

Improving the law on handling workplace sexual harassment in Vietnam from legislative experience in several countries

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ABSTRACT

SH in the workplace is a legal violation that infringes on the dignity, health, and fundamental women's rights and should be strongly condemned and severely punished. However, SH behaviours at work are not yet considered a crime in Vietnam. These behaviours are only currently subject to administrative or disciplinary liability despite the severe damage they cause to victims, employers, and society. In addition, some legal provisions dealing with SH behavior in Vietnam are incomplete and need to be improved. Therefore, within the scope of this article, we analyse the legal basis for sanctions on SH in the workplace in several countries around the world, including Vietnam. We then present some limitations and propose recommendations to improve the law on this issue as follows: Firstly, severe criminal sanctions are essential to deter offenders and ensure robust enforcement. Secondly, perfecting the law on handling administrative violations of SH at work in Decree 12/2022/ND-CP. Thirdly, establishing a statistical database on the situation of SH in the workplace and its resolution is crucial. This database would facilitate reporting to international organizations, evaluate the effectiveness of law enforcement on SH prevention, and monitor violations at various levels. Furthermore, Vietnam should establish a Complaints Committee under the provincial labor agency, similar to the model in India, to resolve cases of SH by business owners and cases where domestic workers are victims. Recognizing the significant cultural barrier where Vietnamese victims often remain silent due to fear, shame, job security concerns, retaliation, isolation, and familial impact, strategies to encourage reporting are necessary. These strategies include educating victims about their rights not to be sexually harassed in the workplace and increasing victim compensation by allocating state fines to them.

Key words: sanctions, sexual harassment, in the workplace

1 INTRODUCTION

SH in the workplace is one of the most common violations occurring in working environments. The consequences of workplace SH not only harm individuals but also negatively impact the work environment and society as a whole. Currently, there are various legal definitions of workplace SH. According to Vietnamese legislators, “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” (Article 3 Clause 9 of the Vietnamese Labor Code 2019). SH encompasses a wide range of behaviors in different forms. These can include verbal acts, sexually suggestive behaviors, or actions that cause discomfort, humiliation, or threaten others, progressing to more severe forms such as sexual coercion. Despite the prevalence of SH in Vietnam, the number of officially reported cases is significantly lower than the actual occurrence. One of the reasons for this un-

derreporting is that the legal framework for addressing SH lacks deterrent measures to penalize offenders effectively, and support mechanisms for victims remain insufficient. This lack of motivation for victims to report SH has further exacerbated the problem. SH in the workplace is considered a form of gender-based violence. However, unlike other forms of gender-based violence such as child marriage, human trafficking, sexual abuse of children, rape, and coercion, SH is not yet classified as a criminal offense in Vietnam. Although sexual harassers in the workplace have repeatedly committed this behavior, they have not been criminally prosecuted, making law enforcement ineffective.

In the article, we analyze the legal provisions addressing SH in various countries, identifying progressive practices that Vietnam can adopt to improve its legal framework. By strengthening the legal framework, Vietnam can prevent potential SH incidents, reduce the number of cases, and propose appropriate intervention and remedial measures for SH victims.

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43 METHODOLOGY

44 The primary research method employed in this article
45 is the legal analysis method. Comparative legal anal-
46 ysis is utilized to contrast Vietnam’s legal provisions
47 with other countries worldwide to identify similarities
48 and differences in legal measures for addressing SH.
49 Additionally, we utilize an analytical method to exam-
50 ine Vietnam’s legal provisions alongside those of other
51 nations, drawing evaluations, and recommendations
52 for appropriate penalties for SH. A synthesis method
53 is subsequently applied to generalize the information
54 and data obtained through analysis and comparison,
55 enabling us to draw conclusions and propose suitable
56 recommendations to improve Vietnam’s legal frame-
57 work for addressing SH.

