

Register of Settlement by Conciliation: Sex Discrimination Ordinance

Employment Field

Sexual harassment with verbal remarks 2011

S23 of SDO

The Respondent (R) was the supervisor of the Complainant (C). They both worked as security guards. C alleged that she asked R for permission to leave her post for a short moment to change her stockings as they were worn. However, R repeatedly requested C to show him where the stockings were worn in a lewd manner despite of the fact that C refused and told him it was near the thigh, making it a private area. C finally threatened to report the harassment to the management level, and R gave permission for her to go change the stockings. C also alleged that R had asked her several times the color of her undergarment before this incident.

C lodged a complaint of sexual harassment with the EOC against R. The case was settled through conciliation after R agreed to issue a written apology.

Remarks:

The Sex Discrimination Ordinance makes it unlawful to sexually harass another person. Sexual harassment is any unwanted or uninvited sexual behavior which a reasonable person regards as offensive, humiliating, or intimidating. Such behavior can be verbal or in writing. In this case, the verbal remarks of R may amount to sexual harassment.

Employment Field

Sexual harassment with repeated text messages 2011

S23 of SDO

The Complainant (C) was a clerk. She alleged that her department manager [Respondent 1 (R1)] sexually harassed her by repeatedly sending her text messages with a sexual overtone and requesting her to go out with him for meals and dates. C claimed that R1's actions were intimidating and sexual in nature.

C lodged a complaint of sexual harassment with the EOC against R1 and also the company (R2) for vicarious liability for R1's actions. The case was settled through conciliation after R1 agreed to provide monetary compensation equivalent to C's one-month's salary along with a letter expressing his regret and promise not to harass in the future. R2 undertook to encourage its staff to lodge a complaint to the management for any act of harassment and to strengthen its policy and practices in preventing sexual harassment in the workplace.

Remarks:

The Sex Discrimination Ordinance (SDO) makes it unlawful for an employee to sexually harass another employee. Sexual harassment is any unwanted or uninvited sexual behavior which a reasonable person regards as offensive, humiliating, or intimidating. Under the SDO, employers may be vicariously liable for the acts of sexual harassment committed by their employees in the course of employment, whether or not these were done with the employers' knowledge or approval, unless employers have taken reasonably practicable steps to prevent sexual harassment in the workplace.

Employment Field

Vicarious liability of employer for sexual harassment in workplace 2011

S23 & S46 of SDO

The Complainant (C) worked for Respondent (R) as a technician. C alleged that she was sexually harassed by one of her colleagues in the workplace. C also alleged that R was vicariously liable for the colleague's sexually harassing acts.

C lodged a complaint of vicarious liability in sexual harassment with the EOC against R. The case was settled through conciliation after R agreed to (1) provide equal opportunities training for all employees; (2) remind all employees of the sexual harassment complaint mechanism; and (3) re-design the uniform for female mechanics staff.

Remarks:

The Sex Discrimination Ordinance makes it unlawful to sexually harass another person. Sexual harassment is any unwanted or uninvited sexual behavior which a reasonable person regards as offensive, humiliating, or intimidating. The employers may be vicariously liable for the acts of sexual harassment committed by their employees in the course of employment unless they have taken reasonably practicable steps to prevent sexual harassment in the workplace.

Employment Field
Workplace sexual harassment 2010

S23 of SDO

The Complainant (C) and the Respondent (R) were colleagues working in a restaurant. C alleged that R sexually harassed her by touching her breasts and commenting that they were big on one occasion, and making a sexually harassing verbal remark that no one would want to have sex with her on another occasion.

C lodged a complaint of sexual harassment with the EOC against R. The case was settled through conciliation after R agreed to issue an apology letter and to pay monetary compensation to C.

Remarks:

The Sex Discrimination Ordinance makes it unlawful to sexually harass another person. Sexual harassment is any unwanted or uninvited sexual behavior, including verbal remarks, which a reasonable person regards as offensive, humiliating, or intimidating.

