Sexual Harassment in the Workplace and Equal Employment Legislation

Hiroko Hayashi
SEXUAL HARASSMENT IN THE WORKPLACE
AND EQUAL EMPLOYMENT LEGISLATION

HIROKO HAYASHI

INTRODUCTION

Female participation in the modern Japanese workplace is on the rise. The total number of female Japanese workers is increasing,1 and women are staying in the labor market for longer periods of time.2 Two major developments have accompanied this change in traditional female employment patterns:3 the passage of the Equal Employment Opportunity Law ("EEOL"),4 and the recognition of sexual harassment as a form of sexual employment discrimination.

This Article examines both of these developments. Part I introduces the structure of the Japanese EEOL and evaluates its effectiveness in

---

1 In 1992, 50.7% of the female population over 15 years old participated in Japanese labor markets, a 3.1% increase since 1980. See Kanpo Shinyoban ("The Official Gazette—A Special Data Edition"), Appendix to No. 1336, 1-6 (1994) [hereinafter Official Gazette]. Male participation dropped from 79.8% to 77.4% during this same period. Id.

2 The average age of women employees in the Japanese work force increased from 26.3 years in 1960 to 35.7 in 1990. ALICE C.L. LAM, WOMEN AND JAPANESE MANAGEMENT: DISCRIMINATION AND REFORM 13 (1992) [hereinafter LAM, WOMEN AND JAPANESE MANAGEMENT].

3 See Yoichiro Hamabe, Inadvertent Support of Traditional Employment Practices: Impediments to the Internationalization of Japanese Employment Law, 12 UCLA PAC. BASIN L.J. 306, 325-26 (1994) (pointing out that traditional female work patterns include short-term employment ending upon marriage, restrictions on hours females can work, and decreases in number of females hired during recessions).

reducing employment discrimination against women. Parts II and III explore the relationship between sexual discrimination and sexual harassment by discussing a current judicial decision affecting sexual harassment in the workplace.

I. THE EQUAL EMPLOYMENT OPPORTUNITY LAW

A. Background

Prior to enactment of the EEOL, the Labor Standards Law was the principal law in Japan protecting women in the private sector. Although the Labor Standards Law required private employers to pay equal wages for equal work, this law had a limited effect because it prohibited only wage discrimination by sex, but not discrimination in recruiting, hiring, job assignments, or promotions. As a result, jobs remained separated by gender.

B. Provisions of the EEOL

The EEOL was enacted in 1985 in connection with Japan's ratifica-
tion of the 1979 United Nations Convention Concerning the Elimination of All Forms of Discrimination Against Women.\(^{10}\) The EEOL prohibits employers from discriminating against female workers in providing education, training, and employee benefits. The EEOL also prohibits employers from imposing mandatory retirement at marriage, childbirth, or upon reaching a certain age.\(^{11}\) Additionally, the EEOL requires employers to \textit{endeavor}\(^{12}\) to treat male and female employees equally when recruiting, hiring, or dispensing job assignments or promotions.\(^{13}\)

The EEOL does not create a private cause of action,\(^{14}\) but provides three mechanisms for dispute resolution:\(^{15}\) (1) the settlement of grievances by a body composed of representatives of the employer and company employees; (2) the availability of advice, guidance, and recommendations provided by the Director of the Women's and Young Workers' Office;\(^{16}\)
and (3) mediation by the Equal Opportunity Mediation Committee in each prefecture.\footnote{See Parkinson, supra note 4, at 607 (stating that each party must consent to mediation).}

C. The Two-Track System—A By-Product of EEOL

After eight years of EEOL enforcement,\footnote{Id. at 606. Danjo Koyō Kintō Hō (Equal Employment Opportunity Law), Law No. 45 of 1985, was enacted on May 17, 1985, but was not enforced until April 1, 1986. Id.} the average wage earned by women workers had not significantly increased. Despite longer terms of service\footnote{Id. at 622. The average length of service for female workers was 6.5 years in 1984. Id.} and higher educational levels,\footnote{Lam, Women and Japanese Management, supra note 2, at 74. A comparison of female workers’ educational levels is presented in the table below. The figures represent percentage of women entering employment:}

<table>
<thead>
<tr>
<th></th>
<th>Junior High School</th>
<th>High School</th>
<th>Junior College</th>
<th>University</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>5.2</td>
<td>60.6</td>
<td>22.5</td>
<td>11.7</td>
</tr>
<tr>
<td>1989</td>
<td>3.4</td>
<td>54.6</td>
<td>28.4</td>
<td>13.7</td>
</tr>
</tbody>
</table>


In 1992, the average length of service for men was 12.5 years while the average length of service for females increased to 7.4 years. Official Gazette, supra note 1.

Two-track systems have been instituted by a number of Japanese employers, particularly large companies,\footnote{Lam, Equal Employment Opportunities for Japanese Women, supra note 4, at 212. Over 40 Japanese corporations with 5000 or more employees have instituted the two-track system. Large companies continue to foster gender-based discrimination by adopting the two-track system since there are no penalties applied for noncompliance with the EEOL. Knapp, supra note 4, at 123-25.} and are comprised of a “management track” (Sogo Shoku) and a “general track” (Ippan Shoku).\footnote{See Knapp, supra note 4, at 123-25. Some businesses have established an in-between category which offers the same job requirements as management (Sogo Shoku) positions but limits transfers to designated geographic areas. See Omori, supra note 22, at 4 (describing this middle category which offers the same job requirements as management (Sogo Shoku) positions but limits transfers to designated geographic areas).}
The management track is available to employees destined for management positions and the general track is open to all other employees. The two tracks offer very different wages, promotion opportunities, and fringe benefits. Employees on the management track perform duties related to planning, development, and negotiations, while those on the general track perform traditional duties such as photocopying, serving tea, and clerical work. Employees on the management track are subject to long hours and numerous job transfers, while employees on the general track are subject to much less rigorous standards. The two-track system facilitates a sophisticated form of discrimination against women. According to research published by the Ministry of Labor in 1990, ninety-nine percent of Japanese working men were on the management track, while more than ninety-six percent of working women were on the general track. The Ministry of Labor ruled, however, that the two-track system is not discriminatory and does not violate EEOL provisions because selection for entry onto either career track is based upon the employee's willingness to accept sex-neutral working conditions, such as long working hours and numerous potential job transfers. The Ministry of Labor issued a category as "watered-down version . . . of sogo-shioko positions").


