



BPSU REPORT: SEXUAL HARASSMENT IN THE WORKPLACE

This report, developed by Bro. Jason P. Hayward, President of the BPSU, seeks to inform members on sexual harassment in the world of work.

*Sexual Harassment
August 2018*

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SEXUAL HARASSMENT IN THE WORKPLACE

What is Sexual Harassment?

Sexual harassment is a hazard encountered in workplaces across the world that reduces the quality of working life, jeopardises the well-being of women and men, undermines gender equality and imposes costs on businesses and organisations.

Sexual harassment is defined by Bermuda's Human Rights Act 1981 as:

“sexual comment or sexual conduct towards that other which is vexatious and which he knows, or ought reasonably to know, is unwelcome”.

In Bermuda, cases of sexual harassment in the workplace go largely unreported. In 2016, the Human Rights Commission reported a mere five (5) cases of sexual harassment, and those are not necessarily all work-related incidences. In a recent employee opinion survey conducted at the KEMH and MWI, 7% of the respondents alleged that they had been subjected to sexual harassment in the workplace. This number is assumed to be drastically higher for hospitality workers who are on the frontline providing services to clients in hotels, restaurants and bars.

The International Labour Organisation (ILO) describes sexual harassment as:

“any unwanted conduct of a sexual nature, request for sexual favours, verbal or physical conduct or gesture of a sexual nature; or other behaviour of a sexual nature that makes the recipient feels humiliated, offended and/or intimidated, where such reaction is reasonable in the situation and condition; or made into working requirement or create an intimidating, hostile or inappropriate working environment.”

Types of Sexual Harassment

Sexual harassment can take various forms. Broadly, there are five (5) forms of sexual harassment including:

1. **Physical harassment** - unwelcomed touching in a sexual manner such as kissing, patting, pinching, glancing or staring lustfully
2. **Verbal harassment** - unwelcomed comments about private life, body parts or a person's appearance, sexually suggestive jokes and comments
3. **Gestural harassment** - sexually suggestive body language and/or gestures, repeated winks, gestures with fingers, and licking lips
4. **Written or graphic harassment** - display of pornographic materials, sexually explicit pictures, screensavers or posters, or harassment via emails and other modes of electronic communication

5. **Psychological/emotional harassment** - persistent proposals and unwelcomed requests, unwanted invitations to go out on dates, insults, taunts or innuendo of a sexual nature.

While the above list is not exhaustive, it provides useful examples to illustrate the significant range of conduct that might constitute sexual harassment.

Sexual harassment in the workplace encompasses situations occurring:

- in the workplace, including public and private spaces;
- in places where the worker is paid, takes a rest break or a meal, or uses sanitary and washing facilities;
- when commuting to and from work;
- during work-related trips or travel, training, events or social activities;
- through work-related communications enabled by information and communication technologies; and
- in employer-provided accommodation.

Gender Lenses

An individual's viewpoint of sexual harassment is often influenced by gender. Men and women exhibit vastly different views of the propriety of sex in the workplace. In general, men and women differ concerning the appropriateness of sexual conduct in the workplace; behaviour considered offensive by women may be viewed as harmless by men.

In an early study, a group of men and women were asked how they would feel if asked by a member of the opposite sex to engage in sex. Their responses were:

Response	Males (%)	Females (%)
Flattered	67.2	16.8
"It depends"	8.9	14.4
Insulted	15.0	62.8
Neither (it would not happen)	8.9	6.0

In another more recent study, male respondents' perceptions of workplace sexual harassment also differed significantly from those of female respondents across several issues. Women had more complete awareness of what constitutes sexual harassment. Compared to female participants, male respondents more frequently tended to think that in many cases women are, to some extent, responsible for their harassment at the workplace, for example, by dressing to attract attention, taking jobs which were traditionally a man's domain and so on. There is certainly a need to create awareness in future professionals, particularly among men, regarding the full definition and scope of sexual harassment.

Effects of Sexual Harassment

Women, far more often than men, are the objects of sexually harassing behavior. Women may be more vulnerable as they have historically held lower paying jobs and/or lower status jobs, although employees in high paying and/or leadership roles can also experience harassment; no one is immune. While harassment does not impact women in a uniform way, it is more prevalent against the more vulnerable. Young workers, for example, are common targets. Other groups which have been found to be disproportionately subjected to sexual harassment are the single, separated, widowed and divorced. It is also apparent that the kind of workplace in which a woman is employed is a significant factor in the likelihood of her being harassed. Women in non-traditional jobs and predominantly male environments as well as women who work for male supervisors have been found to be more likely to be subjected to harassment.

Although most victims of sexual harassment are women, there is a growing awareness that men can be victimised in similar ways. In recent years, the number of complaints and legal actions brought by men have increased.

The effects of sexual harassment on its victims are well documented. Studies routinely confirm that most are upset by it, and that many experience feelings ranging from irritation and nervousness to anger, powerlessness and humiliation. At its worst, sexual harassment can make their working lives miserable and even dangerous. Research has shown that victims can eventually become ill when subjected to sexual harassment on a regular basis; particularly where it is perpetrated by a supervisor, involves sexual coercion, or takes place over a long period of time or in a male-dominated setting. It has been found to trigger a wide range of ailments, including stress-related illnesses, high blood pressure and depression. Ultimately, victims of sexual harassment may miss out on career opportunities or leave their jobs.

