

SEXUAL HARASSMENT IN THE WORKPLACE

Introduction

I was barely 17 when I started working [REDACTED]. For several years thereafter, I never heard the words 'sexual harassment.' I still remember in the early 1980s, I was working for a small and friendly law firm, when I mentioned as a sort of a 'joke', that I had never been sexually harassed. I worked for that firm in a temporary capacity and when I returned there some time later, one of the lawyers had cut out a cartoon from a newspaper and placed it in a photo frame. It showed a secretary, typing furiously and on her desk, were the words 'sexual harassment, reasonable rates' emblazoned on it. Of course, such a cartoon and joke would be considered totally inappropriate now, and deservedly so.

I have carefully tried to examine my working life to recall whether I was sexually harassed. I still do not know whether I was ever sexually harassed and either I did not recognise it or did not take it seriously, or perhaps have simply forgotten the incident/s. There was sexual harassment of a relatively minor nature on a personal level, but none that I can recall in the workplace. However, I have no doubt whatsoever that sexual harassment is prevalent, in the workplace – and elsewhere, that it is a growing problem which is often underestimated, and that steps need to be taken to reduce this problem, and its consequences.

This Submission will look at the definitions of a 'workplace', possible definitions and manifestations of sexual harassment, the demographics of which workers may be affected, the consequences of sexual harassment on workers, families and the community itself. Most important of all, I will consider some strategies to 'educate' employers, employees, politicians, the media, and the community itself so that there is a clearer understanding of what constitutes sexual harassment, why it is serious, and what steps might be taken to drastically reduce this serious problem.

What is a 'workplace?'

We sometimes tend to think about a workplace as a fixed structure, in a building, in which a certain number of people work. In this regard, we may overlook the fact that a workplace may be relatively small, with few employees, and without a particular or fixed address. Emergency workers often tend to ill or injured people at various venues, including in public streets. Private parties which hire security and/ or catering staff might also be referred to as a workplace for a fixed period. What about a private residence where carers look after a person? Universities, colleges and schools are all workplaces.

It is important to keep re-defining and expanding our definitions of workplaces to try to safeguard all employees, regardless of the size of an organisation, the nature of same, the number of employees and the nature of their employment. In this regard, all levels

of Government, Federal, State and Municipal, should also be included as workplaces and codes of conduct required for all 'employees' regardless of their position.

How do we define 'sexual harassment'?

Sexual harassment can take various forms. Some of these forms may appear innocent enough but could be potentially serious, especially as incidents 'escalate'. There is sometimes a rather thin line between what is considered appropriate or otherwise. For years, some women have been told by male colleagues that they have no sense of humour. Female comedians still battle beliefs that male comedians are simply funnier.

There are numerous and arguably, increasing examples of sexual harassment. They range from inappropriate jokes, comments, touching, and explicit sexual material, all the way up to sexual assault. Any behaviour that emphasises gender inequality and seeks to discriminate against another on this basis might be considered sexual harassment. Sexual harassment occurs, when any person uses their workplace position to try and elicit sexual favours, either as a perceived threat or as a reward.

We should also not forget that sexual discrimination along with other forms of bullying, is quite common in relation to people with a physical and/ or psychological disability. Many such incidents are probably very under-reported. The 'victim' may not always understand what has taken place, or how and where to report the incident, and may be fearful of reprisals. Targeting such vulnerable people is particularly reprehensible and proven allegations should be punished severely.

As a very loose definition, sexual harassment may be defined as any behaviour of a potentially sexual nature which makes another person feel uncomfortable, and which could be perceived as threatening, intimidating or humiliating, and, of course, as such, is discriminatory. Perhaps we need clearer definitions and particularly, examples of same.

Demographics

It is quite likely that sexual harassment takes place in many and varied places of employment, including at higher levels. There may be a perception that sexual harassment is more likely to take place within a small business environment, but whether this is a fact or not remains a point of debate. Although larger organisations sometimes pride themselves on their policies and procedures, including in relation to gender equality, when it comes to the practicalities of carrying out such policies, they sometimes fall far short of what is actually required.

It is estimated that one in at least four or five women is sexually harassed, and no doubt some of that harassment occurs in the workplace. Given that many industries are still male-dominated, with strict hierarchies in place, the likelihood of male to female sexual harassment is very probably higher than the reverse. However, there is also the likelihood that men may be sexually harassed, including young and/ or gay men and in

such a case, the 'victim' may be even less inclined to report the incident/s than women for what should be, obvious reasons.

Younger employees are possibly more likely to be sexually harassed than older workers, but this should not be taken as a given. We should also not assume that an older victim is likely to suffer any less than someone much younger. Sexual harassment can have serious consequences, regardless of a person's gender, age or other factors.

