

# **Preventing Sexual Harassment**

## **A Guide for Foreign Domestic Workers and Their Employers**

### **I. Introduction**

Sexual Harassment remains a common problem for foreign domestic workers (FDWs) in the workplace, especially as they work in a private household environment. Survey by the Equal Opportunities Commission (EOC) in 2014 found that 6.5% of FDWs faced sexual harassment over the previous 12 months. Employers and others residing in the household were the most common perpetrators of sexual harassment.

Sexual harassment at work is unlawful. The Sex Discrimination Ordinance (SDO) protects everyone, including foreign domestic workers, from sexual harassment and sexually hostile working environments. Employers also have an obligation to provide a workplace that is free from sexual harassment.

#### **For Workers:**

### **II. Know Your Rights Under The Sex Discrimination Ordinance (SDO)**

Sexual harassment refers generally to unwanted sexual attention. There are two forms of sexual harassment under the law:

- (1) Any unwelcome conduct of a sexual nature in circumstances which a reasonable person would have anticipated that you would feel offended, humiliated or intimidated.

Examples: touching, saying sexual things, making sexual noises or gestures, asking to touch someone, or asking someone for sex.

- (2) A sexually hostile working environment where there are actions, languages or pictures that are of a sexual nature.

Examples: A household member watching pornography in the house or while you are working, or undressing in front of you, which makes you feel intimidated.

The workplace protection against sexual harassment for domestic workers applies to:

- Both sexes, including harassment of the opposite sex as well as the same sex;
- Harassment by all persons residing in the premises;

Even when:

- The harassment was unintentional, happened only once, or no one saw it happen;
- You had unwillingly submitted to the harassment in the past, or if you continued to work for the employer afterwards.

*I was sexually harassed by my employer. I told him to stop or I will lodge a complaint with the EOC. A few days later, he terminated my contract. Can the EOC help me?*

A: Yes, if you are treated less favourably because you have filed or intend to file a complaint under the SDO, you are protected under the law and can lodge a complaint of sexual harassment and “victimisation” to the EOC. You are also protected if you are less favourably treated because you assisted someone else, such as acting as a witness, to lodge a complaint or take legal action under the SDO.

The SDO also provides protection against sexual harassment in the provision of goods, facilities, and services. It is unlawful for a service provider to sexually harass a customer, and vice versa.

Sexual harassment is a civil offence rendered unlawful under the SDO. Depending on their nature and seriousness, some sexual harassment acts, such as stalking or rape, may also bear criminal consequences at the same time.

### **III. What to do if you face sexual harassment?**

- **Say NO to the harasser.**
- **If the employer is not the harasser, lodge a complaint with the employer.** Request your employer to deal with your complaint seriously and fairly.
- **Write down what happened,** including details such as the date, time, and

location of the incident. Include what the person said and did, as well as who was present during the incident.

- **Get support from friends, NGOs, labour unions, consulate-general or other organisations**

Check out the EOC's Anti-Sexual Harassment Resources webpage, including useful links and support organisations, available at [www.eoc.org.hk](http://www.eoc.org.hk).

- **Lodge a complaint to EOC or institute civil proceedings at the District Court**

A complaint can be lodged to the EOC within 12 months of the date of the incident. Legal proceedings should be instituted within 24 months of the incident.

- **If the act involves indecent assault or rape, seek help from the police**

Some types of sexual harassment, such as indecent assault (non-consensual acts/behaviours of a sexual nature, for example: forced touching, kissing and oral sex), may also be criminal offences. Aggrieved persons can consider reporting the incident to the police or seeking support from other organisations. A complaint can also be simultaneously lodged with the EOC.

### **For Employers:**

#### **IV. Understanding Your Responsibilities Under the SDO**

Employers of domestic workers have a responsibility to ensure that their home is a sexual harassment-free workplace.

Employers as well as all persons residing in the home may be individually liable if they sexually harass their domestic worker. Employers with more than one domestic workers may also be vicariously liable if one of their domestic workers sexually harasses another fellow worker, even if they have no knowledge of the sexual harassment, unless they can demonstrate that they have taken reasonable steps to prevent such acts.

**Q: My FDW informed me that she was sexually harassed by a visiting guest who does not live in the home. What should I do?**

**A: If you have been informed of the harassment and take no reasonable action to**

address the complaint in an impartial manner, you may be held liable for aiding the unlawful act.

It is also unlawful for employers to victimise their domestic worker, such as treating him/her less favourably or terminating his/her contract, because the worker has lodged or plans to lodge a sexual harassment complaint.

To help maintain a harmonious employer-employee relationship, which is essential for engaging and retaining workers, the EOC encourages employers to take proactive steps to create a culture of respect in their homes. This includes ensuring that all household members and workers are aware of their rights and responsibilities under the law, and dealing fairly and promptly with any complaint of sexual harassment.

## **V. Lodging a complaint with the EOC**

Complaints should be lodged in writing to the EOC within 12 months of the incident. Complaints can be submitted online, or by post, fax, e-mail, or in person. If you have a language problem, we can also provide you with an interpreter upon request.

Once a complaint is received, the EOC will make a preliminary assessment, and ask the parties if they would like to settle their dispute prior to investigation through the “early conciliation” mechanism. Otherwise, the EOC may investigate into the complaint and encourage a settlement by conciliation. Under the law, the EOC may also decide not to conduct or to discontinue an investigation.

If a settlement cannot be reached, the complainant may apply for other forms of assistance, including legal assistance, from the EOC.

## **VI. Contact us**

Equal Opportunities Commission  
19/F, Cityplaza Three, 14 Taikoo Wan Road, Taikoo Shing, Hong Kong

Hotline : 2511 8211  
SMS service : 6972566616538 (For people with hearing impairment/speech difficulties)

Email : eoc@eoc.org.hk  
Website : www.eoc.org.hk  
Office hours : Monday to Friday from 8:45 am to 5:45 pm

Smart Phone App:

