Sexual Harassment at Work… Much Ado about Nothing or A Real Workplace Issue?

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May 2012
Sexual Harassment at Work

Expected Outcomes from this Presentation:

• A better understanding of what Sexual Harassment is and its link to inequity, and exploitation at the workplace
• Common forms and impacts of Sexual Harassment
• Considerations for national legislation & workplace policies
• Practical concerns for Employers
• Individual actions for dealing with sexual harassment
• Elements of the complaint process
Where do Universal Human Rights Begin?

“In places so small they cannot be seen on any map of the world –

-- **It is in the world of the individual:** the factory, farm or office where every man and woman seeks equal justice, equal opportunity, and equal dignity without discrimination.”
International Instruments

**UN**

- United Nations Charter

- Universal Declaration of Human Rights (adopted by Jamaica over 60 yrs. ago)

- UN Convention on the Elimination of All Forms of Discrimination

**ILO**

- Discrimination (Employment and Occupation) Convention #111 (1958) (ratified by Jamaica in 1975)

- Indigenous and Tribal Peoples Convention #169 (1989)

Regional Instruments

Americas

• American Declaration of the Rights and Duties of Man (1948)

• American Convention on Human Rights (1969)


• Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem Do Para” (1996)

Caribbean

• Model Legislation on Sexual Harassment (1989)

• Model Harmonization Act on Equal Opportunity & Treatment in Employment & Occupation (1996)
Sexual Harassment Defined


“Unwelcome conduct of a sexual nature – used explicitly or implicitly a term or condition of an individual’s employment; unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.”
Sexual Harassment Defined

“Conduct of a sexual nature, or other conduct based on sex, affecting the dignity of women and men at work. This can include physical, verbal or non-verbal conduct.”

European Commission’s Recommendation, 1991
Sexual Harassment is a Form of Discrimination and an Obstacle to Equality and Treatment

“There is widespread recognition that sexual harassment is an obstacle to equality and treatment and an unacceptable aspect of the working environment which must be addressed.

Preventive policies and procedures at the enterprise level should be encouraged in order to reduce the risk of sexual harassment.”
Sexual Harassment -- What it is NOT!

- **NOT easily understood** -- persons may each have a different understanding of what it constitutes.

- **NOT easily understood** -- based on many inter-related factors concerning specific intentions, reactions, employment goals, and working environment prohibiting equal opportunity and treatment.

- **NOT precise** -- relative to perceptions -- the reactions of the recipient and the intentions of the perpetrator.

- **NOT of one culture** -- addressed in many different cultural and developmental contexts concerning human rights and what is socially acceptable (i.e., occasional compliments).
Sexual Harassment - What it is

• Specific definitions vary – but all underscore the point that it is a form of discrimination based sexually-oriented conduct that is unwanted, unreasonable, and offensive to the recipient.

• Based on explicit legislation to promote equal opportunity and treatment, free from discrimination and harassment of any kind

• Contains key elements and can be further defined through examples
Key elements

• Includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexually harassing nature, when:

• submission to or rejection of the harassment is used as the basis for employment decisions affecting the individual; or

• the harassment has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.
### Examples of Sexual Harassment

**• Physical**
- Unwelcome, unnecessary touching in a sexual manner, assault, insulting or abusive behavior

**• Verbal**
- Propositions, direct or suggestive remarks, innuendoes, lewd comments, offensive jokes, abusive language

**• Non-verbal**
- Display and/or distribution of pornographic or suggestive pictures, offensive written or visual material or graffiti, gestures

**• Retaliation**
- Victimization, intimidating, threats, or other unacceptable conduct (i.e. denigrating, ridiculing, bullying, etc)
Two Types

**QUID PRO QUO**
- Sexual blackmail (this for that)
- Single or repeated incident
- Intimidating or offensive
- Abuse of power
- Unwelcome/unwanted

**HOSTILE ENVIRONMENT**
- Interferes with work performance
- Severe/pervasive
- Unwelcome/unwanted
Who Harasses?

- Male to Female
- Male to Male
- Female to Female
- Female to Male
- Third Party Harassment

Why does someone sexually harass another person?

