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SEXUAL HARASSMENT IN THE WORKPLACE



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



What constitutes sexual harassment?

In the Hungarian law, sexual harassment is covered by the general definitions of harassment stipulated by the Act CXXV of 2003 on Equal treatment (“**Equal Treatment Act**”) and by the Act C of 2012 on the Criminal Code (“**Criminal Code**”).

Pursuant to the Equal Treatment Act, a conduct of sexual or non-sexual nature violating the dignity of a person qualify as harassment if its purpose or effect is to create an intimidating, hostile, degrading, humiliating or offensive environment and it is in connection with the protected characteristic of such person (e.g. sex, sexual orientation, religion, belief etc.).

As opposed to the Equal Treatment Act, the Criminal Code aimed to criminalize harassments more serious in nature. Thus, harassment as a criminal offense occurs if a person engages in conduct intended to intimidate another person, to disturb the privacy of or to upset, or cause emotional distress to another person arbitrarily, or if a person pesters another person on a regular basis. It can be seen that while an action in its own may constitute harassment under the Equal Treatment Act, the Criminal Code punishes only actions carried out on a regular basis.

What body of law governs sexual harassment in your jurisdiction?

The Equal Treatment Act and the Criminal Code are the main laws regulating sexual harassment.

What actions constitute sexual harassment?

Sexual harassment defined in the first question can take verbal, non-verbal or physical forms as well. According to the relevant practice the following actions may constitute sexual harassment:

- Telling or otherwise sharing sexually explicit or demeaning jokes;
- Comments on appearance or dress;
- Use of indecent nicknames;
- Insulting or obscene comments;
- Messages, e-mails or phone calls with sexual or obscene comments;
- Seeking for close physical contacts;
- Displaying sexually explicit magazines or cartoons, or calendars showing individuals in bathing suits or underwear; and
- Posting sexually offensive content on social media sites etc.



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

Yes, sexual harassment can occur between two members of the same sex.

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

There is no specific regulation which would oblige the employers to provide sexual harassment training. However, the employers are required to provide secure, harassment-free working environment, and they are required to protect their employees in case of harassment. Therefore, it is recommended to provide sexual harassment training for the employees.

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

It depends on the type of sexual harassment committed (criminal offence or unlawful act) and the type of the authority conducting the procedure regarding the sexual harassment case.

In case of the infringement of the Equal Treatment Act, the procedure may be initiated against the employer before the Equal Treatment Authority. The authority may order the termination of the injurious situation, restrain the prohibitor from future infringements, it can impose fines and publish its decision.

Employees seeking damages for sexual harassment before civil court, may be entitled to compensation. The amount of the compensation varies widely.

If the harassment qualifies as a criminal offence, as a main rule, the perpetrator shall be punishable by imprisonment not exceeding two years.

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

Employees who believe that they have been sexually harassed must prove that they were subject to sexual harassment which caused disadvantage or there is an imminent danger for suffering disadvantage.

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

If the perpetrator is a supervisor who had abused its dominant position, the consequences can be more severe.

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

The employer may dispute that the action violates the dignity of the person or is in connection with the protected characteristic of the person. Moreover, it may show that it did everything within its power, and everything that can be reasonably expected after becoming aware of the sexual harassment. Moreover, the employer should do everything that can be reasonably expected to avoid and prevent sexual harassment.





According to the recommendations of the Equal Treatment Authority, the employer may:

- impose proportionate penalties, in serious cases, terminate the employment of the perpetrator;
- have sexual harassment trainings;
- prepare sexual harassment policies;
- notify the person subject to harassment, that no punishment will be applied against an employee for reporting an incident of sexual harassment or for participating in an investigation;
- record the communication between the parties;
- involve external experts (e.g. mediator) if necessary, etc.

Who qualifies as a supervisor?

The supervisor is someone who has the power to hire, fire, demote, promote, transfer, or discipline the individual who is being harassed.



How can employers protect themselves from sexual harassment claims?

According to the recommendations of the Equal Treatment Authority, the employer may:

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- have sexual harassment trainings;
- prepare sexual harassment policies;
- notify the person subject to harassment, that no punishment will be applied against an employee for reporting an incident of sexual harassment or for participating in an investigation;
- record the communication between the parties;
- involve external experts (e.g. mediator) if necessary, etc.

Does sexual harassment cover harassment because of pregnancy?

Discrimination or harassment on the basis of pregnancy, childbirth, or related medical conditions is unlawful under the Equal Treatment Act.

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

The regulations cover sexual harassments of gay, lesbian, bi-sexual, and transgender persons as well.



What is prohibited retaliation?

Employers shall not take any adverse action against an employee for reporting an incident of sexual harassment or for participating in an investigation of a sexual harassment claim.

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

A consensual relationship cannot be considered as sexual harassment.

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

Yes.

What is the #MeToo movement?

"The #MeToo movement is movement against sexual harassment and assault. Although the hashtag #MeToo had been created some years prior, immediately following the public allegations against Harvey Weinstein in October 2017, the hashtag #MeToo was picked up by celebrities and spread virally on social media platforms. This powerful movement has put sexual harassment in the spotlight, and has empowered survivors of sexual misconduct, especial workplace misconduct, to step forward and take action against their perpetrators."

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

The #MeToo movement originally started in the U.S. has had an impact on the assessment of sexual harassment issues in Hungary too. As a positive impact of the movement, sexual harassments conducted decades ago were revealed and procedures were initiated. However there have been no changes in regulation on sexual harassments in the Hungarian law.

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