[26] See LAM, WOMEN AND JAPANESE MANAGEMENT, supra note 2, at 57-58. Employees on the management track are included in the much-publicized Japanese employment system of lifetime job security, the "nenkō" wage system (whereby wages increase based on age and length of service to the company rather than on job performance), and the enterprise unionism system. Id. There is no limit on promotions in the management track. Id. In contrast, employees on the general track are not guaranteed lifetime employment (in practice, the availability of temporary women workers ensures the continued survival of the lifetime employment system since the temporary workers can be laid off in times of economic distress), are often eligible for only limited wage increases, and are excluded from the enterprise unionism system. Id.

[27] See id. at 123.

[28] See Parkinson, supra note 4, at 629 (explaining that employees on management track enter into "long term, all-encompassing relationship" with their employers); LAM, WOMEN AND JAPANESE MANAGEMENT, supra note 2, at 57-58. See generally UPHAM, supra note 5, at 124-65 (discussing Japanese management structure, traditionally and post EEOL).

[29] See Parkinson, supra note 4, at 623 n.67, 646-47 (stating that employees on general track are generally free to take personal day off from work and are generally not subject to transfers or overtime work). For an illuminating look at the daily lives of some of these workers, see JEANNIE LO, OFFICE LADIES FACTORY WOMEN, LIFE AND WORK AT A JAPANESE COMPANY 17-33 (1990).


guideline on the two-track system, stating that admission onto a specific track should not be based on sex, but should be based on each worker's ability and willingness to accept the working conditions.\textsuperscript{33}

One company, Sumitomo Life Insurance Company ("Sumitomo"), introduced the two-track system to its employees on April 1, 1986, the same day that EEOL enforcement began.\textsuperscript{34} This company's use of the two-track system is illustrative of the way the EEOL provisions and the two-track system operate.\textsuperscript{35} At Sumitomo, men were generally assigned to the management track and women were placed on the general track.\textsuperscript{36} Women were permitted to move onto the management track only after they had passed a selective examination.\textsuperscript{37} Moreover, Sumitomo discriminated against married women on the general track by refusing to promote them.\textsuperscript{38} On February 29, 1992, twenty-two married, female Sumitomo employees requested mediation under Article 15 of the EEOL claiming that the company's practices were discriminatory.\textsuperscript{39} On November 2, 1992,
however, the Director of the Women's and Young Workers' Office decided that no mediation would be instituted by the Equal Employment Opportunity Committee because there were no men on the general track who could be compared to the married women to support the women's allegation of sexual discrimination.\(^4\)

Although the Ministry of Labor does not release to the public the number of mediation applications made by women workers,\(^4\) the number of requests for mediation under Article 15 of the EEOL has been estimated by the Japanese Federation of Labor Lawyers (Nihon Rodo Bengodan). Until February 3, 1995, at least 103 women employed in eleven companies requested mediation. Two of the above companies denied mediation to twenty-two women, even though the Director of Women's and Young Workers' Office approved such mediation. The Director denied mediation to a total of seventy-one women in five other companies.\(^2\) For example, nineteen female employees of Nihon Seimei Insurance Co. were denied their request for mediation on March 21, 1992.\(^3\) Another request for mediation, made on September 28, 1990, by sixteen female employees of Tokai Radio Broadcasting Company, was similarly refused by the Director of the Women's and Young Workers' Office in Aichi Prefecture on June 4.

\(^1\) See Kashima, supra note 24, at 24.

\(^2\) See Knapp, supra note 4, at 120-21. The Ministry of Labor does, however, issue an annual pamphlet which provides examples of consultations, offers interpretations of EEOL provisions, and summarizes disputes resolved in the office. Id. at 119-20.

\(^3\) See Tetsuji Iso, 'Career Clerks' Seek Redress for Alleged Discrimination, Middle Age Employees Petition Labor Ministry,' NIKEI WKLY, May 30, 1994, at 13, available in LEXIS, World Library, ALLWLD File. For example, several requests for mediation under Articles 14 and 15 of the EEOL have been made. In March 1994, a 54 year-old woman and six other female employees of Sumitomo Metal Industries Co. requested and received mediation from the Osaka Women's and Young Workers' Office in the first mediation since the EEOL has been in effect. Id.; see also Equal Employment Law to Be Put to First Test, JAPAN ECON. NEWSWIRE, Sept. 12, 1994, available in LEXIS, AsiaPC Library, JEN File. The mediation resulted in the dismissal of the claims of discrimination in promotions because the women were married. See Government Dismisses Sexual Bias Claims, Urges Job Flexibility, JAPAN ECON. NEWSWIRE, Feb. 20, 1995, available in LEXIS, AsiaPC Library, JEN File.

Female employees of the Sumitomo Electric Industries Co. and Sumitomo Chemical Co. have made mediation requests similar to those made by female employees at the Sumitomo Metal Industries Co. See Iso, supra, at 13. Additionally, six female employees at the Kanematsu Corporation requested mediation from a Tokyo Metropolitan Government office to banish the two-track system. Id.

In March 1994, the first mediation was conducted on the Sumitomo Metal Industry Company case in Osaka, but the proposed recommendation by the Equal Opportunity Mediation Committee was rejected in March 1995 by the seven women petitioners, because it included no concrete remedies. Thus, since enforcement of the EEOL began, mediation has not served as a viable option and discrimination suits have been litigated rather than mediated.  

II. INCREASED AWARENESS OF SEXUAL HARASSMENT AS A FORM OF SEXUAL DISCRIMINATION

In the first Japanese decision on sexual employment discrimination, the Tokyo District Court ruled in favor of the plaintiff and declared that the system of forced retirement upon marriage was illegal. Since then, women have brought a number of successful suits regarding sexual discrimination in the workplace. While sex discrimination in employment has continued to exist, however, the number of discrimination suits brought by women workers against their employers has been decreasing, in part because of the economic recession in Japan, but also because of the amount of time that lapses before a court renders its final decision.

44 See Knapp, supra note 4, at 121-22 (detailing attempt to achieve mediation in Tokai Radio Broadcasting Company dispute). Tokai Radio Broadcasting was the first case considered for mediation by the Women's and Young Workers' Office in Aichi Prefecture. MASAKO OWAKI, BYÔDÔ NO SEKANDO SU'SEI [TO THE SECOND STAGE OF EQUALITY] 268-69 (1992). The office discouraged the women from considering mediation. Id. Refusing to capitulate, the women requested the final stage of dispute resolution under the EEOL mediation by the Equal Opportunity Mediation Committee. Id. The director of the Office declined their request for mediation. Id.

45 See, e.g., Parkinson, supra note 4, at 615 n.33. Issues successfully litigated include forced retirement at child birth, forced retirement for women at the age of 30, and forced retirement for women at younger ages than men. Id.


48 See generally UPHAM, supra note 5, at 124-65 (concluding that it generally takes four or five years to complete litigation in Japanese District Court). Extreme examples include the Nihon
After ten years of enforcement of the EEOL, many women workers have realized the limitation of the remedies offered under the EEOL and mediation by the Equal Opportunity Mediation Committee, and feel that they have been betrayed by the Labor Administration. Quite recently, women workers have been approaching the court directly. This has been termed "the second boom in Japanese litigation concerning sex discrimination in employment."

In Japan, the word for sexual harassment is quite new. Formerly, the term "Seiteki Iyagarase" ("unwelcome sexual advances") was used to describe such conduct, but its actual translation refers to conduct which is more indirect than sexual harassment. In 1982, the term "sexual harassment" appeared for the first time in *Contemporary Japanese Terms*, an annually revised dictionary. "Sekuhara," a shortened form of the word, is now a commonly used word in the Japanese language.

Many Japanese people perceive sexual harassment as a new social problem. Sexual harassment in the workplace, however, is not a modern development. Although sexual harassment has been present in the workplace ever since men and women began working together, in Japan,
sexual abuse and violence in the workplace have only recently begun to be recognized as forms of sexual discrimination.33

Traditionally, sexual harassment was not considered discrimination, but was viewed purely as a private matter between individuals.44 In Japan, sexual harassment has been defined as “unwelcome remarks and conduct in the workplace which influence a worker's job performance and cause a hostile work environment.”55 Because Japanese law does not explicitly forbid sexual harassment, however, this term does not yet have an official legal definition. Nonetheless, on April 16, 1992, for the first time ever in a Japanese court, the Fukuoka District Court held that “Seiteki Iyagarese,” or “sexual unpleasantness” in the workplace is a violation of a worker's interest in maintaining the honor of her reputation.57


33 Bruce D. Fisher, The Ethical Consumer: A Rejecter of Positive Law Arbitrage, 25 SETON HALL L. REV. 230, 252 (1994) (stating that sexual harassment was first recognized in Japan in 1992 over 20 years after its recognition in United States). There are no statutory provisions in Japan which explicitly outlaw sexual harassment. See Merrill Goozner, Japan Discovers Sex Harassment Inklings of Change in Culture that Subordinates Women, CHI. TRIB., Jan. 31, 1993, at 21. There are, however, provisions under the EEOL (mandating equal opportunity) and the Japanese Labor Standards Act (prohibiting wage discrimination) which may theoretically form the basis of a tort-based sexual harassment claim. Tariq Mundiya, Conditions of Work Digest: Combating Sexual Harassment at Work, 15 COMP. LAB. L.J. 119, 124 (1993) (book review). Nonetheless, on April 16, 1992, for the first time ever in a Japanese court, the Fukuoka District Court held that “Seiteki Iyagarese,” or “sexual unpleasantness” in the workplace is a violation of a worker's interest in maintaining the honor of her reputation.57


55 Video to Raise Awareness of Workplace Sexual Harassment, JAPAN ECON. NEWSWIRE, May 9, 1994 (stating that Labor Ministry of Japan issued guidelines in October of 1993 defining sexual harassment as “sexual remarks or actions against the will of a partner and creating job disadvantages for that person in retaliation against their ‘negative’ response, resulting in a deterioration of the work climate”).

56 Omori, supra note 22, at 4 (“After all, there are still no laws protecting Japanese women against sexual harassment.”)

III. THE FUKUOKA SEXUAL HARASSMENT CASE

A. The Facts of the Fukuoka Case

A female editor successfully sued her previous employer, a small publishing company, and her former supervisor for creating a hostile work environment. The publishing company had employed a male editor in June, 1985, and the female editor in December, 1985. The female editor received a starting salary of 90,000 yen per month while the male editor received over three times that amount; in May of 1987, a supervisor increased the female editor's salary by 20,000 yen per month and reduced the male editor's salary by an equal amount. The male editor retaliated to the reduction in his salary by creating a hostile work environment for the female editor: he spread rumors about the female editor's sex life; insinuated that the female editor was engaged in a sexual relationship with the supervisor; stated that the female editor "play[ed] around and [had] many love affairs," and "often [went] out drinking after working late;" told a customer that the female editor had "something wrong down below" when she was hospitalized for an ovarian tumor; stated that the novel for which the female editor received a prize in the Fukuoka Citizen's Art Festival was pornographic; and made numerous other harassing statements about the female editor to both her and her co-workers.

The publishing company subsequently hired a new Chief Executive who supported the male editor by demanding that the female editor submit her resignation by the end of the year. When the female editor refused, the male editor, without any authority, tried to force the female editor to


59 Id.
60 Id.
61 Id.
62 Id.
64 Id.
65 Id.
66 Id.
67 Id.
resign on March 10, 1988. The following day, the female editor asked the Chief Executive to order the male editor to apologize to those customers who inquired about the rumors he spread about her. When the Chief Executive failed to comply with her request, the female editor took her cause to the company President. Because he believed the conflict between the editors was due, in large part, to the female editor's extremely low salary, the Chief Executive raised the female editor's salary to 130,000 yen per month. Despite this effort, the conflict between the editors eventually escalated to the point where it interfered with the company's business operations. At this time, the female editor again complained to both the President and the Chief Executive about the male editor's harassment, both of whom viewed the case as a personal dispute between the editors. Rather than attempt to settle the dispute, both officers instructed the female editor to discuss the matter with the male editor.

The female editor's claim of harassment by the male editor eventually came before the publisher's Executive Board, which concluded that, if the two editors could not resolve their dispute, one of them must be dismissed. The Chief Executive then met privately with the female editor and indicated that if the problem was not resolved, the company would request her resignation. The Chief Executive further told the female editor that she was responsible for helping the male editor become a real man, and that, although she was a capable employee, as a female, she must defer to her male supervisor. Consequently, the female editor resigned, and the Chief Executive met with the male editor to inform him of the female editor's resignation and to suspend him for three days. The Chief Executive also subsequently reduced the male editor's bonus by 50,000 yen (approximately 500 U.S. dollars). Although both editors

69 Id.
70 Id.
71 Id.
72 Id.
73 Id.
74 Id.
75 Id.
76 Id.
77 Id.
78 Id.
79 Id.
80 Id.
were penalized, the female editor was forced to resign while the male editor only suffered a small pay cut in his bonus and a three-day suspension.

