

Corporate Obligations in Anti-Sexual Harassment in the Workplace: A Comparison Based on Chinese and U.S. Laws

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Abstract: A major societal issue nowadays is workplace sexual harassment. It has become increasingly important to clarify the responsibilities of enterprises further, improve legislation in related areas, and analyze the governance experiences of different countries. This paper adopts a comparative textual analysis, combining Chinese and American laws and relevant cases to show the history of changes and different ways of regulating workplace sexual harassment in both countries. Combining the advantages and disadvantages of the two, the author proposes a regulatory model centered on gender discrimination and combined with the protection of human dignity. This will provide theoretical support for establishing a sound system of ex-ante prevention and ex-post relief. At the same time, this paper provides a systematic explanation of sexual harassment in the workplace from multiple perspectives, such as the evidence system and legal and economic analysis. This article would provide new perspectives for the effective regulation of such issues.

Keywords: corporate obligations, sex discrimination, sexual harassment in the workplace, personal dignity

1. Introduction

Sexual harassment has become very common in contemporary society. In the United States alone, 43 percent of men and 81 percent of women report having experienced sexual harassment, according to a 2018 study. Of these, verbal sexual harassment was experienced by 77% of female and 34% of male, 51 percent of female and 17 percent of male have been touched with “salty hands” (salty hands are unwanted and sexually explicit touching) [1]. According to another study, between 25 percent and 85 percent of women in America alone have experienced workplace sexual harassment [2]. The majority of current research on workplace sexual harassment focuses on definition, causes, and possible adverse effects, with insufficient in-depth study by academics on the responsibilities and obligations of enterprises and employers about this issue, as well as on the underlying jurisprudence, and insufficiently comprehensive analysis of the problems arising from the implementation of the relevant laws.

This article will use comparative textual research and case study methodology to compare and analyze the provisions on corporate obligations in reducing sexual harassment at work in China and America. The first section of this essay will explore the evolution of the rules against workplace sexual harassment in China’s mainland. In addition, the precedents of anti-sexual harassment in the

workplace in U.S., the relevant laws, and their jurisprudential basis will be introduced. Eventually, this article will conduct a comparative study of the pertinent rules of China and the United States and analyze the challenges and difficulties in practical implementation. This article will, to a certain extent, provide legal support for regulating sexual harassment in the workplace, avoid potential risks, further improve the legislative system, and safeguard the legitimate rights and interests of employees by clarifying the responsibilities and roles of enterprises.

2. The Development of Anti-Sexual Harassment Regulations in the Chinese Workplace

2.1. Laws and Administrative Regulations (National Level)

For the first time, Chinese legislation specifically recognized sexual harassment was in the Law of the People's Republic of China on the Protection of Women's Rights and Interests (2005 Amendment) [3]. Sexual harassment of women is prohibited, according to Article 40. Victims are allowed to file complaints with the organization or the appropriate entities; According to Article 58, if a person violates this Law by harassing a woman sexually or using domestic violence and if his act violates the public security administration, the victim may request that the general security organ issue the violator an administrative punishment or may begin a civil action in the people's court. Article 11 of the Special Rules on the Labor Protection of Female Employees, as amended in 2012, stipulates that employers should prevent and stop sexual harassment of female workers [4]. Although these laws regulate sexual harassment to some extent, they are general and abstract principles and do not define sexual harassment. At the same time, these laws are fragmented, lack specific implementation rules, and do not provide victims with an effective and reliable means of defending their rights.

