



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

Nguyen Thi Ngoc Uyen^{1,2,*}, Thai Thi Tuyet Dung³



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¹Lecturer, Faculty of Business and Law, Saigon International University, Ho Chi Minh City, Vietnam

²PhD. Student, Ho Chi Minh National Academy of Politics

³Lecturer, University of Economics and Law, Vietnam National University, Ho Chi Minh City, Vietnam

Correspondence

Nguyen Thi Ngoc Uyen, Lecturer, Faculty of Business and Law, Saigon International University, Ho Chi Minh City, Vietnam

PhD. Student, Ho Chi Minh National Academy of Politics

Email: nguyenthingocuyen@siu.edu.vn

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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

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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METHODOLOGY

The primary research method employed in this article is the legal analysis method. Comparative legal analysis is utilized to contrast Vietnam's legal provisions with other countries worldwide to identify similarities and differences in legal measures for addressing SH. Additionally, we utilize an analytical method to examine Vietnam's legal provisions alongside those of other nations, drawing evaluations, and recommendations for appropriate penalties for SH. A synthesis method is subsequently applied to generalize the information and data obtained through analysis and comparison, enabling us to draw conclusions and propose suitable recommendations to improve Vietnam's legal framework for addressing SH.

Legal basis for sanctions for sexual harassment in the workplace in several countries around the world

SH in the workplace is a global, cross-border issue. According to a 2018 survey by CARE Australia, approximately 80% of individuals in Asian countries reported experiencing workplace SH at some point in their lives¹. In Vietnam, a survey conducted by ActionAid Vietnam in collaboration with the Center for Gender, Family, and Environment Research revealed that over 53% of office workers and nearly 60% of public officials had experienced SH two to five times. Additionally, 89% of men and witnesses reported observing such behaviors². Countries have been concerned about SH issues in the workplace quite early. Almost all countries consider SH in the workplace to be a violation of human rights, and victims need to be protected³. Different countries regulate SH in the workplace in different laws and precedents; some countries regulate this issue in Human Rights Law (Canada, Fiji, and New Zealand...)⁴, p25, Criminal Law (Netherlands, Venezuela, Israel, Denmark, Antigua, Barbuda, etc.)⁴, pp 23-26, Administrative Law, Civil Law, Labour Law, Employment Law, Anti-Sexual Abuse Law, or a combination of many different branches of law. According to statistics, more than 50 countries have regulations prohibiting SH at the national or federal level⁵. Depending on the level of deterrence for SH in the workplace, each country's law provides different forms of punishment for this legal violation. Most countries believe that: *"victims of SH at work have the right to sue for civil damages if they can prove evidence of the physical and mental harm they have suffered. Some countries believe that SH in the workplace causes significant dangerous consequences 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 discipline 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 discrimination 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 therapy, and recovery sessions for the victim. Depending on the nature and severity, different levels of punishment 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 victim 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 maximum 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. According to Article 184 the 2016 Criminal Code in Spain: *"Whoever solicits favours of a sexual nature, for himself or for a third party, within the setting of a continuous or usual work relation, teaching or service provision relation, and by such conduct causes the victim a situation that is objective and seriously intimidating, hostile or humiliating, shall be convicted of sexual harassment and punished with a sentence of imprisonment of three to five months or a fine from six to ten months"*⁸.

In the UK, SH is any insult to an individual or intentional touching of another person without that person's permission, and offenders in the UK can be imprisoned for up to 10 years⁹. The 1998 Labor Protection Act of Thailand stipulates that anyone who sexually harasses women and children will be fined up to 20,000 baht¹⁰. Thailand only uses purely administrative measures without considering SH as a criminal. Meanwhile, under Article 26, the Ministry of Labor of Japan has a unique way of approaching SH by publicly disclosing the identities of businesses with unhealthy working environments¹¹.

In the Philippines, any person who harasses another person will be *"penalised by imprisonment of not less than one (1) month nor more than six (6) months, or a fine of not less than ten thousand pesos (P10,000) nor more than twenty thousand pesos (P20,000), or both such fine and imprisonment at the discretion of the court"*¹². In Malaysia, anyone who insults a woman's dignity through words, gestures, or acts that expose the body so that the woman hears and sees. As a result, the harasser will be sentenced to a maximum prison term of 5 years, or a fine or both¹³. Thus, Malaysia applies criminal sanctions in parallel with administrative sanctions.

