Demystifying Sexual Harassment

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What is sexual harassment? As yet, neither the courts nor the legislatures have formulated a comprehensive definition as to what conduct will constitute sexual harassment. However, the Supreme Court of Canada in Janzen v. Platy Enterprises Ltd. has expressed the opinion that sexual harassment will include any unwelcome behaviour which is sexual in nature and which directly or indirectly adversely affects or threatens to affect a person's job security, prospect of promotion or earnings, working conditions or opportunities to secure a job, Hiving accommodations or any kind of public service.

The sort of behaviour which will likely constitute sexual harassment under this "definition" will typically fall into one of two main categories:

1. "You scratch my hack, I'll scratch yours" propositions where employment advancement or some other inducement is offered in return for sex; or
2. Other offensive and discriminatory treatment within the workplace including: sexual touching and explicit propositions; nonsexual but inappropriate touching and "innocent" propositions; gestures which may be reasonably characterized as demeaning to women because of their sex; pin-ups, graffiti, crude and dirty jokes, and vulgar remarks.

As a result of the Supreme Court of Canada's decision in Janzen, it is now confirmed that sexual harassment represents a form of diserimi nation based on sex. Since employers arc obliged at law to provide a healthy work environment, they will be held liable for all acts of sexual harassment committed by all employees of the organization, not simply those committed by managers against subordinate employees.

THE EMPLOYER'S RESPONSE

In order to discharge their obligation to provide a work environment free from sexual harassment and to reduce the risk of liability for failure to do so, employers must become proactive both in monitoring the work environment for any conduct which might be construed as sexual harassment, and in eliminating such behaviour from the workplace. To that end, employers should formulate a sexual harassment policy which includes a mechanism by which complaints can be brought forward and effectively dealt with. In general terms, such a policy should:

1. Identify the employer's objective as being the elimination of sexual harassment from the workplace;
2. Inform employees as to the availability of a formalized confidential complaint procedure administered by senior human resources personnel or other senior managers within the organization;
3. Encourage all employees, including management, to report all incidents of suspected sexual harassment;
4. Establish a procedure by which all sexual harassment complaints are investigated; and
5. Subject to any limitations imposed pursuant to a collective agreement or an

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existing policy regarding sexual harassment, prescribe disciplinary consequences which will follow for all those employees found guilty of sexual harassment.

Once such a policy is adopted, the employer must ensure that it comes to the attention of all employees and that it is followed in all cases. Failure to follow an established policy can in itself give rise to a finding of liability against the employer.

Employers should also ensure that management is receptive to all complaints of sexual harassment and that employees are made aware of that fact. It is imperative for employers that all such complaints he treated seriously, investigated once received, and that following the investigation, disciplinary action be taken where appropriate.

To protect their employees and ultimately their I businesses, it is no longer advisable for employers to ignore or leave the issue of unwelcome behaviour to be resolved between individual employees. Employers must take firm and effective action against sexual harassment.

If your organization does not have a sexual harassment policy at present, our office can assist in drafting one appropriate to your needs in an effort to provide the sort of protection you require.