

# SEXUAL HARASSMENT AT THE WORKPLACE

## EDUCATION AND AWARENESS AS A STARTING POINT




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**O**VER the last decade, more organisations have been paying attention to the topic of sexual harassment in the workplace.

With harassment claims litigating for millions of ringgit, the liability risk to an organisation is enormous.

All organisations, regardless of their size, must have policies and procedures in place to prevent sexual harassment and to address the issue when it occurs.

Employees, including managers and supervisors, must be trained in the organisation's sexual harassment policy. They must understand that sexual harassment can lead to disciplinary action which includes termination.

Thus, the pressure is on human resources (HR) practitioners to ensure that the policy is communicated to all employees.

They must equip managers on how to handle inappropriate behaviour. Likewise, senior management should not take this topic lightly.

### DEFINING SEXUAL HARASSMENT

Sexual harassment, adapted from the Society for Human Resource Management (SHRM), is defined as follows:

*Unwelcome sexual advances, requests for sexual favours, and verbal or physical conduct of a sexual nature that occur under any of the following conditions:*

- When submission to such conduct is made either explicitly or implicitly a term or condition of one's employment.
- When submission, to or rejection of, such contact by an individual is used as the basis for employment decisions affecting that individual.

Sexual harassment is a form of misconduct. The concern here should be: Is this an issue that most managers can manage and prevent in the workplace? Or do they lack the experience and knowledge to manage such cases?

Victims, on the other hand, are also usually very affected and can be too embarrassed to raise this to the right channels.

### A SUBJECT FOR HR CONVERSATION

Does sexual harassment exist in our workplace? Yes, it does.

Strangely, it is not an area that most employees like to talk about. This is also not something most HR practitioners and employers are fully trained in.

The culture of the organisation can also impact the type of conversation one would like to have on this topic.

Why do employees pursue issues of sexual harassment?

In recent times, we also have seen many lawsuits being filed against employers for turning a blind eye on such cases.

Recent examples globally are the cases of Ellen Pao, former interim chief executive officer of Reddit and Hanna Bouveng, former assistant to a Wall Street financier.

In today's environment where risk has become boardroom conversation, many HR issues have also been raised at that level.

Policies are being reviewed and sexual harassment is one of those areas of HR risk management that warrants attention.

If you have a board that is people-focused and reviews the company policies annually, then chances are good that sexual harassment policies are updated.

Industrial relations (IR) are the HR practice, which governs sexual harassment, and IR is about prevention. You would need to assess issues and risks, which could cause duress and injustice at the workplace.

Imagine spending millions in developing and building a strong employee value proposition, and have nothing written on sexual harassment.

### ADDRESSING SEXUAL HARASSMENT

Why should organisations be concerned about sexual harassment?

- They can contribute to a high turnover rate and this might not show in your exit forms.
- Employees would pursue organisational justice and there are areas in which they can seek duress.
- Employers are obliged to provide a workplace environment free of harassment.
- They may eventually lose their best talent.
- More women are joining the workforce, and there are more reported sexual harassment cases involving women compared to men.

A quick glance on the issue of harassment on the SHRM and International Labour Organisation sites indicate that annually, an increasing number of employees are filing suits against employers for failure to provide a safe place to work.



### THREE STEPS TO CREATING AWARENESS

If companies are new to sexual harassment in the workplace, there are essentially three steps to bring this on board and help create awareness.

#### 1 EDUCATION AND AWARENESS

The Malaysian Employment Act caters to the sexual harassment policy, i.e. the Employment Act 1955 (updated April 2012).

The Act now highlights the process, the inquiry that employers are obliged to perform when they receive a complaint on sexual harassment, and how to conduct the necessary inquiry and obtain findings. It also highlights the role of the director-general in this matter.

Progressive in nature, this Act now compels employers to include sexual harassment policy as part of their best practices, and also review official documents like letters of appointment, staff handbook, onboarding orientation materials, staff training and education on sexual harassment.

Dismissal of sexual harassment cases is, however, dealt with under the Industrial Relations Act 1967.

#### 2 ONBOARDING OF MANAGERS ON SEXUAL HARASSMENT

One of the primary stakeholders of a sexual harassment policy is the manager, because irrespective of gender, he or she supervises staff. Should an employee be harassed, the first point of contact for this should be the manager.

But can managers handle this? Do they know what to ask? Do they know who to go to or how to assist the employee in seeking redress and fair treatment?

Some organisations fail to educate their managers on how to conduct domestic inquiries.

With the existing Act, HR practitioners are encouraged to run a half-day or one-day internal programme and share relevant case studies.

If you have unions within your organisation, it would be wise to conduct this and invite the right audience.

Within the Malaysian context, many of such cases have been brought to the Industrial Court. These cases include Eddie Yeo Soon Chye and Lilian Therera De Costa.

#### 3 IMPLEMENTATION AND REVIEW

While HR designs, develops and implements policies, it is the management that has to ensure that information is being properly cascaded, and that the right parties are educated on the policies.

Progressive organisations should conduct talks annually as part of its HR education to reinforce the importance of workplace safety and fair treatment at every level.

### CONCLUSION

Policies on sexual harassment must be frequently updated to meet new research findings and needs. Additionally, operations and support should be reviewed regularly to ensure there is an appreciation of its principles in the workplace.



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