

Protection of Women's Rights in Workplace Sexual Harassment

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Abstract:

In contemporary society, the impact of workplace sexual harassment on women is increasingly drawing attention. This paper, focusing on the study of workplace sexual harassment issues in China, aims to explore the current state of legal protections for women and the corresponding measures. The study utilizes regulative analysis and case study methods to examine the drawbacks and limitations of the legal framework in practical application, revealing deficiencies in safeguarding women's rights. The research finds that despite some legislation in China specifying the legal consequences of sexual harassment, the legislation lacks specificity and sufficient protection for women in its implementation. Therefore, this paper aims to provide theoretical support and policy recommendations to enhance the legal framework for preventing and addressing workplace sexual harassment, thereby promoting gender equality and a healthier workplace environment.

Keywords: workplace sexual harassment; women's rights; power relations; employment environment; responsibility subjects.

1. Introduction

In today's society, the prevention of sexual harassment is a widely discussed social issue and a focal point in safeguarding women's rights. In the workplace, due to their often disadvantaged position both physiologically and psychologically, women frequently become the primary victims of workplace sexual harassment. Using The Supreme People's Court of P.R.C.'s Guiding Case No. 181, "Zheng v. Honeywell Automation Control (China) Co., Ltd. (dispute over an employment contract)", as an example, this case not only reveals the existence of workplace sexual harassment but also underscores the urgency in addressing this issue.

The definition of workplace sexual harassment is not complex. It refers to situations in an unequal gender relationship workplace where one person uses language, actions, or other means to impose unwelcome sexual demands, behaviors, or contact on another person, or creates a hostile or offensive work environment. These behaviors not only make women uncomfortable but also violate their rights and dignity.

In such a workplace environment, it is crucial to clearly identify the responsible parties, in addition to the subject (the person committing sexual harassment) and the victim (the person subjected to sexual harassment). Responsible parties refer to individuals or entities accountable for sexual harassment, including those directly engaging in such behavior and organizations or managers who may indirectly facilitate or condone it. Using The Supreme

People's Court's case in 2022 involving Zheng and Honeywell as an example, this case fully demonstrates the obligations of higher-level entities in preventing workplace sexual harassment. As a senior executive, Zheng, despite being aware of the company's regulations on preventing sexual harassment, disregarded a female employee's complaints of harassment and even supported compliance with the harasser's demands, ultimately leading to her dismissal by the company. This case emphasizes the importance of creating a safe and inclusive work environment where all individuals are respected and treated with dignity.

Currently, society has made some progress in addressing and resolving workplace sexual harassment, but there is still much work to be done to eliminate this widespread problem. For example, creating a more equitable working environment for women, establishing corresponding legal protection systems, and implementing safe reporting mechanisms.

2. Workplace Sexual Harassment: Key Issues in Protection

2.1 Elements of Legal Constituents of Sexual Harassment

The determination of the constituent elements of "sexual harassment" is a prerequisite for the reasonable and objective characterization of such behavior. In practice, the most common constituent elements of sexual harassment are subject, object, and subjective aspect. Identifying these elements at the legal level can objectively provide

legal protection for victims and ensure appropriate legal accountability for perpetrators.

2.1.1 Subject

In sexual harassment cases, the perpetrator, i.e. the subject, refers to the individual who committed the behavior. The perpetrator usually holds higher power in sexual harassment environments, such as supervisors or other influential figures. These individuals may use their status or power to exert pressure or manipulate victims. Legally speaking, it is necessary to determine the identity and behavior of the perpetrator through evidence to ensure fair accountability.

2.1.2 Object

The object of sexual harassment, i.e. the object, is the direct victim of sexual harassment. In the power structure, victims are usually in a lower or weaker position, representing the relatively weaker gender. They may experience sexual harassment in workplace settings, schools, social gatherings, or other environments. Sexual harassment can cause physical and psychological discomfort and distress for the object, potentially affecting their work, education, and personal life. Legally, protecting the object is crucial to ensure fair treatment and legal safeguarding, alongside providing appropriate support and assistance.

