

Power Imbalance (Sexual Harassment)

Sexual harassment constitutes the majority of complaints received under the Sex Discrimination Ordinance (SDO). 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 10 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 to go on 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 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 victimising her and 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 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 would regard as offensive, humiliating or intimidating. 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 on early conciliation. The trading company agreed to give Carol a reference letter and a monetary payment equivalent to three years of her salary. Although Mr Cheung stressed he never had any intention of offending Carol, he agreed to apologise in writing.

Points to Note:

- While sexual harassment often happens in isolation without witnesses, the EOC considers all circumstances and information provided by the complainant in its investigation.
- The SDO provides protection against unlawful acts in the course of employment even if they occur outside 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 sex jokes, may still be unlawful under the SDO.
- An employer is 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 victimise a person, such as treating a person less favourably because he/she has lodged a discrimination complaint.