- To exercise his or her power or authority
- To denigrate or to make someone feel unwanted or ridiculous
- Because of ignorance, i.e., due to lack of understanding or how the behavior makes the recipient feel
Adverse Effects?  Yes!

• For the Recipient
  — Psychological
  — Physical
  — Professional

• For the Workplace
  — Lower productivity, morale, customer care
  — Higher absenteeism, staff turnover
  — Workplace tension
  — Costly investigation, litigation, damages & fines
  — Poor public image, reputation

• For the Harasser
  — Disciplinary action, including dismissal
  — Can result in payment of damages/fine
Who Is Responsible?

• Not Only the Harasser/Offender

• Obligation of Every Employer
  – To take immediate corrective action; “Knew or should have known”
  – To have concern for image by clients or customers

• Line Managers/Shop Stewards
  – Educate membership (women and men)
  – Cooperate with Employers in the formulation of an appropriate workplace policy on the subject
Legislation and Policy – what should be the approach?

- Adopting an explicit definition of sexual harassment designed to protect, prevent, correct and addresses:
  - An explanation on the two types of sexual harassment -- Quid Pro Quo (sexual blackmail) and hostile working environment
  - The unwelcome nature of the prohibited conduct, i.e. physical, verbal & non-verbal, etc., and the non-tolerance for such conduct.
  - A broad outline covering the scope of protection and the responsibilities for as many persons as possible
What elements should be addressed?

- The obligations for the prevention of sexual harassment
- The liability of the employer and the alleged harasser
- Fair and clear procedures covering the hearing of complaints, investigations, burden of proof, confidentiality
- Protection and monitoring against victimization
- Provide for a wide range of damages, remedies and sanctions that both punish and deter harassing conduct
- Establishing a mechanism with resources and competence to handle complaints and apply relevant legislation or policy
Legislative & Policy Trends in the Caribbean

- A number of Caribbean countries have introduced legislation specifically dealing with sexual harassment -- while in other countries, existing laws addressing discrimination does not specifically address the issue.

- Many enterprises do not have sexual harassment policies and thus do not recognize, acknowledge, or know how to deal with it when cases occur.

- Sexual harassment at work exists, but for the most part remains unreported due to the lack of work place policies and procedures to adequately address the issue.
Caribbean Context

**CARICOM Model Legislation on Sexual Harassment (1989)**

**CARICOM Model Harmonization Act**

**National Legislation exists in some countries**
Caribbean Instruments

Model Legislation on Sexual Harassment (1989)

- Covers sexual harassment in employment, education, and accommodation
- Recommends the establishment of a tribunal to resolve these disputes

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An important effort, but there are limitations:

- Limited to “quid pro quo” harassment
- Limited to conduct of a physical sexual nature
- Excludes non-verbal conduct
- Not clear whether a tribunal should only deal with sexual harassment

- Citizenship
- Domestic Violence
- Equal Pay
- Inheritance
- Sexual Harassment
- Sexual Offences
<table>
<thead>
<tr>
<th>Country &amp; Enactment Date</th>
<th>Name of Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bahamas – 1991</td>
<td>Sexual Offences &amp; Domestic Violence Act</td>
</tr>
<tr>
<td>Belize – 1996</td>
<td>Protection Against Harassment Act (close to CARICOM Model)</td>
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<tr>
<td>Guyana – 1997</td>
<td>Prevention of Discrimination Act</td>
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<tr>
<td>Saint Lucia – 2000</td>
<td>Equality of Opportunity &amp; Treatment in Employment &amp; Occupation Act</td>
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<tr>
<td>Trinidad &amp; Tobago – 2000</td>
<td>Equal Opportunity Act (No. 69)</td>
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<tr>
<td>Barbados – 2003 (Draft Bill)</td>
<td>Draft Bill on Sexual Harassment</td>
</tr>
<tr>
<td>Jamaica – 2004 (Draft Legis.)</td>
<td>Draft Legislation on Sexual Harassment</td>
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</tbody>
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The Bahamas

