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Can Employers Afford To Ignore Sexual Harassment?

BY: DIANNE HUBBARD AND RACHEL COOMER

ON the first day of your new job, you try to make a good impression.

You do everything that your colleagues ask you to do, and you smile

and laugh at all their jokes, whether you think they are funny or

not.

But how far does this 'call of duty' go? Many people soon find

their feet in their job and know how to set boundaries.

But when the boundaries are breached by your own boss, what are

you supposed to do? Imagine the following situation: Your boss

starts to touch you inappropriately.

He grabs you from behind, rubs himself against you, sits on your

lap and even licks your ear.

When you protest, he tells you that it is all good fun and part

of the team-building process.

Everyone is friends here, right? Wrong.

Even though the company has no policy on sexual harassment, you

know that his actions are totally inappropriate for a working

environment.

You ask your boss to stop the inappropriate behaviour, and the

next thing you know, you are out of a job.

Sexual harassment is often ignored by employers because it is

not considered to be a serious issue.

There is no harm in a little flirtation in the office and nobody

has been complaining about it, so what is the problem? But the

reason that victims do not complain is because they are too

ashamed, embarrassed or afraid to take a stand.

Colleagues watching from the sidelines may think that the

situation is funny, or fail to realise the extent of the

harassment.

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It is a violation of basic human rights.

The Namibian Constitution states that every person in Namibia has the right to dignity and privacy.

This includes not having to suffer from sexual harassment in the workplace.

The 1992 Labour Act which is currently in operation forbids "harassment" on the basis of sex.

The 2007 Labour Act, expected to come into force later this year, provides a more clear definition of sexual harassment as "any unwarranted conduct of a sexual nature towards an employee which constitutes a barrier to equality in employment" where the victim has made it clear that he or she finds the conduct offensive; or where the harasser should have realised that the conduct would be unacceptable.

The two-prong approach in the new Labour Act covers two types of situations.

The first set of situations depends on the preferences of the recipient of the attention.

For example, asking a co-worker out on a date would not necessarily constitute sexual harassment on a single occasion.

But if the requests were repeated after the co-worker has made it clear that he or she is not interested, then this would become sexual harassment.

The second set of situations covers conduct which is so obviously inappropriate in a working environment that it would constitute sexual harassment even if the employee has not explicitly stated that the conduct is undesirable.

For example, intimate touching of an employee by his or her supervisor would almost always be considered sexual harassment unless it was clearly invited.

Unwarranted sexual conduct can take many forms, including inappropriate touching (such as fondling a person or touching intimate areas of the body such as breasts or thighs),

inappropriate conversations (such as comments of a sexual nature or continual pressure to go on a date) or the inappropriate use of printed or written material (such as sending love letters or exhibiting pornographic images).

Sexual harassment does not necessarily involve physically forcing another person to do something against his or her will; it can also include words and actions which make the workplace threatening or uncomfortable.

The pervasive influence of sexual harassment can be extensive and the impact on the self-esteem of the victim can be devastating.

Many victims are afraid that they will lose their jobs if they complain, so they often keep quiet and endure the humiliation.

One of the reasons victims feel afraid to complain is because they are often made to think they have incited the harassment (such as by wearing attractive clothing or simply being friendly), or that they have not repelled it sufficiently.

In many cases, the perpetrator may make a joke of the situation or try to persuade the victim that it is "normal" practice in the workplace.

Placing the blame on the victim is a common tactic to exert even more control over a person.

Some victims who are afraid to complain may even resign, if they are unable to endure the sexual terrorisation any longer.

The new Labour Act states that an employee's resignation due to sexual harassment by an employer constitutes "constructive dismissal".

Constructive dismissal is when an employee's working conditions have actually forced him or her to resign, and it carries the same remedies as an unfair dismissal, including reinstatement or compensation.

Employers should take note that allowing sexual harassment to take place or to continue can make the employer liable for the harassment, even if the employer did not have any direct involvement.

A forthcoming Code of Best Practice on Sexual Harassment is expected to set forth employer's responsibilities to prevent and address sexual harassment in more detail.

In a recent landmark case, a victim of sexual harassment took both her abuser, who was a manager at the company, and the company to court.

She endured the harassment for a while, but then felt so upset by it that she complained to the manager - which she alleged resulted in her dismissal.

The case canvassed the severe physical, mental and emotional trauma suffered by the complainant as a result of the harassment.

It was eventually settled on terms which cannot be disclosed due to a confidentiality clause in the settlement agreement.

Although this case did not result in a final judgment by the court, in the view of the Legal Assistance Centre (and in the courts of several other jurisdictions), an employer who fails to create and maintain a working environment in which the dignity of its employees is respected, and who fails to take all reasonable steps to prevent its employees from being harassed by other employees in the working environment, is at fault.

By allowing a manager to have an inappropriate licence with a staff member, an employer fails in its duty to the staff.