Provision of Goods, Facilities, and Services
Sexual harassment when receiving services 2010

S40 of SDO

The Complainant (C), together with his wife and daughter, sought to join a tour organized by a travel agency. In the course of applying to the tour, C told a staff from the agency that his wife and daughter would share a room, while he would occupy a single room. C alleged that another staff (Respondent R) of the travel agency joined the conversation and remarked in front of C's wife, daughter, and other customers, "Probably you wish a woman would share a room with you." C claimed the remark caused him and his family discomfort.

C lodged a complaint of sexual harassment with the EOC against R. The case was settled through

conciliation after R agreed to issue a written apology.

Remarks:

The Sex Discrimination Ordinance makes it unlawful to sexually harass another person. Sexual harassment is any unwanted or uninvited sexual behavior which a reasonable person regards as offensive, humiliating, or intimidating. In this case, the travel agent making a verbal remark of a sexual nature to the customer in the course of service provision may amount to an act of sexual harassment.

Employment Field

Sexual harassment and victimization 2008

S9 and S23 of SDO

The Complainant (C) was a corporate affairs manager at a trading company (R2) where she had worked for more than 10 years. C had to make overseas trips with her supervisor (R1) for business matters. During these trips R1 harassed her sexually by touching her thighs and arms and asked her to sit next to him. He even commented about the shape of her body in front of others. C claimed that she had complained to the senior manager who promised to transfer her to the subsidiary company in a similar position. However, she was offered a junior position with lesser pay.

C lodged a complaint with the EOC alleging R1 sexually harassing her and R2 of victimizing her by treating her less favourably (i.e. taking up a junior position with lesser pay after lodging a complaint against R1), and also for being vicariously liable for the unlawful acts of its employee. The case was settled through early conciliation after R1 agreed to offer a letter of apology and a reference letter. R2 also provided C with the regular service leaving benefits and an ex-gratia payment equal to three and a half years' salary.

Remarks:

The Sex Discrimination Ordinance makes it unlawful to sexually harass another person. Sexual harassment is any unwanted or uninvited sexual behavior which a reasonable person regards as offensive, humiliating or intimidating. The employers are responsible for preventing sexual harassment at workplace. They may be vicariously liable for the acts of sexual harassment committed by their employees in the course of employment unless they have taken reasonably practicable steps to prevent sexual harassment at workplace.

Education

Sexual harassment in an educational establishment 2008

S39 of SDO

The Complainant (C) was a student at a local educational establishment (R1). She alleged that her foreign teacher (R2) sexually harassed her on three occasions by lifting her skirt and commenting that her legs were sexy. C claimed that she complained to R2's supervisor but no action was taken against R2. Later when C applied for a position at R1, R2 refused to recommend her for the job. C claimed that R2 victimized her for refusing the sexual advancement and reporting the matter to his boss.

C lodged a complaint of sexual harassment and victimisation against R2 and of vicarious liability against R1. The case was settled through conciliation after R1 and R2 agreed to take several measures. As part of the settlement, R1 agreed to formulate equal opportunities policy and a code of conduct for staff and students, and arrange training on equal opportunities for staff and students. At the same time, R2

apologized to C. Both C and R2 agreed to behave courteously with each other in future.

Remarks:

Under the Sex Discrimination Ordinance, it is unlawful for a teacher to sexually harass a student. Sexual harassment refers to any unwelcome conduct of a sexual nature, which a reasonable person regards as offensive, humiliating or intimidating. It is important to be sensitive to cultural differences. Behaviour and speech that may seem innocuous to one person may be offensive or uncomfortable to someone else.

Employment Field
Sexual harassment 2005

S23 of SDO

The Complainant, a primary school teacher, alleged that the Principal (Respondent 1) had sexually harassed her on various occasions from 1999 to 2004 by making sexual advances towards her. The incidents included making obscene jokes and comments about her dresses and appearance and once making close bodily contact with her. The Complainant turned down Respondent 1's sexual advances after which he began nitpicking her work with a view to forcing her to resign. She also alleged that the school (Respondent 2), as the Respondent's employer, should be held vicariously liable for its employee's sexual harassment acts for it did not take reasonably practicable steps to prevent sexually harassment in the workplace.

The parties agreed to resolve the complaints through early conciliation without going through a full investigation. Respondent 1 undertook in writing not to mention these complaints or make negative comments about the Complainant in future, including comments on the Complainant's performance. Respondent 2 undertook to issue an advisory letter to Respondent 1 advising him to improve his use of words in daily encounters with colleagues and to respect the feelings of his subordinates. Respondent 2 would also provide a reference letter to the Complainant and a designated supervisor to be the Complainant's referee when approached by prospective employers.

Remarks:

Under the Sex Discrimination Ordinance (SDO), it is sexual harassment if an employee makes an unwelcome sexual advance to a fellow worker, or engages in other unwelcome conduct of a sexual nature in relation to the fellow worker. Conduct of a sexual nature includes making a statement of a sexual nature, whether it is made orally or in writing. Unwelcome verbal conduct of a sexual nature includes obscene jokes, sexually derogatory remarks, or persistent questioning about a person's sex life.

It can amount to victimization if an employer treats an employee less favourably by reason that the employee has alleged that another person has committed an act which would amount to a breach of the SDO.

Employment Field
Sexual harassment 2004

S23 of SDO

The Complainant and the Respondent were former colleagues. The Complainant alleged that when they worked together as security guards in the same building, the Respondent had sexually harassed her on three occasions by touching her face and hands. In addition, she alleged that their employer should be vicariously liable for the sexual harassment act of the Respondent. In her view, the employer did not take reasonably practicable steps to prevent sexual harassment in the work place, such as promulgation of sexual

harassment policy, provision of training on anti-sexual harassment to staff, etc.

The Respondent and the employer denied the allegations. The employer explained that an equal opportunities policy was given to the Respondent when he first joined the company in 2002 and produced the Respondent's acknowledgment receipt. However, the employer admitted that no special training was provided for its staff on the prevention of sexual harassment.

The complaints proceeded to conciliation and were resolved by the Respondent offering a written apology to the Complainant, and the employer reinstating the Complainant upon expiration of her current employment contract.

Remarks:

Under the Sex Discrimination Ordinance, it is unlawful to sexually harass a co-worker. Unwelcome sexual advance or conduct of a sexual nature made in circumstances in which a reasonable person would have anticipated that a person would be offended, humiliated or intimidated may amount to an act of sexual harassment. Employers are vicariously liable for the unlawful acts of its employees in the course of their employment unless they have taken reasonably practicable steps to prevent such acts in the workplace. Examples of these steps include promulgation of equal opportunities principles and anti-sexual harassment policy, periodic training of staff on the subject, and effective mechanism taken to address staff complaints.

Register Ref: SDO/5/April/2003

Employment Field

Sexual harassment in verbal form

S23 of SDO

The Complainant (C), an employee of an advertising company, received a warning letter from her supervisor, the Respondent (R), for her habitually being late for work and disobeying instructions. She did not agree with the warning on disobedience and had an argument with R. In their argument, R made remarks to C that 'We would not ask you to be a "chicken".' C felt humiliated because R linked her to a 'chicken', which meant a prostitute in slang language. She lodged a complaint of sexual harassment against R and her employer on the ground of its vicarious liability for the act of R.

Parties agreed to resolve their dispute by way of early conciliation. They reached an agreement in April 2003 whereby R verbally apologized to C in addition to sending an apology card (the content of which was not meant to be disclosed to a third party), and agreed to refrain from making personal remarks about C in future. Employer agreed not to victimize C as the result of the sexual harassment complaint.

Remarks:

Unwelcome remarks of a sexual nature in circumstances where a reasonable person would reasonably feel offended, humiliated or intimidated amount to sexual harassment under the law. Employers are vicariously liable for acts of sexual harassment committed by employees at the workplace. They are encouraged to provide employees with training on the prevention of sexual harassment in the workplace.

Register Ref: SDO/5/February/2003

Employment Field

Alleged sexual harassment in employment

S23 of SDO

The Complainant (C), secretary to the Manager of the Quality Control Department (R) of a manufacturing company, alleged that R sexually harassed her on various occasions including touching her hand and body, commenting on her figure when talking with colleagues, proposing to buy her a sexy night-gown, inviting her to lunch, etc. The sexual harassments started since her employment with the company in December 1999. C was still working in the company at the time of complaint. Statements of many witnesses corroborated C's version of the incidents. Some of the witnesses still worked at the company.

