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MANAGING WORKPLACE DISCRIMINATION, HARASSMENT AND RETALIATION: AN ASSESSMENT OF KENYAN WORKPLACE

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Abstract

Purpose: This paper sought to examine whether workplace training in mitigating discrimination, harassment and retaliation has been effective.

Methodology: This study adopted exploratory research methodology. Exploratory research design is used to investigate a problem which is not clearly defined. It is conducted to have a better understanding of the existing problem, but will not provide conclusive results. It explored studies conducted on the topic. This means that the study relied on desk-top review of the existing studies and documented case laws. Further, it relied on the cases laws. A narrative analysis was done and at this point the information was interpreted by comparing the findings with the findings of other empirical studies. This information was interpreted together with the ‘Stories within stories’ and related to the existing literature

Findings: The results found that while workplace training increases sensitivity, it is associated with less accuracy in detecting discrimination, harassment, and retaliation. This is based on the fact that there are many cases on the matter before the courts. Further, the study shows that there is no relationship between training and the ability of the manager to propose the required response after the act.

Unique contribution to theory, practice and policy: The study recommends that there is need for organizations to develop action plans that will measure the effectiveness of trainings. There is need to regularly review policies to ensure that they are modern realities such as online harassment. Finally the study recommends amendment of the current employment Act to exclusively require that employers must conduct training on the issues.

Key words: *Discrimination, Harassment, Retaliation, workplace Training, Laws.*

INTRODUCTION

Harassment, discrimination and retaliation in the workplace are a common phenomenon in the workplace. However, the evolution of the principles of human rights following the adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations has led to significant developments in laws and policies that take account of these realities. The first article of the Declaration provides that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and must be brotherly to one another. The International Labor Organization (ILO), a United Nations (UN) organization whose mission is to promote socio-economic justice by setting labor standards, also adheres to the above article.

As the oldest and most specialized agency of the United Nations, the ILO recognizes that jobs have become "new homes" for many.¹ This is due to the fact that we spend more than half of our lifetime (cumulative working hours) at work. It is therefore of the utmost importance that we make the environment beneficial for all. Therefore, any form of undesirable behavior that endangers the safety or well-being of the individual must be treated promptly in order to avoid dire consequences. Inevitably, this will have an impact not only on individual occupational health and productivity, but also on the work ethic and performance of the organization.²

Over the years the ILO has developed conventions to address these issues. Some include; Discrimination (Employment and Occupation) Convention, Domestic Worker Convention and Recommendation; Recommendation on transition from the informal to the formal economy, Employment and Decent Work Recommendation for Peace and Resilience, among others. However, ILO human rights defenders recognize that violence and harassment are covered in so many fragmented documents. So it was necessary to create a document that encompasses everything.³ After extensive consultation at all levels, Convention No. 190 and Recommendation No. 206 were finally adopted at the 108th Session of the International Labor Conference in 2019. Convention No. 190 combines equality and inequality as one instrument and places human dignity and respect at the center of its concerns. The Convention recognizes that violence and harassment can constitute a violation or abuse of human rights and for the first time provides a single and compound concept of violence and harassment.⁴

The convention was made aware of the increasing reality of discrimination, harassment and reprisals. This was due to the many studies that were conducted in different countries and in different workplaces around the world that showed the facts. Pursuant to Article 11, the Convention calls on signatory states to provide advice, training and resources to raise awareness and ensure the elimination of violence and harassment.⁵

However, there are only a few studies that prove the effectiveness of such orientation and training programs. We know that training makes people aware of discrimination, harassment and

¹International Labour Organisation, *Skills for a Greener Future* (2019).

²D Druckman and others, *Enhancing Organizational Performance* (National Academies Press 1997).

³'International Labour Organization' <<https://www.ilo.org/global/lang--en/index.htm>> accessed 22 August 2021.

⁴Violence and Harassment Convention, 2019 (C-190).

⁵ibid.

reprisals. However, there are no studies to suggest that training enables managers to accurately identify actions and respond appropriately.