- Sexual Offences and Domestic Violence Act (1991)
  The first Caribbean country to address sexual harassment through legislation, but is now inadequate since:
  - Creates a criminal offence, not civil remedies for the harassed person
  - Permission of the Attorney General is needed to prosecute the crime
  - Limited to Quid Pro Quo Harassment
Barbados

- Draft Bill on Sexual Harassment

“A person shall be taken to harass sexually another person if the person makes an unwelcome sexual advance, or an unwelcome request for sexual favors, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person”

The employer would be liable for sexual harassment and would violate the law in two ways:
- Employer does not exercise the duty to protect the employee from sexual harassment
- Employer or supervisor who themselves seek to extract sexual favors in return for a benefit
Belize

• Protection Against Harassment Act (1996)
  – Like the CARICOM Model, the Act covers employment, education, and accommodation, yet broadens the coverage of educational institutions
  – The standard of what is an unwelcome, unwanted sexual advance is based upon that of the person to whom the advance is directed.
  – “Hostile work environment” – behavior is a reasonable interference with the complainant’s work performance or creates an intimidating, hostile or offensive working environment
  – Imposes duties on employers and persons in charge of institutions to keep the places they control free from sexual harassment

Guyana

- **Equal Rights Act (1990)**
  - The first country in the English-speaking Caribbean to enact legislation making it unlawful to perform discriminatory acts by non-state actors.
  - Restated the provisions enshrined in the Constitution declaring all forms of discrimination against women or men on the basis of sex or marital status illegal

- **Prevention of Discrimination ACT (1997)**
  - Incorporates sexual harassment within anti-discrimination legislation
  - Incorporates the “hostile work environment” standard seen in the Belize Act, yet scope is limited to workplaces only
  - If employer is convicted, aggrieved person can apply for damages for any direct or indirect loss, for an order of redress including an order for reinstatement, or for any other order that the courts thinks is fair and just.
Saint Lucia

  
  – Incorporates sexual harassment within anti-discrimination legislation
  
  – The Act is similar to that of Guyana with one exception:
    • Allows for orders for the employment or re-employment of a person as well as for their reinstatement.
    • Incorporates the “hostile work environment” standard seen in the Belize Act, yet scope is limited to workplaces only
    • If employer is convicted, aggrieved person can apply for damages for any direct or indirect loss, for an order of redress including an order for reinstatement, or for any other order that the courts thinks is fair and just.
Trinidad and Tobago

• Equal Opportunity (EO) Act (No. 69 of 2000)
  – Prohibits discrimination based on sex, race, ethnicity, origin, religion, marital status or disability in employment, training, education and other fields.

– Established EO Commission and Tribunal

– States that an Employer may not discriminate:
  • In terms and conditions of employment
  • In access to promotion, transfer or training
  • By dismissing the person or subjecting the person to any other detriment
Jamaica

- **Charter of Rights Bill** – Amends the Constitution to include protection against discrimination on the basis of the sex of the individual

- **Offences Against the Person Act** - Amended to broaden the definition of rape; includes marital rape as an offence.

- **Other Specific Acts:**
  - Property Act; (Rights of Spouses)
  - Maintenance Act;
  - Domestic Violence Act;
  - Incest Punishment Act

**Sexual Harassment Draft Legislation** – developed since 2004 in relation to sexual harassment in the workplace, rented accommodation, education institutions, among other places.

**Sexual Harassment Policy** – framework revised in Oct. 2006 by Bureau of Women’s Affairs and further developed since 2009 to include all aspects of the draft legislation and addresses issues such as an organization’s liability for sexual harassment and the fair treatment of both victims and perpetrators.

