

Sexual Harassment







INTRODUCTION

Decisions For Life for young women

The Decisions for Life Campaign is a national and international campaign which focuses on young women in the workplace.

The Decisions for Life Campaign empowers young women as they make choices at work and at home. Women face many challenges, from getting a decent job to knowing their workplace rights to getting a good work-life balance. Decisions for Life is about women helping women be the best they can be.

This Decisions for Life booklet focuses on sexual harassment, specifically in the workplace. It looks at what sexual harassment is, and what you can do if you have been affected by sexual harassment.

You can also visit the website www.mywage.co.za for more information on labour laws, workplace rights, wages and decent work.

To find out more about the Decisions for Life campaign telephone Anilla at the Labour Research Service on 021 447 1677

Sexual Harassment: True Stories

The promise of promotion

My name is Sisanda, I live in Durban, in KwaZulu-Natal. I am 28 years old. I have a boyfriend. I'm staying in my own flat and I have two kids. I work at Telkom as a technician. I install Telkom lines and repair them, which is a male-dominated environment.

One day I was working in the office because I was pregnant and could not go into the field. I was in the first trimester of my pregnancy. My executive manager came to the office and asked for my number and I gave it to him. I did not ask him why he wanted my number as he is a senior person and respected by all in the company because of his position. He then started touching my breast and private parts. He said I was beautiful and he could easily get me a position at Empangeni.

I started feeling very uncomfortable and stopped him. I then walked out of the office and told him that I was going to report this to my supervisor. I felt violated and scared. Even though I said I was going to report this, I felt I could not because I thought I could easily lose my job if I told.

A small organisation, an uncomfortable boss

My name is Charmaine, I am 27 years old and I live in Kenilworth, Cape Town. I have a boyfriend, but I do not live with him, and I have no children.

Two years ago I used to work for a small NGO which was run by one man, with three or four female staff at a time. I did not belong to a union, and because it was such a small company, there was no such thing as shop stewards etc. There was a board of trustees, but they were not responsible for employing us.

Because the company was so small, and the pay not always regular, the boss would try to compensate by covering our lunches or other small costs. He used to take the girls out for lunch, and sometimes we used to all work out of his home. The relationship that developed was one where we trusted our boss as our friend, and so when he made flirty comments, or made physical contact (never on private parts) it was always thought of as acceptable.

But the comments continued and often made me feel very uncomfortable, and he often made comments about me in front of other men. While the physical contact was never openly sexual, I knew they were meant in a certain way, and they would always make me feel uncomfortable. The problem was I continued to make excuses for him. Because he was an upstanding man, father and husband, I convinced myself that he would never indulge in something like sexual harassment. When I told my friends, they all told me that his behaviour was unacceptable, and that it was clearly sexual harassment, and that I should take it up with the authorities.

I didn't want to lose my job, or seem like I was looking for attention. Also because he was seen by so many as a moral man, I thought people would not believe me or think I was reading something into the situation. I never did anything about it, but his conduct made me want to leave my job, which I did as soon as I found another one. I still don't know if I would have reported it, because small comments and things like that sometimes don't seem like sexual harassment to certain people, and I am worried that people would think it was my fault rather than his.

Rape, lies and job loss

My name is Ayanda. I live in Magabeni in KwaZulu-Natal. I'm 23 years old. I am single and live with my family. I work as a griller at a Steers diner.

I haven't experienced any sexual harassment but I have a neighbour who used to work for a road construction company. She was employed as a cleaner. She had to pick up papers, sweep and clean the road after renovations. Her boss used to ask her to go and clean his house during working hours. He used to go with her to his house and wait until she finished cleaning. One day as she was busy cleaning, he raped her but nobody believed her. Not even her union organiser, who told her that she was not supposed to be in the boss's house during working hours as her job description did not cover this.

This man lied and told everyone that they were having an affair. He said the girl was bitter because he dumped her. The poor girl was then fired because she reported him and wanted justice.

Union organisers act as if knowing your job description is enough to protect you from abuse. They forget the fact that managers use their power and influence to coerce young women to offer them sexual favours.