The staff member in question showed great bravery in speaking out, setting a courageous example for other victims of sexual harassment.

We hope that her willingness to stand up for her rights will inspire other victims to take a stand against the abuse they are suffering.

The Legal Assistance Centre urges employers to implement a zero tolerance policy on sexual harassment.

If ignored, sexual harassment reduces the productivity and profitability of a company through reduced morale, lack of staff effectiveness, absences from work, and the loss of self-confidence.

As the legal landscape in the field of sexual harassment continues to evolve, employers must ask themselves one simple question - can they afford to ignore the issue of sexual harassment? * Dianne Hubbard is the Project Co-ordinator of the Gender Research & Advocacy Project of the Legal Assistance Centre, and Rachel Coomer is the Public Outreach Officer.

But how far does this 'call of duty' go? Many people soon find their feet in their job and know how to set boundaries. But when the boundaries are breached by your own boss, what are you supposed to do? Imagine the following situation: Your boss starts to touch you inappropriately. He grabs you from behind, rubs himself against you, sits on your lap and even licks your ear. When you protest, he tells you that it is all good fun and part of the team-building process. Everyone is friends here, right? Wrong. Even though the company has no policy on sexual harassment, you know that his actions are totally inappropriate for a working environment. You ask your boss to stop the inappropriate behaviour, and the next thing you know, you are out of a job. Sexual harassment is often ignored by employers because it is not considered to be a serious issue. There is no harm in a little flirtation in the office and nobody has been complaining about it, so what is the problem? But the reason that victims do not complain is because they are too ashamed, embarrassed or afraid to take a stand. Colleagues watching from the sidelines may think that the situation is funny, or fail to realise the extent of the harassment. But sexual harassment is no joke. It is a violation of basic human rights. The Namibian Constitution states that every person in Namibia has the right to dignity and privacy. This includes not having to suffer from sexual harassment in the workplace. The 1992 Labour Act which is currently in operation forbids "harassment" on the basis of sex. The 2007 Labour Act, expected to come into force later this year, provides a more clear definition of sexual harassment as "any unwarranted conduct of a sexual nature towards an employee which constitutes a barrier to equality in employment" where the victim has made it clear that he or she finds the conduct offensive; or where the harasser should have realised that the conduct would be unacceptable. The two-prong approach in the new Labour Act covers two types of situations. The first set of situations depends on the preferences of the recipient of the attention. For example, asking a co-worker out on a date would not necessarily constitute sexual harassment on a single occasion. But if the requests were repeated after the co-worker has made it clear that he or she is not interested, then this would become sexual harassment. The second set of situations covers conduct which is so obviously inappropriate in a working environment that it would constitute sexual harassment

even if the employee has not explicitly stated that the conduct is undesirable. For example, intimate touching of an employee by his or her supervisor would almost always be considered sexual harassment unless it was clearly invited. Unwarranted sexual conduct can take many forms, including inappropriate touching (such as fondling a person or touching intimate areas of the body such as breasts or thighs), inappropriate conversations (such as comments of a sexual nature or continual pressure to go on a date) or the inappropriate use of printed or written material (such as sending love letters or exhibiting pornographic images). Sexual harassment does not necessarily involve physically forcing another person to do something against his or her will; it can also include words and actions which make the workplace threatening or uncomfortable. The pervasive influence of sexual harassment can be extensive and the impact on the self-esteem of the victim can be devastating. Many victims are afraid that they will lose their jobs if they complain, so they often keep quiet and endure the humiliation. One of the reasons victims feel afraid to complain is because they are often made to think they have incited the harassment (such as by wearing attractive clothing or simply being friendly), or that they have not repelled it sufficiently. In many cases, the perpetrator may make a joke of the situation or try to persuade the victim that it is "normal" practice in the workplace. Placing the blame on the victim is a common tactic to exert even more control over a person. Some victims who are afraid to complain may even resign, if they are unable to endure the sexual terrorisation any longer. The new Labour Act states that an employee's resignation due to sexual harassment by an employer constitutes "constructive dismissal". Constructive dismissal is when an employee's working conditions have actually forced him or her to resign, and it carries the same remedies as an unfair dismissal, including reinstatement or compensation. Employers should take note that allowing sexual harassment to take place or to continue can make the employer liable for the harassment, even if the employer did not have any direct involvement. A forthcoming Code of Best Practice on Sexual Harassment is expected to set forth employer's responsibilities to prevent and address sexual harassment in more detail. In a recent landmark case, a victim of sexual harassment took both her abuser, who was a manager at the company, and the company to court. She endured the harassment for a while, but then felt so upset by it that she complained to the manager - which she alleged resulted in her dismissal. The case canvassed the severe physical, mental and emotional trauma suffered by the complainant as a result of the harassment. It was eventually settled on terms which cannot be disclosed due to a confidentiality clause in the settlement agreement. Although this case did not result in a final

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