In recent years, to better address the problems in practice, such as the difficulty of applying prior law to workplace sexual harassment and the fact that victims are afraid to report it. Article 1010 of the Civil Code of the People's Republic of China, promulgated in 2020, expressly specifies that anybody who has experienced unwanted sexual contact by another person by spoken words, written words, photographs, physical acts, or other methods has the right to request that the perpetrator be held vicariously accountable in civil court. The state organs, firms, educational institutions, and other organizations are required to take appropriate precautions, accept and listen to complaints, investigate and handle cases, and take other steps to prevent and end sexual harassment committed by someone who exploited his position and authority or a superior-subordinate relationship, and the like [5]. Law of the People's Republic of China on the Protection of Women's Rights and Interests (2022 Revision) also further clarified the responsibilities of employers and companies in anti-sexual harassment in the workplace [6]. The following steps must be taken by employers to stop and prevent sexual assault of women, in accordance with Article 25: (a) create policies and guidelines that forbid it; (b) identify the team or individual in charge; (c) conduct initiatives for education and training aimed at preventing and ending sexual harassment; and (d) take the necessary safety and security precautions; (e) set up phone numbers, mailboxes, etc., for complaints and open up complaint channels; (f) set up and improve the procedures for investigating and dealing with disputes promptly and protect the privacy and personal information of the parties involved; (g) support and assist victimized women in protecting their rights according to law; and, if necessary, provide psychological guidance for victimized women. h) taking further actions that are appropriate to stop and prevent sexual harassment. In addition, this law provides a responsive avenue of redress for the employer's failure to perform its duties. An open channel for complaints and an efficient investigation and resolution mechanism are necessary weapons to encourage victimized employees to fight against unlawful sexual harassment. Article 77 stipulates that the procuratorate may initiate public interest litigation by the law when the responsible institution does not take appropriate action to prevent and end sexual assault.

It can be seen that China has made significant adjustments and changes in its legislation on sexual harassment over the past two decades. Before introducing the Civil Code of the People's Republic of China, sexual harassment in the workplace was difficult to prosecute and regulate in practice. The fact that the former happens at work is the most obvious distinction between sexual harassment in the workplace and sexual harassment in general. In contrast to public settings, there is frequently a hierarchy of power between the persons involved in sexual harassment at work, and the victim will frequently choose to remain silent rather than seek justice from the outside world out of fear of losing their job and having their performance evaluated negatively. Additionally, because workplaces are more private than public spaces, sexual harassment offenders can victimize their victims more easily while it is also more challenging for victims to avoid incidents and gather proof. Sexual harassment in China's workplaces has become more and more prevalent, due in part to the tolerance of the victims. Some victims are ashamed to tell others about their embarrassing experiences due to their own psychological pressure, while a significant number of other victims tolerate the situation because they lack legal knowledge and do not know how to obtain remedies, or because they are unable to bear the high cost of legal remedies. On this basis, the Civil Code and other laws specifically clarify the responsibilities of enterprises in combating sexual harassment in the workplace and establish a set of mechanisms for prevention beforehand and relief afterward; a practical solution has been systematically proposed to regulate this problem. These new legislative reforms highlight the unique element of the workplace, with particular emphasis on the use of authority and subordination, etc., to commit sexual harassment. To a large extent, this supplements the shortcomings of the previous legislation, clarifies the unique and hidden nature of sexual harassment in the workplace, and provides a powerful legal weapon for victims to file civil lawsuits.

2.2. Local Legislation (Local Level)

In Mainland China, Hubei Province was the initial province to explicitly forbid sexual harassment in 1994. In local laws and regulations, there are several meanings of sexual harassment. Sexual harassment, according to the local legislation, must be "sexually related and involve sexual content." In certain places, a more stringent notion of sexual harassment has been developed, which must involve obscenity or requests for favors relating to sexuality. Additionally, local regulations include particular requirements relating to the duties of employers and businesses. These measures include the requirement that employers create a friendly environment for female employees, that they should hear complaints from victims, that they should initiate an investigation procedure upon receipt of a complaint, and that they should respect the victim's privacy during the complaint procedure. Local laws stipulate that in cases of proven sexual harassment, employers and employment organizations must take corrective measures to stop the perpetrator, criticize and educate the harasser, and support the victim in calling the police or filing a lawsuit.