2.1.3 Subjective Intentions and Behaviors

The subjective intent of sexual harassment usually revolves around the direction in which the perpetrator wishes to obtain sexual benefits from the victim. This intention is intended to satisfy the perpetrator's desire for sexuality, control, or power, without regard for the victim's feelings. At the same time, the implementation of the subject's intention may include the sexual evaluation of the victim, gender discrimination, abuse of gender power, etc. In various ways, they try to deprive the victim of his or her autonomy and dignity, treating them as a sexual object rather than as an individual.

In terms of behavior, sexual harassment can manifest itself in a variety of ways, which can be verbal, written, physical contact, or other non-verbal. Verbal sexual harassment may include inappropriate sexual comments, sexual ridicule, sexual innuendo, etc.. Physical contact sexual harassment may include inappropriate touching, hugging, touching, etc., ... More subtle forms, such as sexism and inappropriate gaze, can amount to sexual harassment. Legally, these factors need to be carefully analyzed and evaluated to determine whether sexual harassment is constituted and to take appropriate legal measures accordingly.

2.2 Key Criteria for Workplace Sexual Harassment: Power Relations and Employment

Environment

In cases of workplace sexual harassment, power relations, and the employment environment are two crucial criteria for determination. Power relations refer to an unequal relationship stemming from factors such as job position, status, or control over resources, where one party holds significantly greater power than the other, who is relatively weaker. Such inequality in power can lead to abuses, resulting in various forms of workplace issues, including sexual harassment.

In practical terms, hierarchical relationships in the workplace are quite common. Superiors possess authority over subordinates in terms of guidance, evaluation, and disciplinary actions, while subordinates often depend on superiors for resources, opportunities, and career support. This unequal power dynamic may lead to superiors abusing their authority to engage in various forms of sexual harassment.

Additionally, it is important to consider in what type of environment these power relations occur. The employment environment encompasses traditional work settings under labor contracts, which are the primary locations where sexual harassment occurs. However, as society evolves, the concept of the employment environment is expanding beyond traditional labor contracts and workplaces to include broader workplace relationships and contexts.

Taking the field of scientific research as an example, professors may exert control over research projects, withdraw research funding, or reduce performance bonuses. Students' evaluations of research outcomes, opportunities for publishing papers, and even career prospects can be directly influenced by professors. In such cases, a power relation exists between professors and students, where students may feel compelled to tolerate inappropriate behavior from professors to protect their interests or avoid pressure. Additionally, the emergence of new work modes like remote work and online work complicates the definition of the employment environment.

In China, a notable case highlighted in a joint publication by the Supreme People's Procuratorate, the All-China Women's Federation, and the All-China Federation of Trade Unions in 2022 involved Zhou, who committed sexual harassment against Hong during her job application process. Zhou exploited Hong's unequal position as a job seeker, deceiving her under the guise of business negotiations and using his industry status to threaten her. Despite not having a formal employment relationship, a power relation akin to a superior-subordinate relationship existed between Zhou and Hong. Therefore, although not legally employed by Zhou, he engaged in workplace sexual harassment against a female job seeker. This case underscores the need to redefine the scope of "workplace" in the context of the modern era, and suggests the necessity

for more comprehensive and applicable preventive measures to better protect women's rights in the workplace.

In conclusion, power relations and the employment environment are crucial criteria for determining cases of workplace sexual harassment. As societal changes and shifts in work environments continue, the understanding and application of these criteria are evolving.

2.3 The Key Criterion of Workplace Sexual Harassment: Responsible Party

In contemporary workplace employment environments, the legal entities forming the employment relationship based on the signing of labor contracts include: the employer and the employee who sign the labor contract, as well as the legal representative of the employer. However, in the specific context of workplace sexual harassment, the perpetrator is necessarily an individual, which notably extends beyond the limits of legal representation to include broader categories such as department heads, team leaders, and project managers. In this scenario, the employer acts as a third party in the sexual harassment relationship and, based on the theory of employer liability, must assume the obligation to protect and care for employees in the workplace. Consequently, the employer inevitably bears corresponding responsibility when an employee suffers harm.

According to the Tort Law of P.R.C., when a personal service relationship causes harm to others due to the service provided, the receiving party bears tort liability. Similarly, the Employment Contract Law of P.R.C. reinforces the legal basis for employer liability, stipulating that the employer is liable for compensation when it involves the personal interests of employees and causes harm to them. The law mandates that employers bear responsibility for injuries suffered by employees in the course of performing work tasks, primarily based on the inherent requirements of the employment relationship. Due to the employee's subordinate status in terms of identity, obligations, and economic aspects with respect to the employer, this unique relationship necessitates that the employer assumes the responsibility to protect and care for the employee.

