

# Article

## Sexual Harassment in the Workplace in Taiwan<sup>†</sup>

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<sup>†</sup> The original version of this article was delivered at the Asian Law Students' Association (ALSA) International Forum on March 1, 2003 in Taipei as a keynote speech.

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## I. INTRODUCTION

As more and more local women have entered the labor market in Taiwan in recent years, various issues concerning gender equality in employment have received attention from the public. Among them, sexual harassment in the workplace has been widely publicized. A series of these incidents at work sites and on campuses were exposed by the press in the early 1990s, and a number of studies and surveys confirmed that a substantial portion of working women had experienced or noticed this kind of unwelcome or unwanted conduct in their workplace. Before 2002, Taiwan did not have a statute specifically prohibiting sexual harassment at work and the related provisions in the Civil Code, the Criminal Code, the Statute for the Maintenance of Public Order and Social Stability, and other labor protection statutes were utilized to cope with this new phenomenon. Since these legislation were not suitable to protect the interests of the parties involved in these incidents, a special chapter was added in the newly passed Gender Equality in Employment Law in 2002 to correct this situation.

Under the related provisions of this landmark legislation, which had been advocated by local women's rights groups for thirteen years, the concept of sexual harassment at work was given a clearer legislative definition. In addition, the employers were required to adopt necessary preventive and corrective programs to eliminate the problems. Besides this, business entities hiring over thirty employees were also instructed to establish internal complaint mechanisms, formal or informal, to proactively settle these disputes in their own organizations. After this new legislation was put into practice on March 8, 2002, the task of preventing these incidents from occurrence at work sites has proceeded very successfully. According to an unofficial report prepared by the Council of Labor Affairs (CLA) in September 2002, almost all governmental authorities and enterprises in the public sector have already set up internal complaint mechanisms in accordance with the requirements of the new law. Although corporate responses in the private sector were not so enthusiastic initially, they have gradually accepted the notion that "prevention" was the best tool for the elimination of these incidents. It is estimated that over 50% of local private business entities have already established various forms of channels to handle this issue. Therefore, Taiwan has become one of the leading nations in Asia to combat sexual harassment in the workplace and its experience in this endeavor merits some attention.

The purpose of this paper is to provide a general account of the problem of sexual harassment in the workplace in Taiwan in recent years and to analyze how the newly-enacted Gender Equality in Employment

Act of 2002 responds to this emerging issue. Aside from introductory and concluding remarks, the main contents of the paper are divided into five sections. Section II uses a number of local surveys to illustrate the prevalence and seriousness of sexual harassment problems in Taiwan in general and in the workplace in particular. Section III points out that the legal regime governing workplace conduct and other related statutes before the enactment of the Gender Equality in Employment Act of 2002 were not suitably effective to handle this new issues. In Section IV, the major provisions dealing with sexual harassment at work in the newly-enacted Gender Equality in Employment Law will be discussed. Section V provides a detailed evaluation of the related provisions of the law, including their merits, shortcomings and controversial aspects. Finally, this paper offers several proposals for the employers to further improve their practices and for the employees to prevent these incidents from occurring, or if they do, to protect their rights and interests.

## II. PREVALENCE AND SERIOUSNESS OF THE PROBLEM

In this section, the prevalence of sexual harassment in the workplace in Taiwan will be described in two stages through numerous empirical researches and surveys. Most of them are conducted by the local non-governmental organizations (NGOs). Although the methods they utilized may be different, their findings strongly illustrated that this crisis in the workplace has reached serious proportions in recent years and that new legislation offering better solutions was badly in need. It is worth noticing that although some local feminists have raised the issue of sexual harassment in the workplace in the 80s,<sup>1</sup> their opinions did not receive wide-spread attention, due in part, to the fact that most people were uninformed on this subject and regarded such conduct and behavior as personal flirtations between members of the opposite sex.<sup>2</sup> A few relevant surveys were released, but they did not specifically focus on incidents that had occurred in the workplace and they treated these incidents only as a kind of public nuisance.<sup>3</sup> As in many countries, the whole issue only

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1. For earlier discussions on this issue in Taiwan, see Ai-Lan Chao, *Preliminary Report on the Survey of Sexual Harassment Against Women*, 25 NEW KNOWLEDGE FOR WOMEN 19, 19-22 (1984); Yenlin Ku, *Controversies over Sexual Harassment*, 25 NEW KNOWLEDGE FOR WOMEN 17, 17-18 (1984); Mei-Neu Yu, *Legal Sanctions Against Sexual Harassment*, 25 NEW KNOWLEDGE FOR WOMEN 30, 30-31 (1984); and Mei-Neu Yu, *How Effectiveness is Legal Sanctions Against Sexual Harassment*, 18 CHINA FORUM 45, 45-46 (1984).

2. See Ching-Feng Chang, *Is There Any Stop to This Long Lasting Hated? A Thorough Analysis of the Dilemma of Working Conditions Faced by Women*, in WHITE PAPER ON CURRENT CONDITIONS OF WOMAN, 1995 159-161 (Yu-Shiu Liu, ed., 1995).

3. See Yin-Hwa Hsieh, *From Sexual Harassment to Sexual Violence*, 214 TODAY LIFE MAGAZINE 16, 16 (1984); Fu-Yuan Hwang, *Sexual Harassment in the Workplace and Its Prevention*, in ESSAYS ON GENDER EQUALITY IN EMPLOYMENT 190-191 (Council of Labor

began to unfold, rather unexpectedly, at the beginning of the 90s.<sup>4</sup>

A. *Surveys in the Early Stage (1991-1995)*

Given that Taiwan is still a male-dominated society, it is not surprising that various forms of sexual aggression against women are among the most serious social problems in Taiwan and have received extensive discussions from local scholars.<sup>5</sup> However, the problem of sexual harassment in the workplace is a new phenomenon and had not attracted attention until the beginning of the 90s. In October 1991, a group of flight attendants from China Airlines accused an airline-employed physician of unprofessional conduct during medical examinations. This incident took place at an extremely opportune moment because during that time, allegations that U.S. Supreme Court Justice-nominee Clarence Thomas had sexually harassed his subordinate Ms. Anita Hill when he was Chairman of the Equal Employment Opportunity Commission (EEOC) were widely reported by the local press and the term “sexual harassment,” which in Chinese language literally means sexual annoyance, had become a very popular parlance. Numerous women’s rights groups rallied to their support and the whole event attracted tremendous publicity, even though the accused physician was subsequently cleared.<sup>6</sup> During the same month, the Modern Women Foundation released the results of a survey on sexual harassment. In that report, 923 working people of both sexes between the age of 16 to 50 were surveyed using the same method with nearly identical questions from the first survey. Among them, 36.1% of working women claimed that they had experienced some forms of sexual harassment in their workplace.<sup>7</sup>

In 1992, after a series of sexual harassment incidents happened on university campuses, female student organizations started to build up

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Affairs ed., 1994); and TAIPEI CITY WOMEN RESCUE FOUNDATION, AN INVESTIGATIVE REPORT ON WOMEN SUFFERING FROM SEXUAL VIOLENCE 11-12 (1990).

4. See CING-KAE CHIAO, SEXUAL HARASSMENT IN THE WORKPLACE AND LEGAL RESPONSES 3-4, 11-14 (2002).

5. See Fu-Yuan Hwang, *White Paper on Personal Safety for Women: Research and Suggestions*, paper presented at the Conference on the Presentation of the White Paper on Women Policy, 3-4, held by the Central Women’s Committee of the KMT Party on March 6, 1995, Taipei, Taiwan and Tsan-Yin Luo, *Sexual Violence: Current Conditions of Sexual Violence and Its Prevention: Deconstructing the Myths and Taking Back the Dark Night*, in Liu, *supra* note 2, at 270-271..

6. For a discussion of this incident, see Hwei-Ling Wang, *Sexual Harassment in the Workplace from the Viewpoint of Labor Law*, paper presented at the Conference on Sexual Harassment in the Workplace, 6, held by the Council of Labor Affairs of the Executive Yuan on January 5, 1993, Taipei, Taiwan.

7. See MODERN WOMEN FOUNDATION, WORKING PEOPLE ATTITUDES TOWARDS AND EXPERIENCE WITH SEXUAL HARASSMENT 20 (1992).

inter-mural networks for mutual support.<sup>8</sup> In March 1993, local news media exposed that an intoxicated female secretary of a local businessman was sexually assaulted by another businessman and a secret service agent after a business dinner. This incident aroused wide-spread indignation and a new bill entitled “The Prevention of Sexual Violence Against Women” was proposed by several female legislators from the (then) opposition Democratic Progressive Party (DPP) and a number of local women’s rights groups. Subsequently, a series of public hearings on this bill were held and the issue of sexual harassment dominated these discussions. In the same year, a large-scale survey and research program sponsored by the CLA to investigate the occurrence of sexual harassment in the workplace in Taiwan was released.<sup>9</sup> Since this survey was the first to focus specifically on incidents of sexual harassment in the workplace, and because the government indicated that the findings would be used as a basis to determine whether or not to add a new provision about prohibiting sexual harassment in the workplace to the official Gender Equality in Employment Bill,<sup>10</sup> the presentation of the findings of this report received wide-spread attention. Although the report did not reveal the exact percentage of surveyed employees who had experienced sexual harassment, it did provide some useful information about local employers’ perceptions of sexual harassment in the workplace. In the same year, another small-scale survey conducted by Dr. Tsan-Yin Luo of World News College of Journalism also discovered that among 493 working women surveyed in Taipei, 1% claimed that they had been sexually assaulted.<sup>11</sup>

On May 22, 1994, a large-scale parade was staged by a number of women’s rights groups in Taipei to protest sexual harassment against women and to show their displeasure with government inaction on this social problem. It was attended by thousands of women and men and was hailed as the first demonstration organized by women’s groups and advocating a single feminist issue held without support from political interest organizations. Although the theme of that demonstration was the issue of sexual harassment in general, its repercussions were far-reaching. Sexual harassment, whether on campus or in the workplace, was no longer treated as a private or personal matter, but instead had become a social issue in the public domain. In that year, a survey sponsored by the

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8. See Shio-Chin Hsieh, *Education: From Reproduction of Patriarchy to the Liberation of Women*, in Liu, *supra* note 2, at 198-199.

9. See PAO-CHIN LU AND LI-YEH FU, A STUDY ON SEXUAL HARASSMENT IN THE WORKPLACE IN TAIWAN AREA 56, 76-80, 115, 119-120 (1993).