3. Existing Regulations Against Workplace Sexual Harassment in America

As early as the Civil Rights Act of 1964, sexual harassment was declared unlawful in the United States. Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex (including pregnancy), and national origin in the workplace. An employee's private right of action is protected by Title VII. When sex discrimination was first outlawed, the goal was to stop people from being treated unfairly because of their sex, at a time when the U.S. federal as well as state definitions of sexual harassment were defined purely as an act committed by an individual based on their sexual needs, rather than as an act of employment discrimination under Title VII of the Civil Rights Act. On this basis, the scope of the harassed person's remedies is quite limited, being limited to requests for reinstatement, back wages owed as a result of the strike for sexual harassment, and

reasonable attorney's fees expended in the litigation, as well as the issuance of a restraining order, etc., and not compensatory and punitive damages from the employer, since the victim has not suffered a tangible economic loss.

Quid pro quo sexual harassment was found to be sex discrimination under the Civil Rights Act of 1964 in *Williams v. Saxbe*, the first case tried by court in 1976 [7]. In this case, the Court held that if one of the conditions of employment is submission to sexual advances by a supervisor, this is a form of sex discrimination, which would artificially create a barrier to work for one gender over the other.

One kind of sex discrimination was described as sexual harassment by the Equal Employment Opportunity Commission (EEOC) in regulations published in 1980, which asserted that the Civil Rights Act of 1964 forbade it. Following this, *Bundy v. Jackson* held for the first time that an employer of a victim of sexual harassment should be held liable, with the Court's decision that Title VII should be interpreted widely to include discrimination in employment, dismissal, and promotion and that sexual harassment, like racial harassment, can harm the atmosphere of work in violation of Title VII [8]. Another critical case is *Meritor Savings Bank v. Vinson*, in which the Supreme Court recognized for the first time that "sexual harassment" violates Title VII and established standards for analyzing whether the conduct is unwelcome. An atmosphere that is hostile can be created by a hierarchy of business liability and conduct or speech [9].

In addition to enhancing women's legal alternatives and their capacity to seek punitive as well as compensatory damages for sexual harassment or discrimination, the Civil Rights Act of 1991 added provisions to Title VII protections. Employers are required to prevent sexual harassment, and victims of sexual harassment may seek punitive damages from an employer for failing to do so due to the company's negligence in upholding their legal obligation to do so. The foundation for combating sexual harassment in American workplaces has largely been established at this stage.

Additionally, several states demand that local businesses provide their staff members a sexual harassment prevention course as a requirement. Businesses with over five staff members must provide a written sexual harassment policy and experiential education by January 1, 2021, according to California law. In 2005, a regulation that applied to businesses with more than 50 employees mandated that only supervisors could get training. This law has been expanded. Every two years after that, training is required for all workers in the state. Training must be provided within six months after recruitment or promotion. The first state to implement a statute requiring yearly workplace harassment training was New York State. Every company is required by law to establish a documented policy. Also, it mandates that firms provide interactive face-to-face or online training for the state's workers and contractors. Employees of New York City must participate in the training every year.

4. A Comparative Analysis of the Regulations in China and the United States

China and the United States have adopted a governance approach based on preventing and remedying. In order to address workplace sexual harassment, employers' involvement is universally accepted as being crucial [10]. By creating anti-sexual harassment policies through laws and regulations and by giving staff the required orientation and training, businesses create a welcoming workplace. Both nations' laws and local regulations provide victims with the legal means to pursue restitution and redress. However, the two nations have approached this problem in extremely different ways. The dignity approach, sees sexual harassment as a violation of an individual's rights, has been embraced by China to address this issue [11]. While the US embraced the discrimination strategy and saw it as a kind of unfair employment [12]. Although the current approach taken by China firmly guarantees that women enjoy complete protection of human dignity in the workplace, limiting the scope of sexual harassment to obscene behavior or pornographic content would ignore the potential for systemic discrimination. This often stems from prejudice and differential treatment due to differences in sexual

orientation in the workplace. By adopting the U.S. method of judging sexual harassment, i.e., characterizing sexual assault as a kind of discrimination based on gender, the legitimate interests of different groups, not only women, can be vigorously defended. Therefore, based on the profound logic behind the laws of the two countries, a more effective anti-workplace sexual harassment law should fully consider different countries' characteristics and cultural traditions. The relevant laws should include the protection of human dignity and bodily rights based on anti-sex discrimination.

