

Conciliation Case

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Working in Fear

THE COMPLAINT

"I thought about quitting, but why should I be paying for something I didn't do? I can't put up with this anymore!" Stephanie started working as a secretary with a small graphic design company four years ago, but the unacceptable behaviour of her boss, Mr Lee, made it difficult for her to attend work lately.

"I have had enough of his offensive and disturbing remarks. On one occasion he said he wanted to cuddle me like his daughter. On another occasion he asked me to marry him to be his second wife. Often, he commented on my sexual attractiveness, and I just had to grin and bear it," Stephanie told the EOC investigator.

"It got to the point that I told him I was extremely distressed by his sexually-suggestive comments, and I resigned. He apologized and promised that he would mind his language. I took his word for it and withdrew my resignation. Then he stopped acting inappropriately, but recently, his behaviour turned for the worse."

Stephanie recalled, "One night when I was alone with him in the office, he crept up behind me in the pantry, and tried to grab me. Then he pulled me down to his knees, but I got away. A few days later, he made another attempt when we were working outside the office. He purposely brushed against my back and started playing with my ear lobes. I was utterly petrified!"

WHAT THE EOC DID

Stephanie filed two complaints with the EOC; one against Mr Lee for individual liability of sexually harassing her and the other against the company for vicarious liability of Mr Lee's acts of sexual harassment. The parties involved agreed to resolve the dispute by early conciliation.

Mr Lee admitted that he had made comments about the appearance of both male and female staff, but he denied the other allegations. He said, "I never had the intention of hugging her, but my gentle pat on her shoulder might have appeared that way. I think she was just over-sensitive."

"These incidents have posed a grave impact on me emotionally. I have been seeing a psychologist since the end of last year because of insomnia, nausea and migraines. In view of my health condition, I had to quit my job, and that imposed a financial burden on me," Stephanie expressed her concern at the meeting.

The dispute was finally resolved, and the settlement terms included a good reference letter and a monetary compensation for Stephanie.

WHAT THE LAW SAYS

Under the Sex Discrimination Ordinance (SDO), sexual harassment in employment is unlawful. In very simple terms, sexual harassment is unwelcome behaviour of a sexual nature, which can be verbal or non-verbal. The assessment on "what is unwelcome" is based on relevant circumstances in which a reasonable person would feel intimidated or offended. The harasser could make an unwelcome sexual advance, such as physical contact, or sometimes it could take the form of an unwelcome request for a sexual favour. Innocuous comments, e.g.

about a woman's appearance, could be offensive if the utterance, coupled with relevant circumstance, such as the place and manner of speech, could result in the creation of a sexually hostile environment.

In practical terms, the trigger point is the subjective feeling of the victim, who feels that she or sometimes he, has been offended, humiliated or intimidated. Sexual harassment interferes with a person's work performance, it can cause stress and loss of confidence. Sometimes, it forces people to leave their jobs.

Apart from individual liability, an employer is vicariously liable for unlawful discrimination or harassment done by its employees in the course of employment, unless the employer could demonstrate having taken reasonable and practicable steps to prevent discrimination and harassment from happening in the workplace.

和解案例

通訊 2007 年 4 月 第 41 期

提心吊膽

投訴內容

「我想過要辭職，但為何我要為自己從未做過的事付出代價？我真的無法再忍受下去了！」阿芬四年前開始在一家小規模的平面設計公司任秘書，但老闆李先生近日的舉動令她難以接受，上班竟變成苦差。

阿芬對平機會的調查員說：「我已受夠了他那些討厭擾人的言談。他說想像抱起他女兒般抱住我。有一次，他叫我做他的二奶。還有，他經常評論我是否性感，我只能忍氣吞聲。」

「但最終我忍無可忍，我告訴他那些挑逗性的說話令我極之反感，我更提出辭職。他隨即道歉並承諾會留意自己的言行。我相信了他的說話，所以收回辭職信，之後他亦收斂了一段時間。可是，最近他又故態復萌，且變本加厲。」

阿芬憶述：「有一晚，辦公室只剩下我倆。當我在茶水間時，他悄悄走到我身後試圖捉著我。當他把我拉到他膝前，我立即跑開。幾天後，我們出外工作，他又騷擾我。他蓄意摸我的背部，又搔我的耳珠。我嚇得說不出話來！」

平機會的行動

阿芬向平機會提出兩項投訴：其一要李先生為性騷擾她負上個人責任；其二要公司為李先生的性騷擾行為負上轉承責任。有關三方都同意以提早調解的方式解決紛爭。

李先生承認曾對其他同事，無論男女的外貌評頭品足，但卻否認其他指稱。他說：「我從來無意擁抱她，也許我輕拍她的肩膀使她產生誤會，她可能是過敏罷了。」

「一連串事件對我的情緒造成嚴重影響。我自去年底一直因失眠、作嘔和偏頭痛而要看心理醫生。雖然辭職會為我帶來經濟負擔，但由於健康理由，我並無他法。」阿芬在調解會議上講述她的困擾。

這宗紛爭終於解決，和解條款包括公司向阿芬發出一封措詞良好的推薦信和作出金錢賠償。

法理依據

根據《性別歧視條例》，僱傭範疇內的性騷擾是違法的。簡單來說，凡是涉及性而不受歡迎的行為，不管是口頭的或非口頭的，都可構成性騷擾。所謂「不受欢迎」，就是一個合理的人在有關情況下會

感到受威嚇或冒犯，騷擾者或做出涉及性的不受歡迎舉動（例如身體接觸），或提出不受歡迎而為要獲取性方面好處的要求等。一些看似無傷大雅的說話，如講述某位女性的外貌，在某些情況下，如說話時的語氣、態度和地點，都可構成為性方面有敵意的環境。

實際上，性騷擾與否的觸發點在於受害人的主觀感受。她/他會感到受冒犯、侮辱或威嚇。性騷擾會影響到受害人的工作表現，更會為他們帶來壓力及使他們失去信心，有時候更會迫使人辭去工作。

除非僱主能證明他已採取合理而切實可行的步驟，以防止在工作場所發生歧視或性騷擾，否則除了騷擾者要負上個人責任外，僱主亦要為僱員在受僱期間所作出的違法歧視或騷擾行為負上轉承責任。

和解案例

通讯 2007 年 4 月 第 41 期

提心吊胆

投诉内容

「我想过要辞职，但为何我要为自己从未做过的事付出代价？我真的无法再忍受下去了！」阿芬四年前开始在一家小规模平面设计公司任秘书，但老板李先生近日的举动令她难以接受，上班竟变成苦差。

阿芬对平机会的调查员说：「我已受够了他那些讨厌扰人的言谈。他说想象抱起他女儿般抱住我。有一次，他叫我做他的二奶。还有，他经常评论我是否性感，我只能忍气吞声。」

「但最终我忍无可忍，我告诉他那些挑逗性的说话令我极之反感，我更提出辞职。他随即道歉并承诺会留意自己的言行。我相信了他的说话，所以收回辞职信，之后他亦收敛了一段时间。可是，最近他又故态复萌，且变本加厉。」

阿芬忆述：「有一晚，办公室只剩下我俩。当我在茶水间时，他悄悄走到我身后试图捉着我。当他把我拉到他膝前，我立即跑开。几天后，我们出外工作，他又骚扰我。他蓄意摸我的背部，又搔我的耳珠。我吓得说不出话来！」

平机会的行动

阿芬向平机会提出两项投诉：其一要李先生为性骚扰她负上个人责任；其二要公司为李先生的性骚扰行为负上转承责任。有关三方都同意以提早调解的方式解决纷争。

李先生承认曾对其他同事，无论男女的外貌评头品足，但却否认其他指称。他说：「我从来无意拥抱她，也许我轻拍她的肩膀使她产生误会，她可能是过敏罢了。」

「一连串事件对我的情绪造成严重影响。我自去年底一直因失眠、作呕和偏头痛而要看心理医生。虽然辞职会为我带来经济负担，但由于健康理由，我并无他法。」阿芬在调解会议上讲述她的困扰。

这宗纷争终于解决，和解条款包括公司向阿芬发出一封措词良好的推荐信和作出金钱赔偿。

法理依据

根据《性别歧视条例》，雇佣范畴内的性骚扰是违法的。简单来说，凡是涉及性而不受欢迎的行为，不管是口头的或非口头的，都可构成性骚扰。所谓「不受欢迎」，就是一个合理的人在有关情况下会

感到受威吓或冒犯，骚扰者或做出涉及性的不受欢迎举动（例如身体接触），或提出不受欢迎而为要获取性方面好处的要求等。一些看似无伤大雅的说话，如讲述某位女性的外貌，在某些情况下，如说话时的语气、态度和地点，都可构成为性方面有敌意的环境。

实际上，性骚扰与否的触发点在于受害人的主观感受。她/他会感到受冒犯、侮辱或威吓。性骚扰会影响到受害人的工作表现，更会为他们带来压力及使他们失去信心，有时候更会迫使人辞去工作。

除非雇主能证明他已采取合理而切实可行的步骤，以防止在工作场所发生歧视或性骚扰，否则除了骚扰者要负上个人责任外，雇主亦要为雇员在受雇期间所作出的违法歧视或骚扰行为负上转承责任。