



# INTERNATIONAL LAWYERS NETWORK



## SEXUAL HARASSMENT IN THE WORKPLACE



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## SEXUAL HARASSMENT IN THE WORKPLACE: WHAT CYPRIOT COMPANIES NEED TO KNOW

### What constitutes sexual harassment?

Sexual harassment is any undesirable conduct of a sexual nature, expressed either by words or deeds, which has the purpose or effect of violating the dignity of a person, especially when it creates an intimidating, hostile, degrading, humiliating or offensive environment, during the person's employment or vocational training or during the person's access to employment or vocational training. Harassment can be any undesirable conduct associated with a person's sex, which has the purpose or effect of violating the dignity of a person, especially when it creates an intimidating, hostile, degrading, humiliating or offensive environment.



### What body of law governs sexual harassment in your jurisdiction?

Section 12 of the Equal Treatment for Men and Women in Employment and Vocation Training Law (205(I)/2002) (herein after "**the Law**") strictly prohibits any actions or omissions, either of a legal entity or a natural person, which is either recurring or non-recurring, which constitute sexual harassment.

### What actions constitute sexual harassment?

Sexual harassment can take many forms, including:

- Engaging in unwelcome sexual conduct towards an individual, including offensive comments, touching or sexual propositions.
- Conditioning a performance evaluation, promotion, salary increase, vacation or other job benefit on an individual's submission to sexual demands.
- Repetition of jokes or other remarks with sexual content.
- Taking or failing to take personnel action as a reprisal against any individual for rejecting sexual advances.
- Repeated references to a person's body, face, sexual preferences, sexual performance.
- Display of objects, posters, cartoons or pictures of a sexual nature.
- Displaying, sending, forwarding, downloading or otherwise distributing sexual materials via Internet, computer or e-mail.

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

Yes, as the Law prohibits any actions which constitute harassment or sexual harassment, if the harassment is based on sex.



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

Employers are not required by Law to provide training for their employees in matters relating to sexual harassment, although it is considered a good practice.

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

Anyone who has been in breach of the Law in matters relating to sexual harassment can bear both civil and criminal liability.

In Civil procedures, the Employment Tribunal Court will award damages on the basis that it is just and reasonable to do so and the damages awarded will cover all the damage suffered by the applicant as a result of the violation of the Law by the respondent. The damages cover material damages, physical and moral damages.

In Criminal procedures, if the perpetrator is a natural person then he will face a fine or a penalty of up to 6 months imprisonment or both and in cases where the perpetrator is a legal entity will face a fine up to €10.570.



### 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 show that the actions were (1) unwelcomed by him or her; (2) of a sexual nature and (3) of such nature, form and intensity which can reasonably violate the dignity of a person, especially when it creates an intimidating, hostile, degrading, humiliating or offensive environment for the person who is being sexually harassed according to a first instance case (*NEKTARIAS VERESIE v. MICHALIS MICHAEL and another, Application No. 556/11. 20/12/2017*).

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

Current legislation does not provide a distinction between supervisors and co-workers in matters relating to sexual harassment. The Law strictly prohibits any actions which can constitute sexual harassment and the only distinction made is between a natural and a legal person. However, in case the offence is committed by a co-worker, the supervisor can be deemed to be jointly liable provided they did not take all adequate measures to prevent it.

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

The law imposes an obligation on the employer to take active measures in protecting their employees from any actions or omissions that constitute sexual harassment. This can be done by issuing a Sexual Harassment Policy informing their employees about sexual harassment and the measures that must be taken to prevent such behavior from happening. Moreover, the employer, as soon as he becomes aware of any sexual harassment taking place in the workplace, must take all reasonable steps and corrective measures to stop any harassing behaviour from re-occurring.



If the employer takes all the above measures and he/she can prove that all the said measures were taken adequately, then it can potentially be used as a defence against sexual harassment claims, provided that the employer was not the perpetrator.

#### **Who qualifies as a supervisor?**

Although the Law does not provide a definition for a supervisor, it can be said that a supervisor, in cases involving harassment claims, 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?**

Employers should devise and provide all employees with a copy of a sexual harassment policy and implement accessible complaint procedures for employees who believe they are being subject to or witness sexual harassment and take all the necessary and reasonable steps in dealing with such claims as soon as they become aware of them.

#### **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 for Men and Women in Employment and Vocation Training Law.

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

The Law strictly prohibits sexual harassment claims which are based solely on sex and makes no reference or distinction in relation to sexual orientation and/or gender identity. However, if a person who is gay, lesbian, bi-sexual or transgender is being harassed due to his/her sex then this action is prohibited under the Law, irrespective of their sexual orientation and/or gender identity.



#### **What is prohibited retaliation?**

Employers may 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. A claim for retaliation may be made even if the underlying complaint of harassment is unfounded.

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

The Law defines sexual harassment as “any unwelcome by the recipient behavior of a sexual nature”.

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

The Law does not confer such liability on an employer.



### What is the #MeToo movement?

Although the #MeToo movement has put sexual harassment in the spotlight, and has empowered survivors of sexual misconduct, especially workplace misconduct, to step forward and take action against their perpetrators in countries worldwide and especially in the United States of America, such movement has yet to be founded in Cyprus and to this day there is no movement battling sexual harassment.

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