The prerequisites for some liability are either infringement of rights or failure to fulfill a due diligence obligation. Workplace sexual harassment can be perpetrated by an employer, a customer or another employee, while the victim must be an employee. Therefore, the protection of employees is the key to preventing sexual harassment, and it is reasonable and preferable that the responsibility for the protection of employees rests with the employer. Further clarifying the obligation of enterprises to prevent sexual harassment and establishing a supporting system from onboarding training daily education to psychological counseling and assistance to victims in providing proof will be more conducive to protecting their legitimate rights and interests. Employers enjoy the benefits of their employees' work, they should also bear the risks involved in employment activities [13]. The benefits that employers derive from their employment activities are not comparable to those of employees, and in terms of financial capacity alone, employers have an advantage over employees in terms of risk-sharing. How much risk to bear depends on the size of the risk-reward benefits, employers have strong economic capital, and do not exclude or even actively obtain high returns through high risk, even if they suffer losses, there are many channels to recover the losses. On the other hand, employees have limited financial resources, and even a small financial loss can affect their quality of life. In a working relationship between a business and a staff member, the employer has the authority to govern and oversee the worker but also bears responsibility for any unlawful acts committed by the worker while doing his or her obligations. The management and control of the worker by the business owner is both a right and a duty. If the employer fails to control the employee, resulting in damage to the interests of a third party during the employee's activities within the scope of his duties, the employer shall be held liable for the infringement of the employer's rights. Enterprises that violate the duty of prevention or are at fault should be held liable within the scope of their responsibility, and the burden of proof on victims should be further reduced by reversing the burden of proof, urging the enterprises concerned to improve the relevant systems, and contributing to the construction of a good working environment. However, with limited time and unlimited space, it is not possible for an employer to exercise good control over every employee, so it is also necessary to exempt the employer from liability under certain circumstances, i.e., where the employer has exercised reasonable care and taken timely and effective measures to refrain from being held liable for the employee's behavior after the sexual harassment has occurred. In addition, when an employee joins a company, the company should clearly state and stipulate in the employment contract the employee's responsibilities and the adverse consequences of violating the anti-sexual harassment provisions. For the victims, the obligation of confidentiality should be fulfilled to prevent the leakage of information that may cause secondary victimization of the employees.

5. Conclusions

The development of anti-sexual harassment legislation in Chinese work environments is depicted in this article, starting from an extensive variety of local regulations and laws. By addressing sexual harassment as a violation of a person's right to their own body and human dignity, China has created a complete system of governance. Unlike China, the United States has spent half a century establishing a governance model based on gender discrimination in employment based on numerous precedents. The two countries have adopted different solutions based on their cultural and historical backgrounds. Based on the comparative analysis, a more reasonable explanation should be found in

the laws of the two countries, further improving the regulation of sexual harassment from prevention to relief, clarifying the obligations of enterprises, and highlighting the special role that businesses have in this issue. The recommendations in this paper will help build a business-oriented model for managing sexual harassment and help reduce victims' difficulties in proving their case to address the current and rising issue of workplace sexual harassment. However, this paper has shortcomings, and the analysis of Chinese local regulations and relevant cases is insufficient. There is still much room for future research on the unique position and role of the workplace in sexual harassment, as well as the underlying economic and cultural factors behind sexual harassment. The resolution of these issues will have a significant impact on creating a favorable workplace environment.

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