Based on the legal principles established in the aforementioned statutes, the author argues that employer responsibilities should extend to the realm of workplace sexual harassment. Firstly, the above legal provisions aim to protect the legitimate rights and interests of employees and ensure that employers bear responsibility for harm suffered by employees during their work. Sexual harassment not only violates employees' personal rights but also severely disrupts their work environment and efficiency. Secondly, the unique nature of the employment relationship, wherein the subordinate status of employees dictates that employers have a duty to protect and care for them, is undermined by the existence of sexual harassment. Lastly,

from the perspective of corporate social responsibility, while employers seek to maximize their own interests, they are obligated to take responsibility for employees' fundamental interests—both physical and mental health. Legal principles and societal demands necessitate the protection of individuals' legal rights and the maintenance of social order.

Besides China, there are many other countries in the world that have established employer liability systems. For instance, cases like *Faragher v. City of Boca Raton* and *Burlington Industries, Inc. v. Ellerth* in the United States illustrate this. A female employee served as a lifeguard named Faragher in Boca Raton, once alleged continuous sexual harassment by two male supervisors in her job. Following her resignation, she filed a lawsuit accusing the City of Boca Raton of failing to take reasonable measures to prevent or rectify the harassment. In the second case, Ellerth, a female salesperson, accused a mid-level manager at Burlington Industries, Inc. of sexual harassment. However, Ellerth did not formally file a complaint with the company during the incident.

According to the US Supreme Court, the determination of employer liability should differentiate between two scenarios: if a superior within a power relationship engages in actions that materially disadvantage the subordinate, leading to significant changes in their work conditions (such as dismissal, demotion, or involuntary transfers), the employer should assume vicarious liability. On the other hand, if managers fail to engage in substantial adverse employment actions against subordinates, employers should generally assume vicarious liability but have the right to defend themselves. It should be noted that employers are obligated to exercise reasonable care to prevent and promptly correct any instances of sexual harassment as part of their duty to prevent workplace sexual harassment.

3. Current Legal Regulations on Workplace Sexual Harassment in Various Countries

3.1 System Design of Employer's Responsibility for Sexual Harassment Prevention in Chinese Law

China's labor laws have long lacked a comprehensive system for preventing and addressing workplace sexual harassment. Laws such as the Criminal Law tend to focus on post-event legal remedies and punishments for acts of sexual harassment, rather than emphasizing preventive measures beforehand. This situation has led to a lag in labor laws and regulations regarding workplace sexual harassment. Only in recent years have some legal provisions been gradually introduced, clarifying the responsibilities that employers should assume.

Although the Special Rules on Labor Protection of Female Employees issued in 2012 stipulates that employers shall prevent and stop sexual harassment against female workers in the workplace, it does not specify legal responsibilities for failure to fulfill this obligation. Due to its lower hierarchical status and limited effectiveness, it imposes relatively weak constraints on employers.

With increased societal attention and awareness of sexual harassment issues, the Civil Code issued in 2020 states if a person infringes upon another's rights by committing sexual harassment through words, text, images, physical behaviors, or other means against the will of the victim, the victim has the right to demand that the perpetrator assume civil liability according to law. It then further mandates that government agencies, enterprises, schools, and other entities shall take reasonable preventive, complaint acceptance, investigation, and disposal measures to prevent and stop sexual harassment through abuse of power, subordinate relationships, etc.

This actually provides dual protection for employees: on the one hand, clarifying the employer's prevention and control obligations, and on the other hand, expanding legal remedies. If an employee is subjected to sexual harassment in the workplace, resulting in personal or property damage, and the employer fails to take necessary preventive measures, the employer will bear tort liability in accordance with the law. This indicates that employers have a responsibility to ensure that there is no sexual harassment in the workplace, and at the same time, they should take proactive measures to prevent and stop such incidents from happening. In addition, if employees are harmed due to sexual harassment, employers should fulfill their obligation to protect them. Legislation should also provide a means for victims to safeguard their legitimate rights.