R denied the allegations. He said most of the alleged incidents did not happen. For incidents which had taken place, he explained that the contexts were not as alleged and they were not of a sexual nature. He contended that the physical environment of the office made it not possible for him to do some of the alleged acts.

The complaint was resolved in February 2003 whereby R donated \$30,000 to the voluntary organizations nominated by C. He also provided C with a written apology for having touched her, gazed at her, invited her to lunch alone, etc. In addition, he undertook not to do such acts in future.

Remarks:

Sexual harassment can be one single incident or a series of on-going events of a sexual nature which according to a reasonable person would offend, humiliate or intimidate the victim.

Register Ref: SDO/3/February/2003

Employment Field

Alleged sex harassment in recruitment

S23 of SDO

The Complainant (C) applied for the post of procurement executive with an airline company but her application was unsuccessful. Through a mutual friend, the Project & Engineering Manager of that airline company (R) assisted her in preparing for the recruitment interview. After her application failed, R sent her two emails in which he told her that he could help her get a job in a subsidiary airline company if she agreed to spend the night with him. C had also made a complaint to R's employer and R was dismissed subsequently.

R denied having sent C the emails. Nevertheless, he was willing to resolve the matter by early conciliation. The complaint was settled in January 2003 whereby R provided C with a written apology for the uneasiness, fear and unpleasantness the emails had caused her.

Remarks:

It is unlawful for an employee of a prospective employer to sexually harass a person seeking to be employed by that employer.

Register Ref: SDO/1/February/2003

Employment Field

Sexual harassment

Alleged sexual harassment and victimization in dental clinic

S9 and S23 of SDO

The Complainant (C) was a part-time dental surgery assistant. She alleged that during her employment with a male dentist (R), R had sexually harassed her by touching her body on several occasions, showing her a nude picture of a female singer and commenting on her appearance. She confronted R and asked him not to

touch her anymore. Shortly after the confrontation, she resigned. She also complained of victimization against R. She said R had refused to provide her with a good reference letter because she had confronted him.

R said that he had affection for C and claimed that he had not been aware that C did not like the physical contacts. If he had known, he would have avoided the contacts.

The complaints were resolved by early conciliation in February 2003. R provided C with a written apology for any injury to feeling caused and a reference letter stating that C's performance was satisfactory and that she was a competent dental surgery assistant. In addition, R provided monetary compensation of \$16,000 to C.

Remarks:

If an employer engages in unwelcome conduct of a sexual nature in relation to an employee, the employee may claim sexual harassment against the employer. Further, if an employer treats the employee less favourably by reason that the latter has alleged unlawful discrimination or harassment against the employer, the employee may also claim victimization against the employer.

Register Ref: SDO/7/January/2003

Employment Field

Alleged sexual harassment and victimization

S23 and S46 of SDO

The Complainant (C) worked as a clerk in the Respondent law firm (R) for a few years. She alleged that her supervisor, the Legal Executive of R, had frequently touched her back since the early days when she joined the firm. She complained to R of sexual harassment. A partner advised her to tolerate the sexual harassment and not to make any complaints if she wanted to keep her job. C was later dismissed without being provided with any reason.

R denied the allegations but was willing to attempt early conciliation before going for a thorough investigation. The complaint was settled in January 2003 whereby R provided C with monetary compensation of \$24,000.

Remarks:

It is unlawful to sexually harass a subordinate. It is also unlawful for an employer to treat an employee less favourably by reason that the employee had complained of sexual harassment or other unlawful acts under the law. Less favourable treatment includes dismissal. Employers are vicariously liable for discriminatory and unlawful acts done by employees in the course of his / her employment.

Register Ref: SDO/1/January/2003

Employment Field

Sexual harassment

Alleged sexual harassment and victimization in accounting firm

S9 & S23 of SDO

The Complainant (C), who used to be an audit trainee of an accounting firm (R2), alleged that her supervisor (R1), who was a senior auditor, had touched her body and made remarks to her with sexual connotations on various occasions. She also complained against R2 that it should be held vicariously liable for R1's sexual harassment acts. C said that when she asked R1 not to sexually harass her again, R1

victimized her by immediately reporting to R2 that she had framed him and that she was incompetent with her work. On the same day, C complained to R2 of sexual harassment against R1. R2 dismissed C on the same day.

