

Sexual Harassment in the Workplace: The Globally Addressed but Unresolved Issue

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Introduction

The alarm is blaring as you scramble to silence it knowing that hitting the snooze button is not an option today. The nerves start to settle in as you get ready for your first day of work at your new job. At long last, you have been successful in securing a job within your field that offers a well-paying salary. It took more than six months of holding endless job interviews that always seemed to result in them saying "thank you for your interest in our company but we have decided to go with another candidate" over and over again. Once some time has passed and you are finally comfortable in your new position, the job of your dreams soon turns into a living nightmare. A colleague makes inappropriate and sexual remarks to you that ultimately left you uncomfortable and unsettled. You choose to disregard it because it is nothing more than words, and you do not want to jeopardize your dream job. As time goes on, the unwanted sexual advancements turn into unwanted physical touching and gestures. There is an option to report the conduct to human resources but who would believe that your supervisor is sexually harassing you? You haven't even been in your position for a year, and it is your word against theirs. The reality of the claim being disregarded, dismissed, or ultimately swept under the table by the company is the only outcome that can come to mind aside from potentially losing your job or being ostracized by your coworkers. Many men and women who are employed around the world are confronted with this reality. Not only do they have to put up with the harassment, but the laws that have been enacted do not adequately protect the trust and safety of both men and women.

The United States of America, Germany, and Japan are nations with some of the highest Gross Domestic Product (GDP) per capita within the world. The way these major countries have dealt with the issue of sexual harassment in the workplace is only imaginable given that they are some of the most powerful working nations in the world. The purpose of this paper is to discuss the history and adoption of sexual harassment policies in these major countries, as well as how these policies have failed to protect the workers that they are intended to protect. Additionally, this paper will provide a comparative analysis of the policies of these three nations in comparison to one another, as well as how the International Labor Organization (ILO) and these nations can improve the policies that they currently carry out by issuing stricter

laws that are truly enforced, creating better safeguards for employees who do file a complaint and ensuring that victims have a checks and balancing system that incorporates anonymity for the victim when filing claims against their aggressors.

History

The United States of America

The Early Years

America's evolution and history of employment equality started off shakily due to the unjust segregation of African Americans and the inequality of women within America prior to the Civil Rights Act of 1964. The first ever movement within the equality sphere was during World War II. In 1941, President Franklin D. Roosevelt signed Executive Order 8802, which prohibited governmental contractors from discriminating on the basis of race, color, or national origin. The purpose behind this order was to ensure that any and all persons were available for helping with the efforts towards the oncoming war. Another notable equality milestone met prior to the Civil Rights Act of 1964 was in 1963 with the Equal Pay Act of 1963 which prevented sex-based wage discrimination (although arguably still an issue to this day in not only America but other countries as well). The Executive Order was the first steppingstone into the evolution of workplace equality and was the first of few executive orders that would ultimately lead to the Civil Rights Act of 1964 which prohibits discrimination in a broad array of private conduct including public accommodations, governmental services, and education. Title VII of the act specifically prohibits employment discrimination based on race, sex, color, religion, and national origin. Along with the creation of the Civil Rights Act of 1964 was the Equal Employment Opportunity Commission, which enforces the standards and requirements set forth in the Civil Rights Act of 1964, specifically enforcing the regulations of Title VII. Following the Civil Rights Act of 1964 was the Equal Employment Opportunity Act of 1972, which can be seen as an act that is to be used in tandem with the Civil Rights Act of 1964, as the act makes amendments/additions to the Civils Rights Act throughout. For purposes of this paper, we will only address sections 701-705 of Title VII of the Civil Rights Act of 1964.

Title VII of the Civil Rights Act of 1964

As previously mentioned above, the Civil Rights Act of 1964 was the first federal act that made it illegal to discriminate based on race, color, religion, sex, or national origin. The act addresses discrimination in education, public places (such as public

accommodations, including voting, schools, and federally assisted programs), as well as housing. Title VII of this act specifically address' discrimination in the workplace in the terms of hiring, firing, and promoting based on race, color, religion, sex, or national origin.

Title VII of the Civil Rights Act of 1964-Synopsis

Definitions – Sec. 701

This provision helps to outline and define quintessential key terms such as “person”, “employer”, and “employment agency”, as well as what bodies/persons are to be excluded from this framework¹.

Exemption – Sec. 702

Exemptions from this act include any employment of aliens outside the U.S and for religious entities hiring on the basis of their faith for their operations or for educational institutions hiring individuals based on their affiliation. *Id.*

Discrimination because of race, color, religion, sex, or national origin – Sec. 703

This portion of the act specifically addresses the prohibition of employers to discriminate against persons based on race, color, religion, sex, or national origin regarding employment, termination, and remuneration. Employment agencies are prohibited from making discriminatory referrals or classifications and labor organizations must not discriminate in membership, referrals, or classifications, nor should they encourage employers in partaking in discriminatory acts. It is, furthermore, unlawful for any employer to discriminate on the aforementioned basis above in regard to the admission to apprenticeship or any other training programs. Exceptions to this act are for legitimate occupational requirements that are based on religion, sex, or national origin. Other exceptions include merit-based systems, seniority systems, and systems which measures earnings by quantity or quality of production so long as they do not enforce these differential pay basis on the grounds of discrimination. *Id.*

Other Unlawful Employment Practices – Sec. 704

The statute explicitly prohibits retaliation against individuals who challenge unlawful actions or participate in investigations or proceedings. Job advertisements should refrain from indicating preferences or exclusions concerning protected

¹ Civil Rights Act of 1964, US EEOC, <https://www.eeoc.gov/history/civil-rights-act-1964> (last visited Jan 20, 2025).

categories unless justified by valid vocational qualifications. The law does not mandate preferential treatment to address demographic disparities unless explicitly specified, and publicly announced activities that benefit Native Americans near reservations are permitted. *Id.*

This framework seeks to eliminate workplace bias while addressing practical, religious, and security considerations. However, sexual harassment is not specifically addressed within the Civil Rights Act of 1964. It has been established that sexual harassment falls under *Title VII of the Civil Rights Act of 1964* as it is considered a form of discrimination.