58 Legal basis for sanctions for sexual harass- 59 ment in the workplace in several countries 60 around the world

61 SH in the workplace is a global, cross-border issue.
62 According to a 2018 survey by CARE Australia, ap-
63 proximately 80% of individuals in Asian countries re-
64 ported experiencing workplace SH at some point in
65 their lives¹. In Vietnam, a survey conducted by Ac-
66 tionAid Vietnam in collaboration with the Center for
67 Gender, Family, and Environment Research revealed
68 that over 53% of office workers and nearly 60% of
69 public officials had experienced SH two to five times.
70 Additionally, 89% of men and witnesses reported ob-
71 serving such behaviors². Countries have been con-
72 cerned about SH issues in the workplace quite early.
73 Almost all countries consider SH in the workplace
74 to be a violation of human rights, and victims need
75 to be protected³. Different countries regulate SH
76 in the workplace in different laws and precedents;
77 some countries regulate this issue in Human Rights
78 Law (Canada, Fiji, and New Zealand...) ⁴, p25, Crim-
79 inal Law (Netherlands, Venezuela, Israel, Denmark,
80 Antigua, Barbuda, etc.) ⁴, pp 23-26, Administrative
81 Law, Civil Law, Labour Law, Employment Law, Anti-
82 Sexual Abuse Law, or a combination of many different
83 branches of law. According to statistics, more than 50
84 countries have regulations prohibiting SH at the na-
85 tional or federal level⁵. Depending on the level of
86 deterrence for SH in the workplace, each country’s
87 law provides different forms of punishment for this
88 legal violation. Most countries believe that: “victims
89 of SH at work have the right to sue for civil damages
90 if they can prove evidence of the physical and mental
91 harm they have suffered. Some countries believe that
92 SH in the workplace causes significant dangerous con-
93 sequences for society, and harassers will be considered

criminals and subject to criminal liability”. However,
most of the remaining countries consider these acts to
be violations of management order at the workplace,
which is less severe for society, so they will be subject
to more appropriate administrative and labour disci-
pline sanctions. Below are several legal sanctions
countries apply to punish those who commit SH acts
in the workplace.

In the United States, SH is a form of sex discrimina-
tion that violates section VII of the Civil Rights Act
of 1964. Under federal law, SH is punishable by up to
20 years in prison if severe, accompanied by fines and
compensation for harassment victims. The violator
must pay hospital fees, medicine, psychological ther-
apy, and recovery sessions for the victim. Depending
on the nature and severity, different levels of punish-
ment are applied:

- Sexual assault causing injury: 3 months in prison
and a fine;
- Harassment in verbal form, sexual behaviour form:
up to 6 months in prison, depending on severity;
- Stalking and harassment affecting the victim’s life
and safety: 1-3 years in prison.

In addition, the maximum compensation for the vic-
tim is USD 300 thousand (more than VND 6 billion)⁶.
Each state in the United States has different ways of
dealing with SH, but the common point is that most
have prison sentences and compensation for victims
of harassment. For example, in California, sexually
harassing or assaulting another person shall result in
a sentence of 22-40 years in prison and a fine of USD
10,000 (more than VND 200 million). In New York
City, the crime of SH carries a sentence of 2-7 years in
prison and is considered a class D felony. Judges have
the right to choose a prison term between the max-
imum and minimum time for the violator. Thus, in
the United States, SH is considered a form of gender-
based discrimination, with penalties often very high,
possibly up to several hundred million dollars, plus
imprisonment from several months to several years.

In France, the penalty for SH is sentenced to 2-3 years
in prison and a heavy fine of 30,000 euros to 45,000
euros (over 800 million to 2.4 billion VND)⁷. Accord-
ing to Article 184 the 2016 Criminal Code in Spain:
“Whoever solicits favours of a sexual nature, for him-
self or for a third party, within the setting of a contin-
uous or usual work relation, teaching or service pro-
vision relation, and by such conduct causes the victim
a situation that is objective and seriously intimidating,
hostile or humiliating, shall convicted of sexual harass-
ment and punished with a sentence of imprisonment of
three to five months or a fine from six to ten month”⁸.

146 In the UK, SH is any insult to an individual or inten- 199
 147 tional touching of another person without that per- 200
 148 son's permission, and offenders in the UK can be im- 201
 149 prisoned for up to 10 years⁹. The 1998 Labor Protec- 202
 150 tion Act of Thailand stipulates that anyone who sexu- 203
 151 ally harasses women and children will be fined up to 204
 152 20,000 baht¹⁰. Thailand only uses purely administra- 205
 153 tive measures without considering SH as a criminal. 206
 154 Meanwhile, under Article 26, the Ministry of Labor of 207
 155 Japan has a unique way of approaching SH by publicly 208
 156 disclosing the identities of businesses with unhealthy 209
 157 working environments¹¹.