R2 denied the allegations. It explained that C was dismissed because of poor performance. The complaints against R2 were resolved by early conciliation in January 2003 whereby R2 provided a verbal explanation of C's dismissal and monetary compensation of \$6,500, a month's salary.

After conciliating with R2, C withdrew the complaints against R1.

Remarks:

A person sexually harasses a fellow worker if he/she engages in unwelcome conduct of a sexual nature in relation to the fellow worker. Conduct of a sexual nature includes oral statements. A person victimizes another person if he/she treats the latter less favourably due to the latter alleging unlawful discrimination / harassment against that person.

Register Ref: SDO/2/December/2002

Employment Field

Alleged sexual harassment related to obscene photos

S23 of SDO

The Complainant (C) was a clerk of a construction company. Apart from her male supervisor and sole proprietor of the company (R), she was the only staff in the company. On one occasion, R asked her to download the photos he had taken by using the company's digital camera and save them in the company's computer. In the process, she found the photos contained three photos of a naked woman's buttocks and private parts. Feeling offended and humiliated, she resigned the following day.

R denied the allegation. He claimed that he had never taken or seen the photos. However, he was willing to attempt early conciliation with C. The complaint was settled in December 2002 whereby R provided C with HK\$3,000. In addition, R provided C with an apology letter for any distress those photos had caused. R would also display the EOC's anti-sexual harassment publication materials in the company.

Remarks:

Obscene photos fall within the definition of conduct of a sexual nature and may offend and humiliate others exposed to them.

Register Ref: SDO/1/December/2002

Non-employment Field

Providing goods, facilities or services

Alleged sexual harassment in service provision

S40 of SDO

The Complainants (C) were window shopping with a friend in a shop which sold old photographs. When introducing to them some photographs displayed in the shop, a shopkeeper (R) said to C "barbecued pork bun". C asked R the meaning of the term. He looked at C's chest and told her that the term related to her bosomy figure.

R denied the allegation but was willing to resolve the complaint by early conciliation. The case was settled

in December 2002 whereby R verbally apologized to C.

Remarks:

It is unlawful for a provider of goods, facilities or services to sexually harass a customer. Conduct of a sexual nature includes making verbal remarks of a sexual nature.

Register Ref: SDO/5/November/2002

Employment Field

Alleged sexual harassment

S23 of SDO

The Complainant (C) was an apprentice in a printing company in which she worked for over four years. She alleged that one of the directors of the company (R) kissed her forehead when she was about to get off work on one Saturday. They happened to be alone when the incident took place.

R was willing to attempt early conciliation with C. The complaint was resolved in November 2002 with R providing C with a verbal apology for injuring C's feelings, a statement on her employment with R and monetary compensation of \$36,000 (roughly equal to 6-month's salary of C). It was also agreed that C could leave the company with advance notice waived.

Remarks:

Conduct of a sexual nature includes unwelcome physical advance and verbal remarks, which according to a reasonable person would offend, humiliate or intimidate the victim. It could be a single incident or a series of events.

Register Ref: SDO/4/November/2002

Employment Field

Alleged sexual harassment

S23 of SDO

The Complainant (C) worked as a security officer in a security company for a brief period. She alleged that her supervisor (R) sexually harassed her by touching her hands and staring at her breasts on several occasions.

R denied the allegations and claimed that the events were fabricated by C.

The complaint was resolved in November 2002. C agreed to settle the matter because R had demonstrated his sincerity by attending the conciliation meeting. She believed that R had learnt a lesson from this complaint and would not sexually harass other colleagues in future.

Remarks:

It is unlawful to sexually harass co-workers. Conduct of a sexual nature includes bodily touches and sometimes staring of a sexual nature.

Register Ref: SDO/2/November/2002

Employment

Alleged sexually harassment in employment

S23 and S46 of SDO

The Complainant (C), a female officer of the Respondent Company (R2), a security services company, served R2 from April 2000 to March 2002. C alleged that her male supervisor (R1) sexually harassed her in the course of his employment by touching her hands and staring at her breasts on several occasions during the period from November 2001 to March 2002. C also considered that R2, as the employer of R1, should be liable for the unlawful act allegedly done by R1 in the course of his employment.

R2 stated that it had not received any complaint from C against the alleged behaviour of R1 before it received C's statement of complaint from the EOC. R2 admitted that it had no policy on sexual harassment. C and R1 were in dispute about whether the alleged acts of sexual harassment had taken place. R2 was in dispute of its responsibility for the sexual harassment alleged against R1.

Parties agreed to settle their cases through conciliation in November 2002. C did not want to pursue the matter after she had expressed her concerns and dissatisfaction to R1. R2 undertook to develop a policy on sexual harassment and establish a complaint-handling procedures.

Remarks:

Employers should take reasonable and practicable steps to prevent sexual harassment. A set of procedures to handle complaints against discrimination and sexual harassment can help an employer to reduce its vicarious liability for the unlawful acts of its employees.

Register Ref: SDO/2/October/2002

Employment Field

Alleged sexually harassment in employment

S23 of SDO

The Complainant (C) worked as an administration officer of a shipping company. She had a loving relationship with the manager of the shipping division (R). After they broke up, R allegedly insulted her with remarks of a sexual nature on three occasions.

R denied the allegations and any loving relationship between them. He said they worked in different departments and he seldom talked to C.

The complaint was resolved in October 2002 whereby the parties undertook to communicate through email in the workplace in future. In the event of face-to-face communications, they would be conducted in the presence of a colleague.

Remarks:

It is unlawful for an employee to sexually harass a fellow employee. Conduct of a sexual nature includes oral statements of a sexual nature.

Register Ref: SDO/4/August/2002

Employment Field

Alleged sexual harassment

S23 of SDO

The Complainant (C) underwent vocational training in a public organization. She alleged that her supervisor (R), a senior architect, sexually harassed her on various occasions during her one-year employment with the organization. The alleged acts included verbal remarks, unwelcome sexual advances and inappropriate bodily contacts.

R denied the allegations. He was of the view that C made these complaints following their heated argument over a work-related issue. On that occasion, R pointed out to C her weaknesses for the first time. The event resulted in C losing control of herself.

The complaint was resolved in August 2002 whereby R provided C with monetary compensation of \$45,000 (roughly equals to 2-month's salary of C) and an apology (both verbal and written). Under their agreement, parties would keep the alleged incident confidential.

Remarks:

Under the anti-discrimination law, employment context include the relationship between employer-employee, supervisor-subordinate, principal-contractor, trainer-trainee relationship.

Register Ref: SDO/2/July/2002

Sexual harassment

Employer's vicarious liability for employee's alleged sexual harassment acts

S23and S46 of SDO

The Complainant (C) used to be a senior accountant of a computer software company (R). She alleged that the principal consultant of R had sexually harassed her on a few occasions. The incidents she raised included ordering to book a room in a hotel for them to share when they were having a business trip in Guangzhou (they did not share a room in the end); asking C to go to his room if she could not sleep on the same trip; making an analogy that C were a soldier and he were a horse on which C had to ride (C perceived the remark as having sexual connotation) and having unusual eye contact with her which made her feel uncomfortable. She alleged that R should be held vicariously liable for the principal consultant's sexual harassment. R did not have an anti-sexual harassment policy. Neither had it provided any relevant training to staff. C also complained of victimization. She alleged that after she had complained to the principal consultant of sexual harassment, she was dismissed.

R denied the allegations but was willing to attempt early conciliation with C. The complaints were resolved in July 2002 whereby R provided C with monetary compensation of \$44,000, about two months' salary. It undertook not to make adverse comments on C's performance if approached by prospective employers. In addition, R undertook to formulate an anti-sexual harassment policy.

Remarks:

An employer may discharge its vicarious liability for an employee's sexual harassment/unlawful discriminatory acts if it can show that it has taken such steps as were reasonably practicable to prevent the employee from doing the alleged unlawful acts. "Reasonably practicable steps" include formulation of an anti-discrimination / sexual harassment policy and provision of training.

