

Laws of protection of women rights against sexual harassment in the workplace

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ABSTRACT

Surveys of sexual harassment at workplace in Vietnam and other countries show that most victims of sexual harassment are women. In fact, the number of sexually harassed female employees each year is very high, but the number of reported and public cases is low. The damage caused to female workers is not only physical and mental but also are long-lasting and incomplete recovery. However, the current legal corridor in Vietnam is incomplete. Administrative sanctions for sexual harassment are not enough of a deterrent while there are no criminal sanctions. In addition, there is no reasonable complaint and denunciation settlement process. Therefore, it is necessary to re-search the current status of sexual harassment in Vietnam and other countries as well as the legal framework governing this issue. The authors used the method of studying secondary sources to summarize and clarify the data of female workers who have been sexually harassed. At the same time, we analyze and compare to foreign regulations, finding out the progress points to improve the loopholes of current labor laws. Through studying foreign legislation on sexual harassment, some highlights in the legislation of some countries whose anti-sexual harassment policy is effective. It includes a strong verbal statement; an efficient and simple complaint procedure; and remedial measures which are powerful and tailored to the nature of the offense. In addition, training should be conducted frequently for all workers and targeted at staff who play a specific role in the complaint procedure.

During our research, the authors used the following research methods: analysis, synthesis, comparison, interpretation, induction, and use of secondary sources.

Key words: sexual harassment at workplace, women rights, Labor Code

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INTRODUCTION

Sexual harassment at workplace is a behavior taking place in many countries in the world, including Vietnam. Therefore, it has become a pressing issue that raises widespread public concern, especially from policy-makers and legislators. The laws of sexual harassment and its prevention have been gradually improved. The Vietnamese labor laws paid attention to this issue and initially had basic legal regulations on sexual harassment at workplace, which helps employees identify sexual harassment. Hence, they have some measures to handling sexual harassment at workplace. However, there are still some legal loopholes that make it difficult to protect the rights of female workers in the workplace. The study of the laws on the protection of female workers against sexual harassment at workplace is a topic that needs further attention and intensive research in order to improve the current Vietnamese labor laws.

SEXUAL HARASSMENT IN VIET NAM AND SOME COUNTRIES IN PRACTICE

“In Germany, a survey indicated that 93% of working women were victims of sexual harassment in 1998” [1, p.14]. “In Canada, 51% of women reported having experienced sexual violence at least once” [1, p.14]. “In India, a woman is sexually harassed every 12 minutes” [1, p.14]. “In China, a survey which was conducted by the Women’s Watch China in 2009 found that 20 percent of the interviewees (1,837 females) conceded to have suffered sexual harassment at work. A survey published in Hong Kong in February 2007 showed that nearly 25% of workers interviewed suffered sexual harassment and two-third of them were women. Among male workers, only 6.6% reported their grievance (compared to 20% of women) because they felt too embarrassed because of ridicule”². “An aware Singapore study in 2008 also indicated that 54.4% of the 500 respondents had experienced some form of sexual harassment” [3, p.172]. “According to a 2004 report issued in Italy, 55.4% of women in

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the 14-59 age group reported having been victims of sexual harassment. One out three female workers are subjected to sexual intimidation for career advancement with 65% blackmailed weekly by the same harasser, usually a co-worker or supervisor. Furthermore, 55.6% of women subjected to sexual intimidation had resigned from the job. In the European Union, 40-50% of women have reported some form of sexual harassment at workplace. According to a survey carried out by the Australian Equal Opportunity Commission in 2004, 18% of interviewees between the age of 18 and 64 years said they had experienced sexual harassment at workplace. Of all those who experienced sexual harassment, 62% were physically harassed and less than 37% were likely to report the abuse. In the United States, in 2006, the Equal Opportunity Commission received 12,025 complaints about sexual harassment at workplace. This is an increase of 100% in just 5 years with 15.4% of these complaints filled by men” [4, p.2]. From FY 2010 to FY 2017, the number of sexual harassment claims in the United States which were sent to the Equal Opportunity Commission decreased gradually to 6,696. There was a rapid increase of sexual harassment claims to 7,609 in FY 2018. From FY 2019 to FY 2010, the United States witnessed a dramatic drop of 7,514 to 6,587 in sexual harassment claims. More than 6,500 sexual harassment claims were filed with the Equal Opportunity Commission in FY 2020². “In Vietnam, the majority of people who are sexually harassed are women (78.2%). Their age is between 18 and 30 years old, while men account for 21.8%”⁵. Another research shows that: “Overall, the type of women most vulnerable to sexual harassment are young, financially dependent, single, or divorced, and with migrant status”⁶.