This story has made me organise lunchtime talks as peers discussing sexual harassment, as we will not like to lose our jobs in this manner. We also give each other support as colleagues.

Sexual harassment in a trade union

My name is Ndwe, I live in Durban in KwaZulu-Natal and I am 25 years old. I have a loving boyfriend and live in a flat near town. I work as an administrator in a union. I do office work and work as a PA for the regional secretary. I have been working for this organisation for four years.

One day I was invited by my chairperson for a drink. At that time I had passed my driver's licence. He gave me his car to drive to the restaurant he was taking me to. When we were about to reach the hotel, he started to brush my thighs. I was shocked, stopped the car and asked him what he was doing. He apologised and said we must continue. When we reached the hotel he ordered beer and asked me what I want to drink. I ordered a soft drink and he said: "I know you take alcohol but why not today?"

He insisted and I ended up ordering two Smirnoff spins. We sat there for two hours and then I requested him to take me home. Along the way, he started to brush me again on my thighs and he stopped the car. He came to my seat and started to fondle my breast, touching me all over and trying to kiss me but I fought him. This took about twenty minutes and I was fortunate because he was drunk. I pushed him away and told him that I was going to tell the other leadership in the region and will raise a sexual harassment case against him. He drove off and dropped me home.

By this time I was shivering and shaking. I could not believe what I have just experienced. I phoned my regional educator and told him. The next morning my chairperson phoned me and apologised. He promised never to do it again. I told him I will report him. He never stopped apologising for a month. I went to the office and he came and asked to speak with me. He apologised sincerely and I never laid a charge against him. He kept his word because he never did this again.

I think to be bold and brave assisted me in not allowing him as my leader or boss to sexually harass me. After this I initiated sexual harassment training in order to make women aware and reduce this in the workplace. Today sexual harassment training is taking place in all programmes of the union.

Harassment by a customer

I am 24 years old and work at Shoprite as a cashier. It is hard to discipline or stop customers who harass you because they come for a short time and leave. There is this one customer that comes to the shop once a week and ensures that he comes to my till to pay. He always asks me what colour underwear I am wearing. He always comments about my eyes and says that he wouldn't mind to wake up on my big thighs.

I tried reporting this to the team leader and supervisor. They first saw it as a joke. One of them told me that this is a compliment and I must enjoy it. It was only after two months that they started attending to this.

Our manager said that it will be difficult to discipline customers. A memo was sent out indicating that sexual harassment of staff by customers and men in the shop would not be tolerated. Such customers would be disciplined and be charged as sexual harassment is an offence. The memo was displayed on our entrance and a few customers saw it. What helped was when this man was approached by my supervisor and manager. We have never saw him in the shop since that day.

Customer abuse

My name is Cynthia. I live in Cape Town. I am 23 years old. I am married and have a one year old daughter. I work in retail as a telesales clerk. I am married and am currently going through a divorce.

I have had a real bad experience where sexual harassment is concerned. More than two years ago I was sexually harassed by one of the customers who shop where I work. This particular customer is a very big spender; he spends close to R500 000 in a month, and therefore management believes that this customer is untouchable. They believe if they say something to him he might take his business elsewhere, and of course

the company can't afford to lose that kind of money because how else would they make their budget?

This customer is the kind of person who believes money is everything. He has a tendency of touching other girls and swearing at them.

On a particular day this customer touched my bum without my permission. This only made matters worse as I was raped seven years ago. I never dealt with it because no one ever believed me, although there was enough proof and semen that was found inside of me. It killed me inside - the next year 2006 I matriculated. It was so hard focusing on my studies and dealing with the fears that I had.

So I took this particular customer to court. I had two witnesses. When we went to court the first day it was postponed because the man did not have his lawyer with him. I went back for the second time and at this stage the witnesses backed out after they swore under oath that they would tell the truth and nothing but the truth. During the questioning the one witness said she didn't say anything, and the other said he was getting old and he couldn't remember anything. However, they had given the police written statements of what happened, they saw what the customer did to me. I think the perpetrator gave money to the witnesses to keep quiet and not say anything. I lost the court case due to lack of evidence. This killed me inside; I then became very suicidal, but never succeeded.

