



平等機會委員會  
EQUAL OPPORTUNITIES COMMISSION

# **Understanding Sexual Harassment in the Workplace**

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# Objectives

- ◆ To define sexual harassment and identify behaviour which may constitute sexual harassment
- ◆ To raise awareness on the liabilities for sexual harassment



# Relevant Law

- ◆ Sex Discrimination Ordinance 《性別歧視條例》
  - Effective: 1996
  - Unlawful acts
    - Discrimination (Sex, pregnancy, marital status)
    - Sexual harassment
  - Establishment of the Equal Opportunities Commission



# Applicable Fields

## ◆ Employment

- Employment
  - Cover: Different terms of employment
  - Must work wholly and mainly in Hong Kong
- Contract worker (Employed by contractor or sub-contractor)

## ◆ Non-employment

- Provision of goods, facilities and services
- Educational establishment



# Sexual Harassment: Definition (1)

## ◆ X makes to Y

- Unwelcome sexual advance,
- Unwelcome request for sexual favours; or
- Other unwelcome conduct of a sexual nature

A reasonable person, having regard to all circumstances, would have anticipated Y to be offended, humiliated or intimidated

# Sexual Harassment: Definition (2)

- ◆ X, alone or together with other persons

Engages in conduct of a sexual nature

Creates hostile or intimidating environment for Y



# Conduct of Sexual Nature

## ◆ Include

- Making a statement of a sexual nature to another person or in his/her presence
- Whether orally or in writing

## Can be

- Physical, visual
- Verbal, non-verbal
- Blatant and overt, subtle and indirect
- Single or repeated incidents
- Intentional, unintentional

# Unwelcome Conduct

◆ Subjective feeling

◆ Generally speaking

- Unwelcome
- Passive
- Not responding in the same way





# Reasonable Person Test

- ◆ Objective standard
- ◆ Reasonable person's reaction in same or similar circumstances
- ◆ Stereotypical notions of acceptable behaviour cannot be considered



# Having Regard to All Circumstances

## ◆ Consider

- Record of events as a whole
- Totality of circumstances, e.g.
  - Nature of alleged incidents
  - Context in which these occurred

## ◆ Need to also consider

- Gender dynamic
- Power dynamic



# Sexual Harassment: Examples

- ◆ Jokes or sarcastic comments about sex or gender
- ◆ Sexually suggestive comments of body shape, sexual activities, etc.
- ◆ Obscene gestures
- ◆ Display or transmit obscene pictures, posters, magazines, websites, etc. (including electronic messages)



# Sexual Harassment: Examples

- ◆ Inappropriate touching
- ◆ Space violation
- ◆ Repeated attempts to make a date
  
- ◆ Sexual propositions or other pressure for sex
- ◆ Implied or overt threats for sex
- ◆ Indecent assault, rape

# Harasser: Who?

- ◆ Anyone
  - Whether unintentionally or maliciously
- ◆ Groups of people without any legitimate power may create a sexually hostile environment



# Victim: Who?

- ◆ Anyone regardless of sex
  - Statistically, women represent the majority of reported cases
  
- ◆ In employment, certain workers are more vulnerable
  - Subordinates, junior staff, casual workers
  - Women working in isolated areas
  - Women moving into non-traditional work areas
  - Ethnic minority women



# Liabilities: Impact vs Intent

- ◆ Impact of behaviour, not intention, establishes unlawful act in law, e.g. a disadvantage, feelings of humiliation etc.
- ◆ Possible to harass unintentionally and no defence to say “Sorry, I didn’t mean it!”
- ◆ Intention not required in law but has relevance to pain and suffering of complainant and redress sought



# Liabilities

- ◆ Personal liability
  
- ◆ Accessory liability
  - Pressure or instruct someone to do it
  - Knowingly aid
  
- ◆ Principal's liability
  - For authorised acts done by their agent
  - Authorisation: Express or implied, precedent or subsequent



# Liabilities

## ◆ Employer's liability

- For employees' sexual harassment act
  - Done in the course of their employment
  - Whether known or approved or not
- Defense: Reasonably practicable steps to prevent, e.g.
  - Policy on sexual harassment
  - Complaint resolution procedures
  - Appointed person(s) to take responsibilities
  - Staff training



# Unlawful Sexual Harassment

- ◆ In employment
  - Employee, Job applicant, Employer
  - Contract worker
  - Person residing in any premises → Person employed to work in those premises
  
- ◆ In services provision
  - Service provider
  - Service user
  
- ◆ In education
  - Student
  - Responsible persons



# What To Do?

- ◆ Act early
- ◆ Make clear to the harasser that the behaviour is not acceptable
- ◆ Request immediate stop of sexual harassment
- ◆ Seek emotional support or counselling
- ◆ Record events: Nature of behaviour, date, time, place and witnesses, etc.
- ◆ If behaviour continues, decide next action as soon as possible



# Where to Complain?

- ◆ Internal policies and procedures
- ◆ Lodge complaint with the EOC (12 months)
  - Investigation
  - Conciliation
- ◆ Take legal action (24 months)
- ◆ Report to the police (criminal in nature)



# Prevention of Victimisation

- ◆ Unlawful to treat someone less favourably for
  - Bringing sexual harassment complaints
  - Being a witness or supporter in a complaint procedures
  - Taking any other actions regarding unlawful sexual harassment



# Preventing Sexual Harassment

- ◆ Know the laws, organisation policy & procedures
- ◆ Attend training to understand what constitute sexual harassment
- ◆ Show respects to colleagues and services users
  - Be sensitive to use of language and jokes told
  - Remove pornographic literature, posters, etc.
  - Check content of messages before forwarding them
- ◆ Point out or try to stop inappropriate behaviour



# Key Messages: Rights and Responsibilities

- ◆ Sexual harassment costs
  - Everyone suffers
  - No one deserves to be harassed – Whether the act itself is lawful or unlawful
  
- ◆ Prevention is better than cure
  - No need to confine to technical interpretation of conduct under SDO
  - Everyone shares the responsibilities



# Equal Opportunities Commission

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