



NTEU at NMMU

def·a·ma·tion

/ˌdɛfəˈmɑːʃ(ə)n/

noun

the action of damaging the good reputation of someone; slander or libel.
"she sued him for defamation"

synonyms: libel, slander, calumny, character assassination, vilification, More

**Defamation in the workplace:
Damages for insulting language**

By Johan Botes, Director- Employment Law, Cliffe Dekker Hofmeyr

The South Gauteng High Court awarded a human resource manager R50 000 in damages, plus legal costs, after she was called a 'liar' and an 'unintelligent white girl'. In *Nadia van der Westhuizen v Morgan Motlogelwa Ntshabele* (case 2014/27063, judgment handed down 23 March 2015) the court upheld her claim for damages and agreed that she suffered damage to her reputation as a result of the defamatory remarks made by the defendant.

The defendant was retrenched by the employer. The plaintiff was tasked to finalise the retrenchment and secure the return of the employer's property in possession of the defendant. The defendant uttered the defamatory remarks in the presence of fellow employees, including the plaintiff. The defendant later made further utterances that the court held were per se defamatory. The defendant did not oppose the application and did thus not suggest that his statements were unintentional or that he had a valid defence for raising the remarks (such as that the statements were true and in the public interest).

The court confirmed the general principles applicable to defamation. "A statement is defamatory of a plaintiff if it is likely to injure the good esteem in which he or she is held by the reasonable average person to whom it has been published. It includes not only statements that expose a person to hatred, contempt or ridicule, but also statements that are likely to humiliate or belittle the plaintiff; which tend to make him or her look foolish, ridiculous or absurd or which render the plaintiff less worthy of respect by his or her peers."

The court may exercise discretion in awarding damages. Relevant factors for the court to consider include the seriousness of the defamatory statements, falseness, nature and extent of the publication of the statement, malice, rank or social status, the absence of an apology, motive and the general conduct of the defendant. The court also considered the fact that the derogatory statement had racial undertones. It confirmed that "... the use of racially derogatory language is regarded by right-minded members of South African society as reprehensible." Nevertheless, the court agreed with previous cautions issued to state that overly large sums should not be awarded in damages so as to avoid promoting or encouraging litigation of this nature.

The lesson from this case is that employers and employees ought to take care in making statements that could be defamatory. Making such statements in the workplace does not present a defence to the wrongdoer. Whilst it may be tempting to lash out at a company representative, be it CEO, line manager or HR representative, employees should refrain from making statements that are untrue, hurtful or otherwise defamatory. Such wrongful statements should neither be made in the workplace or in public, including public platforms like social media (such as Facebook and Twitter) or during an after-hours drinks session at the local pub. Although the courts are reluctant to award significant sums in defamation cases, even an amount of R50 000 could balloon into a more significant sum when taking the plaintiff's legal costs into account.

SOURCE: <http://www.labourguide.co.za/most-recent/2043-defamation-in-the-workplace-damages-for-insulting-language>



**welcomed our 1000th member
this week! We are very proud of
this milestone!**



8 Tips for Leadership When Communicating During Tough Times

By David Grossman

Whether we like it or not, we're still in a time where many organizations are feeling under attack and protecting every asset. In some, the pressure is mounting for leaders to find the answers, and employees who need to stay focused and productive are often numb out of fear of losing their job, taking on more work, or focused on the unknown.

Hidden in these tough times, is a defining moment to create real, meaningful connections to maintain – if not drive – productivity and minimize the disruptions that come with change. It's a time to ensure communication is a top priority to minimize the downside of change and accelerate the upside.

Now more than ever, we need leadership

I used to work for a manager who said, 'Lead, follow, or get out of the way.' This is a litmus test for leadership, which means sharing with employees what we know and what we don't know. This is a time for courageous conversations and straightforward communications.

Specifically, this is the time to talk about how the organization is positioned for the future and/or how changes are being made to set the business up for future success. It's also critical to clearly outline specific expectations for employees and what's needed of them.

