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## Can I Be Fired for Constantly Annoying My Colleague?

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Practical jokes, racial remarks, angry outbursts, and profanities are behaviors, amongst others, often regarded as part and parcel of workplace dynamics with nothing much that can be done about.

While these acts may seem harmless at first sight, when committed over a prolonged period, they are actually forms of harassment that will destroy the safety and harmony of a workplace. If left unaddressed, both employers and employees suffer.

In this alert, we dissect what amounts to workplace harassment and, more importantly, what are the rights and obligations of employers and employees when faced with this issue.

### What Is Workplace Harassment?

In *Malaysia Airline System Berhad v. Wan Sa'adi Wan Mustafa* [2008] 4 ILR 72, the Industrial Court adopted the definition of harassment as follows:

*"[60] In Employment Law in Principle by Rohan Price on pp. 295 and 296 Harassment means:*

*Napoli (Napoli, J Understanding Equal Employment Opportunity, Prentice Hall, 1998, p 109) has described harassment as:*

*Unwelcome behaviour which has the effect of offending, humiliating or intimidating the person at which the behaviour is directed. It may include behaviour by a person, or a group of people, which involves them using power inappropriately over subordinate(s) or colleague(s) at work. It can also include the distribution or publication of racist or sexist materials, verbal abuse, racist or sexist jokes or other comments that negatively stereotype, threats or physical assaults."*

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Further in *Shaun Khee Tuck Keat v. Carigali Hess Operating Company Sdn Bhd* [2016] 4 ILR 112, the Industrial Court held:

*“Harassment is a very serious misconduct and it cannot be tolerated by the employer in any form. The employer bears an obligation to protect its employees from being harassed by their co-workers. Harassment in any form lowers the dignity and respect of the ones who get harassed and disrupts or destroys the harmonious and conducive environment of the workplace. The perpetrators who go unpunished will only intimidate, humiliate and traumatize the victims resulting in an unhealthy working environment...”*

As demonstrated by these cases, workplace harassment can take a variety of forms, and can range from verbal remarks that are subtle to physical aggression that are obvious. Overall, harassment are repeated acts that have the effect of offending, humiliating, intimidating or lowering the dignity and respect of the victim.

These cases also demonstrate that workplace harassment has repeatedly received strong and stern condemnation by the Courts, including that such behavior should not be tolerated by any employer.

### **Workplace Harassment As A Form Of Misconduct**

Considering the above, what should be done by an employer if a case of workplace harassment is reported? In a similar vein, what can an employee do if he/she is suffering from workplace harassment?

These questions were answered in *Khaw Yao Shun v. Petroliam Nasional Berhad (Petronas)* [2019] 2 LNS 2141. In this case, Khaw Yao Shun (Claimant) was dismissed by his employer (Company) for misconduct. Before his dismissal, the Company organised a domestic inquiry against the Claimant wherein 5 charges of misconduct were laid against him. The Claimant was eventually found guilty of 3 of the charges and was dismissed on that basis.

The 3 charges of misconduct were, in summary, as follows:

- 1) Pouring MILO drink into the company's laptop used by Lee Kian Seng (Victim), a colleague of the Claimant;
- 2) Taking multiple documents belonging to the Victim from his room without his consent; and
- 3) Erasing the written notes on the Victim's whiteboard without his consent.

The Claimant, dissatisfied with his dismissal, brought the matter to the Industrial Court. The Industrial Court upon examining the evidence and the witnesses, found in favour of the Company. The Industrial Court held that the Claimant had indeed committed those acts, and that those acts amounted to workplace harassment which warranted a dismissal.

The Court held as follows:

*"[52] ...Workplace harassment and causing damage to the Company's property is a serious offence and that such betrayal of trust could not be condoned by a punishment lesser than dismissal as it would set a dangerous precedent to other employees. The punishment of dismissal was justifiable.*

...

*[56] Therefore, this Court agrees that, discipline at the workplace is the sine qua non for the efficient working of the Company. Given that the Respondent has a huge work force, discipline and civility amongst its employees must be maintained to ensure a conducive, safe and harmonious work environment. The 3 charges proved against the Claimant were sufficiently serious to justify the punishment of dismissal against the Claimant. As such, the dismissal was proportionate to the nature and gravity of the misconduct committed by him. The Claimant's dismissal was with just cause and excuse."*

Thus, while those acts committed by the Claimant in the case may seem minor or insignificant on their own, when viewed collectively, they are very harmful acts that could adversely impact the work environment and the morale of the work force. As such, a stern action by the Company was necessary and justified.

Based on this, victims of workplace harassment should not hesitate to report the same to the management, and the management should not shy away from punishing the perpetrator if the complaints were proven to be true.

### **Beyond The Industrial Court**

Other than disciplinary action by the employer, a victim may also take action against the perpetrator in the civil courts.

The tort of harassment was introduced by the Federal Court in *Mohd Ridzwan bin Abdul Razak v Asmah bt Hj Mohd Nor* [2016] 6 CLJ 346. The Federal Court defined harassment and recognised it as a cause of action:

*"[39] After mulling over the matter, we arrived at a decision to undertake some judicial activism exercise and decide that it is timely to import the tort of harassment into our legal and judicial system, with sexual harassment being part of it.*

...

*[57] For our purpose, before defining the tortious phrase of sexual harassment, we need to know what harassment is in the first place ... Lord Sumption in *Hayes v. Willoughby* [2013] 1 WLR 935 acknowledged that harassment is an "ordinary English word with a well understood meaning." Citing *Thomas v. News Group Newspapers Ltd* [2002] EMLR 78 (at 30), Lord Sumption stated that harassment is, "a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated and does cause that person alarm, fear or distress". We certainly have no disagreement with such a definition."*

Therefore, victims of workplace harassment have several avenues to seek justice, including claiming compensation to remedy the harm suffered.

It is important to note that the decision of *Mohd Ridzwan* was primarily on the issue of sexual harassment. Sexual harassment at the workplace is clearly also a form of workplace harassment which warrants stern disciplinary action. To read more on sexual harassment, click [here for our previous alert on the topic](#).

## Conclusion

In conclusion, both employers and employees are encouraged to seek legal advice when faced with the issue of workplace harassment, so that the right course of action can be taken, and justice can be brought to all parties.

Further, employers should also take a proactive role in preventing workplace harassment from even happening, as prevention is always better than cure. Employers should consider implementing a respectful workplace policy; one drafted and implemented by the firm can be viewed [here](#).

Authored by Louis Liaw<sup>1</sup>.

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<sup>1</sup> Louis Liaw is a Senior Associate with the firm's Employment & Industrial Relations practice. He read law at the University of Cardiff and is an English barrister by training. Louis was previously a member of the Kuala Lumpur Bar Committee, where he chaired the Publications Committee.

## How can we help you?

We are operating as usual and clients may pose any queries on employment and industrial relations matters including those in relation to this alert via e-mail to:

- **Datuk D.P. Naban**  
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