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**CONFLICT
DYNAMICS**
CONFLICT & DISPUTE MANAGEMENT TRAINING



TOKISO

SEXUAL HARASSMENT IN THE WORKPLACE - OPEN SPACE EVENT 3 October 2019

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PURPOSE OF THE DAY



- To surface the range of issues involved in this topic. Some have been outlined in the podcasts, others emerged during the day.
- To do this, we used Open Space Technology
- To produce practical guidelines and suggestions for SABPP to publish to assist HR practitioners and organisations to prevent, deal with and recover from cases of sexual harassment.

CONTRIBUTORS TO PODCASTS



- Introduction (Dr Angela du Plessis, independent mediator, arbitrator and consultant)
- Social Media (Zanele Masoek, Tokiso Dispute Settlement)
- Restorative Justice (Mike Batley, independent Registered Social worker in private practice and Vuyisa Mamanzi, Researcher and Project Manager at the University of Pretoria Centre for Sexualities, AIDS and Gender)
- Alternative Dispute Resolution (Marion Sher, Conflict Dynamics)
- Cultural Differences (Carlene January-Wright, Tokiso Dispute Settlement)

CONTRIBUTORS TO PODCASTS (2)



- Dealing with the Fallout (Dr Angela du Plessis, independent mediator, arbitrator and consultant)
- Legal Aspects of Sexual Harassment (Kerry Gantley & Nobanzi Madikizela, Cowan Harper Madikizela Attorneys)
- Some Legal Conundrums (Advocate Tanya Venter, Tokiso Dispute Settlements)
- Regulatory Framework (Dr Annelie Gildenhuis, Director Aequitas Consultants and Commissioner of Commission for Employment Equity)
- Victim Blaming (Nozinhle Kasaval, Tokiso Dispute Settlement)

Themes dealt with at the workshop



- Societal norms – how they influence the incidence of sexual harassment in the workplace
- Organisational cultures – how to create a culture which discourages sexual harassment and creates a safe working place
- Love contracts to deal with sexual relationships between employees
- Procedures – what is important to have in place to deal with complaints
- Mediation – its place and use as an informal means of dealing with complaints
- Dealing with the fall-out once complaints have been dealt with



Outputs of the groups



TOPIC	Societal norms - the effects and influence in the workplace	Issues identified
PRINCIPLES		Cultural differences and dynamics in the workplace
	Equality	Understand ILO 2019 convention on violence and harassment in the workplace
	Respect	Sexual harassment in a patriarchal society - cultural acceptance? Recognition/understanding. How to ...
	Understanding dignity	Hyper sexual society, therefore people desensitised and harassment is normalised, so we brush it off and minimise it
	Managing diversity (transformational)	Cultural differences in terms of the outlook on sexual harassment
	Social contracts ("rule of law")	Sexual harassment and culture - that which is appropriate in one culture is not in another
PRACTICAL SUGGESTIONS		
	Allowing ourselves to have our views checked	
	Discussing our unconscious biases	
	Sexual Harassment policy as the social contract - committee tasked with this, interviewing employees to understand individual perceptions of unwanted conduct, update annually	
	Defining the work culture in order to enforce workplace principles. Dress code policy - is it appropriate?	
	Continuous workplace workshops + "think tank" to open dialogue around issues and the application of policies	
	Peer accountability	
	Creating guidelines for individuals to follow from examples emanating from the workshops	
	Creating a workplace language to identify unwanted conduct	
	Enforce discipline (through having policies in place)	

TOPIC	Organisational culture	Issues identified
PRINCIPLES		How to create awareness around sexual harassment in the workplace for millennials outside of traditional methods
	Safe, respectful, just, ethical organisation	Addressing subtle forms of bullying and bullying in organisations where there is minimal gender variance in general
	Values, mission, vision, ethics underpin strategic objectives from which policies are formulated and are implemented	Managing sexual harassment in male-dominated organisations in a male dominated industry
PRACTICAL SUGGESTIONS		How do we create workplaces that are respectful and safe, but allow people to be people - sensitisation and training
	Induction	Implementation of policies, guidelines and procedures around sexual harassment - do's and don'ts
	Overt communication strategies/channels including on-line information modules; signed declarations; face-to-face workshops; podcasts/webinars; staff meetings; industrial theatre	Victimisation is a reality in a workplace - abuse of authority/power to victimise others; people in senior positions think they are untouchable, therefore laying a grievance against them could be very difficult
	Sexual harassment audits	Starting early - training to prevent before entering the workplace and on induction
	EAP/Wellness	Training - how to effectively create understanding and awareness in very diverse group (age, gender, personality, culture, race, seniority, victims/not victims etc
	Support mechanisms for both victims and perpetrators	Bullying and power dynamics
	Training to achieve sensitisation	Power dynamics and the link to the styles of communication
	Safe reporting mechanisms	Corporate culture vs people culture. Institutionalised social norms forming part of our norms & leaking into the workplace, influencing perception of what is sh and what is not vs corporate culture
	Support people through the challenge of adapting to change - system/process reviews	Political correctness and sexual harassment
	A "human(s)" to go to safely (trained, skilled, confidential)	





