



Preventing Sexual Harassment in the Workplace

Formulating Corporate Policy on Sexual Harassment

I. Introduction

Background:

Sexual harassment is not harmless play, but an offensive unlawful act. Under the Sex Discrimination Ordinance (SDO), sexual harassment in employment field is unlawful. One of the characteristics of sexual harassment cases is that the victims are usually reluctant to lodge complaints with their employer. Some victims think that there would not be any results even though complaints were made. In addition, some employees are in fear of getting into trouble or exposing themselves to ridicule or being victimized. Hence, even though a company has not received any sexual harassment complaints from employees, that does not necessarily mean that there is no occurrence of sexual harassment incidents.

The consequences of sexual harassment can be costly. Affected employees may face emotional stress, anxiety and even depression. Employers may face low staff morale, tarnished reputation and payouts for legal costs.

Under the SDO, apart from the personal liability to be borne by individuals for unlawful acts of sexual harassment, the employer may also be vicariously liable even he/she had no knowledge about the acts. The Equal Opportunities Commission (EOC) believes that it would be too late to redress the wrongs afterwards; instead, proactive adoption of preventive measures is the desirable approach.

The formulation of a sexual harassment policy reflects the company's concern on the issue and provides guidelines for handling complaints related to sexual harassment. Moreover, the development and promotion of the policy enhances the understanding of the issue by all parties in company and helps nurture the right and proper values of respecting others.



Developing a sexual harassment policy

Some parts of a sexual harassment policy, for instance, the legal definition of sexual harassment, are standardized. However, quite a number of particulars should be tailor-made, subject to the needs and resources of individual companies. For instance, it may not be feasible for a small-size company to set up a panel to handle the complaints.

In addition, through the formulation process, the employer and company management develop a deeper understanding of the nature of sexual harassment and hence, they will implement the anti-sexual harassment measures more proactively in future. If the employees or representatives of employees are consulted or engaged in the discussion before the adoption of the policy, the legitimacy of the sexual harassment policy will be enhanced. A successful implementation of the policy can be envisaged.

Although there is no "one-size-fits-all" policy, some elements are essential for a sexual harassment policy. The EOC has compiled all the important elements into a "Framework for Sexual Harassment Policies" for reference.

II. Framework for Corporate Policy on Sexual Harassment

Regardless of whether a sexual harassment policy has been formulated in your company or not, you may take the elements listed in this Framework as a checklist to check against the sexual harassment policy which is to be / has been adopted, and to consider whether it is required to make any further improvements.



Framework for Corporate Policy on Sexual Harassment

1. Principle: zero tolerance for sexual harassment

The policy should clearly state that everyone has the rights to be respected and be equally treated. It should also point out that sexual harassment is discriminatory and unlawful. Sexual harassment may lead to disciplinary measures of company, and may also entail civil liability and even criminal consequences. Once an act of sexual harassment occurred, any person in the company has a right to lodge a complaint. The determination of company to eliminate and prevent sexual harassment should be clearly conveyed. Sexual harassment will not be tolerated in the company.



2. Objectives and Responsibilities of the Employer & Management

The objectives of sexual harassment policy should be listed out so that all parties in company have a clear understanding of the objectives. The objectives also set a direction for future development of specific measures.

The objectives of sexual harassment policy and the liability of company include but not limited to:

- ensuring all employees, partners and commission agents (including prospective employees and persons who sought for employment / the position as a partner) and other persons who provide service to company (including voluntary helpers, apprentices, contract workers/service providers/agents) are able to work, conduct activities or provide/have access to services in a safe and sexual hostile-free environment;
- informing all employees, through effective means, the sexual harassment policy and the channels to lodge complaints;
- providing appropriate training to employees in order to raise their awareness on sexual harassment and to nurture the right and proper value of respecting others;
- setting up effective channels for lodging complaints, which should be sensitive to the feelings and needs of complainants, in order to make the complaint handling mechanism more user-friendly;



