

China announces new initiatives in combating workplace sexual harassment

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There have been two significant developments in China in 2023 focused on combating workplace sexual harassment (a) the revised Law on the Protection of Women's Rights and Interests, and (b) the publication by the government of a reference policy on eliminating workplace sexual harassment. This client update summarizes these two initiatives and describes their impact on corporations operating in the PRC.

The Revised Law on Protection of Women

On January 1, 2023, the Law on the Protection of Women's Rights and Interests (2022 amendment) (Revised Law on Protection of Women) took effect.

The Revised Law on Protection of Women provides a specific list of practices which should be adopted by employers in order to prevent workplace sexual harassment. These include the following:

- establish anti-sexual-harassment systems;
- designate key responsible personnel;
- organize staff training;
- adopt necessary safety and security measures;
- set up a feasible reporting mechanism; and
- establish investigation handling procedures that can manage complaints in a timely manner.

The Revised Law on Protection of Women also highlights the importance of protecting the privacy and the mental wellbeing of victims, requiring employers to provide therapy sessions for victims when necessary.

Employers who fail to follow these rules may be at risk of litigation and administrative penalties. For the first time, the Revised Law on Protection of Women explicitly authorizes procuratorates to initiate public interest litigations against employers who fail to take reasonable measures to prevent sexual harassment.

Moreover, employers who fail to take necessary measures to prevent sexual harassment may face corrective actions ordered by the authorities; and if corrective actions are not taken, the executive or other personnel in charge may be subject to administrative discipline personally.

The Policy for Eliminating Workplace Sexual Harassment

On March 8, 2023, three PRC government agencies, including the Ministry of Human Resources and Social Security, the

National Health Commission and the Supreme People's Procuratorate as well as three nongovernment organizations, jointly issued the Policy for Eliminating Workplace Sexual Harassment (Reference Text) (the Policy).

The Policy consists of seven chapters covering areas such as training, handling employee complaints, investigations, union participation and supervision. It adopts a victim-centered definition of workplace sexual harassment, characterizing sexual harassment as conduct that causes sexually related discomfort against the will of another person, regardless of whether the perpetrator intended to commit the harassing behavior. Significantly, the Policy indicates that an intent to harass is not necessary in order for conduct to be considered sexual harassment. Rather, it is the victim's perspective that matters.

The Policy also provides further guidance on creating an open reporting channel for employees and developing a systematic set of measures for handling sexual harassment, including formal warnings, reassignment, termination and reporting to the appropriate authorities. In addition, the Policy provides a detailed list of examples of conduct that may constitute workplace sexual harassment, including, for example, "sending obscene photos" and "unwelcomed name calling".

The Policy is designated as a "reference text," meaning that it should be treated as guidance and not as a law that can be directly enforced. However, despite this designation, the Policy is intended to provide a reference for "procuratorates ... carrying out public interest litigation to protect the rights and interests of women." This language suggests that the reference text, although not itself legally binding, may be a useful resource for procuratorates exercising their newly assigned public litigation functions against workplace sexual harassment under the Revised Law on Protection of Women.

Commentary

The number of lawsuits against employers for failure to prevent workplace sexual harassment is expected to rise following the additional detail provided concerning the obligations of employers in the Revised Law on Protection of Women and the Policy. Employers concerned about the potential litigation risk should consider a recent model case announced by the Guangzhou Intermediate People's Court on the protection of female workers which highlighted the importance of having effective policies and systems in place to deal with workplace harassment.

In the model case, the Guangzhou Court ruled that the employer in question was not liable for the alleged sexual harassment because it had in place (a) an employee reporting procedure and a framework for investigating such complaints to prevent sexual harassment; and (b) took measures to deal with the employee's complaint in a timely manner.

In light of the Revised Law on Protection of Women, the Policy and judicial rulings, employers should review their internal controls and policies to determine if they are adequate. While the Policy is a useful resource, it is worth noting that it can be adapted by employers to reflect local regulations, as well as the size and structure of the organization.

We recommend corporations adopt a robust approach to workplace sexual harassment to deter and punish not only harassment that may cause physical harm and discomfort, but also harassment that may contribute to a hostile work environment. This framework should also include a clear reporting channel, procedures for handling and investigating reports of harassment, and union supervision provisions.

For more details on effective anti-harassment policies and procedures, please refer to our three-part series on tackling sexual harassment risks in the workplace (accessible links below):

[Part one: Key legal elements and recent cases](#)

- Part two: How to conduct effective investigations
- Part three: Critical harassment prevention measures

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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