

Second Harassment

Vol. 25, November 2018

The second harassment refers to further harassment experienced as a result of reporting a case of harassment (victim blaming, etc.) Since those who don't have the correct knowledge of harassment may run the risk of becoming the perpetrators themselves, let's raise our awareness about harassment prevention in everyday life, even if we are not among the parties concerned in a dispute.



× “You are also to blame for the incident.”

It is illogical to find fault with the victim by saying things like “Of course you got sexually harassed, dressing like that.” It follows the same logic as a statement like “Of course you got mugged, wearing such a fancy watch.”

× “He (She) is not the kind of person who would do such a thing.”

The victim may worry that the incident they experienced will be dealt with as if it never happened.

NO



× “There were worse in the past.”

Responding in such a manner instead of offering aid to someone who has mustered the courage to speak out will make them feel hopelessly abandoned.



× Destroying evidence before someone goes to a consultation center.

Harassment is an issue concerning human rights, and at times may even be connected to crimes. It is a crime when a third party voluntarily disposes of materials that may become evidence in a criminal case (Article 104 of the Penal Code, Suppression of Evidence)



The Illegality of Second Harassment

Though a current Cabinet minister has said that “sexual harassment is not a crime,” as behavior that inflicts harm upon others, it has become a serious issue. Yes, it is true that there are no provisions related to harassment in the Penal Code. However, if an organization that receives a report of harassment does nothing to deal with the matter, it may be criminally liable.

When nothing is done in response to reports of sexual harassment...

It is a violation of the Equal Employment Opportunity Law

Article 11 Employers shall establish the necessary system to give advice to workers and cope with problems of workers, and take other necessary measures in terms of employment management so that workers they employ do not suffer any disadvantage in their working conditions depending on said workers' responses to sexual harassment in the workplace, or, in their working environments, do not suffer any harm due to said sexual harassment.

When nothing is improved or nothing is done in response to a case of maternity harassment...

It is a violation of the Child Care and Family Care Leave Act

Article 23-2 Employers must not dismiss or otherwise treat a worker disadvantageously on the grounds that said worker files an application pursuant to the provision of the preceding Article* or that measures are taken for said worker pursuant to the provision of the same Article. (*: Article 22. Measures related to Employment Management, etc.)

Legal Precedent (Example Case): A company that received a report of sexual harassment did not take the necessary measures and the employer was held liable as a result.

A mentally disabled employee of a building management company complained to the company about an experience of sexual harassment. However, the boss merely carried out some simple questioning and then, without verifying the sexual harassment, warned the perpetrator to avoid any behavior that may be misunderstood, while leaving the victim in the work environment that had led to the sexual harassment. Despite speaking with the parties in this case of sexual harassment, the company did not dedicate themselves to a thorough investigation or take measures to support the victim, resulting in the company being ordered to pay 500,000 yen in damages to the victim in recognition of the company's collective liability based on its responsibility as an employer in accordance with Article 715 of the Civil Code, as well as 300,000 yen in damages in accordance with Article 350 of the Companies Act for its own illegal activity by not adequately investigating the case.

(Claim for Damages Case, Osaka District Court, *Jurist* Vol. 1391 Page 80, 2009.10.16)

Civil Code, Article 715 (1) A person who employs others for a certain business shall be liable for damages inflicted on a third party by his/her employees with respect to the execution of that business; provided, however, that this shall not apply if the employer exercised reasonable care in appointing the employee or in supervising the business, or if the damages could not have been avoided even if he/she had exercised reasonable care. (2) A person who supervises the business on behalf of the employer shall also assume the liability under the preceding paragraph.

NOTE: Failure to deal with a report of harassment itself may become the subject of a claim for damages.

Civil Code, Article 709 A person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence.

When an employee comes to you to report harassment...

First, be sure to give your full attention to what the employee has to say. If you neglect the issue or otherwise try to explain it away with statements like "This is a common occurrence" or "In the past...", you may be committing second harassment. It is possible you may think "this might just be a misunderstanding," however we recommend that even if doubts are raised, do not immediately begin probing for facts and instead listen carefully from start to finish before verifying the claims.