I am still working in retail for the same company and today I must still face the customer and assist him with whatever query he has. A few months back he told me that I must forget about the past, I mustn't carry my past with me. When I see him I still hurt because of all the injustice.

I now belong to a union. I have become a Shop Steward and I am now stronger than ever. I educate people at the workplace about sexual harassment. I teach them about their rights in the workplace. I teach them what they need to do if they are sexually harassed, where to go and who to contact.

Sexual harassment: An injury to one is an injury to all

Sexual harassment can happen to anybody. It is not restricted to a specific area, or neighborhood, or even age or gender. Most times the perpetrators are men, but occasionally men are also the victims of sexual harassment. Same-sex sexual harassment can also occur.

Sexual harassment can happen anywhere. It can take place in an isolated office, at a busy workplace gathering, in a shop, at a school.

Sexual harassment includes unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature. It is done by bosses, colleagues, and even clients and customers.

Victims of sexual harassment can often feel alone and scared. This is not unusual. But the more that women are aware of their rights, the more they can oppose this abuse and also support each other.

What is sexual harassment in the workplace?

Sexual harassment is any unwanted attention of a sexual nature that takes place in the workplace.

This includes:

- Touching
- Unwelcome sexual jokes
- Unwanted questions about your sex life
- Whistling
- Rude gestures
- Requests for sex
- Staring at your body in an offensive way

It can also include a blatant request for sex in exchange for favours. For example, if a colleague or boss requests sex in order for you to get a job promotion, a better office, or a salary raise.

What legislation exists regarding sexual harassment?

- The Labour Relations Act (no.66 of 1995).
- The NEDLAC Code of Good Conduct on the Handling of Sexual Harassment Cases.

In addition:

It is essential that all companies commit to a policy regarding sexual harassment – which must then be communicated to all employees – and that they enforce this policy. The law requires the employer to create a safe working environment for its employees.

Is sexual harassment allowed in the workplace?

No! In the past, working women in South Africa had to battle with the social and legal failure to recognise sexual harassment as an abuse.

But now, in terms of the Code of Good Practice on the Handling of Sexual Harassment, sexual harassment is regarded as a form of discrimination and is expressly forbidden.

The Code of Good Practice on the Handling of Sexual Harassment states: “Sexual harassment in the working environment is a form of unfair discrimination and is prohibited on the grounds of sex and/or gender and/or sexual orientation.”

What are my labour rights regarding sexual harassment?

Sexual harassment is an unfair labour practice and if it happens to you, you can ask your employer to deal with it.

You have the right to:

- A workplace that is free from sexual harassment
- Be treated with dignity and respect at work
- Be treated equally, and not to be discriminated against because of race, gender, sexual orientation, religious beliefs and/or your HIV status

- To report sexual harassment without fear of victimisation
- Have your complaint treated seriously and confidentially

What about advice and assistance in the workplace?

Sexual harassment is a sensitive issue and a victim may feel unable to approach the perpetrator, or lodge a formal grievance or turn to colleagues for support. Employers should try and designate a person outside of line management whom victims may approach for confidential advice. Such a person could include a trade union representative or an outside professional. They should have the appropriate skills and experience. They must be able to provide support and advice on a confidential basis.

It is essential that your workplace has a policy on sexual harassment in place. It is your right to enquire about this.

What can I do if I am sexually harassed?

You can deal with sexual harassment in an informal or formal way.

Informal way

This is when you try to sort out the problem without taking up a grievance (formal workplace complaint) against the abuser.

Ways of taking informal action:

- Talk to the abuser and ask him to stop the behaviour that makes you feel uncomfortable.
- If you feel uncomfortable about being alone with the abuser, you can ask someone that you trust to come with you when you talk to the abuser.
- Write to the abuser and tell him that his behaviour makes you uncomfortable and ask him to stop. In your letter, write down the things that the abuser does that make you feel uncomfortable.
- Keep a copy of the letter.
- Send the letter by registered mail so that you can prove that you sent it.
- Ask someone else to speak to the abuser. You can ask your shop steward or a work colleague to do this for you.

