

## CHAPTER 3

### DESIGNING A SEXUAL HARASSMENT POLICY

#### 3.1 INTRODUCTION

From an organisational perspective, sexual harassment affects a company's bottom line directly through litigation and settlement costs, and indirectly through the redirection of management's attention and a loss of shareholder confidence (Pearson, 1997:25). From an individual perspective, sexual harassment results in the victim experiencing low self-confidence, reduced morale, a loss of motivation, physiological and emotional trauma, and a loss of commitment to work (Knapp et al, 1997:688). These negative consequences stem from the two types of sexual harassment, namely "quid pro quo" and "hostile work environment" harassment. Both these forms of sexual harassment can result in huge monetary settlements. Consequently, it is in the best interests of companies to initiate appropriate action to limit their liability and fend off sexual harassment claims. This chapter focuses on a policy to manage sexual harassment, why employers fail to manage it effectively, and the guidelines in the South African Code of Good Practice on the Handling of Sexual Harassment Cases (NEDLAC, 1998).

#### 3.2 A POLICY FOR MANAGING SEXUAL HARASSMENT

In the USA, the Equal Employment Opportunity Commission (EEOC) and the courts admonish employers to take action not only to prevent sexual harassment, but to correct sexually harassing behaviour in their workplaces (McAfee & Deadrick, 1996:86). The most common approach adopted by US employers to deal with harassment in the workplace is a structured approach. This approach comprises developing formal policies and procedures to avoid liability and educating and training their employees about these policies (Gold & Unger, 1993; Hotchkiss, 1994; McAfee et al, 1996; Raphan & Heerman, 1997).

Marshall (1999:57) states that in order to avoid any liability in the United States, the onus is on the employer to prove that

- the employer exercised reasonable care to prevent and to promptly correct any behaviour of a sexual harassing nature
- the employee unreasonably failed to take advantage of the preventative and corrective opportunities provided by the employer or to avoid harm otherwise.

The requirement of taking “reasonable care” to prevent sexual harassment should start with a written, consistently enforced policy which flatly prohibits all forms of harassment. These policies should be regularly revised and updated to reflect the new dynamics of sexual harassment identified by recent court cases, with the ultimate goal of adopting an official “zero tolerance” policy in respect of sexual harassment (Coleman 1998:36; Ceniceros, 1998:3; Canoni, 1999:12).

According to Kleine (1998:61), the US court case of Faragher v City of Boca Raton identifies five core components essential to an effective sexual harassment policy which employers should adopt, namely, that the policy should

- use clear and unequivocal language;
- set out an explanation of what sexual harassment is;
- specify the reporting mechanisms to be used by victims of sexual harassment;
- contain anti-retaliation assurances; and
- stress prompt investigation of all sexual harassment complaints.

The goal of any organisation should be to prevent, if possible, the occurrence of sexual harassment. To help combat sexual harassment, organisations should

- ~ develop a written sexual harassment policy, if one does not exist

- ~ communicate this policy to the employees
- ~ train key personnel to recognise and correct behaviour that could be considered sexual harassment and handle complaints of sexual harassment
- ~ conduct a prompt, unbiased investigation of every sexual harassment claim
- ~ take corrective action, when necessary, that matches the severity of the harassment and is sufficiently severe to prevent its recurrence.

The formulation of such a policy as well as the elements which should make up the policy will be discussed next.

### **3.3 DEVISING A POLICY FOR SEXUAL HARASSMENT**

A written sexual harassment policy is the first step towards establishing an organisation's attitude towards sexual harassment (Fink & Perry, 1999:25). This alone will not solve the problem, however, unless it is properly executed throughout the organisation.

#### **3.3.1 Pre-emptive action – top management support**

The most important factor in the creation of an ethical work environment that is free of sexual harassment is the leadership provided by top management (Schaefer & Finegold, 1995:54). Unless top management acts in a manner that clearly impresses upon all employees the importance of ethical conduct, no policy, no matter how carefully drafted, will be taken seriously. Employees will only take the company's policy on sexual harassment seriously if they are convinced of management's sincerity and commitment to prohibiting such conduct. Schaefer and Finegold (1995:54) state that since sexual harassment is less an issue of sex than power, it remains incumbent upon senior management to set the stage for respectful behaviour whereby they will demonstrate their serious commitment to the creation of a

harassment-free work environment. Thus, the process of creating a harassment-free environment begins with the senior executive's words and deeds.

Rubenstein (1989:19) states that senior management's first step in demonstrating their commitment not to tolerate sexual harassment is the publication of a policy outlawing such workplace behaviour. Raphan and Heerman (1997:11) state that top management must make it clear that sexual harassment will not be tolerated by communicating their commitment to the company's policy and by participating in the company-wide rollout programme of the policy. They go further by stating that management can achieve their objective of creating a harassment-free work environment by "walk and talk", that is, by modelling the appropriate behaviour in the workplace at all times. By doing so, they will reinforce the organisation's strongly worded policy. The senior executive's commitment to the process can be demonstrated via memoranda, articles in the company's newsletter and briefing sessions with staff on sexual harassment.

### **3.3.2 Policy formulation**

The importance of a clearly defined policy prohibiting any form of sexual harassment was highlighted by the 1986 US Supreme Court case of Meritor Savings Bank vs Vinson (Flynn, 1991:17). The court ruled in this case that a company would be liable for sexual harassment, even if the management was unaware of the occurrence, unless the company had a policy in place which

- defined sexual harassment
- stated that such harassing behaviour would not be tolerated
- emphasised that harassers would be subject to disciplinary action.

Accordingly, it is important that any policy which strives to curtail sexual harassment behaviour must define what constitutes sexual harassment, delineate the actual complaints procedure and related investigation process, and spell out the sanctions

that would apply to such unacceptable behaviour. Thus, when employees read the policy they must be able to understand the provisions contained therein, and know whom they can approach for assistance. The policy should therefore use language that encourages victims to report incidents of sexual harassment and that clearly communicates the company's commitment to deal with such incidents in an expeditious and fair manner. Lightle and Doucet (1992:36) propose that in the policy formulation phase, employers should select either

- a broad anti-harassment policy which includes a positively worded statement that specifically addresses sexual harassment
- OR**
- a separate sexual harassment policy that covers all organisational members
- OR**
- separate sexual harassment policies; for example, one that addresses non-management, and one that addresses management.

However, Rowe (1996:247) disagrees with their view, especially with regard to separate policies for different ranks. Since the occurrence of sexual harassment affects all employees, irrespective of their hierarchical status, it is inappropriate to distinguish between managerial and non-managerial employees when drafting an organisation's sexual harassment policy. Therefore, one general policy, applicable to the entire organisation, should be compiled, as it would be seen as fairer and less invidious in coverage (Rowe, 1996:248). Furthermore, a general policy would provide greater choice for victims and help focus attention on offensive behaviour rather than segregating managers and non-managers. Accordingly, the policy should avoid differentiating between the organisational status of employees and concentrate on

- emphasising that all employees have the right to be treated with dignity and respect at work, and that sexual harassment is both insulting and demeaning to the recipient;
- defining the types of harassment, namely "quid pro quo" and "hostile work environment" harassment
- specifying examples of harassment, including verbal, visual and physical harassment

- stressing that sexual harassment is unlawful and will neither be permitted nor condoned in the workplace
- emphasising that all employees, namely managers, supervisors and co-workers, have a positive duty to establish and maintain workplaces free of sexual harassment
- detailing the procedures to be followed by victims in order to obtain assistance
- clearly delineating the steps managers will take when a complaint is lodged, including a fair, prompt and confidential investigation process setting out the disciplinary sanctions that will be imposed if employees are found guilty of sexual harassment
- ensuring that no employee, irrespective of status, need fear victimisation for processing a sexual harassment claim (Rubenstein, 1989:19; Schaefer et al, 1995:55; and Rowe, 1996:249).