The Civil Code does not explicitly mention gender in its provisions on the prevention and control of sexual harassment, a characteristic determined by its focus on protecting natural persons. The Laws on the Protection of Women's Right and Interests (2022 Revision) specifically stipulates in Article 80 the legal obligations of employers when women suffer sexual harassment, clarifying the legal responsibilities of employers in preventing workplace sexual harassment and strengthens penalties for violations. This move is expected to further combat sexual harassment, enhance employers' attention to the issue, effectively protect the legitimate rights and interests of female employees, and promote the establishment of a fair and healthy workplace environment.

3.2 Legal Regulations on Sexual Harassment Prevention in Foreign Countries

Many countries around the world have recognized the delay in civil remedies in cases of sexual harassment and

have established employer liability systems to prevent workplace sexual harassment.

The United States was one of the first countries in the world to legislate on sexual harassment. In defining workplace sexual harassment, the U.S. primarily relies on legislation and case law. In addition to the historically significant Title VII of the Civil Rights Act, statutory laws include the Equal Employment Opportunity Act, and so on. Under these laws, the Equal Employment Opportunity Commission (EEOC), appointed by the President, has the authority to issue injunctions and can file lawsuits on behalf of federal courts against employers who violate federal employment discrimination regulations. Furthermore, the EEOC has issued documents such as the Policy Guidance on Current Issues of Sexual Harassment, which provides important guidance for preventing workplace sexual harassment. For example, the Enforcement Guidance Workplace Harassment details specific measures for addressing workplace sexual harassment.

Germany follows the strict principle of fault liability. According to Section 831 of the German Civil Code, if an employer has fulfilled their relevant responsibilities and preventive obligations within the work environment, or if despite fulfilling these obligations, they could not prevent the occurrence of harm, then the employer is not held liable. Additionally, German law recognizes that irrespective of any benefit gained, if an act of sexual harassment causes injury to the personal dignity of the victim, the victim has the right to seek redress. The General Act on Equal Treatment affirms employers must take preventive measures to protect employees from sexual harassment. There are also some other laws support the right of victims to seek remedies, including the right to file complaints with the respective company or administrative authorities. Based on the above points, employers are obligated to promptly supervise and take measures to respond to victims' requests, proactively implementing reasonable preventive measures to prevent workplace sexual harassment.

3.3 Existing Barriers and Legislative Insufficiencies

The legal complexities surrounding the application of laws against sexual harassment are both common and intricate, involving multifaceted factors.

3.3.1 Ambiguity in the Current Legal Definitions of Sexual Harassment

Firstly, within the current Civil Code, the interpretation and definition of sexual harassment in China are relatively ambiguous. While it enumerates various forms of sexual harassment, the legal provisions lack a clear-cut definition of sexual harassment. Conversely, in other jurisdictions, countries have defined sexual harassment through case law. For instance, in the United States, feminist legal

scholar Catharine MacKinnon initially defined sexual harassment as “the unwanted imposition of sexual requirements in the context of a relationship of unequal power”. Her viewpoint, that sexual harassment is a form of gender discrimination, was acknowledged by the U.S. Supreme Court in the landmark 1986 case of Meritor Savings Bank, FSB v. Vinson. This transition from theory to legal framework based on gender discrimination signifies a more mature definition and application of sexual harassment in the U.S. legal system.

The imperfections in defining sexual harassment may complicate the handling of related cases, making it challenging for judges and juries to render accurate judgments. Furthermore, legal limitations such as statutes of limitations often prevent some victims from obtaining rightful judicial remedies. Sexual harassment is often a highly subjective behavior. Therefore, the lack of a precise definition can easily lead to perpetrators using excuses to exonerate themselves.

3.3.2 Evidence Fixation and Obstacles in Sexual Harassment Cases

Sexual harassment often occurs in private settings, so there are few direct witnesses or video evidence. Victims may choose not to publicly report the behavior due to fear, shame, or embarrassment, making it more difficult to collect evidence in such cases. In court, victims’ statements often rely more on evidence, which also increases the difficulty of conviction.

Moreover, considering that sexual harassment cases often involve power differentials, perpetrators usually hold higher positions of authority. This dynamic can deter victims from reporting due to fears of facing severe consequences, thereby abandoning their efforts to protect their rights. Power imbalances may lead to the silencing of victims, hindering the exposure and resolution of sexual harassment cases.

