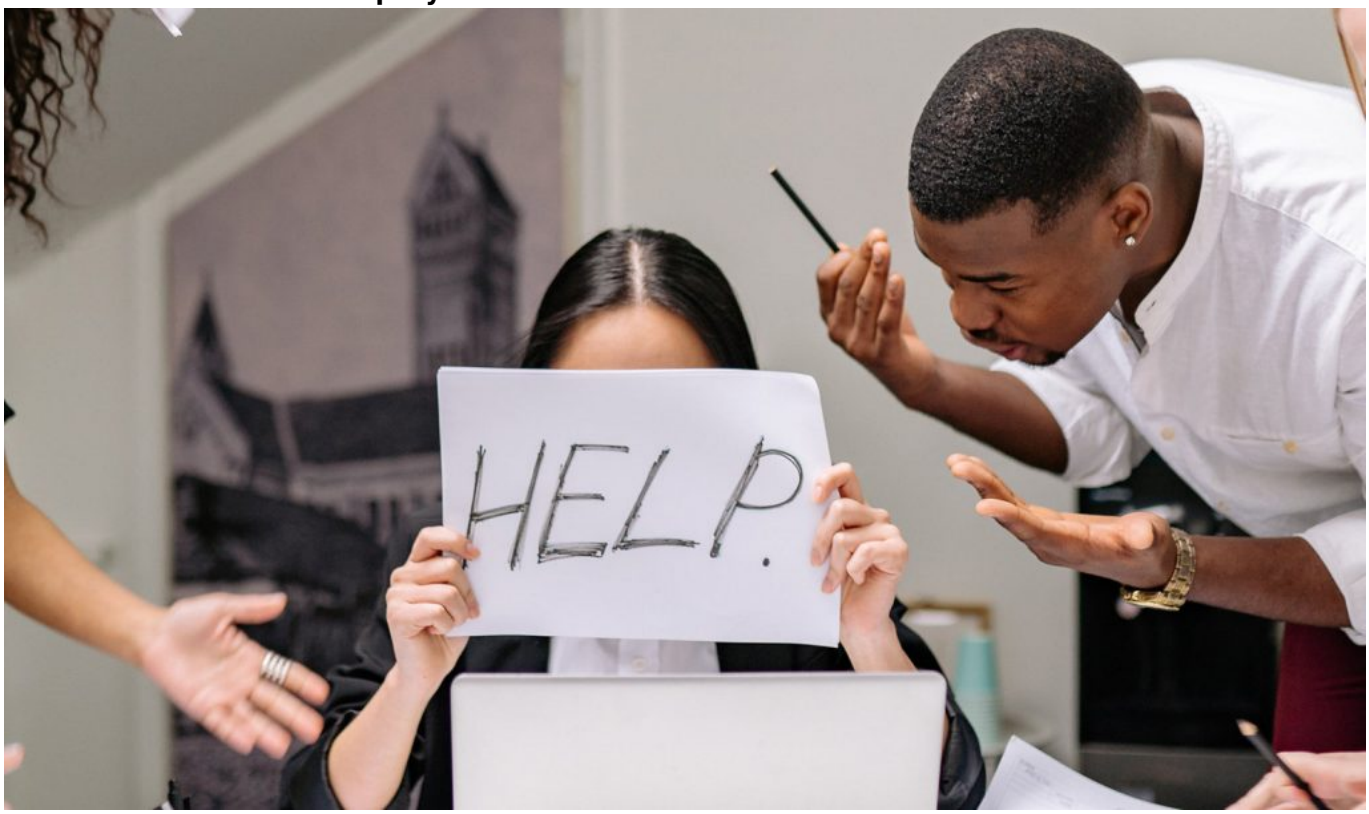
Sexual assault hits employers hard



Employers may be hit by both the Employment Equity Act (EEA) as well as by the Labour Relations Act (LRA) when employees commit sexual harassment. Section 60 of the EEA in effect, provides that, if the employer fails to take the steps necessary to deal with unfair discrimination or sexual harassment the employer can be charged under the EEA for such failure.

This suggests that, wherever an employer becomes aware of sexual harassment it should take disciplinary steps without unnecessary delay. For example, in the case of Christian vs Colliers Properties (2005, 5 BLLR 479) Ms Christian was appointed as a typist by the employer. Two days after starting work her boss asked her if she had a boyfriend and invited her to dinner. He also invited her to sit on his lap and kissed her on the neck. When she later objected to the owner's conduct he asked her whether she was "in or out". When she said that she was "not in" he asked her why he should allow her employment to continue. She was dismissed with two days pay and referred a sexual harassment dispute.

In a default judgement the Court decided that:

The employee had been dismissed for refusing her superior's advances
This constituted an automatically unfair dismissal based on sexual discrimination
Newly appointed employees are as deserving of protection from sexual harassment as are their longer serving colleagues

The employer had to pay the employee:

24 months' remuneration in compensation
Additional damages
Interest on the amounts to be paid
The employee's legal costs

The above finding might lead employers to believe that, in order to protect themselves, they need to dismiss any employee found guilty of sexual harassment. However, this is not always so. For example, in

the case of SABC Ltd VS Grogan (2006, 2 BLLR 207) a regional sales manager was dismissed for (amongst other things) sexual harassment after he had allegedly kissed a junior female colleague several times, given her love literature and had physical contact with her in his car. An arbitrator later found that, while he was guilty of sexual harassment the level of seriousness of his conduct did not merit dismissal. This was largely because the alleged victim had not seemed to mind his advances very much and had said she thought he should not be dismissed. The arbitrator therefore ordered the employer to reinstate the employee. The Employer took this decision on review to Labour Court but lost again as the Court pronounced the arbitrator's finding to have been properly thought out and justified.

The above case findings show that:

Employers cannot ignore sexual harassment of their employees and must act swiftly.
However, this does not mean that dismissal is appropriate in every case.
Employers need to use reputable labour law experts to assist with:
Deciding what the appropriate action should be in each individual case of sexual harassment
Designing a comprehensive sexual harassment policy
Ensuring that every owner, manager and employee knows and understands the severe consequences of committing such acts
Communicating to all concerned that such misconduct will result in severe penalties including possible dismissal
Ensuring that all employees feel entirely free to report sexual harassment.
Training all employees in the above listed issues as well as in what constitutes sexual harassment, how to deal with it, where to report it and the company's supportive policy towards sexual harassment victims

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