

When Talking Turns Toxic

Sexual harassment does not necessarily have to be physical in nature. Under the Sex Discrimination Ordinance (SDO), sexual harassment can involve physical, visual, verbal or non-verbal conduct of a sexual nature which is uninvited and unwelcome.

The Complaint

Emily was an administration clerk at a company. On various occasions, the company director made remarks of a sexual nature to her or in her presence. Once, when the two of them were travelling back to the office in a car, he asked Emily if she had ever had pre-marital sex. In another instance, he suggested to a female colleague in front of Emily that she should watch a pornographic movie in order to recover from her illness. The director also asked Emily whether all the men in this world were her husbands.

Emily said that she had to seek medical treatment as a result of the harassment. One week after the last incident that took place, she tendered her resignation together with a sick leave certificate. She did not give the one-month payment in lieu of notice, as the reason for her to resign was great distress caused by the sexual harassment.

Emily later lodged a complaint with the EOC against the director for sexual harassment.

What the EOC did

The EOC case officer contacted the respondent about the complaint and explained to him the provisions of the SDO, which protects all employees working in Hong Kong from being sexual harassed by their bosses, co-workers, service providers or customers.

Emily's case was settled through conciliation. The director agreed to provide Emily with a work reference letter and one-month basic salary, withdraw the labour claim against Emily for payment in lieu of notice, and not make any comment on Emily's performance should her prospective employers call for reference. Meanwhile, Emily agreed to some terms related to business undertakings and to provide the company with a letter of resignation on a voluntary basis.

Points to Note:

- Conduct of a sexual nature, as long as it is uninvited and unwelcome, can constitute sexual harassment and is unlawful. Unwelcome conduct of a sexual nature, such as conversations on issues of a sexual nature, even not directly or consciously targeted at a particular co-worker, may cause that co-worker to feel offended, humiliated or intimidated, and may create a sexually hostile environment for him/her.
- Employers should develop policies to handle and prevent sexual harassment in the workplace. Otherwise, they can be held vicariously liable for their employees' sexual harassment acts.