This policy must be specifically related to sexual harassment and not be included in a general company policy, such as one dealing with misconduct, as there are differences with respect to the origin and manifestation of sexual harassment and other misconduct. Furthermore, a sexual harassment specific policy will serve to convey a sense of urgency concerning workplace sexual harassment. Diagram 3.1, (pages 3-7 to 3-10) which follows, presents an example of a sexual harassment policy.

### **3.3.3 Elements of a sexual harassment policy**

Besides the written policy document, an effective sexual harassment policy includes a complaint procedure, disciplinary sanctions, a briefing and sensitising process, and training.

**DIAGRAM 3.1 AN EXAMPLE OF A SEXUAL HARASSMENT POLICY AND AN EMPLOYEE ACKNOWLEDGEMENT FORM**

**To: ALL EMPLOYEES**  
**From: JACKIE JONES, Chief Operating Officer**  
**Re: SEXUAL HARASSMENT PREVENTION POLICY**

*Our company is committed to providing you with a workplace free from all forms of discrimination and one in which every employee is treated with honour, respect, dignity and professionalism. To that end, the company hereby adopts a “zero tolerance” policy against sexual harassment and any inappropriate conduct of a sexual nature by employees or managers. In addition, no form of harassment or employment discrimination will be tolerated, including discrimination based on an individual’s sex, race, colour, religion, national origin, disability, age, veteran status, citizenship, sexual orientation, or any other class protected by federal state, or local laws.*

*Sexual harassment is sex discrimination and illegal. It is prohibited under federal law by Title VII of the Civil Rights Act of 1964, and the laws of [name of State]. According to the federal Equal Employment Opportunity Commission, sexual harassment includes unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly, a term or condition of employment; (2) submission to or rejection of such conduct is used as the basis for an employment decision affecting an employee; or (3) such conduct has the purpose or effect of unreasonably interfering with an employee’s work performance or creating an intimidating, hostile, or offensive working environment.*

*Sexual harassment can occur between a manager and an employee, between co-workers of the opposite or the same sex, and by customers or other visitors to the company. A manager who grants an employment benefit or imposes an employment penalty based on submission to, or refusal of, a request for sexual favours from an employee has committed “quid pro quo” sexual harassment. Managers, employees, or visitors who engage in inappropriate sexual conduct can be held responsible for creating a sexually hostile work environment, another form of sexual harassment that is unlawful.*

*Even employees who are not the direct recipients of sexual harassment but witness sexually harassing behaviour are indirect victims of sexual harassment. Sexual harassment also involves sexual conduct that is “unwelcome”. This means that the recipient or observer did not want, encourage, invite, or solicit the conduct.*

*However, any conduct that is or could be perceived as personally offensive or failing to respect the rights of others could be “unwelcome”. Because people perceive things differently, every employee has an obligation to refrain from any conduct of a sexual nature. Sexual harassing conduct can include, but is not limited to, the examples provided below. However, in keeping with the company’s “zero tolerance” policy against sexual harassment, all conduct of a sexual nature is prohibited:*

***Verbal:*** *sexual jokes; innuendos; comments based on sexual stereotypes; sexually suggestive comments; sexual propositions; threats; whistles or telephone calls; comments about a person’s body parts; and any sexual statements communicated through the company’s computer systems or fax machines*

***Non-verbal:*** *sexual graffiti, pictures, posters, cartoons, or objects, sexual e-mail communications or jokes; eye contact with a person’s sexual body parts; and obscene gestures*

***Physical:*** *any intentional uninvited physical contact, including touching, brushing up against the body, pinching, patting, and rubbing.*

*Sexual harassment is insulting, offensive, and demeaning. Therefore, all employees at the company, including managers, have a duty to prevent and immediately report any conduct of a sexual nature even if they do not personally believe that the conduct amounts to sexual harassment. No reported incident will be considered too trivial, and the company strongly encourages all employees to come forward with their observations or complaints.*

*In addition, no employee will be retaliated against in any manner for reporting a suspected incident of sexual harassment or for assisting the company in efforts to prevent such incidents from occurring.*

*Employees who believe they have been a victim of sexual harassment or who have observed inappropriate sexual conduct, should immediately report the incident to any of the following three individuals: **Jane Doe, Vice President of Human Resources; Fred Smith, Assistant Vice President; or Jackie Jones, Chief Operating Officer.** They can be reached by telephone at the following numbers: .....*

*Under no circumstances should an employee report an incident to a member of management who he or she is alleging committed sexual harassment. If a complaint is made to a direct supervisor, the supervisor will report the incident to the individuals named above before any action is taken. Complaints can be made in person, anonymously, verbally, or in writing.*

*All sexual harassment complaints will be investigated promptly by one or more of the individuals named above. However, if any of the investigators are named as the alleged sexual harasser, they will not have any responsibility for conducting the investigation. The investigation may involve witness interviews and a review of any documents, objects, or other evidence related to the sexual harassment complaint.*

*All complaints and investigations will be kept confidential to the maximum extent possible, and in accordance with the company's legal responsibility to conduct a prompt and adequate investigation. Only those individuals at the company with a "need to know" will be informed.*

*Following the investigation, the investigators will review their findings with the appropriate managers, and a determination will be made on how the complaint should be resolved. In appropriate cases, the perpetrator will be promptly subject to discipline, up to and including discharge, in management's discretion, depending on the seriousness of the offense or other circumstances. However, the company reserves the right to discipline any employee who engages in offensive conduct, regardless of whether sexual harassment has been found. A complaining employee will be made aware of the results of the investigation and the discipline imposed. If the complaining employee disagrees with the outcome of the investigation, he or she will have the opportunity to submit a written statement to that effect. In addition, the company will take whatever steps are reasonably necessary to assist a victim of sexual harassment with counselling opportunities or by other means.*

*To further promote the company's commitment to a "zero-tolerance" policy against sexual harassment, all employees, including management personnel, will be required to attend periodic sexual harassment sensitivity and awareness training sessions to assist the company in the identification and prevention of sexual harassment at all levels.*

**Jackie Jones**

*Chief Operating Officer*

#### **ACKNOWLEDGEMENT FORM**

*I have carefully read the attached Sexual Harassment Prevention Policy, and I fully understand its meaning and content. I agree to abide by all the requirements of the Policy and to accept my responsibility to report promptly any inappropriate conduct which I may observe. I also agree that my own conduct will be subject to the Policy and that I may be disciplined, up to and including termination, if it is determined that I have engaged in any inappropriate conduct.*

\_\_\_\_\_  
**Employee's Signature**

\_\_\_\_\_  
**Date**

**Source:** Orlov and Roumell (1999:68-80)

### **3.3.3.1 Complaint procedure**

It is important to develop a clear and precise procedure to deal with the occurrence of sexual harassment as it gives meaning and effect to the intent expressed in the employer's sexual harassment policy. The complaint procedure may take the form of one or a combination of dispute resolution mechanisms. The dispute resolution mechanisms available are the direct approach, informal third-party intervention, the generic approach, classic mediation, and rights-based adjudication (Rowe, 1996:251). These dispute resolution mechanisms form the basis on which organisations can develop their own internal mechanism to manage and prevent sexual harassment in the workplace. For a full discussion of dispute resolution mechanisms see Appendix A.

Whatever type of procedure is adopted for handling complaints, it should emphasise the expeditious resolution of complaints (Rubenstein, 1989:20). In addition, the procedure must protect the confidentiality of the complainant and strive for a fair resolution of the complaint. Finally, the procedure should ensure the enforcement of penalties against harassers and at the same time guard against the possible victimisation of the complainant (Rowe, 1992:250).

