

ARTICLES

How To Report Sexual Harassment: Breaking The Wall of Silence

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The presentation was premised on understanding the “Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace” and the recourse available to victims of sexual harassment. The Code has been in existence for about 15 years (1999) and only in 2012, the Employment Act 1955 was amended to incorporate elements of the Code. The amendments to the Employment Act 1955 sets out steps to be taken by a victim and the legal recourse available in the event an employer refuses to investigate any complaint.

What is interesting about this ever sensitive yet real element of work life is the definition of sexual harassment and practical difficulties in determining whether the unwarranted attention or action was in fact harassment of a sexual nature.

In balancing the interest of a victim of sexual harassment and the alleged perpetrator, the Courts have, in the recent times, been required to draw a distinction between an actual act of sexual harassment and circumstances when a victim may have just been “overly sensitive” about particular remarks made in just in the course of everyday conversation. Human Resource practitioners and academicians have even come up with a list of circumstances where “sexual harassment” would not be deemed as harassment but most likely welcomed.

An analysis of recent cases was also discussed during the presentation and what captured the audiences attention was the fact that the Courts, in determining if the harassment was really sexual in nature and how deeply a victim was affected by the same, are sanitizing the conduct of the victim post event.

If a victim behaves in a normal manner i.e. not distraught or upset, the chances are he/she was not sexually harassed and the incident could be consensual. This angle of consideration cannot be conclusive due to the subjective nature of individuals, however, does assist in weeding out the cases where victims are in fact crying wolf.

The recourses available to victim of sexual harassment was also discussed in light of circumstances where a victim may consider herself constructively dismissed in the event the employer does not take an action when a complaint of sexual harassment is made. The amendments to the Employment Act 1955 provide a structured process where complaints can be made to the Director General if an employer refuses to investigate into a complaint of sexual harassment and the punishment that will be meted out to an employer.

The In-House Counsel Congress was attended by about over 200 In-House Counsels and the presentation was well received by those who attended.