

# Chinese Laws and Regulations on Sexual Harassment in a Hostile Work Environment: Employers' Liability in Comparison with U.S. Regulation

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**Abstract.** Based on the current legislative and judicial background in China, this article focuses on the issue of sexual harassment in a hostile work environment, and points out the main regulatory content, legal remedies, and deficiencies in judicial practice of the current Chinese law. It also compares the main regulatory methods of the United States in this field, summarizes its more perfect employer liability types and judicial remedies, and on this basis discusses the possible legal improvement direction of China's regulation of sexual harassment in a hostile work environment. This paper attempts to take into account the actual problems in China and the legal system of diversified dispute resolution, and argues that it is possible to fill the relevant legal loopholes and promote the enhancement of the legal protection of women's human dignity and natural rights by mainly focusing on the delineation of specific employer's liability modes and the promotion of specific remedies that can be implemented, and puts forward relevant and feasible recommendations.

**Keywords:** Sexual harassment; hostile work environment; Chinese Laws; U.S. Regulation.

## 1. Introduction

"Sexual harassment, as a violation of rights, has been gradually incorporated into the laws of various countries, which is one of the most important manifestations of the development of international human rights, and also demonstrates the legal protection of women's human dignity and rights. The specific definition of "sexual harassment" varies from country to country, but on the whole, sexual harassment can be defined in the following four aspects: First, there must be behavior, which can be physical, verbal or visual. Second, these behaviors must be unwelcome or unwanted in the eyes of the aggrieved person. Third, the behaviors must be erotic or sexually related based on the sex or gender of the aggrieved person. Fourth, the behaviors have a substantial impact on the aggrieved person's economic life or have a serious negative impact on his or her work activities or work environment [1].

Under the current classification criteria generally recognized in international law, "sexual harassment" is divided into two main types: first, quid pro quo harassment; second, hostile environment harassment. transactional sexual harassment can be seen in It can be understood from the perspective of "quid pro quo harassment," which occurs when an employee is forced to engage in sexual activity in exchange for promotion, job retention, or other types of employee benefits, i.e., the employee provides sexual harassment to the employer in exchange for his or her own job security, which is a relatively easy-to-understand and easy-to-define form of sexual harassment. On the other hand, hostile environment harassment is more ambiguous, involving different disputes and evaluations, relying more on the subjective feelings of the harasser in the work environment, and is not easy to be recognized as a violation of rights, and the corresponding complaint protection mechanism also needs to be further improved. Generally speaking, work environment sexual harassment occurs when an employee's work atmosphere becomes abusive or hostile due to the actions or behaviors of his or her employer or co-workers, and such infringement may come from any employee [2].

This paper examines the challenges and legislative nuances surrounding sexual harassment in the workplace, focusing on the legal framework within the People's Republic of China (PRC). Despite the existence of laws aimed at curbing such behavior, the implementation and enforcement of these laws reveal significant gaps in the context of workplace sexual environments. The study will explore the characteristics of Chinese law as they pertain to personality rights and the limitations in holding employers accountable for sexual harassment incidents.

As the legal regulation of hostile work environment sexual harassment in the United States has been practiced for a long time and has resulted in relatively well-developed complaint mechanisms, types of liability determination, and avenues of redress, this paper draws on case studies and comparative insights from the U.S. legal avenues to suggest possible improvements to China's legal system. These include clarifying employer liability, diversifying legal remedies for victims, and promoting a more gender-equitable workplace culture. The discussion extends to non-legal strategies, emphasizing the role of employer policies and education in prevention and the establishment of supportive reporting mechanisms.

Ultimately, the paper aims to contribute to the understanding of sexual harassment in the legal and societal spheres, advocating for a multifaceted approach that combines legal reform with practical measures to foster a respectful and safe work environment.

## **2. Current Situation and Legal Inadequacies of Hostile Work Environment Sexual Harassment in China**

### **2.1. Basic Overview of Current Situation**

In China, there is no explicit legal regulation that strictly adheres to the traditional classification of sexual harassment, nor has there been the enactment of a specific "Sexual Harassment Law." However, relevant legislative provisions can be identified within various types of laws that address the issue of workplace sexual harassment. Although the current state of workplace sexual harassment and its legal response requires in-depth analysis and improvement, China has been developing and refining its legal framework, gradually forming a rudimentary structure of systemic legislation on this issue.

