

RESPECT IN THE WORKPLACE: CHALLENGES AND POSSIBLE SOLUTIONS

Current position:

The ILO, MOLISA and VCCI drafted a non-binding Code of Conduct on Sexual Harrassment in the Workplace to help companies develop their own policy and regulations for preventing and addressing sexual harrassment and promote safe working conditions (accessible here: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_421220.pdf).

The Government is in the process of reforming the Labour Code to include provisions allowing an employer to dismiss an employee in the case of non-compliance.

Prevention is more effective

Presumably, recognizing that enactment is not as effective as prevention, the draft Code places the burden on the employer to put in place steps to develop and implement preventative solutions (Article 6(c)). Specifically, the draft Code obligates employers to *develop and implement solutions to prevent sexual harrassment at workplace*.

The obligations are two- fold: (i) Employer must actively implement precautionary measures to minimize risk of occurrence; (ii) Respond appropriately – presumably by having a clear and easy to understand complaints/ grievant procedure incorporating formal and informal mechanism in place.

Challenges in implementing:

	Issue	Proposed action
Awareness	<p>The draft legislation stopped short of holding an employer liable for any harassment where the employer has failed to take all reasonable steps to prevent and deal with sexual harassment at the workplace.</p> <p>Many employers are not aware of the Sexual Harassment Code of Conduct. This means that more will need to be done in order to raise awareness amongst employers.</p>	<p>Require employers to draft a policy or regulation on sexual harassment which must be registered with the labour authority (similar to Internal Labour Regulations).</p>

Definition	<p><i>“Sexual harassment at workplace” shall mean any behavior of a sexual nature of anyone towards another at a workplace that is not expected or accepted by the recipient. The workplace is any place that the employee de facto works according to agreement or assignment by the employer.</i></p> <p>General in nature. Challenging to have a specific definition. However appears to extend coverage to include those employed by different organization with no common workplace e.g. service providers and possibly acts conducted through new technologies.</p>	<p>Advocate groups can assist by developing a comprehensive list of examples of behavior that constitutes sexual harassment that employers could use as a guide. Should clarify that where the action or behaviour of an accused is not motivated/mala fide, it could still amount to sexual harassment.</p>
Standard of proof	<p>No guidelines relating what would qualify as evidence.</p>	<p>Proposed standard of proof should not be based on stereotyped notions of acceptable behaviour.</p> <p>Whether adopt perspective of a reasonable person’s reaction to a similar environment or context in which the alleged act occurred.</p>
Character of complainant	<p>Case law, including foreign judgments, which emphasises that bringing up the past history or character of a woman is an attempt to leverage on prejudices and to make proceedings uncomfortable for the complainant, to the extent of her abandoning, withdrawing or settling the complaint.</p>	<p>To have clear guidelines on how to obtain testimony – eg whether the complainant is required to recount in detail the alleged act.</p>
Anonymous complaints	<p>Employers may not take action noting that there are no sanctions imposed on employer for failing to meet its obligations under Article 6.</p>	<p>To consider if there is any possibility to hold employer liable for failing to provide a safe workplace.</p>
Gender neutral policy	<p>The draft Labour Code seems to have greater protection towards women to reflect the Vietnamese context power equations at the workplace where women are usually the victims of abuse and violence.</p>	<p>Drafters may wish to consider covering both genders or draft policies in gender neutral language.</p>