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SEXUAL HARASSMENT IN THE WORKPLACE



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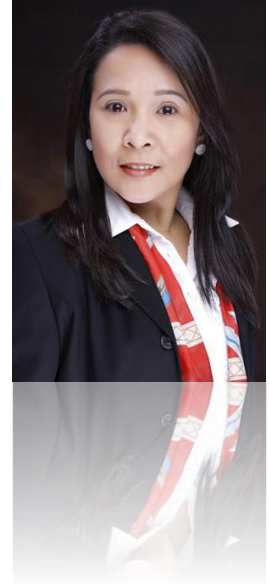


SEXUAL HARASSMENT IN THE WORKPLACE: WHAT PHILIPPINE COMPANIES NEED TO KNOW

1. What constitutes sexual harassment?

As per *Republic Act No. 7877*,¹ **work, education or training-related sexual harassment** is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said act.

As per *CSC Resolution No. 01-0940*,² the administrative offense of sexual harassment is an **act, or a series of acts, involving any unwelcome sexual advance, request or demand for a sexual favor, or other verbal or physical behavior of a sexual nature**, committed by a government employee or official in a work-related, training or education related environment of the person complained of.



2. What body of law governs sexual harassment in your jurisdiction?

Republic Act No. 7877, otherwise known as *An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes*, governs sexual harassment in the Philippines.

In relation hereto, the Civil Service Commission (CSC) issued *CSC Resolution No. 01-0940* which applies specifically to officials and employees in the government.

3. What actions constitute sexual harassment?

Under the *Republic Act No. 7877*:

In a work-related or employment environment, sexual harassment is committed when:

- 1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

¹ REPUBLIC ACT NO. 7877, *An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes*, 14 February 1995.

² CSC RESOLUTION NO. 01-0940, *Administrative Disciplinary Rules on Sexual Harassment Cases*, May 21, 2001.



- 2) The above acts would impair the employee's rights or privileges under existing labor laws;
or
- 3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

While in an education or training environment, sexual harassment is committed:

- 1) Against one who is under the care, custody or supervision of the offender;
- 2) Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;
- 3) When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships or the payment of a stipend, allowance or other benefits, privileges, or considerations; or
- 4) When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.³

Under the CSC Resolution No. 01-0940:

Work related sexual harassment is committed under the following circumstances:

- 1) Submission to or rejection of the act or series of acts is used as a basis for any employment decision (including, but not limited to, matters related to hiring, promotion, raise in salary, job security, benefits and any other personnel action) affecting the applicant/employee; or
- 2) The act or series of acts have the purpose or effect of interfering with the complainant's work performance, or creating an intimidating, hostile or offensive work environment; or
- 3) The act or series of acts might reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation to a complainant who may be a co-employee, applicant, customer, or word of the person complained of.

Education or training-related sexual harassment is committed against one who is under the actual or constructive care, custody or supervision of the offender, or against one whose education, training, apprenticeship, internship or tutorship is directly or constructively entrusted to, or is provided by, the offender, when:

- 1) Submission to or rejection of the act or series of acts as a basis for any decision affecting the complainant, including, but not limited to, the giving of a grade, the granting of honors or a scholarship, the payment of a stipend or allowance, or the giving of any benefit, privilege or consideration.
- 2) The act or series of acts have the purpose or effect of interfering with the performance, or creating an intimidating, hostile or offensive academic environment of the complainant; or

³ Section 3, REPUBLIC ACT NO. 7877.



- 3) the act or series of acts might reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation to a complainant who may be a trainee, apprentice, intern, tutee or ward of the person complained of.⁴

In addition, *CSC Resolution No. 01-0940* provides for the following illustrative forms of sexual harassment:

(a) Physical

- i. Malicious Touching;
- ii. Overt sexual advances;
- iii. Gestures with lewd insinuation.

(b) Verbal, such as but not limited to, requests or demands for sexual favors, and lurid remarks;

(c) Use of objects, pictures or graphics, letters or writing notes with sexual underpinnings;

(d) Other forms analogous to the forgoing.⁵

4. Can sexual harassment occur between two members of the same sex?

Yes, the law made no distinction or qualification. Any employee, male or female, may rightfully cry “foul” provided claim is well substantiated.⁶

5. Are employers required to provide sexual harassment training for their employees?

Under the *Republic Act No. 7877*:

Yes, according to *Section 4 of Republic Act No. 7877*, it shall be the duty of the employer or the head of the work-related, educational or training environment or institution, to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. Towards this end, the employer or head of office shall:

- 1) Promulgate appropriate rules and regulations in consultation with and jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions, therefore.
- 2) Create a committee on decorum and investigation of cases on sexual harassment. The committee shall conduct meetings, as the case may be, with officers and employees, teachers, instructors, professors, coaches, trainers and students or trainees to increase understanding and prevent incidents of sexual harassment. It shall also conduct the investigation of alleged cases constituting sexual harassment.