The Criminal Law of the People's Republic of China and the Public Security Administration Punishment Law of the People's Republic of China serve as two key legal documents that play a significant role in the judicial practice concerning sexual harassment cases. The Criminal Law focuses on punishing sexual harassment acts that result in serious consequences, while the Public Security Administration Punishment Law primarily regulates sexual harassment incidents occurring in public places. Article 1010 of the Civil Code of the People's Republic of China and Article 25 of the Law of the People's Republic of China on the Protection of Women's Rights and Interests provide clearer legal foundations for addressing workplace sexual harassment. These provisions can be summarized into three main aspects: firstly, the rights of victims, meaning that victims of sexual harassment have the legal right to seek remedies from the harasser; secondly, the responsibilities of employers, where entities such as government agencies and businesses are obligated by law to establish and enforce measures to prevent and address workplace sexual harassment; and lastly, preventive actions by employers, which include but are not limited to formulating and enforcing anti-harassment policies, appointing a responsible party to manage complaints, conducting educational programs on sexual harassment prevention, ensuring security measures are in place, providing clear and accessible complaint mechanisms, establishing prompt and fair investigation and resolution procedures, and offering support to victims, including legal assistance and psychological counseling [3].

In addition, social laws such as the Labor Protection Law also pay attention to the labor rights of women. An increasing number of institutions and organizations are focusing on the issue of sexual harassment in the workplace and have gradually introduced regulations such as the "Elimination of Sexual Harassment in the Workplace System", which clarify the main contents of the definition and main manifestations of sexual harassment in China, public commitment, propaganda training, staff

reporting and complaints, investigation and disposal, and trade union participation and supervision. Overall, the Chinese legal system follows the principle of "no punishment without a legal basis," emphasizing that any form of punishment must be explicitly authorized by law. This principle is of great significance for the formulation of new laws and the enforcement of existing ones.

However, despite the legal framework for the prevention and response to sexual harassment, there are still issues in the practical implementation that need to be addressed. For example, the covert nature of sexual harassment and the difficulty in obtaining evidence make the application of the Criminal Law and the Public Security Administration Punishment Law somewhat limited, especially in the prevention and treatment of workplace sexual harassment. In China, political movements in the last century, such as the People's Commune Movement, provided equal job opportunities for both genders and established public ownership, achieving equal distribution of labor outcomes and reducing visible gender inequality in the workplace. However, with the implementation of Deng Xiaoping's reform and opening-up policies, the establishment of a socialist market economy with Chinese characteristics, and the increase in the private enterprise system, gender issues have gradually come to the forefront. This indicates that workplace sexual harassment, as a form of gender discrimination, is still in the developmental stage of recognition and response strategies in Chinese society.

The law may lack specific guidelines on how to effectively implement preventive and responsive measures against sexual harassment and does not clearly stipulate the legal consequences for employers who fail to fulfill their responsibilities in this regard. This can lead to a lack of accountability for employers and thus affect the deterrent and enforceability of the law. Moreover, the law provides insufficient guidance on collecting and presenting evidence, which may increase the difficulty for victims when filing complaints, especially when they fear retaliation or social stigma. There is also ambiguity in the legal definition of what constitutes sexual harassment, which may lead to difficulties for courts in defining sexual harassment behavior. More importantly, Chinese law does not currently provide a clear and effective judicial remedy for victims of hostile work environment sexual harassment. When such victims appear, there is no clear remedy and standard for reference, and even if the court can determine that they have suffered from hostile work environment sexual harassment, it cannot make judgments based on the corresponding laws, and thus protection for the relevant victims cannot be discussed.

## **2.2. Relevant Issues**

### **2.2.1. Major Legislative Deficiencies in Hostile Work Environments**

In China, addressing sexual harassment within hostile work environments is confronted with several legal challenges and shortcomings, as outlined below with specific examples and proposed enhancements.