10. The official bill of this new law was first drafted by the Council of Labor Affairs of the Executive Yuan in 1993 in response to the pressures from local women’s rights groups, see Cing-Kae Chiao, *The Enactment of the Gender Equality in Employment Law in Taiwan: Retrospect and Prospect*, 13 JAPAN INT’L LAB. L. FORUM SPEC. SERIES 20-21 (2002).

11. See Luo, *supra* note 5, at 270.

Department of Labor Affairs of Taiwan Province to examine workers' living conditions in Taiwan Province also showed that over 15% of female workers had experienced or noticed incidents of sexual harassment in their workplace.<sup>12</sup>

According to a survey sponsored by the Bureau of Public Health of the Executive Yuan and released in February 1995, over 43% of medical personnel claimed to have experienced some forms of sexual harassment during medical treatments, either by doctors, colleagues or even patients.<sup>13</sup> In March 1995, a report published by the Formosa Cultural and Educational Foundation also pointed out that of the 937 women over the age of 20 polled by telephone interviews, over 30% of the working women expressed that they had experienced similar encounters.<sup>14</sup> In addition, a report issued by the Twenty First Century Foundation in the same year also showed that almost 20% of women surveyed listed sexual harassment as the social issue that most concerned them.<sup>15</sup> In September 1996, a survey done by the Taipei City Working Professionals' Association also showed that of the 947 white-collar employees (both male and female) questioned, over 25% of them indicated that incidents of sexual harassment in the workplace occurred frequently or occasionally.<sup>16</sup>

#### B. *Surveys in the Current Stage (1996-2001)*

In 1996, there were two surveys and researches released that were related to the issue of sexual harassment at work. The first research was conducted by the China Institute of Industrial Relations under the sponsorship of the CLA. Although the main purpose of the program was to evaluate local corporations and labor unions' responses to the enactment of the proposed Gender Equality in Employment Bill, it did reveal that 19.7% of the surveyed labor unions indicated that the incidents of sexual harassment did happen in their business entities.<sup>17</sup> The second survey was published by the Taipei City Working Professionals' Association in September. According to its finding, approximately 25% of

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12. See DEP'T OF LAB. AFFAIRS, TAIWAN PROVINCIAL GOV., REPORT ON SURVEY AND ANALYSIS OF LIVING CONDITIONS OF WORKERS IN TAIWAN PROVINCE 26, 70 and 140 (1994).

13. See BUREAU OF PUBLIC HEALTH, EXECUTIVE YUAN, THE PREVALENCE OF SEXUAL HARASSMENT IN MEDICAL PRACTICE 2 (1995).

14. See FORMOSA CULTURAL AND EDUCATIONAL FOUNDATION, A REPORT ON THE ANALYSIS OF PUBLIC OPINION ON THE TRENDS OF WOMEN IN TAIWAN IN 1995 Chapter 4, Chart 5 (1995).

15. See TWENTY FIRST CENTURY FOUNDATION, A REPORT ON THE ANALYSIS OF A SURVEY ON THE DEGREE OF SATISFACTION OF WOMEN IN TAIWAN AREA IN 1995 28 (1995).

16. See TAIPEI CITY WORKING PROFESSIONALS' ASSOCIATION, A SURVEY OF WORKING AND LIVING CONDITIONS OF WORKING PROFESSIONALS IN TAIPEI CITY 15-16 (1996).

17. See CHINA INSTITUTE OF INDUSTRIAL RELATIONS, AN INVESTIGATION AND EVALUATION OF THE ENVIRONMENTS FOR IMPLEMENTING THE GENDER EQUALITY IN EMPLOYMENT LAW 21 (1996).

the respondents (both males and females) indicated that these incidents occurred in their workplace frequently or occasionally.<sup>18</sup> In 1997, the same association again conducted a similar survey and the findings pointed out that almost 50% of respondents replied that these incidents occurred in their workplace.<sup>19</sup> The same survey also found out that only 8.8% of the respondents' business entities had adopted any preventive mechanisms to deal with the problem of sexual harassment.<sup>20</sup>

According to a report by the United Evening News on June 31, 1998, a survey released by an organization named Women Action Association of Kaohsiung City indicated that 18% of respondents replied that they had noticed sexually harassing conduct happening in their work sites.<sup>21</sup> In the same survey, over 97% of the respondents also pointed out that the City itself should enact a local statute to prevent these incidents from happening.<sup>22</sup> In the same year, the CLA published an official report entitled A Survey on Female Employment Conditions. According to this survey, 7.9% of the female respondents replied that they had encountered these unpleasant conduct. However, the same survey also indicated that only 17.7% of business entities had initiated disciplinary measures against the perpetrators and over 73.4% had not adopted any actions.<sup>23</sup> In addition, the Taipei City Working Professionals' Association conducted its consecutive survey in three years and released its finding in September. The survey revealed that over 51.9% of female respondents replied that sexual harassment never happened in their workplace, while over 58% of male respondents gave the same reply.<sup>24</sup> The only encouraging aspect of this survey was that more than 12.4% of business entities surveyed had set up some forms of internal complaint procedures to deal with this problem.<sup>25</sup>

In 1999, the Nursing College of National Yan-Ming University conducted a survey on 254 nurses of the Taipei Veterans' General Hospital to find out the seriousness of sexual harassment in the medical communities. Its finding indicated that over 53% of the respondents complained that they had encountered sexual harassment in the process of

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18. See TAIPEI CITY WORKING PROFESSIONALS' ASSOCIATION, A SURVEY OF WORKING AND LIVING CONDITIONS OF WORKING PROFESSIONALS IN TAIPEI CITY 5 (1996).

19. See TAIPEI CITY WORKING PROFESSIONALS' ASSOCIATION, A SURVEY OF WORKING AND LIVING CONDITIONS OF WORKING PROFESSIONALS IN TAIPEI CITY IN 1997 5 (1997).

20. *Id.*

21. See UNITED EVENING NEWS, June 30, 1998, 4.

22. *Id.*

23. See COUNCIL OF LABOR AFFAIRS OF THE EXECUTIVE YUAN, A SURVEY ON FEMALE EMPLOYMENT CONDITIONS 2 (1998).

24. See TAIPEI CITY WORKING PROFESSIONALS' ASSOCIATION, A SURVEY OF WORKING AND LIVING CONDITIONS OF WORKING PROFESSIONALS IN TAIPEI CITY IN 1998 3 and Chart 8 of Appendix (1998).

25. *Id.*



providing nursing services. Among these conduct, 38.5% were physical touching of a sexual nature. Most of them were sexually harassed by their male patients, with male relatives of the patients and doctors as the second and third major perpetrators.<sup>26</sup> This survey strongly illustrated that these incidents had gradually expanded to the fields of professional services and their future trends merited further studies.<sup>27</sup>

In November 2000, the above-mentioned Taipei City Working Professionals' Association published a report on the working conditions of flight attendants. The survey found out that over 85% of female flight attendants responded that during providing their in-flight services, these incidents had occurred frequently or occasionally. Only less than 14.71% replied they had never encountered or noticed these incidents. As for the male flight attendants, over 43% of them indicated that these incidents occurred frequently or occasionally.<sup>28</sup> This survey strongly exposed that this profession belongs to the "high risk" category of job due to the unique sex stereotyping toward female flight attendants and their unique working environments.

Finally, the Kaohsiung Municipal City conducted a survey on January 16 to 17, 2001 on its own employees about their attitudes toward the problem of sexual harassment at work. According to the finding of the questionnaire, before the City Government promulgated its own internal complaint procedures in 2000, over 33.2% of female employees had been sexual harassed while on duty and 5.7% of male employees had the same experience. After the complaint mechanism was put into practice, the ratio for female workers who experienced these incidents had reduced to 22.7% and for male employees was 5.2%.<sup>29</sup> This survey was the first conducted on public officials in this country. How can sexual harassment occur in a city hall with a rather sound personnel system and qualified public officials? The implications of this survey really merited further attention.<sup>30</sup>

Based on the results of the foregoing surveys, it is estimated that a substantial proportion of working women have experienced some kind of sexual harassment in their workplace in Taiwan. Generally speaking, this ratio cannot be regarded as unusually high as compared to that in other industrialized countries.<sup>31</sup> However, since most local working women are

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26. See Cing-Kae Chiao, *Legal Controversies Arising from Sexual Harassment in the Medical Institutions*, in CING-KAE CHIAO, *NEW PROSPECTIVES ON SEXUAL HARASSMENT* 360 (2002).

27. *Id.* at 360-361.

28. See TAIPEI CITY WORKING PROFESSIONALS' ASSOCIATION, *DISCUSSION CONFERENCE ON WORKING CONDITIONS OF FLIGHT ATTENDANTS* 42 (1999).

29. See CHIAO, *supra* note 4, at 18.

30. *Id.*

31. As for the prevalence and seriousness of the same problem in other industrialized

still not assertive in matters concerning gender equality in general, and also because they tend to be conservative in dealing with these kinds of sexual offenses in particular, it is believed that the actual numbers of women suffering from sexual harassment in their workplace are likely much higher.<sup>32</sup> Moreover, the above-mentioned surveys also did not provide any information about the percentage of working men experiencing sexual harassment in the workplace. As the power structure in Taiwanese workplaces is still dominated by men, this phenomenon suggests that sexual harassment is essentially an issue of imbalance of power between both sexes in society and in the labor market. The incidents of men being sexually harassed by women are, for example, very rare.<sup>33</sup> Finally, same-sex, sexual orientation-related harassment were also not reported by those surveys.<sup>34</sup> This is probably due to the fact that Taiwan is still a conservative society and the study of this issue is only in an embryonic stage.

### III. LEGAL REGIME GOVERNING SEXUAL HARASSMENT AT WORK BEFORE THE ENACTMENT OF THE GENDER EQUALITY IN EMPLOYMENT ACT OF 2002

Before the enactment of the Gender Equality in Employment Act of 2002, Taiwan did not have a law specifically addressing sexual harassment in the workplace. Therefore, it had to rely on a variety of related provisions scattered through other statutes, such as the Civil Code, the Criminal Code, the Statute for Maintenance of Public Order and Social Stability, or even the labor statutes to deal with this new form of workplace conflict.

#### A. *Civil Code*

Since some types of sexual harassment can cause harm to the reputation of the victims, they can claim that their individual rights were damaged and require the court to eliminate that infringement, pursuant to Article 18 of the Civil Code of 1929 (as amended in 1982). However, the

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countries, such as that of in the United States and member states of the European Unions, see CING-KAE CHIAO, LEGAL ISSUES CONCERNING SEXUAL HARASSMENT IN THE WORKPLACE IN THE UNITED STATES 3-10 (1997); CING-KAE CHIAO, COMBATING SEXUAL HARASSMENT IN THE WORKPLACE 197, 208, 217-218, 224-225, 242-243, 311, 370-371, 379-380, 400-401 (2002); and International Labour Office, *Combating Sexual Harassment at Work*, 11 CONDITION OF WORK DIGEST 1, 67, 73, 78, 91, 101, 117, 147, 160 (1992).