⁴ *Section 3*, CSC RESOLUTION NO. 01-0940.

⁵ *Section 4, Id.*

⁶ *Philippine Aeolus Automotive United Corp. v. NLRC*, G.R. No. 124617, 28 April 2000, 387 PHIL 250-266.



Under the CSC Resolution No. 01-0940:

Yes, according to *Section 60 of CSC Resolution No. 01-0940*, all agencies of the government shall develop an education and training program for their officials and employees and the members of their Committee on Decorum and Investigation to increase understanding about sexual harassment, prevent its occurrence, and ensure proper investigation, prosecution and resolution of sexual harassment cases.

6. What are the liabilities and damages for sexual harassment and where do they fall?

Under the Republic Act No. 7877:

According to *Section 4 of Republic Act No. 7877*, the employer or head of office, educational or training institution shall be solitarily liable for damages arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institution is informed of such acts by the offended party and no immediate action is taken thereon.

Section 7 of the same law provides that any person who violates the provisions of this Act shall, upon conviction, be penalized by imprisonment of not less than one (1) month nor more than six (6) months, or a fine of not less than Ten thousand pesos (P10,000) nor more than Twenty thousand pesos (P20,000), or both such fine and imprisonment at the discretion of the court.

Any action arising from the violation of the said Act shall prescribe in three (3) years.

Under the CSC Resolution No. 01-0940:

According to *Section 54 of CSC Resolution No. 01-0940*, the head of office who fails to act within fifteen (15) days from receipt of any complaint for sexual harassment properly filed against any employee in that office shall be charged with Neglect of Duty.

Section 55 of the same law provides that any person who is found guilty of sexual harassment shall, after the investigation, be meted the penalty corresponding to the gravity and seriousness of the offense.

In relation to the immediately preceding paragraph, *Section 56* provides that the penalties for light, less grave, and grave offenses are as follows:

A. For light offenses:

1st offense – Reprimand

2nd offense – Fine or suspension not exceeding thirty (30) days

3rd offense – Dismissal

B. For less grave offenses:

1st offense – Fine or suspension of not less than thirty (30) days and not exceeding six (6) months

2nd offense – Dismissal

C. For grave offenses: Dismissal



Lastly, *Section 57* provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count, and the rest shall be considered as aggravating circumstances.

7. What does an employee who believe they've been sexually harassed have to prove for a successful claim?

The employee must establish the elements of the crime. The following are the elements of sexual harassment as defined by law: (1) that the offender has authority, influence or moral ascendancy over victim in a work, training, or education environment; (2) the offender demands, requests or otherwise requires any sexual favor from the victim.

The gravamen of the offense is not the violation of victim's sexuality but the abuse of power of the offender.⁷ Any employee, male or female, may rightfully cry "foul" provided claim is well substantiated. There is no time period within which he/she is expected to complain through proper channels.⁸ The time to do so may vary depending on the needs, circumstances, and emotional threshold of the employee.

Moreover, it is not necessary that the demand, request, or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender.⁹

8. Is it different if a supervisor or a co-worker is the perpetrator of the sexual harassment?

If an employee sexually harasses another employee, but the former has no authority, influence or ascendancy over the latter, the harassment may constitute the crime of unjust vexation or acts of lasciviousness punishable under the RPC.

Notably, *CSC Resolution No. 01-0940* no longer requires that the offender should be one with authority, influence or moral ascendancy over the victim hence, it likewise applies when the perpetrator is a co-worker.

9. What are the potential defenses employers have against sexual harassment claims?

The employer's defenses may be the following:

- 1) The acts were not committed at all.¹⁰
- 2) The acts were committed by accident.¹¹
- 3) The victim's evidence did not prove that sexual harassment occurred.¹²

⁷ *Id.*

⁸ *Id.*

⁹ *Bacsin v. Wahiman*, G.R. No. 146053, 30 April 2008, 576 PHIL 138-145.

¹⁰ *Gonzales v. Serrano*, G.R. No. 175433, 11 March 2015 & *Jacutin v. People*, G.R. No. 140604, 06 March 2002, 428 PHIL 508-519.

¹¹ *Bacsin v. Wahiman*, G.R. No. 146053, 30 April 2008, 576 PHIL 138-145.

¹² *Libres v. National Labor Relations Commission*, G.R. No. 123737, 28 May 1999, 367 PHIL 180-191.



- 4) The acts committed do not constitute sexual harassment.¹³
- 5) The charge was filed on the ground of revenge/harassment.¹⁴

10. Who qualifies as a supervisor?

Section 3 of *Republic Act No. 7877* provides for the persons, in the similar footing with a “supervisor”, who may be held liable to commit acts of sexual harassment.

