

Addressing Sexual Harassment



A Critical Step towards the
elimination of unfair
discrimination in the
workplace



Sexual Harassment in the Workplace



Introduction

- # Sexual Harassment as a form of discrimination
- # What is sexual harassment
- # Why should we pay attention to sexual harassment





Sexual Harassment in the Workplace

The Employment Equity Act

Section 6

No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.



Sexual Harassment in the Workplace

The Employment Equity Act

Section 6(3)

Harassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of grounds of unfair discrimination listed in subsection (1).

WHAT IS DISCRIMINATION



- **differentiation - treating people differently by including some, excluding others, preferring some over others**
- **when differentiation is based on unacceptable reasons - it becomes discrimination**
- **What are unacceptable reasons?**
- **Individuals or groups are discriminated against if**
 - they are denied benefits enjoyed by others or
 - made to suffer prejudice which others are not subjected to

An unlisted reason for differentiation – is it discrimination?



YES! if it meets this test...

“Whether, objectively, the ground [reason] is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner.”

~ Harksen v Lane NO, 1998(1) SA 300 (CC)



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Definitions

In 1980 the Equal Employment opportunities Commission in the United States defined sexual harassment as:

“Unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature when:

1. 1.submission to such conduct is made an implicit or explicit condition of employment
2. 2. submission to or rejection of such conduct effects employment opportunities; or
3. 3. the conduct interferes with an employee’s work or creates an intimidating, hostile or offensive environment”



Sexual Harassment in the Workplace

Definitions continued

The draft bill on the Promotion of Equal Opportunities

- # any conduct where a person makes an unwelcome sexual suggestion
- # unwelcome request for a sexual favour to another person
- # engages in any other unwelcome conduct of a sexual nature



Sexual Harassment in the Workplace

Definitions continued

The Code of Good Practice

Sexual harassment is
unwanted conduct of a
sexual nature



Sexual Harassment in the Workplace

Definitions continued

“unwanted sexual attention of a persistent or abusive nature, made by a person who knows or ought reasonably to know that such attention is unwanted;

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Definitions continued

Common element in all definitions

- # Unwanted
- # Unwelcome
- # Unsolicited
conduct





Sexual Harassment in the Workplace

Forms of Sexual Harassment

- # Physical
- # Verbal
- # Non-Verbal



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- # Quid-pro-quo
- # Sexual favouritism
- # Hostile work environment

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Legislative Imperatives

- # **The Constitution of the Republic of South Africa, Act 108 1996**
- # **The Labour Relations Act**
- # **The Employment Equity Act**
- # **Promotion of Equality Act**
- # **Code of good practice**





Sexual Harassment in the Workplace

The Constitution

Human Dignity

“Everyone has inherent dignity and the right to have their dignity respected and protected”

(Section 10 – Constitution of South Africa 1996)

“Everyone has the right to privacy...”

(section 14 – Constitution of South Africa 1996)



Sexual Harassment in the Workplace

The Labour Relations Act

Section 203

Codes of Conduct



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The Employment Equity Act

Section 60

Liability of Employers

If it is alleged that an employee, while at work, contravened a provision of this Act, or engaged in any conduct that, if engaged in by that employee's employer, would constitute a contravention of a provision of this Act, the alleged conduct must immediately be brought to the attention of the employer.



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The Employment Equity Act

Section 60

Liability of Employers

The employer must consult all relevant parties and must take the necessary steps to eliminate the alleged conduct and comply with the provisions of this Act.



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The Employment Equity Act

Section 60

Liability of Employers

If the employer fails to take the necessary steps referred to in subsection (2). And it is proved that the employee has contravened the relevant provision, the employer must be deemed also to have contravened this provision.



Sexual Harassment in the Workplace

The Employment Equity Act

Section 60

Liability of Employers

Despite subsection (3), an employer is not liable for the conduct of the employee if that employer is able to prove that it did all that was reasonably practicable to ensure that the employee would not act in contravention of this Act.



