

AMENDMENTS TO EMPLOYMENT ACT TO ADDRESS SEXUAL HARASSMENT, 29 MAY 2007

The Women's Centre for Change, Penang (WCC), as part of the Joint Action Group for Gender Equality (JAG), appreciates the government's latest efforts to legislate against sexual harassment in the workplace by way of its proposed amendments to the Employment Act 1955, as announced by the Ministry of Human Resources recently.

JAG has long campaigned for a specific law on sexual harassment in Malaysia and in 2001 submitted a proposed Sexual Harassment Bill to the government. JAG has often highlighted the insufficiency of the Code of Practice for the Prevention and Eradication of Sexual Harassment in the Workplace, launched by the Ministry of Human Resources in 1999. As the Minister of Human Resources, Datuk Seri Dr Fong Chan Onn himself has pointed out, the Code serves as a practical guide only without any force of law and although employers are encouraged to implement it, this is done on a voluntary basis.

In 2005, JAG submitted a Memorandum to the Ministry of Human Resources and the Ministry of Women, Family and Community Development highlighting our concerns on the limitations of the proposed amendments to the Employment Act and the Penal Code as announced by the Ministry of Human Resources back then.

Among the concerns raised by JAG is that any amendment to the Employment Act would generally only apply to employees earning below RM1,500, thus excluding other categories of workers. Sexual harassment happens to women of different levels at the workplace, from contract workers and trainees to those in top levels of management. It can happen to Parliamentarians as well as to judges. Thus, legislation against sexual harassment must be wide enough to cover the different scenarios in which such harassment could occur.

Legislation against sexual harassment must also provide victims with access to independent legal dispute resolution. This includes the establishment of special grievance mechanisms to encourage victims to come forward, in a safe and supportive environment, so that the facts may be ascertained and the aggressor disciplined if necessary. The Malaysian Employers Federation has reportedly proposed that sexual harassment be categorised as misconduct under the existing Section 14 of the Employment Act. However, Section 14 merely empowers the employer to take action against an employee for misconduct. It does not set out an independent grievance procedure. What if it is the employer himself who commits sexual harassment? It is, therefore, essential that an impartial redress procedure, overseen by independently appointed officers, be set up accordingly.

Sexual harassment is both a form of violence and of discrimination against women. WCCwelcomes the steps taken by the government to recognise the severity of sexual harassment happening in the workplace. Women workers from different occupations and at all levels must be able to seek and to receive appropriate help should sexual harassment occur.

Unless and until there is adequate protective legislation, incidents of sexual harassment will remain invisible and women especially will continue to suffer in silence.

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