Cultural variations, different experiences and values may also impact upon sexual harassment, in terms of the perpetrator as well as the victim. In some cultures, women and gays have few rights and may suffer from various forms of discrimination. This could result in misunderstandings or outright abuse, some of which may again be unreported. However, it is very important not to overemphasise culture, religion and similar factors when considering sexual harassment. Sexual harassment, like other forms of sexual abuse, are prevalent in the community, and are not necessarily affected by education, position or status, as well as other factors.

People with disabilities

As mentioned above, research apparently shows that people with a physical and/ or psychological disability are often at greater risk of abuse than others in the community, whether by family/ relatives, friends, neighbours or – by professionals. Many disadvantaged people are unable to report any form of abuse or fear doing so for a number of reasons. This includes sexual abuse. Greater monitoring of disadvantaged people is required, and again, the definition of 'workplace' needs to include any place in which a service is performed.

Casual workers

The casualization of the workforce has impacted many workers, often adversely. Workers often miss out on basic entitlements, including leave and superannuation, as well as coping with low wages. Casual workers are sometimes poorly trained, do not have access to resources, and can be called into work on short notice. Firing casual workers, is quite common, and casual workers often have few workplace rights, including the right to a safe and healthy workplace.

Some employers prefer to reveal as little as possible about casual staff, for a number of reasons. Employees, some of whom may be paid in cash, may be equally reticent about making complaints regarding their workplace for fear of having their hours cut, losing their jobs or in some cases, being reported to Government officials.

There is little doubt that some casual employees are the victims of sexual harassment. Trying to encourage any victim of sexual harassment to come forward is sometimes a challenge, but persuading casual workers to do so may require even greater planning and effort. People who are particularly vulnerable may prefer remaining silent rather than risking the consequences of speaking up.

Voluntary workers

Voluntary workers, which apparently may number as many as 2 million, also merit special attention. Voluntary workers forego all the benefits that we normally associate with work, as well as a wage, but may fall off the radar in terms of any form of protection, including working in a safe and healthy environment, and, of course, being subject to sexual harassment. Voluntary workers should be provided with the same protections as any other worker, including legal rights.

Slavery/ Rural Areas

It is hard to believe that slavery still exists, especially in civilized and progressive nations. There is plenty of evidence to the contrary, including in Australia. Young women in particular, including from other nations, are particularly at risk. A recent news story pointed to the resurgence of massage parlours which allegedly are 'fronts' for brothels, hiring young students on VISAs. There are probably other, and lesser-known examples, including in industries that rely heavily on young travellers including students. This may include workers in regional areas who are not always closely monitored.

Consequences

The 'Victim'

Sexual harassment, even at a 'lower' level, often adversely affects employees, psychologically and sometimes physically. The employee may feel stressed and anxious, including a fear of losing their job. This may also lead to an increase in alcohol consumption and/ or drugs, illicit or prescription, which can all have serious consequences.

Job insecurity is increasingly high in our society. Job performance may suffer and the victim may fear telling family members or other staff, in case there may be repercussions. A victim may fear being perceived as a 'whinger', or that no one will believe them. Women in particular who suffer domestic violence at home, as well as sexual harassment at work, may be at serious risk.

Job performance may suffer and the victim may take time off work, which could affect other employees and ultimately, lead to the person being demoted or even losing their job. A worker who has a physical and/ or psychological disability may find their condition/s worsen following any form of sexual harassment.

Family

Partners, family members and relatives may also suffer. They may be unaware of the actual situation, but note that their partner or parent is exhibiting some unusual behaviours. Young children in particular may be adversely affected. Even if a victim tells their family what has happened to them, family members may not know how to react. If a family is financially dependent on the victim's job, they may advise them to

do nothing rather than risk losing that job. Relationships may be badly strained and in some cases, there may be permanent fractures.

The Community

Very little happens in isolation. Sexual harassment in the workplace is costly, financially as well as socially. The need to take increased sick or other forms of leave, decreases in production, poor staff morale and increased staff turnover may decrease profits and in some cases, put the business at risk, which can also lead to unemployment.

Sexual harassment may also increase the need for medical and legal resources which are sometimes strained at the best of times. Businesses may need to increase spending on legal resources and training, and if litigation is required, this can also increase expenditure. The good name of a business may be at risk if there are allegations of any form of sexual misconduct, even if sometimes those allegations are not proven. A lack of consumer and/ or shareholder confidence might develop.

Victims who resort to legal action may also find it difficult to finance legal representation. They may have to cut down on spending on various items, including basic household necessities. In some cases, the victim may have to borrow money.

Strategies

Prevention is generally better than a cure. Here is a list of potential strategies to reduce sexual harassment in the workplace.

Education

Early intervention is important. Young people need to learn about their rights, including in the workplace. Teenagers and young people are often at risk of exploitation on various levels, including sexually. This needs to be reinforced again at universities and colleges. As more people work in smaller and often home-based industries, it is just as important for students to learn about employer's responsibilities, as well as employee rights.