Therefore, this study addresses this issue by examining whether training on dealing with discrimination, harassment and retaliation in the workplace has been effective in the Kenyan work environment. This study adopted exploratory research methodology. Exploratory research design is used to investigate a problem which is not clearly defined. It is conducted to have a better understanding of the existing problem, but will not provide conclusive results. It explored studies conducted on the topic. This means that the study relied on desk-top review of the existing studies and documented case laws. Further, it relied on the cases laws. A narrative analysis was done and at this point the information was interpreted by comparing the findings with the findings of other empirical studies. This information was interpreted together with the ‘Stories within stories’ and related to the existing literature

Understanding Discrimination, Harassment and Retaliation.

Discrimination is the practice of treating one person or group of people unfairly differently from other people or groups of people.⁶ It is also referred to as any discrimination, exclusion or preference based on race, skin color, gender, religion, political opinion, national origin or social origin that results in the abolition or reduction of the violation of equal opportunity and treatment in employment or occupation.⁷ Gender discrimination is a global phenomenon that can be traced on both a personal and organizational level and is ultimately seen as a terrible obstacle to the development process.⁸

In Kenya, a significant number of studies have shown that women's participation in the labor force has increased over the past two decades, despite significant advances in some socio-economic indicators, such as the increase in primary and secondary school enrollment for boys and girls, there is even higher levels of gender violations in almost all sectors such as health, education, wages, labor force participation, and access to and control of resources.⁹

Women make an essential contribution to agriculture and the rural economy in developing countries. Women make up 43% of the workforce in developing countries.¹⁰ Despite the different roles within and between different regions, their participation is important regardless of national borders.

⁶BE Whitley and ME Kite, *The Psychology of Prejudice and Discrimination* (Wadsworth Cengage Learning 2010).

⁷‘ILO: Workplace Discrimination, a Picture of Hope and Concern’ <https://www.ilo.org/global/publications/world-of-work-magazine/articles/WCMS_081324/lang--en/index.htm> accessed 22 August 2021.

⁸Jane L Parpart and V Eudine Connelly, M. Patricia, Barriteau, *Theoretical Perspectives on Gender and Development* (International Development Research Centre 2000).

⁹Hannah Timmis, ‘Jobs in Kenya: Opportunities and Challenges’ [2018] K4D Helpdesk Report 17 <<https://assets.publishing.service.gov.uk/>>.

¹⁰FAOU Nations and others, ‘The State of Food Security and Nutrition in the World 2019: Safeguarding against Economic Slowdowns and Downturns’ (FAO 2019).

Discrimination in the workplace can be defined as a situation of giving unfair advantage (or disadvantage) to members of one group over members of the other group.¹¹ In the workplace, gender discrimination can occur in several dimensions, including differences in recruitment, financial incentives and wages, promotions, and inequalities related to different goods and equipment made available to different genders.¹² Women in work are more likely to be temporary and part-time, less likely to receive promotions, have fewer opportunities for professional development and focus on occupations and sectors where there are barriers to employment.¹³

According to Convention No. 190, violence and harassment are described as a single compound term that includes “a range of unacceptable behaviors, practices or threats.”¹⁴ The reason for this broad understanding is to allow flexible coverage of different manifestations of harassment.¹⁵ Harassment manifests itself through various behaviors, such as social isolation, silence, rumors, false accusations, threats, ridicule, insults that affect the victim's privacy or attitudes, excessive criticism, work surveillance, withholding information or deprivation of responsibility, and physical or verbal Attack.¹⁶

The most common form of harassment in the workplace is sexual harassment. Under Employment Act, an employee is sexually harassed if that employee's employer, or a representative of that employer or a colleague - (a) asks that employee, directly or indirectly, for sex, sexual contact, or any other form of activity that implies or implies a promise : (i) preferential treatment in labor matters; (ii) threats of adverse employment treatment; or (iii) a threat to the employee's current or future employment status; (b) uses written or spoken language of a sexual nature; (c) uses images of a sexual nature; or (d) exhibits physical behavior of a sexual nature that directly or indirectly exposes the employee to behavior that is unwelcome or offensive to that employee and that by its nature has a negative impact on that employee's employment, performance or job satisfaction.¹⁷

Retaliation is defined as the adverse action taken by an employer against an employee when the employee seeks redress for illegal employment practices.¹⁸ According to the internal ILO guideline of March 5, 2021, retaliation refers to all direct or indirect harmful actions that affect the employment or working conditions of an employee if such measures are threatened or for the purpose of harming a person punish, intimidate, or injure someone for engaging in a sheltered activity. Retaliation in itself constitutes misconduct and may result in disciplinary action or other

¹¹JB Cunningham, *Strategic Human Resource Management in the Public Arena: A Managerial Perspective* (Palgrave Macmillan 2016).

