

STATE OF ISRAEL

MINISTRY OF JUSTICE

PREVENTION of SEXUAL HARASSMENT LAW, 5758-1998

Purpose

1. The purpose of this law is to prohibit sexual harassment in order to protect human dignity, liberty and privacy and to promote equality between the sexes.

Definitions

2. In this Law -

“in service” means in the service of the Security Forces, where there is no employee-employer relationship between the Security Forces and the person serving in the Security Forces;

“has shown” means has shown by words or by conduct, provided that there is no reasonable doubt as to the meaning of such conduct;

“reference” means reference in writing, orally, by way of a visual or vocal medium, including computer or computer material, or by conduct;

“the Employment (Equal Opportunities) Law” means the Employment (Equal Opportunities) Law, 5748-1988¹ ;

“the Penal Law” means the Penal Law, 5737-1977²;

“helpless person” - as defined in section 368A of the Penal Law;

“Security Forces” means the Israel Defence Forces, the Israel Police, the Prison Service and the other security organizations of the State;

“computer” and “computer material” - as defined in the Computers' Law, 5755-1995³;

¹ Sefer HaChukkim of 5748, p. 38

² Sefer HaChukkim of 5757, p. 226

³ Sefer HaChukkim of 5755, p. 366

“labour relations sphere ” means the workplace, another place where an activity on behalf of the employer takes place, in the course of employment or where, in any place whatsoever, a position of authority in a work relationship is being exploited;

“manpower contractor” - as defined in section 1 of the Employment of Persons by Manpower Contractors Law, 5756-1996⁴;

“minor” means a person who has not yet attained the age of 18.

Sexual Harassment and Adverse Treatment

3. (a) Each of the following acts constitutes sexual harassment:
- (1) blackmail by way of threats, as defined in section 428 of the Penal Law, where the act demanded to be performed by the person is of a sexual character;
 - (2) indecent acts, as defined in sections 348 and 349 of the Penal Law;
 - (3) repeated propositions of a sexual character to a person, where that person has shown to the harasser that he is not interested in the said propositions;
 - (4) repeated references directed towards a person, which focus on his sexuality, where that person has shown to the harasser that he is not interested in the said references;
 - (5) an intimidating or humiliating reference directed towards a person concerning his sex, or his sexuality, including his sexual tendencies;
 - (6) propositions or references as described in subsections (3) or (4), directed towards one of those enumerated in subsections (a) to (c), in such circumstances as specified in such subsections, even where the person harassed has not shown the harasser that he is not interested in the said propositions or references:
 - (One) a minor or a helpless person, where a relationship of authority, dependence, education or treatment is being exploited;
 - (Two) a patient undergoing mental or medical treatment, where a relationship of authority between the patient and the person treating him is being exploited;
- (Three) an employee in the labour relations sphere and a person in service, within the framework of such service, where a position of authority in a work relationship or in service is being exploited.
- (Four) Prejudicial treatment is any harmful act, the source of which is sexual harassment or a complaint or court action filed in relation to sexual harassment.

Prohibition of Sexual Harassment and of Adverse Treatment

4. A person may not sexually harass another or subject him to prejudicial treatment.

⁴ Sefer HaChukkim of 5756, p. 201

Sexual Harassment and Adverse Treatment are Offences

5. (a) A person who sexually harasses another, as defined in section 3(a) (3) to (6) shall be liable to of imprisonment for a term of two years.
- (Two) A person subjecting another to adverse treatment, as defined in section 3(b), is liable to imprisonment for a term of three years.
- (c) A person who sexually harasses another, as defined in subsection (a), and subjects him to adverse treatment, as stated in subsection (b), is liable to imprisonment for a term of four years.
- (Four) The provisions of sections 2(a) and 2(b) of the Amendment of Procedure (Examination of Witnesses) Law, 5718-1957⁵, shall apply to the examination of a person harmed by an offence under this section and to his evidence concerning such an offence.
- (Five) The provisions of sections 352 of the Penal Law shall apply to the publication of the name of a person harmed under this section.

Sexual Harassment and Adverse Treatment are Civil Wrongs

6. (a) Sexual harassment and adverse treatment are civil wrongs, and the Civil Wrongs Ordinance [New Version]⁶, shall apply to such acts, subject to the provisions of this Law.
- (Two) A court may award compensation for sexual harassment and for adverse treatment to an amount which shall not exceed NIS 50,000, without damage having to be proved; this amount shall be updated on the 16th of each month in accordance with the rate of excess of the new index over the basic index;
- for the purposes of this subsection -
- “index” means the cost of living index published by the Central Bureau of Statistics;
- “the new index” means the index for the month last preceding the month of updating;
- “the basic index” means the index for the month of March, 1998.