158 In the Philippines, any person who harasses another 210
 159 person will be "penalised by imprisonment of not less 211
 160 than one (1) month nor more than six (6) months, or 212
 161 a fine of not less than ten thousand pesos (P10,000) 213
 162 nor more than twenty thousand pesos (P20,000), or 214
 163 both such fine and imprisonment at the discretion of the 215
 164 court"¹². In Malaysia, anyone who insults a woman's 216
 165 dignity through words, gestures, or acts that expose 217
 166 the body so that the woman hears and sees. As a result, 218
 167 the harasser will be sentenced to a maximum prison 219
 168 term of 5 years, or a fine or both¹³. Thus, Malaysia 220
 169 applies criminal sanctions in parallel with administra- 221
 170 tive sanctions. 222

171 In China, Article 42 of the 2012 Law of the PRC on 223
 172 Penalties for Administration of Public Security stipu- 224
 173 lates that "A person who commits one of the following 225
 174 acts shall be detained for not more than five days or be 226
 175 fined not more than 500 yuan; and if the circumstances 227
 176 are relatively serious, he shall be imprisoned for not less 228
 177 than five days but not more than ten days and may, in 229
 178 addition, be fined not more than 500 yuan:

- 179 (1) writing letters of intimidation or threatening the 230
- 180 personal safety of another person by other means; 231
- 181 (2) openly humiliating another person or slandering an- 232
- 182 other person by fabricating stories; ... 233
- 183 (4) threatening, humiliating or beating up a witness or 234
- 184 his close relative or retaliating against either of them; 235
- 185 (5) repeatedly dispatching pornographic, humiliating, 236
- 186 intimidating or other information to disturb the nor- 237
- 187 mal life of another person; or 238
- 188 (6) peeping, secretly taking photos, eavesdropping, or 239
- 189 spreading the privacy of another person"¹⁴. 240

190 In summary, SH in the workplace is handled in dif- 241
 191 ferent forms: disciplinary action, civil compensation 242
 192 claims, administrative sanctions, and criminal pros- 243
 193 ecution. In more than one-third of countries, spe- 244
 194 cific provisions are included in labor laws, often in 245
 195 the form of dismissal. In most countries, victims of 246
 196 SH in the workplace have the right to sue for com- 247
 197 pensation. Depending on the regulations of differ- 248
 198 ent countries, compensation claims can be handled 249

together with criminal proceedings or separately in 199
 an independent civil case. Most of the remaining 200
 countries consider SH as an act violating the manage- 201
 ment order in the workplace, the nature of the be- 202
 havior is not seriously dangerous and only requires 203
 administrative handling. However, more and more 204
 countries have criminal sanctions for SH in the work- 205
 place. According to the author's preliminary statis- 206
 tics, workplace SH is prohibited and criminalized in 207
 more than 45 countries such as Ukraine (Penal Code), 208
 Bangladesh (Prevention of Violence Against Women 209
 and Children Act), Costa Rica (Penal Code), Mauri- 210
 tius (Penal Code), Spain (Penal Code), Sri Lanka (Pe- 211
 nal Code), India (Penal Code)¹⁵, United Republic of 212
 Tanzania (Penal Code), Venezuela (Law on Violence 213
 Against Women and Families), Israel, Antigua, Bar- 214
 buda, Denmark, Philippines, United States, Algeria, 215
 Kenya, China⁴, Gabon, Montenegro, Peru, France, 216
 South Sudan¹⁶, Chile, Bahrain, Barbados, Djibouti, 217
 Saudi Arabia, Tunisia, United Arab Emirates, Jor- 218
 dan¹⁷ ... Those countries prosecute criminal liability 219
 and request compensation for damages or apply it si- 220
 multaneously in resolving SH cases in the workplace, 221
 depending on the severity of the case. Although the 222
 number of days in prison is not many compared to 223
 other serious crimes, the criminalisation of SH in the 224
 workplace has shown the "zero tolerance" attitude of 225
 the state and society towards criminals and the de- 226
 terrence and prevention against those who intend to 227
 commit SH. It will also be a reference for perfecting 228
 future Vietnamese law on handling SH behaviours. 229

Legal basis for sanctions for sexual harass- 230 ment in Vietnamese workplace 231

232 According to point d, Clause 2, Article 35 of the 2019 233
 Labour Code, SH is grounds for employees to unilat- 234
 erally terminate the labour contract without notice in 235
 case of SH in the workplace. This is a new, advanced 236
 point of the 2019 Labour Code compared to the 2012 237
 Labour Code. In addition, Article 125, Clause 2 stipu- 238
 lates that "an employer may dismiss an employee for 239
 disciplinary reasons when an employee commits SH 240
 against the internal labour regulations". 241

242 In parallel with labour disciplinary sanctions, SH acts 243
 at work can be administratively sanctioned according 244
 to Clause 3, Article 11 of Decree 12/2022/ND-CP: "A 245
 fine ranging from VND 15,000,000 to VND 30,000,000 246
 shall be imposed for committing acts of SH in the work- 247
 place if not liable to criminal prosecution". While SH 248
 acts toward domestic workers, they shall be fined ac- 249
 cording to Clause 4, Article 30 of Decree 12/2022/ND- 250
 CP with a higher fine "from VND 50 million to VND 251

250 75 million”. It is worth mentioning that Decree
 251 12/2022/ND-CP only stipulates one primary form of
 252 sanction; it does not prescribe additional forms of
 253 sanction, and no remedial measures are applied to SH
 254 acts.