The Ministry of Labor - Invalids and Social Affairs, which received the valuable support of the International Labor Organization, conducted research on sexual harassment which shows that 80% of the victims in Vietnam did not understand clearly the form of sexual harassment⁷. In fact that many victims of sexual harassment do not realize it and their rights have not been adequately protected. The rest of them have known but they still have chosen to keep quiet, resign and accept due to the fear of losing their jobs, and retaliation. Some want to trade for a position, career opportunities. In our perspective, this is for the following reasons: Many women choose to remain silent because they fear being persecuted by harassers who have a higher social status than them. Some others are afraid of being ridiculed by people around, ranging from their colleagues, friends, neighbors to

their families. Some other women do not understand the legal knowledge to prevent and protect when being sexually harassed.

THEORETICAL BASIS

The concept in international law

It is very important to determine the concept of sexual harassment at work because it helps us identify when people are sexually harassed and will take action to punish sexual harassment.

The Universal Declaration of Human Rights, for the first time in 1948, banned discrimination of any kind, including that based on sex, which was further supported by two international conventions adopted in 1966. The Convention on the Elimination of All Forms of Discrimination Against Women⁸ in 1979 accepted a broad definition of discrimination specifically against women and required the ratifying states to take appropriate measures to eliminate discrimination against women in the field of employment, ratified on 17 February 1982 by Vietnam. However, this Convention has no provision stating the ban on sexual harassment at work.

General Recommendation No. 19 was issued by the Convention on the Elimination of All Forms of Discrimination against Women in 1992. In paragraph 18, it clarifies that “Sexual harassment includes such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demand whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment” [5, Article 11. 8.]. Sexual harassment includes unwelcome sexually determined behavior based on that definition, but what is a sexually determined behavior is still not clarified. Therefore, this concept of sexual harassment is also indefinite, which leads to confusion for individuals, law enforcement agencies, and related entities. In addition, the object of regulation of the Convention only aims at women, so the concept of sexual harassment is not comprehensive compared to that of other international organizations.

The Philippines also learns from the Convention on the Elimination of All Forms of Discrimination Against Women, enacting a similar concept, which is: “In a work-related or employment environment, sexual harassment is committed when:

(i) The sexual favor is made as a condition in the hiring or the employment, re-employment or continued employment of the 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 effect said, employee;

(ii) The above acts would impair the employee's rights or privileges under existing labor laws; or

(iii) The above acts would result in an intimidating, hostile, or offensive." [9, Section 3]

Meanwhile, the International Labor Organization is considered as a vanguard and unique international body to have adopted an instrument that contains protection against sexual harassment. The 1958 Discrimination (Employment and Occupation) Convention (No. 111) first provided a broad definition of the term discrimination to cover any distinction, exclusion, or preference made on sex that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The 1985 International Labor Conference recognized sexual harassment as a detriment to working conditions, employment, and promotion prospect of employees. The 1989 International Labor Organization Meeting of Experts on special Protective Measures for Women and Equality of Opportunity and Treatment categorized workers' personal security, notably sexual harassment as a safety and health problem. Similarly, the 1992 Tripartite Symposium on Equal Opportunity and Treatment for Men and Women in Employment in Industrialised Countries also discussed the sexual harassment issue. The International Labor Organization defines sexual harassment as a sex-based behavior that is unwelcome and offensive to its recipient. For sexual harassment to exist, these two conditions must be presented. Sexual harassment at workplace is classified under two main types:

"(i) Quid Pro Quo or This for That

This type of sexual harassment implies seeking sexual favours or making sexual advances in exchange for benefits at work. It includes instances when:

- There are implicit or explicit requests or demands for unwelcome sexual activity as a term or condition of employment
- Consent to or rejection of unwelcome sexually explicit behaviour or speech is made a condition for employment, or refusal to comply with a 'request' is met with retaliatory action such as dismissal, demotion, difficult work conditions.