#### **2.2.1.1. Vague Legal Provisions and Judicial Interpretations**

The Civil Code's Article 1010 offers a broad definition of sexual harassment but falls short of specifying the behaviors that qualify. This ambiguity can impede the identification of sexual harassment in real-world scenarios. There is a pressing need to delineate clear-cut examples of harassing behaviors, including unwelcome sexual advances and physical intrusions. Furthermore, the current dearth of uniform judicial interpretations across various jurisdictions can lead to inconsistent rulings, potentially undermining the legal recourse for victims. It is imperative that the Supreme People's Court establish cohesive judicial guidelines to standardize the adjudication process for sexual harassment cases [4].

#### **2.2.1.2. Challenges in Evidence Collection and Legal Expenses**

The private nature of sexual harassment incidents often results in a scarcity of tangible evidence, placing the victim at a disadvantage when attempting to substantiate their claims. The absence of surveillance in locations such as private offices can leave victims without direct evidence, and courts

may not have a consistent framework for assessing the validity of such evidence. Coupled with the high financial burden of litigation, including attorney and court fees, pursuing legal action can be prohibitive for many. It is recommended that the legal system develop clear evidence evaluation protocols and provide financial relief measures for victims.

#### **2.2.1.3. Preventing Further Victimization**

Post-incident measures are critical in safeguarding victims from secondary harm, which includes safeguarding their privacy and shielding them from retaliatory demotions, pay cuts, or terminations. The specter of such repercussions can dissuade victims from seeking justice. The legal framework must be fortified with explicit provisions to prevent secondary victimization and to ensure that victims can report incidents without fear of social stigma or professional backlash.

#### **2.2.1.4. Addressing Additional Concerns**

The aftermath of a sexual harassment incident requires more than legal recognition; it necessitates a robust support system for the victim's psychological and social rehabilitation, which is often lacking. Moreover, the social repercussions of reporting harassment, such as facing negative public opinion and workplace ostracism, can be significant. Legal provisions must be augmented to protect victims from discrimination and to encourage a culture of accountability and respect within the workplace.

In summary, the legal architecture surrounding workplace sexual harassment in China requires significant refinement. A concerted effort to enhance legislation, establish judicial clarity, streamline evidence requirements, alleviate litigation costs, and bolster victim support is paramount. By doing so, the legal system can become more effective in preventing and addressing sexual harassment, thereby upholding the rights of employees and cultivating a more equitable and supportive work environment.

### **2.2.2. Key Deficiencies - Legal Provisions on Employer Liability**

#### **2.2.2.1. Ambiguity in Civil Liability for Negligence**

In cases of sexual harassment, an employer's negligence may manifest as a failure to provide a safe working environment or to take timely corrective actions in response to known instances of sexual harassment. For instance, at a technology company, a female employee might repeatedly suffer from inappropriate physical contact and verbal harassment by a coworker. However, if the company's management fails to conduct an investigation and take action promptly in accordance with the "Law of the People's Republic of China on the Protection of Women's Rights and Interests," it can lead to ongoing harm to the victim. The legal provisions regarding the specific elements constituting employer negligence and the scope of liability are not clearly defined, which can create uncertainty in the application of the law when victims seek civil remedies.

#### **2.2.2.2. Vague Principle of Liability Attribution**

The principle of liability attribution pertains to the allocation of responsibility between the employer and the perpetrator in acts of sexual harassment. In some cases, such as when a female employee is sexually harassed by her immediate supervisor, the company may refuse to acknowledge employer liability due to a lack of direct evidence, placing the entire responsibility on the individual perpetrator. Under the "Tort Liability Law," employers have a certain supervisory responsibility for the actions of their employees within the scope of their work. However, the law does not specify how this principle should be applied in cases of sexual harassment, leading to disputes over the delineation of liability.

#### **2.2.2.3. Suitability of Private Employers as Defendants**

In practice, private employers may exploit their dominant position in the employer-employee relationship to evade legal responsibility through means such as contract termination or asset transfer. For example, a female waitress at a restaurant who is subjected to continuous harassment by her boss may find that when she lodges a complaint, the employer uses various tactics, including threats and

dismissal, to prevent her from taking legal action. Courts may struggle to effectively hold private employers accountable due to a lack of explicit provisions regarding their status as defendants in such cases. Legal Framework for Addressing Sexual Harassment in the American Workplace [5].