¹²ibid.

¹³World Bank, ‘World Development Report 2013: Jobs’ (World Bank Publications 2012).

¹⁴Violence and Harassment Convention, 2019 (C-190).

¹⁵Equality and Human Rights Commission, ‘Sexual Harassment and Harassment at Work’ (2020).

¹⁶V Di Martino and others, *Preventing Violence and Harassment in the Workplace* (European Foundation for the Improvement of Living and Working Conditions 2003).

¹⁷Employment Act No. 11 of 2007.

¹⁸D Chappell and others, *Violence at Work* (International Labour Office 2006).

appropriate action.¹⁹ The purpose of the retaliation provision is to make the law more effective by protecting workers from the potentially negative consequences that could result from reporting violations by the employer.²⁰

The 2019 Convention on Violence and Harassment requires Member States, as part of the Implementation and Remedies part, to ensure easy access to appropriate and effective legal remedies as well as mechanisms and procedures for reporting and resolving complaints in the world of work, such as protection against victimization or Retaliation against complainants, victims, witnesses and whistleblowers.

Legal Framework on Managing Workplace Discrimination, Harassment and Retaliation.

Violence and Harassment Convention, 2019 (C-190) and Recommendation No. 206.

Kenya's constitution according to the supremacy of the constitution provides that the general rules of international law are part of Kenyan law.²¹ It also provides that any treaty or convention ratified by Kenya is part of Kenyan law under this Constitution.²² As a member state of the ILO, the labor laws of Kenya are anchored on the principles of strong international standards of the agency. However, Kenya has not ratified the 2019 Convention on Violence and Harassment.

Convention No. 190 and Recommendation No. 206 call on the countries that have ratified it to enact laws and regulations requiring employers “to take appropriate measures, commensurate with their level of control, to avoid violence and harassment in the world of work, including gender-based violence and harassment”. Article 9 provides for that;

Each member enacts laws and regulations that require employers to take appropriate measures, commensurate with their level of control, to prevent violence and harassment in the workplace, including gender-based violence and harassment, and in particular to the extent that this is reasonably possible;

- (a) in consultation with workers and their representatives, adopt and implement workplace policies on violence and harassment;
- b) Take violence and harassment and the associated psychosocial risks into account in occupational safety management
- c) recognize the dangers and assess the risks of violence and harassment with the participation of workers and their representatives and take measures to prevent and control them, and
- d) Inform and train workers and other data subjects, where appropriate in accessible formats, about the identified dangers and risks of violence and harassment and the associated preventive and protective measures, including the rights and obligations of workers and other data subjects with regard to the in sub-paragraph (a) the policy referred to in this article.

¹⁹C De Cooker and IIA Sciences, *Accountability, Investigation And Due Process in International Organizations* (Martinus Nijhoff 2005).

²⁰ibid.

²¹The Constitution of Kenya 2010.

²²ibid.

Among the specific measures that ratifying countries should require employers to adopt and implement a workplace policy on violence and harassment in consultation with workers and their representatives. This is a key strategy to promote a work environment and culture free from violence and harassment. Based on existing practices - and the elements provided in paragraph of Recommendation 206, such guidelines could include, for example, the employer's obligation and responsibility to maintain a safe environment, as well as definitions of violence and harassment and relevant examples of prohibited conduct, behaviors and practices based on the specific industry and professional context.

Convention Concerning Discrimination in Respect of Employment and Occupation, 1958.

The Convention requires states to approve laws that prohibit discrimination and exclusion on any basis, including race or color, gender, religion, political opinion, national or social origin, in employment matters, and repeals laws that are not based on equal opportunities.²³

The Constitution of Kenya 2010.

The Kenya constitution is regarded globally as one of the most progressive document. One of the reason for this praise is it provision on the bill of rights. In as far as discrimination, harassment and retaliation, the constitution provides on various article on protection against these vices. Under article 41, it provides that every person has the right to fair labour practices. It further states that every worker has the right;²⁴

- a) to fair remuneration;
- b) to reasonable working conditions;
- c) to form, join or participate in the activities and programmes of a trade union; and
- d) to go on strike

Article 27 prohibits any person and state from discriminating directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.²⁵ Article 28 on the other hand provides that every person has inherent dignity and the right to have that dignity respected and protected.²⁶ All these provision are grounds enough to demand that workplace managers protect employees from any form of discrimination, humiliation and retaliation.