32. See LU & FU, *supra* note 9, at 119-120.

33. For a discussion of this rare type of case, see CHIAO, *supra* note 4, at 182-183.

34. However, a recent same-sex sexual harassment case that happened in December 2002, which has caused a great sensation in local media in Taipei (the so-called "licking the ear scandal"), indicates that even bi-sexual harassment is also a possibility in Taiwan.

remedies provided by the Code are extremely limited. According to Paragraph 2 of the same Article, plaintiffs may only receive compensation for violations of rights specifically stipulated in the law. Currently, the Code lists exclusively those rights concerning life, body, name, reputation, freedom, status, and capabilities as those rights qualified to receive this special protection. Under such circumstances, even if a plaintiff can win her (or his) case through protracted civil procedures (normally lasting four to five years), her (or his) chance of getting compensation is quite slim due to the fact that the meanings of those listed rights are vague and abstract at best. Moreover, judges are typically reluctant to recognize sexual harassment as a cause of action under current legal standards because of the very heavy burden of proof imposed on the plaintiffs by the law. Furthermore, expensive legal fees can also serve as a deterrent for the potential plaintiff who is typically in a weaker economic position. Therefore, the Civil Code is certainly not a useful means of redressing this kind of work site conflict.<sup>35</sup>

#### B. *Criminal Code*

There are also a number of provisions in the current Criminal Code that are relevant to several forms of sexual behavior and therefore can in some cases be used as legal sanctions against perpetrators of sexual harassment in the workplace. For instance, some serious forms of sexual misconduct in the workplace – such as rape, attempted rape or other types of sexual assault – constitute a level of sexual aggression that is prohibited by Chapter 16 of the Criminal Code of 1935 (as amended in 1999), which deals with a variety of crimes relating to obscenity. In addition, some types of sexual harassment involving physical contact or touching are clearly in violation of those provisions concerning assault and battery, false imprisonment, confinement or restraint of personal freedom (Chapter 26). Furthermore, some misconduct, especially that of a verbal nature, can also presumably be interpreted as reaching the level of defamation or libel against a victim (Chapter 27). Finally, if a *quid pro quo*-type of sexual harassment or assault is committed, then Article 228 of the Code, which addresses the crime of an individual sexually assaulting a subordinate through the abuse of his authority, is a particularly relevant provision. However, using the criminal statutes to solve sexual harassment

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35. For discussions about the shortcomings of using the Civil Code to handle these kind of worksite disputes, see Wang, *supra* note 6, at 10-13; SHU-CHEN WANG, CRAWLING FORWARD—BRAVELY COMBATING SEXUAL HARASSMENT IN THE WORKPLACE 198 (1993); and Hwei-Jiun Yu, *Legal Problems Concerning Sexual Harassment in the Workplace*, 45-46, paper presented at the Conference on Sexual Harassment in the Workplace, held by the Council of Labor Affairs of the Executive Yuan on January 5, 1993, Taipei, Taiwan.

problems also has some inherent drawbacks as the civil statutes and their effectiveness in dealing with this workplace issue is quite doubtful.<sup>36</sup> For instance, the burden of proof for a criminal offense, which is much stricter than that of civil cases, is always the most insurmountable obstacle a plaintiff has to overcome. Since civil remedies are normally denied except in extreme circumstances, simply punishing an offender for his misconduct sometimes cannot make a victim whole. Furthermore, a long, and costly criminal trial is also nightmarish for a plaintiff. Therefore, resorting to the Criminal Code is also not a practical tool to resolve conflicts arising out of sexual harassment in the workplace.<sup>37</sup>

C. *Statute for the Maintenance of Public Order and Social Stability*

Article 83 of the Statute for Maintenance of Public Order and Social Stability of 1991, formerly a police law, has often been mentioned by local scholars as an alternative means of handling controversies over sexual harassment in the workplace.<sup>38</sup> That provision prohibits several types of indecent conduct in public places, such as peeping, exposing oneself, and forcefully teasing or accosting members of the opposite sex. However, as this provision only deals with a very limited range of misconduct, it is inadequate to cover the whole spectrum of sexual harassment in the workplace. Besides, it only imposes an administrative fine on an offender and cannot provide the victim with any other compensatory remedy. Furthermore, using a police statute to govern behavior in the private sphere is inconsistent with the purposes of that law because it is designed mainly to handle conduct in public spaces. Therefore, that statute is also not a suitable mechanism for settling these kinds of disputes.<sup>39</sup>

D. *Labor Standards Act*

Theoretically, several “general protection” provisions in the Labor Standards Act of 1984 could provide employees with some protection in cases of sexual harassment. For instance, Article 11 of the law prohibits employers from terminating labor contracts without prior notice. However, the article is not applicable to sexual harassment because this kind of incident does not fall into any of the five categories of events that require special protection. Paragraph 2 of Article 14 of the Act allows employees to terminate labor contracts without prior notice to their

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36. See WANG, *id.* at 196-198 and Yu, *id.* at 25.

37. See Wang, *id.* at 13-15 and Yu, *id.* at 25.

38. See Wang, *id.* at 14.

39. See CHIAO, *supra* note 4, at 23.

employers in cases when the employer, or the employer's relatives or agents, commit violence or other serious misconduct against them and requires employers to pay severance payment. Clearly this particular article can only serve as a last legal resort for employees who are forced to quit due to sexual harassment in their workplace.<sup>40</sup>

E. *Employment Service Act*

One article in the Employment Service Act of 1992 can at least offer employees some form of legal remedy if they become the victims of sexual harassment in the workplace. According to Article 5 of that Act, employers are prohibited from discriminating against applicants or employees because of the following factors: race, status, language, thought, religion, party affiliation, place of ancestry, sex, marriage or marital status, appearance, figure, disabilities, and former labor union membership. Paragraph 2 of Section 5 of the Implementing Regulations of the Act also stipulates that municipal and county governments may set up commissions on employment discrimination to determine whether a discriminatory act has been committed by the employer. Until now, these commissions have been established in all municipalities and counties in Taiwan. Among these commissions, the most active is the one set up in Taipei in 1995. It has settled a number of employment discrimination disputes, some of which were directly dealt with sexual harassment in the workplace. The rulings of these cases have been widely covered by the local press and acclaimed by women's rights groups.<sup>41</sup> However, one of the drawbacks of this Act was that the sanction it can impose on the employer was rather light. Before the amendment of the law in 2001, the commissions could only suggest the competent authorities to impose a maximum administrative fine of NT\$30,000 (equivalent to U.S. \$1,111) on the employer. For a wealthy employer, this penalty is merely a slap on the wrist and therefore failed to serve as an effective deterrent. Fortunately, the Act had been amended on December 21, 2001 and the amount of the administrative fine was increased fifty times.<sup>42</sup> However, due to a serious legislative mistake, this newly amended Act cannot play an active role in preventing sexual harassment in the workplace (to be discussed in Section V of the paper).<sup>43</sup>

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40. See Wang, *supra* note 6, at 9-10, 12-13.

41. See CHIAO, *supra* note 4, at 52-63, 174-185.

42. See Cing-Kae Chiao, *An Analysis of the Related Provisions to the Prevention of Sexual Harassment at Work in the Gender Equality in Employment Law of 2002*, 271 TAIPEI BAR J. 40, 44 (2002).

43. *Id.* at 47.

IV. MAJOR PROVISIONS CONCERNING PREVENTION OF SEXUAL  
HARASSMENT AT WORK IN THE GENDER EQUALITY  
IN EMPLOYMENT ACT OF 2002

In this section, the legislative backgrounds of the Gender Equality in Employment Act of 2002 will be briefly discussed. It will then proceed to describe the Act's major provisions concerning the prevention of sexual harassment in the workplace, including the legislative definitions of two major types of this conduct, the scope of employer liability, their legal remedies, and other related matters.

A. *General Backgrounds*

The enactment of the Gender Equality in Employment Act was a long and tortuous process. In August 1987, the media in Taiwan reported extensively on the forced termination of 57 and 44 female employees of the Dr. Sun Yet-Sen Memorial Hall in Taipei and Kaohsiung City Culture Center respectively, who were fired because they had either reached the age of 30, got married or were pregnant.<sup>44</sup> These incidents triggered waves of strong protest from various local women's rights groups, which forced the Ministry of Education, the central competent authority in charge of governing these two leading cultural institutions, to discontinue this long-standing employment practice of forced retirement after marriage or pregnancy. In October that year, the Awakening Foundation (Women with New Knowledge), an active and vocal women's rights group composed of professional working women, started to collect, discuss and translate related foreign materials in an effort to draft a new bill.<sup>45</sup> However, the process of enactment of this landmark statute did not proceed well even from the beginning. The bill had been languished in the Legislative Yuan for almost thirteen years without any meaningful progress. It was not until the DPP Party won the presidential election in May 2000 that the legislative process of the law was re-started in earnest. The Legislative Yuan passed the Gender Equality in Employment Bill on December 21, 2001 and the Act was formally put into force on March 8, 2002.<sup>46</sup>

During the earlier stage of the drafting of this Act, the issue of preventing sexual harassment at work was not mentioned at all. Actually, it was not until May 1993, when the CLA began to draft its own official bill that this new controversy in the workplace had attracted widespread

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44. For a brief account of these two incidents, see Chiao, *supra* note 10, at 20.

