

# Sexual harassment and the employer

## Part II

*How the employer should respond to instances of sexual harassment.*

THIS IS our fourth column in the series on sexual harassment following the recent judgment of the Court of Appeal in *Equal Opportunity Commission and Rishi Persad-Maharaj vs Cascadia Hotel Ltd.* On April 18, we spoke about the judgment and explained that sexual harassment can be sex-based discrimination in employment that is prohibited by the Equal Opportunity Act. On April 25, we spoke about sexual harassment in the world of work and noted that harassment may manifest as a single incident, such as where a manager or supervisor demands sexual favours in return for a benefit (that is, quid-pro-quo harassment) or in a series of incidents that creates a harmful and uncomfortable work environment for the victim (that is, hostile work harassment).

Then on May 9, we explained why the employer should take issues of sexual harassment seriously and what they should do to try to prevent it. Today we will consider what the employer should do when harassment actually occurs, that is, what would be appropriate corrective responses. These topics are covered in greater detail in our "Guidelines on Sexual Harassment in the Workplace" which, as we noted before, is available for free download on our website.

As we discussed in the previous article, the employer should have a complaints/grievance procedure where people can report instances, and they could be treated with. The process can be both informal and formal. Informal processes emphasise a forward-looking settlement of the conflict, confidentiality and reconciliation. The victim is allowed to air their grievance, and the offender is spoken to privately; they are



told that their behaviour is unwelcome and they are asked to stop it going forward. Oftentimes the victim is happy just to have the conduct ended.

The formal process emphasises investigation, adjudication and imposition of a sanction, if appropriate. An investigator has to be appointed, who may be internal or external, and it may be one person, two people or a panel. They would have to interview the alleged victim, and would have to convey to the alleged offender a statement of the allegations against them; it is akin to a hearing before a court and the alleged offender must be treated with natural justice and fairness. For example, they must be presumed innocent until proven otherwise, they must be given an adequate opportunity to respond and to present their defence, and as part of this may be entitled to cross-examine the alleged victim.

The investigator (or panel) has to make a finding on whether the complaint is substantiated, and they must put their findings in a written report. It is open to them to make a recommendation on what corrective measures should be taken, but if this involves any disciplinary sanction against the offender, the report needs to be sent to that person and they must be given the opportunity to comment or respond. If the report is submitted to another body to decide (for example the board of directors), then that decision-maker must likewise give the offender the opportunity to be heard before any adverse action is taken against them.

Adverse actions include things like demotion, suspension, or dismissal, but there is the possibility of ameliorative actions such as training and counselling. What actions should be taken against the offender would depend on factors such as:

- i. The severity or frequency of the harassment;
- ii. The wishes of the person who was harassed;
- iii. The extent to which the harasser could have anticipated that their behaviour was unacceptable or unwanted;
- iv. The level of remorse; and/or
- v. Whether there have been any prior incidents or warnings.

It is also important to remember the victim; the employer should not only take action to sanction the offender, but should also take appropriate action to remedy the person who suffered. This would include things like:

- i. Restore losses the victim may have suffered, or things that were taken away or withheld from them because they refused to submit to the harassment.
- ii. Restore sick or annual leave taken because of the harassment.
- iii. Consider granting additional leave to allow them the opportunity to mentally re-settle and re-centre.
- iv. Provide access to counselling and medical support if needed.
- v. Remove negative reports and evaluations that the offender might have given to them because they did not submit to the harassment.

For more information people can consult our guidelines on our website [www.equalopportunity.gov.tt](http://www.equalopportunity.gov.tt). Additionally, people can request training and sensitisation sessions from the EOC on this topic and other aspects of discrimination, which are provided free of charge. Send an e-mail to [communications@eoc.gov.tt](mailto:communications@eoc.gov.tt).