3.3.3 Unclear Legal Responsibilities of Employers

Although China has stipulated in the Civil Code that employers are responsible for preventing and addressing sexual harassment, the regulations regarding penalties for employers who fail to fulfill these obligations are not well-defined or sufficiently stringent. In practice, some employers may not diligently fulfill their responsibilities to prevent sexual harassment because the consequences for violations are not severe or clearly outlined. The lack of effective penalties may lead some employers to adopt a stance of covering up or ignoring sexual harassment issues rather than actively taking preventive measures.

Therefore, enhancing supervision and management of employers, along with establishing stricter and clearer penalty mechanisms, is crucial for effectively preventing sexual harassment.

3.3.4 Influence of Traditional Sociocultural Factors on Sexual Harassment Victims

Sociocultural factors significantly influence the perception and response to sexual harassment. In certain societies, sexual harassment may be normalized, placing additional societal pressures and discrimination on victims, making them unwilling or unable to report such behaviors. Additionally, gender stereotypes and discrimination may lead to biases in recognizing sexual harassment, resulting in some behaviors being trivialized or disregarded.

In conclusion, the legal complexities surrounding sexual harassment involve various factors. Resolving these issues requires the improvement of legal frameworks, strengthening measures against sexual harassment, enforcing punishments, and enhancing awareness among all parties involved to create a safe environment free from sexual harassment.

4. Measures for Preventing and Combating Workplace Sexual Harassment

4.1 Ensuring the Reporting Rights and Privacy of Victims

Sexual harassment in the workplace not only violates the physical and mental health of victims, but also greatly damages their career and personal dignity. Therefore, ensuring victims’ right to report and protecting their privacy is one of the main tasks in preventing and addressing sexual harassment.

Firstly, it is necessary to ensure that victims can easily report sexual harassment to relevant organizations such as women’s protection associations and women’s federations. The current Chinese Constitution grants citizens the right to report, a democratic oversight right. Regarding citizens’ reports, no one may suppress or retaliate. Although the accused in sexual harassment cases does not have public attributes, the poor behavior of the person who has implemented sexual harassment has constituted malfeasance and illegality. Therefore, under the rights granted by the constitution, the country can enhance its build-up of the reporting protection framework against workplace sexual harassment. Guided by these legislative principles, current relevant legislation and regulations must be improved further, and it is necessary to improve Article 11 of the Special Provisions on Labor Protection of Female Employees regarding protection measures and reporting measures for female workers after sexual harassment to ensure their universal applicability and effectiveness. This not only helps strengthen the fight against sexual harassment but also contributes to improving workplace environments and promoting social fairness and justice.

Additionally, it is essential to enhance the roles of the organs of public security, the procuracy and the court in

handling sexual harassment complaints, ensuring that citizens can report safely and fairly. The reporting mechanism should be clear and transparent. Employers should establish detailed internal procedures for handling sexual harassment complaints and widely publicize them among all employees to ensure everyone knows how to report incidents. It is crucial to guarantee that victims will not face any form of retaliation or discrimination.

Furthermore, protecting the privacy of victims is paramount. Employers should strictly control the disclosure of information when dealing with sexual harassment complaints to prevent further harm or social stigmatization of the victims. Professional psychological support and counseling services should be provided to help victims cope with potential negative effects. Encouraging victims to seek legal assistance or professional counseling is also important to safeguard their legitimate rights and interests throughout this process.

4.2 Enhancing the Role of Employers in Preventing and Addressing Workplace Sexual Harassment

As the main place where sexual harassment occurs, the workplace plays a crucial role in preventing and addressing such behavior. As employers and managers of the workplace, they should take responsibility for ensuring workplace safety and order, and have an obligation to actively prevent and address any form of sexual harassment in order to protect the rights and interests of employees.

Firstly, employers should augment protection for female employees in their internal regulations, establishing and enforcing a zero-tolerance policy against sexual harassment. These regulations should clearly articulate the stance against sexual harassment, protections for female employees' rights, and procedures for handling sexual harassment complaints. Coverage should encompass all employees, including the C-levels, middle-level managers, and grassroots staff, ensuring everyone understands and complies with the relevant provisions.