45. *Id.*

46. *Id.* at 22.

attention. In the final stage of enactment of this Act, due to the pressure of local women's rights groups, a new chapter was added in the so-called "consolidated" and "co-ordinated" versions of the bill and sexual harassment at work was treated as a form of sex discrimination in employment. Although the Legislative Yuan had made numerous revisions of the wordings of major provisions governing this important issue, it kept the substantive portions of the chapter almost intact.<sup>47</sup>

### B. *Legislative Definitions of Major Types of Sexual Harassment at Work*

One of the unique characteristics of the chapter dealing with the prevention of sexual harassment in the workplace in the new law is that it closely follows the U.S. model in offering legislative definitions for two major types of sexual harassment.<sup>48</sup> The first type of conduct is defined as "hostile working environment sexual harassment." It denotes to the conduct of "anyone" who asks for sexual favors or uses verbal or physical conduct of a sexual nature in the workplace to cause an intimidating, hostile or offending work environment for employees, to infringe or interfere with their personal dignity, physical liberty or to affect their job performance.<sup>49</sup>

The second type of conduct is quoted as "*quid pro quo* sexual harassment", that refers to that an employer explicitly or implicitly asks for sexual favors from employees or job applicants, or uses other verbal or physical conduct of a sexual nature as an exchange for the establishment, continuity or alternation of an employment contract.<sup>50</sup>

### C. *Employer Liability*

The new Act also imposes very strict liability on employers in order to proactively prevent sexual harassment from occurring in the workplace.<sup>51</sup> For instance, for those employers hiring more than thirty

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47. In this respect, this new chapter was strongly influenced by the American practices, see CHIAO, *supra* note 4, at 157-164 and 165-168. As for different viewpoints, see Feng-Hsien Kao, *A Study on the Enactment of the Prevention of Sexual Harassment Law*, 105 F.T. L. REV. 57, 57-59 (1997). Judge Kao regards sexual harassment as a form of infringement on personal safety and human dignity and she advocates to enact a comprehensive statute to prevent these incidents from occurring in the workplace, on campus, in the military and on sites of providing professional or general services. See Kao, *id.* at 61-64.

48. See CHIAO, *COMBATING SEXUAL HARASSMENT AT WORK*, *supra* note 31, at 94-95.

49. See Item (1) of Article 12 of the Gender Equality in Employment Law of 2002. For an unofficial version of the Law, see Appendix (1) of the Article.

50. *Id.* Item (2).

51. See Paragraph 1 to Article 13 of the Law. In this regard, the influence from the United States is the most salient, see Cing-Kae Chiao, *Corporate Responses to the Issue of Sexual Harassment in the Workplace in Taiwan—Lessons from the United States*, in *EMBEDDEDNESS & CORPORATE CHANGE IN A GLOBAL ECONOMY* 158-162 (Rueling Tzeng and Brian Uzzi, eds.,

employees, the Act specifically requires that measures for preventing and correcting sexual harassment, related complaint procedures and disciplinary measures shall be set up and all these measures shall be openly displayed in the workplace to inform all employees.<sup>52</sup>

The Act also admonishes employers to implement immediate and effective correctional and remedial measures when they become aware of the occurrence of these incidents.<sup>53</sup> Since most employers in Taiwan are quite unfamiliar with these preventive measures, the Act also instructs the CLA to draw up related guidelines concerning preventive, correctional measures, complaint procedures and punishment measures for those covered employers (see Appendix (3) to the paper).<sup>54</sup> Finally, in order to effectively enforce the above-mentioned measures, the Act also imposes an administrative fine on any employer who is found to be in violation of this obligation.<sup>55</sup>

#### D. *Legal Remedies*

The new Act also provides a variety of rather complicated remedial measures for the alleged victims of sexual harassment in the workplace. Among twelve articles in the Chapter Five of Remedies and Appeal Procedures, four are directly related to this aspect.<sup>56</sup> For instance, Article 26 of the Act stipulates that the employers and the offenders shall be jointly liable in making compensation for the victims of these incidents. However, in order to encourage the employers to implement all preventive and correctional measures as required by the Act, it also offers them an “affirmative defense”: If the employers can prove that they have complied with the preventive and remedial requirements of the Act and provide all necessary cares in preventing these incidents from occurring but they still happen, then they are not liable for the damages. Nevertheless, if compensation cannot be obtained by the injured parties, in pursuant to Article 27 of the Act, the courts may, on their application, taking into account of the financial conditions of the employers and the injured parties, order the employers to compensate for a part or the whole of the damages. If the employers have made the above-mentioned compensation, they have rights of recourse against the harassers.<sup>57</sup>

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2000).

52. See Paragraph 1 to Article 13 of the Law. The reason for covering employers or business entities with over thirty employees is that over one-half of employees in Taiwan will be protected by the Law.

53. *Id.* Paragraph 2.

54. For an unofficial English version of these Guidelines, see Appendix (2) of the Article.

55. See Article 38 of the Law.

56. See Articles 27-30 of the Law.

57. According to Article 27 of the Law, employers are jointly and individually liable for both



Furthermore, if the employers are aware of the occurrence of sexual harassment in the workplace and have not implemented immediate and effective correctional and remedial measures and cause damage to the employees or job applicants, the employers shall also be liable for any damage arising from these incidents. In the case of the above-mentioned circumstances, the aggrieved employees or job applicants may also claim a reasonable amount of compensation for such non-pecuniary damages. If their reputations have been damaged, they may also claim the taking of proper measures for the rehabilitation of their reputations.<sup>58</sup>

Finally, the Act also sets a two-year and ten-year prescription period respectively to stabilize the legal relationships among the interested parties. According to Article 30 of the Act, the claim for damages arising from a wrongful act, whether committed by the employers or harassers, is extinguished by prescription, if not exercised in two years by the claimants become known of the damage or the obliges are bound to make compensation. The same rule also applies if ten years have been elapsed from the date when the harassing conduct or other wrongful acts were committed.<sup>59</sup>

#### E. *Other Related Provisions*

In addition to the foregoing provisions, the new Act also has several provisions that are indirectly related to the protection of the alleged or actual victims of sexual harassment in the workplace. First, Article 36 of the Act stipulates that the employers may not terminate, transfer or take any disciplinary or retaliatory measures that are adverse to the employees who personally file sexual harassment complaints pursuant to the law or who assist other employees (or job applicants) file similar complaints.<sup>60</sup> Second, Article 37 of the Act also requires the competent authorities at all levels to provide legal aids for employees or job applicants when they file lawsuits in courts because their employers have violated provisions of the law which are related to sexual harassment in the workplace.<sup>61</sup> Furthermore, when the employees or job applicants file related lawsuits

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*quid pro quod* and hostile working environment sexual harassment incidents without distinction. This provision imposes a much heavier legal responsibility on employers and may have several unnecessary implications. *See* Chiao, *supra* note 42, at 46.

58. *See* Articles 28-29 of the Law.

59. These two prescription periods are modeled after Article 197 of the Civil Code.

60. In addition to this protection, Article 13 of the Guidelines for Establishing Measures of Prevention, Complaint and Punishment of Sexual Harassment in the Workplace also instructs employers to adopt necessary measures to prevent harassers or other persons from taking retaliatory action against the complaining victims.

61. The Council of Labor Affairs of the Executive Yuan has already promulgated the Measures for Providing Legal Aids for Lawsuits Concerning Gender Equality in Employment on March 6, 2002 to implement this Article.

and apply for precautionary proceedings, the same Article also stipulates that the courts may reduce or exempt the amount for security.<sup>62</sup> Finally, for those employers who fail to set up internal complaint mechanisms and openly display them, or who fail to take immediate and effective measures when they know of the occurrence of the incidents, or who take retaliatory or disciplinary measures against the employees who file the related complaints, an administrative fine not less than \$10,000 yuan but not exceeding 100,000 yuan shall be imposed.<sup>63</sup>

## V. A CRITICAL EVALUATION

In this section, the positive, negative and controversial aspects of the provisions related to the issue of sexual harassment in the workplace in the Gender Equality in Employment Act of 2002 will be thoroughly examined and analyzed in order to determine whether the reform measures it contains really can achieve the proclaimed goal of eliminating and preventing these incidents at work in Taiwan.

### A. *The Positive Aspects of the New Act*<sup>64</sup>

As mentioned earlier, most of the provisions of the new Act related to the prevention of sexual harassment in the workplace are modeled after the progressive practices in the industrial nations, they also are designed to cope with local needs.<sup>65</sup> Therefore, these provisions have the following merits. First, by clarifying the assignment of employer liability, they not only effectively prevent these incidents from occurring in the first place, but solutions can be promptly obtained if incidents did happen. Both functions of deterrence of the perpetrators and reasonable remedies for the victims can be achieved at the same time as the experience of the industrial nations can prove. In addition, by adopting the practice of “affirmative defenses” for the employers, they also encourage them to

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62. See Article 4 to 5 of the above-mentioned Measures.

63. See Article 38 of the Law.

64. Since the passage of the Gender Equality in Employment Law, the committees on gender equality in employment at all levels of the governments have not received any complaint concerning this issue. Therefore, it is not very easy to assess the positive aspects of the new law. Nevertheless, according to a survey issued by the Council of Labor Affairs on March 8, 2004, the date in celebration of the enacting of the law, almost 100 percent of the covered governmental entities have already set up related mechanism to handle this problem. As for in the private sector, over 63% of the surveyed business entities have also established the same system. This statistical data clearly indicates that the preventive measures provided by this new law have tentatively achieved their goal. See COUNCIL OF LABOR AFFAIRS, EXECUTIVE YUAN, THE SURVEY ON CURRENT SITUATIONS OF GENDER EQUALITY IN EMPLOYMENT IN TAIWAN AREA 3-4 (2004).

65. For instance, the stipulations that the perpetrators and employers are jointly and individually liable to make compensation and the longer periods of prescription for claiming damages are both designed in accordance with the related provisions in the Civil Code.

proactively put into practice of various preventive and remedial measures to avoid these incidents from occurring. These incentives not only can encourage self-management in the workplace, but also avoid the Act's unnecessary involvement and entanglement into the subtle relationship between both sexes.<sup>66</sup>

Secondly, the new Act sets up multiple complaint channels to solve disputes arising from these incidents. Aside from utilizing internal complaint procedures to settle in business entities themselves,<sup>67</sup> various external complaint mechanisms are also supplemented. Since the members of the committees on gender equality in employment in all levels of governments are composed of experts with necessary qualifications, they will make the task of finding better solutions for all parties involved much easier.<sup>68</sup> Besides, the provisions of prohibiting the employer from taking retaliatory measures can also encourage the victims of these incidents to file their complaints. Even after these incidents have become the targets of lawsuits, the provisions concerning legal aids mentioned above, coupled with the stipulations of Article 35 that require the courts to examine the investigation reports, rulings and decisions rendered by the committees on gender equality in employment, can certainly enhance the chance of the victims to win their cases and get suitable compensation.<sup>69</sup>

Finally, after the passage of the Act, the CLA has already drafted and promulgated the Guidelines for Establishing Measures of Prevention, Complaint and Punishment of Sexual Harassment in the Workplace (*see* Appendix C. to the paper) pursuant to the requirement of Article 13 of the Act. These guidelines are provided for those employers who are hiring more than thirty employees. In addition to clearly proclaiming that the

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66. *See* Chiao, *supra* note 42, at 46.

67. In addition to the internal complaint procedures specifically provided for in Article 13 of those employers hiring over thirty employees, Article 32 of the Law also stipulates that employers may establish complaint systems to coordinate and handle related complaints filed by employees. Under such circumstances, those employers with less than thirty employees also have discretion to set up alternative complaint mechanisms to settle disputes from incidents of sexual harassment in the workplace.

68. Paragraph 2 to Article 5 of the Law specifically provides that members of these committees shall be selected from persons with related expertise on labor affairs, gender issues or with legal backgrounds. Among them, two members shall be recommended by workers' and women's organizations respectively and the number of female members of these committees shall be over one-half of the total membership. Currently, governments of all levels in Taiwan have already set up these committees to handle issues concerning gender equality in employment, including disputes arising from sexual harassment at work.

69. Normally, the courts in Taiwan have hardly paid any attention to the reports or decisions of these "expert" committees even including their fact-findings, *see* Cing-Kae Chiao, *An Evaluation of the Results of the Committee on Employment Discrimination of the Taipei Municipal City in Handling Sexual Harassment in the Workplace*, in CHIAO, *supra* note 26, at 474. Article 35 of the Law can certainly improve the status of the findings these committees. However, these committees have not examined any case concerning sexual harassment at work after the passage of the Gender Equality in Employment Law of 2002.

employers shall provide working environments free of sexual harassment for their employees, the Guidelines also detail various measures for preventing and handling of these incidents, which make the whole prevention mechanism even more wholesome.<sup>70</sup>

B. *The Negative Aspects of the New Act*<sup>71</sup>

Since the whole system is quite new in this country, some defects in the related provisions are inevitable and need to be amended in the future. First, most of the legislative definitions of sexual harassment of Article 12 themselves are directly translated from English into Chinese, such as sexual request, sexual nature, hostile working environment, intimidating working environment, offensive working environment ... etc. Most of them are full of ambiguity and cannot find their corresponding Chinese meanings. Since the enforcement rules of the Act and the above-mentioned guidelines have not elaborated on these terms, a case-by-case examination certainly will make the clarification even harder.<sup>72</sup>

Secondly, the related provisions impose the same liability on the employers without distinguishing whether the incidents belong to *quid pro quod* or hostile working environment sexual harassment. This will encourage the employers to treat some milder incidents too seriously and impose unnecessary harsh disciplinary measures on the perpetrators.<sup>73</sup>

Finally, the new Act makes no mention about harassing persons with special sexual orientation or preference. Since Taiwan's society and workplace have become diverse in recent years, it is necessary to expand the coverage of protection. Besides, as personal relationships between the two sexes in the workplace has become much more closer, the issues of office romance and sexual favoritism should also not be ignored.<sup>74</sup>

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70. The drafting of these guidelines is actually closely following the example of the famous Guideline on Sexual Harassment issued by the Equal Employment Opportunity Commission (EEOC) of the United States in 1980. For a discussion of the contents of those Guidelines, see CHIAO, LEGAL ISSUES CONCERNING SEXUAL HARASSMENT IN THE WORKPLACE IN THE UNITED STATES, *supra* note 31, at 16-19.

71. These negative aspects of the new law have been thoroughly discussed and debated when the Committee on Gender Equality in Employment of the Council of Labor Affairs held its regular meetings during 2002 and 2003. However, since the Council insists that the new law has just put into practice recently and it is not necessary to amend it right away, the shortcomings of the law as indicated will not be addressed in the near future. Fortunately, since the commissions on employment discrimination at all levels of the governments have already accumulated rather abundant experiences in dealing with these issues, it is believed that these negative provisions will not impede the normal enforcement of the law.

72. See Article 4 of the Enforcement Rules of the Gender Equality in Employment Law of 2002.

73. See Chiao, *supra* note 42, at 46.

74. For a detailed discussion on this topic in the United States, see generally BUREAU OF NATIONAL AFFAIRS, CORPORATE AFFAIRS: NEPOTISM, OFFICE ROMANCE & SEXUAL HARASSMENT 9-33, 35-57 (1988).

C. *The Controversial Aspects of the New Act*<sup>75</sup>

Since some related provisions concerning sexual harassment in the workplace of the new Act are the product of legislative compromises, especially during the final stages of enactment, several controversial aspects become inevitable. First, on the same date when the Legislative Yuan passed the Gender Equality in Employment Act, it also amended the penal provisions of the above-mentioned Employment Service Act of 1992. Under this revision, the administrative fine for violating Article 5 of that Act, which prohibits the employers from discrimination their employees or job applicants because of their ... sex is increased fifty times. Because the commissions on employment discrimination of all levels of governments normally treat sexual harassment in the workplace as a form of sex discrimination in the past.<sup>76</sup> After the newly-amended Employment Service Act has dramatically increased the amount of the administrative fine, the victims of sexual harassment at work certainly are inclined to use that law to punish their employers, while the employers certainly would like to use the Gender Equality in Employment Act of 2002 to settle these disputes because the administrative fine the law imposes is extremely small. Therefore, finding a way to apply these two statutes to the same form of sex discrimination in employment has become the first controversial issue the CLA has to settle. In May 2002, the CLA rendered an official interpretation which declares that the Gender Equality in Employment Act of 2002 should take precedence over the Employment Service Act of 1992 in handling issues of sex discrimination in employment. Although this official interpretation clarifies the order of application of these two statutes, the legislative error of two different amount of administrative fines remains unsettled and needs to be amended as soon as possible.<sup>77</sup>

Second, although the new Act encourages the employers to establish internal complaint mechanisms to settle incidents of sexual harassment at work in their business entities, it is unclear what their relationship is with the external complaint mechanism provided for in the new law. Whether the committees on gender equality in employment can use the materials

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75. Just like the above-mentioned positive and negative aspects of the related provisions of the new law, the controversial issues in this part of the new law will not be amended in the near future. However, since the inconsistency in the provisions of imposing different administrative fines in the new law and the newly amended Employment Service Law discussed later is so apparent that the Council of Labor Affairs has already agreed to propose an amendment to the Legislative Yuan as soon as possible.

76. See Cing-Kae Chiao, *The Contributions of the Committee on Employment Discrimination of the Taipei Municipal City to the Prevention of Sexual Harassment in the Workplace*, in CING-KAE CHIAO, *ESSAYS ON LABOR LAW* (I) 267-269 (1999).

77. See Chiao, *supra* note 42, at 47.

produced in these internal channels in investigating the related cases. Whether the courts can examine the fact-finding reports of these internal complaint mechanisms. The new Act is totally silent on these matters and should be settled as soon as possible.<sup>78</sup>

Finally, the ten-year period of prescription for claiming damages in the lawsuits concerning sexual harassment in the workplace as provided by Article 30 of the new Act is too long as compared with other foreign practices (normally two to five years). In order to stabilize legal relationship between the concerned parties, it is necessary to make a suitable reduction.<sup>79</sup>

## VI. SUGGESTIONS FOR THE EMPLOYERS AND EMPLOYEES

In this section, the paper will offer several proposals for the employers and employees to observe the requirements of the new Act and the above-mentioned Guidelines. It also provides some advice, which are strongly recommended by experts on personnel or human resources managers, to prevent these incidents from occurring, or if they do, to better protect their own rights and interests.<sup>80</sup>

### A. *Suggestions for the Employers*<sup>81</sup>

In order to prevent incidents of sexual harassment at work from occurring, or if the victimized employee or job applicants file their complaints to the committees on gender equality in employment or the courts, and to utilize affirmative defenses provided by the new Act, the employers shall adopt the following measures:

- (a) Developing and implementing a comprehensive and well-

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78. *Id.*

79. *Id.*

80. The suggestions offered in this section, especially those for employers, are mostly drawn from the experiences of the United States and other industrialized countries, *see generally* RALPH H. BAXTER, JR. and LYNNE C. HERMLE, *SEXUAL HARASSMENT IN THE WORKPLACE, A GUIDE TO THE LAW* 97-106 (1989); ELLEN BRAVO AND ELLEN CASSEY, *THE 9 TO 5 GUIDE TO COMBATING SEXUAL HARASSMENT*, 98-110 (1992); FEDERAL PERSONNEL MANAGEMENT INSTITUTE, INC., *THE FEDERAL MANAGERS' GUIDE TO PREVENTING SEXUAL HARASSMENT* 31-43 (1989); International Labour Office, *supra* note 31, at 17-19, 200-226; BARBARA LINDERMANN AND DAVID D. KAUDE, *SEXUAL HARASSMENT IN EMPLOYMENT LAW* 415-454 (1992); NATIONAL ASSOCIATION OF MANUFACTURERS, *SEXUAL HARASSMENT: HOW TO DEVELOP AND IMPLEMENT EFFECTIVE POLICIES* 13-33 (1987); and ELLEN J. WAGNER, *SEXUAL HARASSMENT IN THE WORKPLACE: HOW TO PREVENT, INVESTIGATE, AND RESOLVE PROBLEMS IN YOUR ORGANIZATIONS* 39-132 (1992).

81. Although the following suggestions for the employers in this section have mostly drawn from the experiences of the United States and other industrialized countries, some of these practices have been revised to adapt to local needs and in accordance with the requirements of the Guidelines for Establishing Measures or Prevention, Complaint and Punishment of Sexual Harassment in the Workplace issued by the Council of Labor Affairs for local business entities.

publicized written policy statement to prohibit sexual harassment in the workplace.<sup>82</sup>

Typically, the key elements of a policy should include: (i) an unequivocal statement proclaiming that sexual harassment will not be tolerated in the company; (ii) a clear definition of sexual harassment and a list of examples of actionable conduct; (iii) a brief description of the internal procedures for bringing complaints and a list of the individual(s) designated to receive and address such complaints; (iv) a promise that the company will maintain a complaint's confidentiality to the fullest extent possible; (v) a guarantee that the employee will not be punished for voicing a complaint; and (vi) a statement of the corrective action the company will take in the case of sexual harassment conduct, if substantiated, up to and including disciplinary discharges.<sup>83</sup> In order to ensure that all employees (supervisory and non-supervisory) are aware of this important policy, the employers shall communicate and disseminate it as widely as possible, by posting it on notice boards, including it in personnel manuals and training materials or even on e-mail and by asking employees to submit a written acknowledgement of receipt.<sup>84</sup>

(b) Adopting an internal complaint procedure.<sup>85</sup>

There are two types of complaint procedures, formal and informal, and the employers can utilize one or both of them according to their own needs. Generally speaking, informal procedures can provide a number of flexible approaches for settling these conflicts. The employers shall designate one or more officials in the personnel departments (a majority of them are female personnel, depending on the case itself) to offer consultative services to the employers and to solve the problem as quickly as possible. The employers may also encourage their employees to use this informal procedure before filing a formal complaint. Because most of the victims in these cases generally only want the perpetrators to stop their offensive conduct, methods such as conference, conciliation or mediation can often achieve results that are satisfactory to both parties involved.<sup>86</sup>

(c) Conducting a prompt, objective, thorough, and confidential investigation on all sexual harassment claims.<sup>87</sup>

When the employers receive a complaint from their employees, they shall start a preliminary investigation. Through this process, the

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82. See Chiao, *supra* note 51, at 159; International Labour Office, *id.* at 17, 200-226; and NATIONAL ASSOCIATION OF MANUFACTURERS, *id.* at 36-46.

