

“Workplace Harassment Comes in Many Forms: How Can You Help Your Company Prevent and Deal with Harassment in the Workplace”

The #MeToo movement has spread like wildfire in the US, and thanks to social media, the hashtag has brought increased awareness of sexual harassment in the workplace. The #MeToo movement has also gained footing in Japan, with increased media coverage as a few male politicians and officials have found themselves in the spotlight for alleged sexual harassment acts. Indeed, the Government of Japan has recognized that power harassment in the workplace is one of the issues to be reviewed as part of Prime Minister Abe’s 2017 Plan for the Implementation of Workstyle Reforms. On March 30, 2018, a report was issued by Ministry of Health, Labour and Welfare’s (MHLW) Investigative Commission on Measures to Prevent Power Harassment in the Workplace and further discussions will be held in the Labor Policy Council. Harassment has been a long-standing issue in Japan, but given the government’s renewed focus on harassment, we believe that companies should be aware of the definitions and descriptions of the various forms of harassment and implement certain measures to prevent harassment within its workplace.

Workplace harassment can come in many forms, and the three forms which have often been disputed between the employer and employee are: 1) power harassment; 2) sexual harassment; and 3) maternity harassment.

Power harassment is defined by the “Proposals for Prevention/Settlement of Workplace Power Harassment” (dated March 15, 2012) issued by the Roundtable Conference Regarding Workplace Bullying and Harassment of the MHLW as “an act by an employee using his/her position of seniority or relationship with a co-worker which causes such co-worker mental or physical stress or a degradation of the working environment beyond the appropriate scope of the company’s business.” It listed six categories of harassment including (i) assault, (ii) intimidation, (iii) isolation or neglect – e.g., where the employee is purposely not invited to company events or when an employee is positioned “near the window” (*madogiwa*) (iv) forcing an employee to perform unnecessary or impossible jobs, (v) ordering an employee to perform menial tasks which are far below the employee’s ability or experience, and (vi) excessively inquiring into private affairs of the employee.

Sexual harassment in the workplace under the Equal Employment Opportunity Law (EEOC) and MHLW 2006 Guidelines on sexual harassment is described as a non-consensual sexual act in the workplace which causes an unfavorable treatment of an employee or a degradation of the working

environment and companies must take necessary measures to prevent such sexual harassment pursuant to the EEOL and MHLW Guidelines. Sexual harassment has two different categories: 1) Reward/penalty type – where a quid pro quo or penalty is connected to a sexual act in the workplace against the employee’s will such as if an employee is fired for refusing a sexual relationship with his/her boss; and 2) environmental type – where sexual acts related to the work environment have a serious negative impact on the employee’s ability to perform his/her job such as where an employee cannot concentrate on her work due to nude female posters being posted at the office.

Maternity harassment is also described by the EEOL and MHLW 2016 Guidelines on maternity harassment as being “an act in a workplace which causes a degradation of the work environment of a female employee due to her pregnancy or childbirth.” Further, the company should have internal work rules which provide for certain periods of leave for a pregnant employee based on the Labor Standards Act and the Child and Family Care Leave Act – e.g., allowing for maternity leave for a period of six weeks before the due date and eight weeks after childbirth and for childcare leave.

Indeed, the impact of harassment in the workplace for companies can be profound, as affected employees can suffer from physical and mental health issues, reduced productivity and morale, and job turnover. Of course the company can be exposed to reputational risk from employee lawsuits as well as potential investigations and warnings from the Labor Standards Supervision Office if such harassment affects the mental health of employees.

What should your company do to help your company prevent and deal with workplace harassment? The first step would be to have a strong message from top management that expressly states all forms of harassment will not be tolerated within the company. Next, the company should review its internal work rules (*shuugyou kisoku*), harassment prevention rules (*harassment boushi kitei*) and labor-management contract (*roushi kyouyaku*) and strengthen such rules with respect to the prevention of and disciplining sexual harassment acts. Prompt announcement of the rules is necessary and thorough implementation through distributing emails, intranet messages, and holding explanation town hall-styled meetings would be recommended. Companies should also use as a reference, the manual released by MHLW on the introduction of power harassment measures which lists seven basic measures and the MHLW’s Guidelines on Sexual Harassment and Maternity Harassment.

The company should also conduct periodic and anonymous questionnaires to all employees to assess its current employment conditions and implement training on its internal work rules and policies on harassment for new employees as well as periodic training for current officers and employees. Training should be done company-wide and include training for part-time and temporary employees as well as specific training focused on executives and managers – as many harassment cases involve acts against temporary workers as employees may sometimes believe temporary workers have less “rights” than a full-time employee. Training can be done internally by an HR department or by outside advisors including lawyers or “industrial counselors” (*sangyou counselor*).

Finally, a very important measure is to implement a consultation hotline or point of contact within the company. Employees must be informed where they can go and who they can contact if they are being harassed or have witnessed a harassment incident. The company can hire an outside law firm or advisor to monitor the hotline. If the company doesn't implement a hotline, the harassed employee will have the limited choices of either reporting the incident to the authority or consulting with an outside lawyer, both of which the company would clearly like to avoid.

With the increased awareness of harassment issues by the government, employees, and the media, companies can no longer take an indifferent approach to harassment and must be proactive in implementing the necessary measures to prevent and deal with the many forms of harassment in the workplace.

Sonderhoff & Einsel provides legal advice for employers on harassment issues including advising on internal work rules, harassment training, harassment investigations, dispute resolution, and negotiations with the labor authority as well as serving as an external hotline for employee inquiries on harassment. The information in this letter is provided as general information and is not meant to be provided as specific professional advice. If you have any specific questions, please contact Grant Tanabe (tanabe@se1910.com) or Ayuko Nemoto (a-nemoto@se1910.com).