

Conciliation Case

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Zero Tolerance

THE COMPLAINT

“My high school teacher warned us that sexual harassment can happen to anyone, anytime and any place. But I never thought that it could happen to me. Soon after I had graduated from high school, I joined a servicing company as a temporary customer service assistant, with a half-year contract. Being a new member to the company, I was glad to be working closely with Mr. Wong who had taught me a lot about the job. He was very experienced and had worked for the company for a long time,” said May, the complainant.

“The first few weeks were my honeymoon period, as everything went very smoothly. However, his attitude gradually changed. He started to stare at me, which made me uncomfortable. I began to avoid him,” May continued.

But, May's plan soon failed. “On several occasions when there was nobody around, he touched my face, my head and my hands. I could no longer bear it and lodged a complaint with my immediate supervisor. However, she commented that it was just a trivial matter and I should concentrate on my work. I was very disappointed,” May recounted her trauma. She left the company when her contract ended.

WHAT THE EOC DID

May lodged a complaint with the Equal Opportunities Commission (EOC) against her colleague Mr. Wong for sexually harassing her, and against the company for being vicariously liable for the unlawful act of its employee Mr. Wong. May was frustrated by the irresponsible and evasive attitude of her supervisor.

Upon receipt of the complaint, the EOC contacted Mr. Wong who denied all allegations. However, he did admit that he might have treated May too much like his own daughter. This might have caused some misunderstanding, but he stressed he never had any intention of hurting May. After several rounds of negotiations, Mr. Wong agreed to write May an apology letter.

As for the servicing company, the company representative agreed to conciliate by offering another short-term contract to May.

WHAT THE LAW SAYS

Sexual harassment includes any unwanted and uninvited sexual behaviour which a reasonable person would anticipate would offend, humiliate or intimidate the recipient of that behaviour. Under the Sex Discrimination Ordinance, sexual harassment in employment is unlawful.

It is worth noting that, although an employer might not encourage any act of sexual harassment, or may have no knowledge of it, the employer may nevertheless be held vicariously liable for the unlawful act of an employee, unless the employer can prove that all reasonably practicable steps have been taken to prevent such an act from taking place.

和解案例

通訊 2005 年 7 月 第 34 期

不再容忍

投訴內容

「我的中學老師曾提醒我們，任何人都可能受到性騷擾，但我從沒想過竟會發生在我身上。中學畢業後不久，我加入了一間服務公司，擔任短期客戶服務助理，簽了半年合約。剛加入公司，我樂於與黃先生共事，他教曉我很多工作上的事。他經驗豐富，亦在公司服務了很長時間。」投訴人阿美說道。

阿美繼續說：「起初的幾個星期都相安無事，而我的工作亦很順利。可是，他的態度卻漸漸改變。他開始打量我，使我感到很不自在。我亦漸漸迴避他。」

然而，阿美的方法並不奏效。「有幾次，他趁四周沒有人的時候摸我的臉、頭和雙手。我實在不能忍受下去，因此向直屬上司投訴。但她卻認為這不是甚麼一回事，着我該專心工作，我感到十分失望。」阿美陳述她不愉快的經歷。她在合約完結時離開了公司。

平等機會的行動

阿美向平等機會委員會（委員會）提出投訴，指同事黃先生性騷擾她，以及公司須為員工黃先生的違法作為負上轉承責任。她上司不負責任和借故推搪的態度也使她很洩氣。

委員會在收到投訴後立刻聯絡黃先生，但他否認所有指稱。他只承認可能將阿美視為自己的女兒般對待，因此引起誤會，他更強調從沒有意圖傷害阿美。經過多輪的商議後，黃先生同意向阿美作出書面道歉。

服務公司的代表則同意給予阿美另一短期合約作為和解條款。

法理依據

性騷擾包括任何不受歡迎和涉及性的行徑，而這些行為會令一個合理的人感到受冒犯、侮辱或威嚇。根據《性別歧視條例》，僱傭範疇內的性騷擾乃屬違法。

值得注意的是，雖然僱主可能沒有鼓吹或不知悉任何性騷擾的作為，但除非該僱主能證明已採取所有合理可行的措施，以防止這些事情的發生，否則僱主可能須為員工的違法行為負上轉承責任。

和解案例

通讯 2005 年 7 月 第 34 期

不再容忍

投诉内容

「我的中学老师曾提醒我们，任何人都可能受到性骚扰，但我从没想过竟会发生在我身上。中学毕业后不久，我加入了一间服务公司，担任短期客户服务助理，签了半年合约。刚加入公司，我乐于与黄先生共事，他教晓我很多工作上的事。他经验丰富，亦在公司服务了很长时间。」投诉人阿美说道。

阿美继续说：「起初的几个星期都相安无事，而我的工作亦很顺利。可是，他的态度却渐渐改变。他开始打量我，使我感到很不自在。我亦渐渐回避他。」

然而，阿美的方法并不奏效。「有几次，他趁四周没有人的时候摸我的脸、头和双手。我实在不能忍受下去，因此向直属上司投诉。但她却认为这不是甚么一回事，着我该专心工作，我感到十分失望。」阿美陈述她不愉快的经历。她在合约完结时离开了公司。

平等机会的行动

阿美向平等机会委员会（委员会）提出投诉，指同事黄先生性骚扰她，以及公司须为员工黄先生的违法作为负上转承责任。她上司不负责任和借故推搪的态度也使她很泄气。

委员会在收到投诉后立即联络黄先生，但他否认所有指称。他只承认可能将阿美视为自己的女儿般对待，因此引起误会，他更强调从没有意图伤害阿美。经过多轮的商议后，黄先生同意向阿美作出书面道歉。

服务公司的代表则同意给予阿美另一短期合约作为和解条款。

法理依据

性骚扰包括任何不受欢迎和涉及性的行径，而这些行为会令一个合理的人感到受冒犯、侮辱或威吓。根据《性别歧视条例》，雇佣范畴内的性骚扰乃属违法。

值得注意的是，虽然雇主可能没有鼓吹或不知悉任何性骚扰的作为，但除非该雇主能证明已采取所有合理可行的措施，以防止这些事情的发生，否则雇主可能须为员工的违法行为负上转承责任。