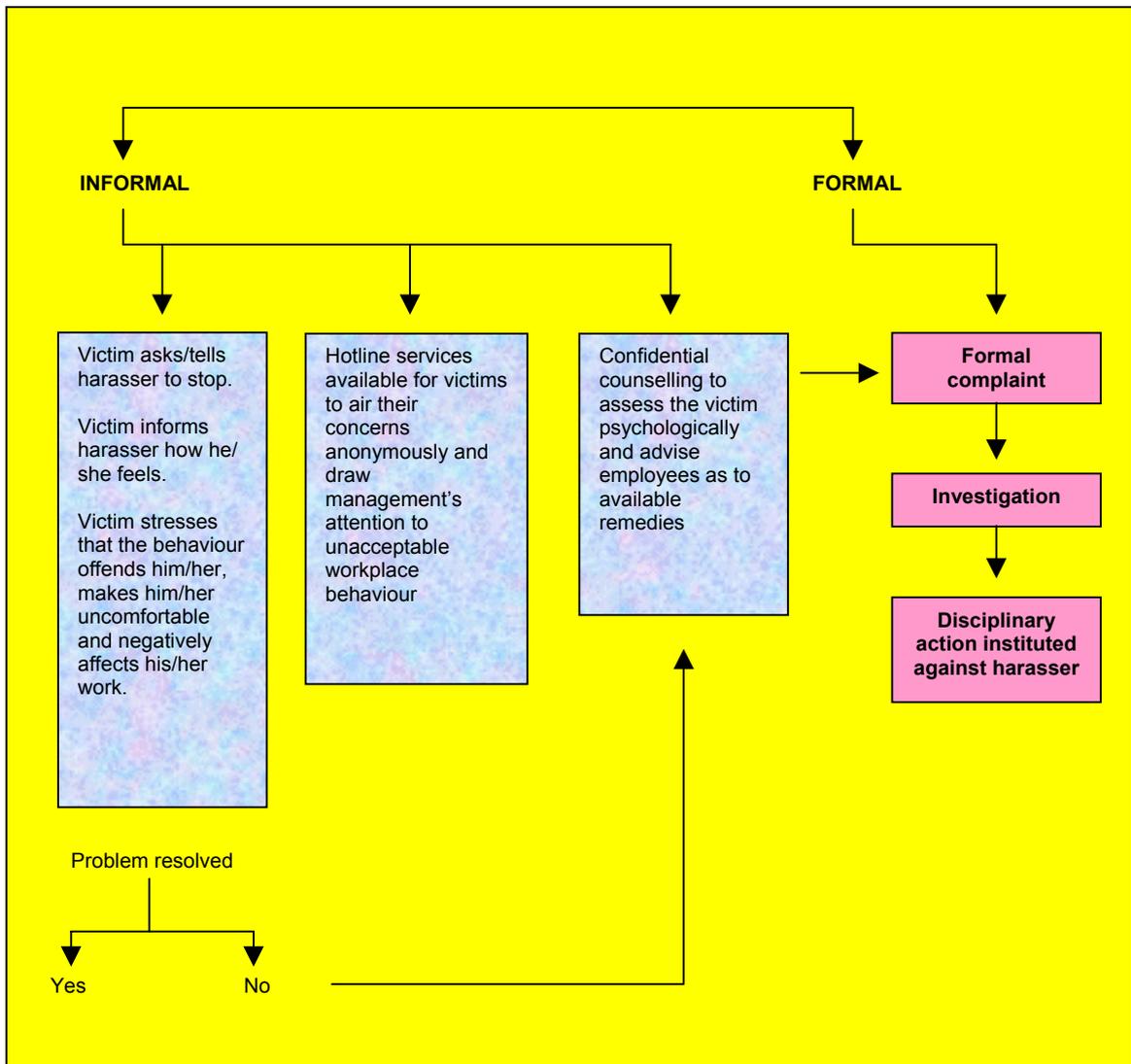
A holistic approach should be adopted when designing a complaint procedure in order to cater for both formal and informal mechanisms. If the procedure only comprises a formal mechanism, victims could be dissuaded from raising complaints for fear of adverse reaction and embarrassment (Rubenstein, 1989:21). By including informal mechanisms in their procedures for dealing with sexual harassment, organisations would not only address this fear, but provide the means for those victims who simply want to ensure that the offensive behaviour stops (ILO, 1992:36). Accordingly, if organisations are sincere in dealing with and eliminating workplace sexual harassment, they should adopt a complaint procedure that is flexible and offers employees more than one route. Hotchkiss (1994:20) states that organisations should consider the following aspects when designing their complaint procedure:

- Make the procedure simple and user friendly.

- Provide employees with alternatives, allowing for victims to by-pass their immediate supervisor, as often the supervisor is the offender.
- If the supervisors in an organisation are of one sex, designate employees from the opposite sex to deal with complaints.
- Do as much as possible to ensure confidentiality of any investigation and consequently talk about the case only to those who need to know.
- Set time frames for the various stages of the complaint procedure and adhere to them.
- Thoroughly document all stages of the process as these documents will prove invaluable should the case progress to legal proceedings.
- In the course of the process, assure victims of the organisation's desire to get to the bottom of the complaint as the expressed intention of the company is to provide all employees with a sexual harassment-free working environment.

In developing the complaint procedure, companies should take the views of female as well as male employees into account. This can be achieved by embarking on a consultation procedure aimed at eliciting the views of the various stakeholders on issues relating to the punishment of offenders (rights-based focus) and subtle methods of stopping the harassment without any form of punishment (interest-based focus). By including the views of the respective parties, everybody will be more committed to invoking and using the complaints procedure than if they were not consulted in its design.

Bearing the above aspects in mind, the organisation should formulate its complaint procedure to include informal and formal elements. The elements of a complaint procedure are graphically presented in figure 3.1 below.

**FIGURE 3.1 ELEMENTS OF A COMPLAINT PROCEDURE**

**Source:** Adapted from Rubenstein (1989:21)

- ***Informal mechanisms***

In practice, many victims prefer to first attempt to resolve the harassment by informal means such as asking the offender to stop (Rubenstein, 1989:21). The company can provide assistance for employees choosing this route by allowing the harassed employee to talk to designated officials in the company. The person designated to fulfil this role should be carefully chosen and trained to be tactful, kind, warm and capable of giving an objective, impartial opinion. The company can further assist victims electing to follow the informal route by

coaching them on the following three self-defence techniques (McAfee et al, 1995:87):

➤ **Ask: Polite request**

The victim is counselled in the appropriate method of politely requesting the harasser to refrain from engaging in a particular form of behaviour. This technique is designed to deal with mild forms of harassment (low severity and/or pervasiveness) and is used when the parties involved are relatively congenial.

➤ **TELL: Assertive technique**

Here the victim is trained how to tell the harasser that he/she heard or observed what was said/done by the harasser and explain why it is unacceptable and advise the harasser what future behaviour is expected. This technique is designed to combat harassment that is of medium intensity, that is, of moderate severity and/or pervasiveness.

➤ **THREATEN: Warning technique**

Here the victim is advised and trained to give the harasser a final notice that unless his/her behaviour changes, a formal complaint will be filed. The victim is advised to use this technique when the ask and tell techniques have not produced the desired effect.

While employers have the responsibility of preventing sexual harassment, employees also have a responsibility to assert themselves when others engage in offensive behaviour, and the above techniques provide them with the necessary tools to do so (McAfee et al, 1996:89).

The second element of the informal mechanisms indicated in figure 3.1 (page 3-13) consists of a management hotline service. It is counterproductive to require all sexual harassment complaints to be put in writing before any management action is taken (Rubenstein, 1989:21). By providing a hotline service, victims are able to draw management's attention to the existence of a sexually pervasive work environment. The victim thus highlights a problem

and requests management to rectify the situation. This avenue serves the purpose of dealing with the victim's concerns without the victim fearing adverse reaction and embarrassment.

The third and final component of the informal mechanism is that of confidential counselling. The complaint procedure makes specific provision for problems to be discussed confidentially and informally with a trained counsellor with the aim of resolving the problem informally before a formal complaint is made. The pioneering work done on confidential counselling by the Dutch Institute, *Handen Thuis* ("Hands Off") emphasises that in order for this informal mechanism to be effective, it is important that the facilities, accessibility and anonymity accorded to the counsellor are laid down by the company (Rubenstein, 1989:22). The company's complaint procedure must set out the functions of the counsellor, so that employees are aware of the existence of this mechanism to deal with harassment. According to Rubenstein (1989:22), the core functions of the confidential counsellor are to:

- listen to what has happened
- deal with the emotions arising as a result of the incident
- draw the victim's attention to whatever further formal course of action is open to him/her
- assist the victim in filing a formal complaint
- make management aware of the problem while ensuring that the names of the harasser and the victim, remain anonymous.