### **3. Legal Regulation of Hostile Work Environment Sexual Harassment in the United States**

#### **3.1. The Triad of Employer Liability Models**

Drawing from the U.S. Federal Supreme Court's rulings and the evolution of legal norms, the liabilities that employers face in cases of workplace sexual harassment can be delineated into three principal models: strict vicarious liability, presumed vicarious liability, and negligence-based liability.

##### **3.1.1. Model One: Strict Vicarious Liability**

Within this framework, when an individual in a managerial or supervisory capacity engages in sexual harassment that significantly and adversely impacts the victim's employment status, the employer is held to strict vicarious liability. In these instances, the employer is precluded from leveraging any preventative or remedial actions taken against sexual harassment as a legal defense.

###### **3.1.1.1. Defining managerial or supervisory roles**

For an employer to be subjected to strict liability, the act of sexual harassment must be perpetrated by an individual vested with managerial prerogatives. The federal statutes do not lay out explicit criteria for what constitutes managerial authority, which has led to a bifurcation in the interpretation by U.S. courts--a more constrained view versus a more expansive one. There is a judicial consensus that the presence of managerial authority is not necessarily reflective of one's job title but is closely tied to the actual sphere of influence that the individual possesses.

Courts advocating for a narrow interpretation posit that managerial authority is ascertained only when the individual has the power to hire, demote, or terminate employment. Conversely, courts embracing a broad interpretation assert that managerial authority can be attributed to an individual even in the absence of direct power over hiring, firing, promotion, demotion, or disciplinary actions, provided they have oversight over the victim's routine work responsibilities.

To encapsulate, U.S. courts evaluate the presence of managerial authority in an employee based on the scope of their powers and job functions. While there is no unanimity on the specific benchmarks, the general consensus encompasses two primary scenarios: firstly, the capacity to execute decisions on hiring, firing, promotional activities, demotions, job reassignments, and disciplinary measures; secondly, the prerogative to oversee and direct the day-to-day professional conduct of other employees, irrespective of the ability to make personnel decisions [6].

###### **3.1.1.2. The determination of tangible employment actions**

Under the doctrine of strict vicarious liability, it is imperative to demonstrate, beyond the managerial authority of the harasser, that the victim's employment status has suffered from tangible employment actions. The Federal Supreme Court, in the seminal Ayres case, has characterized tangible employment actions as substantial alterations to the terms and conditions of employment, typically culminating in economic detriment. These can encompass a spectrum of actions, including but not limited to hiring, termination, the denial of promotions, job reassignments that significantly modify job responsibilities, or decisions precipitating a marked change in benefits [7].

###### **3.1.1.3. The utility of employer-implemented Anti-Sexual Harassment Protocols under strict vicarious liability**

In the realm of strict vicarious liability, while an employer's implementation of anti-sexual harassment protocols does not serve as a shield against liability, it is not devoid of legal relevance. In legal practice, an employer's adoption of prudent and appropriate measures aimed at the prevention and

rectification of sexual harassment can be instrumental in mitigating or nullifying the imposition of punitive damages [8].

### **3.1.2. Model Two: Rebuttable Vicarious Liability**

Under this model, an employer is presumed to be liable even when the harasser occupies a managerial post and the victim's employment status remains unaltered in a substantial manner. However, the employer can rebut this presumption by establishing that: (1) they have instituted reasonable measures to guard against sexual harassment and have expeditiously addressed any instances post-occurrence; (2) the victim has not made reasonable use of the mechanisms provided by the employer for the prevention or rectification of sexual harassment or for the avoidance of harm. A valid affirmative defense is underpinned by two elements, both of which impose the onus of proof on the employer [9].

#### **3.1.2.1. The employer's timeous implementation of reasonable measures to prevent and correct sexual harassment**

The first element of the affirmative defense mandates that the employer demonstrate due diligence in the establishment of robust mechanisms to counteract sexual harassment within the workplace, coupled with the swift adoption of corrective steps in the wake of any such incidents.

#### **3.1.2.2. The victim's non-utilization of employer-provided anti-sexual harassment mechanisms**

Judicial precedent suggests that a victim's non-utilization of the employer's anti-sexual harassment mechanisms generally falls into two categories: firstly, a complete disengagement from the mechanisms provided by the employer; secondly, an unreasonable delay in engaging with the employer's anti-sexual harassment mechanisms.