<ul style="list-style-type: none">• handling complaints on the principles of fairness, impartiality and confidentiality, and in a serious and discreet manner; and• ensuring that nobody will be punished because of lodging a complaint in good faith.	<input type="checkbox"/> <input type="checkbox"/>
3. Obligation and Responsibility of Employer and All Employees	
<ul style="list-style-type: none">• The work environment is created by both the employer and the employees. The policy should clearly state that the employer, company management and all employees have the obligation and responsibility to prevent and eliminate sexual harassment, including respecting the will and feelings of others, refusing to tolerate any sexual harassment behavior, and supporting co-workers to take reasonable steps to stop sexual harassment.• The policy should clearly state that any employee can lodge a complaint with the company management / person-in-charge of handling sexual harassment complaints if the employee witnessed any other employee committed any sexual harassment act or was sexually harassed.	<input type="checkbox"/> <input type="checkbox"/>
4. Definition of Sexual Harassment	
<p><u>Definition:</u></p> <ul style="list-style-type: none">• The policy should explain the meaning of sexual harassment in plain and simple language. For instance, sexual harassment means a person makes an unwelcome conduct of a sexual nature to you. The unwelcome conduct includes unwelcome sexual attention, physical contact, talking about issues of a sexual nature, or making a sexual advance. It also amounts to sexual harassment if you find the environment you work is sexually hostile, in which you feel intimidated.• Section 2(5) of Sex Discrimination Ordinance (SDO) provides the definition of sexual harassment. In addition, sections 2(7), 2(8), 9, 23 and 39 are provisions in relation to sexual harassment. Under the SDO, the legal definition of sexual harassment is:	<input type="checkbox"/> <input type="checkbox"/>



(a) If any person

(i) makes an unwelcome sexual advance, or an unwelcome request for sexual favors, to another person; or

(ii) engages in other unwelcome conduct of a sexual nature in relation to that person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that she would be offended, humiliated or intimidated; or

(b) The person, alone or together with other persons, engages in conduct of a sexual nature with creates a hostile or intimidating environment for another person.

Clarification of common myths:

- **Regardless of gender:** the policy should state that sexual harassment may occur to any person, regardless of gender; all provisions in the SDO and the company policy related to sexual harassment are applicable to both men and women as well as sexual harassment to persons of the same sex.
- **Intention is irrelevant:** the policy should state that even if the act of sexual harassment is not intentional or there is no evidence to prove the intention, it amounts to sexual harassment once the act meets the definition of sexual harassment. Hence, no matter whether the act is intentional or not, or even if the act is of a playful nature, it may amount to sexual harassment.
- **Single incident:** the policy should state that a single incident may also amount to sexual harassment.
- **Power relationship:** Although sexual harassment incidents are usually related to a power relationship, i.e., the powerful harass the weak. It is also possible for a person weaker in power to harass a more powerful person, e.g., an employee harasses the employer.



5. Examples of Sexual Harassment	
<p>It may not be easy for the general public to master the definition of sexual harassment. Therefore, it is useful to provide examples as illustration. Please refer to <i>Preventing and Dealing with Sexual Harassment</i> on the website of the EOC for relevant examples.</p>	<input type="checkbox"/>
6. Rights of victim and various actions to be taken	
<ul style="list-style-type: none">● Every person has a right to lodge a complaint on sexual harassment. <input type="checkbox"/>● When a person is sexually harassed, he/she may take the following actions: <input type="checkbox"/><ul style="list-style-type: none">■ Speak up at the time. Tell the harasser that his/her act is unwelcome and should be stopped immediately.■ Keep a written record of the incidents, including the dates, time, location, witnesses and nature (what the harasser has said or done) and his/her own response.■ Tell someone he/she trusts and ask for emotional support and advice.■ Lodge a formal or informal complaint to the employer / company management.■ Lodge a complaint with the EOC and request investigation or conciliation. In case conciliation fails, the complainant may request the EOC to provide legal assistance. Telephone number of the EOC: 2511-8211. For enquiries or complaints, please refer to the EOC website: http://www.eoc.org.hk/eoc/graphicsfolder/complaint.aspx■ Consult a lawyer; report to the police or to file a civil law suit against the harasser.● It should be clearly stated that the complaint handling procedure does not affect the complainant's lodging complaints with the EOC, reporting to the police or filing a lawsuit in the District Court. <input type="checkbox"/>	