(ii) Hostile Work Environment Hostile working environment involves uninvited and unwelcome conducts or behavior whether they are physical, verbal, non-verbal or visual forms which create work environment that makes it uncomfortable for a worker to be there. Hostile working environment is usually dependent on circumstances, frequency (repetitive misconduct rather than a single episode of misbehaviour), and severity"¹⁰

In the United States, Article 42 of The Civil Act §2000e - 2, sexual harassment at workplace is one of the prohibited acts¹¹. The first and classic American case law on sexual harassment was the Jenson v. Eveleth Taconite Co¹² which made an important contribution to describe fully sexual harassment. According to this case, the Federal Court Judge accepted the definition of sexual harassment in the guidelines of the Equal Employment Opportunity Commission. Specifically, "Harassment includes sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature [that has] the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment" [13, 283p]. This concept has had certain effects on lawmakers in Vietnam during the revision of the 2019 Labor Code. However, some countries regulate sexual harassment quite simply, including only one that affects human dignity or threatens the health of the harassed person, such as laws in Malaysia, Sweden, and India.

In section 2.2. (g) Malaysia Employment Act (Amended, supplemented 2012) states: "Sexual harassment means any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is offensive or humiliating or poses a threat to his well-being, arising out of and in the course of his employment"¹⁴.

Definition of sexual harassment at workplace in India: "Sexual harassment at workplace includes such unwelcome sexually determined behavior (whether directly or by implication) as

- Physical contact and advances;
- A demand or request for sexual favors;
- Sexually colored remarks;
- Showing pornography;
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature" [15, p.18].

This definition comes from a lawsuit in India. In 1997, Vishaka and a group of women sued Rajasthan state to the Supreme Court of India for not introducing any

regulations of protecting women from sexual harassment at work in their Labor laws. As a result, the judgment provided guidelines for the prevention of sexual harassment. This is an important first step in addressing discrimination and gender-based violence in India. Although the object of protection is only women, this verdict provides female workers with a legal basis to protect them against sexual harassment at workplace.

In summary, after researching the concepts of sexual harassment at workplace, the authors realized some main points:

Firstly, all countries consider sexual harassment as a violation of human rights and victims need to be protected. Different countries regulated sexual harassment in different laws and legal precedents. There are countries prescribed in human rights law, criminal law, administrative law, civil law, labor law, employment law, anti-sexual law, or a combination of different law branches. Depending on the level of deterrence against sexual harassment at workplace, the laws of each country provide different sanctions for violations of this law. Some countries consider this behavior causing significant dangerous consequences for society and harassers would be considered as a crime and subject to criminal sanctions. But some other countries consider these behaviors that infringe on management order at the workplace. Because it has negative effects on productivity and the working environment, it will be administratively and disciplined. But most countries consider that a person who has suffered sexual harassment has the right to sue for civil damages if they can prove the physical and emotional effects caused to them.

Secondly, there are two ways to define “sexual harassment at workplace”, including listing these behaviors of sexual harassers and describing signs of these behaviors. In general, the method of describing the basic signs of sexual harassment is more commonly used because the descriptive method not only provides enough basic signs to identify sexual harassment but also is comprehensive enough to identify possible cases in practice.