255 Suppose the harassment seriously offends the dignity
 256 and honour of others. In that case, it can also be crim-
 257 inally prosecuted according to Article 155 of the 2015
 258 Criminal Code (amended and supplemented in 2017),
 259 “Insults to another person”: “1. Any person who seri-
 260 ously insults another person shall receive a warning, be
 261 liable to a fine of VND 10,000,000 - VND 30,000,000
 262 or face a penalty of up to 03 years’ community sentence.

263 2. This offence committed in any of the following cir-
 264 cumstances carries a penalty of 03 - 02 years imprison-
 265 ment:

- 266 a) The offence has been committed more than once;
- 267 b) The offence is committed against 02 or more people;
- 268 c) The offence involves abuse of the offender’s position
 269 or power;
- 270 d) The offence is committed against a law enforcement
 271 officer in the performance of his/her official duties;
- 272 dd) The offence is committed against a person who cares
 273 for, teaches, raises or provides medical treatment for the
 274 offender;
- 275 e) The offence is committed using a computer network,
 276 telecommunications network or electronic device;
- 277 g) The victim suffers from 11% - 45% mental and be-
 278 havioural disability because of the offence.

279 3. This offence committed in any of the following cir-
 280 cumstances carries a penalty of 02 - 05 years imprison-
 281 ment:

- 282 a) The victim suffers from $\geq 46\%$ mental and be-
 283 havioural disability because of the offence;
- 284 b) The offence results in the suicide of the victim.

285 4. The offender might be prohibited from holding cer-
 286 tain positions, practising his/her profession or doing
 287 certain jobs for 01 - 05 years”.

288 In cases where the victim is under 16 years old, these
 289 SH acts can be charged as child molestation accord-
 290 ing to the provisions of Clause 1, Article 146 of the
 291 2015 Criminal Code (amended and supplemented in
 292 2017) on Molestation of a person under 16: “Any per-
 293 son who molests a person under 16 for purposes other
 294 than sexual intercourse or other sexual activities shall
 295 face a penalty of 06 - 36 months’ imprisonment”.

296 The issue of compensation for the victim, in this case,
 297 is applied according to the provisions of point dd,
 298 Clause 1 Article 85 of Decree No. 145/2020/ND-CP
 299 dated 14 December 2020 on the elaboration of some
 300 Articles of the Labor Code on working conditions
 301 and labour relations, and Clause 2, Article 592 of the

2015 Civil Code, “Damage caused by harm to hon-
 our, dignity or reputation”. Accordingly, the person
 who commits the crime will compensate for damages
 to the honour, dignity, and reputation of the victim,
 specifically as follows: “A person causing harm to the
 honour, dignity or reputation of another person must
 pay compensation for damage as provided in Clause 1
 of this Article together with another amount of money
 as compensation for the mental suffering of the ag-
 grievated person. The amount of compensation for men-
 tal suffering shall be as agreed by the parties; if the par-
 ties cannot agree, the maximum sum shall not exceed a
 ten-month base salary prescribed by the State”¹⁸.

Compensation includes material damage and com-
 pensation for mental damage arising from reasonable
 costs for mitigating and remedying the damage, loss
 of or reduction in actual income and other damage as
 prescribed by law. To force the harasser to be respon-
 sible for damages, the accuser and the state authorities
 must prove three factors: SH at work, actual damages,
 and a causal relationship between the SH act and the
 actual damage.

DISCUSSION

First, in Vietnam, SH in the workplace is not con-
 sidered a crime, although the consequences for vic-
 tims, agencies, and businesses are challenging to re-
 cover. SH in the workplace is a severe problem, affect-
 ing the rights of dignity, physical and mental health,
 and workers’ careers. According to global scholarly
 research, the consequences of SH include: Coping
 with harassment often leads to psychological stress,
 which increases the likelihood of experiencing anx-
 iety, depression, or insomnia¹⁹. The risk of devel-
 oping post-traumatic stress symptoms becomes even
 higher when individuals choose to stay silent about
 their experiences²⁰. On a physical level, research in-
 dicates that women who face harassment are more
 prone to negative physiological effects, such as ele-
 vated blood pressure, headaches, and digestive is-
 sues²⁰. Furthermore, harassment can significantly
 hinder career growth and lead to job loss, with women
 who report it being less likely to receive promotion
 recommendations and more likely to leave their po-
 sitions²¹. In addition, SH can create an unsafe, un-
 comfortable working environment, negatively affect-
 ing morale and work performance and reducing the
 business’s image and profits. Another limitation is
 that obscene behaviour against people over 16 years
 old cannot be criminally prosecuted because there are
 no provisions in the current Criminal Code. There-
 fore, the Vietnamese Penal Code needs to include
 sanctions for individuals who commit acts of SH after

354 having already been administratively sanctioned for
 355 such behavior. This addition is essential to ensure the
 356 deterrent effect and effective enforcement.

