

## Legal Insights: Sexual Harassment at Work

I had the honor to be invited by Safe Haven Foundation to participate in a panel discussion titled “A Conversation about Domestic Violence”, to commemorate November as the month to create awareness regarding Domestic Violence. I hope that this discussion, together with all the activities that were organized during November to create awareness, indeed created more awareness. During the panel discussion that was streamed via the Safe Haven Foundation’s Facebook page, a viewer asked a question that was not related to Domestic Violence, but it is also relevant to date due to the Me-Too movement. The question was regarding sexual harassment at work. In this article I will elaborate on our labour law aspects of this topic.

I have to say that during my career I only encountered one case in which my advice was requested on this topic. However, taking into account the global impact that the Me-Too movement, I can imagine that it is also relevant here in Sint Maarten.

Unfortunately, our current written labour law is outdated, and there are no explicit laws protecting employees from sexual harassment. Article 7A:1614x of the Civil Code stipulates that the employer has the obligation to furnish and to maintain the workplace and tools, and give rules and instructions in a manner that the employee is protected for danger to body and honor. Article 7A:1614Y stipulates that the employer is obligated to do the necessary that a good employer should do or not do under equal circumstances.

In my legal opinion these articles imply that the employer is required to create a safe environment for its employees. Part of this safe environment is implementing rules in the company to prevent and to punish transgressive behaviors. This does not mean that as an employer it is necessary to have a bulk of non-fraternization rules in your company akin to what is done in corporate America. Normally employers have a set of rules in the organization, for example that theft will not be tolerated. In these same set of rules, the employer can include rules regarding the non-tolerance of sexual harassment. Recommended is to include a definition of what sort of behaviors will be considered sexual harassment. In a bigger organization the employer can consider appointing an employee that acts as a confidant for other employees in cases of transgressive behavior.

A rule has no validity if it is not upheld. So, if an employee complains that a colleague or even its manager has harassed her/him sexually, the employer needs to take the accusation seriously and investigate the complaint. The employer may have to take disciplinary measures against the employee that violates the internal rules. The disciplinary measures to be taken depend on the circumstances, but the recommendation is to request legal advice if the employer is considering dismissing the employee.

If an employee complains and the employer does not act on the complaint, the employer might be found not to be behaving as a good employer and there could be financial implications in that. Furthermore, in a company where employees feel unsafe, their productivity is negatively affected which in turn affects the bottom line.

For employees that experience sexual harassment at work, is important to collect prove of such harassment. Mails, WhatsApp’s, recorded conversation or witnesses can all be proof of sexual harassment. That will help your employer to take action, or if your employer will not take action help you in a legal case against your employer because he did not take action. Furthermore, if the employer is doing the harassment, such evidence will help you in a legal case if you want to

terminate the employment agreement and seek compensation. If the sexual harassment extends to criminal acts, the employee could also consider filing a complaint at the police.

I know that I am not offering the victims of work place harassment much hope, but as I said unfortunately the current laws do not offer a lot of protection to the employee that has become victim of sexual harassment, if the harassment does not extend to a criminal act. Therefore, it is for the employer to foster a safe environment for its employees. Protect your human capital, as happy employees create happy clients. A safe working environment is a part of creating happy employees.

And to all people that think that their more than collegial attention, sexual jokes or sending sexual images to colleagues is OK, it is not. I will not even elaborate on touching. Keep out of the personal space of your colleagues, even after the pandemic has ended.

I wish all the readers happy holidays, as this will be my last article for 2020.