Some victims find sexual harassment so offensive that they elect to confront the issue head on via the formal process, which consists of a formal complaint, investigation and disciplinary action (see figure 3.1 on page 3-13). To cater for such cases, the company's formal mechanism must set out the procedures to be followed in this instance.

- **Formal mechanisms**

The formal mechanisms set out in the company's in-house reporting procedures describe the investigative procedure and delineate the disciplinary process (Bresler & Thacker, 1993; Thacker, 1992; and Peavy, 1995).

- **Reporting procedures**

Thacker (1992:51) states that in order to have an effective reporting procedure the following aspects need to be contained in such a procedure:

- what a victim should do if he/she is the target of sexual harassment
- how to register a complaint
- with whom a complaint must be registered
- what happens after a complaint has been registered
- how long it takes before an investigation begins
- how the investigation is conducted and by whom
- who the investigation results are disseminated to
- what disciplinary action will be taken.

The reporting procedure consists of a process that entails a victim filing a written complaint with a person designated by the company to deal with cases of harassment. In many companies, the human resources professional fulfils this role. The victim would approach the designated official and complete a complaint form that would detail the what, when and how of the harassing experience. The situation will often be highly emotionally charged and the designated official should therefore be tactful, kind, warm and capable of conducting himself/herself objectively

throughout the process. During the actual process of a victim submitting a written complaint, he/she must be assured that the complaint will be kept confidential. It is also advisable to give an unequivocal written guarantee that there will be no retaliation for lodging the complaint (Peavy, 1995:26). Once the victim has completed the complaint form, the formal investigation phase can commence.

➤ **Investigation**

Prompt, tactful investigation is critical in persuading passive targets to file complaints (Peavy, 1995:26). The investigator must be sensitive to the fact that the very process of bringing a complaint or relating the incident to the investigator may prove to be an ordeal in itself for the victims. Therefore, what is needed is an investigation and not an inquisition (Rubenstein, 1989:26). As the investigator is key to the sexual harassment case, the formal procedure document must stress that the designated investigator is experienced and trained in human behaviour (including causes and effects of socially deviant behaviour) and trained in various forms of crisis intervention. By the company doing this, the victims will feel confident that their complaints will be handled professionally.

The investigation process consists of two stages, namely (1) gathering the facts and (2) evaluating the facts to determine the appropriate corrective action to be taken, if any (Oh, 1992:228).

The first stage consists primarily of interviews to get the facts. For the investigator to fulfil his/her role effectively, Gill (1995:30&90) states that the investigation process should consist of the following steps:

- Advise the victims that the incident they complained of will be investigated within 24 hours.
- Do not promise confidentiality since the investigator cannot practise due process if the accuser's identity cannot be revealed.

- Interview the victim who is laying the charge first. Confirm the written statement that was handed in, and advise the victim that he/she should avoid discussing the incident with others and allow the investigator to conduct his/her own investigation.
- Interview the alleged harasser next. It is important for the investigator to provide enough information about the complaint and go through objectionable behaviour item by item so that the accused understands how to respond. The investigator must get a written statement from the alleged harasser, since he/she will have more leverage with the harasser than with the victim due to the potential disciplinary nature of the investigation.
- In instances where the harasser does not deny the harassing conduct but explains the circumstances, there is no need to proceed further with the investigation. In such cases the emphasis is on finding an appropriate remedy.
- When the investigator is confronted with a situation of “he said, she said”, the onus is on the investigator to delve deeper and ascertain whether anyone else had been subjected to offensive conduct by the accused.
- If complaints are corroborated, the investigator must determine whether there were any mitigating circumstances.

Once a confidential file has been opened regarding the incident and all the parties involved have been interviewed, the investigator must evaluate all the evidence, draft a report, and finally decide on the appropriate corrective action for the particular situation. It is important that throughout the process, the investigator keeps in mind that a person is innocent until proven guilty (Wright & Bean, 1993:35). Prior to recommending a particular course of action, the investigator must also review the relevant personnel files, company policies

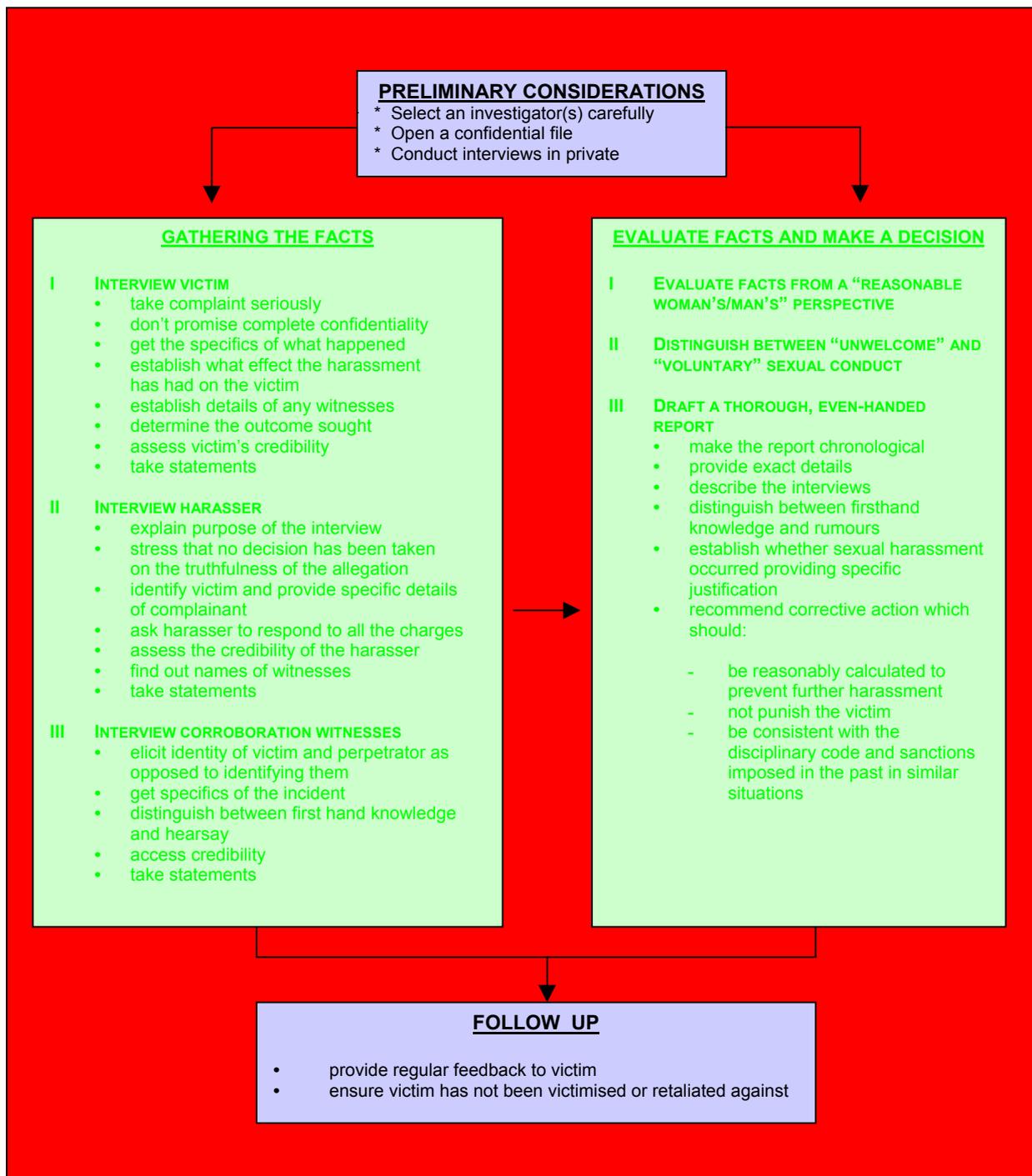
and existing laws on sexual harassment, in order to ensure that the recommended action is, in fact, the most appropriate under the circumstances.