The Workplace

Appropriate training even in small workplaces should be considered and perhaps, made compulsory. Some training might have to be conducted by external trainers to avoid any form of bias. Using a combination of verbal and written training, in the form of manuals, as well as role plays, would be useful. People need access to information in various forms. As a multicultural society, information should be provided in various languages. Training might also include cultural sensitivity.

Unions

More workers should be encouraged to join a relevant Union. There is often greater security and access to resources when employees have that opportunity. However, some employers look askance at Unions and may try to discourage employees from

joining. This needs careful investigation. There needs to be more Unions or at least some form of employee representation for smaller organisations which are often poorly represented.

Government intervention/ Workplace visits

Perhaps a special taskforce / statutory body needs to be set up at a Federal level, in relation to sexual harassment in the workplace. Such a body should be given a reasonable amount of independence, and the powers to take certain actions. One of its briefs should be to visit as many workplaces as possible, including smaller ones, not just to investigate any reported breaches, but rather, as a preventative measure.

Some of those visits might need to be spontaneous to ensure that employers do not try and hide any wrong doing. However, the idea is not necessarily to take a big stick to employers, although that may be necessary on some occasions, but rather to help employers understand their responsibilities and simultaneously, reassure employees of their rights and what can be done if those rights are breached.

Legal and medical assistance

For many victims of sexual harassment, legal assistance is financially out of reach and so they remain silent. There needs to be greater provision of cheap or even free legal resources to assist such victims. Lawyers need to be incentivised to provide legal assistance to support these victims. In some circumstances, class actions may be an option to reduce costs and encourage victims working for the same employer to come forward.

There also needs to be greater medical assistance for victims, including specialised counselling, which again, may need to be subsidised for victims with few financial resources. Mandatory reporting of abuse might also need to be considered, although there can be advantages as well as disadvantages to doing so.

Institutional abuse/ Mandatory reporting

Handling allegations of sexual harassment in-house needs to be carefully explored. There is evidence that our universities and colleges are mishandling such allegations, as a way of avoiding any form of controversy or damaging their image. This is but one example. If a university fails to take such allegations seriously, the victim suffers even greater trauma, whilst there are few, if any, consequences for the offender. This can also increase the risk of other potential victims.

If there is an allegation of a potential crime, including a sexual offence, the police should be called in to investigate the matter. If we fail to do so, then we continue the pattern in which sexual offences are not treated seriously enough, whether they occur at home, on our streets – or in any workplace.

Consequences for offenders

We have laws for offenders found guilty of serious sexual harassment/ assault, even though we could debate whether those laws go far enough and/ or whether they are being enforced appropriately. In the case of a workplace, and depending on the severity of the offence, other 'remedies' might include financial penalties, formal / written apologies, mandatory training and counselling. The victim's position should be guaranteed and there should be no fear of any form of reprisal.

It is very frustrating and distressing for victims who were told that their situation was believed, but that nothing could be done because the offender was 'too important' to lose. In some cases, the victim had to either continue working with that offender or walk away from their job. Even if a transfer was possible, it was the victim who was transferred, sometimes to their detriment, whilst the offender continued to work in his/ her position, unscathed. No one is or should be, so important that they can abuse another without any repercussions. Employers who 'protect' sexual offenders should be penalised for doing so, and prevented from allowing this type of situation to recur.

Misuse of Power/ Bullying

Some offenders will plead ignorance as a defence to sexual harassment. There are circumstances in which a person may have misunderstood a situation or failed to take it seriously. However, it is arguable that these situations tend to be in the minority. Similar to rape, sexual harassment is often an example of the abuse and misuse of power, often from males to females. In the case of workplace harassment, the offender also tries to use their position to dominate another/ others. As such, it is a form of bullying, in which the offender shows a lack of respect for and empathy with their victim/s.

Conclusion

Sexual harassment is serious and prevalent in our society, including in our workplaces. Much of it is hidden from public and sometimes, even private view. Victims can come in various shapes and sizes, including different cultures, backgrounds, and age groups. It is arguable that certain groups are more at risk than others. In a workplace, a person may stay silent for fear of losing their position and their financial independence. A 'workplace' is a term that is ever-changing as our society develops, and needs to include casual workers, volunteers and seasonal workers.

The consequences of sexual harassment affect not only the victim, but his family/ relatives and the community itself. The higher the incidence of sexual harassment cases, the greater the economic and social burden on everyone, including governments, medical staff and the legal fraternity.

Using a variety of strategies may help to educate employers, employees and unions to better identify sexual harassment in its various forms, and to develop a wider range of techniques to reduce the number of cases, and to provide legal and other remedies for victims.

Finally, we need to understand that whilst serious, sexual harassment is but one form of bullying in the workplace. There is some evidence that as many as one in five employees are dissatisfied with their workplace for a number of reasons. Research points to increased and varied forms of bullying and employees working in a 'hostile workplace.' Like sexual harassment, any form of workplace bullying is unprofessional, unethical, inhumane and socially as well as economically, unacceptable.

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