83. See CHIAO, LEGAL ISSUES CONCERNING SEXUAL HARASSMENT IN THE WORKPLACE IN THE UNITED STATES, *supra* note 31, at 214-215.

84. See BAXTER, JR. & HERMLE, *supra* note 80, at 97 and CHIAO, *id.* at 215-216.

85. See Chiao, *supra* note 51, at 159-160; International Labour Office, *supra* note 31, at 18; and LINDERMANN & KAUDE, *supra* note 80, at 417-418.

86. Chiao, *id.* at 160.

87. *Id.*

complainant is interviewed by officials in the personnel departments and all related information is collected. Their preferred response from the employers is ascertained and they are also assured that no retaliatory measures will be taken against them. If the preliminary investigation proves that sexual harassment did occur, then a formal investigation procedure will be triggered. Normally, a neutral third party shall be appointed to conduct this investigation. During this process, a series of interviews shall be conducted. Different questions will be asked in accordance with the status of the interviewees (complainants, harassers, supervisors, and witnesses). Procedural fairness and the protection of privacy shall be strictly observed during the investigation. Confidentiality shall also be maintained to the greatest extent possible in order to encourage employees to use complaint procedures and to protect the employer from defamation lawsuits by the alleged harasser. If the accusation cannot stand after the investigation, the employers normally shall inform the parties involved and reiterate their commitment to the prohibition of sexual harassment in the workplace. If the accusation cannot be substantiated by the investigation, the employers shall still take other measures to ensure that questionable, if not harassing, conduct shall not occur.<sup>88</sup>

(d) Taking appropriate corrective action.<sup>89</sup>

If an investigation reveals that harassment did occur, then the employers shall take a variety of corrective actions. Normally, they shall adopt progressive disciplinary measures against the harasser in correspondence to the severity of the misconduct. In addition, these actions also are designed, insofar as is possible, to end the harassment and prevent future occurrences. The employers generally shall impose one or more of the following punishments: an oral reprimand, a written warning, transfer to another department or post, demotion, and delay in receiving promotion or raise in salary. In some extreme and serious cases, the offender will be discharged to protect the interests of the employers and other employees. Finally, after corrective action is taken, ensure that harassment does not recur and that the victims not retaliated against.<sup>90</sup>

(e) Adopting additional preventive measures.<sup>91</sup>

In addition to the above mentioned action, the employers can also execute a variety of supplementary measures to improve their practices.

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88. As for methods of conducting investigations, see Cheryl B. Bryson, *The Internal Sexual Harassment Investigation: Self-Evaluation Without Self-Incrimination*, 15 EMP. REL. L.J. 551, 554-558 (1990); James J. Oh, *Internal Sexual Harassment Complaints: Investigating to Win*, 18 EMP. REL. L.J. 227, 230-231 (1992); and WAGNER, *supra* note 80, at 39-52.

89. See Chiao, *supra* note 51, at 160-161.

90. See Article 13 of the Guidelines for Establishing Measures of Prevention, Complaint and Punishment of Sexual Harassment in the Workplace.

91. See Chiao, *supra* note 51, at 161.



For instance, they may conduct “exit interviews” to determine whether the departing employee was forced to resign due to harassment. If this is discovered to be true, then the employee shall be persuaded to stay until the whole matter is resolved. Under such circumstances, the employers not only can discover an unexposed incident, but also can avoid future wrongful discharge claims. The employers can also set up special telephone hot-lines or mailboxes to encourage their employees to blow the whistle. Although anonymous tips are generally not processed, they can certainly serve as an early warning sign. The employers shall also vigilantly inspect their workplace to find out whether their employees have displayed offending materials or engaged in inappropriate sexual horseplay. In the meantime, the employers shall treat gossip and rumors of their employees attentively and actively pursue an investigation if the same person has been repeatedly mentioned.<sup>92</sup>

(f) Strengthening awareness among employees and providing necessary educational programs for them.<sup>93</sup>

Because employees at different levels of a business entity play different roles in these incidents, these programs shall always be tailored to their special needs. For instance, since managerial and supervisory employees are in a pivotal position to handle this issue in the workplace, their training programs normally shall be concentrated on the contents of relevant statutes, administrative regulations, company policy, and employer liability; the operation of internal complaint procedures, investigation processes, and other administrative or judicial relief; and the methods and skill to prevent and stop these incidents from occurring. The employers may also offer group discussions, critiques of video programs and role-playing to ensure that these personnel are equipped to handle their responsibilities. For non-supervisory employees, training programs are mainly focused on the norms of person-to-person relationships and not on related legal problems or personnel administration. During these training sessions, in addition to emphasizing the employers’ stance on sexual harassment, they shall also encourage employees to participate actively in the development of the company’s harassment policy, complaint procedures, investigation processes, and other corrective programs. For those personnel in charge of investigation, their training programs shall consist mainly of the techniques of asking the right questions, handling hesitant or uncooperative witnesses, discovering evidence, determining the credibility of the interviewees, using informal means to mediate the disputes, and preparing findings and

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92. See CHIAO, LEGAL ISSUES CONCERNING SEXUAL HARASSMENT IN THE WORKPLACE IN THE UNITED STATES, *supra* note 31, at 226-227.

93. See Chiao, *supra* note 51, at 161-162.

recommendations for the employers. Occasionally, they may have to work with in-house or outside legal counsel to process their investigation, therefore, a certain amount of training on sexual harassment law is also useful.<sup>94</sup>

#### B. *Suggestions for the Employees*

As for the employees themselves, the following guidance shall be closely observed:

(a) They shall often pay attention to the decency of their own dressings, manners and behaviors. Any chance offered to the harassers shall be avoided, such as getting together without others' presence, having meals or drinks together, requesting or giving personal favors ... etc. It is necessary to make a clear demarcation between business and personal affairs.<sup>95</sup>

(b) When actually encountered sexual harassment, they shall trust their own instincts and ask for reliable emotional supports. They shall seriously demonstrate their unwelcomeness to the harassers, or request the perpetrators to stop the harassing conduct immediately. These protests can be expressed through talkings or conduct, or by using simple letters. Never try the evading or neglecting attitude towards these matters, otherwise the whole incident will become further deteriorating.<sup>96</sup>

(c) If they decide to make a formal complaint or file a lawsuit, they should gather all the necessary materials, including direct, indirect and circumstantial evidences. Since testimonies of co-workers and ex-employees play a very important role in ascertaining these allegations, especially in the internal complaint procedures, they shall disclose the incidents of sexual harassment to these persons as soon as they occur.<sup>97</sup>

(d) If they decide to utilize external complaint mechanisms to settle their grievances, they shall contact local women's rights organizations or other public-interest NGOs. Normally, these organizations have well-trained personnel to provide professional consultations and legal advices. Besides, committees on gender equality in employment at all levels of governments are also suitable arena to settle these disputes. Finally, filing lawsuits at courts can be treated as the last resort.<sup>98</sup>

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94. See Bryson, *supra* note 88 at 554-558; CHIAO, LEGAL ISSUES CONCERNING SEXUAL HARASSMENT IN THE WORKPLACE IN THE UNITED STATES, *supra* note 31, at 227-230; Oh, *supra* note 88, at 230-231; and WAGNER, *supra* note 80, at 122-125.

95. See Cing-Kae Chiao, *Sexual Harassment in the Workplace and Its Prevention*, in MODERN FAMILY AND SOCIAL DEVELOPMENT 110-111 (Chi-Hwa Ma, ed., 1995); Hwang, *supra* note 3, at 203-204, and LU & FU, *supra* note 9, at 163-164.

96. See Chiao, *id.*; Hwang, *id.*; and LU & FU, *id.*

97. See Chiao, *id.*; Hwang, *id.*; and LU & FU, *id.*

98. As mentioned earlier in this Article, using courts as venues to settle disputes arising from

## VII. CONCLUSION

Sexual harassment in the workplace has reached serious proportions in Taiwan in recent years, coinciding with worldwide trends. It presents a number of economic, social, and personal problems for employees, families, and business entities. Surveys reveal that a substantial number of working women have experienced unwanted or unwelcome sexual encounters during their careers. The proportion is even higher for women employed in traditionally male-dominated job markets. Both employees and employers are adversely affected by these incidents. The government has moved one step closer by enacting a new Gender Equality in Employment Act to eradicate these incidents by imposing legal responsibilities on employers to prevent and stop sexual harassment from taking place in their workplace.<sup>99</sup> The experience of other industrial nations has shown that employers are in the best position to play an active role in this endeavor. The reform measures adopted in this country are closely modeled after the advanced foreign practices and proved rather successfully in local implementation.<sup>100</sup> Hopefully that through the strict enforcement of this new Act, sexual harassment can be prevented from occurring in the workplace, the disputes can be solved to the satisfaction of the parties involved and the legal liability for the employers can be minimized when these disputes lead to litigation in the courts. Taiwan's experience in this field certainly can provide some positive lessons for other Asian nations to learn from.<sup>101</sup>

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sexual harassment in the workplace is not a suitable method in Taiwan, *see generally* Cing-Kae Chiao, *An Analysis of Two Cases Concerning Sexual Harassment at Work Rendered by the Courts—With Special Reference to the Insights Provided by the U.S. System*, in *COLLECTION OF COURT'S DECISIONS ON LABOR (III)* 168-188 (Taiwan Labor Law Association, ed., 2000). As for a general account of a famous court decision concerning sexual harassment at work in a local hospital, *see* CHIAO, *supra* note 26, at 368-384.

99. For a detailed discussion of other related recent reform measures in Taiwan, *see* Cing-Kae Chiao, *An Analysis of Sexual Reform Measures Concerning Sexual Harassment in the Workplace in Recent Years*, in CHIAO, *supra* note 26, at 319-332.