The court held that the Chief Executive's remarks in his private meeting with the female editor supported the female editor's claim that her dismissal was unlawful. Both editors had the same academic backgrounds and performed the same type of work, yet the male was paid 300,000 yen per month, while the female was only paid 130,000 yen per month following her second promotion. On its face, the salary discrepancy seemed to violate Article 4 of the Labor Standards Law, which prohibits wage discrimination based on gender. As the Fukuoka Case indicates, sex discrimination in personnel management may breed sexual harassment.

B. The Judgment of Fukuoka District Court

The Fukuoka District Court decided that the persons in charge of personnel management, namely the President and Chief Executive, negligently failed to resolve the problem between their employees due to their categorization of it as a personal dispute. The court, therefore, concluded that the President and Chief Executive were responsible for a violation of Article 709 of the Japanese Civil Code, which provides, in pertinent part, that "[a]ny person who intentionally or with fault infringes upon another person's rights shall compensate for the damages." The court further ruled that, as an employer, the publishing company was responsible for the President's and the Chief Executive's torts under Article 715 of the Civil Code, which provides, in relevant part, that,

---

81 Id.
82 Id.
84 Id. The association of Women for Action and Research conducted a survey of 56 Japanese companies in Singapore and found that more than half of the reported incidents of sexual harassment against women in the workplace involved superiors in administrative, executive, and clerical positions. Ian Stewart, Japanese Accused of Sexual Harassment, S. CHINA MORNING POST, Mar. 26, 1994, at 12, available in LEXIS, News Library, SCHINA File; cf. Fic., supra note 37, at 24 (indicating that "sexual harassment flourishes in the corporate world in part because management relegates women to the role of prospective brides").
86 Id.
87 MINPO (Civil Code), art. 709.
88 Id.
"[a] person who employs another to carry out an undertaking is bound to make compensation for damage done to a third person by the employee in the course of the undertaking . . . ."\textsuperscript{89}

The Fukuoka District Court held the publishing company vicariously liable under the Civil Code Article 715, not only for the torts committed by the actual harasser, but also for those committed by its President and Chief Executive.\textsuperscript{90} The plaintiff claimed 3,000,000 yen in damages and 670,000 yen in attorneys' fees.\textsuperscript{91} The damages were solely to compensate the plaintiff for the infringement on her personal rights and her emotional suffering, as the plaintiff made no claim for economic loss.\textsuperscript{92} The court ordered the female editor's employer and supervisor to pay her 1,500,000 yen (approximately 15,000 U.S. dollars) as consolation, and 150,000 yen for attorney's fees. The decision became final on April 30, 1992.\textsuperscript{93}

The Fukuoka District Court decision contains four important points. First, the court addressed whether sexual harassment violates personal rights. The court judged that the male editor, by spreading rumors about the female editor's sex life to damage her reputation and to force her to resign, infringed on her personal rights in violation of Article 709 of the Civil Code.\textsuperscript{94} Personal rights include one's right to bodily integrity, liberty, honor, life, reputation, and privacy.\textsuperscript{95}

Second, the Fukuoka District Court held that a worker has a right to a non-hostile work environment and found that the male editor violated Article 709 of the Civil Code by creating a hostile work environment.\textsuperscript{96}

\textsuperscript{89} MINPO (Civil Code), art. 715.1.
\textsuperscript{92} Id.
\textsuperscript{95} See Patterson, supra note 54. In recognizing the right to privacy aspect of the claims, the judge relied on an earlier decision by the Tokyo District Court which held that a company violated its employee's privacy by releasing private information about the employee to a real estate office. Id. at 218 n.82; see also Defendants Accept Sexual Harassment Ruling, supra note 93. Presiding Judge Takashi Kawamoto stated that the company "neglected the obligation to secure proper working conditions for the plaintiff and tried to solve the issue by having the woman accept [the] disadvantages of [leaving the firm]" due to rumors. Id. (citation omitted).
\textsuperscript{96} Judgment of April 16, 1992, Fukuoka Chihō Saibansho, Heisei Gannen (1989) (Wa) No. 1872, Songai Baishō Seikyū Jiken (Japan); see also Patterson, supra note 54, at 218.
This decision was the first to uphold a claim to a non-hostile work environment based solely on a worker's personal right to work in an environment free of harassment.\(^9\)

Third, the Fukuoka District Court addressed whether prevention of sexual harassment is the company's responsibility. Article 715 of the Civil Code provides that employers are liable for damages employees cause to a third party, including the employee's colleagues.\(^9\) Employers, therefore, are responsible for sexual harassment in the workplace, even if the employers are not directly involved. The court concluded that an employer liable under Article 715 of the Civil Code must compensate an aggrieved employee for his or her suffering.\(^9\) Moreover, the court held that a company is responsible for taking the necessary measures required to ensure that its employees' personal rights are not violated.\(^10\)

Finally, the Fukuoka District Court addressed whether a company is liable for unlawful acts by its administrative officers. The court held that the President and the Chief Executive neglected to take the measures necessary to maintain a non-hostile work environment.\(^10\) Although the Japanese Constitution, the Civil Code, and the labor laws provide for equality between men and women, the President and the Chief Executive essentially resolved a dispute between a male and a female employee by forcing the female employee to resign.\(^10\) The court, therefore, held that the company failed to take the proper measures needed to improve its employee's work environment.\(^10\) Although the decision never explicitly used the term "sexual harassment," it held that the male editor, by spreading rumors regarding the female editor's sex life, violated the female

\(^9\) See Steven R. Weisman, *Landmark Sex Harassment Case in Japan*, N.Y. TIMES, Apr. 17, 1992, at 3 (stating Fukuoka District Court decision is first successful legal action against harassment in Japan); Terry McCarthy, *Sayonara Sex Harassment: Japanese Turning the Tide*, TORONTO STAR, Apr. 24, 1992, at C18 (finding Fukuoka decision unusual because defendant's harassing conduct was purely verbal); Patterson, *supra* note 54, at 216-19.

\(^9\) MINPO (Civil Code), art. 709.


\(^10\) Id. In response to the Fukuoka Court decision, many companies are conducting seminars and publishing brochures discussing sexual harassment in an attempt to reduce its occurrence among workers. Yomiuri Shinbun, *Sexual Harassment Awareness is Rising in Japan*, DAILY YOMIURI, Feb. 9, 1994, at 13, available in LEXIS, AsiaPC Library, Yomiur File.


\(^10\) Id.; see KENPO [Constitution] art. XIV (Japan); MINPO (Civil Code), art. 90; Ródó Kijun Hō (Labor Standards Law), Law No. 49 of 1947; see also Patterson, *supra* note 54, at 211-15.

employee's interest in maintaining the honor of her reputation. The male editor further violated the female editor's rights by damaging her reputation as a professional and ultimately causing her resignation. Most significantly, the court recognized a claim never before upheld in a Japanese court: an employee's right to a non-hostile work environment.

Despite this milestone, "sexual harassment" remains officially undefined in Japan. The Ministry of Labor, however, has defined "sexual harassment" in recent guidelines as a "communication gap." In 1991, the government organized the Council on Female Employee Management and Communications Gaps (the "Council"), to research sexual harassment in order to prepare guidelines for businesses. In October of 1993, the Council characterized sexual harassment as unpleasant speech or conduct, by sexual references or connotations, that creates a difficult working environment.

C. One-Day Telephone Survey on Sexual Harassment

Public reaction to the first successfully litigated claim of sexual harassment in Fukuoka was strong and controversial. On October 7, 104

104 Id.
105 Id.; see also Patterson, supra note 54, at 216-19.
108 The Nihon Keizai Shinbun, Lawsuit Puts Spotlight on Sexual Harassment, JAPAN ECON. J., Aug. 18, 1990, at 10, available in LEXIS, AsiaPC Library, Japan File. Over a year after the Fukuoka Court decision was rendered, the Ministry of Labor formally defined "sexual harassment" as "sexual speech or conduct that leads to a deterioration of the work environment." Ministry Announces Definition of Sexual Harassment, JAPAN ECON. NEWSWIRE, Oct. 18, 1993, available in LEXIS, News Library, Wires File.
109 See Shinbun, supra note 100. The Ministry of Labor, responding to the problem of sexual harassment, ran a major campaign against sexual harassment. Id. The Ministry’s plan included the formulation of a research study group and the evaluation of other countries programs to eliminate sexual harassment and its goal was to set up guidelines for corporations in Japan to deal with sexual harassment in the workplace. Id.
110 Hamabe, supra note 3, at 327; Pamala Kurilla, No Sex Please, We Are Japanese, HERALD (Glasgow), Sept. 15, 1994 (indicating Ministry of Labor has produced 100-point checklist to help companies determine if female employees are treated fairly). In 1991 the Ministry of Labor established a commission to investigate sexual harassment and its findings were published in Sekuhara: Keihatsu katsudō de mizen ni fusegu [Preventing Sexual Harassment Through Education], NIKKEI, Sept. 18, 1993, at M34 (citing Hamabe, supra note 3, at 327).
111 See generally Patterson, supra note 54. The Fukuoka claim was filed in the Fukuoka District Court in August of 1989. In September, the Dai-ni Tokyo Bar Association, one of three bar associations in Tokyo, announced that it would open a one-day telephone hotline to survey victims of sexual harassment. Lawyers Plan Sexual Harassment Hotline, JAPAN ECON.
1989, during the early stages of the litigation, the Dai-ni Tokyo Bar Association ("Association") held a one-day telephone survey on sexual harassment (the "Survey"), and received calls indicating a surprisingly high volume of sexual harassment. In that one day, the Association received 138 calls reporting incidents of sexual harassment; three such calls were made by male employees protesting sexual harassment by female supervisors or co-workers.

The ages of the harassment victims ranged from the teens through the sixties, while approximately two-thirds of the victims were women in their thirties and forties. A large number of the reports of sexual harassment actually constituted violations of the criminal law, such as rape, assault and battery, obscenity, and false imprisonment. Many victims felt compelled to resign or were at least actively contemplating resigning. Victims of sexual harassment who resign typically suffer economic disadvantages such as a deduction of all or part of their lump-sum retirement payments, a three-month waiting period before receiving unemployment insurance benefits, and, under the Labor Standards Law, the loss of the equivalent of thirty days of average wages as a discharge allowance.
D. Sexual Harassment—Sex Discrimination or Not?

One of the functions of the Tokyo Metropolitan Office of Labor Administration (the “Office of Labor Administration”) is to receive labor complaints. In the 1980s, it began to receive many complaints of “Seiteki Iyagarase.” The Office of Labor Administration originally classified these complaints as incidents of “miscellaneous discrimination,” but, as the number of complaints of “Seiteki Iyagarase” grew to exceed the number of claims of age discrimination, retirement-age discrimination, or violations of maternity protection, the complaints came to be classified as cases of “sexual harassment.” In fact, the Office of Labor Administration has recognized sexual harassment as a type of employment discrimination since February of 1989. Statistics indicate that the office handles approximately 400 consultations on sexual harassment each year.

Common-law countries treat sexual harassment as a violation of the laws that prohibit sex discrimination in employment. The United States, for example, has a well-developed body of legislation and litigation in the area of sexual harassment. The United States Supreme Court has

---


120 See generally Shinbun, supra note 100; Akiko Fukami, Sexual Harassment in Japan, S.F. CHRON., June 30, 1990, at 18.

121 See Fukami, supra note 120.

122 Masaomi Kaneko, Sōdan Madoguchi Kara Mita Seiteki Iyagarase [Sexual Harassment through the Window of Labor Consultation], in Sexual Harassment (Nikkei Kohōbu, Tokyo ed. 1990).

