

Short notes on:

## **SEXUAL HARRASSMENT IN THE WORKPLACE**

### ***Introduction***

Sexual harassment, a violation of human rights and a form of sex discrimination, is costly to employees in the workplace. Although many countries have legislation governing sexual harassment in the workplace, it remains pervasive and underreported. This is because today, sexual harassment often takes on more subtle forms. Instead of being propositioned for sexual activities or being inappropriately touched, an employee might receive suggestive messages, images, unwelcome sexually charged comments or invitations to meetings that somehow turn into dates. In this fast-paced world, harassment of a sexual nature is likely to happen through social media or other venues outside the office.

### ***How is sexual harassment defined?***

The harassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of the listed grounds provided in Section 9 of the Constitution<sup>1</sup> and Section 6 of the Equity Employment Act.<sup>2</sup> The Equity Employment Act defines sexual harassment as the unwanted conduct of a sexual nature which makes a person feel offended, humiliated, or intimidated. This is not limited to sexual harassment of the opposite gender and includes homosexual and bisexual harassment.<sup>3</sup>

### ***Types of sexual Harassment***

There are two types of sexual harassment; namely, quid pro quo harassment and hostile work environment. Quid pro quo harassment is the toleration of harassment to obtain job-related benefits or to avoid job-related detriment. Here, an employee can be offered a promotion in exchange for sexual favours or be threatened with a dismissal in the absence of such sexual favours. Hostile work environment occurs when an employee is subjected to unwelcome physical or verbal conduct of a sexual nature that is so severe or pervasive that it changes the employee's working conditions or creates an abusive work environment.

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<sup>1</sup> This list includes race, gender sex, pregnancy, marital status, ethnic or social origins, colour, sexual orientation, age disability religion culture and language.

<sup>2</sup> *The Equity Employment Act No. 55 of 1998*

<sup>3</sup> *Ntsabo v Real Security CC (2003) 4 ILJ 2341 (LC)*

## ***Types of inappropriate actions***

Where quid pro quo is relatively straightforward, hostile work environment, on the other hand proves to be more difficult. Examples of more overt sexual harassment includes unwanted kissing, touching of breasts or private parts, requests for sexual favours, sexually explicit comments and gestures and cornering in a small space. While overt forms of sexual harassment certainly still occur in the workplace, subtle forms are slowly on the rise. These include, but not limited to:

- Repeated compliments of an employee's appearance or repeated unwanted touching.
- Commenting on the attractiveness of employees
- Discussing one's sex life in front of an employee or asking about an employee sex life.
- Making sexual jokes and whistling at another
- Sexual rumours about an employee

## ***Protection for the employee***

For someone's conduct to qualify as hostile work environment, it must be offensive not only to the employee but also to a reasonable person in the same circumstances. The Code of Good Practice<sup>4</sup> expects that employees will be warned of the undesirability of harassment and the procedures to be followed by victims in the event of such conduct. This implies that all employees including employers should be educated in this regard. Section 60 of the EEA provides that an employer will be held liable where they had been informed of the occurrence of sexual harassment and failed to take the appropriate corrective methods and as such in cases where an employee is subject to sexual harassment at the workplace, such conduct must be brought to the attention of the employer.<sup>5</sup> Failure to do so will result in the contravention of the provisions of the Act.

Contact an Attorney at SchoemanLaw for assistance in ensuring your workplace is compliant in dealing with issues where you are facing harassment in the workplace.

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<sup>4</sup> Schedule 8 of the Labour Relations Act

<sup>5</sup> *Ntsabo v Real Security CC (2003) 4 ILJ 2341 (LC)*