357 *Second*, some regulations on administrative sanc-
 358 tions for violations of SH at the workplace in Clause
 359 3, Article 11, and Clause 4, Article 30 of Decree
 360 12/2022/ND-CP are not suitable, such as lack of ad-
 361 ditional sanctions, lack of remedial measures, and in-
 362 consistency between the content of legal regulations,
 363 and the name of the article.

364 *Third*, much information and results of complaints
 365 about SH in the workplace should be made public
 366 and transparent in the mainstream press or on the
 367 websites of state management agencies. As a result,
 368 employees no longer want to complain or denunciate
 369 because they do not believe in the settlement's fair-
 370 ness and results. Social organisations, the media, and
 371 the public cannot evaluate and monitor this settle-
 372 ment process's objectivity, timeliness, and effective-
 373 ness. As a result, it can create conditions for negative
 374 behaviours such as corruption and abuse of power,
 375 making it difficult for complainants and denunciators,
 376 cases are ignored, and no agency resolves them.

377 *Fourth*, Vietnam has no regulations on the mecha-
 378 nism to protect employees from SH by business own-
 379 ers or domestic workers who are sexually harassed at
 380 work. Because when the business owner implements
 381 SH and the employee complains within the work-
 382 place, the resulting outcome is not objective and the
 383 disciplinary action of dismissal cannot be applied to
 384 the business owner. For domestic workers who are
 385 sexually harassed in Vietnam, there is no internal in-
 386 stitution or grassroots trade union to help them re-
 387 solve the case.

388 *Fifth*, cultural, religious, and gender stereotypes in
 389 Vietnamese society have a profound impact on the be-
 390 haviour of female victims. They are reluctant to report
 391 and dare not speak up when witnessing or being sub-
 392 jected to SH at work. As a result, it is difficult for au-
 393 thorities to detect and intervene quickly to protect SH
 394 victims. In reality, SH in the workplace occurs reg-
 395 ularly, but the number of officially reported cases is
 396 very low.

397 RESULTS

398 *First*, considering criminalising SH behaviours as in
 399 the laws of some other countries for several reasons:

- 400 - It is significantly dangerous to society as SH not only
- 401 causes profound mental harm to the victim but also
- 402 seriously violates human dignity and human rights.
- 403 Ignoring or not seriously handling these behaviours

404 will create conditions for similar behaviours to con-
 405 tinue, causing unpredictable consequences for soci-
 406 ety. SH causes deep psychological damage to victims,
 407 which can lead to depression, anxiety, and even sui-
 408 cide. Dignity and psychology are factors that cannot
 409 be restored to their original state. Furthermore, SH
 410 creates a toxic working environment where people feel
 411 unsafe and threatened. The number of victims of SH
 412 is increasing. According to the 2019 Survey on violence
 413 against women nationwide, one in ten women
 414 (11.4%) have suffered one or more forms of SH in
 415 life. Studies have also documented high rates of SH
 416 among students in schools and other public places.
 417 A 2018 study found that 60% of students from high
 418 school to university in four provinces of Vietnam re-
 419 ported experiencing SH at least once, half of whom re-
 420 ported experiencing anxiety and depression after the
 421 incident²².

422 - Harassment in the workplace can be proven through
 423 the following sources of evidence: readable docu-
 424 ments; audible evidence; visual evidence; electronic
 425 data such as emails, messages, etc.; physical evidence
 426 such as tools used by the person committing the har-
 427 rassment to the victim; the victim's statement; the
 428 witness's statement; the statement of the person sus-
 429 pected of committing the harassment; the conclusion
 430 of a competent state agency (if any) etc²³.

431 - Administrative sanctions for SH are ineffective and
 432 not enough to deter sexual harassers. Criminalizing
 433 SH will send a strong message that these behaviours
 434 are unacceptable and that they shall be severely pun-
 435 ished, creating a deterrent for those who intend to
 436 commit SH acts, thereby reducing the rate of these in-
 437 cidents.

