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Workplace Wellness in Singapore

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LEGAL UPDATE

The concept of "employee wellness" is an emerging trend whereby organizations look beyond the physical environment at the workplace to also make it safe against all forms of emotional stress, including those caused by harassment, bullying, discrimination and abuse.

Specialists in the area of "wellness" conduct audits of the work environment and report weaknesses that often lead to the development of new procedures for detecting and reporting areas of concern and training of supervisory staff. The existing and evolving employment law regime and practice is both a catalyst in and a reaction to this new trend.

Legislation in Singapore has traditionally focused on safeguarding the physical environment only. For example, the Workplace Safety and Health Act Cap. 354A ("WSHA") was enacted in 2006 to cover the safety, health and welfare of employees at the workplace and it only focuses on ensuring a safe physical environment for employees. Employees who encountered emotional abuses at the workplace often had to rely on their company grievance policy or internal procedures in order to seek redress and relief.

The common law position in Singapore has also traditionally been that an employer is vicariously liable for a tort (unauthorized course of conduct) committed by its employee in the course of employment provided that, *inter alia*, it is "fair and just" to do so and the employer could have contemplated the unauthorized course of conduct or that it was within the scope of the employee's work duties. This set of criteria, in the past, limited the circumstances under which an employer could be held vicariously responsible for a wrongful act of an employee which affected the wellness of another employee. This is now being reviewed and re-tested by the courts, given the new realities.

If we argue that an employer has a duty of care to provide an "emotionally" safe workplace, then the common law tort of negligence could be invoked to protect an employee. However, the elements required could be difficult to prove. In the Singapore case of *Ngiam Kong Seng & Anor v Lim Chiew Hock* [2008] 3 SLR(R) 674, the Plaintiff sought damages for psychiatric harm due to the negligence of the Defendant. The Court affirmed that the type of injury must be a recognizable psychiatric illness established by doctors and secondly, it must have been foreseeable that the psychiatric harm would be sustained as a result of the negligence in question ("causation").

If these elements existed, then the Court would go on to apply a two-pronged test as follows: firstly, it would determine whether there was a relationship between the parties ("legal proximity") so as to result in the existence of a duty of care. Secondly, it would take into account public policy considerations that militated against imposing the duty of care on the defendant. Only if these criteria were all met, would it rule that tortious negligence had occurred.

There are additional factual challenges-new technology in the form of Whatsapp, office messaging services and social media that have further facilitated the instances of problematic behaviors as employees take to social media platforms in their interactions with colleagues. The result is that in Singapore, we are witnessing more and more cases of sexual discrimination, abusive behaviour (physical and mental), discrimination (concerning race, gender, sexual and transgender orientation), cyber bullying and physical stalking (in and outside the workplace). In view of this, employers in Singapore have been encouraged to develop an internal framework within organizations to manage these issues, including adopting a zero tolerance approach, devising an effective harassment prevention policy (to be incorporated, for example, into a company's employee handbook), training on workplace harassment and abuse and proper reporting procedures (for harassment reporting) and whistleblowing policies.

In addition, the Protection from Harassment Act Cap.256A ("POHA") was passed in Parliament in March 2014 to provide civil and criminal remedies in order to safeguard individuals against harassment and related anti-social behaviour. Aggrieved employees may lodge a police report if they believe an offence under the POHA has been committed. Civil remedies available to the aggrieved employee include obtaining a Protection Order (PO) and Expedited Protection Order (EPO) in a situation where harassment or abuse is likely to persist.

However, the recourses to a PO and EPO are towards the employees committing the offences and not the employer. The POHA also applies to protect persons against harassment from another person and may not extend to a person taking an action against his/her employer. Singapore courts will likely look to other common law jurisdictions for guidance. One such case could be the UK case of *Majrowski -v- Guy's and St Thomas' NHS Trust*; HL 12 Jul 2006, where a claimant employee sought damages on the grounds that he had been bullied by his manager and that bullying amounted to harassment under the UK Protection from Harassment Act 1997. The manager's employer appealed a finding by the court that it was responsible for the manager's actions. The Court held that the employer was liable for the manager's actions and that the claimant had a right to damages. The decision gave employees who were bullied or harassed at work a further basis to claim compensation from their employer.

In Canada, a lawsuit was recently filed with the Ontario Supreme Court by a former employee of a Canadian bank, CIBC. She claimed that a former executive director of the bank sexually assaulted her at a company party in 2007 and that the bank failed to protect her from future instances of sexual harassment and instead, allowed a "sexually poisoned and toxic work environment" to fester. The Plaintiff is seeking more than $1million Canadian dollars in damages from the CIBC and the former executive director. CIBC denies the allegations. This case is still pending, and may very well be settled out of court, like many of such cases, and thereby deprive the development of further precedent in this new area of law. However, in the meantime, and as the law evolves, employers should exercise vigilance in ensuring that workplace environments are both physically and emotionally "safe places".

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