

HR Law Hotline

August 04, 2008

SEXUAL HARASSMENT: WORKPLACE 'OUTSIDE THE BOX'!

In a recent case throwing more light on the considerations in relation to harassment at the workplace, the Delhi High Court has ruled that sexual harassment at the workplace also includes such an act committed outside the physical office premises.

FACTS OF THE CASE:

In March 2007, a director of National Academy of Audit and Accounts (NAAA), an academy imparting training services, was allegedly drunk and entered the female officer's room in the Glen Officers' Mess and misbehaved with her. The female officer filed a First Information Report the next day and also informed her senior officials of the misconduct. This led to a departmental inquiry against the director and he was suspended from his employment and a criminal case was filed against him.

The director approached the Central Administrative Tribunal, principal bench, New Delhi ("Tribunal"), seeking to stay the departmental inquiry contending that the alleged misconduct could not be categorized as sexual harassment at the workplace as the incident occurred in the official mess where the female officer was residing. The Tribunal did not agree to the director's reasoning and refused to stay the departmental inquiry.

CURRENT LEGAL POSITION:

Unlike several other countries, India still does not have a codified law prohibiting sexual harassment at workplace. The Supreme Court of India in the landmark judgment of Vishaka vs. State of Rajasthan (1997) has laid down the guidelines ("Guidelines") to be followed by all employers prohibiting sexual harassment at workplace. Until the enactment of a legislation on this subject, the Guidelines have a binding effect.

The Government has proposed to introduce the Protection of Women Against Sexual Harassment At Workplace Bill, 2007 ("Bill") in the Parliament. The Bill is largely on similar lines as the Guidelines and lays down provisions with respect to the setting up of an internal complaints committee and in cases where the setting up of an internal complaints committee is not possible, a local complaints committee, which would look into complaints regarding sexual harassment.

Vikram Shroff, head of the firm's Human Resources Law practice group at Nishith Desai Associates is of the view that "unlike the US, the law on sexual harassment in India is still evolving and there are only a handful of instances which eventually get reported and litigated. While India has yet to see substantial litigation matters on sexual harassment, there is definitely a growing importance on this subject. Employers have sensed the need to review their existing policies and practices and have also started using the services of experts to train their managers to deal with such issues in the workplace."

ANALYSIS AND IMPLICATION:

The Guidelines do not define a 'workplace'. 'Workplace' in general context would mean the place where the employees work. However, the Bill defines a 'workplace' to include any place visited by the employee arising out of or during and in the course of employment. Although this definition is broad enough to cover any incident which may occur at any place in the course of employment, it is not entirely clear as to whether an act which occurs outside the physical premises of the establishment and which is not in the course of employment would also be subject to disciplinary proceedings by the employer.

In order to determine whether a particular place is a 'workplace' or not, the Tribunal considered factors like proximity from the place of work, control of management over such place/residence where working woman is residing and whether such residence is an extension or contiguous part of the working place. However, it has also been clarified by the Tribunal that these parameters only provide general guidelines and are not determinative factors. Therefore, the manner in which a 'workplace' is construed would depend on the facts and circumstances of each and every case.

This judgment is a clear deviation from the traditional idea of sexual harassment at the workplace and has broadened the scope of 'workplace'. It is heartening to know that courts have gone on to apply certain law in relation to protection of the employees' interests beyond the four walls of the establishment and have looked at such issues from a more practical perspective.

Sources: WP(C) No. 8649/2007 Saurabh Kumar Mallick vs. The Comptroller & Auditor General of India and Another

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