123 See Beverley H. Earle & Gerald A. Madek, An International Perspective on Sexual Harassment Law, 12 Law & Ineq. J. 43 (1993) (discussing state of sexual harassment law in United States and Europe). In the United Kingdom, for example, the 1975 Sex Discrimination Act is construed to include sexual harassment. Id. at 83 (discussing Porcelli v. Strathclyde Regional Council, 1986 I.C.R. 564 (Scot. Sess.)). An Australian court held that the International Convention on Elimination of all Forms of Discrimination Against Women imposes a duty to take measures necessary to secure equal rights for women, including the prohibition of sexual harassment. Id. at 81 n.287 (discussing Aldridge v. Booth, 80 A.L.R. 1 (Fed. Ct. 1988)). Additionally, a New Zealand court used the existing penal law to bring criminal indecent assault charges against a shop owner accused of sexual harassment, id. at 81 n.287 (discussing R. v. Dean, 3 N.Z.L.R. 444 (Wellington Ct. App. 1991)), and in 1992, France made the abuse of authority by use of force or duress to obtain sexual favors (quid pro quo sexual harassment) a criminal offense. Id. at 80 (citing CODE PENAL [C. PEN.] art. 222-23 Titre II (Fr.), available in LEXIS, Loireg Library, Codes File).
interpreted sexual harassment under Title VII of the Civil Rights Act, stating that quid pro quo sexual harassment violates that statute’s prohibition on sex discrimination. The Supreme Court also ruled that hostile-environmental sexual harassment similarly violates Title VII. Both types of sexual harassment constitute sex discrimination because harassers, taking advantage of a victim’s sex, force some employees to work under conditions different from that of other employees. Some of the courts in the United States, therefore, conclude that sexual harassment is unlawful as a general rule and will be equally actionable whether that harassment is initiated by women against men, or

---

124 Meritor Sav. Bank v. Vinson, 477 U.S. 57, 67 (1986). In Meritor, Justice Rehnquist, delivering the opinion for the Court, stated that “for sexual harassment to be actionable, it must be sufficiently severe or pervasive ‘to alter the conditions of [the victim’s] employment and create an abusive working environment.’” Id. (quoting Henson v. Dundee, 682 F.2d 897, 904 (11th Cir. 1982)). Title VII of the Civil Rights Act of 1964, as amended, makes it an “unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1) (1988).

125 Quid pro quo sexual harassment occurs when “someone with the authority to control employment opportunities, such as promotions or salary increases, tries to get a subordinate employee to grant sexual favors in order to obtain or retain that employment opportunity.” BARBARA LINDEMENN & DAVID D. KADUE, PRIMER ON SEXUAL HARASSMENT 22 (1992). A complaining employee must prove all five of the following elements identified by the courts to establish liability for quid pro quo sexual harassment:

1. the complaining employee is a member of a protected class;
2. the complaining employee was subjected to unwelcome sexual advances;
3. the complaining employee suffered an adverse employment action;
4. (a) the sexual advance was because of the complaining employee’s gender, and (b) the complaining employee’s reaction to sexual advance affected a tangible aspect of her job; and
5. the employer is responsible.

Id. at 22-23.

126 “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when . . . (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.” EEOC Guidelines, 29 C.F.R. § 1604.11(a) (1980).

127 See Meritor, 477 U.S. 57; cf. Miller v. Bank of Am., 600 F.2d 211 (9th Cir. 1979) (finding plaintiff’s discharge for her refusal to cooperate with her supervisor’s sexual advances constituted quid pro quo sexual harassment and was thus violation of Title VII).

128 See Meritor, 477 U.S. at 66 (“Since the Guidelines were issued, courts have uniformly held, and we agree, that a plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment.”).

129 See, e.g., Harris v. Forklift Sys., Inc., 114 S. Ct. 367 (1993). Although the EEOC guidelines seem to imply that to be violative the conduct must be sexual in nature, courts now generally recognize the applicable test to be whether the offensive conduct is due to the complaining employee’s gender, and such conduct need not be of a sexual nature to be actionable. See McKinney v. Dole, 765 F.2d 1129 (D.C. Cir. 1985).
by men against women, or between members of the same sex.\textsuperscript{130}

\section*{E. No Legal Definition of Sex Discrimination}

Article 14 of the Japanese Constitution prohibits sex discrimination in political, economic, or social relations.\textsuperscript{131} There is no legislation, however, that prohibits sex discrimination by employers in the private sector.\textsuperscript{132} While Article 4 of the Labour Standards Law only prohibits wage discrimination against women,\textsuperscript{133} the EEOL offers women workers some additional protections in other areas.\textsuperscript{134} It remains unclear, however, whether sexual harassment constitutes sex discrimination in Japan. Since the \textit{Sumitomo Cement Case},\textsuperscript{135} women workers have litigated many discrimination claims against their employers.\textsuperscript{136} Discriminatory practic-

\textsuperscript{130} See Showalter v. Allison Reed Group, Inc., 767 F. Supp. 1205 (D.R.I. 1991) (sexual harassment claims by males actionable under Title VII), \textit{aff'd on other grounds}, 984 F.2d 4 (1st Cir. 1993). Not all courts, however, construe Title VII to include claims of men harassed by women or between men. \textit{See}, e.g., Fleenor v. Hewitt Soap Co., 1995 WL 386793 (S.D. Ohio Dec. 21, 1994) (discussing why Title VII does not apply to case other than male harassers and female victims). These courts want to limit Title VII to the historically oppressed and, therefore, protected class, i.e. women. \textit{Id.; see} Joyner v. AAA Cooper Transp., 597 F. Supp. 537 (M.D. Ala. 1983) (holding prima facie case of sex discrimination based upon quid pro quo sexual harassment existed where manager made unsolicited homosexual overtures to plaintiff which employee rebuked); \textit{cf.} McCoy v. Johnson Controls World Servs., 878 F. Supp. 229 (D. Ga. 1995) (finding Title VII includes homosexual harassment provided victim is member of protected class); Garcia v. Elf Atochem N. Am., 28 F.3d 446 (5th Cir. 1994) (concluding male harassment of male employee not actionable under Title VII if harassment was sexual in nature).

\textsuperscript{131} \textit{KENPÔ} [Constitution] art. XIV, para. 1 (Japan). Article 14 states, in pertinent part, that "[a]ll of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin." \textit{Id.}

\textsuperscript{132} See Patterson, \textit{supra} note 54, at 213 (stating that there is no private cause of action or other mechanism to force compliance of Japan's Equal Employment Opportunity Law). \textit{See generally} Hamabe, \textit{supra} note 3, at 324 (stating that statutory provisions fall short of ensuring equal treatment in all aspects of employment).

\textsuperscript{133} \textit{RÔDÔ KIJUNHÔ} (Labor Standards Law), Law No. 49 of 1947, art. IV ("The employer shall not discriminate women against men concerning wages by reason of the worker being women.").

\textsuperscript{134} \textit{Danjo Koyô KINTÔ HÔ} [Equal Employment Opportunity Law], Law No. 45 of 1985. The EEOL prohibits discrimination against female workers in the areas of retirement age, termination and voluntary resignation. \textit{Id.} Although the EEOL requires employers to endeavor to provide equal opportunities for the recruitment, hiring, placement and promotion of female and male workers, no sanctions are imposed upon such employers who fail to provide such opportunities. \textit{See} Hamabe \textit{supra} note 3, at 324 nn.82-83.

