

Conciliation Case

Newsletter May 2001 Issue No. 18

You Have the Right to Say “NO”

THE COMPLAINT

“I had worked for the estate management company as a cleaner since 1997. During an afternoon in mid-1999, my immediate supervisor molested me for the first time. We were discussing some job arrangements at the management office when he suddenly touched my breast. I was so angry and frightened that I left immediately. Nobody was around at that time.

This was only the beginning of a nightmare. Two weeks later, when there was nobody around the management office, he harassed me again. The same thing happened ten times in 1999. I remember clearly because I have put all these unhappy experiences in my diary. Despite my repeated rejections, he had no intention to stop and on the contrary, he became more offensive. There was once when he even followed me to the toilet. I hurt my back on the towel-hanger when I tried to stop him from entering. I cried loudly and he fled.

When I mentioned this to our boss, she told me not to pursue the complaint. Apparently she had done nothing with it. I was very upset and humiliated. It was so unbearable that I eventually resigned in mid-2000.”

Besides her supervisor, the complainant also lodged a complaint of vicarious liability against the estate management company, which was the employer of the alleged harasser.

WHAT THE EOC DID

Upon receipt of the complaint, the EOC suggested an early conciliation for all parties. The complainant and the respondents all agreed to the arrangement.

After a series of negotiations, the supervisor agreed to give a written apology. In accordance with the complainant's wish, the estate management company consented to investigate the case, inform staff of its sexual harassment policy as well as to conduct staff training. The case was then settled.

WHAT THE LAW SAYS

Sexual harassment includes unwelcome conduct of a sexual nature in which a reasonable person would feel offended, humiliated and intimidated. Under the Sex Discrimination Ordinance, sexual harassment in employment is unlawful.

It is worth noting that although an employer might not encourage sexual harassment acts, or had no knowledge of it, the employer would nevertheless be held vicariously liable for the unlawful acts of its employees, unless the employer could prove that reasonable and practicable steps have been taken to prevent such offences from taking place.

和解案例

通訊 2001 年 5 月 第 18 期

你有權說「不」

投訴內容

「我自一九九七年起在這間物業管理公司任清潔工人。一九九九年中的一個下午，我的直屬上司首次性騷擾我。當時我們正在管理處討論工作安排，他突然摸我的胸部，我十分憤怒及害怕，於是立刻離開，當時並無其他人在場。

估不到這只是噩夢的開始。兩星期後，他趁管理處沒有人的時候，再次騷擾我。同類情況在一九九九年內發生了十次之多。這些不愉快的經歷，我一一清楚記於日記中。儘管我多番拒絕，但他卻無意停止，反之變本加厲。有一次他甚至尾隨我到洗手間，為阻止他進入，我被毛巾掛架弄傷了背部。我大聲叫喊他才逃去。

當我向老闆提及這事件時，她吩咐我不要提出投訴。她顯然對這事沒有作出任何行動。我感到十分沮喪和受侮辱，在忍無可忍的情況下，我終於在二零零零年中辭職。」

由於答辯人的僱主需要為其僱員的行為負上轉承責任，因此，投訴人除了投訴其上司外，亦對該物業管理公司作出投訴。

平機會的行動

委員會收到投訴後，建議有關方面提早進行調解。投訴人及答辯人對這安排均表同意。

經過連番磋商後，該名直屬上司答應作書面道歉。物業管理公司亦按照投訴人的意願，答允徹查事件，並向員工解釋該公司的防止及處理性騷擾政策，和提供有關培訓。投訴人的意願發出信件，表明不會因任何申請人的受僱情況而歧視該申請人，個案最終獲得解決。

法理依據

性騷擾是指任何不受歡迎並涉及性的行徑，而這些行為會令一個合理的人感到受冒犯、侮辱及威嚇。根據《性別歧視條例》，僱傭範疇內的性騷擾實屬違法。

值得注意的是，除非僱主已採取了合理而又切實可行的措施，防止性騷擾事件的發生，並能提出這方面的證明；否則，即使僱主沒有慫恿員工作出性騷擾行為，又或對事件毫不知情，僱主仍需對其僱員的違法行為負上轉承責任。

和解案例

通讯 2001 年 5 月 第 18 期

你有权说「不」

投诉内容

「我自一九九七年起在这间物业管理公司任清洁工人。一九九九年中的一个下午，我的直属上司首次性骚扰我。当时我们正在管理处讨论工作安排，他突然摸我的胸部，我十分愤怒及害怕，于是立刻离开，当时并无其他人在场。

估不到这只是噩梦的开始。两星期后，他趁管理处没有人的时候，再次骚扰我。同类情况在一九九九年内发生了十次之多。这些不愉快的经历，我一一清楚记于日记中。尽管我多番拒绝，但他却无意停止，反之变本加厉。有一次他甚至尾随我到洗手间，为阻止他进入，我被毛巾挂架弄伤了背部。我大声叫喊他才逃去。

当我向老板提及这事件时，她吩咐我不要提出投诉。她显然对这事没有作出任何行动。我感到十分沮丧和受侮辱，在忍无可忍的情况下，我终于在二零零零年中辞职。」

由于答辩人的雇主需要为其雇员的行为负上转承责任，因此，投诉人除了投诉其上司外，亦对该物业管理公司作出投诉。

平机会的行动

委员会收到投诉后，建议有关方面提早进行调解。投诉人及答辩人对这安排均表同意。

经过连番磋商后，该名直属上司答应作书面道歉。物业管理公司亦按照投诉人的意愿，答允彻查事件，并向员工解释该公司的防止及处理性骚扰政策，和提供有关培训。投诉人的意愿发出信件，表明不会因任何申请人的受雇情况而歧视该申请人，个案最终获得解决。

法理依据

性骚扰是指任何不受欢迎并涉及性的行径，而这些行为会令一个合理的人感到受冒犯、侮辱及威吓。根据《性别歧视条例》，雇佣范畴内的性骚扰实属违法。

值得注意的是，除非雇主已采取了合理而又切实可行的措施，防止性骚扰事件的发生，并能提出这方面的证明；否则，即使雇主没有怂恿员工作出性骚扰行为，又或对事件毫不知情，雇主仍需对其雇员的违法行为负上转承责任。