438 The criminalisation of SH creates a solid legal system
 439 to protect people from SH acts. Criminalisation helps
 440 ensure that SH victims receive more appropriate pro-
 441 tection and compensation when there is judicial in-
 442 volvement. In addition, offenders will be punished
 443 according to their dangerous behaviours.

444 - More countries have been criminalising SH, which
 445 can help the government keep up with international
 446 trends and protect and promote human rights in Viet-
 447 nam.

448 - The legal gap is filled because molesting acts against
 449 people over 16 years old have not been criminally
 450 prosecuted, so adding a new crime on SH will over-
 451 come this limitation.

452 *Second*, improving the law on administrative sanc-
 453 tions for SH in the workplace.

454 Under the provisions of Clause 3, Article 11 of De-
 455 cree 12/2022/ND-CP, the act of SH at work but not
 456 to the extent of criminal prosecution shall be fined

457 from VND 15 million to VND 30 million. In ad-
 458 dition, Clause 4, Article 30 on violations of regula-
 459 tions on domestic workers, when an employer con-
 460 ducts SH toward a domestic worker, but not to the
 461 extent of criminal prosecution, the employer shall be
 462 fined from VND 50 million to VND 75 million. These
 463 two regulations are revealing many limitations, and
 464 improvements need to be made, such as:

465 - *Adding additional penalties.*

466 When those who commit SH acts at the workplace use
 467 images and documents related to sex to harass oth-
 468 ers at the workplace, it is also necessary to apply ad-
 469 ditional sanctions, such as confiscation of evidence,
 470 means, and tools of crime, to stop the violation and
 471 prevent that person from continuing to use those im-
 472 ages, and documents to harass others.

473 - *Supplementing remedial measures.*

474 After being harassed at work, the harassed person
 475 will be physically and mentally injured deeply, so it
 476 is necessary to quickly apply remedial measures to
 477 force the violator to "publicly apologise for the viola-
 478 tion unless the victim has a written request not to apolo-
 479 gise" to show remorse, educate the violator, and some-
 480 how help the victim be comforted, and soothe the
 481 pain they have experienced, restoring to their origi-
 482 nal state.

483 Furthermore, it is necessary to add a remedial mea-
 484 sure to force the correction of false or misleading in-
 485 formation because there are cases where the harasser
 486 used images and information related to sex. They dis-
 487 tributed it at the company or posted it online to harass
 488 another employee. Only applying a fine is not enough
 489 because those images and information seriously af-
 490 fect the honour and dignity of the victim. Correcting
 491 false or misleading information is necessary to restore
 492 the victim's dignity promptly and prevent such harass-
 493 ment from continuing.

494 - *Editing the name of Article 11 of Decree 12/2022/ND-CP or moving the content of Clause 3, Article 11 to another position.*

497 Specifically, the name of the provision is a violation
 498 of regulations on the implementation of employment
 499 contracts. However, the content is: "Fine from VND
 500 15,000,000 to VND 30,000,000 for SH in the workplace
 501 but not to the extent of criminal prosecution". Perform-
 502 ing a labour contract is when one party (employer or
 503 employee) carries out certain tasks agreed upon in the
 504 labour contract. Therefore, performing a labour con-
 505 tract is a legal, positive act arising in the relationship
 506 between the employee and the employer to carry out
 507 certain tasks based on the previously signed labour
 508 contract. In the case of an employee harassing an-
 509 other employee in the company, it is not performing a

labour contract but an act against labour regulations,
 a violation of the law that needs to be punished. So, it
 is necessary to rename Article 11 in a broader direc-
 tion or move the content of Clause 3 of Article 11 to
 another more suitable clause.

- *Revising several provisions in Clause 3, Article 11, and Clause 4, Article 30 of Decree 12/2022/ND-CP to be suitable*

According to the provisions of Clause 3, Article 11, "A
 fine ranging from VND 15,000,000 to VND 30,000,000
 shall be imposed for committing acts of SH in the work-
 place if not liable to criminal prosecution", and Clause
 4, Article 30, "A fine of VND 50,000,000 to VND
 75,000,000 for employers who abuse, sexually harass
 against employees who are domestic workers but not to
 the extent of criminal prosecution". The unreasonable
 point here is using the phrase "but not to the extent of
 criminal prosecution" because, according to the cur-
 rent Criminal Code of 2015, amended in 2017, SH
 in the workplace is not considered a crime. One of
 the principles stipulated in Article 5 of the 2015 Law
 on Promulgation of Legal Documents (amended and
 supplemented in 2020) is "Ensure the constitutional-
 ity, legitimacy, and uniformity of legal normative doc-
 uments in the legal system". Therefore, the legal doc-
 uments of lower-level state agencies must be consis-
 tent with the documents of higher-level agencies²⁴.
 Therefore, it is necessary to propose removing this
 phrase from the content of administrative sanctions
 for SH in the workplace in Clause 3, Article 11, and
 Clause 4, Article 30.