7. Principles of handling sexual harassment complaints	
<ul style="list-style-type: none">● Fairness: enquiries and complaints should be handled in a just and impartial manner to ensure that the complainant and the alleged harasser are fairly treated, and both parties have chances to present their case.	<input type="checkbox"/>
<ul style="list-style-type: none">● Confidentiality: assurance should be given to all employees that all information and records related to a sexual harassment complaint must be confidential and only be disclosed to relevant staff on a need-to-know basis. Since the alleged harasser is a key person in the case, under the principle of natural justice, he/she should be informed about the details of the allegation.	<input type="checkbox"/>
<ul style="list-style-type: none">● Avoiding any delay: complaints should be handled promptly because both the complainant and the alleged harasser are under pressure. Employer/company management or the person-in-charge of handling complaints should deal with the case without any delay.	<input type="checkbox"/>
<ul style="list-style-type: none">● Transparent procedures: companies should incorporate the handling procedures related to sexual harassment complaints in their complaint policy/sexual harassment policy and make them known to all staff and other workers in the company.	<input type="checkbox"/>
<ul style="list-style-type: none">● Protection for complainants and witnesses: complainants and witnesses should be protected against victimization (which in itself is an unlawful act of discrimination under section 9 of the SDO) because of the complaint case.	<input type="checkbox"/>
<ul style="list-style-type: none">● Avoid conflict of interest: if the employee who handles the enquiry / complaint case is closely related to the complainant or the alleged harasser (for instance, relatives), or the alleged harasser is the person-in-charge of handling sexual harassment complaints, the case should be handled by another person.	<input type="checkbox"/>
<ul style="list-style-type: none">● Anonymous complaint: whether the complaints are anonymous or not, companies may need to make inquiries or to conduct investigation. If the complainant is a minor, the case should be handled more discreetly.	<input type="checkbox"/>



<ul style="list-style-type: none">● Handling cases discreetly: showing empathy to the feelings of complainants, for instance, avoiding asking the complainant to repeat his/her painful story, appointing investigators of the same sex to interview the complainant, etc. in order to ensure that the complainant would not be unnecessarily further distressed or humiliated. Complaint cases should be handled discreetly so that the other related parties would not be unnecessarily distressed.	<input type="checkbox"/>
8. Mechanism for handling sexual harassment complaints	
<ul style="list-style-type: none">● Names and contacts of all employees who handle the complaint cases should be listed out. <input type="checkbox"/>● Both informal and formal complaint handling mechanisms for sexual harassment complaints should be established. If the primary concern of the complainant is to stop the acts of sexual harassment as soon as possible by way of taking informal action (e.g., sending a clear message to the alleged harasser) instead of conducting an investigation into his/her case, the complaint will be handled informally. Generally speaking, the informal complaint handling mechanism is suitable for handling minor and single incidents rather than serious and repeated acts of sexual harassment. <input type="checkbox"/>● If a case is proceeded to conciliation, the person who is in-charge-of the conciliation process should be agreed by both the complainant and the alleged harasser. <input type="checkbox"/>● Companies may consider using a flow chart to clearly indicate each step of the procedure. <input type="checkbox"/>● If the complainant or alleged harasser is a minor, he/she is entitled to be accompanied by his/her parent/guardian/family member to attend the relevant interview as so to safeguard his/her rights. <input type="checkbox"/>● If a panel is formed in company to handle the sexual harassment complaint, it should be composed of almost equal number of members of both sexes. <input type="checkbox"/>● If necessary, the complainant and the alleged harasser should avoid contact, in particular, private contact, during the period of investigation. <input type="checkbox"/>	