Title VII of the Civil Rights Act of 1964 – (amendments include provisions from the Civil Rights Act of 1991(CRA) and the Lilly Ledbetter Fair pay Act of 2009) Synopsis

Definitions – Sec. 701

This section, like the original one, defines terms essential to the workforce/place. The most notable addition to the definition section is defining the term “sex” The definition of "sex" includes pregnancy, childbirth, and related medical conditions, ensuring equal treatment in benefits, although employers are not required to provide health insurance for abortions unless the procedure is necessary to save the mother's life or address complications. ²

Applicability to foreign and religions employment – Sec. 702

The provisions of this subchapter do not apply to employers hiring aliens outside the United States or to religious entities employing individuals of a specific religion to perform work related to their activities. Additionally, foreign operations of corporations controlled by American employers are required to comply unless doing so violates the laws of the foreign country in which they operate. For foreign entities not controlled by U.S. employers, this subchapter does not apply. *Id.*

Unlawful Employment Practices – Sec. 703

Unlawful employment practices are outlined as any actions by employers, employment agencies, or labor organizations that discriminate based on race, color, religion, sex, or national origin. Employers are prohibited from discriminating in hiring, firing, compensation, or terms and conditions of employment. Employment agencies cannot discriminate in referrals or classifications. Labor

² Title VII of the Civil Rights Act of 1964, US EEOC, <https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964> (last visited Jan 20, 2025).

organizations are similarly barred from discriminatory practices in membership, referrals, or classifications that limit employment opportunities. Furthermore, it is unlawful to discriminate in admissions to apprenticeship or training programs. *Id.*

Exceptions are provided for bona fide occupational qualifications, where certain characteristics like religion or sex are necessary for the operation of a business. Seniority systems, merit-based systems, and productivity measures are permitted if they are not intended to discriminate. Specific exemptions apply to religious organizations and educational institutions with religious affiliations. Practices that disproportionately impact a protected group are prohibited unless they can be justified as job-related and necessary for the business. *Id.*

Other Unlawful Employment Practices – Sec. 704

Retaliation is prohibited under this section, making it unlawful for employers, labor organizations, or others to discriminate against individuals who oppose unlawful practices or participate in investigations or proceedings. Additionally, it is unlawful to publish or display discriminatory notices or advertisements, except when a bona fide occupational qualification justifies the requirement. *Id.*

The Equal Employment Opportunity Commission (EEOC) – Sec 705

The EEOC was established to enforce these laws. It consists of five members appointed by the President, ensuring political balance, and is empowered to investigate complaints, provide technical assistance, and intervene in lawsuits. The EEOC also conducts educational outreach and submits annual reports to Congress and the President. It may also establish regional offices as necessary to fulfill its duties. The Commission oversees a revolving fund to support technical assistance and training programs, financed through fees for services. These programs aim to help employers, employees, and the public understand and comply with the laws. This ensures that the Commission remains an active and accessible resource for addressing and preventing workplace discrimination. *Id.*

A Comparison and Contrast of the Civil Rights Act of 1964 and the amended version

Title VII of the Civil Rights Act of 1964 and its amended version aim to ban workplace discrimination, with the revised version providing substantial improvements and clarifications. The revised version introduces pregnancy, childbirth, and other medical

issues within the scope of sex discrimination. Both versions grant exemptions for religious organizations and the employment of foreign nationals outside the U.S.; but the revised version broadens compliance obligations to U.S.-controlled corporations operating internationally, unless contradicted by foreign legislation. The original version forbids discrimination in hiring, termination, compensation, and work conditions, while allowing bona fide occupational qualifications (BFOQs) and merit or seniority systems. Both versions ban retaliation against individuals contesting discriminatory practices; but the amended version enhances these rights and underscores exclusions for affirmative action and Native American employment in proximity to reservations. The Equal Employment Opportunity Commission (EEOC), created in the original legislation, is augmented in the amended version with expanded enforcement authority including the oversight of compliance regarding pregnancy and religious accommodations, as well as the administration of technical assistance and training programs financed through a revolving fund. The revised version enhances the original Act by integrating expanded rights, tackling contemporary workplace issues, and bolstering enforcement measures.

Although the United States was ahead of the other countries mentioned with establishing and prohibiting discrimination on the basis of color, race, gender, or national origin, the creation of said act did not help to prevent sexual harassment in the workplace. It was further proved that the court originally did not apply Title VII to sexual harassment as shown in *Barnes v. Train*. In 1974, Barnes, a female, federal brought suit against her employer for sexual discrimination due to her employer removing her from her position and terminating her prior position after Barnes refused to have sexual relations with her supervisor. The court held that sexual harassment did not fall under the category of sex discrimination, because when applying the term sex, the court understood the term to mean discrimination due to being a man or woman.³ However, two years later, the case of *Williams v. Saxbe* became the first prima facie case of sexual harassment and discrimination in the United States. Williams, similarly to Barnes, was a federal worker and was discharged from her position after refusing the sexual advances of her supervisor. The court held that sexual harassment does fall under the category of sex under the Civil Rights Act of 1964, and judgment was found in favor for Williams.⁴ The EEOC classifies sexual harassment as violation of *Title VII* pertaining to the category of “sex”. It is unlawful to harass a person because of that person’s sex and harassment is considered a blanket term where