#### **3.1.2.3. Disputes in application**

In the context of the second model of liability, the employer's affirmative defense necessitates proof of the establishment of an anti-sexual harassment mechanism and the plaintiff's non-utilization of said mechanism. If the plaintiff can establish that they have engaged with the mechanism in a reasonable manner, such as through the timely filing of a complaint, the employer's affirmative defense may be deemed unsuccessful.

### **3.1.3. Model Three: Negligence Liability**

Within this framework, if the individual committing the sexual harassment is an employee or a third party devoid of managerial responsibilities (including customers and other non-employees), and the employer: (1) was aware or should have been aware of the sexual harassment; (2) failed to implement timely and suitable corrective measures, the employer may be held liable for negligence concerning the sexual harassment [10].

A pivotal aspect of this model is the shift in the burden of proof. While under the second model the onus is on the employer to demonstrate the implementation of reasonable preventative and corrective measures and the victim's non-utilization of these mechanisms, under the third model, the burden shifts to the plaintiff, who must substantiate that the employer was aware or should have been aware of the sexual harassment and failed to take prompt and suitable corrective action [11].

## **3.2. Application of Specific Liability Models in U.S. Practice**

The United States has achieved notable success in the management of workplace sexual harassment through the fortification of employer liability mechanisms, offering valuable insights for the refinement of corresponding systems in China. This is reflected in several key areas.

### **3.2.1. Legislative Emphasis**

Placing a legislative emphasis on the pivotal role of the employer liability mechanism in the establishment of an anti-workplace sexual harassment framework is of paramount importance. Given that employers wield direct control over the workplace and its environment and are equipped to

enforce preventative and corrective actions against sexual harassment, it is imperative that Chinese legislation explicitly delineate the responsibilities of employers in combating sexual harassment and the legal liabilities that ensue [12].

### **3.2.2. Distinguishing Forms of Employer Liability**

It is essential to differentiate between the various forms of employer liability contingent upon the nature of the sexual harassment incident at hand. The U.S. approach, which differentiates employer liability based on the perpetrator's status and the extent of the victim's employment conditions affected, presents a more reasoned methodology over a blanket assignment of employer liability [13].

### **3.2.3. The Dual Purpose of the Employer Liability Mechanism**

The employer liability mechanism serves a dual purpose: not only to hold accountable but also to educate and guide. The U.S. system has shown that, under certain conditions, the internal anti-sexual harassment protocols established by an employer may serve as justification for the mitigation or exemption of their liability. This inherently encourages proactive measures by employers to combat sexual harassment. In the formulation of such systems, China should also concentrate on motivating and directing employers to proactively implement effective internal anti-sexual harassment protocols, thereby fostering a healthier and more equitable workplace environment [14].

## **4. Suggestions for Improving the Law on Sexual Harassment in a Hostile Work Environment in China**

Regarding the improvement of laws on sexual harassment in the workplace in China, current laws such as the Civil Law and the Law on the Protection of Women's Rights and Interests only stipulate that women can file complaints with authorities, but they do not provide feasible remedies. Once again, we can draw on the practices of American law. Please refer to the summary, which specifically improves remedies in terms of behavioral remedies, monetary remedies, and other forms of redress.

In China, the issue of sexual harassment in the workplace has already attracted widespread social attention, but there are deficiencies in the current laws regarding the provision of remedial measures. To more effectively protect the rights and interests of the victims, the following is a detailed elaboration of the suggestions for improving the current legal system.

### **4.1. Behavioral Remedies**

The concept of "personal safety protection orders" should be introduced into laws such as the Labor Law, allowing victims of sexual harassment to apply to the court for an injunction to prevent the perpetrator from continuing acts of sexual harassment or approaching the victim. For instance, if an employee is subjected to persistent harassment by a colleague, she may apply to the court to prohibit that colleague from maliciously entering her workspace or communicating with her directly. Moreover, the law should clearly stipulate that employers have the responsibility to establish and maintain a sexual harassment-free work environment, and penalties should be imposed on employers who fail to fulfill this responsibility. For example, if a company fails to prevent acts of sexual harassment, leading to multiple employees being victimized, it should face corresponding administrative penalties [15].