In China, Article 42 of the 2012 Law of the PRC on Penalties for Administration of Public Security stipulates that *"A person who commits one of the following acts shall be detained for not more than five days or be fined not more than 500 yuan; and if the circumstances are relatively serious, he shall be imprisoned for not less than five days but not more than ten days and may, in addition, be fined not more than 500 yuan:*

- (1) writing letters of intimidation or threatening the personal safety of another person by other means;
- (2) openly humiliating another person or slandering another person by fabricating stories; ...
- (4) threatening, humiliating or beating up a witness or his close relative or retaliating against either of them;
- (5) repeatedly dispatching pornographic, humiliating, intimidating or other information to disturb the normal life of another person; or
- (6) peeping, secretly taking photos, eavesdropping, or spreading the privacy of another person"¹⁴.

In summary, SH in the workplace is handled in different forms: disciplinary action, civil compensation claims, administrative sanctions, and criminal prosecution. In more than one-third of countries, specific provisions are included in labor laws, often in the form of dismissal. In most countries, victims of SH in the workplace have the right to sue for compensation. Depending on the regulations of different countries, compensation claims can be handled

together with criminal proceedings or separately in an independent civil case. Most of the remaining countries consider SH as an act violating the management order in the workplace, the nature of the behavior is not seriously dangerous and only requires administrative handling. However, more and more countries have criminal sanctions for SH in the workplace. According to the author's preliminary statistics, workplace SH is prohibited and criminalized in more than 45 countries such as Ukraine (Penal Code), Bangladesh (Prevention of Violence Against Women and Children Act), Costa Rica (Penal Code), Mauritius (Penal Code), Spain (Penal Code), Sri Lanka (Penal Code), India (Penal Code)¹⁵, United Republic of Tanzania (Penal Code), Venezuela (Law on Violence Against Women and Families), Israel, Antigua, Barbuda, Denmark, Philippines, United States, Algeria, Kenya, China⁴, Gabon, Montenegro, Peru, France, South Sudan¹⁶, Chile, Bahrain, Barbados, Djibouti, Saudi Arabia, Tunisia, United Arab Emirates, Jordan¹⁷... Those countries prosecute criminal liability and request compensation for damages or apply it simultaneously in resolving SH cases in the workplace, depending on the severity of the case. Although the number of days in prison is not many compared to other serious crimes, the criminalisation of SH in the workplace has shown the "zero tolerance" attitude of the state and society towards criminals and the deterrence and prevention against those who intend to commit SH. It will also be a reference for perfecting future Vietnamese law on handling SH behaviours.

Legal basis for sanctions for sexual harassment in Vietnamese workplace

According to point d, Clause 2, Article 35 of the 2019 Labour Code, SH is grounds for employees to unilaterally terminate the labour contract without notice in case of SH in the workplace. This is a new, advanced point of the 2019 Labour Code compared to the 2012 Labour Code. In addition, Article 125, Clause 2 stipulates that *"an employer may dismiss an employee for disciplinary reasons when an employee commits SH against the internal labour regulations"*.

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

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

Suppose the harassment seriously offends the dignity and honour of others. In that case, it can also be criminally prosecuted according to Article 155 of the 2015 Criminal Code (amended and supplemented in 2017), "Insults to another person": "1. Any person who seriously insults another person shall receive a warning, be liable to a fine of VND 10,000,000 - VND 30,000,000 or face a penalty of up to 03 years' community sentence. 2. This offence committed in any of the following circumstances carries a penalty of 03 - 02 years imprisonment:

- a) The offence has been committed more than once;
 - b) The offence is committed against 02 or more people;
 - c) The offence involves abuse of the offender's position or power;
 - d) The offence is committed against a law enforcement officer in the performance of his/her official duties;
 - dd) The offence is committed against a person who cares for, teaches, raises or provides medical treatment for the offender;
 - e) The offence is committed using a computer network, telecommunications network or electronic device;
 - g) The victim suffers from 11% - 45% mental and behavioural disability because of the offence.
3. This offence committed in any of the following circumstances carries a penalty of 02 - 05 years imprisonment:
- a) The victim suffers from $\geq 46\%$ mental and behavioural disability because of the offence;
 - b) The offence results in the suicide of the victim.
4. The offender might be prohibited from holding certain positions, practising his/her profession or doing certain jobs for 01 - 05 years".