TOPIC	Love Contracts - declaration of relationship of a sexual nature	Issues identified
PRINCIPLES		Love contracts - how do we deal with non-fraternisation policies
	Vertical and horizontal relationships. Vertical relationships are not allowed.	Love contracts gone wrong - appropriate; terms?
	Must be regulated by a policy	Obligation of employees to declare workplace relationships - horizontal & vertical
	Horizontal relationships should have love contracts	
	Adults to take responsibility for their relationships regarding fall out	
PRACTICAL SUGGESTIONS		
	Declare relationships to HR, who should advise pair on risks	
	Inform HR when relationship ends	
	Note that love contracts do not diminish employer liability but help to mitigate the risk	
	Note that love contracts help to identify malicious intent in subsequent allegations of sexual harassment	

TOPIC	Procedures for dealing with allegations of sexual harassment	Issues identified
PRINCIPLES		Water cooler chit chat & gossip, should you address/investigate it, responsibility to investigate
	Creativity	Consistency in terms of how to deal with sexual harassment
	Flexibility	Reporting - formal vs informal. Criminal vs civil. ADR. Why: people often don't know what their options are and the recourse they have and what that practically means
PRACTICAL SUGGESTIONS	Awareness	"MY sister's/brother's keeper" is there a duty on witnesses to sexual harassment (rights and responsibilities); can one be expected to be a witness when the
	Training	Respecting the rights of alleged perpetrators
PRACTICAL SUGGESTIONS		Addressing sexual harassment incidents/claims post employment of/by ex-employees against current employees
	Assess policies against these principles	How do we make sure HR is a safe space to deal with sexual harassment. Why: employers are not sure what a safe space looks like, how to practically create a safe space
	Consider reporting structures/mechanisms: in/out of HR?; hotline; specific office/designated and trained officials	How to create a safe space when someone has come forward
	Incorporate option for inquisitorial investigations where independent investigator's mandate includes making findings and determine sanction	Witnesses to sexual harassment: tools to address the s.h.; guidelines; responsibilities. Why: for every person who is sexually harassed, there may be 1 or more people who witness the harassment
	Must have suitable options where complainant does not want to be identified	The investigation process of the allegation
	Policy should allow flexibility because often the disciplinary process is not appropriate	How to deal with culture differences or job level differences where there is alleged sexual harassment
	Consider complexities which might be involved such as ill health; cultural dynamics	
	Align sexual harassment procedure with concept of progressive discipline (corrective)	
	Consider separation of complainant and perpetrator after the case has been concluded	



TOPIC	Mediation as an option for dealing with sexual harassment cases	Issues identified
PRINCIPLES		Concept of restorative justices & mediation/dialogue as a tool in informal procedure and managing fall out - test
	Complainant led	How to facilitate an informal grievance hearing on sexual harassment
	Take all suggestions/rumours/suspicious seriously and investigate them	Mediation as a first port of call for sexual harassment and other issues int the workplace
	Given that there is a continuum of sexual harassment, there should be many/various responses	Dealing with suspicions in the absence of evidence
	Management has a responsibility to create safe workplaces	How best to deal with suspicions of sexual harassment
	Organisations are responsible for developing and upholding ethics and values internally and externally (responses to social movements such as those agains gender-based violence)	Informal proceedings in attending to sexual harassment complaints
PRACTICAL SUGGESTIONS		Managers as mediators - having an internal cadre who can champon resolution
	Informal processes are helpful in speeding up resolution	Mediation - sharing information
	Responses are workplace specific given organisational contexts	Is mediation a useful means/tool in dealing with sexual harassment
	Deal with and balance all interests (complainant, accused and the organisation) and offer a range of options through the policy	
	Empower complainants to make fully informed choices of the process to follow	
	Align policies to legislative changes	
	Ensure informal processes such as mediation can be carried out by competent staff or provide external access	
	Explore restorative justice options and perspectives	
	Timeous response is important once a complaint is made	
	Consider similar process such as management of poor performance as a way of dealing with inappropriate behaviour	
	Cases need to be dealt with flexibly and sensitively	
	Invest in awarens and skills development to assist identification of sexual harassment and how to deal with it	
	Have internal and external go-to people - champions, mediators, managers	
	Be aware that some stakeholders may have competing agenda's when complaints arise	
	Include sexual harassment policy, implementation and reporting in mandate of EE Committee to involve wider set of stakeholders and gain senior management attention	