The final aspect of the investigation is for the investigator to follow-up with the complaining employee. The follow-up process is important because it demonstrates to the victim that the company is actively investigating his/her complaint and further ensures that the victim has not been subjected to some form of retaliation for lodging the complaint (Nobile, 1996:14).

The investigation process should be outlined in a formal document to be provided to all to ensure that all the relevant parties are aware of what the actual investigation entails. This will ensure that the victims of harassment are not discouraged from reporting cases for fear of the unknown. A checklist should be included in the company's formal investigation document. By implementing the checklist, the company will be able to audit its procedure and establish whether any crucial elements have been left out. An example of a checklist is depicted in figure 3.2 on page 3-20.

### **3.3.3.2 *Disciplinary sanctions***

Should the investigation process conclude that the employee was the victim of sexual harassment, a hearing must be held. According to the International Labour Office, an employee is entitled to a fair hearing before any disciplinary penalty is imposed. Schedule 8 of the South African Labour Relations Act, 66 of 1995 stipulates that an employee has the right to a hearing at which he/she can state his/her case in response to any allegations that are made (*audi alterem partem rule*). Should the employee be found guilty of sexual harassment, the company can impose a disciplinary penalty. To assist the person chairing the disciplinary hearing in imposing an equitable penalty, the formal company procedure should include a list of possible penalties applicable to any employee found guilty of sexual harassment (Feldman, 1987:14).

**FIGURE 3.2 CHECKLIST FOR SEXUAL HARASSMENT INVESTIGATIONS**

**Source:** Adapted from Oh (1992:230)

By publishing the possible sanctions, the company would clearly and unambiguously advise harassers of the consequences of their conduct. The procedure should, therefore, set out examples of sexual harassment offences with corresponding penalties. Depending on the desired outcome that a victim seeks from the disciplinary action, the severity of the harassment and the pervasiveness of the conduct, provision

should be made for a range of penalties from a verbal warning to discharge. In selecting the appropriate penalty, the chairman of the hearing should bear in mind that the actual penalty must be administered judiciously in order to re-affirm that injury was done to the victim and to avoid harassment from occurring again (Wright et al, 1993:35). Specifying a range of penalties for sexual harassment and consistently imposing them reinforces management's statement that sexual harassment will not be tolerated.

### **3.3.3.3 *Briefing and sensitising employees***

Once the organisation has formally drafted a policy detailing how sexual harassment will be dealt with, it needs to be disseminated in the organisation, failing which, it will not have the desired effect for which it was compiled. Wide publication of the policy is necessary for employees to be aware of their rights and what recourse is available to them. Bohren (1993:61) states clearly that managers who want to avoid the liability arising from workplace sexual harassment, need to understand more about this type of behaviour, including the need to recognise and dispel the myths surrounding sexual harassment. A process of briefing and sensitisation achieves this objective. Firstly, the policy and procedures that have been developed need to be communicated. The communication process should include placing copies of the policy and procedures in employee handbooks, posting them on company noticeboards, and printing them periodically in the company's newsletter. Merely being aware of the policy is no guarantee, however, that employees will actually invoke the procedures, and therefore sensitising is also important.

Secondly, any misconceptions that might exist concerning sexual harassment need to be cleared up. Only when these misconceptions have been dispelled will it be possible for employees to come to terms with sexual harassment and have recourse to the company's policy and procedures to combat such unacceptable conduct.

Thus, by sensitising employees on these issues, they gain greater insight into the problem of sexual harassment and furthermore become aware of the importance the

company places on striving to prevent sexual harassment and managing this form of behaviour should it manifest itself in the workplace.

Egler (1995:27) identifies five myths and misconceptions that need to be dispelled in the process of sensitising:

➤ **MYTH 1: Conduct must be sexual to constitute sexual harassment.**

Most people are of the view that sexual harassment necessarily involves conduct of a sexual nature. However, any behaviour that is gender based and affects the person at whom it is directed, is sexual harassment. Accordingly, by making the workforce sensitive to this concept they will be encouraged to have recourse to the formal procedure when they encounter offensive gender-based conduct and not only when they are confronted by sexual-based conduct.

➤ **MYTH 2: Unwelcome is the same as involuntary.**

Many employees are under the misconception that unwelcome means involuntary. As Egler (1995:28) puts it, a workplace affair may be voluntary in that there is no coercion and yet it may be unwelcome in that the victim may feel that he/she must continue with the relationship in order to get along with the harasser. Consequently, unless the company dispels this myth, employees could be unaware that the formal policy and procedures could be invoked in such instances. Ceniceros (1998:3) states that because office romances can spawn sexual harassment lawsuits, employers should protect themselves “by asking love-smitten employees to voluntarily sign statements acknowledging that their relationship is consensual”.

➤ **MYTH 3: Sexual harassment requires an intent on the part of the harasser.**

Often employees believe that the harasser’s conduct must be intended as harassing to give rise to a finding of sexual harassment. Intent is irrelevant as it is the impact on the victim that is important. By correcting such a misconception, the company would encourage the use of the procedures by victims when they themselves feel offended.

➤ **MYTH 4: Liability is limited to conduct by supervisors and managers.**

Employees must be sensitised to the fact that harassment need not be limited to superiors to give rise to liability. In cases of a “hostile work environment”, the offensive conduct is normally forthcoming from a co-worker. Unless victims are aware that such instances are covered by the procedures, they could be reluctant to raise the issue with management.

➤ **MYTH 5: The employer is not responsible for harassment by a third party.**

Unless employees have been briefed on the fact that the policy caters for cases where they have been harassed by a third party/non-employee, they will be ignorant of their rights in such cases, and consequently fail to seek recourse.

The sensitising and briefing process requires management to actively promote the company policy and procedures. Bohren (1993:63) states that this is achieved by widely publishing the policy, by talking to all employees on a regular basis about sexual harassment, and by adopting a philosophy of management by walk about in order to ensure that the work environment is free of sexually charged behaviour.

By drafting a strongly worded policy, formulating a complaint procedure, and dispelling the above myths, management will be in a position to eliminate inappropriate behaviour from the workplace. The final management responsibility is to formally train victims on how to recognise conduct that constitutes sexual harassment and how they are to invoke the complaint procedure. Furthermore, in order to ensure the effective implementation of both policy and procedures, management will also need to train the persons charged with implementing these procedures. However, all the policies and procedures will not necessarily prevent sexual harassment. Licata and Popovich (1987:35) point out that while organisational policies and procedures are important mechanisms to prohibit sexual harassment, they are not sufficient to prevent it. It is only through training that people will learn to change their behaviours and develop the necessary skills to manage the interactions

of their work-groups (Schumacher & Fester, 1996; Raphan et al, 1997; and Peirce et al, 1998).

### **3.3.3.4 Training**

Sexual harassment training does not always guarantee that employees will conduct themselves in an acceptable manner. However, when employees are made aware of the rules and consequences, they are less likely to feel trapped by harassers or to perpetrate abuse themselves (Jameson, 1997:38). Raphan and Heerman (1997:12), state that training programmes on sexual harassment at work help to give meaning to the company's policies in this area. According to Rubenstein (1989:24), sexual harassment training can be divided into two parts. Firstly, the training can be directed at communicating the company's policy and procedures, and secondly, at providing attitudinal training with the primary aim of preventing the occurrence of sexual harassment.

#### **(1) Policy and procedure training**

This concentrates on informing the employees about the company's policy on sexual harassment and the avenues open to them to formally deal with incidences of harassment. During this process the employees are trained how to invoke the company's complaint procedure. Employees are advised of the formal as well as informal mechanisms available, and coached on how to go about utilising these mechanisms. This training should take place at least once a year.