Legislative Framework.

The Employment Act of 2007.

This law lays down the minimum conditions of employment. The law regulates the relationship between employer and employee. It defines the benefits, duties and obligations of the employer

²³Convention Concerning Discrimination in Respect of Employment and Occupation, 1958.

²⁴The Constitution of Kenya 2010.

²⁵ibid.

²⁶ibid.

and the employee, including: service contract, prohibition of forced labor, discrimination in the workplace, sexual harassment, payment of wages, vacation, dismissal and living conditions.²⁷

The law also provides that an employer must promote equal employment opportunities and strive to eliminate discrimination in any employment policy or practice. It also states that no employer may directly or indirectly discriminate against an employee or potential employee or harass an employee or potential employee;

- a) on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status;
- b) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.

Regarding sexual harassment, which is a common form of harassment, the law provides that an employee will be the victim of sexual harassment if that employee's employer, or a representative of that employer or a colleague -²⁸

- a) directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express-
 - i) promise of preferential treatment in employment;
 - ii) threat of detrimental treatment in employment; or
 - iii) threat about the present or future employment status of the employee;
- b) uses language whether written or spoken of a sexual nature;
- c) uses visual material of a sexual nature; or
- d) Shows physical behavior of a sexual nature which directly or indirectly subjects the employee to behavior that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction.

Analysis of the effectiveness of Training Programs in managing Discrimination, Harassment and Retaliation in Workplaces.

One of the key approaches proposed by ILO in managing discrimination, harassment and retaliation is for the state to come up with laws and regulations that impose a duty on the business organization, both private and public, to train the `managers on these issues.²⁹ For instance, in 2019 French government provided the following duties for the harassment officer;

- i) Introducing awareness- raising measures and training measures for employees and managers.
- ii) Directing employees towards competent authorities (labour inspector, labour doctor, official defender of the rights).

²⁷Employment Act No. 11 of 2007.

²⁸ibid.

²⁹Violence and Harassment Convention, 2019 (C-190).

- iii) Implementing internal procedures in order to encourage the reporting and processing of a situation of sexual harassment or sexist attitudes.
- iv) Conducting internal investigations after the reporting of a situation of sexual harassment or sexist attitude.

In Kenya, the employment Act only provides that the employer has to, in consultation with the employees or their representative, come up with a sexual harassment policy. Under the policy the law requires the employer to ensure that necessary steps are taken to protect the employee. One of the popular step taken is training of the employees especially high ranking personnel on the issue. But the burning question is to what extent these trainings have been effective.

Susan conducted a study in the United States in which she questioned the belief that the education of employees prevents or at least significantly reduces unfair discrimination in the workplace, prohibited by Title VII of the Civil Rights Act and other civil rights laws can.³⁰ This widespread and seldom questioned premise has spawned a multi-billion dollar sexual harassment and diversity training industry made up of counselors, attorneys, and human resources professionals who offer litigation prevention programs. However, the premise of education, to promote employee tolerance and to drastically change the work culture, has not been empirically proven. The study was also based on the Supreme Court's decision to adopt anti-discrimination training as a doctrinal and jurisprudential part of the substantive law of Title VII. The landmark case made it clear that the Title VII Court specifically encourages the introduction of a personnel policy and employee training.

Her study focused on the misunderstanding of the effects of sexual harassment and diversity training on workers and challenged the wisdom of a thoughtful and blind view of these employer efforts by the court and the legal profession in general.³¹ She argues that unlike lawyers, social scientists are troubled by the blatant lack of empirical research on the effects of anti-discrimination training and urges caution when approving such programs. The lack of research on program outcomes is dangerous for two reasons. First, prevention programs, even if adopted with the best of intentions, can have negative effects. Second, the training offers the impression that "something is being done" that gives managers and others a false sense of security. However, an ineffective education program cannot reduce the incidence of prejudice in the workplace.

