

How to Address and Prevent Sexual Harassment in the World of Work

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Presenters

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QUESTIONS

Q: Hi there, question for Manuela re C190 - given that the home is now the workplace, does the convention apply directly to instances of domestic violence where the worker is working from home?

Yes, it does to the extent that it has implications for the worker's performance.

Q: does c190 also cover informal workers?

Manuela: Yes it does. The Convention applies to the private and public sectors, the formal and informal economy in both urban and rural settings. The Convention and Recommendation apply also to the home, when it is a workplace, and thus applies, among others, to domestic workers and home-based workers who very often work informally.

Q: Many years ago I attended a university sponsored workshop on sexual harassment and what surprised was the sexual harassment is a crime defined by the victim as what some people will accept a perhaps welcome the same action would be taken as harassment. Is this correct?

Robin: I am not sure that I understand this question. Sexual harassment refers to a range of behaviors and laws passed to address it vary. For example, in the U.S. the federal civil law, Title VII of the Civil Rights Act and its implementing regulations regulate and prohibit sexual harassment but some forms of sexual harassment such as sexual violence and sexual assault are also crimes. In some countries the only law on sexual harassment is criminal law and it generally refers to more significant acts such as rape and sexual violence. A key feature of sexual harassment is welcomeness - whether or not the behavior was welcome by the target is part of the analysis under US law.

Trang: I think this question is related to the point I made about sexual harassment versus unwelcome or inappropriate behavior. In an organizational setting, for someone to have been found to have engaged in sexual harassment, there would need to be an allegation, investigation process and a finding of misconduct; therefore behavior that the receiver may feel is “sexual harassment” might not rise to the level of misconduct under the policies/laws. However, if the receiver finds ANY behavior to be unwelcome, they have the right to ask for it to stop, and if the perpetrator continues even they have been asked to stop, they would be getting closer to harassment. What one person finds “unwelcome” may feel okay to someone else – what is important to remember is that the person on the receiving end determines whether a behavior is unwelcome.

Manuela: I believe the question is whether in certain jurisdictions particular behaviors that qualify as “sexual harassment” would not be subject to criminal law, while in other jurisdictions the very same behaviors would be punished through criminal law. Prohibiting sexual harassment in criminal law can be useful for extreme cases of violence and harassment. However, it has been found that addressing sexual harassment only through criminal proceedings is normally not sufficient, due to the sensitivity of the issue, the higher burden of proof, which is harder to meet, especially if there are no witnesses, and that criminal law normally focuses on sexual assault or ‘immoral acts’, and not the full range of behaviour that constitutes sexual harassment in employment and occupation. The best approach is prohibiting sexual harassment in labour, OSH, criminal and non-discrimination law as it would allow victims to seek a variety of remedies depending on the nature of the act, and the type of work relationship and conditions they are working under.

Q: Question for Robin - In your experience, you would have seen that different countries have different legal recourse mechanisms to address concerns of workplace sexual harassment such as courts, specialized tribunals, human rights commissions, employer-built bodies etc. What, in your experience, proves to be most effective? Are employer interventions in workplace sexual harassment effective?

Robin: Yes, there is a wide range of legal responses to forms of gender-based violence and harassment in the world of work. I think those that are most effective are those that are enforced and implemented. You can have the best written policy or law but if it is not enforced it doesn't matter. Enforcement depends on societal and cultural change.

Q: Manuela, how is ILO collaborating the actioning and rollout for c190? Awareness campaign? Collaboration with UN-Women and He-for-She campaign, NGO's, other interest groups that represent higher-risk?