The training must also be directed at equipping the persons designated to deal with and investigate cases of sexual harassment. The investigators must be trained how to conduct the actual investigation to ensure they comply with the various elements set out in the checklist for sexual harassment investigation (see figure 3.2 on page 3-20). One method of training supervisors to come to terms with sexual harassment is through a process termed behavioural modelling (Licata et al, 1987:37), which consists of

- observing a role model perform the skill through a film or role play

- practising the new skill or behaviours demonstrated during the role-play
- receiving feedback from the instructor and other trainees on what they did correctly or incorrectly, and how to improve their skills
- transferring the new skill or behaviours to the actual job setting.

An important aspect regarding the training of managers to investigate and resolve sexual harassment complaints, is the need for sensitivity. Unless victims are dealt with in an empathetic manner during the resolution process, they will be reluctant in the future to raise incidents of harassment due to the humiliation and embarrassment they might have suffered in the past.

According to Bland and Stalcup (2001:58-59), a training programme for sexual harassment should do the following:

- Establish what managers and supervisors must know about sexual harassment.
- Identify the employer's policy and which managers and supervisors will be responsible for enforcement.
- Emphasise the prohibition on retaliation for reporting harassment or participating in an investigation of harassment.
- Define sexual harassment, providing examples.
- Describe how to know when conduct is unwelcome.
- Define when the employer/supervisor is liable for sexual harassment.
- Describe the potential cost to the victim (e.g. psychological harm), the employer (e.g. decline in productivity) and the harasser (e.g. tort claim), making it clear that the harasser may be personally liable under some circumstances.

- Include role-playing and post-training questionnaires so that the employer can be sure managers, supervisors and employees have acquired the needed information.

Effective training thus requires a multi-dimensional approach which incorporates the pertinent factual information, namely policies, procedures and definitions, with techniques aimed at modifying people's behaviour (Licata et al, 1987:35). A typical training model for sexual harassment prevention is depicted in figure 3.3 on page 3-29.

## (2) **Attitudinal training**

According to Licata and Popovich (1987:35), sexual harassment is a role problem that occurs when sex-role stereotypes are transferred to the workplace. In such instances, an individual's expectations of another's sex-role are confused with his/her work-role expectations. Attitudinal training is a process in which the members of a group communicate verbally and non-verbally those expectations of each other that could result in inappropriate or incorrectly perceived expectations. This role problem explanation of sexual harassment provides employers with a framework around which they can develop preventative sexual harassment training.

Licata and Popovich (1987:35) advocate "role negotiation techniques (RNT)" to resolve work-role/sex-role conflict and, in so doing, prevent workplace sexual harassment. Role negotiation techniques consist of a warm-up, contract setting, diagnosis and negotiation.

- **Warm-up**

The warm-up commences with a discussion about the employee's roles both on and off the job. During the discussion the participants explain how these roles are balanced and the means of preventing role problems. Those who participate in the programme must recognise the need for

change and be willing to clarify and negotiate roles and make the necessary behavioural changes (Licata et al, 1987:37).

- **Contract setting**

Contract setting establishes the ground rules for the negotiation. The emphasis is on establishing rules for the type of feedback participants should provide in cases of sexual harassment, how to give feedback, and how to communicate their expectations. One method of accomplishing this is to have participants form sub-groups of three to five people and among themselves propose goals and objectives for the session and a set of operating rules (Licata et al, 1987:37).

- **Diagnosis**

During diagnosis the employees begin to define their work-roles and contributions and, in so doing, strive to minimise the perceived relevancy of their sex-roles at work. This allows the participants to confront or explore their expectations of others' work-roles and the extent to which their role expectations are confounded with sex-role expectations (Licata et al, 1987:37). During diagnosis the employees communicate their frustrations arising out of role conflict and ambiguity, thereby dealing with behaviours and habits that they perceive as constituting harassing behaviour.

- **Negotiation**

During negotiation the employees clarify their role expectations of others and, in return, the others communicate their own expectations. The focus in negotiation is on specific behaviour and various perceptions of behaviour as opposed to the perceived attitudes and values of the employees. This step of RNT contains the most significant deviation from the traditional approach as many of these issues relate to sex-roles and work-roles and the clarification of certain behaviours which may not be negotiable (Licata et al, 1987:38).

- **Evaluation of training**

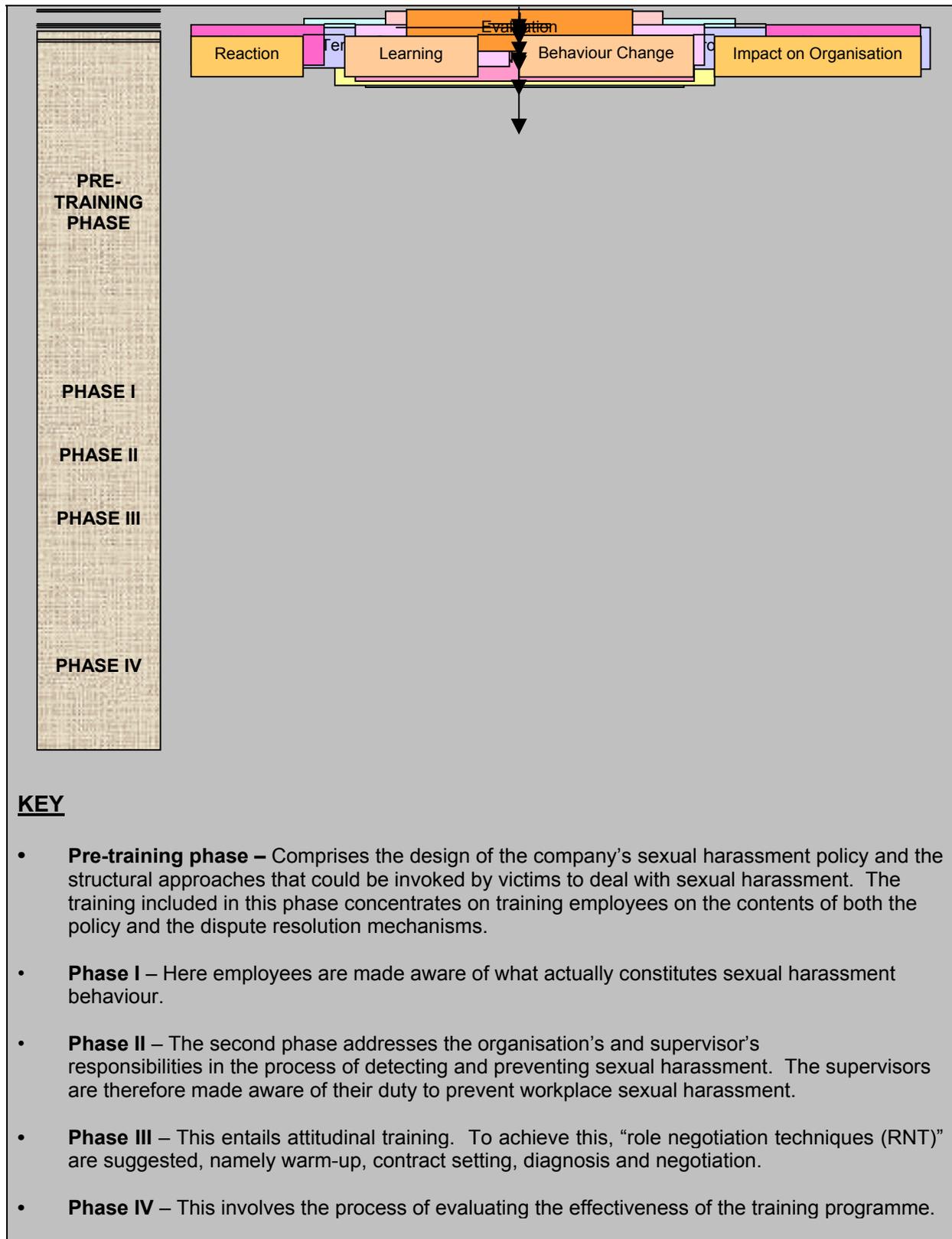
The final step in the training process is evaluating the effectiveness of the training programme. Management must determine whether the programme developed, met the goals of knowledge acquisition, behavioural change and, ultimately, improved group morale and productivity. If the goals were not met, however, the programme will have to be modified. Thus, creating a harassment-free workplace is not an one-shot event (Schaefer et al, 1995:56). It is necessary to review the policy to see how the company is doing and, if required, implement improvements. Actual cases of harassment must be reviewed in order to establish whether the incidence of sexual harassment has increased or decreased. The actual complaints procedures should be reviewed regularly to determine whether they comply with any changes to the legislation or whether there is a better way of dealing with harassment cases. Prevention is a dynamic process and the environment in which companies operate is constantly changing. To be effective, management must evaluate all their policies and procedures to keep abreast of changes or the policies and procedures will become defunct and fail to ensure a workplace free of sexual harassment.

