

Women, Business, and Sexual Harassment

Sexual harassment is a form of unlawful sex discrimination, which includes unwanted verbal or physical behavior of a sexual nature that occurs in the workplace or in an educational setting under certain conditions.

Sexual harassment is always an unsolicited and unreciprocated behavior. It is an unwanted and imposed sexual attention which may be reduced into two types: sexual coercion and sexual annoyance. *Sexual coercion* is that which is explicitly or implicitly made as a condition for favorable decisions affecting one's employment, gain or loss of tangible job benefits. *Sexual annoyance*, although not directly related to anyone's employment, still creates an intimidating, hostile, or offensive environment in the workplace.

Such behavior is illegal if it creates an environment that is hostile or intimidating, if it interferes with a person's work or school performance, or if acceptance of the harasser's behavior is made a condition of employment or academic achievement. A number of more enlightened countries—including United States, Philippines, Japan, Canada, Australia and several European nations—have laws that prohibit sexual harassment.

Is sexual harassment a form of discrimination?

The Supreme Court of the United States ruled in a 1986 case (*Meritor Savings Bank v. Vinson*) that sexual harassment is a form of discrimination prohibited by Title VII of the *1964 Civil Rights Act*. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment.

The most important element is: When submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment (US Equal Employment Opportunity Commission, 1980).

Is there an anti-sexual harassment law in the Philippines?

Seemingly, the Philippines is one of the enlightened nations since we have enacted a law against sexual coercion. The *Philippine Anti-Sexual Harassment Act of 1995* somehow repeated the US Supreme Court ruling of 1986 Case *Meritor Savings Bank v. Vinson*. It defines sexual harassment as:

“The sexual favor made as a condition in the hiring or in the employment, reemployment 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” (RA 7877, section 3).

Is this law addressed to the male specie?

Strictly speaking, sexual harassment is sexual coercion, a condition for favorable decisions affecting one's job. In a strict legal sense, sexual harassment could be committed by somebody having authority or moral ascendancy over another—usually by a male superior. As the *Anti-Sexual Harassment Act* reads:

“An employer, 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...”

Most often, those persons having authority are male superiors. But the law should work both ways, for women too can become sexual harassers or *tsansingeras* in local word. Michael Crichton's *Disclosure* (starring Michael Douglas) is a pertinent movie to watch (or book to read), where it is the woman (Demi Moore) who frets and assaults the man. Nevertheless, it doesn't take a genius to understand that the law (*Anti-Sexual Harassment Act*) protects our women. In the Philippines, the *Anti-Sexual Harassment Act* is virtually addressed to men. More often than not, men who wield some kind of authority become sexual harassers.

What are the manifestations of sexual harassment?

Sexual harassment may be manifested in both the verbal and physical conduct. Verbal harassment may consist of lewd comments or remarks, offensive jokes or outright propositions. The physical form may range from a naughty glance, leering, kissing and intentionally brushing up against a person to pinching, touching and any sexual assaults.

The use of objects or pictures to harass the victim is another form. While it may be difficult to define sexual harassment in watertight terms it is important to have a clear idea of the sorts of behavior that constitute sexual harassment, given a particular setting. The European Commission Code of Practice (1993) presents a list, which may include the following:

- Touching including pats, hugs or *akbay*, cuddles, kissing or *beso-beso*, fondling, pinches and staring;
- Standing too close, bending over or extending legs or bodies over desks;
- Leering, watching women go up open staircases, making persistent eye contact;
- Gestures using hands, tongue, mouth, pieces of instrument, fondling of private parts;
- Suggestive comments about one's body, clothes, personal lives, partners;
- Innuendoes, sexist or lewd remarks or jokes; and
- Display of sexually explicit materials, sexual or sexist telephone calls, fax messages, e-mail, graffiti, letters or notes.

The list is certainly not exhaustive and it widens the often narrow definition of sexual harassment (unwanted visual, verbal, and physical behavior of sexual nature).

What makes verbal sexual harassment different from a compliment?

A compliment produces a good feeling so much so one wants the interaction to go on. Sexual harassment is so discomforting that one wants it to stop—*pronto*. Such conduct causes the victim to undergo embarrassment or humiliation and a sense of being violated, taken as an object and pushed into a corner.

Verbal sexual harassment is more on the behavior that is coercive, unsolicited and embarrassing on the part of the victim. Take note: Sexual harassment is not based on the perpetrator's good feeling but on the victim's bad feeling. A compliment produces a good and healthy feeling on the receiver while verbal sexual harassment definitely produces a diseased feeling. For this reason, it's always proper for men—more importantly for those in management and executive positions—to conduct themselves in a friendly but highly professional manner to prevent misunderstanding.

Are employers accountable when sexual harassment happens in the workplace?

Because the Philippine *Anti-Sexual Harassment Act* (RA 7877) declares sexual coercion or any unreciprocated and unsolicited behavior in the workplace or educational institution unlawful, it imposes a duty on the employer to prevent or deter any commission of acts of sexual harassment.

That Philippine *Act of 1995* makes sure that accountability falls on both the harasser and the employer. For when an employer fails to act after knowing the commission of offense, he/she will be held liable in solidarity for damages arising from the acts of sexual harassment. If found guilty, the offender is penalized by imprisonment from one to six months or fine ranging from P10,000 to P20,000 or both at the discretion of the court.

Are witnesses important to prove that sexual harassment took place in the workplace?

Unless there are witnesses to the incident, which is almost improbable to produce, a complaint for sexual harassment usually winds up as a case of the word of the female employee against that of the alleged author of the sexual indiscretion.

Let me give you an example. In one of the first documented cases, Magdalena Gapuz, head of the Mother and Child Preschool, and Ligaya Annawi, a teacher at Fort Del Pilar Elementary School, accused the City Schools Superintendent of sexually harassing them on several occasions.

During the hearing, the committee of investigation, chaired by an Undersecretary of the Department of Education, asked the complainants to produce witnesses. In reply, rather with more common sense, Gapuz said: "Sir, how can I produce witnesses of Mr. Belagan giving me a stolen kiss and asking for a date to facilitate approval of the permit to operate my school?" (Cimatu & Fernandez, 1994).

The case boils down to trustworthiness: Who between the parties is telling the truth? Was the employee motivated by ill will and bad faith when she filed the complaint? Did she merely make up the story to attract attention to herself? Does the alleged harasser carry a reputation for being loose and reckless with his hands (and mindless too) whenever he interacts with female employees?

It may be significant to note that in our country there was no specific law against sexual harassment until July of 1995 when the *Anti-Sexual Harassment Act* was promulgated. In CSR and business ethics, however, it is best to understand that even before it became illegal, sexual harassment in the workplace and educational institution is offensive from the moral perspective. Ethical principles and social responsibility always apply even in the absence of a law which declares an act illegal.

Posted by **Dr. Jose Mario B. Maximiano**

Ref.: <http://jmbm.blogspot.dk/2010/06/women-business-and-sexual-harassment.html>

Look also here: www.law.aboutphilippines.ph and www.humanabuse.aboutphilippines.ph