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Promotion of Equality Act

(xiii) ‘harassment’ means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is

calculated to induce submission by actual or threatened adverse consequences and which is related to

- (a) sex, gender or sexual orientation; or
- (b) a person’s membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group



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Promotion of Equality Act

Prohibition of harassment

11. No person may subject any person to harassment.



Sexual Harassment in the Workplace

The Effects of Sexual Harassment

- # For the Victim
- # For the Company
- # For the perpetrator



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The Effects of Sexual Harassment

On the Victim

- # degraded, humiliated, ashamed
- # depression, anxiety, shock, denial
- # low self esteem
- # sexual problems



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The Effects of Sexual Harassment

On the Company

- # Financial losses
- # Lack of productivity
- # Factionalism
- # Image can be tarnished
- # Resignations



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The Effects of Sexual Harassment

On the perpetrator

- # Image
- # Social standing
- # Loss of Income
- # Financial Loss
- # Criminal Record



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Liability of Employer

- # International Examples
- # Employment Equity Act
- # Case studies



Sexual Harassment in the Workplace

Addressing Sexual Harassment at Work

- # Create a climate conducive to end discrimination
- # Have a written Policy
- # Procedure to deal with complaint



Sexual Harassment in the Workplace

Addressing Sexual Harassment at Work

Why a written Policy?

- # **The Labour Relations Act requires that you have a policy in place**
- # **shows management's commitment to eliminate sexual harassment**
- # **Staff will take the issue of sexual harassment seriously**



Sexual Harassment in the Workplace

What should a good policy contain?

- # A clear policy statement
- # Purpose
- # Definition
- # Application
- # Procedures to be followed
- # Redress mechanisms



Sexual Harassment in the Workplace

What should a good policy contain?

- # False accusations – dealing with
- # Confidentiality
- # Additional sick leave or Trauma Counselling
- # Implementation procedures/processes



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Policy Content

Policy Statement

- # employer's commitment to providing a work environment that is free of all forms of discrimination
- # Dignity and respect
- # Zero Tolerance



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Policy Content

Purpose

This section should clearly illustrate

intent

purpose



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Policy Content

Definition

- # Develop clear definition
- # Use Code of Good Practice
- # State the forms of sexual harassment



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Policy Content

Application

Who does this policy apply to

- # All staff
- # Prospective employees
- # Non-employees



Sexual Harassment in the Workplace

Policy Content

Procedures to be followed

Informal Procedure

Complainant approaches harasser to resolve issue

Formal Procedure

Could follow company's disciplinary process

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Policy Content

Redress mechanisms

- # complaints procedure
- # assure confidentiality
- # investigation process
- # penalties the harasser will face

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Policy Content

Redress mechanisms

remedies are available to the victim

appeals procedure



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Policy Content

False accusations

- # false accusations can lead to disciplinary steps
- # civil litigation

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Policy Content

Implementation

#communication

#Education

#Training

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How to deal with a sexual harassment case

Informal Process

- # Victim informs perpetrator conduct is unwelcome
- # Have witness
- # Record incidents and steps to resolve

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How to deal with a sexual harassment case

Formal Process

- # Can follow company's disciplinary process
- # Stipulate who handles complaint
- # Set time frames for resolution

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How to deal with a sexual harassment case

Formal Process

- # Thorough investigation
- # Remember confidentiality
- # Stipulate sanctions

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How to deal with a sexual harassment case

Formal Process

CCMA

Labour Court



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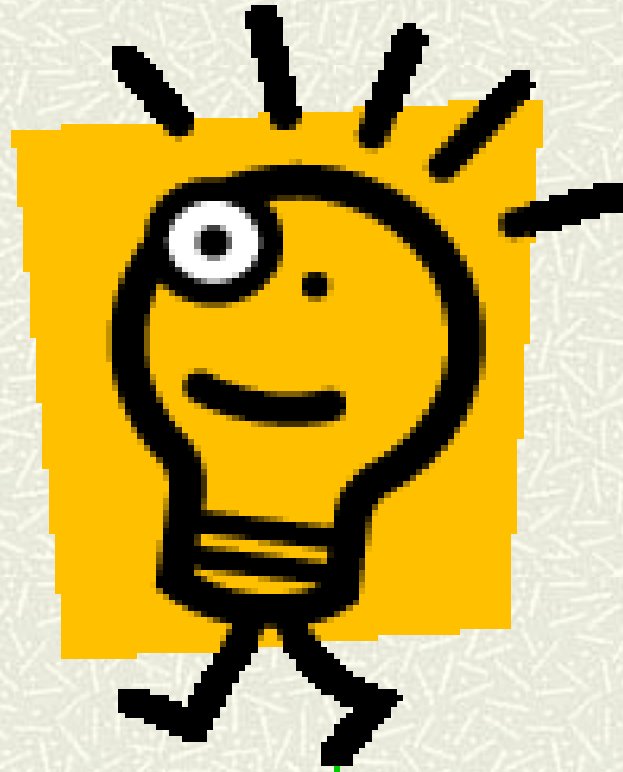
Case Study

Ntsabo v Real Security cc

- # Establishes employer liability
- # Sexual harassment is discrimination
- # Awarding of damages



Thank you



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