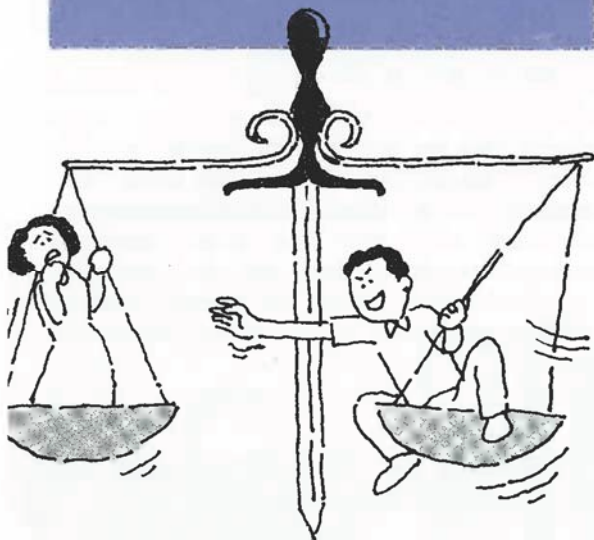


sexual harassment

AND THE LAW



What does the law say about sexual harassment?

Nothing. There is no specific law on sexual harassment in the Philippines. However, certain acts of sexual harassment can be covered by offenses under the Revised Penal Code or under the Civil Service Law.

What are these laws under the Revised Penal Code?

Under Art. 287, 2nd paragraph on Light Coercions: "Any other coercions or unjust vexations shall be punished by **arresto menor** (imprisonment ranging from one to 30 days) or a fine ranging from five to 200 pesos, or both.

Art. 336, Acts of Lasciviousness: "Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by **prision correccional** (six months and a day to four years and two months in its minimum period, and two years, four months and one day up to six years, in its maximum period).

Art. 359, Slander by Deed: "The penalty of **arresto mayor** in its minimum period (imprisonment from four months and one day to six months) or a fine ranging from 200 to 1000 pesos shall be imposed upon any person who shall perform any act not included and punished in this title, which shall cast dishonor, discredit or contempt upon another person. If said act is not of a serious nature, the penalty shall be **arresto menor** or a fine not exceeding 200 pesos.

What does the Civil Service Law say about sexual harassment?

Nothing directly, although there are disciplinary action against government personnel for "(4) Misconduct and (5) Disgraceful and immoral conduct."

So what's wrong with these laws? Why can't we just apply them to sexual harassment?

Because these laws are not specific to sexual harassment and were drafted sometime ago, the laws did not consider the serious implications and threats to one's dignity and livelihood by some of the more serious manifestations of this behavior.

Consequently, the penalties imposed are outdated and too light, especially when

compared to the arduous process of filing charges and parrying countercharges that one provoked the sexual harassment by one's looks, acts and manner of dressing.

Can you cite some examples of how these laws have proven inadequate to sexual harassment cases?

There are two cases, both involving government personnel, which were decided under Civil Service laws—that of teacher-applicant Guillerma Castanares, and Estela Balbago, a secretary at the National Power Corporation thermal power plant in Calaca, Batangas.



Castanares, on two occasions, was asked to dance in her underwear by Education officials in Tubod, Lanao del Norte, in exchange for some money and the promise of a job. Although the Education department found all the local Education officials guilty as charged and imposed a penalty of either a suspension or dismissal

against them, the respondents appealed to the CSC. The Commission then modified the ruling and found the respondents guilty only of Grave Misconduct and not Disgraceful or Immoral Conduct. It was held that the issue in question was really just the use of DECS division and district offices as a venue for the bold dance exhibition since the woman had consented to the request. So from the penalty of dismissal, the men were meted out six months to one year suspension and in the case of one of the less guilty parties, a fine equivalent to six months' salary. Needless to say, the CSC decision provoked criticisms and protests from several women's groups.

The case of Balbago involved a male supervisor who "mashed her left breast and touched her hair against her will," inside his office. Two years after strenuous hearings during which Balbago was reverted back to being clerk, the supervisor was found guilty of "simple misconduct" and meted out a mere one-month suspension.

Based on these two cases, sexual harassment was viewed by the CS Law not as a grave abuse of authority and as possible proof of immorality against the offending supervisors, which they are, but as mere cases of misconduct that should be dealt with lightly.

This dismissive attitude toward sexual harassment charges seems to justify the answer of several respondents in a 1988 local survey of 50 female employees of a universal bank. The survey reported that most victims of sexual harassment would rather not file charges in court because of the time-consuming intricacies and complications involved, not to mention the expense. Why go to all that trouble after all, when the harasser can get away with his crime with a mere month-long suspension or perhaps a P200 fine?

What is being done to remedy this failing?

Several bills are now pending in both chambers of Congress in an attempt to define sexual harassment as an offense punishable by law. There's Senate Bill 1632, the consolidated version of bills filed by Sen. Gloria-Macapagal Arroyo and Sen. Blas Ople, also titled "An Act proscribing sexual harassment in the employment and non-employment environment and providing penalties therefor."

House Bill 9425 sponsored by Rep. Luwalhati Antonino and several other representatives is titled "An Act declaring unlawful sexual harassment in the employment environment and providing penalties therefor."

How do these bills deal with sexual harassment?

All of the bills define sexual harassment as a separate offense from acts of lasciviousness and simple coercion. Specifically, these bills define sexual harassment as:

- unwelcome or uninvited advances, requests for sexual favors and other verbal or physical conduct of a sexual nature

which are unlawful when:

- submission to such advances is made, either explicitly or implicitly as a term or condition for employing an individual, or if already employed, is used as basis for employment decisions affecting such worker or employee;
- submission to, or rejection of, such advances, requests, or conduct would impair the right of the worker concerned

This is also the logic behind

- Sect. 7 (a), which states that "Within 30 days from receipt of the committee report and recommendation, (the DOLE) Secretary shall render his/her decision."

The administrative order also includes an awareness-raising campaign and information dissemination on sexual harassment to prevent its incidence.

What about the Civil Service Commission? Has it started a similar campaign among government employees?

The CSC has its EQUADS or equality advocates, designated employees in its various regional and central offices who attend to instances of discrimination and harassment in the public sector.

How do the EQUADS attend to their task of ensuring equality in government offices?

First, a complaint by the aggrieved party is essential, says Director Agnes Epino, a focal point of the CSC. Government employees can inform the EQUADS of existing practices and forms of harassment in their agency either through the grievance machinery of their department or agency, a complaint with the department or agency head, or directly with the CSC.

Counselling and assistance may be sought from the CSC Central Office, which has a woman's desk attended to by four Focal Point members, or from the Civil Service Regional Offices. These regional offices also have counselling and

referral desks attended to by designated EQUADS.

What other services can government employees expect from the EQUADS?

To accomplish the goal of equal opportunities in employment and a work environment free of harassment, EQUADS are mandated to

- conduct information and educational campaigns on various forms of discrimination and harassment
- provide counselling services to victims of inequities - refer cases of discrimination and harassment for investigation
- assist in the establishment and strengthening of special redress procedures
- document and monitor all cases of harassment and discrimination
- promote employment equity practices consistent with the merit and fitness principle
- review and identify policies and CS law and rules which may encourage discrimination indirectly and recommend proposals to prevent it
- conduct dialogues with officials reiterating their responsibilities in this regard
- provide assistance to alleged victims through moral and, if possible, legal support.

So far, what has been the reaction to these bills?

According to sources at the UP College of Law, which closely coordinated with House staffers on the bills, HB 9425 has provoked the usual reaction mainly from male legislators.

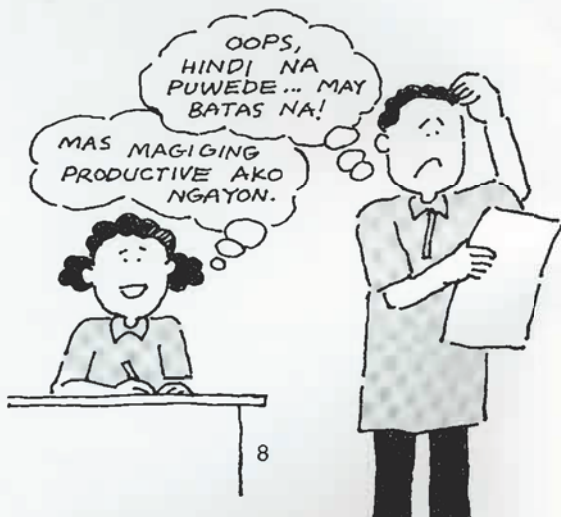
That is, it has been regarded as "anti-romance."

What can we do to hasten the passage of these bills?

We can lobby our respective representatives, send letters to the editor appealing for public support, join fora and workshops on the issue, or better still, organize awareness courses on sexual harassment as part of union activities to learn more about the issue and gain more adherents to it.

But do we really need laws to govern sexual harassment? Can't we treat this as a personal matter that can be settled amicably between the two parties?

It is precisely because there are no laws directly addressing sexual harassment that such



conduct persists. Harassers know that their targets—mainly women—are hesitant to talk about their experience for fear of being fired and because they know they have no recourse in law. Treating sexual harassment as a criminal offense and prescribing penalties for it will give victims a greater incentive to file charges. At the same time, the law will prompt management to distance themselves from such acts and their perpetrators because they know that they are jointly liable for not preventing sexual harassment in the workplace.

But passing a law takes so much time. Is there anything that the private sector can do, like include it in the Labor Code?

The Department of Labor is presently exploring the possibility of including sexual harassment in the Labor Code. In the meantime, the DOLE has issued Administrative Order 68 which creates a commission to investigate sexual harassment complaints within the department. The order covers acts committed by DOLE employees and officials on other co-workers and those seeking DOLE services.

Is there a quicker way of getting sexual harassment in the books?

In the US, under the Equal Opportunities Act, sexual harassment was cast as a violation of existing anti-discrimination laws. Locally, according to some legal sources, test cases can be filed to see if sexual harassment can be prosecuted based on Republic Act 6725, which specifies penalties for sex-based discrimination in pay, promotion and training.

When submission to sexual advances is made a condition for job security, promotion or benefits, this may be considered sex-based

discrimination. The person being harassed would probably not be subjected to such a condition if he or she were of the other sex.

How can the Civil Service Commission improve its handling of sexual harassment cases?

The CSC can issue implementing rules and regulations that will specifically include sexual harassment among the grounds for disciplinary action, in addition to "gross immoral conduct," "misconduct," and others. The Civil Service law may also be amended to make sexual harassment a separate offense warranting suspension or removal from office.

How about including sanctions against sexual harassment as part of office policy?

Yes, why not? Most companies have Codes of Ethics or Discipline and can include sexual harassment under provisions on morality, grave abuse of authority, or threats and intimidation. Better still, companies can draft guidelines on sexual harassment, like what the Philippine Daily Inquirer did in 1993. (*Please see excerpts in the pamphlet "What can be done"*). The guidelines, the first in the country, were published twice in the daily and can serve as a sample policy for other companies.

How does one go about drafting guidelines on sexual harassment for the office?

As in the case of the Inquirer, a committee can be formed composed of several senior employees and union members. It is important to have both rank and file as well as middle- or top-level employees in the committee to make

sure that all points of view are represented. Men and women should both be part of the committee to prevent the issue from degenerating into a battle of the sexes.

An informal and confidential survey among employees can establish how sexual harassment has been manifested in the workplace so far, its level of incidence, the most common conduct construed as sexual harassment, the usual recourse of victims, who the typical or usual harassers are, management reaction, if any, and union or company policies that can address these problems. An awareness seminar, not only for the committee members, but also for the company's officers and employees can also help employees become more receptive of the policy, knowing that it affects not just the victims but the entire workplace as well.

What are the elements of an effective policy?

An effective policy should include the following:

- a statement of the organization's intention to eliminate sexual harassment;
- a statement establishing who is covered by the policy;
- a clear and concise definition that specifies different forms of sexual harassment and which includes examples of prohibited behavior;
- the clearly stated rights and responsibilities of all;
- specific procedures for submitting grievances and investigating complaints;

- designated timelines (or lapse period) for each step;
- protection from retaliation;
- a statement of the organization's intention to take disciplinary action where appropriate within an established time period;
- protection of confidentiality for all parties

Are having good or responsive laws enough?

No. It is important to remember that no matter how well-meaning the laws are, taking court action is bound to exact from the complainant heavy emotional as well as financial costs. Moreover, any legislation on sexual harassment is likely to suffer in implementation if social attitudes toward the problem remains the same. No matter how strong the law is, few victims will take public action if society continues to blame them for their trouble.

There is therefore a need for continuous consciousness-raising on the issue, especially among union members who still view sexual harassment as a "personal problem" and as a divisive factor in working class unity. Women also need to be constantly assured that they did not bring on the offensive conduct on themselves, while management must see that preventing sexual harassment is part of good business. An extensive education campaign, probably by women's groups and labor federations, should thus compliment attempts to change the law.

Even good laws become meaningless when they are ignored over time because stronger cultural and social practices have not been addressed.