

Power Imbalance (Sexual Harassment)

Sexual harassment is a common complaint received under the Sex Discrimination Ordinance. Unlawful acts include both unwelcome person-to-person conducts of a sexual nature and a sexually-hostile environment.

◆ **The Complaint**

Carol never imagined that, after ten years, she would leave her job at a trading company this way. "My performance was consistently good and I was promoted three years ago. My job required me to engage in social activities outside the office and overseas business trips with my boss, Mr. Cheung. Mr. Cheung frequently asked me to sit next to him, and he took every opportunity to touch me. He even described the shape of my body in front of the others. I gave him hostile looks and it should be obvious to him that his behaviour was totally unwelcome. I avoided seeing him, but he threatened to demote me if I did not talk to him face to face," said Carol.

Distressed and suffering from insomnia, Carol could not concentrate on her work. Her complaint to the Personnel Department was ignored. She then sought help from a senior manager, who promised to transfer her to a post at a subsidiary which was similar to her present job. However, she was offered a junior post with less pay. She eventually resigned.

✓ **What the EOC did**

Carol lodged a complaint with the EOC against her boss, Mr. Cheung, for sexual harassment, and against the company for (a) victimizing her and (b) being vicariously liable for the unlawful act of its employee.

The EOC's case officer explained to Carol the complaint handling and conciliation procedures. The provisions of the Sex Discrimination Ordinance (SDO) were also explained to Mr. Cheung and the company. Under the SDO, sexual harassment includes any unwelcome behaviour of a sexual nature which a reasonable person regards as offensive, humiliating or intimidation. Acts of sexual harassment may be direct or indirect, physical or verbal, and can include indecent or suggestive remarks or inappropriate touching.

After rounds of negotiations, the parties agreed to early conciliation. The trading company agreed to give Carol a work reference letter and a monetary payment approximately equal to her three years' salary. Although Mr. Cheung stressed he never had any intention of offending Carol, he agreed to apologise in writing.

An employer is also vicariously liable for unlawful sexual harassment acts committed by employees in the course of their employment, whether with or without the employer's knowledge or approval of such behaviour. It is also unlawful for employers to victimize a person, such as treating a person less favourably because he or she has lodged a discrimination complaint.

Points to Note:

- As we are aware that sexual harassment often happens in isolation, the EOC considers all circumstances and information provided by the complainant, even in the absence of concrete evidence, in our investigation.
- The SDO provides protection against unlawful acts in the course of employment even if they occurred outside of Hong Kong, as long as the employee does his/her work wholly or mainly in Hong Kong.
- Intent to discriminate or harass is irrelevant. Unintended acts of a sexual nature, such as jokes, may still be unlawful under the SDO.

Tip: For more information, refer to the EOC's Know Your Rights Series on Sexual Harassment.