Here are eight tips to use when communicating during tough times:

- **Remember the shadow that's cast by leaders and the company** – if in a situation where layoffs are happening, keep in mind that they may be tomorrow's prospects, clients, boss, or future job candidates someday
- **Be honest, human, empathetic and show you care** – delivering tough news is tough and it's okay to let employees know it. Do what you can to make them feel comforted
- **Hold a mirror to yourself** – as you prepare to share updates and/or tough news, consider how you would like to be communicated with if you were in the employees' shoes
- **Outline expectations clearly** – it's the fastest way to find out if employees are on the same page as you and engaged, and if they're not, it could be a safe way for people to gracefully opt out of their job
- If layoffs happen, **help the remaining employees "mourn the loss"** – don't pretend that nothing happened or that the people left in the company or group aren't affected
- **Don't wait to communicate until you have all the answers**, by then it will be too late – if you wait, someone is going to speak on your behalf and fill the information vacuum whether the information is right or wrong
- **Provide context and relevance** so employees understand the meaning behind what's being said and understand what it means to them; have a [message platform](#) of core messages and actions
- **Consider creating online and real-world networks for alumni** – a place to keep in touch with others, network with each other, and keep a fond connection with the company so your organization is seen as a connector and you have ambassadors

Remember, talking about the state of the business – whether good news or grim – it makes good business sense to avoid significant distractions at a time when a steady hand at the wheel is needed.

Now more than ever, employees want to know where they stand and they need to stay focused. To do this, they need the right direction and information from their leaders and communicators.

SOURCE: <https://www.linkedin.com/pulse/8-tips-leadership-when-communicating-during-tough-times-grossman>

**NINE TENTHS OF EDUCATION IS
ENCOURAGEMENT**

DEALING WITH SEXUAL HARASSMENT IN THE WORKPLACE

Sexual harassment is any unwanted attention of a sexual nature that takes place in the workplace. This is any kind of sexual behaviour that makes you feel uncomfortable, including:

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

The Labour Relations Act is the main act that deals with sexual harassment in the workplace. It has a Code of Good Practice on Sexual Harassment that sets out the best ways to deal with complaints about sexual harassment.

1. Labour Rights

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 and your HIV status.
- To report sexual harassment without fear of victimisation (ill-treatment).
- Have your complaint treated seriously and confidentially.

2. What to do if you are Sexually Harassed?

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

2.1 Informal Way

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

Guidelines:

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.

2.2 Formal Way

- Where a formal procedure has been chosen by the aggrieved, a formal procedure for resolving the grievance should be available and should:
- Specify to whom the employee should lodge the grievance.
- Make reference to timeframes which allow the grievance to be dealt with expeditiously.
- Provide that if the case is not resolved satisfactorily, the issue can be dealt with in terms of the dispute procedures contained in item 7(7) of this code.
- offence to victimise or retaliate against an employee who in good faith lodges a grievance of sexual harassment.



3. Investigation and disciplinary action

- Care should be taken during any investigation of a grievance of sexual harassment that the aggrieved person is not disadvantaged, and that the position of other parties is not prejudiced if the grievance is found to be unwarranted.
- The Code of Good Practice regulating dismissal contained in Schedule 8 of this Act, reinforces the provisions of Chapter VIII of this Act and provides that an employee may be dismissed for serious misconduct or repeated offences. Serious incidents of sexual harassment or continued harassment after warnings are dismissable offences.
- In cases of persistent harassment or single incidents of serious misconduct, employers ought to follow the procedures set out in the Code of Practice contained in Schedule 8 of this Act.
- The range of disciplinary sanctions to which employees will be liable should be clearly stated, and it should also be made clear that it will be a disciplinary offence to victimise or retaliate against an employee who in good faith lodges a grievance of sexual harassment.

4. Criminal and civil charges

- A victim of sexual assault has the right to press separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by this code.

5. 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 for conciliation in accordance with the provisions of section 135 of this Act. 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 in terms of section 135(5).

[Code of Good Practice on Handling Sexual Harassment Cases](#)

[701.08 NMMU Sexual Harassment Policy](#)

<http://www.mywage.co.za/main/decent-work/fair-treatment/sexual-harassment>