Notwithstanding the above practices that can be used by companies to deal with workplace sexual harassment, many employers still fail to effectively manage and prevent workplace sexual harassment.

### **3.4 ORGANISATIONS' INACTION TOWARDS WORKPLACE SEXUAL HARASSMENT**

Despite the growing number of complaints worldwide, organisations generally take no action towards sexual harassment in the workplace. Peirce, Smolinski and Rosen (1998:41-54), attribute this to what they call the "deaf ear syndrome", which is the result of inadequate organisational policies and procedures, managerial rationalisation and inertia.

**FIGURE 3.3 TRAINING MODEL FOR SEXUAL HARASSMENT PREVENTION**



**Source:** Adapted from Licata and Popovich (1987:36)

### **3.4.1 Inadequate organisational sexual harassment policies and procedures**

Inadequate policies and procedures form the basis of managerial inaction and, ultimately, failure to prevent the occurrence of sexually harassing behaviour. According to Peirce, Smolinski and Rosen (1998:43), sexual harassment policies are inadequate if they are vague and/or ambiguous, define sexual harassment vaguely, and provide for cumbersome reporting procedures. Such policies and procedures contribute directly to the “deaf ear syndrome”.

#### **3.4.1.1 Poorly written policies**

Vague or poorly written policies render organisations unable to identify potential sexual harassment situations. This, in turn, results in organisations overlooking and ignoring actual incidents of sexual harassment. Furthermore, managers are unsure of how to interpret complaints and what action they should take. Peirce, Smolinski and Rosen (1998:43) point out that policies are often written in “legalese” with no clarifying explanations. This causes confusion for both managers and victims and makes the policy “user-unfriendly”. Consequently, in attempting to deal with sexual harassing behaviour, the respective parties avoid turning to the policy. In their article, *Breaking the silence: creating user-friendly sexual harassment policies*; Peirce, Rosen and Hiller (1998:225) state that when victims see that there are no mechanisms for registering complaints, they hold out little hope of having their complaints addressed.

#### **3.4.1.2 Vague definitions of sexual harassment**

Vague definitions of what actually constitutes sexual harassment add to the confusion for both management and employees. This, in turn, renders managers incapable of identifying and responding to legitimate charges of sexual harassment by victims. Peirce, Smolinski and Rosen (1998:43) point out that the problem is further complicated by the fact that the concept of “hostile work environment” is very broad and includes unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature. Hence it is difficult to draft a definition that covers all conceivable forms of sexual harassing conduct. For this reason,

organisations draw up vague definitions, which makes it difficult to draw the line between joking and sexual harassment (Peirce et al, 1998:44).

#### **3.4.1.3 *Cumbersome reporting procedures***

Peirce et al (1998:45), point out that cumbersome reporting procedures lead to ambiguity and victims becoming confused on how to proceed, and management feeling justified in ignoring or deferring investigations. This aggravates the problem. Cumbersome procedures thus contribute directly to uncertainty in the minds of managers on their role in managing sexual harassment, and in turn, to their failure to take action.

A further problem with cumbersome reporting procedures is that they traditionally require the victim to report the incident to an immediate supervisor. This renders the reporting procedure unworkable when the supervisor is the actual harasser (Peirce et al, 1998:45).

#### **3.4.2 Managerial rationalisation**

While inadequate policies and procedures frustrate the effort to redress sexual harassment complaints, even organisations with well-developed policies are not likely to respond effectively to the phenomenon of sexual harassment if their managers react defensively or rationalise complaints away (Peirce et al, 1998:45).

Peirce, Smolinski and Rosen (1998: 45), point out that managers often react to claims of sexual harassment by

- denying the claims
- blaming the victim
- minimising the seriousness of the offence
- protecting a valued employee

- ignoring chronic harassers
- retaliating against the victim.

Brown (1997:643) parallels the above reactions to those that characterise a narcissistic personality or narcissistic managerial/organisational profile. According to Peirce, Smolinski and Rosen (1998:46), a narcissistic manager or organisational profile needs to maintain a positive self-image and in order to preserve this self-image, adopts the following broad “ego-defensive” behaviour to any conduct or incident that may tarnish the positive self-image:

- denial
- rationalisation
- self-aggrandisement
- attribution egoism
- sense of entitlement
- anxiety.

The six indicators of narcissism therefore mirror the six managerial reactions by which organisations distort negative situations of sexual harassment in order to preserve the organisational self-esteem. The six managerial reactions will be briefly examined next.

#### **3.4.2.1 *Denying the harassment claim***

Being of a sensitive and personalised nature, sexual harassment complaints trigger psychological defence mechanisms, resulting in managers becoming defensive where the reputation of the company may be damaged (Peirce et al, 1998:46). In such

cases, managers refuse to accept that the reported incident constituted sexual harassment, often arguing that what was called harassment, was actually consensual activity between the parties involved (Peirce et al, 1998:46). The denial by managers has the effect of excluding the possibility of a full investigation into the sexual harassment complaint. In such instances, it is not uncommon for disgruntled victims to seek recourse via the courts or even the media.

#### **3.4.2.2 *Blaming the victims***

A common response by managers, is to turn a deaf ear to sexual harassment complaints by adopting the attitude that the victim brought the harassment on himself/herself. In so doing, managers avoid any blame being apportioned to them. By avoiding blame in this way, the narcissistic manager attributes favourable traits and outcomes to himself/herself, and negative attributes and outcomes to the victims (Peirce et al, 1998:46).

Accordingly, narcissistic organisations are unable to perceive that their managers are at fault in disputes with workers, and react by attributing negative characteristics to employees who accuse managers of misconduct. Peirce, Smolinski and Rosen (1998:46) point out that in such narcissistic organisations, managers allege that employees who bring charges of sexual harassment are seeking revenge against the employer for poor performance reviews. In doing so, the organisation demonstrates its belief that lower level employees are at fault and not those employees accused of harassment.

#### **3.4.2.3 *Minimising the seriousness of the offence***

Peirce, Smolinski and Rosen (1998: 45), state that managers often have the tendency to trivialise sexual harassment complaints as they often regard the victims as weak and lacking a sense of humour. In so doing, the managers establish in their own

minds that the complaints were unjustified and lacked substance, and therefore they feel no compulsion to conduct a proper investigation into the actual claim of sexual harassment.

By convincing themselves that the sexual harassment incidents were trivial, the managers are practising a form of self-deception that unreasonably leads them to believe that the victims will accept their judgement and, ultimately, withdraw their complaint (Peirce et al, 1998:47).

#### **3.4.2.4 *Protecting valued employees***

Another typical reaction of managers in “deaf ear” syndrome organisations is to ignore or excuse the behaviour of high ranking employees or employees with superior performance records (Peirce et al 1998: 47). This approach has two consequences. Firstly, sexual harassment goes unpunished, and secondly, others in the organisation perceive the non-action as “implicitly sanctioning” such behaviour and feel less constrained to refrain from such behaviour themselves (Peirce et al, 1998:47).