100. *See* Cing-Kae, Chiao, *Legal Controversies and the Prevention of Sexual Harassment on University Campus—Experiences for the United States*, in CHIAO, *supra* note 26, at 298-301 and Cing-Kae Chiao, *An Evaluation of the Performance of the Committee of Sexual Harassment of the Taipei Municipal City*, in CHIAO, *supra* note 26, 425-432.

101. In addition to the newly-enacted Gender Equality in Employment Law of 2002, under the advocacy of Judge Feng-Hsien Kao, a bill entitled the Prevention of Sexual Harassment Law is also pending in the Legislative Yuan. The bill enlarges the scope of protection to victims of sexual harassment, whether they occur at work, on campus, in the military, or other sites for providing professional or general services. For a general discussion of the contents of this bill, *see* CHIAO, *supra* note 4, at 211-223 and Kuo, *supra* note 47, at 61-64. As for the conceptual framework of the bill, *see* Feng-Hsien Kuo, *A Study on the Legal Concept of Sexual Harassment*, 52 *THE LAW MONTHLY* 24-32 (2001).

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## ***Appendix (1): Gender Equality in Employment Act<sup>†</sup>***

Passed by the Legislative Yuan on December 21, 2001.

Promulgated by the President on January 16, 2002.

### **Chapter I General Provisions**

#### **Article 1**

To protect equality of right to work between the two sexes, implement thoroughly the constitutional mandate of eliminating sex discrimination, promote the spirit of substantial equality between the two sexes, this Act is hereby enacted.

#### **Article 2**

Arrangements made by employers and employees that are superior to those provided for by this Act shall be respected.

This Act is applicable to public officials, educational personnel and military personnel, provided that, Articles 33, 34 and 38 shall not be included.

Complaints, remedies and processing procedures for public officials, educational personnel and military personnel shall be handled in accordance with respective statutes and regulations governing personnel matters.

#### **Article 3**

The terms used in this Act shall be defined as follows:

1. "employee" means a person who is hired by an employer to do a job for which wage is paid.

2. "applicant" means a person who is applying a job from an employer.

3. "employer" means a person, a public or private entity or authority that hires an employee. A person who represents an employer to exercise managerial authority or who represents an employer in dealing with employee matters is deemed to be an employer.

4. "wage" means compensation which an employee receives for his or her work, including wages, salaries, premiums, fringe benefits and other regular payments under whatever name which are payable in cash or in kind, or computed on an hourly, daily, monthly or on a piece-work basis.

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<sup>†</sup> This is an unofficial English version of the Act translated by the author.

**Article 4**

The term “competent authority” used in this Act is referred to the Council of Labor Affairs of the Executive Yuan at the central government level, the municipal governments at the municipal government level, and the county/city governments at the county/city level.

Matters prescribed in this Act which are concerned with the competence of other authorities with special purposes shall be handled by those authorities with special purposes.

**Article 5**

In order to examine, consult and promote matters concerning gender equality in employment, the competent authority at each government level shall set up committee on gender equality in employment.

The committee on gender equality in employment referred to in the preceding paragraph shall have five to eleven members with a term of two years. They shall be selected from persons with related expertise on labor affairs, gender issues or with legal backgrounds. Among them, two members shall be recommended by workers’ and women’s organizations respectively. The number of female members of the committees shall be over one-half of the total membership.

Matters concerning the organization, meeting and other related issues of the committees referred to in the preceding paragraph shall be drawn up by the competent authorities at each government level.

In the case of local competent authorities which have already set up commissions on employment discrimination, they may handle the related matters referred to in this law, provided that, the composition of these commissions shall be in accordance with the provisions of the preceding paragraph.

**Article 6**

For the purpose of promoting employment opportunities for women, competent authorities at the municipal, county (or city) government level shall prepare and earmark necessary budgets to provide various occupational training, employment service and re-employment training programs for them. During these training and service periods, child-care, elder-care and other related welfare facilities shall be set up or provided for.

The central competent authorities may provide financial assistance for those competent authorities at the municipal, county (or city) government level that have provided occupational training, employment service and re-employment training programs, and set up or provide child-care, elder-care and other related welfare facilities during those training and service periods mentioned in the preceding paragraph.

## **Chapter II Prohibition of Sex Discrimination**

### **Article 7**

An employer shall not treat an applicant or an employee discriminatorily because of sex in the course of recruitment, examination, appointment, assignment, designation, evaluation and promotion. However, if the nature of work only suitable to a special sex, the above restriction shall not apply.

### **Article 8**

An employer shall not treat an employee discriminatorily because of sex in the case of holding or providing education, training or other related activities.

### **Article 9**

An employer shall not treat an employee discriminatorily because of sex in the case of holding or providing various welfare benefit measures.

### **Article 10**

An employer shall not treat an employee discriminatorily because of sex in the case of paying remuneration. An employee shall receive equal pay for equal work or equal value. However, if such differentials are the result of a seniority system, a reward and punishment system, a merit system or other justifiable reasons of non-sexual factors, the above restriction shall not apply.

An employer may not adopt a method of reducing the remuneration of other employees in order to evade the provision of the preceding paragraph.

### **Article 11**

An employer shall not treat an employee discriminatorily because of sex in the case of retirement, severance, job leaving and termination.

Work rules, labor contracts and collective bargaining agreements shall not prescribe or arrange in advance that when an employee marries, becomes pregnant, engages in child-birth or child-raising activities, he or she has to leave his or her job or apply for leave without payment. An employer also shall not use the above-mentioned factors as reasons for termination.

Any prescription or arrangement that contravenes the provisions of the two preceding paragraphs shall be deemed as null and void. The termination of the labor contract shall also be deemed as null and void.

### **Chapter III Prevention and Correction of Sexual Harassment**

#### **Article 12**

Sexual harassment referred to in this Act shall mean one of the following circumstances:

(1) in the course of an employee executing his or her employment duties, any one makes a sexual request, uses verbal or physical conduct of a sexual nature or with an intent of sex discrimination, causes him or her a hostile, intimidating and offensive working environment and infringes on or interferes with his or her personal dignity, physical liberty or affects his or her job performance.

(2) an employer explicitly or implicitly makes a sexual request toward an employee or an applicant, uses verbal or physical conduct of a sexual nature or with an intent of sex discrimination as an exchange for the establishment, continuance, modification or assignment of a labor contract or as a condition to his or her designation, remuneration, personal evaluation, promotion, demotion, reward and punishment.

#### **Article 13**

An employer shall prevent and correct sexual harassment from occurrence. For an employer hiring over thirty employees, measures for preventing and correcting sexual harassment, related complaint procedures and punishment measures shall be established. All these measures mentioned above shall be openly displayed in the workplace.

When an employer knows of the occurrence of sexual harassment mentioned in the preceding article, immediate and effective correctional and remedial measures shall be implemented.

Related guidelines concerning preventive and correctional measures, complaint procedures, and punishment measures mentioned in the preceding paragraph shall be drawn up by the central competent authority.

### **Chapter IV Measures for Promoting Equality in Employment**

#### **Article 14**

When a female employee encounters job difficulty because of menstruation, she may request a menstruation leave for one day in one month. The number of this leave shall be incorporated into sickness leave.

The computation of wage of a menstruation leave shall be made pursuant to the related statutes and administrative regulations governing sickness leave.

#### **Article 15**

An employer shall stop a female employee from working and grant

her a maternity leave before and after childbirth for a combined period of eight weeks. In the case of a miscarriage after being pregnant for more than three months, the female employee shall be permitted to discontinue work and shall be granted a maternity leave for four weeks. In the case of a miscarriage after being pregnant for over two months and less than three months, the female employee shall be permitted to discontinue work and shall be granted a maternity leave for one week. In the case of a miscarriage after being pregnant for less than two months, the female employee shall be permitted to discontinue work and shall be granted a maternity leave for five days.

The computation of wage during maternity period shall be made pursuant to the related statutes and administrative regulations.

While an employee's spouse is in labor, his employer shall grant him two days off as a fraternity leave.

During the preceding fraternity leave period, wage shall be paid.

#### **Article 16**

After being in service for one year, an employee hired by an employer with more than thirty employees may apply for parental leave without payment before any of his or her child reaches the age of three years old. The period of this leave is until his or her child reaches the age of three years old but cannot exceed two years. When an employee is raising over two children at the same time, the period of his or her parental leave shall be computed aggregately, provided that, the maximum period shall be limited to two years the youngest one has received raising.

During the period of parental leave without payment, an employee may participate in the original social insurance programs continuously. Premiums originally paid by the employer shall be exempted and premiums originally paid by the employee may be postponed consecutively for three years.

Payment of subsidies for parental leave shall be prescribed by other statutes.

The measures for implementing matters concerning parental leave shall be drawn up by the central competent authority.

#### **Article 17**

After the expiration of the parental leave referred to in the preceding article, an employee may apply for reinstatement. Unless one of the following conditions exists and after receiving permission from a competent authority, an employer may not reject such application:

(1) Where the employer's business is suspended, or there is an operating loss, or a business contraction.

(2) Where the employer changes the organization of his or her

business, disbands or transfers his or her ownership to others pursuant to other statutes.

(3) Where *force majeure* necessitates the suspension of business for more than one month.

(4) Where the change of the nature of business necessitates the reduction of workforce and the terminated employee cannot be reassigned to other suitable position.

In the case of an employer cannot reinstate an employee due to the causes referred to in the preceding paragraph, he or she shall give notice to the affected employee thirty days in advance and offer severance or retirement payment in accordance with legal standards.

#### **Article 18**

Where an employee is required to feed his or her baby of less than one year of age in person, in addition to the rest period prescribed, his or her employer shall permit him or her to do so twice a day, each for thirty minutes.

The feeding time referred to in the preceding paragraph shall be deemed as working time.

#### **Article 19**

For the purpose of raising child(ren) of less than three years of age, an employee hired by an employer with more than thirty employees may request one of the following from his or her employer:

(1) to reduce working time one hour per day; and for the reduced working time, no remuneration shall be paid.

(2) To adjust working time.

#### **Article 20**

For the purpose of taking personal care for a family member who needs inoculation, who suffers serious illness or who must handle other major events, an employee hired by an employer with more than thirty employees may request a family leave. The number of this leave shall be incorporated into normal leave and not exceed seven days in one year.

The computation of wage during family leave period shall be made pursuant to the related statutes and administrative regulations governing normal leave.

#### **Article 21**

When an employee makes a request pursuant to the provisions of the preceding seven articles, an employer may not reject, provided that, the employer has a justifiable reason under Article 19 of this Act.

When an employee makes a request pursuant to the preceding

paragraph, an employer may not treat it as a non-attendance and affect adversely the employee's full-attendance bonus payments, personal evaluation or take any disciplinary action that is adverse to the employee.