Third, establishing a statistical database on the situ-
 ation of sexual harassment in the workplace and its
 resolution is crucial.

This database will provide an overview and details
 of the situation of SH in the workplace in Vietnam,
 as well as the results of handling complaints and den-
 unciations of employees. The statistics may include
 data on the number of complaints and denunciations,
 information about the case, time of settlement, and
 settlement results. This information should be made
 public on mass media and the relevant agency's elec-
 tronic information portal after encoding the victim's
 personal information. It is necessary to build a statis-
 tical database on complaints and denunciations and
 periodically publicise this data while applying infor-
 mation technology to effectively and safely manage
 and publicise information on complaints and denun-
 ciations.

Fourth, building the local Complaints Committee

Referring to Article 6 of The SH of Women at Work-
 place (Prevention, Prohibition, and Redressal) Act
 2013 in India, the local Complaints Committee has

authorised to resolve complaints where the employer is the violator or the subject of SH is a domestic worker. This provision is a reasonable idea to ensure independence, objectivity, and timeliness in resolving complaints that Vietnam can refer to. The composition of the Local Complaints Committee is stipulated in Article 7 as follows:

“- A Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;

- One Member to be nominated from amongst the women working in block, taluka or tehsil or ward, or municipality in the district;

- Two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to SH...;

- The concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio”.

We recommend Vietnam should also Vietnam should establish a Complaints Committee under the provincial labor agency, similar to the model in India to resolve cases of SH by business owners and cases where the victims of SH are domestic workers.

Fifth, promoting propaganda and dissemination of laws on preventing and combating SH at work in Vietnam.

Strengthening the dissemination of the law on SH prevention is extremely important to raise awareness among workers to understand ways to prevent and combat SH in the workplace. When awareness changes, it will lead to positive changes in individuals' behaviour and the community, creating an equal, safe working environment. Female victims boldly speak up and "say no to SH in the workplace". Through these training courses, workers will know their rights and responsibilities and how to protect themselves and respond promptly to violations. The content of training courses should focus on issues such as identifying SH, consequences, rights of victims, measures to prevent SH for workers in the workplace, measures to respond to SH in the workplace, departments and agencies that receive and resolve complaints, and denunciations.

Sixth, increasing their compensation by forwarding states' fines to victims.

In the United States, victims can sue their employers instead of suing the harasser to receive compensation. Compensation includes not only compensatory damages but also punitive damages. These amounts are intended to punish the offender but not paid to the state but to the victim. In the United States, some victims have received huge fines of up to millions of

dollars from multinational companies and corporations²⁵. This is a regulation that Vietnam should learn from the United States so that victims are more courageous in reporting SH at work, and receive an additional amount of money to compensate for the mental and physical damage they have suffered.

CONCLUSION

The laws on handling SH in the workplace in Vietnam are still simple, mainly disciplinary sanctions and administrative sanctions. Moreover, these regulations are unclear or incomplete compared to other countries. The article has pointed out the limitations and proposals to improve the laws on handling administrative violations of SH in the workplace such as: adding additional penalties, supplementing remedial measures, editing the name of Article 11 of Decree 12/2022/ND-CP or moving the content of Clause 3, Article 11 to another position and revising several provisions in Clause 3, Article 11, and Clause 4, Article 30 of Decree 12/2022/ND-CP to be suitable. In addition, the authors propose that it is necessary to criminalize the act of SH in cases where the violator has been administratively sanctioned for this act but continues. At this point, administrative sanctions are no longer effective because many violators accept to pay fines to continue to commit acts that pose a significant danger to others. Therefore, criminal sanctions must severely punish that person to ensure deterrence and effective handling. Next, we recommend building a a statistical database on the situation of SH in the workplace and its resolution. Building data on the situation of SH in the workplace is highly necessary in order to have a basis for reporting to international organizations when requested and a basis for evaluating the effectiveness of law enforcement on SH prevention, and monitoring the situation of violations at lower levels and among employers. We also recommend Vietnam organize a Complaints Committee under the provincial labor agency, similar to the model in India to resolve cases of SH by business owners and cases where the victims of SH are domestic workers. A limitation in Vietnamese culture is that victims do not want to report or complain when they are sexually harassed at work because of fear, shame, fear of losing their jobs, fear of retaliation, isolation, and impact on family happiness. Many people accept, remain silent, and forgive the harasser. Therefore, we have proposed measures to encourage them to speak out so that the authorities and employers can manage and protect them. A solution can be applied by educating victims about their rights and increasing their compensation by forwarding states' fines to victims.