TOPIC	Dealing with the fall-out of sexual harassment complaints	Issues identified
PRINCIPLES	Complaints of sexual harassment can be Divisive; Emotive; Complex; and Disruptive. Hence there is a need to plan and implement fall out interventions	Responding to the trauma, vicarious trauma and emotional wellbeing of recipients, alleged perpetrators and organisations in sexual harassment cases and accessing
		The lasting effects of workplace sexual harassment - how the loved ones are affected
PRACTICAL SUGGESTIONS	HR needs to debrief: themselves through a process introspection possibly using an expert; and hold a formal close-out process	Support groups within organisations to assist employees who are affected - the do's and don'ts, should we/should we not. Does it help create a safe environment
	Identify the stakeholders for the fall-out intervention: in the workplace (victim, accused, witnesses, bystanders); family; clients; others	Fall out - at beginning, during, and after
	Identify possible interventions, do risk analysis and implement most appropriate one: "TRC"; awareness raising around sexual harassment; change reporting relationships;	Non-disclosure agreements - do they help or hinder?
		Dealing with malicious claims of sexual harassment
		Responsibility and rights of employee and accused. Social media influencing emotions. Inconclusive findings on sexual harassment matters. Aggrieved refuses to refer matter to CCMA or lay a criminal/civil case. However, still pressuring the company to remove the "perpetrator". Inciting colleagues, disciplinary action followed for causing disruption in the workplace; then seen as "victimisation"
		Accused of sexual harassment and found not guilty - what now?
		The bystander effect - do you say something when you see something?
		Tangible fall out: physical workplace reactions, what constitutes immediate action, breaking the destructive corporate culture. Intangible fall out: mob justice and social justice of the social media element for both the reporter and the alleged perpetrator (blaming the victim, having the perpetrator fired). Dealing with the fall out highlights the perceptions of individuals around sexual harassment and unchecked prejudices

Other issues raised and not dealt with specifically



Fear

Breaking the silence on sexual harassment and the bullying that exacerbates the harassment. Victims suffering in silence and having to resign as they cannot handle the pressure. Impact of sexual harassment. How to empower employees in breaking the silence and ensuring a safe working environment for them. How to deal with the bullying that follows. Prevention through dialogue

The commonality of shame in reporting: moving away from the narrative that it only happens to women, also transgender individuals. Is this adding to the fear or resistance of men viewing conduct from other men or women as sexual harassment? Does this add to the embarrassing and shame around it happening as a man reporting it? Dealing with unchecked social norms and biases

37% do not report through formal processes. Creating grievance friendly processes

The fear behind it. Why victims fear reporting especially when it relates to a senior staff member

The other side of fear - how to behave; avoidance due to impact on employment. Listening & dialogue

Ethnic fear

Fear of victimisation, not enough proof

How to overcome the stigma attached to sexual harassment

Defining sexual harassment

Is it necessary to say "stop"?

Silence is not consent

Was I just sexually harassed? Having the dialogue tools to have the discussion

Test for determining sexual harassment

Single incident - classifying sexual harassment - test applied is ought to have known. Test applied with reference to seniority, age etc?

Flirting vs sexual harassment

Next steps



- Review outcomes of workshop (Penny & Angela)
 - Each delegate consider take-home outcomes and implement change in their organisation
- Determine best type of publication (Penny & SABPP)
 - Plan and write the publication (to be determined)
- Set up special interest group (Angela)
- Discuss role of SABPP in taking public stand on gender-based violence (Penny with Xolani)



Thank you to all the delegates
and we look forward to your
continued participation on this
important topic