In addition to these important concerns, from her point of view the wider question arises as to the significance of development policy jurisprudence on education and prevention in the Discrimination laws in the Workplace. She notes that there is a worrying trend in civil rights to accept legal compliance formally rather than substantively. The uncritical introduction of anti-discrimination training can therefore further promote this trend. Her observations in the study are that if equality is to go beyond aesthetics and the preventive goal of the Workplace Discrimination law is to be achieved, courts need to look beyond symbols to determine whether

³⁰Susan Bisom-Rapp, 'An Ounce of Prevention Is a Poor Substitute for a Pound of Cure: Confronting the Developing Jurisprudence of Education and Prevention in Employment Discrimination Law' (2000) 22 Berkeley Journal of Employment and Labor Law.

³¹ibid.

the environment in which a complainant worked is truly discriminatory was. The symbolic gestures of employers who offer anti-discrimination training, however good they are, are a poor substitute for carefully weighing the specifics of a particular job.

Seward argues that an integrated industrial relations program is important for nurses and healthcare professionals.³² In his analysis, he suggests that this premise is based on two related and generally accepted beliefs: (1) that labor relations activities - training, recruitment, public relations, safety, etc. - have a direct impact on work ethic, efficiency and satisfaction, and (2) job satisfaction has a direct impact on employee health. Even future-oriented companies are increasingly realizing that they have an obligation to every employee, regardless of whether they negotiate with the union they represent or not. That deeper obligation is to treat him fairly, to communicate with him, to protect him, to pay him fairly and fairly, to train him and to give him a fair chance of promotion. These areas are a legitimate concern for any for-profit business. They also affect the nursing and medical professions because if they are not done, the overall health of the company and the people who make it up is at risk. However, it is not enough to state the objectives mentioned above. We have to go further and know if we can reach them, or at least know if we are getting closer to them.

Arthur et al. conducted a study that examined the relationship between the design and evaluation characteristics of training and the effectiveness of training in organizations.³³ The researchers used meta-analytical methods. The results of the meta-analysis showed a training efficiency of the sample-weighted mean of 0.60 (k = 15, N = 936) for the reaction criteria, 0.63 (k = 234, N = 15,014) for the learning criteria, 0.62 (k = 122, N = 15,627) for the behavioral criteria and 0.62 (k = 26, N = 1,748) for the outcome criteria. These results suggest a medium to large effect size for organizational training. In addition, the training method used, the characteristics of the skill or task to be trained and the choice of evaluation criteria were linked to the effectiveness of the training programs.

Brown argues that “training needs assessment” is an on-going process that collects data to identify existing training needs so that training can be developed that will help the organization achieve its goals.³⁴ The needs analysis is essential for the success of a training program. Organizations often develop and implement training without first performing a needs assessment. These organizations run the risk of overexerting themselves, overexerting themselves, or missing the essentials.

Other studies argued that companies which employ innovative training and development methods are likely to outperform their competitors who don't.³⁵ Providing effective education and training also helps companies develop the human capital needed to face competitive challenges. Many companies today recognize that learning through training, development and

³²Seward H French Jr, ‘Measuring Progress on Industrial Relations.’ .

³³Winfred Arthur Jr. and others, ‘Effectiveness of Training in Organizations: A Meta-Analysis of Design and Evaluation Features.’ 234.

³⁴Judith Brown, ‘Training Needs Assessment: A Must for Developing an Effective Training Program’ (2002) 31 Public Personnel Management 569 <<https://doi.org/10.1177/009102600203100412>>.

³⁵Druckman and others (n 2).

knowledge management helps employees strengthen or expand their skills, which has a direct impact on their job performance, satisfaction and development.

Training on managing discrimination and harassment to human resource managers is usually accompanied by informing them on consequences of retaliation. Retaliation is unlawful discrimination by an employer following reports of harassment against them. Human resource (HR) professionals should empower employees to report complaints and work with managers to ensure issues are properly addressed, with a zero-tolerance policy of retaliation.³⁶ HR professionals are the employer's first line of defense against retaliation allegations and complaints. Conducting a thorough and fair investigation of internal complaints, with an emphasis on determining the complainant's protective status, is an integral part of any anti-retaliation strategy or program.

Case Laws on Discrimination, Harassment and Retaliation.

Since the duty to protect the employees from discrimination, harassment and retaliation is placed on the employer and failure to which the victim may seek recourse in courts of law, there have been many cases both locally and internationally brought before the courts of law. Many employees who have been victims of this have ended up being compensated by the employer. Cases on this matter can be traced back in the United States early 1970s. This was the period when Catherine Mackinnon, a renowned feminist, argued that sexual harassment amounts to discrimination. Her stand was accepted by the supreme court of America.

