

最新法庭判決：

## 性騷擾個案

### *Latest Court Ruling - Sexual Harassment Case*

#### 裁決

區域法院於2010年8月23日判一名遭受性騷擾及性別歧視的女僱員獲發賠償。法院下令被告人需向原告人支付港幣197,039元，當中包括感情損害賠償、懲罰性損害賠償及收入損失。原告人獲平等機會委員會(平機會)提供法律協助。

#### The Judgment

The District Court awarded compensation on 23 August 2010 to a female employee who was sexually harassed and unlawfully discriminated against on the ground of her sex. The defendant was ordered to pay damages to the plaintiff at HK\$197,039 for injuries to her feelings, punitive damages, and loss of income. The plaintiff received legal assistance from the Equal Opportunities Commission (EOC).

#### 個案詳情

原告人L於2007年8月出席面試，由被告，亦即公司的最高級職員負責主考。面試後，被告向L發出三個涉及性的電話短訊，但L沒有理會。L隨後獲聘用，於2007年9月開始上班。在她正式上班前及受聘期間，被告人連番向L提出不受歡迎的性要求和涉及性的不受歡迎行為，包括邀請她出外晚餐及共飲、說話時隱含與性有關的意思、輕掃她的胸部、將手放在自己的私處同時色迷迷地看著她，並說想發生性行為。

L拒絕了被告的所有要求。由於她感到被冒犯，故開始避免接觸被告人(即她的上司)。此後被告人對L的態度有變，L於2007年10月遭解僱。L於是向平機會投訴，經調查後，平機會嘗試展開調解程序以解決問題。L要求被告書面道歉及作金錢賠償，但被告人只答應書面道歉，卻一直沒有向L發出道歉信。L於是向被告人再建議，若不給她賠償，可捐款(金額較法庭裁定的為低)予慈善機構以示歉意，但被告人仍然拒絕。L遂向平機會申請法律協助，將案件提上法庭，申請獲平機會接納。

雖然被告人曾在解僱信中批評L的工作表現，然而，有關指稱並無證據支持，而L被解僱前也未收過任何書面警告。法庭裁定，原告人遭受解僱是拒絕上司性要求的直接結果，這明顯是性騷擾案件。

在一般情況下，不論僱主是否知悉或批准有關行為，被告人所屬公司對其僱員受僱期間所做的行為亦須負上轉承責任。

#### 結論

法庭的裁定清楚表明，《性別歧視條例》保障所有僱員不受性騷擾。《性別歧視條例》的保障亦包括正式受聘前的招聘階段。為防止在工作場所中發生涉及性而不受歡迎的行徑，僱主及人力資源從業員應採取實際可行的措施。

#### The Case

L, the plaintiff, attended an interview conducted by the defendant, who was the most senior staff at the company, in August 2007. After the interview, the defendant sent her three SMS messages with sexual overtones, which she ignored. She was subsequently offered the position, and began her employment in September 2007. Prior to and during the course of her employment, the defendant made repeated unwelcome sexual advances and engaged in unwelcome conducts of a sexual nature toward L, including inviting her to dinner and drinks, making comments with sexual overtones, brushing her breast, leering at her while putting his hand on his private parts, and telling her he wanted to have sex.

L rejected all of the defendant's advances. Feeling offended, she began to avoid contact with the defendant, who is her supervisor. The defendant's behavior toward L began to change. In October 2007, she was dismissed. She then lodged a complaint with the EOC. After investigation, the EOC attempted to facilitate a settlement through conciliation. L requested an apology letter plus monetary compensation from the defendant, who would only agree to an apology letter but this letter was never delivered to her. L then made a counter-offer for the defendant to make a donation (of a much smaller amount than the court's ruling) to a charity as a token of his regret, but this request was also rejected. L then applied to the EOC for legal assistance to take the defendant to court, which was granted.

The dismissal letter contained criticisms of her performance. However, no evidence was given for the allegations, and no written warning had been issued against her prior to the dismissal. The court found that this was a clear case of sexual harassment, and the dismissal was a direct result of the sexual harassment.

Under ordinary circumstances, the Hong Kong office of the defendant's company may also be vicariously liable for the acts done by its employees in the course of employment, whether or not these were done with the employer's knowledge or approval.

#### Conclusion

The court ruling clearly shows that all employees are protected against sexual harassment under the Sex Discrimination Ordinance (SDO). The SDO's protection also covers the recruitment stage prior to any formal offer. Employers and human resource practitioners are reminded to be vigilant against any acts which may be unwelcome conducts of a sexual nature, and take practicable steps to guard against such behaviours.