\textsuperscript{135} \textit{Sumitomo Cement Case}, 467 HANJI 26 (Tokyo D. Ct. Dec. 20, 1966) (granting women right to reject forced early retirement upon marriage). In the \textit{Sumitomo Cement Case}, the court held that forced early retirement upon marriage infringed upon Article 24 of the Constitution, which gives women the right of freedom of marriage. \textit{Id.}

\textsuperscript{136} See Patterson, \textit{supra} note 54, at 213 n.49 (stating that \textit{Sumitomo} was first case in line of decisions which granted women right to continue working after marriage).
es, such as forced retirement upon marriage,\textsuperscript{137} forced retirement of young women,\textsuperscript{138} gender-differentiated retirement ages,\textsuperscript{139} and promotion discrimination,\textsuperscript{140} have been found to violate Article Ninety of the Civil Code, which states, in pertinent part, that “[a] juristic act whose object is a matter contrary to public [policy] or good manners and customs, is void.”\textsuperscript{141} Although the “public [policy]” and “good manners” standards incorporate the principle of equality set forth in Article Fourteen of the Constitution,\textsuperscript{142} such standards are vague and abstract. Courts must determine whether an employment practice is reasonably discriminatory.\textsuperscript{143} Even after enactment of the EEOL,\textsuperscript{144} Article Ninety of the Civil Code continues to play a very important role in the litigation of sex discrimination in employment cases.\textsuperscript{145}

F. Quid Pro Quo Harassment or Environmental Harassment?

Although the court in the Fukuoka case did not expressly refer to “sexual harassment,” that case has been reported as an environmental sexual harassment case.\textsuperscript{146} In fact, Japanese courts now recognize two types of sexual harassment: quid pro quo harassment and environmental

\textsuperscript{137} See, e.g., Onoda Cement Case, 523 HANJi 79 (Morioka D. Ct. Apr. 10, 1968) (declaring that layoffs focusing unequally on married female employees and female employees over age of 30 constitutes illegal discrimination).

\textsuperscript{138} See, e.g., Tokyû Kikan Kogyô, 560 HANJi 23 (Tokyo D. Ct. July 1, 1969) (declaring that forced retirement of women at age 30 is illegal).

\textsuperscript{139} See, e.g., Nissan Motor Case, 990 HANJi 3 (Sup. Ct. Mar. 24, 1981) (declaring forced retirement of women at age 55 and men at age 60 illegal); Izu Cactus Park Case, 770 HANJi 18 (High Ct. Feb. 26, 1975) (declaring mandatory retirement of women at age 47 and men at age 57 illegal).

\textsuperscript{140} See Court Issues Landmark Ruling Against Sex Discrimination, KYODO NEWS SERVICE, July 4, 1990, available in LEXIS, Nexis Library, INTL File. In 1990, the Tokyo District Court awarded 124 million yen to a class of 18 women in a suit for gender-based denial of promotion. Id.

\textsuperscript{141} MINPô (Civil Code), art. 90.

\textsuperscript{142} See KENPô [Constitution] art. XIV, para. 1 (Japan).

\textsuperscript{143} See generally Hamabe, supra note 3, at 327 n.96 (discussing categorization by Japan’s Ministry of Labor of “environment” of sexual harassment and comparing it to “hostile environment” harassment recognized by United States and determined using reasonable person standard).

\textsuperscript{144} Danjo Koyô Kintô Hô [Equal Employment Opportunity Law], Law No. 45 of 1985.

\textsuperscript{145} See generally Knapp, supra note 4 (discussing various advantages of using Article 90 in discrimination cases).

\textsuperscript{146} See, e.g., Japanese Women Hail Landmark Ruling on Sexual Harassment, GUARDIAN, Apr. 17, 1992, Foreign at 11 (translating Judge Kawamoto: “It was against the law to dismiss the woman or to antagonise [sic] her with remarks about sexual relations or her personal life.”).
harassment. Quid pro quo harassment occurs when a superior offers to promote an employee or raise an employee's wages in exchange for sexual favors or the toleration of sexual harassment, and threatens to disadvantage an employee who rejects such requests by methods such as dismissal and unfair transfer. Environmental harassment exists when employers, executives, supervisors, co-workers, or customers create a hostile or unpleasant work environment by discussing sex with the victims or by engaging in conduct which diminishes the employee's work spirit. Additionally, unnecessary touching, the posting of nude posters, and the use of obscene language all may constitute environmental sexual harassment.

147 See Patterson, supra note 54, at 214. The Japanese courts and legal commentators divide sexual harassment into two categories: (1) Daishō (“quid pro quo”) and (2) Kankyō (“hostile environment”). Id. In fact, Daishō harassment has been successfully litigated a few times, but the defendant's conduct must have been truly egregious for the plaintiff to be victorious. Id.

148 See, e.g., Henson v. Dundee, 682 F.2d 897, 908 (11th Cir. 1982) (holding that “[a]n employer may not require sexual consideration from an employee as a quid pro quo for benefits”).

149 See LINDERMAN & KADUE, supra note 125, at 40-42. To establish a hostile environment claim, the conduct complained about must be unwelcome. Id. This conduct must take the form of sexual advances or “gender-based animosity,” with the latter most often taking the form of “gender-baiting” or “nonsexual hazing based on sex.” Id. In October of 1993, the Ministry of Labor published its definition of sexual harassment, “sexual speech or conduct that leads to deterioration of the work environment.” Ministry Announces Definition of Sexual Harassment, supra note 108. See generally Meritor Sav. Bank v. Vinson, 477 U.S. 57, 65-66 (1986).

150 See Barrett v. Omaha Nat'l Bank. 726 F.2d 424 (8th Cir. 1984).


152 See, e.g., Harris v. Forklift Sys., Inc., 114 S. Ct. 367, 371 (1993). The Harris Court declined to specify what types of conduct might create a hostile environment, and indicated that this could only be determined by evaluating all the circumstances. Id. “These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.” Id.

