

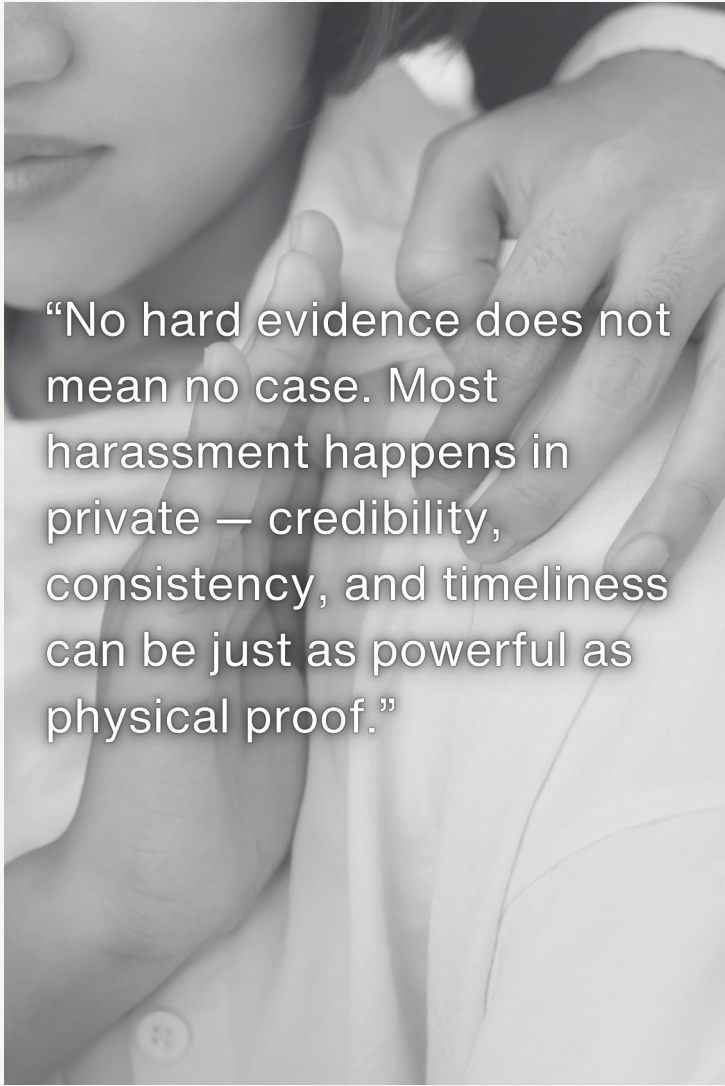
PERSPECTIVES

SEXUAL HARASSMENT COMPLAINTS WITHOUT HARD EVIDENCE: WHAT HR NEEDS TO KNOW

Investigating sexual harassment is never straightforward. It becomes even more challenging when there is no hard or conclusive evidence, for example, no CCTV footage, no eyewitnesses, or no physical proof.

The reality is that most harassment does not happen in front of cameras or other people. It usually takes place behind closed doors, in private. This makes it unrealistic to expect “perfect evidence” in every case.

But the absence of hard evidence does not mean the absence of a case. Malaysian law makes it clear that sexual harassment can still be established on the balance of probabilities, based on what is more likely to have happened. Unlike criminal proceedings, employment disputes do not require proof “beyond reasonable doubt.” Instead, HR must weigh credibility, consistency, and surrounding circumstances. Factors such as the timeliness of the complaint, corroboration from colleagues who noticed distress, consistency in the complainant’s account, and any patterns of behaviour by the alleged perpetrator all play a role in determining the outcome.



“No hard evidence does not mean no case. Most harassment happens in private — credibility, consistency, and timeliness can be just as powerful as physical proof.”



WHAT THE LAW SAYS

Sexual harassment is interpreted widely under several key legal provisions as below:

- **Employment Act 1955:** Defines sexual harassment as any unwanted conduct of a sexual nature, verbal, non-verbal, visual, gestural, or physical, that is offensive, humiliating, or threatening to well-being, in the course of employment.
- **Anti-Sexual Harassment Act 2022:** Broadens the scope further, removing the workplace limitation. It recognizes harassment in any form, whether inside or outside the workplace that can reasonably be seen as offensive or humiliating.
- **Code Of Practice On The Prevention And Eradication Of Sexual Harassment In The Workplace:** Introduces the idea that sexual harassment includes any unwanted conduct of a sexual nature that places a condition of a sexual nature on employment, or that humiliates, offends, or threatens a person's dignity, even if not directly linked to their employment.

Together, these provisions make it clear that sexual harassment is not limited to physical acts or obvious advances. Words, gestures, stares, messages, or even a workplace "joke" can all cross the line if they cause harm or humiliation.



In *Muhammad Fikri Firdaus Abdullah v MAS* [2014] 2 LNS 1426, a stewardess alleged sexual harassment by a Lead Steward. There was no CCTV and no direct witness, no 'hard proof.'

Still, the Court ruled in her favour because she:

- Reported the incident immediately to a colleague, who confirmed she was distressed.
- Lodged a police report soon after the flight.

The Court found her actions credible and consistent, enough to prove her claim on the balance of probabilities. This case illustrates that timely reporting and corroboration can be just as powerful as physical evidence.



HR'S ROLE IN CASES WITHOUT HARD EVIDENCE

Employers have a duty to investigate all complaints fairly, even when the evidence is limited. HR should:

- Acknowledge the Reality of Harassment – Understand that most incidents happen away from CCTV and public eyes. Lack of 'hard proof' should never be used as a reason to dismiss a complaint.
- Receive and Record – Document all details carefully and assure confidentiality.
- Investigate Promptly – Begin within a reasonable timeframe, interview both parties separately, and check for indirect evidence (e.g., behavioural changes, corroboration from colleagues, timing of reports).
- Apply the Right Standard – Use the balance of probabilities, not the higher criminal standard of proof.
- Select a Proper Panel – For domestic inquiries (DI), ensure panel members are trained, impartial, and understand how to apply the balance of probabilities. If no suitable internal members are available, consider outsourcing to neutral external parties with the necessary expertise.
- Take Action if Substantiated – Options include warnings, transfer, demotion, or termination.

LEGAL AND ORGANISATIONAL IMPLICATIONS



The consequences of sexual harassment extend far beyond internal disciplinary action. For perpetrators, liability may arise under both the:

- Anti-Sexual Harassment Act 2022 – The Tribunal has the power to order remedies such as a public or private apology, damages, compensation of up to RM250,000, or mandatory participation in corrective programmes.
- Penal Code – Criminal liability may also apply, with penalties including imprisonment, a fine, or both.

Upholding Workplace Integrity

For HR, 'no hard evidence' does not mean 'no case.' Most sexual harassment will never be caught on camera or witnessed directly. Instead, credibility, timeliness, consistency, and indirect evidence can be the deciding factors.

Every allegation must be taken seriously, investigated fairly, and resolved without delay.

Ultimately, addressing complaints, even when evidence is inconclusive, is not only a legal requirement, but also a commitment to protecting dignity, trust, and integrity in the workplace.