In her seminal work written in 1979, University of Michigan law professor, Catharine A. MacKinnon, observed that victims of harassment often feel humiliated, degraded, ashamed, embarrassed and cheapened, referred to comments reportedly made by harassed women in a survey conducted by the Working Women United Institute. Women generally react to sexually harassing conduct in one of four ways:

1. avoidance
2. diffusion
3. negotiation
4. confrontation

Sexual harassment also costs employers. In a recent Canadian survey, for example, nearly one-third of victims reported that their jobs had been affected by sexual harassment. In these circumstances, productivity may decrease, team work jeopardised, and the risk of workplace accidents increase. Ultimately, employers may lose valuable workers, while others may be

dissuaded from applying for vacancies. Employers who fail to prevent sexual harassment may also face the financial costs of sick pay for employees who become ill, and legal bills from court actions brought against them.

The Union's Perspective

The BPSU has sought to raise awareness, support targeted persons and promote workplaces free of bullying and harassment. Through the Union's educational programs, we have trained Shop Stewards to identify negative behaviours and provided them with the necessary tools to respond to harassment in the workplace. In May 2016, the BPSU produced an anti-bullying and harassment magazine to serve as a resource guide for both workers and employers.

The Union has realised that the courtroom is not the most appropriate forum to resolve sexual harassment issues. While the Human Rights Act protects persons from sexual harassment in the workplace, we find workplace policies combined with strong legislation to be most effective.

As sexual harassment cases are highly charged and emotional, they are difficult to resolve in an adversarial environment. Efforts to eliminate sexual harassment from the workplace are far more likely to be effective in those instances where employers adopt and implement policies focused on prevention.

In the case of a unionised environment, the Union plays a role in assisting either a complainant or a respondent in a sexual harassment complaint. This can become complicated when both parties are members. In this regard, the Union provides assistance in a fair way to both parties. Failing to do so could result in either party being in a position to file a grievance, duty of fair representation complaint or human rights complaint against the Union.

The Union also ensures that workplaces have adequate anti-harassment policies. Good policies typically contain the following elements:

- A clear description of prohibited conduct
- The prohibition of sexual harassment covers everyone in the workplace – supervisors, co-workers and non-employees
- Employees are encouraged to report harassment before it becomes severe or pervasive
- Assurance that employees who report acts of harassment, or provide information relating to such complaints, will be protected from any form of retaliation
- Clearly described reporting procedures, providing accessible and, where necessary, alternate avenues of complaint for the harassed worker
- Assurance that the employer, to the extent possible, will provide confidentiality of the complainant
- A complaint process providing a prompt, thorough and impartial investigation

- Assurance that the employer will take appropriate corrective action once it determines harassment has in fact occurred in its workplace.

A well-drafted policy should be coupled with employee training to ensure employees know their rights and the channels to use in the event of an incident of sexual harassment. If the policy exists but employees have not been made aware of its existence, there can be issues if there is a later attempt to rely on the policy. Beyond training employees on the policy itself, employers should also consider generalised harassment and discrimination training to ensure all employees are made aware of the types of conduct that may constitute harassment and discrimination. Pro-active approaches can help avoid future liabilities and costly disruptions in the workplace. Ideally, training will help maintain a positive working environment, or at the very least, ensure complaints are made earlier and therefore, easier to remedy.

Employers

As a minimum, there are two (2) main actions that all employers should take to prevent and settle the case of sexual harassment:

1. Develop, endorse and communicate to all employees a sexual harassment policy within the working environment. This should be disseminated to all employees during recruitment and induction
2. Take effective and appropriate remedial action if sexual harassment occurs.

Employers/management should refrain from committing acts of sexual harassment and should contribute towards creating and maintaining a work environment free from sexual harassment. This is accomplished by regulating standards to eliminate all forms of unwanted harassment that leads to sexual harassment.

Employers/management should attempt to ensure that all third parties such as customers, job applicants or suppliers, are not subjected to sexual harassment by the employer or employees and vice versa. All employers, regardless of the size of the business, should take proper steps to prevent sexual harassment in the workplace. This means that employers must actively implement preventative measures to minimise the occurrence of sexual harassment and to respond appropriately when harassment occurs. Large companies or organisations may need to disseminate information and conduct formal training to ensure that all employees are aware of and understand the company policy regarding sexual harassment. In small companies, the most appropriate strategy might be to provide a copy of a sexual harassment policy to employees and hold informal discussions with employees to ensure they understand the policy.

Due to these reasons, all employers should be required to establish a mechanism within the company, organisation or institution to prevent and to respond to cases of sexual harassment in the workplace. The mechanism must include the elements listed above.

Government

Through reports from the Labour Advisory Council, it is my understanding that the Government is working on a sexual harassment legislation, separate and apart from the Human Rights Act. I applaud the move as Governments should have a firm stance on eliminating sexual harassment in the workplace. The Government should promote a safe and decent work environment. Enforcement is often the area that needs strengthening.

The Government should take appropriate measures to:

1. Monitor and enforce national laws and regulations regarding sexual harassment in the world of work
2. Ensure that all persons concerned have easy access to appropriate and effective remedies as well as safe, fair and effective reporting and dispute resolution mechanisms in cases of violence and harassment including:
 - i. complaint and investigation mechanisms at the workplace level
 - ii. dispute resolution mechanisms external to the workplace
 - iii. access to courts or tribunals;
 - iv. protection against victimisation of or retaliation against complainants, witnesses and whistle-blowers
 - v. legal, social, medical and administrative support measures for complainants
3. Provide for sanctions, where appropriate, in cases of sexual harassment in the workplace
4. Ensure that workers have the right to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to life or health due to Sexual harassment, without suffering undue consequences
5. Ensure that labour inspectorates and other relevant authorities, as appropriate, are empowered to deal with sexual harassment.

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