³ *Barnes v. Train*, No. 1828-73., 1974 U.S. Dist. LEXIS 7212 (Aug. 9, 1974)

⁴ *Williams v. Saxbe*, 413 F. Supp. 654 (1976)

sexual harassment falls under.⁵ Unsolicited sexual advances, demands for sexual favors, and other verbal or physical actions of a sexual nature amount to sexual harassment when such conduct explicitly or implicitly impacts an individual's employment, unreasonably disrupts work performance, or fosters an intimidating, hostile, or offensive workplace environment.⁶ Between 2014-2021, the EEOC received 54,429 charges alleging sexual harassment.⁷ Despite the large quantity of complaints filed, the EEOC recognizes that still a majority of persons do not report their incidents. *Id.*

Germany

Germany is a major player within the world, despite ranking so high in the business sphere of the world, Germany has only recently put an act into place addressing employer equality based on gender, race, color, or national origin. Germany was the last among the other countries in this article to pass such an act as the act did not come into fruition until 2006.

General Equal Treatment Act (AGG)

The General Equal Treatment Act, also known as "Allgemeines Gleichbehandlungsgesetz" (AGG) has been in effect since August 2006. This act was created by applying four anti-discrimination directives created by the European Union (EU). As outlined in the "*Guide to the Equal Treatment Act*"⁸, The four directives that helped

Council Directive 2000/43/EC of 29 June 2000 implemented the principle of equal treatment irrespective of race or ethnic origin (Racial Equality Directive). This directive is aimed to combat discrimination regarding race or ethnicity. It is based on the principle of equal treatment between persons and forbids both direct

⁵ Sexual harassment, US EEOC, <https://www.eeoc.gov/sexual-harassment> (last visited Jan 20, 2025).

⁶ FACT SHEET: SEXUAL HARASSMENT DISCRIMINATION US EEOC, <https://www.eeoc.gov/laws/guidance/fact-sheet-sexual-harassment-discrimination> (last visited Jan 20, 2025).

⁷ Sexual Harassment in Our Nation's Workplaces. Office of Enterprise Data and Analytics (OEDA) Data Highlight No. 2. U.S. Equal Employment Opportunity Commission (EEOC), Washington, DC, April 2022.

⁸https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/EN/publikation/en/agg_wegweiser_engl_guide_to_the_general_equal_treatment_act.pdf?__blob=publicationFile#:~:text=The%20objective%20of%20the%20General,%2C%20age%2C%20or%20sexual%20orientation.&text=Employers%20have%20legally%20mandated%20organisational%20obligations.

and indirect discrimination, harassment, instruction to discriminate and victimization.⁹

Council Directive 2000/78/EC of 27 November 2000 established a general framework for equal treatment in employment and occupation. Through the Framework Directive on Employment, the EU pursues the objective of creating a general framework to combat discrimination on grounds of religion or belief, disability, age, or sexual orientation in employment and occupation. Formally known as the Employment Equality Directive, this legislation seeks to eradicate discrimination in employment and occupation, guaranteeing equal access to work and the opportunity to contribute to society, irrespective of religion, belief, age, disability, or sexual orientation. It forbids both direct and indirect discrimination and to further social and public interest.¹⁰

Council Directive 2004/113/EC of 13 December 2004 implemented the principle of equal treatment between men and women in the access to and supply of goods and services (Equal Treatment in Goods and Services Directive). The regulation underscores gender equality in the labor market, outlawing both direct and indirect discrimination, including addressing sexual harassment. It enhances existing legal frameworks, guaranteeing non-discriminatory treatment in sectors beyond employment, including insurance and pensions, while tackling sex-based actuarial practices. Exceptions are permitted for valid purposes such as privacy, single-sex services, or athletics. The regulation stipulates legal safeguards, burden-shifting in discrimination situations, and proactive engagement with stakeholders. Member States are required to establish enforcement agencies, implement effective punishments, and may adopt more stringent anti-discrimination measures.¹¹

⁹ Directive 2000/43 - implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin - main contents, DIRECTIVE 2000/43 - IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RACIAL OR ETHNIC ORIGIN - EU MONITOR, https://www.eumonitor.eu/9353000/1/j4nvk6yhcbpeywk_j9vvik7m1c3gyxp/vitgbg_i6x6z8 (last visited Jan 20, 2025).

¹⁰ Legislation - Employment Equality Directive (2000/78/EC), EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION, https://employment-social-affairs.ec.europa.eu/policies-and-activities/rights-work/tackling-discrimination-work/legislation-employment-equality-directive-200078ec_en#:~:text=With%20the%20Employment%20Equality%20Directive,age%2C%20disability%20and%20sexual%20orientation. (last visited Jan 20, 2025).

¹¹ Council directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, COUNCIL DIRECTIVE 2004/113/EC OF 13 DECEMBER 2004

Directive 2006/54/EC of 5 July 2006 of the European Parliament and Council (formerly Council Directive 2002/73/EC amending Council Directive 76/207/EEC) which implemented the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Equal Treatment Directive). The directive consolidates and revises EU regulations regarding gender equality in work and occupation. It forbids discrimination, encompassing direct, indirect, harassment, and sexual harassment, pertaining to access to employment, occupational training, working conditions, and remuneration. Special provisions are incorporated for maternity, parental leave, and occupational social security programs.

The directive mandates Member States to guarantee effective enforcement, encompassing judicial remedies, compensation, and a reallocation of the burden of proof in discrimination cases. Equality bodies are required to engage in communication with stakeholders to advance gender equality. Member States are required to implement the directive by 2008 and may take more advantageous measures. This single framework, effective in 2009, supersedes the repealed directives.¹²

It prohibits discrimination against sex, race, color, gender, and national origin. They are the only nation to outright address, define, and include sexual harassment within the original act. By clearly and concisely acknowledging and outlawing sexual harassment within the act ensures that there is no confusion or need for interpretation of the law. Within the General Equal Treatment Act, employers hold the responsibility of taking preventative measures to protect their employees from sexual harassment and are the ones in which employees can report their harassment to.¹³ Despite this holding true, only one in five employees know that employers are obliged to protect their staff

IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT BETWEEN MEN AND WOMEN IN THE ACCESS TO AND SUPPLY OF GOODS AND SERVICES, <https://www.legislation.gov.uk/eudr/2004/113/introduction> (last visited Jan 20, 2025).

¹² Directive 2006/54/EC of the European Parliament and of the council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), <https://www.legislation.gov.uk/eudr/2006/54>. (last visited Jan 20, 2025).

¹³ Sexual harassment in the workplace in Germany, CMS Expert Guides, <https://cms.law/en/int/expert-guides/cms-expert-guide-on-sexual-harassment-in-the-workplace/germany> (last visited Feb 21, 2025).

from sexual harassment.¹⁴ Furthermore, it was found in a study held of 1,002 participants, that 17 percent of female employees and 7 percent of male employees have already been sexually harassed at work.¹⁵ In an article written in 2019, it was shown that there was an increase in sexual harassment in the workplace when looking at the prior four years (2015-2019).¹⁶ In a study released that same year by the Federal Anti-Discrimination Agency, it was shown that 1 in 11 workers were the victim of sexual comments or advances, whereas in a similar study in 2015 it was 1 in 14 employees who experienced harassment. *Id.* In the same report, 53 percent, while 43 percent of victims were harassed by a work colleague and almost one in five perpetrators were superiors. *Id.* Although legislation requires employers to take preventative measures, it does not specify which measures to take.¹⁷ Section 12 (3) of the General Equal Protection Act states that the employers may choose which repercussion for the aggressor which includes: cautioning the perpetrator, moving/relocating them, or ultimately terminating¹⁸ Even though there are repercussions for those that harass workers, victims often attempted to resolve the issue, but were fearful for the repercussions of reporting harassment to their boss.¹⁹

Japan

The Equal Employment Opportunity Law (EEOL) is a crucial legal framework that significantly influences the landscape of women's workplace rights in Japan. The Equal Employment Opportunity Law (EEOL) was developed over time to combat discriminatory practices and promote gender equality in employment. This evolution has been driven by the complicated societal context, which is marked by conventional gender roles and structural barriers in the labor. The evolution of the EEOL helps to

¹⁴ Sexual harassment at work, Antidiskriminierungsstelle, https://www.antidiskriminierungsstelle.de/SharedDocs/forschungsprojekte/EN/UMFRAGE_sex_Belaestigung_am_ArbPlatz_en.html (last visited Jan 20, 2025).

¹⁵ *Id.*

¹⁶ Deutsche Welle, Sexual harassment affects 1 in 11 German workers – DW – 10/25/2019 dw.com (2019), <https://www.dw.com/en/sexual-harassment-on-the-rise-in-german-workplace-study/a-50979194> (last visited Feb 21, 2025).

¹⁷ Sexual harassment in the workplace in Germany, CMS Expert Guides, <https://cms.law/en/int/expert-guides/cms-expert-guide-on-sexual-harassment-in-the-workplace/germany> (last visited Feb 21, 2025).

¹⁸ General act on equal treatment (Allgemeines Gleichbehandlungsgesetz – agg), https://www.gesetze-im-internet.de/englisch_agg/englisch_agg.html (last visited Feb 21, 2025).

¹⁹ Deutsche Welle, Sexual harassment affects 1 in 11 German workers – DW – 10/25/2019 dw.com (2019), <https://www.dw.com/en/sexual-harassment-on-the-rise-in-german-workplace-study/a-50979194> (last visited Feb 21, 2025).

show the framework on how Japan as a society started to address the inequality of women in the workforce and the issue of sexual harassment in the workplace. As revisions began to incorporate and acknowledge the inconsistencies of equality by the 2006 EEOL, it was fully addressed that there is harassment in the workplace and an article was written to combat this.

1985 EEOL Synopsis

The 1985 Equal Job Opportunity Law (EEOL) of Japan was enacted with two primary aims: to guarantee equal job opportunities for women and to improve their welfare and social status, as specified in Article 1. It acknowledged the dual roles of women as laborers and caregivers, seeking to promote equilibrium between professional and familial responsibilities in accordance with Article 2. This Act established obligatory non-discrimination clauses with court enforcement, rendering non-compliant contracts void and permitting tort damages. Nonetheless, it also incorporated less enforceable "endeavor to provide" provisions in Articles 7 and 8, mandating companies to pursue equal chances in recruiting, employment, assignment, and promotion without imposing penalties for non-compliance. The Ministry of Labor developed guidelines pursuant to Article 12 for employers, advocating equitable treatment. The EEOL predominantly employed a voluntary dispute resolution process via mediation, as detailed in Articles 13 to 21, with the participation of the Women and Minors Office or the Equal Opportunity Mediation Commission as necessary.²⁰

1997 EEOL Synopsis

Article 1 of the 1997 revision of the Equal Employment Opportunity Law (EEOL) articulates its primary objective: to advance constitutional equality between men and women. Article 2 emphasizes the law's objective of achieving gender parity in workforce participation for women. Subsequent articles clarify the comprehensive workplace equality strategy of the law. Article 5 addresses recruitment and employment, Article 6 pertains to job assignments, professional advancement, and training, and Article 7 discusses employee perks. The required retirement age and termination conditions for female employees are addressed in Articles 8 and 9. Articles 11–14 of the EEOL delineate conflict resolution and mediation mechanisms, while Articles 14–16 establish entities to supervise these procedures. Article 21 addressed sexual harassment in the workplace for the first time by enacting a provision that employer's *consider* from the viewpoint of employment management that women workers do not suffer from

²⁰ Robbi Louise Miller, "The Quiet Revolution: Japanese Women Working Around the Law," 26 HARVARD WOMEN'S LAW JOURNAL 163–215 (2003).

sexual speech and behavior in the workplace, nor does their workplace suffer. *Id.* This legislative framework aims to include gender equality into Japanese employment standards to safeguard and enhance women's rights and welfare.

2006 EEOL Synopsis

Article 5 emphasizes meritocracy by requiring gender-neutral hiring and recruitment. Article 6 forbids sex discrimination in assignment, promotion, training, fringe benefits, and contractual arrangements. Article 7 extends this restriction to recruitment and hiring, with the Ministry defining discriminatory actions. Article 9 also protects women workers against marriage, pregnancy, and delivery discrimination. Article 11 requires employers to address and reduce the negative consequences of sexual speech and behavior in the workplace to promote safety and equality. Article 14 also requires the state to help employers implement equal opportunity and treatment procedures. Finally, Article 62-2 restricts some tasks for pregnant and new mothers to protect their health. *Id.* These laws show Japan's dedication to a gender- and bias-free workplace.

A Comparison and contrast of the EEOL

The 1986, 1997, and 2006 Japanese Equal Employment Opportunity Laws encourage gender equality and prohibit workplace discrimination. All three iterations aim to promote workplace parity, but their techniques and provisions differ. Women's professional possibilities, reemployment after marriage and delivery, and work-family balance are the main goals of the 1986 law. In contrast, the 1997 law emphasizes female workers' economic and social contributions while protecting their welfare and parenting. Both statutes prohibit gender-based discrimination in hiring, promotion, education, training, and benefits. They protect maternity leave and prohibit discrimination in retirement, dismissal, and retirement regulations related to marriage, pregnancy, or childbirth. The 1986 statute encourages voluntary Complaint Settlement Board resolution, but the 1997 law requires Equal Opportunity Mediation Commission mediation. Both statutes also promote government and employer programs to help women return to work after childbirth or childcare, including reemployment measures and childcare leave. The 2006 modifications strengthened gender equality measures in Articles 5, 6, 7, 9, 11.

These changes promoted equal opportunity in recruiting, employment, job assignment, promotion, and training and addressed marital, pregnancy, and childbirth discrimination. The 2006 modifications provide the most concise and thorough additions and stronger requirements regarding sexual harassment and/or discrimination and to ultimately create a fair and inclusive workplace for all.

Harassment is prevalent in Japanese workplaces, with approximately one-third of employees having encountered some type of harassment.²¹ In a study of 300 participants, 21 percent encountered. Out of the 300 participants, 64 percent chose not to report the harassment they experienced. Furthermore, 59.4 percent stated that they believed it would have no impact.²² Although the 1986 Equal Employment Opportunity Law (EEOL), which was later revised in 1997 to include sexual harassment in the workplace, has been enacted, women continue to face harassment and lack a sense of security, despite the existence of legislation intended to protect them.

In 1986 Japanese legislature formed what would be the foundation to protections and rights for women in the workforce. Through this first passing of the 1986 EEOL women were able to have some commonality with their male coworkers as far as their opportunities in the workplace. There was also a strong emphasis in the 1986 EEOL that focused on creating provisions that assisted women in balancing home life as a wife or caretaker while also being an employee. It wasn't until a decade later that Japanese legislators decided that a revision was necessary for the EEOL. The 1997 revised EEOL was the first provision to mention sexual harassment at all within the workplace. Sexual harassment was deemed such a foreign and taboo thing within Japanese culture that the name itself was adopted from American pronunciation. As stated by Yuki W. P. Huen, "In fact, sexual harassment in the workplace is not a modern development. Although the term *sekuhara* was new, what it describes was not unfamiliar to many Japanese women."²³ Although the term was new, the act

Despite there being legislation to combat said harassment, it still falls short. Although the 1997 revision of the EEOL was put into effect it can be said that it is merely to placate Japanese women of their concerns but will not truly benefit them. In 1997 a Study Group on sexual harassment in the workplace conducted a large-scale survey, sending questionnaires to 2,254 companies and 6,762 employees of those companies. The results yielded that sexual harassment. Among the female respondents, 59.7 percent reported

²¹ Statistics are from a survey performed by consulting firm Shikigaku in 2022 with a pool of 2,204 participants.

²² Statistic are from a survey performed by consulting firm Shikigaku in 2022 with a pool of 2,204 participants that was shrunk into a smaller pool of 300 participants who would categorize their complaints. <https://www.nippon.com/en/japan-data/h01513/>

²³ Huen, Yuki W. P. "Workplace Sexual Harassment in Japan: A Review of Combating Measures Taken." *Asian Survey*, vol. 47, no. 5, 2007, pp. 811–27. JSTOR, <https://doi.org/10.1525/as.2007.47.5.811>. Accessed 26 Apr. 2024.

incidents of sexual harassment in the workplace.²⁴ Although these statistics are outdated, they are compelling because they were taken within the same year the revision for sexual harassment was passed. This shows a common knowledge and understanding amongst employers and employees that there is a sexual harassment problem even before it was directly addressed. A 2015 survey by the Japan Institute for Labor Policy and Training found that nearly 30 percent of the 9,654 women between the ages of 25 and 44 who responded reported being sexually harassed at work.²⁵ Even though there is a provision in place, even the modern-day Japanese work woman deals with sexual harassment. Many times, these incidents go unreported due to the fear of repercussions within the workplace, or how to try to act as if it didn't happen. The only way that the sexual harassment provision in the EEOL can help women is if they report the incident but unfortunately, this provision fails to consider the psychological response women have to a traumatic event.

International Labor Organization (ILO)

The ILO was created to advance the notion that universal and enduring peace may be achieved by guaranteeing that the social fairness of labor laws is addressed and regulated. The International Labor Organization was initially established in 1919 as a part of the Treaty of Versailles. This was done to further the belief that an organization could be developed to help with the framework and enforce policies created to have a standard in the work field. Although the International Labor Organization (ILO) was established prior to the United Nations, it was not until 1946 that it was elevated to the status of a specialized agency under the United Nations. This occurred after the United Nations was established in 1945. Convention No.100, also known as the Equal Remuneration Convention, was ratified in 1951, and Convention No.111, also known as the Discrimination (Employment and Occupation) Convention, was approved in 1958. Both conventions demonstrate the International Labor Organization's (ILO) commitment to equality and its leadership in tackling the issue of discrimination based on gender. Even though the International Labor Organization (ILO) had already established these conventions, it would not be

²⁴ Ryuichi Yamakawa, *We've Only Just Begun: The Law of Sexual Harassment in Japan*, 22 *Hastings Int'l & Comp. L. Rev.* 523 (1999).

Available at:

https://repository.uclawsf.edu/hastings_international_comparative_law_review/vol22/iss3/2

²⁵ Japan: End workplace harassment, violence. Human Rights Watch. (2020, October 28). <https://www.hrw.org/news/2018/12/02/japan-end-workplace-harassment-violence>

until nearly sixty years later that sexual harassment in the workplace would be addressed and included in a convention.

C190 Violence and Harassment Convention (No. 190)

In June, every international convention acknowledged and addressed harassment and violence in the workplace. Convention 190 defines violence and harassment as "...a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment".²⁶ C190 goes on to define gender-based violence and harassment as "violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment." *Id.* The convention delineates the parameters defining one's presence in a workspace and mandates that members uphold the obligation to respect and advocate for the rights of all individuals at work, providing an environment devoid of harassment and violence. In conclusion, the convention addresses the recommendation that appropriate actions should be taken if there is a report of harassment or violence in the workplace, as well as the recommendation that training should be provided to recognize the significance of violence and harassment in the workplace.

R206 Violence and Harassment Recommendation (No.206)

Recommendation 206 is an extension of C190 and should be evaluated with the same stipulations described in C190. R206 takes a consistent approach to addressing workplace violence and harassment by highlighting the significance of providing protection against and preventing such misconduct among employees. In addition to highlighting the importance of establishing and implementing training and awareness programs concerning violence and harassment in the workplace, the recommendation includes a variety of solutions and support services for persons who are suffering harassment.²⁷

²⁶ C190 - violence and harassment convention, 2019 (no. 190), CONVENTION C190 - VIOLENCE AND HARASSMENT CONVENTION, 2019 (No. 190), https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB%3A12100%3A0%3A%3ANO%3A%3AP12100_ILO_CODE%3AC190 (last visited Dec 22, 2024).

²⁷ R206 - violence and harassment recommendation, 2019 (no. 206), RECOMMENDATION R206 - VIOLENCE AND HARASSMENT RECOMMENDATION, 2019 (No. 206), https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB%3A12100%3A0%3A%3ANO%3A%3AP12100_INSTRUMENT_ID%3A4000085 (last visited Feb 21, 2025).

Discussion

The IOL has opened the door to addressing violence and harassment in the workplace on a global level but fails to adequately hold its members accountable as there are no sanctions or repercussions when a member fails to adopt policies that the ILO creates. The ILO may not have powers of its members, but its conventions and recommendations are thorough and can be adopted/incorporated by these major countries to help address and adequately resolve the issue of sexual harassment in the workplace.

A Compare and Contrast of the Three Nations

The workplace equality legislations in the United States, Germany, and Japan aim to eradicate discrimination and foster an equal and safe work environment. Nevertheless, their strategies for tackling sexual harassment, a widespread workplace concern, exhibit notable disparities. Title VII of the Civil Rights Act (Amended), Germany's General Equal Treatment Act (AGG), and Japan's Equal Employment Opportunity Law (EEOE) each embody their distinct cultural, legal, and societal imperatives. Although these laws tackle diverse forms of discrimination, their emphasis, enforcement strategies, and efficacy in combating sexual harassment vary significantly.

Provisions for Sexual Harassment

Sexual harassment is a primary concern of workplace equality legislation, although its handling differs in breadth and precision across the three frameworks. Title VII of the Civil Rights Act characterizes sexual harassment as a type of sex discrimination, and forbids it in two principal forms: quid pro quo harassment and hostile work environment allegations. Quid pro quo harassment transpires when employment advantages are contingent upon sexual favors, whereas hostile work environment accusations pertain to widespread, undesired behavior that engenders threatening or offensive workplace conditions. Employers must implement preventive measures, address grievances, and may be held accountable for inaction.

