

Workplace Bullying & Sexual Harassment in Malaysia

1.0 Understanding workplace bullying and sexual harassment

1.1 Workplace bullying

Workplace bullying may generally be understood as repeated or unreasonable conduct directed towards an employee which creates a hostile, intimidating, humiliating or degrading working environment. It may take physical, verbal, psychological or digital forms. Examples include persistent insults, intimidation, humiliation, unreasonable criticism, threats, social exclusion, abuse of authority and deliberately undermining an employee's work.

Unlike sexual harassment, Malaysian legislation has historically not provided a single statutory definition of "workplace bullying". However, this does not mean that bullying falls outside the scope of legal protection. Depending on the circumstances, the conduct may amount to a breach of the employment relationship, misconduct, constructive dismissal, or even a criminal offence.

1.2 Sexual harassment

Sexual harassment is specifically regulated under Malaysian legislation. Section 2 of the Employment Act 1955 (EA 1955) defines "sexual harassment" as any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment. The conduct may include inappropriate sexual remarks or jokes, unwanted touching, sexual advances, sexually suggestive messages, gestures, images or communications. Notably, the definition is not restricted to conduct by men against women and therefore protects employees regardless of gender.

2.0 Employers' duties and consequences of non-compliance

2.1 Duty to inquire into sexual harassment and take action

The EA 1955 does not contain specific provisions governing workplace bullying, but Part XVA imposes duties on the employer to address sexual harassment issues. Section 81A recognizes

complaints of sexual harassment made by an employee against another employee, by an employee against an employer, or by an employer against an employee. Section 81B further requires the employer to inquire into the complaint in the prescribed manner. If the employer refuses to conduct an inquiry, the complainant must generally be informed of the refusal and the reasons for it in writing within 30 days. Refusal to inquire is permitted only in the limited circumstances in Section 81B(3), involving a complaint previously inquired into with no harassment proven, or one regarded as frivolous, vexatious or not made in good faith.

Where sexual harassment has been proven, Section 81C further requires appropriate action against the perpetrator. If the perpetrator is an employee, disciplinary action may include dismissal without notice. In addition, Section 81H also requires an employer to display a notice raising awareness of sexual harassment at the workplace. This reflects an important shift from merely responding to complaints toward prevention and awareness.

2.2 Duty to ensure the safety and welfare of employees at work

The Occupational Safety and Health Act 1994 (OSHA 1994) provides another layer of protection under Section 15. Bullying or sexual harassment may engage the duty stated under Section 15 where the conduct creates workplace safety, health or psychosocial risks.

The importance of OSHA 1994 has increased with recognition of psychosocial risks. The 2024 DOSH guidelines expressly identify bullying, harassment and discrimination as organizational psychosocial hazards. Although the guidelines themselves should not be treated as creating a new statutory offence of bullying, they provide useful guidance for employers in identifying, assessing and managing workplace risks.

2.3 Consequences of non-compliance

Failure by an employer to comply with its statutory obligations may give rise to various legal consequences. For example, an employee subjected to bullying or harassment may, depending on the circumstances, make a representation under Section 20 of the Industrial Relations Act 1967 (IRA 1967) alleging dismissal without just cause or excuse on the basis of constructive dismissal.

The Malaysian courts have recognized that an employer's failure to address serious workplace harassment may contribute to constructive dismissal. For instance, in *Sitt Tatt Berhad v Flora a/p Gnanapragasam & Anor* [2006] 1 MLJ 497, the employee alleged sexual harassment by her immediate superior and complained to senior management, but no effective action was taken. The High Court upheld the Industrial Court's finding of constructive dismissal. It demonstrates that an employer's failure to protect an employee after receiving complaints may itself become legally significant.

More recently, the Federal Court in *Tan Lay Peng v RHB Bank Berhad & Anor* [2024] 5 MLRA 171 reaffirmed that the applicable test for constructive dismissal is the "contract test". An employee must establish that the employer has committed a fundamental or repudiatory breach going to the root of the employment contract, or has demonstrated an intention no longer to be bound by its express or implied terms. Mere unreasonable conduct by an employer, without more, is insufficient to establish constructive dismissal.

In addition, an employer may be subject to statutory penalties for non-compliance with the relevant statutory obligations. Under Section 81F of EA 1955, non-compliance with inquiry obligations may result in a fine not exceeding RM50,000. Furthermore, Section 19 of OSHA 1994 also states that a contravention of the relevant employer duties may result in a fine for an amount up to RM500,000, imprisonment of up to two years, or both.

3.0 Legal developments and emerging issues

3.1 Anti-Sexual Harassment Act 2022

One of the notable legal developments in Malaysia is the emergence of the Anti-Sexual Harassment Act 2022 (ASHA 2022) as it creates a mechanism for victims of sexual harassment to obtain redress independently of the employer's internal disciplinary process.