⁵ Sefer HaChukkim of 5718, p. 16

⁶ Laws of the State of Israel, New Version 10, p. 266

(c) A court, or a labour court, as the case may be, shall not hear an action in respect of a civil wrong under this section or under section 7 which has been filed after three years have elapsed from the date upon which the cause of action has arisen.

Steps to be taken by an employer

7. (a) An employer has a duty to take such steps as are reasonable in the circumstances, so as to prevent sexual harassment or adverse treatment in the labour relations sphere, on the part of his employee or on the part of a person in charge on the employer's behalf, even where such a person is not his employee; an employer is also obliged to deal with cases of sexual harassment and adverse treatment. To this end, an employer is obliged to:

- (1) prescribe an efficient procedure for filing a complaint in respect of sexual harassment and for the examination of the complaint;
- (2) deal efficiently with a case of sexual harassment or of adverse treatment which has come to his notice and do everything within his power to prevent the recurrence of the said acts and to rectify the harm caused to the complainant as a result of sexual harassment or adverse treatment.

(Two) An employer who employs more than 25 employees shall, in addition to his duties under subsection (a), prescribe a code of practice which shall include the principal provisions of this Law concerning sexual harassment and adverse treatment in the labour relations sphere and which shall detail the procedures prescribed by the employer for filing complaints in respect of sexual harassment or adverse treatment and for dealing with such complaints prescribed by the employer (hereinafter -"code of practice"); the employer shall publish the code of practice among his employees.

(c) An employer who has failed to comply with his duties under subsections (a) (1) and (2) and (b) shall be liable for a civil wrong pursuant to section 6 and for a civil wrong for harmful conduct as defined in section 7 of the Employment (Equal Opportunities) Law, committed, in the labour relations sphere, by his employee or by a person in charge on behalf of the employer even if such a person is not his employee.

(Four) The Minister of Justice, with the consent of the Minister of Labour and Social Affairs and with the approval of the Knesset Committee for the Promotion of the Status of Women, shall prescribe -

- (1) rules in relation to the implementation of employers' duties under this section; such rules may be of general application or may apply to types of workplaces, branches of employment or professions;
- (2) a model code of practice which shall serve as a model for employers (hereinafter referred to as a model code of practice).

(e) In order to implement the duties of an employer under subsection (b) the employer shall adapt the model code of practice as required.

(f) For the purpose of this section, "adverse treatment" - includes harmful conduct within the meaning of section 7 of the Employment (Equal Opportunities) Law.

- (Seven) The provisions of this section shall apply *mutatis mutandis* to institutions which provide theoretical or professional education to persons of adult age, and for this purpose the institution shall be regarded as the employer; the teacher or the lecturer shall be regarded as the employee or person in charge on behalf of the employer; and the pupil or student shall be regarded as the employee.

Failure to Publish a Code of Practice is an Offence

8. An employer who has failed to publish a code of practice pursuant to section 7(b) is liable to a fine and to an additional fine for every week in which the offence continues in the amount of the fine prescribed by section 61(c) of the Penal Law.

Extension of Application

9. The provisions of this Law in relation to employers and employees shall apply, *mutatis mutandis* also to a person who in practice employs another through a manpower contractor and to a person so employed.

Jurisdiction of the Labour Court

10. (a) The Labour Court shall have exclusive jurisdiction in civil proceedings pursuant to sections 6, 7 and 9 in one of the following -
- (1) sexual harassment of an employee, in the labour relations sphere, committed by an employer or a person in charge on his behalf, or by another employee;
 - (2) adverse treatment of an employee, in the labour relations sphere, on the part of an employer or a person in charge on the employer's behalf, or on the part of another employee;
 - (3) the liability of an employer under section 7 in respect of sexual harassment or adverse treatment of an employee, in the labour

relations sphere, committed by a person in charge on behalf of the employer or committed by another employee;

(Two) The provisions of this section shall not apply to a civil proceeding in respect of sexual harassment or adverse treatment in service.

(c) The provisions of sections 10, 10A, 12 and 13 of the Equal Opportunities in Employment Law shall apply to proceedings pursuant to this section.

Status of the State

11. This Law shall apply to the State; for the purposes of sections 7 and 8, where there is no employee-employer relationship between the Security Forces and the person serving in the Security Forces, the Security Forces shall be regarded as the employer and the person serving shall be regarded as the employee.

Saving of Laws

12. The provisions of this Law shall not derogate from the provisions of any other law.

Implementation and Regulations

13. The Minister of Justice is charged with the implementation of this Law and may, with the approval of the Knesset Committee for the Promotion of the Status of Women, publish regulations in any matter concerning implementation.

Duty to Make Regulations

14. Regulations pursuant to section 7 shall be presented for the first time for approval by the Knesset Committee for the Promotion of the Status of Women within five months from the date of publication of this Law.