#### **3.4.2.5 *Ignoring a habitual harasser***

Managers may discount a sexual harassment complaint based on the fact that the victim had previously been warned about the harasser’s propensity for such conduct. In such instances, the manager adopts the view that forewarned is forearmed and accordingly the victim should have avoided any situation which could have given rise to sexual harassment (Peirce et al, 1998:48). A warning conveyed to victims is an inappropriate way of dealing with sexual harassment since it does not deal with the incident but merely forestalls a complaint. Moreover, it is evident that management is aware of an employee’s harassment tendencies, yet fails to take any proactive measure to rectify the situation.

### **3.4.2.6 *Retaliation against victims***

Retaliation against victims of sexual harassment parallels reaction to employees who blow the whistle on their organisation for other misdeeds (Peirce et al, 1998:48). Threats of retaliation do not manage the incidence of workplace sexual harassment, but rather create a culture of fear and intimidation.

### **3.4.3 *Inertia***

The final aspect of “deaf ear syndrome” is managerial behaviour associated with organisational inaction. Peirce, Smolinski and Rosen (1998:49) associate managerial inertia to the location of an organisation, male-dominated blue-collar industries, decentralised organisations and cultural differences in multinational companies.

- *Location of an organisation*

Companies located in rural areas often represent the only employment alternative for many workers. Since these employees are highly dependent on the company for their livelihood, managers are under no pressure to respond to sexual harassment complaints from their staff. According to Peirce, Smolinski and Rosen (1998:49), companies in rural locations develop what is termed a false sense of immunity to charges of sexual harassment.

- *Male-dominated blue-collar industries*

Male-dominated blue-collar industries are seen as male bastions where men have been accustomed to treating women as wives and lovers rather than co-workers (Peirce et al, 1998:49). This sex-role spillover is often used to explain and/or rationalise sexually harassing behaviour at work. When the gender composition in the company is highly skewed (male bastions), then sex-role spillover is exacerbated. In such instances, males find it difficult to modify their perceptions of women on entering the workplace, resulting in male managers tending to downplay or ignore complaints of sexual harassment.

- *Decentralised organisations*

Inability or unwillingness to react to workplace sexual harassment may also be associated with decentralised organisations. Often company head offices have well-developed policies and procedures governing sexual harassment, but the implementation and enforcement thereof at decentralised branches are left to the local manager (Peirce et al, 1998:50). Accordingly, when problems of workplace sexual harassment occur at decentralised branches, the head office denies responsibility and lays the blame at the door of the decentralised branch. In such cases, head office personnel are slow to respond and shift the responsibility to the decentralised branch for investigation. Since decentralised managers often lack expertise, experience and resources to respond effectively, they fail to act and in so doing contribute to organisation inaction.

- *Cultural differences in multinational companies*

International executives who have been socialised into other cultures have difficulty dealing with problems of workplace sexual harassment in the country where they work, which has a different culture to their own (Peirce et al, 1998:50). This, in turn, results in inaction on their part when cases of workplace sexual harassment are reported.

Having discussed international approaches to the management of sexual harassment in the workplace, the South African situation will be investigated next.

### **3.5 THE SOUTH AFRICAN CODE OF GOOD PRACTICE ON THE HANDLING OF SEXUAL HARASSMENT CASES**

In 1998 the National Economic Development and Labour Council (NEDLAC) drafted the Code of Good Practice on the Handling of Sexual Harassment Cases, which was incorporated as a Schedule into the Labour Relations Act, 66 of 1995. The primary objective of the Code is to eliminate sexual harassment in the workplace by encouraging the development and implementation of policies and procedures that will lead to the creation of sexual harassment-free workplaces where all parties' integrity,

dignity and privacy are respected. The Code sets out guidelines to achieve these objectives.

### **3.5.1 Policy statement**

The Code states that the first step in creating a sexual harassment-free workplace is for the organisation to express concern about and commitment to dealing with the problem of sexual harassment. The employer should issue a formal policy statement stipulating, inter alia, that (NEDLAC, 1998:4):

- (a) All employees, job applicants and other persons who have dealings with the business have the right to be treated with dignity.
- (b) Sexual harassment in the workplace will not be permitted or condoned.
- (c) Persons who have been or are being subjected to sexual harassment in the workplace have the right to lodge a grievance about it and appropriate action will be taken by the employer.

Furthermore, the policy statement should specify that (NEDLAC, 1998:4):

- (a) allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially,
- (b) employees will be protected against victimisation, retaliation for lodging a grievance and from false accusations.

The policy statement should be communicated effectively to all employees and the onus is on management to implement the policy and to take disciplinary steps against employees who do not comply with it. Failure to do so would render the policy null and void.

### **3.5.2 Procedures**

The policy statement, should also explain the procedures to be followed by employees who are victims of sexual harassment. The procedures developed should

ensure that sexual harassment cases are resolved in a sensitive, efficient and effective manner, since sexual harassment is a sensitive issue, and victims may be reluctant to approach the harasser, lodge a formal grievance or turn to a colleague for support. To counteract this reluctance on the part of the victims, employers should designate a person other than a line manager whom victims may approach for confidential advice (NEDLAC, 1998:5). Employees who approach the designated person for advice and assistance have the choice of electing to have their particular sexual harassment incident resolved informally or formally.

### **3.5.2.1 Informal procedure**

In the informal approach it may be sufficient for victims to have an opportunity to explain to the harasser that the behaviour in question is not welcome, that it offends them or makes them feel uncomfortable, and that it interferes with their work. Should the informal procedure not resolve the problem satisfactorily, or in severe cases of sexual assault, rape, a strip search or “quid pro quo” harassment, however, the victim’s appropriate action would be to invoke the formal procedure (NEDLAC, 1998:5).

### **3.5.2.2 Formal procedure**

The Code merely states that the formal procedure should specify that the victims may lodge a grievance against the harasser and that such a grievance, once lodged, must be dealt with expeditiously. Furthermore all cases of sexual harassment need to be investigated by management, and if it is established that a case of sexual harassment has occurred, then disciplinary action should be initiated in accordance with Schedule 8 of the Labour Relations Act, 66 of 1995 (Dismissal). The Code, however, fails to specify clearly what the procedures regarding the grievance and/or disciplinary process should entail. It should be noted that where the parties are unable to resolve a dispute internally, they may refer the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA) for conciliation. Should conciliation fail, the dispute may be referred to the Labour Court for adjudication.

### **3.6 CONCERNS REGARDING THE CODE OF GOOD PRACTICE ON THE HANDLING OF SEXUAL HARASSMENT CASES IN SOUTH AFRICA**

The major concern regarding the Code of Good Practice on the Handling of Sexual Harassment Cases is that it is reactive and not proactive. For example, the Code comes into effect only once a case of sexual harassment has occurred, and does not set out any methods for the actual prevention of sexual harassment behaviour. Secondly, although the Code acknowledges the need for informal mechanisms, it merely suggests that victims approach their harassers in respect of the unacceptable conduct. Often victims may not feel comfortable doing this, and the Code fails to provide alternative informal mechanisms in such instances. Finally, there is concern that no support structures, such as psychological counselling, are made available to victims of harassment. The Code fails to stipulate detailed measures for dealing with sexual harassment and specific actions to be implemented in cases of sexual harassment.

### **3.7 CONCLUSION**

This chapter discussed the drawing up of a policy to effectively manage and prevent sexual harassment in the workplace. To be effective, the policy needs to be communicated. A critical component of such a policy is the complaint procedure, with formal and informal mechanisms to be used by victims of sexual harassment. A proper disciplinary system with specific disciplinary sanctions needs to be established to send a clear message to other potential harassers. Companies should also draw up a training programme. The reasons for companies' failure to act against sexual harassment were also considered. Finally, the South African Code of Good Practice on the Handling of Sexual Harassment Cases was discussed. The Code was found to be reactive rather than proactive. It fails to provide support structures to victims and specific actions to be implemented in cases of sexual harassment. From the discussion it became clear that a South African model for the management of sexual harassment is urgently needed. Chapter 4, then, focuses on designing a holistic model to manage sexual harassment in the workplace in South Africa.