

BY TERENCE QUEK

DON'T STAND FOR IT

Under the Protection from Harassment Act 2014, employees will be statutorily protected from harassment in the workplace and are empowered to take legal measures against the perpetrators

HARASSMENT has become an increasingly prevalent issue in the workplace, particularly in the virtual realm of cyberspace, where the added dimension of anonymity makes harassment easier, permanent and more far reaching than ever before. In response to this issue, the Protection from Harassment Act 2014 (the Act) was passed to provide better protection for employees by clearly stating that workplace harassment is unlawful.

The Singapore Parliament passed the Protection from Harassment Act 2014 on March 13, which criminalises harassment, cyber bullying and unlawful stalking. Prior to the Act, there was no Singapore legislation pertaining to harassment and there existed only piecemeal legislation with ad hoc provisions providing some degree of protection.

The Act abolishes the common law tort of harassment and introduces a single Act regime that further extends the scope of offences relating to harassment and anti-social behaviour such as causing harassment, alarm or distress by using threatening, abusive or insulting words, behaviour or communication. The existing protection for public servants will also be extended to public service workers under the new Act.

THE ORIGIN OF THE NEW ACT

The Act is largely based on the United Kingdom's Protection from Harassment Act 1997 (PHA). Like the UK's PHA, there is no definition of harassment but it also includes causing alarm or distress. While the statute does not contain a formal definition, the Minister of Law clarified that "harass, alarm or distress" will be given the same interpretation. It is unclear how this will apply in practice but it may give courts some discretion in view of the inventive but mischievous forms that harassment may take.

A notable distinction between the UK's PHA from the Singapore Act pertains to the "course of conduct" requirement. "Course of conduct" under the UK's PHA involves conduct on two or more occasions in order to make out a claim. Singapore legislation only makes use of the condition under the offence of unlawful stalking, defined as either one "protracted" occasion or more than two occasions in any other case. As it stands, it is unclear what would constitute one "protracted" occasion. The less stringent application of the Singapore Act's "course of conduct" requirement could lead to an increase in claims if the threshold for what constitutes harassment is set too low.

THE EFFECT ON THE WORKPLACE

Under the Act, employees will be statutorily protected from harassment in the workplace and are empowered to take legal measures against the perpetrators. It will serve as a useful tool to employers, and it is recommended that employers should consider the impact of the Act on their existing employment policies, code of conduct and anti-harassment policy statements to ensure that they are in compliance with the new Act.

Failure to do so may open up employers to allegations of aiding such perpetrators. To increase awareness of the new legislation in the workplace, employers should conduct information sessions and provide accurate guidelines to employees so that they are aware of what constitutes tolerable behaviour.

Given the cultural diversity of today's workforce, it is essential that both employers and employees are aware of customs and cultural norms when amending an organisation's code of conduct given the more stringent requirements in the new Act. What may normally be considered to be a kind gesture could be undesirable and offensive to another individual from a different background, resulting in a preventable incident of harassment.



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NOTABLE CHANGES

One of the newly introduced offences under the Act is unlawful stalking. This refers to any form of persistent communication that is unwanted, such as an accused's course of conduct which he knows would cause harassment, alarm or distress to the victim. The course of conduct can be one protracted occasion or two or more occasions, thereby preventing less serious one-off incidents from being legally actionable. An example cited by the Act would be Y repeatedly sending e-mails to Y's subordinate (X) with suggestive comments about X's body.

Intentionally causing harassment and related anti-social behaviour are offences regardless of whether they are committed in physical surroundings or online. The forms of communication under the Act include any words, image, message, expression, symbol or other representation that can be heard, seen or otherwise perceived by any person. This broad definition encompasses the use of social media and other online communication methods commonly used today. To clarify, the Act does not create any specific workplace harassment offence but the offences apply to workplace scenarios.

REMEDIES

The Act provides new remedies in various forms of statutory recourse. This will provide greater protection to victims of harassment with self-help measures, civil remedies and criminal sanctions in addition to tougher sentences for repeat offenders. One form of remedy under the Act are protection orders or expedited protection

orders that require the harasser or a third party to desist from doing anything as specified in the order. The Court has discretion to give any direction necessary for and incidental to carrying out the protection order. Compared with the former requirements for obtaining a protection order, the new Act is less stringent and makes applications easier.

Another remedy allows victims who have false statements of fact alleged against them to apply to the Court to obtain a notification to be published which informs readers that the facts are false. In addition, the Act will apply to persons outside Singapore if the necessary conditions are met. For example, acts perpetrated overseas that target a victim in Singapore will be criminalised. There is a wide range of sentencing options available such as fines, imprisonment and community orders.

Any person who contravenes the Act is entitled to defend himself by proving that his conduct was reasonable or that the perpetrator had no reason to believe that the victim would perceive the communication.

The Act has been passed but it does not formally become law until it comes into operation by notification in the Gazette, which is likely to take place before the end of this year. Employers are advised to revisit their existing company policies and make appropriate updates, while ensuring that employees are well informed so that they do not contravene the Act. ■

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