**Sexual Harassment Bill** - announced since February 2011, a bill is to be drafted after Cabinet approves already-submitted sexual harassment policy.
Common Features of the Legislations

1. Specific Legislation on Sexual Harassment Enacted

2. Incorporates Sexual Harassment within Anti-discrimination Legislation

3. Addresses Quid Pro Quo Only
4. Addresses Hostile Environment
5. Limits to Physical Conduct Only
6. Establishes Equal Opportunity Commissions/Tribunals
7. Specifies Employers’ Responsibilities
8. Specifies procedures for redress, payment of damages, re-employment, re-instatement
9. Limits to Workplaces Only

11. Specific Legislation TO BE DEVELOPED

1. CARICOM, Bahamas, Belize, Barbados (Draft Bill)

2. Guyana, Jamaica, St. Lucia, Trinidad & Tobago

3. CARICOM, Bahamas
4. Belize, Guyana, St. Lucia
5. CARICOM, Belize
6. CARICOM, Trinidad & Tobago
7. Barbados, Trinidad & Tobago
8. Guyana, St. Lucia
9. Guyana, St. Lucia
10. CARICOM, Belize

11. Barbados, Jamaica
What should be the Concerns of Employers?

• Upholding the fundamental principles of treating every employee with dignity and respect.

• Providing a safe working environment, including one that is free from all forms of harassment and intimidation.

• Maintaining a motivated, productive workforce, free from stress, absenteeism, etc.

• Cultivating a public image that would have a positive impact on the opinions of existing and potential consumers as well as employees.

• Adopting workplace policies and procedures that state the company’s attitude and to prevent and deal with negative incidents.

• Putting in place communication, education, and training strategies that address all aspects of the issues.
Unions also have an Obligation. . . .

. . . to work towards eliminating these problems

- Educate membership (women and men)
- Survey membership
- Negotiate language and procedures through collective bargaining
- Joint trainings with management
- Investigate cases and follow through with procedures
- Cooperate with employers in the formulation of an appropriate workplace policy on the subject
Business Reasons for Taking Action Against Discrimination at Work

- Business morality/ethics: 73%
- Other (building a unified corporate identity): 41%
- Public Image: 40%
- Productivity: 40%
- Costs: 27%
No formal anti-discrimination policy..... Why not?

- Unnecessary: 11%
- In the process of developing a policy: 11%
- Not considered it: 14%
- We have a policy, but have not written it down: 32%
- We aim at being an equal opportunity employer: 42%
- We ensure compliance with laws and regulations: 47%

Other: 5%
Issues Covered by Collective Dispute Procedures

- Mobbing/Bullying etc.: 48%
- Discrimination: 48%
- Privacy & Confidentiality: 52%
- Sexual Harassment: 52%
- Promotions: 63%
- Severance & Pensions: 65%
- Redundancy: 65%
- Organisation of Work: 66%
- Health & safety: 68%
- Pay & Conditions: 85%

Developing Workplace Policies

Elements to Include:
A. Strong statement on the organization’s attitude to sexual harassment
B. Clearly worded definition of sexual harassment
C. Outline the organization’s objectives for eliminating sexual harassment

Indicate that sexual harassment is prohibited
Include examples of what is and what is not sexual harassment
Refer to the responsibilities of everyone to take remedial and preventive measures

Importance of wide, public dissemination of the main issues; be specific; avoid legalese
Procedures to Remedy & to Prevent

Elements to Include:

A. Clear delineation of the responsibilities of management and workers

B. Details outlining grievance handling procedures (complaint, investigation, resolution)

C. Communication campaign for information, help, & advice:
   - Training strategy
   - Counseling & referral
Dealing with Sexual Harassment

If you believe that someone has behaved disrespectfully towards you:

• do not deny that something has happened -- trust instincts

• do not assume that the behavior will stop if you ignore it

• speak up; if you find it easier, put the complaint in writing

• gather evidence and document the details if the offensive behavior recurs
Misunderstandings

• In some cases, sexual harassment may arise from misunderstandings which often arise from:

-- differences in perception

-- stereotypes or false assumptions related to factors such as race, ethnicity, gender, religion, age, disabilities or sexual orientation.
Intention versus Impact

• The key factor in dealing with sexual harassment is its impact on the recipient(s), not the intention of the perpetrator(s).

