Proposal under fire

> MEF says sexual harassment clause lop-sided; women's groups say it's not enough

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PETALING JAYA: The proposed sexual harassment clause in the Employment Act (EA) 1955 has come under fire from both the Malaysian Employers Federation (MEF) and women's groups, who claim it is not adequate to address the issue.

On Thursday, Deputy Human Resources Minister Datuk Maznah Mazlan tabled the Employment (Amendment) Bill for first reading. The amendment, among other things, stipulates that employers who turn a blind eye to sexual harassment can be fined up to RM10,000.

MEF's executive director Shamsuddin Bardan said the federation is unhappy with the amendments.

"Even without the (amendments to the) Act the employers are already practising the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace. It is not something new for us," he told *theSun*.

"We disagree (with the compulsory rule imposed on employers to investigate sexual harassment complaints) ... what irritates MEF is that the proposed amendment is imposing an instruction with a penalty if the employers fail (to investigate).

The duty to investigate should not be imposed by law because the complainants may not be happy with the employer's inquiry and may bring the matter to the Labour Department, which could lead to other consequences to the company, he said.

Shamsuddin also questioned the need for legislation on the issue.

"Since the establishment of the code of conduct, less than 500 cases have been reported to the ministry in the past 10 years; that is less than 50 a year. This does not warrant legislation," he stressed.

However, Womens' Aid Organisation executive director Ivy Josiah refuted this, saying that there should not be any resistance from the employers should they be doing it right.

"If the employers are confident that they are addressing sexual harassment well, the law is just a reinforcement of their commitment.

"They should not be reacting to it this way. It is a known fact that only about 3% of the companies have adopted the code," she told *theSun*.

Josiah: Only 3% of companies have adopted code

Shamsuddin: MEF unhappy with amendments

According to statistics from the ministry, to date, only 1,659 out of 14,398 private companies that have more than 50 staff have adopted the code, which was established in 1999.

Calling the proposal "lopsided," Shamsuddin said the amendments could be abused by employees to make "malicious" accusations against colleagues and employers.

"What the amendment lacks is this: What happens if the complaints were malicious in nature? Can the company dismiss the complainant for making false or malicious complaints?" he asked.

"And in the event any employee is dismissed after being found guilty of the offence, this kind of dismissal that should not be challenged under Section 20 of the Industrialisation Act," Shamsuddin said.

Section 20 of the Act states that an employee who feels he/she has been dismissed without just cause can make representations in writing to the director-general of industrial relations to be reinstated to his/her former employment.

Another aspect that was not looked into, Shamsuddin said, was the long period for the human resources ministry to refer the case to Industrial Court.

"By the time the case is heard, the company may not have any witnesses to testify or the victims may be married and may be embarrassed to testify," he said.

Ivy said sexual harassment is a crime and cannot be equated to other misconduct at the workplace such as stealing and coming late to work.

Nevertheless, she agreed that the amendment alone to address the issue is "inadequate" as the EA only covers those who earn below RM1,500, though efforts are afoot to increase this to RM2,000.

So victims would only be able to rely on it if they earn below this amount, she said.

Echoing her call, All Women's Action Movement (Awam) senior programme officer Abigail De Vries said the women's groups have always been against these kinds of amendments to existing Acts because it would not cover sexual harassment issue comprehensively.

This is also the reason why we have been pushing for the enactment of a Sexual Harassment Act, she added.

The proposed amendment also states that an employer can refuse to inquire into a sexual harassment complaint if the complaint had been looked into and no case had been proven, or the employer is of the view that the complaint is not made in good faith.

If proven, disciplinary action can be taken against the guilty employee, including dismissal without notice or downgrading.

The amendment also states that a maximum two-week suspension without pay can be imposed.

The employer must submit a report of the inquiry to the manpower director-general within 30 days after the findings of the inquiry.