

Saccawu scores against sexual harassment

Many companies turn a blind eye to sexual harassment and seriously let women down.

Mike Abrahams and **Patricia Nyman** tell how Shoprite Checkers did exactly this by continuously transferring a sexual harasser. Finally Saccawu members are forcing the company to take responsibility.

The main piece of legislation in place to address the scourge of sexual harassment in the workplace is the Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace. This amended code was issued by the Minister of Labour in terms of section 54(1)(b) of the Employment Equity Act 55 of 1998 (EEA). The code facilitates the process to enable employers to free the workplace from sexual harassment.

However, despite these provisions sexual harassment continues unabated and employers continue to flout the provisions of the EEA. The negative attitude of companies towards combating sexual harassment undermines their own efforts for a smooth running and a socially responsible company. Contrary to the indifference displayed by company management, sexual harassment has a negative effect on the company as a whole.

The effects of sexual harassment on a victim cannot be highlighted enough and should not be trivialised. Each experience of sexual harassment is different and

people react in various ways. Victims' responses to sexual harassment is dependent on a number of factors such as age, background, reaction of family, friends and co-workers, the level of violence experienced and fear of job loss.

Being sexually harassed and feeling unable to do something about it because of management's attitude, puts victims under a lot of stress and stress can lead to further physiological or mental health problems, which in turn leads to lower work performance or staying away from work to avoid the harasser. Being sexually harassed makes women feel embarrassed, degraded and worthless, they may resign from their work rather than deal with the harasser.

Anyone can be a victim of sexual harassment including men, but the overwhelming majority of victims are women because of the unequal gender power relations between men and women in society including in the workplace.

In the services sector, like the hospitality and retail industries, there are large numbers of women, in particular young women who are desperate to keep

their jobs. They are most often employed under precarious and vulnerable employment contracts and conditions. In this context and the context of high levels of unemployment, women are even more vulnerable and exposed to sexual harassment. Positions of power in the workplace are delegated to men. Men are in positions such as supervisors and managers and are more likely to abuse their power.

But there are some positive experiences of women challenging sexual harassment. Women victims have been courageous and have dealt with the scourge of sexual harassment, and scored a victory. Below is such a case which we tell about in detail in order to continue our fight against the scourge of sexual harassment and all forms of gender inequality.

SUCCESSFUL CASE

In late 2009, a South African Commercial Catering & Allied Workers Union (Saccawu) member employed at Shoprite Checkers in the Western Cape filed a grievance against a manager for sexual harassment at work. The investigations into the grievance reflected that there was sufficient

evidence to hold a grievance hearing, with the union demanding the manager's dismissal.

However, at the internal hearing, while also noting that the manager and perpetrator had failed a polygraph test, the company concluded there was insufficient evidence to find him guilty of sexual harassment. The company however did transfer the manager to another Shoprite Checkers branch in the same region. This same manager had been transferred twice before under the same cloud of an investigation of sexual harassment.

Despite the unsatisfactory outcome of the internal hearing, Saccawu through its gender department encouraged our member to lay criminal charges against the manager and it went to court on 23 February 2010. Here it must be pointed out that the police were very helpful in assisting the victim with the charges, and rather than sexual harassment, the charge was changed to sexual assault.

The verdict of the criminal case was that the manager was guilty of sexual assault and sentenced to R6 000 or 12 months of which six months and R3 000 were suspended for five years. The manager was compelled to immediately pay R3 000.

The magistrate in handing down the sentence made the important point that a clear signal must be sent to society that such acts wherever they take place will not be tolerated. This means that for future legal actions against sexual harassment there is now a case law precedent where victims can get remedy through the criminal courts.

Saccawu on behalf of its member has now instituted proceedings through the CCMA

(Commission for Conciliation Mediation & Arbitration) to forward the case to the Labour Court. Here it will pursue claims against the company for damages and pain and suffering especially given the previous sexual harassment history of the manager involving his frequent transfers. The dismissal of the perpetrator is also on the cards.

The sexual harassment incident has, and is still is, having a detrimental impact on the young woman. She is sitting with huge medical bills because of this incident, which the company will not take responsibility for, nor the pain she has gone through. With the company, it is business as usual.

This company has a history of transferring sexual harassment perpetrators from one store to the other. It transfers the problem rather than dealing with it. In terms of the Employment Equity Act, companies are liable when they do not deal with the conduct of their employees appropriately. This included the failure to ensure a sexual harassment-free workplace where employees, in particular women, are treated with dignity and respect.

In terms of this case, the solidarity and support provided by fellow union members and leadership across companies assisted greatly by attending the court case in large numbers. Solidarity and support is vital in dealing with, and combating, sexual harassment, because sexual harassment remains under reported. Many women would rather keep quiet for fear of being disbelieved or being marginalised. Fortunately in this case the support by many fellow union members gave her the strength to continue. (See also *SALB 2006* for a similar sexual harassment case at

Makro Germiston where women members asserted their rights.)

SEXUAL HARASSMENT POLICY

The above case also demonstrates the importance of negotiating a sexual harassment policy and procedure agreement, to ensure a sexual harassment-free workplace.

Enforcement of such an agreement must include that the policy and related procedures are made public to all in the company. The company must also provide education to all employees including top management which should stress that sexual harassment is illegal and is a form of discrimination against women. The more women know their rights around sexual harassment, and the more men become aware of this unwanted, inappropriate conduct in the workplace, the more we can work towards eliminating sexual harassment.

As part of intensifying a campaign against sexual harassment, it is necessary to send a clear message to employers who fail to enforce employment equity and sexual harassment policies, that the union will not remain silent. Through this case and the many other cases that we are dealing with, Saccawu wants to send a clear message to managers, supervisors and those in power that we will not tolerate sexual harassment in the workplace.

Saccawu is sending a clear message to all those in the workplace that our members and women will not be quiet in the face of any form of harassment. Sexual harassment is no joke! SCORE against it! LB

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