Secondly, employers need to establish effective complaint-handling mechanisms. Upon receiving a sexual harassment complaint, immediate action should be taken, including thorough investigation and serious disciplinary measures within the legal framework. The process must ensure fairness, transparency, and confidentiality, respecting the rights of all involved parties. Simultaneously, careful consideration should be given to evidentiary issues when handling reports of sexual harassment. If an investigation confirms the occurrence of sexual harassment, employers should promptly take corrective actions, such as warnings, job reassignments, penalties for violators, or even termination of employment contracts.

Thirdly, employers should enhance employee education and training. Regular training sessions on sexual ha-

arrassment should be conducted to educate employees on relevant laws, regulations, and company policies, thereby increasing awareness and sensitivity to sexual harassment issues. Training content may include recognizing sexual harassment behaviors, how to respond to and report incidents of sexual harassment, among other aspects. The goal is to effectively prevent occurrences of sexual harassment through education and training, fostering a respectful and harmonious work environment.

Lastly, employers should actively promote mutual respect and equality among employees. By cultivating an open and inclusive corporate culture that advocates teamwork and mutual support, workplace conflicts and misunderstandings can be minimized. Leaders and managers in organizations should lead by example, consistently upholding fairness and integrity, thereby ensuring fairness and transparency in the workplace.

4.3 Improving the Construction of Relevant National Laws

Effective legal frameworks are crucial for preventing and addressing workplace sexual harassment.

Initially, our country's compliance management regarding sexual harassment started relatively late, particularly in forming a comprehensive compliance system for corporate sexual harassment. Based on the protection of fundamental rights of natural persons in the Civil Code and the safeguarding of women's rights in the Law on the Protection of Women's Rights and Interests, corresponding laws, regulations, departmental rules, and judicial interpretations have been formulated and refined. However, as mentioned earlier, there is still room for improvement in China's legal definition of workplace sexual harassment. There is a need to further clarify the legislative techniques in terms of legal concepts, adopting both general and enumerative legislative techniques to clearly define the connotations and extensions of sexual harassment within legal categories. This dual approach helps to delineate its scope comprehensively and reduce enforcement difficulties caused by legal uncertainty, thereby narrowing the discretion of law enforcement, ensuring uniform enforcement standards, and defining sexual harassment behaviors clearly to ensure the applicability and effectiveness of the law.

Secondly, legislature should specify the legal responsibilities of workplace sexual harassment and the corresponding penalty mechanisms in regulations at different levels. On one hand, they should define the types of responsibilities for workplace sexual harassment, including circumstances under which criminal, administrative, and civil responsibilities should be assumed. On the other hand, they should standardize the specific degrees of infringing behaviors and their corresponding penalties. Individuals or organizations engaging in sexual harassment should bear

appropriate legal responsibilities, including administrative penalties, economic compensation, and criminal penalties, to effectively combat and sanction violations. This not only serves as a deterrent but also protects all employees in the workplace from sexual harassment.

Thirdly, the state should establish a sound complaint reporting and judicial remedy system. The law should clearly stipulate the rights and procedures for victims to report sexual harassment, protecting the privacy and safety of reporters. In addition, it is necessary to ensure that courts adjudicate sexual harassment cases efficiently and fairly, ensuring that victims obtain timely judicial relief and compensation. At the same time, it is important to strengthen the judicial oversight function of the procuratorate to supervise the fairness and legality of court rulings.

Apart from the above points, the state should actively engage in social propaganda and educational activities to raise public awareness and attention to the issue of sexual harassment. Through education, training, and public opinion guidance, societal cultural transformation can be promoted to establish a respectful and harmonious workplace environment.

5. Conclusion

Against the backdrop of increasingly prominent issues of workplace sexual harassment, this paper conducts a comparative analysis of current laws in China and abroad regarding the protection of women facing workplace sexual harassment. It reflects inadequacies in China's definition and punishment of such behaviors. This study aims to further understand the barriers in legal implementation of sexual harassment issues, explore more effective judicial and social intervention mechanisms, and ensure the full protection of women's rights in the workplace. Additionally, the author hopes that future legal reforms will focus on enhancing the clarity and operability of legal provisions, establishing a more robust legal enforcement system, and improving public awareness and workplace culture. Only in this way can true gender equality be achieved and the healthy development of the workplace environment be ensured.

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