Regulations according to Vietnamese laws

In 2012, the term “sexual harassment at workplace” was mentioned firstly in the 2012 Vietnamese Labor Code with provisions prohibiting it. Employees who are sexually harassed can unilaterally terminate the labor contract without any advance notice [16, Article 3.1]. However, these regulations were still general, lacking legal documents to identify behaviors of

sexual harassment. These limitations made progress in preventing sexual harassment hard. Therefore, local authorities have faced arduous challenges when punishing the harasser in practice. In particular, the Vietnamese Labor Code 2012 has not defined sexual harassment at workplace; hence, many people do not know the difference between sexual harassment and innocent flirting as well as signs of sexual harassment at workplace, making it difficult for state agencies and businesses to detect and sanction cases of sexual harassment at workplace. Until 2019, the Vietnam Labor Code (approved by the National Assembly on November 20, 2019, available from January 1, 2021) goes a further step when it defines sexual harassment at workplace. It was the first time that the definition of sexual harassment has been codified. According to Article 3 Clause 9 of the Vietnamese Labor Code 2019, it stipulates that “Sexual harassment at workplace means any sexual act of a person against another person in the workplace against the latter’s will. Workplace means the location when an employee works under an agreement or as assigned by the employer”.

Although this concept has some ambiguous points about the term “sexual act”, the decree guiding the implementation of some articles of the Labor Code has more detailed regulations to explain it. Specifically, Article 84 of the Decree No. 145/2020/ND-CP prescribes detailed guidance on some aspects of sexual harassment at workplace. First, the decree provides more clarification on the term “sexual act”. Sexual harassment defined by Article 3 Clause 9 of the Labor Code may occur in the form of a request, demand, suggestion, threat, use of force to have sex in exchange for any work-related interests; or any sexual acts that thus creates an insecure and uncomfortable work environment and affects the mental, physical health, performance, and life of the harassed person.

Second, the decree outlines some forms of sexual harassment that are not only actions but also verbal sexual harassment or non-verbal sexual harassment. Third, the workplace is also defined clearly in the decree. The workplace has been determined as “any location where the employee works in reality as agreed or assigned by the employer” under Decree No. 145/2020/ND-CP Article 84. The Decree also suggested particular places that could be considered as workplaces: “the work-related locations or spaces such as social activities, conferences, training sessions, business trips, meals, phone conversations, communications through electronic media, on shuttles provided by the employer, and other locations specified by the employer”.

From the above-mentioned information, the Vietnamese Labor Code 2019 and detailed guidance documents have stipulated quite particularly and more completely about regulations on these concepts, form, and signs of sexual harassment at workplace. Hence, subjects involved in labor relationships have had explicit provisions to protect themselves and a safe working environment. Therefore, it can contribute to improving productivity improvement and efficiency in the workplace.

However, these behaviors are not criminal in Vietnam. These actions are not directed to the act of copulation or other sexual intercourse because "copulation or other sexual intercourse" is a sign of criminal behavior. Because in order to constitute a crime of sexual abuse according to the provisions of the 2015 Penal Code, there must be two elements: the person's criminal behavior or must go to "copulation or other sexual intercourse" or must directed toward the copulation or other sexual intercourse. But workplace sexual harassment is not directed to copulation or other sexual intercourse, so it is not considered a criminal offense.

The 2019 Labor Code has several provisions on sexual harassment at workplace, specifically: Article 3 Clause 9 on the definition of sexual harassment, Article 8 Clause 3 on forbidden actions of "sexual harassment at workplace", and Article 3, Clause 1 stipulates "workers who have been sexually harassed have the right to unilaterally terminate the employment contract". In addition, Article 125, Clause 2 stipulates that "an employer may dismiss an employee for disciplinary reasons when an employee commits sexual harassment against the internal labor regulations".