In 1986, the Supreme Court in *Meritor Savings Bank, FSB v. Vinson*, a female bank employee sued her employer under Title VII, claiming that a manager had sexually forced her forty to fifty times over several years, petted her in front of others, exposed herself at work, and eventually raped her several times.³⁷ In addition to filing a lawsuit based on the employer's actual requirements for sexual relations - which the court saw as a quid pro quo under Title VII lawsuit - she also sought redress on the theory that the manager's actions created a hostile sexual environment Harassment. . The court agreed to recognize the plaintiff's "sexual harassment" hostile environment claim.

This decision laid the precedent that was adopted by other courts globally. Employers had to take caution that they had a duty to protect the employees from any form of harassment or discrimination. Human resource experts came up with discrimination and harassment policies that mainly included training of the managers and supervisors on the subject. Employees were also trained and particularly on their right and the procedure of reporting. Further, government institutions were required to protect their employees.

The House of Lords in United Kingdom held *Majrowski v. Guy's & St Thomas' NHS Trust*, that an employer can be vicariously liable for the harassment of an employee.³⁸ In this case, a National Health Service (NHS) Trust clinical audit coordinator alleged that his manager harassed him at work, in part because of his sexual orientation. He sued his employer for damages under

³⁶DK Hayes and JD Ninemeier, *Human Resources Management in the Hospitality Industry* (Wiley 2009).

³⁷*Meritor Savings Bank, FSB v Vinson*, 477 US 57 (1986).

³⁸*Majrowski v Guy's and St Thomas's NHS Trust* [2006] 3 WLR 125.

Section 3 of the 1997 Protection from Harassment Act (PHA), claiming he was responsible for the conduct of the manager who harassed him. His lawsuit was dismissed in the first instance on the grounds that the 1997 PHA did not permit vicarious agents' liability. The court of appeal ruled, however, that an employer in violation of the PHA 1997, and can be held liable for the harassment of his employees, provided that there is a sufficiently clear connection between work and work.

In Kenya, the Teachers Service Commission (TSC) Act provides that the commission duty is to keep under review the standards of education, training and fitness to teach appropriate to persons entering the teachers service, and the supply of teachers, and to tender advice to the Minister from time to time on the aforesaid matters and on such other matters as may be referred to it by the Minister. This statutory provision was used in *Teachers Service Commission v WJ & 5 others*, where the court of appeal held that Teachers Service Commission is vicariously liable for the sexual misconduct of its employees in the course of employment.³⁹ The court said that the appellant had a statutory duty to ensure the minors had a safe learning environment which it failed to do. Further, the absence of provisions for remedy for breach of that statutory duty was no bar to stop the minors from filing a claim of damages under the tort of negligence and the Constitution. Thus, court of appeal agreed with the learned trial Judge on finding that the 1st and 2nd respondents were entitled to payment of damages of Kshs. 2,000,000 and Kshs. 3,000,000 respectively.

In *OI Pejeta Ranching Limited v David Wanjau Muhoro*, the court of appeal while awarding the respondent Ksh 7,500, 000 and Ksh 1,744,542 held that it's an Unfair Labour Practice to Pay Different Wages for Work of Equal Value.⁴⁰

These cases can only be attributed to the ineffectiveness the organization in managing discrimination, harassment and retaliation. They have caused the employer to lose a lot.

Conclusion and Recommendations

The study suggests that, while training increases sensitivity, training is associated with decreased accuracy in identification of discrimination, harassment and retaliation. This is based on the fact that there are many cases on the matter before the courts. Further, the study shows that there is no relationship between training and the ability of the manager to propose the required response after the act.

The study recommends that there is need for organizations to develop action plans that will measure the effectiveness of trainings. There is need to regularly review policies to ensure that they are modern realities such as online harassment. The study recommends amendment of the current employment Act to exclusively require that employers must conduct training on the issues, and also include an anti-retaliatory policy for every organization. Finally the Kenya government should ratify Violence and Harassment Convention, 2019 (C-190) and Recommendation No. 206.

³⁹*Teachers Service Commission v WJ & 5 others* [2020] eKLR.

⁴⁰*OI Pejeta Ranching Limited v David Wanjau Muhoro* [2017] eKLR.

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