Also, keep in mind that spreading rumors like "It seems that XX-san is being harassed" also constitutes behavior connected to second harassment. Be sure to confirm the appropriate scope of information sharing always in accordance with the wishes of the employee. As to how it would be best to approach resolving the matter, it is important to not unilaterally suggest a solution, but instead to listen to the wishes of the employee and then work together to come up with an answer.

Do not become a bystander!

When someone is harassed, it is not easy for them to discuss the matter with those around them and so there is a tendency for victims to become isolated. Do not stand idly by if you witness a scene or any speech or behavior that seems like harassment: first, to support the victim, address them, and try listening to what they have to say. Pretending not to see the harassment is itself a secondary act of harm, and runs the risk of heightening the victim's interpersonal distrust.

When you are the victim of second harassment...

First, please come to the Nagoya University Harassment Consultation Center for counseling on the matter. While of course we offer counseling to current university members, we also extend our services to alumni and former employees. The measures we take in response to your case will vary depending on where the harassment occurred and other factors. Rest assured that our center is staffed with counselors who specialize in harassment counseling, and that we will not share any of your information without your consent. You can use our services without worry.



Harassment Countermeasures Global Trends

On June 8, 2018, the International Labour Organization (ILO) adopted the resolution and proposed conclusions offered in the reports of the Standard-Setting Committee on “Violence and Harassment in the World of Work” during the 107th session of its International Labour Conference (ILC). It marks a significant development for the adoption of new treaties and other international agreements in the future, and we can expect similar developments for domestic legislation in Japan, a member nation.

The reports define “violence and harassment” as unacceptable behaviors or actions that cause physical, mental, sexual, or economic harm, expand the definition of “worker” to include “anyone working irrespective of their contractual status,” and redefines “perpetrators and victims” to also include other parties like clients and customers. Also, it calls for member countries to adopt laws and ordinances to prohibit violence and harassment in work environments.

To prevent harassment in its many forms, it is clear that we must treat it as both a societal and environmental problem and never allow ourselves to become bystanders in the future.

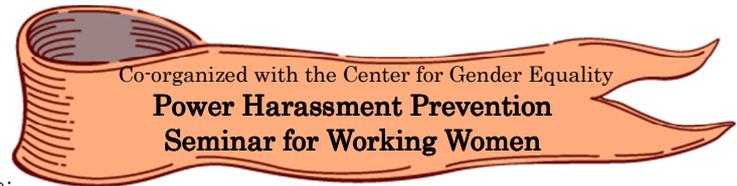
“What kind of society is a society where women shine?”

NODA Seiko (House of Representatives)

13:00-14:00 on Thursday, December 20, 2018

Location: Nagoya University Idea Stoa
National Innovation Complex (NIC), 1st Floor

Register here:



“Professor, that romance is sexual harassment!”

MUTA Kazue

(Osaka University Graduate School Professor)

13:00-14:00 on Tuesday, December 25, 2018

Location: Nagoya University Idea Stoa
National Innovation Complex (NIC), 1st Floor

- Both events are free (Max: 80 seats)
 - Registration is open until Friday, December 14th
- NOTE: If you cannot scan the QR code, please provide your name, affiliation, and contact information to the contact listed below.

Nagoya University Harassment Consultation Center

School of Engineering Building 7, 2nd Floor of Tower B, Furo-cho, Chikusa-ku, Nagoya-shi, 464-8601

Hours of Operation (Mon-Fri, Excluding Holidays) 9:00-17:00

Tel: 052-789-5806 (Higashiyama) Fax: 052-789-5968 (Higashiyama)

E-mail: h-help@adm.nagoya-u.ac.jp (Higashiyama, Tsurumai, Daiko)

<http://www.sh-help.provost.nagoya-u.ac.jp>

★ (The satellite office at the Tsurumai Campus is open every Tuesday, while the Daiko office is open on the 2nd and 4th Thursdays of each month)