DISCUSSION

Some limitations and some recommendations

Firstly, Vietnamese laws do not specify the process and procedures for employees to complain and denounce, but it allows the employer to introduce internal labor regulations. Therefore, every different business has different rules and procedures for complaints and denunciations. Only a few businesses pay attention to this issue. The remaining companies' labor regulations do not have provisions to help employees understand the complaint and denunciation process when they are sexually harassed in the workplace. In Vietnam, there is not yet a specialized labor agency to receive and handle denunciations and complaints of employees when they are sexually harassed at work. Therefore, if business owners sexually harass their employees, most female workers will

choose to remain silent because they cannot report it within the company. Moreover, the sanction of labor discipline cannot be applied in this case, while the current level of administrative fines in Vietnam is quite low. Meanwhile, the laws of many countries have been concerned in this content. In the United States, when a workplace sexual harassment incident occurs, the person being harassed has a variety of authorities who can receive their complaint. It could be a human resources manager, EEO officer, or other supervisors. At the federal level, there is a specialized agency available to receive complaints of sexual harassment of workers. "The EEOC is an independent federal agency that promotes equal opportunity in employment through administrative and judicial enforcement of the federal civil rights laws and education and technical assistance. Applicants and employees of most private employers, state and local governments, educational institutions, employment agencies, and labor organizations may be assisted by the EEOC"¹⁷.

They have set out fundamental requirements to have a simple complaint procedure, flexible complaint form to protect the best interests of those who suffer sexual harassment. Specifically, in California - the United States, the complaint process is required to be confidential, timely response, furthermore, an impartial and timely investigation is conducted by qualified personnel. They will collect evidence and keep track of reasonable progress. Afterward, they will select appropriate options for remedial actions and resolutions and have timely closures. Also, employees have a variety of complaints and denunciations way not only in writing but also orally to departments of the company, or competent state agencies¹⁸. From the reference to foreign laws, the Vietnamese labor laws do not need to stipulate the complaint and denunciation process, but lawmakers should set out the basic requirements of a complaint process, and its form. Then, it helps to improve accessible response and ensure optimal rights for employees who suffered from sexual harassment at workplace.

Secondly, current Vietnamese law does not impose sanctions on punishing enterprises that fail to issue inadequate internal labor regulations. In fact, many labor regulations of enterprises are very simple. Some businesses do not mention the contents of sexual harassment as well as the complaint process in their internal labor regulations and measures to protect people who are sexually harassed. It is necessary to add sanctions for employers who do not have adequate labor rules in the decree of the Government on administrative sanctions in the field of labor.

Thirdly, all businesses in Viet Nam are not imposed on any training about sexual harassment at work. Therefore, many female workers in Vietnam do not recognize whether sexual harassment or not. “The American Social Security Administration, which employs workers across the United States, purchased sexual harassment awareness training software to provide training for all of its employees” [15, p.60]. However, in some states in the United States, all workers must attend training every two years. Then, they will be received a certificate that is eligible for work. “Employers with at least five employees to comply with the new requirements must provide by Dec. 31, 2020: (1) at least two hours of sexual harassment prevention training to all managerial employees and (2) at least one hour of sexual harassment prevention training to all nonmanagerial employees. After the 2021 compliance requirements are met, employers must provide training every two years at a minimum. Training must occur within six months of hire to a nonmanagerial position or promotion to a managerial position (including hiring) as applicable”¹⁹. Especially, the training will focus on some main issues below:

- How to identify behavior that may constitute unlawful harassment, discrimination, or retaliation under both state, and federal law.
- What steps to take when harassing behavior occurs in the workplace.
- How to report harassment complaints.
- Supervisory employees’ obligation to report harassing, discriminatory, or retaliatory behavior of which they become aware.
- How to respond to a harassment complaint.
- The employer’s obligation to conduct a workplace investigation of a harassment complaint.
- What constitutes retaliation and how to prevent it.
- Essential components of an anti-harassment policy.
- The effect of harassment on harassed employees, coworkers, harassers, and employers”²⁰.

Thanks to this training, employees especially women workers will be aware of their rights and responsibilities under anti-harassment laws or trained on how to detect and report inappropriate behaviors. We believe that Vietnam labor regulations should stipulate annual training courses on sexual harassment at workplace. It can be organized online or offline to promulgate the laws of sexual harassment for employees so that they can identify signs of sexual harassment at workplace. They can protect their legitimate rights and interests when being harassed.

