



# How well do your anti-harassment tools work overseas?

By **Donald C. Dowling, Jr.** - 21 December 2017

The 2017 tsunami of high-profile sex harassment allegations against politicians, entertainers and news reporters has employers rethinking their approach to eradicating workplace harassment. And this issue is global—the news stories splash across media outlets worldwide and the conversation is everywhere.

Overseas, eradicating workplace sex harassment is just as urgent as it is stateside. Anti-harassment laws abroad can be strict. Costa Rica, India, Korea and other countries impose specific rules for sex harassment policies and training. France, Egypt, India and other countries criminalize sex harassment—harassers can actually go to jail and can implicate their employers.

Multinational employers stand exposed to harassment claims outside the United States unless they have implemented tough and effective measures to protect against workplace harassment globally. Fortunately, U.S. employers have spent decades refining sophisticated tools for fighting workplace harassment—anti-harassment policies, reporting requirements for co-worker dating, internal complaint systems, “love contracts,” and workplace training.

But U.S. employers engineered these tools for the highly-evolved U.S. legal environment, accounting for rarified concepts such as the “tangible employment action” requirement for imposing vicarious liability, the “unreasonable failure to take advantage of preventive or corrective opportunities” affirmative defense to harassment claims, a “severe and pervasive requirement” for hostile environment harassment, and claims of “implicit quid pro quo third-party harassment.”

Before the current flood of sex harassment allegations, U.S.-headquartered multinationals may have assumed their U.S. anti-harassment toolkit was state-of-the-art. They may have exported the U.S. approach to combatting workplace harassment, assuming it a sensible practice worldwide. But because U.S. anti-harassment tools were engineered for the well-evolved, highly-refined—but purely domestic-U.S.—environment, simply exporting these tools does not always work. Law and culture overseas may differ substantially, which often compels a different compliance approach.

For that matter, all the high-profile sex harassment accusations against U.S. politicians, entertainers and reporters leave many wondering how effective U.S. approaches to eradicating workplace harassment have been, all along. Overseas, news reports portray sex harassment as an *American* compliance challenge. For example, one Chinese newspaper suggested that the type of sexual harassment widely reported in recent months could never happen in China because of its cultural traditions.<sup>1</sup>

In this environment, multinationals should revisit, and sharpen, their tools for fighting workplace harassment outside the United States—their anti-harassment policies, reporting procedures, internal complaint systems, “love contracts” and training. An approach honed in the U.S. makes a great starting point, but it may need to be refined and adapted for the very different environment overseas. Consider:

- *Vehicle*: What is the best vehicle for imposing an anti-harassment rule across worldwide operations—a single company-wide global anti-harassment policy, a harassment provision in the global code of conduct, aligned local-country anti-harassment policies, or some combination?
- *Protected group harassment*: Does the company’s global approach to fighting harassment export the default U.S. model based on gender and protected-group status? If so, does it comply in countries that prohibit *non-status-linked* workplace bullying, “mobbing,” psycho-social harassment and “moral harassment”? For that matter, does the listing of protected groups in the anti-harassment policy and training align with legally-protected categories overseas?
- *Local compliance*: Does the company’s global approach account for local mandates and nuances abroad? For example, countries from Costa Rica to India to Korea impose specific requirements for sex harassment policies and training. Do the global anti-harassment materials comply? Do they account for laws in France, Egypt, India and elsewhere that criminalize harassment?
- *Cultural appropriateness*: Is the company’s global approach to disclosing co-worker dating and “love contracts” too rooted in U.S. cultural norms? Does it work in environments hostile to these concepts, like Continental Europe and Latin America?
- *Reporting system*: Does the company’s reporting and grievance system comply abroad, consistent with Europe’s data protection regulation of whistleblower hotlines and overseas employment doctrines that can invalidate mandatory reporting rules?

A U.S.-based company’s tools for fighting workplace harassment might need sharpening even domestically, after all the recent attention. Internationally the issue is yet more complex, because U.S. approaches to eradicating workplace harassment need reengineering for the overseas environment.