In cases where the victim is under 16 years old, these SH acts can be charged as child molestation according to the provisions of Clause 1, Article 146 of the 2015 Criminal Code (amended and supplemented in 2017) on Molestation of a person under 16: "Any person who molests a person under 16 for purposes other than sexual intercourse or other sexual activities shall face a penalty of 06 - 36 months' imprisonment".

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

2015 Civil Code, "Damage caused by harm to honour, 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 aggrieved person. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties cannot agree, the maximum sum shall not exceed a ten-month base salary prescribed by the State"¹⁸.

Compensation includes material damage and compensation 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 responsible 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 considered a crime, although the consequences for victims, agencies, and businesses are challenging to recover. SH in the workplace is a severe problem, affecting 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 anxiety, depression, or insomnia¹⁹. The risk of developing post-traumatic stress symptoms becomes even higher when individuals choose to stay silent about their experiences²⁰. On a physical level, research indicates that women who face harassment are more prone to negative physiological effects, such as elevated blood pressure, headaches, and digestive issues²⁰. 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 positions²¹. In addition, SH can create an unsafe, uncomfortable working environment, negatively affecting 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. Therefore, the Vietnamese Penal Code needs to include sanctions for individuals who commit acts of SH after

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

Second, some regulations on administrative sanctions for violations of SH at the workplace in Clause 3, Article 11, and Clause 4, Article 30 of Decree 12/2022/ND-CP are not suitable, such as lack of additional sanctions, lack of remedial measures, and inconsistency between the content of legal regulations, and the name of the article.

Third, much information and results of complaints about SH in the workplace should be made public and transparent in the mainstream press or on the websites of state management agencies. As a result, employees no longer want to complain or denounce because they do not believe in the settlement's fairness and results. Social organisations, the media, and the public cannot evaluate and monitor this settlement process's objectivity, timeliness, and effectiveness. As a result, it can create conditions for negative behaviours such as corruption and abuse of power, making it difficult for complainants and denouncers, cases are ignored, and no agency resolves them.

Fourth, Vietnam has no regulations on the mechanism to protect employees from SH by business owners or domestic workers who are sexually harassed at work. Because when the business owner implements SH and the employee complains within the workplace, the resulting outcome is not objective and the disciplinary action of dismissal cannot be applied to the business owner. For domestic workers who are sexually harassed in Vietnam, there is no internal institution or grassroots trade union to help them resolve the case.

Fifth, cultural, religious, and gender stereotypes in Vietnamese society have a profound impact on the behaviour of female victims. They are reluctant to report and dare not speak up when witnessing or being subjected to SH at work. As a result, it is difficult for authorities to detect and intervene quickly to protect SH victims. In reality, SH in the workplace occurs regularly, but the number of officially reported cases is very low.

RESULTS

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

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

will create conditions for similar behaviours to continue, causing unpredictable consequences for society. SH causes deep psychological damage to victims, which can lead to depression, anxiety, and even suicide. Dignity and psychology are factors that cannot be restored to their original state. Furthermore, SH creates a toxic working environment where people feel unsafe and threatened. The number of victims of SH is increasing. According to the 2019 Survey on violence against women nationwide, one in ten women (11.4%) have suffered one or more forms of SH in life. Studies have also documented high rates of SH among students in schools and other public places. A 2018 study found that 60% of students from high school to university in four provinces of Vietnam reported experiencing SH at least once, half of whom reported experiencing anxiety and depression after the incident²².

- Harassment in the workplace can be proven through the following sources of evidence: readable documents; audible evidence; visual evidence; electronic data such as emails, messages, etc.; physical evidence such as tools used by the person committing the harassment to the victim; the victim's statement; the witness's statement; the statement of the person suspected of committing the harassment; the conclusion of a competent state agency (if any) etc²³.

- Administrative sanctions for SH are ineffective and not enough to deter sexual harassers. Criminalizing SH will send a strong message that these behaviours are unacceptable and that they shall be severely punished, creating a deterrent for those who intend to commit SH acts, thereby reducing the rate of these incidents.

The criminalisation of SH creates a solid legal system to protect people from SH acts. Criminalisation helps ensure that SH victims receive more appropriate protection and compensation when there is judicial involvement. In addition, offenders will be punished according to their dangerous behaviours.

- More countries have been criminalising SH, which can help the government keep up with international trends and protect and promote human rights in Vietnam.

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

Second, improving the law on administrative sanctions for SH in the workplace.

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

from VND 15 million to VND 30 million. In addition, Clause 4, Article 30 on violations of regulations on domestic workers, when an employer conducts SH toward a domestic worker, but not to the extent of criminal prosecution, the employer shall be fined from VND 50 million to VND 75 million. These two regulations are revealing many limitations, and improvements need to be made, such as:

- *Adding additional penalties.*

When those who commit SH acts at the workplace use images and documents related to sex to harass others at the workplace, it is also necessary to apply additional sanctions, such as confiscation of evidence, means, and tools of crime, to stop the violation and prevent that person from continuing to use those images, and documents to harass others.

- *Supplementing remedial measures.*

After being harassed at work, the harassed person will be physically and mentally injured deeply, so it is necessary to quickly apply remedial measures to force the violator to "publicly apologise for the violation unless the victim has a written request not to apologise" to show remorse, educate the violator, and somehow help the victim be comforted, and soothe the pain they have experienced, restoring to their original state.

Furthermore, it is necessary to add a remedial measure to force the correction of false or misleading information because there are cases where the harasser used images and information related to sex. They distributed it at the company or posted it online to harass another employee. Only applying a fine is not enough because those images and information seriously affect the honour and dignity of the victim. Correcting false or misleading information is necessary to restore the victim's dignity promptly and prevent such harassment from continuing.

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

Specifically, the name of the provision is a violation of regulations on the implementation of employment contracts. However, the content is: "Fine from VND 15,000,000 to VND 30,000,000 for SH in the workplace but not to the extent of criminal prosecution". Performing a labour contract is when one party (employer or employee) carries out certain tasks agreed upon in the labour contract. Therefore, performing a labour contract is a legal, positive act arising in the relationship between the employee and the employer to carry out certain tasks based on the previously signed labour contract. In the case of an employee harassing another 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 direction 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 workplace 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 current 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 constitutionality, legitimacy, and uniformity of legal normative documents in the legal system". Therefore, the legal documents of lower-level state agencies must be consistent 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 situation 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 denunciations 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 electronic information portal after encoding the victim's personal information. It is necessary to build a statistical database on complaints and denunciations and periodically publicise this data while applying information technology to effectively and safely manage and publicise information on complaints and denunciations.

Fourth, building the local Complaints Committee

Referring to Article 6 of The SH of Women at Workplace (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 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.

ABBREVIATIONS

SH in the workplace: Sexual harassment in the workplace

Decree No. 12/2022/ND-CP dated 17 January 2022 on penalties for administrative violations against regulations on labour, social insurance, and Vietnamese guest workers: Decree 12/2022/ND-CP

CONFLICT OF INTEREST STATEMENT

The authors declare that they have no conflicts of interest

AUTHORS' CONTRIBUTION

- Author Nguyen Thi Ngoc Uyen: Read foreign and Vietnamese documents, analyze, compare with Vietnamese law, find out the shortcomings and make some recommendations, and write most of the article.

- Author Thai Thi Tuyet Dung: Read Vietnamese legal regulations, analyze, and write the "Introduction", "Methodology" and "Legal basis for handling sexual 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

Nguyễn Thị Ngọc Uyên^{1,2,*}, Thái Thị Tuyết Dung³



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¹Giảng viên trường Đại học Quốc tế Sài Gòn

²NCS ở Học viện Chính trị quốc gia Hồ Chí Minh, Việt Nam

³Giảng viên trường Đại học Kinh tế - Luật, Đại học Quốc gia TP. Hồ Chí Minh, Việt Nam

Liên hệ

Nguyễn Thị Ngọc Uyên, Giảng viên trường Đại học Quốc tế Sài Gòn

NCS ở Học viện Chính trị quốc gia Hồ Chí Minh, Việt Nam

Email: nguyenthingocuyen@siu.edu.vn

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

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