<ul style="list-style-type: none">• If necessary, supports and counseling are offered to the complainant.• Taking into account the age, the education level of and the distress suffered by the complainant after the sexual harassment incident, the company should allow the complainant to lodge a formal or informal complaint in various ways.• The interviews and the statements of both the complainant and the alleged harasser should be documented.• A written report should be prepared and the investigation result, the punishment and the considerations should be made known to both the complainant and the alleged harasser.• If one party does not accept the investigation result, as a principle of natural justice, appeals to senior level of company management should be allowed.• Sexual harassment acts may also amount to criminal offences such as indecent assault, distribute or display indecent and obscene articles. The company may consider referring those cases to the police.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
9. Time bar for lodging a complaint	
<ul style="list-style-type: none">• There is a time bar for lodging a complaint with the EOC or to take legal action. If the person who is sexually harassed intends to lodge a complaint with the EOC, he/she should take action within 12 months after the incident occurred. Otherwise, the EOC will not handle the case unless there are justifiable reasons for the delay. Any decision to take legal proceedings to the District Court should be made within 2 years after the incident occurred.• Having considered that any delay could cause difficulty to the investigation and the collection of evidence, the company can set a time bar for lodging complaints. However, the time bar should be reasonable and should take into account that the victim may postpone lodging a complaint due to the post-incident anxiety and distress suffered by him/her. With a view to avoiding victims being discouraged by the time bar, companies may specify that delayed complaints with justifiable reasons would be handled at the company's own discretion.	<input type="checkbox"/> <input type="checkbox"/>



10. Punishment	
<ul style="list-style-type: none">The policy should state the specific disciplinary measures to which sexual harassment acts could lead and what the maximum penalty is, for instance, making apologies, attending counseling sessions, paying compensation, being dismissed, etc. Actions that could be taken by the company should also be stated. For instance, if the case involves criminal offences, the company will report it to the police.	<input type="checkbox"/>
11. Measures for prevention of sexual harassment	
<ul style="list-style-type: none">Promulgation of policy: companies should promulgate the policy to all employees on a regular basis. The sexual harassment policy should be distributed and explained to all new employees (including temporary employees).Accessible information: the policy should be uploaded to the company intranet and website (contract service providers and external parties may not be authorized to have access to the company intranet) so that all company management and employees can have access to the policy at any time. Notices of the policy should also be prominently posted for all employees (in particular those who have no access to computer in company) to inform them of the policy, the way to get a copy of it, and the channels to lodge a complaint. All service providers and external parties should know that there is zero-tolerance to any sexual harassment acts and should be provided with the relevant information.Regular review: the review period for the policy and measures is specifically set at a regular interval, instead of generally saying "regular" review would be conducted.Regular training: set specific targets (such as number of people and/or regular period of time) for training and education programmes on gender equality, respecting others and enhancing awareness on the prevention of sexual harassment for employees, and also arrange those employees to receive training on how to handle sexual harassment complaints.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>



<ul style="list-style-type: none">● Elimination of offensive articles or information: all articles that may possibly lead to sexual harassment and preventing any improper use of computer technology are cleared in order to prevent sexual harassment.● Designate employees to implement the measures: employees of particular positions in company are designated to implement specific measures for the prevention of sexual harassment. A clear lineation of responsibility can ensure proper implementation of the policy.	<input type="checkbox"/> <input type="checkbox"/>
12. Related resources	
<ul style="list-style-type: none">● Information related to sexual harassment may be listed out, for instance, links to sexual discrimination information and on-line training modules of the EOC, and the videos or articles of sexual harassment talks or workshops organized by Non-Government Organizations, news reports, researches and studies on sexual harassment, and related websites of universities, etc.● Companies may take notice to EOC's Sexual Harassment On-line Resource Centre (under construction) and the training course and related information provided by the Non-Government Organizations.	<input type="checkbox"/> <input type="checkbox"/>



III. Implementation of sexual harassment policy

Developing a corporate policy on sexual harassment is the first step to prevent sexual harassment. Companies should adopt corresponding measures to implement the policy; otherwise, it will just be empty talk. The following questions may remind the company management to be aware of the progress of policy implementation in their companies:

1. Has the sexual harassment policy been reviewed or amended ever since its development and promulgation?
2. When was the last review of the company sexual harassment policy conducted?
3. Do all employees and new employees know about the corporate policy on sexual harassment?
4. When was the last training conducted for employees on sexual harassment or gender equality?
5. When was the last training conducted for employees on handling sexual harassment?
6. As a policy maker, when did you receive your last training related to sexual harassment?

— End —

Disclaimer:

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