

## **EO Files (January 2020)**

### **“THINGS WE DO, PEOPLE WE MEET – Reflections in Brief”**

#### **Anti–sexual harassment policy – Not just a box to check off**

**Ricky Chu Man-kin IDS, Chairperson of Hong Kong’s Equal Opportunities Commission, states the case for proactively implementing corporate anti–sexual harassment policies, not only for the benefit of all personnel as human beings, but also for the company’s bottom line.**

It was 1 November 2018. From San Francisco and São Paulo to Sydney and Stockholm, more than 20,000 employees and contractors in Google offices spanning 50 cities staged a walkout to protest the tech giant’s handling of sexual harassment complaints. The backlash erupted after The New York Times reported that Google had allegedly paid off executives accused of sexual misconduct with exit packages worth millions of dollars, panned by the protest organisers as ‘the latest example of a culture of complicity, dismissiveness and support for perpetrators’.

Allegations of workplace sexual harassment, as well as the way they are handled, are putting the interests of corporations at stake. To state the obvious, their reputation and credibility are on the line, a risk exacerbated in this age of social media when there are an estimated 317,000 new posts on Facebook every minute, 21 million tweets on Twitter every hour and 500 million people publishing stories on Instagram every day.

The toll goes beyond a tainted brand name. Under the Sex Discrimination Ordinance (SDO) in Hong Kong, employers may be held vicariously liable for any act of sexual harassment committed by an employee – even when they have no knowledge of it – unless they can prove that practicable steps have been taken to prevent the transgression, such as adopting an anti–sexual harassment (ASH) policy. Financial remedies may be ordered by the court and, in the case of small and medium-sized enterprises (SMEs), this can deal a crushing blow to their business.

#### **The human and financial cost of workplace sexual harassment**

In the absence of a transparent ASH policy and an impartial complaint-handling procedure, employees are bound to work in an atmosphere of fear and intimidation. It saps their morale. A study published in the academic journal *Personnel Psychology* in 2007 found that companies could face a loss of up to US\$22,500 per employee in terms

of productivity drops and turnovers due to sexual harassment. The idea that victims and witnesses will stay silent and remain devoted employees – an assumption perhaps particularly popular among large corporates who pride themselves on attractive wages and career opportunities – is simply untrue.

The impact of sexual harassment on the cherished ‘bottom line’ is therefore real, immediate and far-reaching. Profitability aside, in 2016 the Stock Exchange of Hong Kong Ltd (the Exchange) made it compulsory for listed companies to disclose their performance in relation to environmental, social and governance (ESG) issues on an annual basis. Employment and labour practices, including those concerning ‘equal opportunity, diversity, anti-discrimination, and other benefits and welfare’, fall under the ‘social’ reporting area. As professional compliance advisers, company secretaries can and should enable management and the board to appreciate the value of an ASH policy for employee well-being and good corporate governance.

Indeed, data shows there is room for much progress to be made. According to a research report released by the Hong Kong Institute of Chartered Secretaries (the Institute) in October 2019, 216 of its members skipped the question when asked about the quality of ASH policies and procedures of companies listed on the Exchange; among the 155 who responded, only 5.84% gave a ‘very strong’ rating.

Over the years, in fact, sexual harassment has consistently accounted for a significant portion of complaints lodged with the Equal Opportunities Commission (EOC) under the SDO. In the financial year 2018/19, out of the 420 SDO complaints handled by the EOC, 185 were sexual harassment cases, over 80% of which were employment-related.

Evidently, workplace sexual harassment is an entrenched problem affecting all industries and walks of life. And company secretaries, working closely with directors, managers, shareholders and regulatory bodies, are well-positioned to help familiarise their organisation with the law, formulate an ASH policy and monitor its implementation. In December 2019, a trainer from the EOC delivered a seminar to members of the Institute, explaining how the SDO defines sexual harassment and dispelling widespread myths, such as that bantering about a voluptuous colleague is nothing more than harmless play; that putting a racy screensaver on one’s computer is equally innocuous; or that acts directed at a person of the same sex do not count.

### **Mitigation measures**

As mentioned, to mitigate potential vicarious liability, organisations should proactively carry out preventive measures against sexual harassment. These can begin with drafting a comprehensive ASH policy, which should consist of not only a declaration of zero tolerance, but also a clear definition and relatable examples of sexual harassment; contact details for the designated complaint-handling personnel; a transparent mechanism for investigating complaints and avoiding conflict of interest; a note about possible disciplinary action; an assurance of impartiality, confidentiality and protection from victimisation; and information on alternative avenues of redress, such as lodging a complaint with the EOC (within 12 months of the incident), filing a civil lawsuit in the District Court (within two years of the incident), or reporting to the police when criminal acts are involved (such as unwanted touching of private parts).

Next, care should be taken to publicise the policy through as many channels as possible, from emails, posters and intranets to staff meetings and orientation sessions. The message must reach all parties sharing the same workplace, including full-time and part-time staff, temporary workers, contractors, service providers, trainees, interns and volunteers alike. Only with this level of commitment can organisations cultivate an environment that is safe and supportive enough for all aggrieved persons to come forward for help.

As the sole statutory body tasked with eliminating discrimination, harassment and vilification in Hong Kong, the EOC provides both regular courses and on-demand, tailor-made training programmes for organisations determined to tackle workplace sexual harassment. Our website ([www.eoc.org.hk](http://www.eoc.org.hk)) also features a detailed framework for formulating a corporate policy against sexual harassment.

### **Stepping up the fight**

One of the greatest legacies of the global #MeToo movement is the conversation it has inspired about abuse of power, corporate responsibility, bystander apathy and inadequate victim support services. With plans in the pipeline to set up a special ASH unit, the EOC is looking to build on these reflections and step up the fight against workplace sexual harassment on multiple fronts, from conducting a holistic review of the law and recommending amendments to fill its gaps, to exploring collaboration with non-governmental organisations to establish a one-stop support platform for victims.

But then again, corporations too have an indispensable role to play, from both an economic and ethical perspective. As silence breakers around the world send one wake-

up call after another to businesses, management – and the company secretaries who advise them on governance – must quit paying lip service and instead proactively demonstrate a true commitment to combatting sexual harassment.

**Ricky Chu Man-kin**  
**Chairperson**  
**Equal Opportunities Commission**

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