### **4.2. Compensation for Psychological Damage**

The psychological trauma caused by sexual harassment to the victim is profound. The law should clearly define the scope and standards for compensation for psychological damage to ensure that victims can receive appropriate financial compensation. If a victim suffers severe anxiety and depression due to sexual harassment and requires long-term psychological counseling and treatment, the court should consider the costs of such treatments as well as the job opportunities and social activities the victim has lost as a result, and determine the corresponding compensation amount to be paid by the perpetrator.

### **4.3. Punitive Damages**

To combat intentional and repeated acts of sexual harassment, it is suggested to introduce a mechanism for punitive damages. This mechanism should allow the court, in cases of sexual harassment, to impose fines based on the degree of malice and the severity of the perpetrator's actions. For example, when an employer uses their position of power to sexually harass a subordinate and retaliates after the victim files a complaint, the court can determine that they pay punitive damages, an amount several times the actual loss inflicted upon the victim [16].

### **4.4. Attorney's Fees**

In cases of workplace sexual harassment, it is suggested to implement a one-way transfer system for attorney's fees. This means that the losing party must pay the winning party's attorney's fees, while the winning party does not need to bear the attorney's fees of the losing party. If a victim prevails in litigation, the defendant company must not only pay the compensation but also the victim's attorney's fees, ensuring that the victim does not give up on litigation due to financial burden [17].

### **4.5. Anonymous Reporting Mechanism**

To protect the identities of victims and whistleblowers, it is suggested to establish an anonymous reporting system. At least, an anonymous hotline or online platform should be set up to allow employees to report incidents of sexual harassment without revealing their identity. This system should ensure the confidentiality of the reporter's information and provide a secure channel for victims and informants to report acts of sexual harassment without fear of personal safety or occupational risks [18].

### **4.6. Legal Assistance**

The government and non-governmental organizations should provide legal aid services to help victims of sexual harassment understand their rights and guide them on how to seek redress through legal means. The non-governmental organization can provide professional legal advice to victims of sexual harassment, assist them in preparing litigation materials, and even provide representation in litigation if necessary. In addition, these organizations can also provide psychological counseling to the victims to help them deal with the psychological trauma caused by sexual harassment.

By implementing these specific measures, a more comprehensive and effective legal framework can be constructed to protect the rights and interests of victims of workplace sexual harassment and promote a healthy and equal working environment. The implementation of these measures requires the joint efforts of the government, businesses, social organizations, and every citizen. Only in this way can we fundamentally solve the problem of workplace sexual harassment and protect the dignity and rights of every individual [19].

## **5. Conclusion**

The analysis of sexual harassment regulations in the People's Republic of China (PRC) reveals a complex interplay between legal provisions and their actual enforcement. Although the Civil Code serves as a bridge between various legal approaches, it does not clearly define the responsibilities of employers nor establish explicit punitive measures for violations. Compared to the legal system in the United States, it is evident that the PRC has the opportunity to strengthen its legal framework by adopting a more explicit framework for employer liability and expanding the legal remedies available to victims. Proposed solutions, including enhancing employer accountability, introducing punitive damages, and establishing confidential reporting mechanisms, aim to reinforce the legal system and provide a more comprehensive support network for victims.

Furthermore, the implementation of non-legal measures, such as providing increased legal assistance, implementing workplace education and training programs, and advocating for gender diversity in



leadership, can work in conjunction with legal reforms to foster a culture of prevention and create a more inclusive professional environment. These measures, combined with legal improvements, are crucial for addressing the issue of underreporting of incidents and the adverse career impacts faced by victims.

Essentially, while the PRC has made progress in recognizing and legislating against sexual harassment, there remains a need to establish a more robust and nuanced legal system that adeptly balances the protection of individual rights with the promotion of a respectful and equitable workplace. In terms of legal measures, the focus can primarily be on clarifying the division of employer responsibilities and specific judicial remedies. The combination of legal and non-legal strategies offers a promising path towards this goal, ultimately creating a more just and supportive atmosphere for all employees.

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