668 **ABBREVIATIONS**

669 SH in the workplace: Sexual harassment in the work-
670 place
671 Decree No. 12/2022/ND-CP dated 17 January 2022
672 on penalties for administrative violations against reg-
673 ulations on labour, social insurance, and Vietnamese
674 guest workers: Decree 12/2022/ND-CP

675 **CONFLICT OF INTEREST STATEMENT**

676 The authors declare that they have no conflicts of in-
677 terest

678 **AUTHORS' CONTRIBUTION**

679 - Author Nguyen Thi Ngoc Uyen: Read foreign and
680 Vietnamese documents, analyze, compare with Viet-
681 namese law, find out the shortcomings and make
682 some recommendations, and write most of the arti-
683 cle.
684 - Author Thai Thi Tuyet Dung: Read Vietnamese le-
685 gal regulations, analyze, and write the "Introduction",
686 "Methodology" and "Legal basis for handling sexual
687 harassment in the workplace in Vietnam".

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Hoàn thiện pháp luật xử lý hành vi quấy rối tình dục tại nơi làm việc ở Việt Nam từ kinh nghiệm lập pháp của một số quốc gia

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TÓM TẮT

Quấy rối tình dục tại nơi làm việc là hành vi vi phạm pháp luật, xâm phạm đến nhân phẩm, sức khỏe và các quyền cơ bản của người lao động và cần phải bị lên án mạnh mẽ và trừng phạt nghiêm khắc. Tuy nhiên, hành vi quấy rối tình dục tại nơi làm việc vẫn chưa bị coi là tội phạm ở Việt Nam. Những hành vi này hiện chỉ phải chịu trách nhiệm hành chính hoặc kỷ luật mặc dù chúng gây ra thiệt hại nghiêm trọng cho nạn nhân, người sử dụng lao động và xã hội. Ngoài ra, một số quy định pháp luật liên quan đến hành vi quấy rối tình dục tại Việt Nam còn chưa đầy đủ và cần được hoàn thiện. Do đó, trong phạm vi bài viết này, chúng tôi phân tích cơ sở pháp lý để xử phạt quấy rối tình dục tại nơi làm việc ở một số quốc gia trên thế giới, trong đó có Việt Nam. Sau đó, chúng tôi trình bày một số hạn chế và đề xuất các khuyến nghị để hoàn thiện pháp luật Việt Nam về vấn đề này như sau: Một là, chế tài hình sự nghiêm khắc là cần thiết để răn đe người vi phạm và đảm bảo thực thi mạnh mẽ. Hai là, hoàn thiện pháp luật về xử lý vi phạm hành chính về quấy rối tình dục tại nơi làm việc trong Nghị định số 12/2022/NĐ-CP. Ba là, thiết lập cơ sở dữ liệu thống kê về tình hình quấy rối tình dục tại nơi làm việc và giải quyết quấy rối tình dục là rất quan trọng. Cơ sở dữ liệu này sẽ tạo điều kiện thuận lợi cho việc báo cáo với các tổ chức quốc tế, đánh giá hiệu quả thực thi của pháp luật, phòng ngừa quấy rối tình dục và giám sát các hành vi vi phạm ở nhiều cấp độ khác nhau. Hơn nữa, Việt Nam nên thành lập một Ban giải quyết khiếu nại thuộc cơ quan lao động cấp tỉnh, tương tự như mô hình của Ấn Độ, để giải quyết các trường hợp quấy rối tình dục do chủ doanh nghiệp quấy rối người giúp việc gia đình. Nhận thấy rào cản văn hóa đáng kể khiến nạn nhân Việt Nam thường im lặng vì sợ hãi, xấu hổ, lo ngại về an ninh việc làm, trả thù, cô lập và tác động đến gia đình, các chiến lược khuyến khích báo cáo là cần thiết. Các chiến lược này bao gồm giáo dục nạn nhân về quyền không bị quấy rối tình dục tại nơi làm việc và tăng số tiền bồi thường cho nạn nhân bằng cách lấy tiền phạt của nhà nước trả cho họ.

Từ khóa: Chế tài xử phạt, quấy rối tình dục, tại nơi làm việc

Trích dẫn bài báo này: Uyên N T N, Dung T T T. Hoàn thiện pháp luật xử lý hành vi quấy rối tình dục tại nơi làm việc ở Việt Nam từ kinh nghiệm lập pháp của một số quốc gia. *Sci. Tech. Dev. J. - Eco. Law Manag.* 2025; 9(0):1-1.