

Client Alert

Upcoming Revisions to Sexual Harassment Requirements in China: How Employers Should Prepare for Changes to Employer Liability

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On May 28, 2020, the National People's Congress of the People's Republic of China issued the new Civil Code of the People's Republic of China ("PRC Civil Code") which will become effective on January 1, 2021. This new PRC Civil Code, which is the first comprehensive code legislating civil matters in China, will replace nine existing laws and regulations.

One of the most hotly discussed topics in the new PRC Civil Code is the legal liabilities imposed on employers in China under Article 1010 with respect to sexual harassment. Article 1010 provides that, "where a person engages in sexual harassment of another person in the forms of verbal remarks, written language, images, physical behaviors or otherwise, against the will of another person, the victim has the right to request the person to bear civil liability according to the law." Article 1010 further stipulates that "agencies, enterprises, schools, etc., shall adopt reasonable measures on prevention, acceptance and handling of complaints, investigation and disposal [of complaints], etc., to prevent and curb sexual harassment by making use of official powers and affiliation, etc."

Notable highlights of Article 1010 include:

- The concept of "sexual harassment" under PRC laws and regulations has been defined for the first time.
- The scope of victims of sexual harassment has been expanded to include men for the first time; before this, victims of sexual harassment had been limited only to women, such as under the PRC Criminal Law and the Special Provisions on Labor Protection for Female Employees.
- Employers in China now have general obligations to: (i) take reasonable measures to prevent sexual harassment; (ii) accept and handle complaints relating to sexual harassment; and (iii) investigate and impose disciplinary actions to prevent and stop any sexual harassment by taking advantage of official powers and subordinate relationships.

At this point, there is no explicit legal requirement on employers to conduct sexual harassment training under Article 1010. However, one can argue that employers in China should provide regular sexual harassment trainings to employees to show their efforts in taking reasonable measures to prevent and stop sexual harassment. How these requirements will be interpreted and enforced are also not entirely clear.

Our Recommendations

Below are some key measures multinational companies may consider to prepare themselves in advance of Article 1010 employer obligations relating to sexual harassment becoming effective:

- a. Establish and improve company rules prohibiting sexual harassment in the workplace
- By now most multinational companies should have in place comprehensive enterprise-wide code of conduct or policies under which sexual harassment is strictly prohibited at the workplace. Companies should
 - Ensure that such existing global policies are fully operational and enforceable in China, including, if necessary, undertaking the democratic and public announcement procedures to validate the relevant company policies under Article 4 of the PRC Labor Contract Law;
 - Set up and put into operation safe reporting/complaining channels (e.g. hotlines) through which employees may report any sexual harassment cases to their employers, and procedures to respond/handle complaints appropriately to ensure the employees who filed sexual harassment complaints are taken seriously and will be investigated in a timely manner;
 - Conduct internal investigations on the alleged sexual harassment cases appropriately in accordance with internal procedures that are in place, while being careful to protect the privacy and reputation of the employees involved during the investigation;
 - Impose penalties (i.e., labor disciplinary actions, such as unilateral termination of employment based on severe violation of company rules) on employees who committed sexual harassment;
- b. Provide regular/periodic trainings to all employees for the purposes of the prevention and prohibition of sexual harassment in the workplace
- The purpose of the training is to provide employees with a better understanding of what constitutes sexual harassment and what they should do when they experience personally or observe any sexual harassment; supervisors should also be trained to respond to any complaints in an appropriate manner
 - The training should be customized to take into consideration the changing landscape of sexual harassment laws and the shifting cultural attitudes toward harassment and gender in China; for example, global policies may include same-sex harassment and the concept of harassment not motivated by sexual desire, both of which may be unfamiliar to employees in China (and may not be recognized by the courts yet even though the language of Article 1010 does not preclude such conducts being considered as sexual harassment).

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