The AGG in Germany specifically includes sexual harassment as a type of discrimination, offering concrete protections from the beginning. The AGG broadly defines sexual harassment as any verbal, non-verbal, or physical conduct of a sexual nature that infringes upon an individual's dignity or fosters a hostile work environment. Employers are obligated to avert harassment via policy, training, and workplace interventions. Victims can lodge

complaints and pursue remedies, with enforcement facilitated by equality institutions and judicial mechanisms.

Japan's EEOL incorporated sexual harassment prohibitions during its development, with notable amendments in the 1997 and 2006 versions. In 1997, legislation expressly acknowledged sexual harassment in the workplace, mandating businesses to avoid and handle unwanted sexual behavior. Article 11 of the 2006 revision underscored the obligation of employers to mitigate the effects of sexual discourse and conduct in the workplace. Nevertheless, the EEOL fails to enforce stringent sanctions on noncompliant businesses, and prevailing cultural norms frequently dissuade victims from reporting harassment, constraining the law's effective impact.

Influence of Cultural and Societal Factors on the Enforcement of Sexual Harassment

The cultural and societal background in each nation profoundly influences the implementation and efficacy of sexual harassment regulations. Title VII has significantly contributed to the awareness of sexual harassment in the United States, especially through prominent cases and the #MeToo movement. The Equal Employment Opportunity Commission (EEOC) is essential in implementing Title VII, examining complaints, settling conflicts, and litigating instances of systemic harassment. Notwithstanding this advancement, underreporting persists as a significant issue, as some victims harbor fears of revenge or possess insufficient faith in the legal system.

Germany's AGG offers explicit and extensive protections against sexual harassment, yet public knowledge of these rights is still inadequate. Research indicates that hardly one in five employees in Germany recognizes their employer's duty to avert sexual harassment.²⁸ Research has further shown that sexual harassment has been on the rise even after the AGG was adopted. Moreover, although victims may pursue remedies, societal stigmas associated with reporting harassment dissuade numerous persons from submitting complaints. This establishes a disparity between the law's purpose and its actual effect.

Japan's EEOL encounters heightened cultural and structural obstacles. Sexual harassment, despite being officially deemed illegal, continues to be a widespread problem in Japanese workplaces. Surveys indicate that a considerable percentage of employees, particularly women, encounter harassment; nonetheless, the majority opt not to report it. A survey revealed that 64% of victims

²⁸ Sexual harassment at work, Antidiskriminierungsstelle, https://www.antidiskriminierungsstelle.de/SharedDocs/forschungsprojekte/EN/UMFRAGE_sex_Belaestigung_am_ArbPlatz_en.html (last visited Jan 20, 2025).

refrained from reporting their harassment, with 59% perceiving that such actions would be futile. The notion of sexual harassment, termed “sekuhara,” was originally derived from English, indicating its comparatively recent acknowledgment in Japanese dialogue. Notwithstanding legislative progress, entrenched cultural norms about gender roles and workplace hierarchy impede the EEOL's efficacy in combating harassment.

Enforcement Mechanisms and Their Function in Addressing Harassment

Enforcement methods are crucial in combating sexual harassment. Title VII is endorsed by the EEOC, which offers comprehensive investigation and legal resources to address harassment. Victims may pursue compensation, while employers may incur punitive consequences for neglecting to prevent or handle harassment. This robust enforcement structure has facilitated fundamental transformations in company culture and policy.

The AGG in Germany encompasses enforcement mechanisms, with equality bodies responsible for ensuring compliance and victims granted access to court remedies. The absence of punitive damages and insufficient public awareness of rights diminish the law's efficacy in discouraging harassment. Employers are required to implement preventive measures; nonetheless, the responsibility frequently rests with victims to pursue enforcement.

Japan's EEOL prioritizes voluntary adherence and depends on companies to enforce harassment prevention strategies. The Ministry of Health, Labor, and Welfare offers guidelines; nonetheless, the absence of robust enforcement procedures or penalties diminishes the law's efficacy. The cultural aversion to reporting harassment, coupled with this issue, constrains the EEOL's capacity to effectuate significant change.

Comparative Efficacy

Of the three frameworks, Title VII provides the most extensive strategy for tackling sexual harassment. The comprehensive definitions, robust enforcement mechanisms, and established jurisprudence offer explicit instructions for employers and pathways for victim restitution. Germany's AGG integrates sexual harassment provisions within its anti-discrimination legislation; however, weak enforcement and cultural barriers limit its effectiveness.

Sexual harassment continues to be a prominent workplace concern in the United States, Germany, and Japan; yet the efficacy of regulatory frameworks in mitigating this issue differs considerably. Title VII offers comprehensive safeguards and

enforcement, establishing it as a global frontrunner in addressing harassment. Germany's AGG provides harassment protections within a broader anti-discrimination framework but requires stronger enforcement and awareness efforts. Japan's EEOL signifies advancement in acknowledging harassment; yet cultural and institutional obstacles persist in hindering its objectives. Ultimately, combating sexual harassment necessitates not only robust legislation but also societal and cultural transformations to empower victims and ensure accountability for abusers.

Improving Sexual Harassment Law in the United States, Germany, and Japan

Sexual harassment continues to be a pervasive problem in workplaces globally, compromising employees' dignity, safety, and equality. Despite the establishment of legislative frameworks to address sexual harassment in the United States, Germany, and Japan, deficiencies in these laws, their implementation, and prevailing cultural attitudes towards harassment persistently undermine their efficacy. By fortifying legal protections, augmenting enforcement mechanisms, and confronting societal hurdles, these nations may establish safer and more inclusive workplaces.