• If a behavior is reasonably perceived as offensive, it should be stopped - - whether it was intended or not to be so by the person initiating the behavior.

• Do not allow the excuse that offensive behavior is a normal aspect of one’s culture; any sexually-offensive behavior is inappropriate to any multi-cultural society or organization.
When victims don’t complain

It is relatively common that some victims may not complain or may not want to file a formal complaint because they:

• blame themselves for the situation;
• do not want anyone to know about it;
• are ashamed that the incident(s) that occurred;
• are unaware of their rights;
• fear that the risks of retribution may outweigh the benefits of filing an official complaint.
Individual action may be the most effective way to stop inappropriate workplace behavior with a minimum of conflict:

• when your objective is simply to stop the behavior (i.e. not to pursue a formal complaint);

• when the offender is unaware that her/his behavior is offensive and/or;

• when the behavior is at a comparatively low level of severity.
In some situations, inappropriate behavior will stop if you tell the offender to stop in a way that the offender can clearly understand, for example:

**Describe the behavior you don’t like:** “I don’t find jokes about sex the way you describe it funny. Please don’t tell jokes like that when I’m around.”

**Describe your feelings:** “It makes me uncomfortable when you talk to me/touch me/look at me that way. Please don’t do it again.”

**Request the behavior you want:** “As I’ve told you before, I am not interested in going out with you. Please don’t ask me again.”
The Complaints Mechanism

Initial Action by Complainant

Counseling

Formal complaint

Investigation

Disciplinary Action/ Complaint Dismissed

Informal complaint

Resolution

Documenting Behavior
Formal Complaints -- Elements

- Thorough investigation
- Innocent until proven guilty
- Support victim
- Confidentiality
- Transparency
- Time-bound
- Protection of the recipient from retaliation
Informal Complaints Process

Challenging the Harasser
- Individually (in person or written)
- With informal support
- With/through the manager

Intended to:
- Stop behavior
- Be quick & efficient
- Provide damage control

Monitor for Retaliation
Formal Complaints....When to Initiate?

When there is a failure to resolve through informal means

Whenever responsibility is denied

Severe/Pervasive/Senior Manager
Training/Dissemination

**Who?**
- Managers
- Complaints Officers
- Counselors
- Entire workforce
- Incoming workers

**What?**
- Definitions
- Workplace Policy & Procedures
- Practical Measures to prevent incidents

**How?**
- Workshops/discussion groups
- Worker participation
- Promotional materials
Sexual Harassment at Work --- Much Ado about Nothing or a Real Work Place Issue?

• Sexual harassment is a form of discrimination and is viewed from the perspective of the recipient.

• Based upon the number of legislation, acts, drafts, etc., which have been put in force, it is apparent that sexual harassment is a real workplace issue that requires preventive and remedial measures.

• Much “Ado” will occur if you do nothing (if no measures taken for preventive or remedial action)

What do YOU conclude?
Conclusions and Recommendations

• There is widespread recognition that sexual harassment is an obstacle to equality and treatment and an unacceptable aspect of the working environment which must be addressed.

• You cannot legislate behavior into people – you can only encourage value systems that guide ethical behavior.

• Training is essential to raise awareness and educate on its various forms, the issues, and the impacts.

• Key reasons to establish and implement national legislation and workplace policies are to remedy and prevent negative incidents.

• Wide communication of the policies & procedures is required as strategies for empowerment; the corresponding consequences for breach of the established policies should be emphasized.
Follow-up Actions

For All Parties (Governments, Employers, Workers)

- Need to better equip each other with information on this form of discrimination
- Take action through the establishment and implementation of national legislation and workplace policies.

For the ILO

- More assistance for drafting and updating legislation
- Educate constituents for awareness of the issues and the impacts

For National Employers’ Organizations:

- Adopt policies that create an enabling environment for all levels of enterprises
- Provide advisory services to businesses on drafting policies; educate and train to promote a proactive approach
Discussion

Questions

Suggestions

Thank you for your attention!