Formal way

Where a formal way has been chosen, a formal policy or a collective agreement for resolving the grievance should be available in the workplace and should:

- Specify to whom the employee should lodge the grievance.
- Make reference to time frames which allow the grievance to be dealt with timeously.
- Provide that if the case is not resolved satisfactorily, the issue can be dealt with in terms of the dispute procedures contained in the Code of Good Practice on the Handling of Sexual Harassment.

What action can be taken against the abuser?

If unfair discrimination is shown in a labour court, the court's orders may include the payment of compensation, an award of damages or an order that the employer should take preventative steps to eliminate the discrimination.

In terms of the Labour Relations Act, an employee may also be dismissed for serious misconduct or repeated offences. Serious incidents of sexual harassment or continued harassment after warnings are dismissable offences.

In addition, it is a disciplinary offence to victimise or retaliate against an employee who lodges a grievance of sexual harassment.

Can one lay criminal and civil charges?

A victim of sexual assault has the right to press separate criminal and/or civil charges against an alleged perpetrator. The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007; also referred to as the Sexual Offences Act), covers such areas as rape and sexual/indecent assault.

What about dispute resolution?

Should a complaint of alleged sexual harassment not be satisfactorily resolved by the internal procedures set out above, either party may within 30 days of the dispute having arisen, refer the matter to the CCMA (Commission for Conciliation, Mediation and Arbitration). Should the dispute remain unresolved, either party may refer the dispute to the Labour Court within 30 days of receipt of the certificate issued by the commissioner.

What if a client or customer sexually abuses me?

It is important for management to respond and act appropriately in cases of sexual harassment and discrimination. It fosters good working relations and shows a commitment to take the complaints of the workforce seriously. However, often small businesses or management are unaware of the steps that need to be taken and the procedures that need to be followed when dealing with complaints of sexual harassment. The Code states:

“Employers should create and maintain a working environment in which the dignity of employees is respected. A climate in the workplace should also be created and maintained in which complainants of sexual harassment will not feel that their grievances are ignored or trivialised, or fear reprisals.”

There are ways that an employer can make their workplace feel safe and secure for workers. Ultimately, however, the Code of Good Practice on the Handling of Sexual Harassment does not confer the authority on employers to take disciplinary action in respect of non-employees.

Support Contact list

Western Cape:

Rape Crisis
Observatory Counselling line
021 447 9762
Athlone Counselling line
021 633 9229
Khayelitsha Counselling line
021 361 9085
www.rapecrisis.org.za

Women's Legal Centre
021 424 5660
www.wlca.org.za

Mosaic Training, Service and
Healing Centre for Women
021 761 7585
www.mosaic.org.za

Western Cape Network on
Violence against Women
021 448 6180

Reach
Sexual harassment and violence
against women on rural farms
079 889 0289
www.reach.org.za

Eastern Cape:

Masimanyane
Women's support centre
043 733 7006
www.masimanyane.org.za

Mpumalanga:

GRIP
Rape intervention programme
015 752 4404/7

Limpopo:

TVEP
The Thohoyandou Victim
Empowerment Programme
015 963 1222
www.tvep.org.za

Gauteng:

Powa
People Opposing Women Abuse
083 765 1235
www.powa.co.za

KwaZulu-Natal:

KZN Network on Violence against
Women
031 261 3471

National:

Legal Resources Centre 011 836
9831 (National)
Grahamstown :046 622 9230
Durban :031 301 7572
Cape Town :021 481 3000
www.lrc.org.za

CCMA 011 377 6650
Shukumisa Campaign
A campaign around policies
regarding sexual offences
www.shukumisa.org.za

With thanks to Mosaic for contact details



DECISIONS FOR LIFE CAMPAIGN

www.mywage.co.za or Labour Research Service on 021 447 1677