Sexual harassment and the employer

THIS IS our third article 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 on April 25 we spoke about sexual harassment in the world of work. Today we will consider sexual harassment from the employer's perspective: why should it be taken seriously and what can be done to prevent it. 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.

Firstly, why should it be taken seriously? It is tempting for employers to see sexual harassment as an inter-personal issue, but this is ill-advised for the following reasons:

* Sexual harassment claims can have financial consequences for the employer, if the victim takes legal action and the employer has to pay compensation and legal costs. The victim can, for example, lodge a complaint with the commission or, through a trade union, report a trade dispute to the Minister of Labour. The employer may be held liable for the wrongful acts of the employee who committed the harassment (that is, vicarious liability) and for failing to provide a safe system of work for the employee who was the victim (that is, liability under the OSH Act).

* Sexual harassment impacts employee health and motivation and leads to lower productivity. Employees who are the victims of harassment see the workplace as toxic and hostile and become less committed. When they are on the job, they will try to avoid interactions with the harasser, and if this cannot be avoided, they stay away from the job as much as possible and eventually leave the job.

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* Sexual harassment negatively affects the employer's brand and image. Customers and stakeholders who become aware that the employer tolerates this harassment would less likely want to do business there, and the better qualified candidates would less likely want to work there.

Secondly, what then should the employer do? The employer should look at mechanisms:

(I) To prevent sexual harassment from occurring; and

(ii) To respond appropriately to cases when it does happen.

We will deal with corrective actions in a future article, but it must be remembered that the best deterrence is a robust response. An offender is more likely to offend if he or she does not think that the employer will take the appropriate action to treat with a complaint. In those circumstances, the training and policies discussed below will be of little value. The preventive actions that an employer can take are:

1. Training: The employer should train all employees, managers and agents on what workplace sexual harassment is and how they will respond to reports of same.

2. Reporting procedure: The employer should have clear, easy-to-follow procedures to report complaints of sexual harassment. In larger organisations it may suffice to say: send an e-mail to human resources.

3. Complaints/grievance procedure: After it is reported, the employer should have procedures for treating with the complaint of sexual harassment. Complaints/grievance procedures may differ according to the employer's size and available resources. This will be discussed in the future article on corrective measures.

While it is important that the employers have these policies and procedures, they must go on to communicate these to the employees so that they are aware of same. In larger organisations they can be posted onto the staff intranet. New employees should be made aware of them as part of their orientation in the same way the employer educates new people on HSE matters, and existing employees should be periodically retrained on them, in the same way the employer conducts periodic fire drills.

For more information people can consult our guidelines. 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.