



NTEU at NMMU

Sexual Harassment at Work: Employers will be held liable

By Siobhan Leyden,

Partner in the Employment Law department, Shepstone & Wylie Attorneys

On 31 March 2016, the High Court in Grahamstown delivered a judgment in which it held an employer (Municipality) and a senior municipal employee jointly and severally liable for the damages suffered by a female employee who was sexually harassed at her place of work. Although the value of the damages awarded to the employee have yet to be determined by the Court, the judgment sends a clear message to employers. Employers have a duty to prevent and eliminate sexual harassment at the workplace.

In this case, a relatively junior and young female employee was sexually harassed by her immediate supervisor. On one occasion the supervisor addressed sexual comments to her and on another occasion, he attempted to force his tongue down her mouth. After these incidents, the employee felt distressed and anxious to work with her supervisor. She was often required to work late at night with her supervisor and the mere sight of him reduced her to tears.

The employee laid criminal charges against her supervisor and also reported her supervisor's conduct to the Municipality's legal department which investigated the matter and took disciplinary action against him. However, much to the employee's disappointment, her supervisor was not dismissed and he returned to work after he served his punishment in the form of a meagre 2 weeks' unpaid suspension. The employee testified that she couldn't cope in that she was traumatised and would hide if she saw her supervisor at work. She eventually resigned, after which, she instituted a claim for damages against the Municipality and the supervisor.

The High Court came held that:

- Employers have a common-law duty to take reasonable care for the safety of employees.
- The supervisor created an offensive and intimidating work environment for the employee.
- The supervisor was in a position of authority and as such, the employee should have been able to trust him. When an employer places an employee in a special relationship of trust, the employer bears the responsibility of ensuring the employee is capable of trust.
- The Municipality allowed the supervisor to return to work.
- Although the Municipality had a policy on sexual harassment at its workplace, there was no evidence that employees had received training thereon.
- The Municipality must be held jointly and severally liable with the supervisor for the employee's damages and loss of earnings.

Source: <http://www.labourguide.co.za/most-recent/2285-sexual-harassment-at-work-employers-will-be-held-liable>

YOUTH DAY 16 JUNE



Onus of Proof and Employer's Obligation during Dismissal Disputes

By Magate Phala

Section 192 of the Labour Relations Act, 66 of 1995 provides that

1. in any proceedings concerning any dismissal, the employee must establish the existence of the dismissal, and
2. if the existence of the dismissal is established, the employer must prove that the dismissal is fair.

Section 188 (1) of the Labour Relations Act supra further provides that a dismissal that is not automatically unfair, will be rendered unfair if the employer fails to prove:

- (a) that the reason for dismissal is a fair reason and
 - (i) that it is related to the employee's conduct or capacity, or
 - (ii) that it is based on the employer's operational requirements and that
- (b) the dismissal was effected by a fair procedure.

Any person considering whether or not the reason for dismissal is a fair reason or whether or not the dismissal was effected by a fair procedure must take into account the Code of Good Practice: Dismissal.

It is not a given that if the employee is found guilty of misconduct that a sanction of dismissal should be applied. Employers have a further duty to lead evidence showing that the employee by his conduct has breached the trust relationship. Moreover, in some cases, where the employee has been found guilty of dishonesty, employers may argue before the Commissioner that by applying the principle of *Res Ipsa Loquitur* (Latin for "the thing speaks for itself") and relevant case law that dismissal is the only suitable penalty.

Source: <http://www.labourguide.co.za/most-recent/2281-onus-of-proof-and-employer-s-obligation-during-dismissal-disputes>



17 JUNE 2016 IS A UNIVERSITY HOLIDAY @ NMMU. ENJOY YOUR DAY OFF!

TURC ELECTIONS 2016 – WE NEED YOU!

What are the functions, powers and duties of the TURC?

- The TURC may either refer matters to the Branch Executive Committee with recommendations for action, or, arrive at a method, or way, of resolving any issue, conflict or dispute at the point of concern, which shall be notified to the BEC and the consequent outcomes reported to the BEC;
- One of the duties of the TURC member is to build a relationship with constituency members;
- The TURC members may assist and represent, or arrange appropriate representation for, the employee in grievance and disciplinary proceedings;
- The TURC members must monitor the employer's implementation and application of terms of conditions of employment of the constituency members;
- The TURC must report any alleged contravention of any law regulating terms and conditions of employment, occupational health and safety, or other general concerns to the BEC.

DO YOU THINK YOU CAN FULFIL THE DUTIES OF A TURC MEMBER? CONTACT US!