Managing Sexual Harassment in the Campus

Equal Opportunity Unit, The University of Hong Kong
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Objectives

◆ To identify behaviour which may constitute sexual harassment

◆ To explore ways to effectively respond to sexual harassment
Relevant Law

《性別歧視條例》
Sex Discrimination Ordinance

◆ Effective: 1996
◆ Unlawful acts
  ● Discrimination: Sex, pregnancy or marital status
  ● Sexual harassment
◆ Established Equal Opportunities Commission

Applicable Fields

◆ Employment
  ● Employment (Mainly and wholly work in HK)
  ● Contract workers
  ● Commission agents
  ● Vocational training
  ● Employment agencies
  ● Trade unions
  ● Qualifying bodies, etc.

◆ Non-employment
  ● Goods, facilities & services
  ● Educational establishments
  ● Dispose & manage premises
  ● Barristers
Unlawful Sexual Harassment

◆ In employment

- Employee → Colleague / job applicant
- Employer ↔ Job applicant / employee
- Principal / contract worker → Contract worker
- Person residing in any premises → Person employed to work in those premises

◆ In education

- Student → Student / Applicant
- Staff or responsible person ↔ Student / applicant

◆ In services provision

- Service provider (employee) ↔ Service user
Liabilities

◆ Aggrieved person may seek remedies
  ● Establishing unlawful act in law: Impact of behaviour on the complainant
  ● Intention has relevance to pain and suffering of the complainant

◆ Some sexual harassment behaviour is criminal offense as well, e.g. indecent assault, rape

Liabilities

◆ Personal liability

◆ Accessory liability
  ● Pressure or instruct sexual harassment
  ● Knowingly aid sexual harassment

◆ Principal’s liability
  ● Sexual harassment done by authorised agent
  ● Authorisation: Express or implied, precedent or subsequent
Liabilities

◆ Employer’s liability

● Sexual harassment done by its employees in the course of their employment
  – Work-related social functions
  – Business trips

● Whether with or without knowledge or approval

➢ Defense: Reasonably practical steps to prevent

Sexual Harassment: Definition (1)

◆ Person-to-person

X makes an unwelcome conduct to Y
  – Sexual advance
  – Request for sexual favours
  – Other conduct of a sexual nature

A reasonable person, having regard to all circumstances, would have anticipated that Y to be offended, humiliated or intimidated
Sexual Harassment: Definition (2)

◆ X, alone or together with other persons

engages in conduct of a sexual nature

creates a hostile / intimidating environment for Y

Conduct of Sexual Nature

◆ Include making a statement of a sexual nature
  ● To another person
  ● In his/her presence
  ● Orally
  ● In writing

◆ Can be
  ● Physical, visual
  ● Verbal, non-verbal
  ● Blatant and overt
  ● Subtle and indirect
  ● Intentional or unintentional
  ● Single or repeated incidents
Unwelcome Conduct

◆ Subjective feeling of the aggrieved person

◆ Generally speaking
  ● Unwelcome
  ● Passive
  ● Not responding in the same way

Reasonable Person Test

◆ Objective standard

◆ Reasonable person’s reaction in same or similar circumstances

◆ Stereotypical notions of so-called acceptable behaviour cannot be considered
Regard to all Circumstances

◆ Consider
  ● Record of events as a whole
  ● Totality of circumstances (e.g. nature of alleged incidents, context in which these occurred)

◆ Need to consider
  ● Gender dynamic
  ● Power dynamic

Sexual Harassment: Examples

◆ Jokes or sarcastic comments about sex or gender
◆ Sexually suggestive comments of body shape, sexual activities, etc.

◆ Obscene gestures
◆ Display or transmit obscene pictures, posters, magazines, websites, etc. (Include electronic messages)
Sexual Harassment: Examples

◆ Inappropriate touching
◆ Space violation
◆ Repeated attempts to make a date

◆ Sexual propositions or other pressure for sex
◆ Implied or overt threats for sex
◆ Indecent assault, rape

Who may be the Harasser?

◆ Anyone
  ● Whether unintentionally or maliciously

◆ Groups of people may create a sexually hostile environment

◆ Person in control of others
Who may be Sexually Harassed?