The United States

The United States has achieved considerable advancements in combating sexual harassment via Title VII of the Civil Rights Act of 1964 and its following revisions. The Equal Employment Opportunity Commission (EEOC) is pivotal in enforcing legislation, investigating grievances, and litigating systemic harassment cases. Nonetheless, significant deficiencies persist that obstruct the complete actualization of these safeguards.

A significant concern is underreporting. Numerous victims apprehend retribution or question the efficacy of the grievance procedure. To resolve this issue, the U.S. might enhance anti-retaliation safeguards and ensure increased confidentiality for complainants. Employers ought to establish anonymous reporting mechanisms overseen by external organizations to promote the reporting of harassment by employees without apprehension.

A further aspect requiring enhancement pertains to the law's scope. Currently, Title VII applies only to employers with 15 or more employees, excluding small businesses from its protections. Removing this criterion would broaden protections for millions of employees in small businesses. Furthermore, federal legislation does not require anti-harassment training for all workplaces. Mandating evidence-based training programs in all workplaces will enhance

awareness, mitigate harassment, and guarantee that employees and management are adequately informed of their rights and obligations.

Stronger penalties for employers who fail to address harassment, including higher financial sanctions and public accountability measures, could serve as more effective deterrents. By targeting these areas, the U.S. may enhance its already formidable foundation for preventing sexual harassment.

Germany

The General Equal Treatment Act (AGG) of Germany offers extensive safeguards against sexual harassment, clearly categorizing it as a breach of workplace equality. Nevertheless, inadequate public awareness and insufficient enforcement methods diminish the law's practical efficacy.

A primary concern is the insufficient awareness among employees. Studies show that only one in five German employees is aware of their employer's responsibility to prevent harassment under the AGG. Germany may implement statewide educational programs and mandate firms to furnish employees with transparent, accessible information regarding anti-harassment rules. These initiatives should underscore the entitlement to a secure and dignified work environment and motivate victims to report incidents.

Enforcement procedures require enhancement. The AGG permits victims to lodge complaints and pursue court remedies; however, the lack of punitive damages diminishes its deterrent efficacy. Introducing financial penalties for non-compliant companies and creating a national registry of violations could enhance accountability. Additionally, Germany ought to create autonomous reporting entities that offer victims legal and emotional assistance, alleviating the responsibility on persons to independently manage the complaint process.

Employers must adopt more aggressive measures to avert harassment. The AGG imposes employer accountability, although it fails to delineate explicit methods for its attainment. Mandating regular workplace climate evaluations, designating anti-harassment officers, and implementing compulsory training programs will foster safer conditions and diminish harassing occurrences.

Japan

The Equal Employment Opportunity Law (EEOL) in Japan has seen substantial evolution since its inception in 1986, with amendments in 1997 and 2006 focusing on sexual harassment and gender discrimination. Nonetheless, cultural norms and inadequate enforcement mechanisms persist in diminishing its efficacy.

Cultural perceptions of workplace hierarchy and conformity deter numerous victims from reporting harassment. Surveys show that 64% of victims choose not to report incidents, believing that doing so would lead to no meaningful action. To address this issue, Japan should attempt to initiate educational programs to alter social conceptions about harassment, underscoring that it is both unacceptable and criminal.

The EEOL also lacks robust enforcement tools. Employers are urged, though not mandated, to establish reporting systems, resulting in numerous workplaces lacking definitive protocols for addressing complaints. Japan ought to implement uniform reporting systems in all workplaces and establish external oversight entities to ensure employer compliance. Employers who inadequately address harassment should face enhanced penalties, including financial punishment and public accountability measures.

Another difficulty is Japan's dependence on voluntary adherence. The EEOL emphasizes employer accountability but lacks enforcement mechanisms to ensure compliance. Empowering the Ministry of Health, Labor, and Welfare to perform workplace audits and impose penalties for noncompliance will strengthen enforcement. Furthermore, establishing a centralized governmental entity to manage harassment reports and offer victim assistance will facilitate the process and motivate more persons to report incidents.

Ultimately, rectifying gender disparity in leadership is essential. Workplace power imbalances contribute to harassment. Increasing the number of women in leadership roles could help mitigate these risks. Japan ought to incentivize corporations to elevate women to top positions as a component of a comprehensive approach to address harassment and promote equality.

A United Front

Although each nation faces distinct issues, countries can implement common techniques to enhance their legal frameworks. Implementing bystander intervention training could enable staff to identify and confront harassment promptly. Implementing transparency measures, including the monitoring of harassment complaints and their resolutions, will enhance accountability. Moreover, promoting international cooperation with the ILO to exchange best practices among countries may enhance the development of creative strategies to address harassment more efficiently.

Conclusion

The fight against sexual harassment is challenging, but the potential benefits are substantial. Sexual harassment has long been

a widespread issue, predating legal prohibitions. Despite being illegal in these nations, many cases remain unreported or unresolved. These countries could improve their response to sexual harassment by incorporating best practices from other nations. The ILO's conventions and recommendations are more detailed and thorough than any of these countries and should be the framework these nations follow in evolving their laws regarding sexual harassment. It can also easily be said that with these countries being some of the top GDP nations of the world, more funding towards awareness and education on sexual harassment could be apportioned to this effort. Additionally, these nations should enhance protections for anonymous reporting and ensure real consequences for perpetrators. Although these nations have made substantial improvements in this department, there is always room for refining their laws to ensure that their citizens are safe from sexual harassment while working. While progress has been made, there is still more work to be done in all these nations.