Amendment of the Employment (Equal Opportunities) Law

15. In the Employment (Equal Opportunities) Law, 5748-1988 -

(1) Section 7 shall be replaced by -

“Harmful Conduct based on Sexual Harassment

7.(a) In the labour relations sphere an employer or a person in

charge on his behalf shall not harm an employee or a person seeking employment in the matters enumerated in section 2 or in any other way, where the source of such harmful conduct is one of the following:

- (1) Sexual harassment of an employee or of a person seeking employment committed by an employer, a person in charge on the employer's behalf or by another employee;

in this Law, "sexual harassment" has the same meaning as in the Prevention of Sexual Harassment Law, 5758-1998 (hereinafter referred to as the Prevention of Sexual Harassment Law), provided that in respect of harmful conduct the source of which is sexual harassment under section 3(a)(3) and (4) of the said Law, a single proposition or reference is sufficient;
 - (2) a complaint or a court action filed by an employee in respect of harmful conduct as described in in this section;
 - (3) Assistance given by an employee to another employee in respect of harmful conduct as described in this section;
- (Two) The provisions of section 6(b) shall apply to harmful conduct, the source of which is a complaint or court action as described in subsection (a)(2) and (3).
- (Three) The provisions of this section in relation to employers and employees shall apply *mutatis mutandis* also to a person who in practice employs another through a manpower contractor and to a person so employed.”;
- (2) in section 9, subsection (b) shall be replaced by -
“(b) In an action by an employee or by a person seeking employment for infringement of section 7(a), the onus of proof that he has not engaged in harmful conduct as stipulated in the said subsection shall lie with the employer, where the employee or the person seeking employment has proved the existence of circumstances enumerated in one of paragraphs (1) to (3) of section 7(a);
 - (3) in section 10 -
(One) the section shall be numbered “(a)” and at the end of paragraph (1) add the following: “however in a civil proceeding in respect of harmful conduct as stated in section 7, the Labour Court may award compensation of up to NIS 50,000 without damage having to be proved.”
- (Two) after subsection (a) insert:

(Three) the amount prescribed in subsection (a)(1) shall be updated on the 16th of each month in accordance with the rate of excess of the new index over the basic index; for the purpose of this subsection -
“index” means the cost of living index published by the Central Bureau of Statistics;
“the new index” means the index last preceding the month of adjustment;
“the basic index” means the index for the month of March 1998.”;

(4) in section 10A subsection (a) shall be replaced by the following:

“(a) In a proceeding under this Law in respect of harm the source of which is one of the matters enumerated in section 7(a) or in respect of discrimination on the grounds of sexual tendencies under section 2(a), the Labour Court may sit *in camera*; where a prosecutor or a complainant has requested a hearing *in camera*, the Court shall accede to his request, unless the Court shall decide otherwise on special grounds which shall be recorded.”

(5) at the end of section 14 add: “however in respect of a civil action pursuant to section 7, the period of prescription shall be three years from the day upon which the cause of action has arisen.”

(6) In section 15 -

(One) in subsection (a), “6, 7 or 8” shall be replaced by “6 or 8”;

(Two) insert after subsection (a) -

“(a1)(1) A person contravening the provisions of section 7 shall be liable to imprisonment as prescribed in section 5(b) of the Prevention of Sexual Harassment Law;

(2) An employer or a person in charge on his behalf, who

has sexually harassed his employee pursuant to section 3(a) of the Prevention of Sexual Harassment Law and has harmed him as stated in section 7, shall be liable to imprisonment as prescribed in section 5(c) of the said Law.

(a2) The provisions of section 5(d) and (e) of the Prevention of Sexual Harassment Law, shall apply to an offence under subsection (a1).”;

(7) in section 18, after subsection (d), insert:

(Five) An inspector appointed pursuant to subsection

(Six) shall also supervise the implementation of section 7(b)

of the Prevention of Sexual Harassment Law, and to this end he shall be invested with the powers stated

in this section.”

Amendment of the Labour Courts Law

16. At the end of the Second Schedule of the Labour Court Law, 5729-1969⁷, add: “section 8 of the Prevention of Sexual Harassment Law, 5758-1998.”

Amendment of the Courts Law

17. At the end of section 68(b)(5) of the Courts Law [Consolidated Version], 5744-1984⁸, add: “or an offence pursuant to the Prevention of Sexual Harassment Law, 5758-1998.

Commencement

18. (a) This Law shall come into force upon the expiry of six months from the date of the publication of this Law.

(Two) Notwithstanding the provisions of subsection (a), section 7 shall not come into force before the expiry of one month from the publication of regulations thereunder.

⁷ Sefer HaChukkim of 5729, p. 70.

⁸ Sefer HaChukkim of 5744, p. 198.

