

# What Does Marriage Have to Do with It?

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*To this day, the stereotypical belief that married women are indifferent to their career growth and unwilling to work overtime or irregular hours persists among some employers. Their recruitment decisions are driven by these assumptions, rather than based on an objective assessment of the individual's abilities and circumstances.*

### The Complaint

Jenny saw an online job posting from a marketing company for a personal assistant opening. Two days after she applied for the position, she received a call from a person claiming to be a supervisor at the company. He said that his boss found her a very suitable candidate, and commended her about her experience and the awards she had won.

The supervisor then asked Jenny to send over full body pictures of herself, saying he needed to see if her dressing style fit in with the company's image. Upon receiving the photos, he said, "You have such a great figure. It's turning me on." He added that the job required her to be unmarried and single, and she would have to act as if she was the boss's girlfriend, have sexual relations with him, and attend banquets with him wearing scanty clothing. When she told him she was married and would not be able to comply with the said requirements, the supervisor said she was not suitable for the job.

### What the EOC did

Jenny lodged a complaint with the EOC under the Sex Discrimination Ordinance (SDO), alleging that the supervisor had sexually harassed her, and that his employer (the Respondent) had discriminated against her on the ground of her marital status while being vicariously liable for the supervisor's sexual harassment act.

The Respondent said that the supervisor asked about Jenny's marital status because they had previously employed a married person who refused to take calls after work and on public holidays, leading to complaints from clients. The parties agreed to early conciliation and reached a settlement, with the Respondent agreeing to make a monetary payment to Jenny.

### Points to Note:

- Under the SDO, it is unlawful for an employer to treat a job applicant less favourably on the ground of his/her marital status, such as by refusing employment. During an interview, employers are advised to raise questions directly related to the nature and genuine requirements of the job, such as whether the candidate is willing to work overtime or answer calls from clients at night. Assumptions and questions based on an applicant's marital status should be avoided.
- Under the SDO, unlawful sexual harassment occurs if an employer or employee engages in conduct of a sexual nature in relation to a job applicant (including but not limited to making a sexual advance or a request for sexual favours), where the conduct is unwelcome to the applicant, and a reasonable third person, having regard to all the circumstances, would have anticipated that the applicant would be offended, humiliated or intimidated by the conduct. Whether the conduct was a one-off incident is irrelevant.
- An employer is vicariously liable for any unlawful act of sexual harassment committed by their employees in the course of their employment, whether or not it was done with the employer's knowledge or approval. This is unless the employer can show that reasonably practicable steps have been taken to prevent the act.
- Some examples of preventive measures may include formulating a comprehensive anti-sexual harassment policy (covering the definition of sexual harassment, complaint-handling procedures, information of contact persons, etc.), informing employees of the policy through different channels, and providing relevant training for staff on a periodic basis.