In November 2019, the ILO adopted a strategy to promote the ratification and implementation of C. No. 190 and R. 206. A rapid entry into force of the Convention, which requires two ratifications, is important to maintain the momentum. Upon request, the Office assists countries

in undertaking pre-ratification reviews of national laws and practice and in identifying measures to overcome identified gaps. While ratification is our priority we are working with all countries that are interested in ending V+H, even though they may not yet be ripe to ratify C. No. 190. While essential, legal reforms are not sufficient to ending violence and harassment. Significant social change is also necessary. To this end, we are examining, documenting and disseminating information on, among others, what measures – both in law and in practice – are most effective to prevent, address and change such behaviours in different work settings, whether formal or informal, and depending on the social groups involved; how to review/adapt OSH legislation and management systems to address violence and harassment; or how to prevent/mitigate new risks of violence and harassment stemming from the impact of technology and new forms of work. In cooperation with the International Training Centre of the ILO (Turin Centre), we are developing training or other learning opportunities and the development of a knowledge-sharing platform for ILO constituents and other stakeholders to provide easy access to learning, research and information products.

Strategic partnerships are another key element of the strategy, which involves collaboration with national Parliaments, the EC and other regional organization, and UN agencies, including UNWOMEN. We are also working with ITUC, at global and regional levels, the Global Union Federations, the International Organization of Employers (IOE), and organizations representing indigenous peoples, peoples with disabilities or people living with HIV, among others. A communication strategy, including a global awareness-raising campaign, to promote the ratification and implementation of the Convention among key ILO and other audiences, is also in the making.

Statistics on violence and harassment in the world of work are sporadic and scarce and comparability of data problematic because of differences in definitions and methods. The ILO is working together with the International Labour Statisticians towards developing a new methodology for measuring V+H in the world of work and ensure comparability of data across countries.

Q: What type of accountability mechanisms can be set in place to ensure that all employees play an active role in creating an inclusive/supportive/mutually protective and respectful work culture?

Trang: I am seeing a resurgence or organizations and companies engage much with their values. Creating the space for employees to discuss and celebrate the values of the organization is a good way for everyone to get on the same page as to what behaviors they would like to see from one another, and then hold one another accountable to them. I've recently done a review of values statements and codes of conducts – and the most progressive companies are literally writing into their values statements things like, “we speak up when we see actions that run counter to our values.” Core Values statements and codes of conduct can be very powerful if they are disseminated and discussed widely among staff. Also, employee engagement surveys

are a good tool if you can add/track questions that are related to the values and behaviors of inclusion/respect etc. Feel free to contact me to learn more: trang@ethosadvisorsdc.com

Q: Where it is still difficult to rely on the judiciary to prove sexual harassment based on the community prejudices, what is the alternative?

Robin: Employers may implement policies and programs to hold perpetrators accountable in their workplaces as long as it doesn't run afoul of the law and those policies and programs can be very effective.

Q: What works to address sexual harassment in countries where the larger community surrounding the workplace does not see harassment as a problem including the legislature?

Answered live and available in the recording.

Q: What are some successful solutions/strategies for making the business case to employers to take the actions Manuela and Robin have presented (building on Lis' points in her intro about the significant costs to employers)?

Answered live and available in the recording.

Trang: There are so many recent examples of high profile cases that have cost companies MILLIONS of dollars because they did not deal with perpetrators (Harvey Weinstein, Les Moonves CEO of CBS, Matt Lauer of NBC, etc). I actually think we need to compile a list of these so that businesses can see the visible costs...not to mention costs in productivity drop, morale drop, reputation, etc.

Q: Are there any concrete tools that small businesses can implement to prevent GBVH, in particular small businesses in developing countries? They often don't have the resources to implement e.g. large-scale training programs or some of the other available tools.

Answered live and available in the recording.

Trang: in addition to what we talked about in the live recording, there are actually lots of free resources just on the internet that can be used for training, you don't need to implement a large scale program. Feel free to get in touch with me and I'm happy to brainstorm with you: trang@ethosadvisorsdc.com

Q: Hi, how the institutes/companies can strengthening the " confidentiality" and "privacy" in reporting sexual harassment cases at work? it's challenging to get the trust from the survivors to report their complains if they experience any kind of violence because they afraid that their cases will be known by everyone in the workplace

Answered live and available in the recording.