The Tribunal for Anti-Sexual Harassment is also established. The tribunal provides an alternative platform to the courts for complaints of sexual harassment. The tribunal's jurisdiction is not limited to employment relationships and may therefore address sexual harassment occurring in a wider range of circumstances. A complainant may lodge a complaint directly with the Tribunal, which determines the complaint on the balance of probabilities. Proceedings are conducted in

private, and the Act provides for the Tribunal to make an award, where practicable, within 60 days from the commencement of the hearing.

3.2 Amendments to the Penal Code in 2025

The most significant recent development concerning workplace bullying is the introduction of Sections 507B to 507G of the Penal Code (PC). The amendments came into force on 11 July 2025 and criminalise various forms of threatening, abusive or insulting conduct, harassment-related conduct, and the misuse or publication of identity information, including conduct which may arise in bullying situations.

Section 507B addresses the use of threatening, abusive or insulting words or acts with the intention of causing, or knowing or ought to know that it is likely to cause, harassment, distress, fear or alarm. A person convicted of an offence under Section 507B may be punished with imprisonment for a term of up to 3 years, a fine, or both. Meanwhile, Section 507C applies where threatening, abusive or insulting words, communications or acts are heard, seen or otherwise perceived by a person who is likely to feel harassed, distressed, fearful or alarmed by such conduct. The offence carries imprisonment for a term of up to one year, a fine, or both.

The statutory defence is prescribed under Section 507C(2), where it states that it shall be a defence to a charge against a person under this section if it is proved that he had no reasonable grounds to believe that the words or communication used or made by him, or his act, would be heard, seen or otherwise perceived by a person who was likely to feel harassed, distressed, fear or alarmed by such words, communication or act.

Section 507D is particularly significant in serious bullying cases. Section 507D(1) criminalises an act causing a person to believe that harm will be caused to that person or another person, as well as provoking a person to cause harm to themselves or another person. The person shall be punished with imprisonment for a term which may extend to one year or with fine or with both. Under Section 507D(2), where the person who is provoked attempts to commit suicide or commits suicide as a result of the provocation, the offender may be punished with imprisonment for a term of up to 10 years, a fine, or both.

On the other hand, Section 507E and 507F address publication or circulation of identity information, while Section 507G defines concepts including “harm”, which includes psychological harm.

4.0 Current circumstances and emerging issues in Malaysia

4.1 Do the courts acknowledge workplace bullying and sexual harassment?

Malaysian courts have acknowledged workplace bullying in several decisions. For example, in *Bina Goodyear Bhd v Subramaniam* [2004] ILJU 55, the court recognised that public humiliation by an employer amounted to destruction of mutual trust and confidence, and such conduct may support a claim for constructive dismissal.

Similarly, in *Abbott Laboratories (Malaysia) Sdn Bhd v Yeoh Siew Tin* [2005] 1 ILR 43, the respondent, a senior medical representative for the company, faced toxic, hostile remarks and oppressive behaviour from her supervisor. The hostile environment created by management caused the claimant severe mental distress and damaged the implied term of mutual trust and confidence in the employment relationship. This case shows an example of how psychological abuse, toxic pressure, and humiliation by management can breach employment contracts.

There are also cases which fall within the ambit of ASHA 2022. On 12 July 2024, the Tribunal for Anti-Sexual Harassment issued its first award to a female employee who complained of physical sexual harassment by her male employer. It was reported as the first complaint decided by the tribunal after it became operational. The award was issued within the statutory 60-day period under Section 19(1) of ASHA 2022.

4.2 Risk of employer retaliation

There is a possibility that an employee who reports bullying may subsequently become the subject of disciplinary action. The recent court decision in *Kuhendran all Rajan v American Express (Malaysia) Sdn Bhd* (Award No. 741 of 2026) demonstrates this concern.

In this case, the claimant had alleged years of bullying, harassment and intimidation by his superior and had made internal complaints. He was then subjected to disciplinary scrutiny and

dismissed after escalating his complaints to the company's HQ. The Industrial Court found the dismissal to be without just cause or excuse and ordered the employer to pay RM153,200 comprising back wages and compensation in lieu of reinstatement.

The decision of this case is significant because it highlights that an employer's response to a complaint may itself become the subject of scrutiny. Hence, it is important for an employer to ensure that disciplinary action against an employee who has made a complaint is supported by verifiable reasons, rather than creating the appearance of retaliation.

5.0 The way forward

Ultimately, the objective should not merely be to provide remedies after the occurrence of bullying or sexual harassment in the workplace, but to foster a workplace culture in which such conduct is prevented and promptly addressed when it arises. At the same time, the protection of complainants must be balanced with the right of persons accused of misconduct to a fair and impartial process. As Malaysia's legal framework continues to develop, future judicial and tribunal decisions will be important in clarifying the scope of employer liability and the application of the new criminal offences.

Disclaimer

This article provides general information and educational purposes only and does not constitute legal advice. The legal position may vary depending on the facts and circumstances of each case, and the law may be amended or developed from time to time. Readers should obtain specific legal advice before acting on or relying on any information contained in this article. Y S Ling & Co. accepts no responsibility or liability for any loss or damage arising from reliance on the contents of this article.