Register Ref: SDO/2/June/2002

Non-employment Field

Alleged sexual harassment in service provision

S40 of SDO

The Complainant (C) alleged that her doctor, the Respondent (R), sexually harassed her by touching her breasts and nipples while he was examining her alone at his clinic in 1999. C had also reported the case to the police. R was tried for indecent assault in 2000 and was acquitted.

At EOC, R denied C's allegation and claimed that the incident was purely a misunderstanding. Both parties were in dispute about whether the conduct of R was of a sexual nature. R all along claimed proper medical procedure while C maintained that touching sensitive female parts, i.e. the breasts and the nipples, was beyond 'proper'.

The complaint proceeded to settlement in June 2002. C accepted the payment of a sum of \$33,000 and a letter of understanding from R as full and final settlement of her complaint against R.

Remarks:

It is unlawful for a person to sexually harass other person in the course of offering to provide, or providing goods, facilities or services to the latter. Parallel criminal and tort actions can be instituted against the harasser to redress criminal and civil wrongs.

Register Ref: SDO/1/June/2002

Employment Field

Alleged sexually hostile working environment

S23 & 46 of SDO and S11 & S49 of DDO

The Complainant (C), who used to work as a Security Guard for the Respondent company (R2), a television broadcasting company, alleged that both R2 and her supervisor (R1) had discriminated against her on the ground of her physical disabilities. With problems in her legs, she could not stand for long hours. Without prior notice, she was transferred to a more strenuous post with a view of forcing her to resign. In addition, she complained against R2 that it should be held vicariously liable for the alleged sexual harassment of her by the security guards and the carpenters. The alleged sexual harassment included discussion of their sexual experiences in C's presence, changing clothes and going to toilets with the door opened when C was patrolling there, posting of nude posters, placing pornographic magazines in the workplace, discussing pornographic pages of newspapers and commented on the figures and attire of women, etc.

R1 disputed the allegation of constructive dismissal but agreed that no prior notice was given. The transfer was in response to a grievance raised by C. R2 contended that there were no obscene posters and magazines found at the workplace. An anti-sexual harassment and anti-discrimination policy was in place in the company.

The complaints were resolved in June 2002 by early conciliation whereby R1 provided C with a written apology for his failure to provide prior notice to C and to consult her before transfer. R2 agreed to introduce the anti-discrimination and anti-sexual harassment concept in its internal communication to staff. It also agreed to consider providing relevant training to staff.

Remarks:

It is unlawful to discriminate against a person on ground of his/her disability. Subjecting the person to detriment can be discriminatory. A person sexually harasses another person, if he/she, alone or together with other persons, engages in conduct of a sexual nature which creates a sexually hostile or intimidating working environment for the other person. Employers are vicariously liable for such sexually hostile

working environment created by its employees.

Register Ref: SDO/1/May/2001

Employment Field

Alleged sexual harassment

S9, S23 and S46 of SDO

The Complainant (C) joined a manufacturing company as an accounting clerk in 1995 and she was transferred to the design department in August 1997. The Respondent (R) was a director and an employee of the company.

The alleged sexual harassment started in September 1997 when there were only C and R in the design room. R touched C's thigh and told her not to shout as there were people outside the room. A few days later, R did the same despite C's objection. Since then, the harassment continued and became more serious and frequent, from once a week to almost every day in November and December 1997. Although with reduced frequency, the harassment continued throughout 1998. One day in January 1999, R indecently assaulted C and was pushed away.

Since then, R stopped harassing C. However, he often picked on C's work and commented on her designs negatively. On one occasion, he even made embarrassing remarks about C's wrinkles. C claimed that R kept on attacking her dignity and confidence with a view to force her to resign. In December 2000, a staff member informed C that she would be made redundant because R's daughter, who returned from overseas, would take over her post.

R was eager to settle the case with C before investigation. An early conciliation meeting was arranged in May 2001 and monetary compensation of \$1,000,000 was paid to C.

Remarks:

It is unlawful for a director who is an employee to sexually harass his/her employee. Sexual harassment includes unwelcome sexual advance, unwelcome request for sexual favours or other conduct of a sexual nature made in relation to a person (including verbal remarks). Treating the victim of sexual harassment less favourably after he/she complained about the harassment is an act of victimization, which is also unlawful under the law. Employers are vicariously liable for the unlawful act of its employee.