Fourthly, Vietnamese legislators need to impose stricter laws on sexual harassers. Specifically, the competent authorities need to investigate soon as well

as publicize the identities of harassers and increase the current level of administrative penalties. Currently, in Vietnam, the fine for harassers in the workplace is from 100.000 to 300.000 VND [21, Article 5]. Although the consequences of sexual harassment are extremely serious, which affects the human dignity, morale, health, and normal working environment of the victim, the fine is too low. Meanwhile, the minimum regional minimum wage is now VND 3,070,000 per month [22, Article 3.1]. Thus, the highest fine is approximately 9.8% of the minimum wage in the lowest area, which is not enough to deter the harassers from violating this behavior. Referring to the fine level in Asian countries, it is easy to recognize that Vietnam’s fine level is the lowest country. Specifically, in the Philippines, harassers will be sentenced to 1 to 6 months of imprisonment, or be fined 200-400\$ or both²³. In Malaysia, anyone who insults a woman’s dignity by words, gestures, or exposes a body that makes women hear and see. As a result, harassers will be sentenced to a maximum of 5 years ‘imprisonment or fine money or both’²⁴. In China, Article 42 of the 2012 Public Security Penalties law stipulates that people repeatedly sending obscene, offensive, intimidating messages, or committing acts that disturb the normal life of people or humiliate others will be sentenced to five days of imprisonment or fined up to 500 yuan. Serious cases can be put 5 to 10 days in prison and fined an additional 500 yuan²⁵.

Fifthly, in some other countries, an employer is held to be liable when sexual harassment occurs in their company due to an employee’s incident. In Serbia, the Law on the Prevention of Harassment at the workplace, 2010, makes the employer “responsible for any damage that the official or employee carrying out harassment causes to another employee employed by the same employer” (Article 9). The responsibility of the employer for any conduct of an employee, with or without their knowledge and approval, is also found in other legal texts, including the Equality Act, 2010, of the United Kingdom, and the Occupational Health and Safety Act of the province of Ontario, Canada. “Employers also hold other broader responsibilities, in particular the obligation to take reasonable steps or measures to prevent or address violence and harassment”²⁶. An approach adopted in many jurisdictions is to specifically provide for employer liability in legislation. The question which then arises is the degree to which the employer’s knowledge of the specific act of sexual harassment should affect its liability. “The legislation in the Philippines provides that

the employer will be liable for acts of sexual harassment of which he/she was informed if immediate action was not taken”²⁷. In some countries, employers can be held to be liable for sexual harassment of which they should have been aware. In the United States, for example, the Supreme Court has held that employers will be liable unless they can demonstrate they exercised reasonable care to prevent and remedy sexual harassment in their workplace and that the employee failed unreasonably to take advantage of the internal procedures²⁸. Nevertheless, the Vietnamese Labor Code 2019 does not mention this content. It is thought that the employer will be liable for acts of sexual harassment of which he/she was informed if immediate action was not taken. Because it helps employers be more responsible for promulgating some rules of prohibition of sexual harassment in their units. They would raise awareness of preventing and remedying sexual harassment in their workplace. Therefore, the Vietnamese Labor Code 2019 should amend the following content: *“When there is a case of sexual harassment by an employee, the employer is still responsible unless they can demonstrate they exercised reasonable care to prevent and remedy sexual harassment in their workplace and that the employee failed unreasonably to take advantage of the internal procedures”*.

CONCLUSION

The paper has analyzed the sexual harassment in some countries in practice, as well as the concepts of sexual harassment in the conventions and laws of some countries around the world. From the study of foreign laws, we give some following recommendations to improve Vietnamese law on this issue:

- Vietnamese labor laws do not need to stipulate the complaint and denunciation process, but lawmakers should set out the basic requirements of a complaint process and its form. Then, it helps to improve accessible response and ensure optimal rights for female employees who suffer from sexual harassment at workplace.
- It is necessary to add sanctions for employers who do not have adequate labor rules in the decree of the Government on administrative sanctions in the field of labor.
- Vietnam labor regulations should stipulate annual training courses on sexual harassment at workplace. It can be organized online or offline to promulgate the laws of sexual harassment for employees.
- Vietnamese legislators need to impose stricter laws on sexual harassers. Specifically, the competent authorities need to investigate soon as well as increase

the current level of administrative penalties. In addition, Vietnamese labor laws should add provision that employers will be liable unless they can demonstrate they exercised reasonable care to prevent and remedy sexual harassment in their workplace and that the employee failed unreasonably to take advantage of the internal procedures.

