

The Liabilities of Harassers and Employers for Sexual Harassments in the Workplace in Japan and Taiwan

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Abstract

This paper focuses on the liabilities of harassers and employers for sexual harassments in the workplace under the regulations of the Civil Code and the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment in Japan and also discusses the liabilities under the regulations of the Civil Code and the Act of Gender Equality in Employment in Taiwan.

The Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment in Japan establishes that employers shall prevent and correct sexual harassments from occurring, but it does not hold the employers liable if they fail to comply. Therefore, the victims could only seek compensation under the Civil Code. Hence, the harassers are liable under tort law, and the employers are jointly liable for the torts of its employees' or for its own activity. Besides, the employers might also be liable for non-performance of obligation under contract law.

On the other hand, the Act of Gender Equality in Employment in Taiwan which also establishes that the employers shall prevent and correct sexual harassments from occurring and implement immediate and effective correctional and remedial measures, and that the employers would be held liable if failed to comply. However, whether a measure could qualify as "immediate and effective" has always been controversial. Besides, since the regulations apply to all employers regardless of the size of their business, it has also been criticized for being unrealistic.

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This paper is a comparative research on Japan, and delves into the liabilities of harassers and employers for sexual harassments in the workplace and its relating issues in both Taiwan and Japan.

Keywords: sexual harassment in the workplace, Act of Gender Equality in Employment, employer liability, immediate and effective correctional and remedial measures, Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment