



## (8) Sexual Harassment in the Workplace

### *What is sexual harassment?*

Sexual harassment is any unwanted or uninvited sexual behaviour which a reasonable person regards as offensive, humiliating or intimidating. Unwelcome sexual advances or unwelcome requests for sexual favours are sexual harassment. Acts of sexual harassment may be done by any person to a man or a woman, and may be direct or indirect, physical or verbal. Here are some examples:

- unwelcome physical contact, such as hugging, kissing or touching
- staring or leering
- brushing up against the body
- intrusive questions of a sexual nature about one's private life
- sexually offensive gestures

Some acts of sexual harassment may amount to criminal offences, for example:

- obscene phone calls
- indecent exposure
- sexual assault

Sexual harassment also includes the creation of a sexually hostile or intimidating environment, for example:

- sexually suggestive comments or jokes
- sexually explicit pictures or posters
- insults or taunts based on sex
- wolf whistling

Sexual harassment interferes with a person's work performance, can cause stress and the loss of confidence, and sometimes forces people to leave their jobs.

### *Who can be sexually harassed?*

People of either sex and of any age can be sexually harassed. Sexual harassment often takes place when one person (or a group of persons) uses power inappropriately over another person (or a group of persons). However, it can also take place in situations where there is no relationship based on power, for example, among colleagues.

### *What is the responsibility of the employer?*

Employers are responsible for preventing sexual harassment in the workplace. This responsibility does not change irrespective of whether an employee works on a permanent, casual, full-time or part-time basis, or as a contract worker. Employers should also be aware that the person who harasses may be anyone that comes into contact with the employee such as a supervisor, a colleague, or a client.

Employers may also be liable for acts of sexual harassment committed by their employees in the course of employment, regardless of whether the acts were done with the employers' knowledge or approval. However, it is a defence for the employers to show that they have taken reasonably practicable steps to prevent employees from doing such acts, for example, by implementing a policy on sexual harassment in the workplace.

It is in the interests of both employers and employees to have a policy on handling and preventing sexual harassment in the workplace<sup>10</sup>. Employers should make clear to their staff that it is everybody's responsibility to recognise and take seriously the need to ensure that the workplace is free from sexual harassment and all staff should treat their colleagues with respect.

### *Dealing with complaints of sexual harassment*

There may be a formal and an informal way of dealing with complaints of sexual harassment. The two approaches are both valid and can be included in a sexual harassment policy. The approach to take will usually depend on the wish of the complainant. Employers need to set out clear procedures for both approaches and make the information available to all staff. This is particularly important in helping staff to understand the steps involved when making a



complaint of sexual harassment.

### **Confidentiality**

The principle of confidentiality should underpin any policy on sexual harassment. In short, this means that any information relating to a complaint of sexual harassment must only be given on a need-to-know basis. Employers need to ensure that managers understand this principle when dealing with complaints. By adopting such a principle, it gives assurance to the complainant or potential complainant that management appreciates the sensitive nature of sexual harassment and that the details of complaint will not be disclosed to other colleagues.

## **(9) Sex as a Genuine Occupational Qualification**

### ***Discrimination on the ground of sex is unlawful***

Men and women are entitled to equal consideration for jobs, irrespective of their sex. It is unlawful under the Sex Discrimination Ordinance (SDO), for employers to single out men only, or women only, for a job. They can only do so in exceptional circumstances where being a man or being a woman is a Genuine Occupational Qualification (GOQ) for a particular job.

### ***Exception where sex is a Genuine Occupational Qualification***

There are a few instances in which employers can claim sex as a GOQ for a job. Where a GOQ exists for a job, it applies also to consideration for promotion, transfer, or training for that job, but cannot be used to justify a dismissal.

### ***In what circumstances is sex a Genuine Occupational Qualification?***

The circumstances in which sex is a GOQ for a job are:

- The essential nature of the job requires a man or a woman because of physiology or for authenticity in dramatic performances or other entertainment. For example, in the modelling of clothes or playing the role of a particular sex in a film or in a play.
- The job requires a man or a woman to preserve decency or privacy. For example, the requirement of a male to work as an attendant in a men's changing room.
- The job is likely to involve the employee working or living in a domestic setting and has significant physical or social contact with the person living there. For example, domestic helpers or, companion to an elderly person.
- The nature of work or the location of the establishment requires the employee to live in premises provided by the employer and the only available premises do not provide both separate sleeping accommodation and sanitary facilities

<sup>10</sup> Guidelines on the setting up of such a policy are contained in the Code of Practice on Employment under the Sex Discrimination Ordinance published by the EOC.