Recent Japanese surveys on sexual harassment have generated confusion over the prevalence of sexual harassment and what type of behavior creates a hostile work environment. See, e.g., Robert Stern, Japan's Women Given Tough Lesson in Sexual Harassment, TIMES (London), Feb. 19, 1994 (quoting spokeswoman for Japan’s Women's Democratic Club, as stating “Japanese men have no idea what sexual harassment is”). The All-Japan Prefectural & Municipal Worker's Union survey of 9300 women and 2000 men included incidents of physical touching, lewd jokes, comments on appearance and intentional references to age. Survey Shows Sexual Harassment Reaches 20%, NIKKEI WKLY, Aug. 29, 1994, Issues & People, at 22, available in LEXIS, World Library, ALLWLD File. About 30% of the men surveyed were unsure of whether they were guilty of harassment. Id. A survey of more than 9600 female executives showed that over 60% of senior female executives claimed to be victims of sexual harassment. Nigel Smith, Dirty Work: Japanese Women Are Standing Up to Harassment at Work, But Still the Men's Comics are Full of Sexual Violence, GUARDIAN, Feb. 1, 1993, at 12. The Japanese Teachers' Union reported that
Because, under agency law, agents in the United States are authorized to hire and fire personnel, claims of quid pro quo harassment by agents is common in the United States. The most frequent case of sexual harassment in the United States involves a victim who suffers discrimination by being placed in a situation in which she must make a choice to either accept an unpleasant or hostile environment or resign, accept a discharge, or agree to an unfair transfer. In Japan, however, because corporate executives or agents are not necessarily authorized to hire and fire personnel, this type of sexual harassment is less common and may only be initiated by empowered executives. Instead, in Japan, it is far more common for a supervisor to take advantage of his supervisory position to sexually harass employees. In fact, almost all of the sexual harassment

45% of female school teachers that responded suffered at least one type of sexual harassment. Half of Female Teachers Suffer Sexual Harassment, JAPAN ECON. NEWSWIRE, Aug. 5, 1994, available in LEXIS, News Library, Wires File. A 1993 survey by the Fukuoka Prefectural government found that 25% of the 1800 participants had experienced sexual harassment. Fic, supra note 37, at 24.

In an effort to educate the public about sexual harassment, the Ministry of Labor distributed a 24-minute video with examples of harassment and measures to combat it. Video to Raise Awareness of Workplace Sexual Harassment, supra note 56.

See, e.g., Bundy v. Johnson, 641 F.2d 934 (D.C. Cir. 1981) (adjudicating plaintiff's claim that she was denied promotion in retaliation for her refusal of superior's sexual advances). Mere supervision of another employee is insufficient to create an agency relationship which imputes liability to the employer. See generally Gary v. Long, 59 F.3d 1391 (D.C. Cir. 1995) (applying agency theory to Title VII claims involving supervisors). In Gary, Gary's supervisor, Long, demanded sex in return for favors, and when she refused he demanded sex as a condition of continued employment. Id. at 1393. She continued to refuse and he raped her. Id. The court reasoned that an employer would be liable for a supervisor's quid pro quo harassment only if the supervisor had the authority to subject the victim to adverse job consequences if she refused to submit to unwelcome sexual advances. Id. at 1396. The employer would not be liable for environmental harassment if it could establish that a supervisor who created a hostile work environment was not acting as the employer's agent. Id. Gary's company had an active policy against sexual harassment, and the court found that Gary could not have reasonably believed that Long had authority to harass her. Gary, 59 F.3d at 1398. Therefore, the plaintiff's Title VII claims were dismissed. Id.

See generally LINDEMANN & KADUE, supra note 125, at 30-31 (discussing common situations of hostile environment sexual harassment involving disparate treatment based on employees' gender). Quid pro quo sexual harassment may be reported and litigated more frequently because it may be easier to define forced sexual relations which have independent criminal sanctions (e.g., rape and sexual assault laws) than a hostile environment which is outside the amorphous boundaries of acceptable social interaction between men and women. See generally Earl & Madek, supra note 123.

See generally Patterson, supra note 54, at 222 (stating that Japanese style of management tends to be consultative rather than authoritative, and disputes are more often resolved through compromise rather than confrontation).

See Stewart, supra note 84. A survey of 56 Japanese companies in Singapore, conducted by the Association of Women for Action and Research, revealed that more than half of the
cases now being litigated in Japan involve this type of harassment. Litigation over sexual harassment in the workplace has dramatically increased since the Fukuoka District Court decision. This decision is an example of expulsive and environmental sexual harassment and illustrates how sexual harassment has been used by men in an attempt to prevent women from becoming rivals for high positions of power in the workplace.

CONCLUSION

The Fukuoka District Court decision demonstrates that an employer and its upper-management officers must take the necessary measures required to maintain a non-hostile work environment for its employees and prevent violations of employees' personal rights. Employers who neglect to do so may be held liable for the nonperformance of their contractual duties under Article 415 of the Civil Code. Further, when an employee's personal rights are violated and the employee is prevented from performing his or her task, the company and the officers in charge of administration, including the president and the senior executive, are responsible for restoring a non-hostile work environment for employees. If the administrative officers neglect to fulfill this responsibility, they may be held liable for violating Article 709 of the Civil Code.

reported incidents involved superiors in the workplace. Reuters Newsline, Mar. 18, 1993, available in LEXIS, News Library, Wires File. According to a regional government survey conducted in Southern Japan, in three out of four cases, the offending party was the boss. Id. See Smith, supra note 153, at 12 (stating that Fukuoka decision encouraged women all over Japan to sue for damages on grounds of sexual harassment). Following the decision, more serious sexual harassment claims were made around Japan, including claims of rape by a superior. Id.; Woman Wins 800,000 Yen in Sexual Harassment Suit, Japan Econ. Newswire, May 26, 1994, available in LEXIS, AsiaPC Library, Japan File (stating that Kanazawa District Court ordered construction company and its president to pay damages to female employee fired after rejecting president’s sexual advances); Miho Yoshiwaka, Japanese Goes Public Against Sexual Harassment, Reuters Library Report, May 11, 1993, available in LEXIS, News Library, Wires File (discussing first sexual harassment case where plaintiff identifies herself publicly); Woman Demands Compensation, Apology, Over Harassment, Japan Econ. Newswire, July 14, 1992, available in LEXIS, AsiaPC Library, Japan File (discussing suit filed in Yokahama District Court by woman demanding compensation and public apology over alleged sexual harassment by supervisor).

See supra note 47 and accompanying text.

MNP (Civil Code), art. 415. Article 415 states that “[w]hen the debtor does not perform the obligation in accordance with the intent and purpose of the same . . . the creditor may demand compensation for accruing damage. The same applies when performance has become impossible owing to a cause attributable to the debtor.” Id.

MNP (Civil Code), art. 709 (“A person who has intentionally or negligently violated the right of another is bound to compensate any damages resulting in consequence.”).