#### **Article 22**

In the case of a spouse of an employee who is not engaged in any gainful employment, the provisions of Articles 16 to 20 of this Act shall not apply, provided that, the employee has a justifiable reason.

#### **Article 23**

An employer hiring more than two hundred and fifty employees shall set up child care facilities or provide suitable child care measures.

Competent authorities shall provide financial assistance for those employers who have set up child-care facilities or provide suitable child care measures for their employees.

The standards of setting up child care facilities, providing child care measures and matters related to financial assistance shall be drawn up by the central competent authority after consulting with other related public authorities.

#### **Article 24**

For the purpose of assisting those employees who have left their jobs due to the reasons of marriage, pregnancy, child-birth, child-care or taking personal care of their families, competent authorities at each government level shall adopt employment service, occupational training and other necessary measures for them.

#### **Article 25**

For those employers who hire the employees who have left their jobs due to the reasons of marriage, pregnancy, child-birth, child-care or taking personal care of their families and with outstanding results, competent authorities at each government level may provide suitable rewarding measures for them.

### **Chapter V Remedies and Appeal Procedures**

#### **Article 26**

When an employee or an applicant is damaged by the employment practices referred to in Articles 7 to 11 or Paragraph 2 to Article 21 of this Act, the employer shall be liable for any damage arising therefrom.

#### **Article 27**

When an employee or an applicant is damaged by the employment

practices referred to in Article 12 of this Act, the employer and the harasser shall be jointly liable to make compensation. However, the employer is not liable for the damages if he or she can prove that he or she has complied with this Act and provide all preventive and correctional measures required, and he or she has exercised necessary care in preventing this damage from occurring but it still happens.

If compensation cannot be obtained by the injured party pursuant to the provisions of the preceding paragraph, the court may, on his or her application, taking into consideration the financial conditions of the employer and the injured party, order the employer to compensate for a part or the whole of the damages.

The employer who has made compensation has a right of recourse against the harasser.

#### **Article 28**

When an employee or an applicant is damaged because an employer contravenes the obligations referred to in Paragraph 2 to Article 13 of this Act, the employer shall be liable for any damage arising therefrom.

#### **Article 29**

In the case of circumstances referred to in the preceding three articles, an employee or an applicant may claim a reasonable amount of compensation even for such damage that is not a purely pecuniary loss. If his or her reputation has been damaged, the injured party may also claim the taking of proper measures for the rehabilitation of his or her reputation.

#### **Article 30**

The claim for damages arising from a wrongful act referred to in Articles 26 to 28 of this Act is extinguished by prescription, if not exercised in two years by the claimant becomes known of the damage or the obligee bound to make compensation. The same rule applies if ten years have elapsed from the date when the harassing conduct or other wrongful act was committed.

#### **Article 31**

After an employee or an applicant makes a prima facie statement of the discriminatory treatment, the employer shall shoulder the burden of proof of non-sexual factor of the discriminatory treatment, or the specific sexual factor for the employee or the applicant to perform the job.

#### **Article 32**

An employer may establish a complaint system to coordinate and



handle the complaint filed by an employee.

### **Article 33**

When an employee finds out that an employer contravenes the provisions of Articles 14 to 20 of this Act, he or she may appeal to the local competent authority.

When he or she appeals to the central competent authority, the authority shall refer the appeal to the local competent authority after it receives the appeal or within seven days after the date it has found out the above-mentioned contraventions.

Within seven days after the local competent authority has received the appeal, it shall proceed to investigate and may mediate the matters for the related parties in accordance with its competence and authority.

The measures for handling the appeals referred to in the preceding paragraph shall be drawn up by the local competent authority.

### **Article 34**

After an employee or an applicant finds out that an employer contravenes the provisions of Articles 7 to 11, Article 13, Paragraph 2 to Article 21, or Article 36 of this Act and appeals the matter to the local competent authority, if the employer, employee or applicant is not satisfied with the decision made by the local competent authority, he or she may apply to the Committee on Gender Equality in Employment of the central competent authority for examination or file an administrative appeal directly within ten days. If the employer, employee or applicant is not satisfied with the decision made by the Committee on Gender Equality in Employment of the central competent authority, he or she may file an administrative appeal and proceed an administrative lawsuit pursuant to the procedures of the Administrative Appeal Act and the Administrative Lawsuit Act.

The measures for handling the examination of the appeal referred to in the preceding paragraph shall be drawn up by the central competent authority.

### **Article 35**

When a court or a competent authority determines the fact of a discriminatory treatment, they shall examine the investigation reports, rulings and decisions rendered by the committees on gender equality in employment.

### **Article 36**

An employer may not terminate, transfer or take any disciplinary action that is adverse to an employee who personally files a complaint

pursuant to this Act or assists other file a complaint.

**Article 37**

The competent authority shall provide necessary legal aid when an employee or an applicant who files a lawsuit in a court because of any violation of this Act by his or her employer.

The measures for providing legal aid referred to in the preceding paragraph shall be drawn up by the central competent authority.

When an employee or an applicant files a lawsuit referred to in the preceding paragraph and applies for precautionary proceedings, the court may reduce or exempt the amount for security.

**Chapter VI Penal Provision**

**Article 38**

An employer who violates the provisions of Articles 7 to 10, Paragraphs 1 and 2 to Article 11, the final part of Paragraph 1 and Paragraph 2 to Article 13, Paragraph 2 to Article 21, or Article 36 of this Act, shall be punished by an administrative fine not less than NT\$ 10,000 but not exceeding NT\$ 100,000.

**Chapter VII Supplementary Provisions**

**Article 39**

The enforcement regulations of this Act shall be drawn up by the central competent authority.

**Article 40**

This Act shall be effective on March 8, 2002.

***Appendix (2): Enforcement Rules of the Gender  
Equality in Employment Law<sup>†</sup>***

Promulgated by the Council of Labor Affairs of the Executive Yuan  
on March 6, 2002 by Lao-Tung-Shan-Tze-No. 0910010551.

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Article 4

The determination of sexual harassment referred to in the Law shall be examined on a case-by-case basis, in order to investigate the concrete facts of the background of occurrence, work environments, interpersonal relationships, the offender's speech and conduct and the understandings of the respondents.

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<sup>†</sup> This is an unofficial English version of the Rules translated by the author.

***Appendix (3): Guidelines for Establishing Measures of Prevention, Complaint and Punishment of Sexual Harassment in the Workplace<sup>†</sup>***

Promulgated by the Council of Labor Affairs of the Executive Yuan on March 6, 2002 by Lao-Tung-Shan-Tze-No. 0910010443.

**Article 1**

These Guidelines are enacted pursuant to Paragraph 3 to Article 13 of the Gender Equality in Employment Act.

**Article 2**

For an employer hiring over thirty employees, he (or she) shall set up measures of prevention, complaint and punishment of sexual harassment in accordance with these guidelines. These measures shall be openly displayed in the noticeable place in the workplace and given to all employees.

**Article 3**

An employer shall provide a work environment free of sexual harassment for his (or her) employees and applicants. He (or she) shall adopt appropriate measures to prevent, correct, punish and handle this conduct and protect the privacy of the parties involved.

**Article 4**

Measures for preventing and correcting sexual harassment shall include the following items:

(1) Implement educational programs for preventing and correcting sexual harassment.

(2) Announce publicly a written policy for the prohibition of sexual harassment in the workplace.

(3) Promulgate complaint procedures for handling sexual harassment incidents and designate specific personnel or organization in charge of these procedures.

(4) Handle these complaints in confidentiality and protect complainants from any retaliation or other disadvantageous treatment.

(5) Establish measures for punishing those proven perpetrators after

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<sup>†</sup> This is an unofficial English version of the Guidelines translated by the author.

investigation.

#### **Article 5**

An employer shall set up designated telephone, telefax, special mail box or e-mail address to handle the complaints concerning sexual harassment. The related information shall be openly displayed at the noticeable place in the workplace.

#### **Article 6**

The complaint of sexual harassment shall be filed orally or in writing. For these complaints filed orally, the personnel or unit in charge of receiving these complaints shall put them into record. After clearly announcing them to the complainant or let he (or she) read them and ascertain the correctness of their contents, the complainant shall sign his (or her) name or put his (or her) seal on the record.

The written form referred to in the preceding paragraph shall be signed or sealed by the complainant and contain the following items:

- (1) Name, service unit and official title, address or residence, contact telephone number of the complainant and the date of filing the complaint.
- (2) If he (or she) has an agent, a commission form shall be forwarded and the name, address or residence and contact telephone number of the agent shall be listed.
- (3) Facts and contents of the complaint.

#### **Article 7**

When an employer handles a complaint concerning sexual harassment, it shall be processed in secret.

For the purpose of handling a complaint referred to in the preceding paragraph, an employer and representatives of the employees shall jointly set up a committee for handling sexual harassment. The appropriate ratio of the sexes of members of this committee shall be maintained.

#### **Article 8**

After an employer in receipt of a complaint, he (or she) may proceed to conduct an investigation. In the process of conducting such an investigation, the privacy right and other legal rights concerning personality of the parties involved shall be protected and respected.

#### **Article 9**

When the committee for handling sexual harassment is in session, it may inform the parties involved and other related persons to be present and make statements. It may also invite other persons with related expertise and experience to provide assistance.

**Article 10**

The committee for handling sexual harassment shall render its decision with reasons. It may also offer punishment or other suggestions for solving the dispute.

The decision referred to in the preceding paragraph shall be informed to the complainant, the respondent of the complaint and the employer in writing.

**Article 11**

A complaint shall be finalized and closed in three months after it is filed. If a complainant or a respondent of the complaint is not satisfied with the decision on the complaint, he (or she) may file an appeal within ten days. After the case is finalized and closed, the related parties may not file a complaint on the same incident.

**Article 12**

After a conduct of sexual harassment is investigated and proved to be happened, an employer shall make an appropriate punishment or render other corrective measures to the respondent of the complaint in accordance with the seriousness of the incident. If the fact of false reporting is proved, the employer shall make an appropriate punishment or render other corrective measures to the complainant.

**Article 13**

An employer shall adopt follow-up monitor, evaluation and supervision measures to ensure the effectiveness of the implementation of punishment and other related corrective measures. He (or she) shall avoid the recurrence of the same incident or the occurrence of retaliatory activities.

**Article 14**

If an employer regards that it is necessary to provide counselling or medical treatment for the parties involved, he (or she) may refer them to professional counsellors or medical institutions.

**Article 15**

These Guidelines shall be effective on the date of promulgation.