◆ Anyone regardless of sex
  ■ Women represent the majority of reported cases

◆ More vulnerable
  ■ Work alone or in isolated / remote area
  ■ Women moving into non-traditional work area
  ■ Subordinates, junior staff, casual workers
  ■ Ethnic minority women

Dealing With Sexual Harassment

◆ Lodge a complaint with the EOC (within 12 months)
◆ Take legal action (within 24 months)

◆ Report to the police (If criminal in nature)

◆ Internal procedures: Different approaches
  ■ Encourage self-management
  ■ Informal (Intervention and resolving matters)
  ■ Formal investigative procedures
Self Management

- Complainant approaches respondent directly, makes clear that the behaviour is not acceptable
- Requests immediate stop of sexual harassment
- May request apology from the respondent
- Points to note
  - Act early
  - Record event, nature of behaviour, date, time, place and witnesses, etc.
  - Seek emotional support or counseling
  - If behaviour continues, decide next action

Informal Resolution

- Emphasis on
  - Resolution
  - Manager or designated person: Intervention and mediation

- Appropriate when
  - Parties likely to have ongoing contact and complainant’s wish
  - Addressing individual concerns
  - Person responsible for the behaviour may admit
Informal Resolution

- Role of manager and designated person
  - Take the matter seriously, listen carefully
  - Respect privacy
  - Maintain impartial and be fair
  - Explain
    - University’s policies and relevant laws
    - Impact of the behaviour and expectation of the University (Where necessary, coach parties to act appropriately)
    - Possible options for solutions
  - Consider mediating disputes
  - Make records

Formal Investigative Process

- According to University’s policy and procedures
  - Usually involve: Written complaint, investigation and possible disciplinary actions

- When to use
  - Complainant wishes
  - Informal attempts at resolution failed
  - Involves serious allegations of misconduct
  - Complainant has been victimised
Handling Sexual Harassment Complaints

◆ Key principles: Regardless of the nature

bullet Give priority and prompt handling
bullet Keep matter in confidential
bullet Treat in serious, professional and fair manners

◆ Prevention of victimisation

 Handling Sexual Harassment Complaints

◆ Points to note

bullet Bear in mind nature of sexual harassment and issues involved
  – Sensitive in nature
  – Not easily articulated / proved
  – Power dynamic
  – Gender stereotype

bullet Concern for victim’s emotion and situation
Preventing Sexual Harassment

◆ Rights and responsibilities

● Everyone is entitled to have the equal opportunities to develop and contribute
  – A safe environment to work, study and live in
  – Be respect and not to be harassed

● Everyone shares the responsibilities
  – Be conscious about own behaviour
  – Help create and maintain such environment

Preventing Sexual Harassment

◆ Role of the University

● Key: Prevention

● Take reasonably practical steps

  Consider
  – What has been done?
  – What should have been done?
Preventing Sexual Harassment

◆ Role of managers and designated persons

- Set the tone
- Lead by example – be a good role model
- Influence and change workplace and campus culture

Preventing Sexual Harassment

◆ Role of managers and designated persons

- Always observe the professional code of conduct
- Know the mechanisms
- Familiar with the University’s procedures
- Understand sexual harassment issues and learn how to handle it
Preventing Sexual Harassment

◆ Role of managers and designated persons

● Management by walking

● Check environment or work process
  – Ensure that it is free of sexist materials or any other forms of stereotyping materials such as posters, screensavers, etc.
  – Wherever possible, make sure it is unlikely for sexual harassment to happen

Preventing Sexual Harassment

◆ Role of managers and designated persons

● To team members
  – Ensure they are aware of and understand sexual harassment policies and procedures
  – At staff meetings
    ➢ Raise sexual harassment issues
    ➢ Make it clear that you won’t tolerate
  – Ensure they would raise concerns with you
  – Follow up any behavioural changes
  – Intervene immediately to suspected sexual harassment, no need to wait for complain
Key Messages

◆ Remember
  ● Sexual harassment once happens, harm is done
  ● Prompt and effective responses can reduce the negative effect and harm to all parties

◆ Preventing sexual harassment
  ● Do not confine to technical interpretation
  ● Both individuals and the University have the responsibilities to do so
  ● Managers and designated persons should pay attentions to any inappropriate behaviour and deal with it without delay

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