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LIST OF ABBREVIATIONS

Sexual harassment at workplace: sexual harassment
Quấy rối tình dục: QRTD
FY: Fiscal Year
EEO: Equal Employment Opportunity
EEOC: Equal Employment Opportunity Commission
The Government’s Decree No. 145/2020/ND-CP dated December 14, 2020, elaborates some articles of the Labor Code on working conditions, and labor relations: Decree No. 145/2020/ND-CP

DECLARATION OF COMPETING INTEREST

The authors declare that they have no conflicts of interest

AUTHORS’ CONTRIBUTION

- Author Nguyen Thi Ngoc Uyen: Read foreign documents, analyzed, compared with Vietnamese labor laws, found out the inadequacies and give some recommendations, and wrote most of the article content.
- Author Le Nhat Bao: Read Vietnamese documents, analyzed, synthesized information, as well as wrote the section “regulations on sexual harassment according to Vietnamese laws section”.

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Pháp luật bảo vệ quyền của lao động nữ đối với hành vi quấy rối tình dục tại nơi làm việc

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TÓM TẮT

Các nghiên cứu về thực trạng QRTD tại nơi làm việc tại Việt Nam và các nước cho thấy hầu hết nạn nhân của QRTD là nữ giới. Trên thực tế, số lượng nữ lao động bị QRTD hàng năm rất cao, nhưng số vụ việc được báo cáo và công khai lại khá thấp. Những thiệt hại gây ra cho lao động nữ không chỉ về vật chất, tinh thần mà còn lâu dài, khó phục hồi. Tuy nhiên, hành lang pháp lý ở Việt Nam hiện nay chưa hoàn thiện, chưa có quy trình giải quyết khiếu nại, tố cáo hợp lý. Hơn nữa, xử phạt hành chính đối với hành vi QRTD nơi làm việc chưa đủ sức răn đe trong khi chưa có chế tài hình sự. Việc nghiên cứu về thực trạng QRTD tại Việt Nam và các nước cũng như khung pháp lý điều chỉnh vấn đề này là cần thiết và cấp bách hiện nay. Từ đó, nhóm tác giả sử dụng phương pháp nghiên cứu tài liệu thứ cấp ở nước ngoài để tổng hợp làm rõ những số liệu người lao động nữ đã bị QRTD. Đồng thời, chúng tôi phân tích, so sánh các quy định nước ngoài, tìm ra những điểm tiến bộ khắc phục được lỗ hổng của pháp luật lao động Việt Nam hiện nay. Qua nghiên cứu pháp luật nước ngoài về vấn đề QRTD tại nơi làm việc, một số điểm nổi bật trong pháp luật một số nước có một chính sách chống QRTD hiệu quả là: một tuyên bố chính sách mạnh mẽ; một thủ tục khiếu nại hiệu quả và đơn giản khi áp dụng; và các biện pháp khắc phục hậu quả mạnh mẽ và phù hợp với bản chất của hành vi vi phạm pháp luật đó. Ngoài ra, việc đào tạo cần được tiến hành thường xuyên cho tất cả các nhân viên và đặc biệt tập trung vào các nhân viên có vai trò cụ thể tham gia vào thủ tục khiếu nại.

Trong quá trình viết bài này, nhóm tác giả đã sử dụng các phương pháp nghiên cứu sau: phân tích, so sánh, tổng hợp, diễn giải, quy nạp và sử dụng tài liệu thứ cấp.

Từ khóa: quấy rối tình dục tại nơi làm việc, quyền phụ nữ, Bộ luật lao động

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