The said section provides that “work, education or training-related sexual harassment is committed by an **employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment**, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

11. How can employers protect themselves from sexual harassment claims?

Under the *Republic Act No. 7877*:

For employers to protect themselves from sexual harassment claims, Section 4 of *Republic Act No. 7877* makes the employer or the head of office duty-bound to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment.

Specifically, the employer or the head of Office shall:

- 1) Promulgate appropriate rules and regulations in consultation with and jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions, therefore.
- 2) Create a committee on decorum and investigation of cases on sexual harassment. The committee shall conduct meetings, as the case may be, with officers and employees, teachers, instructors, professors, coaches, trainers, and students or trainees to increase understanding and prevent incidents of sexual harassment. It shall also conduct the investigation of alleged cases constituting sexual harassment.

In addition, this section requires the employer or head of office, educational or training institution to disseminate or post a copy of this Act for the information of all concerned.

¹³ *Id. & Gonzales v. Serrano*, G.R. No. 175433, 11 March 2015.

¹⁴ *Floralde v. Court of Appeals*, G.R. No. 123048, 08 August 2000, 392 PHIL 146-156 & *Office of the Ombudsman v. Medrano*, G.R. No. 177580, 17 October 2008, 590 PHIL 762-781.



Under the CSC Resolution No. 01-0940:

Section 7 of *CSC Resolution No. 01-0940* provides for the creation of a Committee on Decorum and Investigation in all national or local agencies of the government, state colleges and universities, including government-owned or controlled corporations with original charter.

12. Does sexual harassment cover harassment because of pregnancy?

No, harassment because of pregnancy is not expressly covered under *Republic Act No. 7877* or *CSC Resolution No. 01-0940*. However, *Republic Act No. 7910*, otherwise known as “*The Magna Carta of Women*,” prohibits acts of discrimination against women in all its forms.

13. Does sexual harassment protect gay, lesbian, bi-sexual, and transgender persons?

Yes, *CSC Resolution No. 01-0940* somehow protects harassment on the basis of sexual orientation when it classified as a “**less grave offense**” the making of “derogatory or degrading remarks or innuendoes directed toward the members of one sex, or one’s sexual orientation or used to describe a person.”

14. What is prohibited retaliation?

There is no concept yet of prohibited retaliation under *Republic Act No. 7877*.

However, a similar concept can be found under *Article 118 of the Labor Code of the Philippines* which provides that it shall be unlawful for an employer to refuse to pay or reduce the wages and benefits, discharge or in any manner discriminate against any employee who has filed any complaint or instituted any proceeding under this Title or has testified or is about to testify in such proceedings.

15. Can a consensual relationship between a supervisor and subordinate be considered sexual harassment?

No, a consensual relationship between a supervisor and subordinate cannot be considered sexual harassment. In one case,¹⁵ the Supreme Court of the Philippines even stated that “Assuming arguendo that respondent never intended to violate RA 7877, his attempt to kiss petitioner was a flagrant disregard of a customary rule that had existed since time immemorial – that intimate physical contact between individuals **must be consensual.**”

16. Can an employer be liable for the actions of a third party (e.g. the public, clients, vendors)?

Yes, *Section 5 of Republic Act No. 7877* provides that the employer or head of office, educational or training institution shall be solitarily liable for damages arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institution is informed of such acts by the offended party and no immediate action is taken.

¹⁵ *Gonzales v. Serrana*, G.R. No. 175433, 11 March 2015, 752 SCRA 434.



On the other hand, Section 54 of *CSC Resolution No. 01-0940* provides that the head of office who fails to act within fifteen (15) days from receipt of any complaint for sexual harassment properly filed against any employee in that office shall be charged with Neglect of Duty.

17. What is the #MeToo movement?

According to a Philippine news article entitled “#MeToo and sexual harassment in the Philippines,”¹⁶ the real origin of the #MeToo movement was in 2006 when American activist Tarana Burke told fellow sexual assault survivors “me too.” Eleven years later came Alyssa Milano’s #MeToo tweet on Oct. 15, 2017, making Burke’s movement viral and leading to more than 12 million related posts, reactions and comments on Facebook within 24 hours.

18. How is the #MeToo movement impacting the law in your jurisdiction?

According to the same article,¹⁷ “In the Philippines, there have been very few publicized sexual harassment cases in the workplace where the investigations are known by the public. Two of these cases are in the Ateneo and ABS-CBN. It is too early to know whether these are unusual cases or whether these cases are the beginning of a #MeToo movement in the Philippines.”

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¹⁶ Cruz, Efren. “#MeToo and sexual harassment in the Philippines.” *The Philippine Star*, 28 October 2018.

¹⁷ *Id.*