

AIM

1. The aim of this Code of Practice is to provide guidelines to employers on the establishment of in-house mechanisms at the enterprise level to prevent and eradicate sexual harassment in the workplace.

RATIONALE

2. Sexual harassment problem arises out of general workplace relationships involving personal behaviour of people within the enterprise. Therefore, the most effective way of dealing with the problem is to tackle it at workplace itself so that it can be confronted on the spot and nipped in the bud.

3. The best approach to combat sexual harassment in the workplace is through the establishment of preventive and redress mechanism at the enterprise level. A decision has been made that this approach will form the basis of our national policy and practice in dealing with sexual harassment in the workplace.

MEANING OF SEXUAL HARASSMENT

4. For the purpose of this Code, sexual harassment means:

Any unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment:

that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her/his employment; or

that might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or a threat to his/her well-being, but has no direct link to her/his employment

5. Based on the definition in article 4 above, sexual harassment may be divided into two categories, namely sexual coercion and sexual annoyance

Sexual coercion is sexual harassment that results in some direct consequence to the victim's employment. An example of sexual harassment of this coercive kind is where a superior, who has the power over salary and promotion, attempts to coerce a subordinate to grant sexual favours. If the subordinate accedes to the superior's sexual solicitation, job benefits will follow. Conversely, if the subordinate refuses, job benefits are denied.

Sexual annoyance, the second type of sexual harassment, is sexually-related conduct that is offensive, hostile or intimidating to the recipient, but nonetheless has no direct link to any job benefit. However, the annoying conduct creates a bothersome working environment which the recipient has to tolerate in order to continue working. A sexual harassment by an employee

against a co-employee falls into this category. Similarly, harassment by a company's client against an employee also falls into this category.

6. Within the context of this Code, sexual harassment in the workplace includes any employment-related sexual harassment occurring outside the workplace as a result of employment responsibilities or employment relationship. Situations under which such employment-related sexual harassment may take place includes, but is not limited to:

- at work-related social functions;
- in the course of work assignments outside the workplace;
- at work-related conferences or training sessions;
- during work-related travel;
- over the phone; and
- through electronic media.

7. It is essential to emphasize that sexual harassment refers to sexual conduct which is unwanted and unwelcome to the recipient, It is also a sexual conduct which is imposed on and unsolicited or unreciprocated by the recipient.

FORMS OF SEXUAL HARRASMENT

8. Sexual harassment encompasses various conducts of a sexual nature which can manifest themselves in five possible forms, namely:

verbal harassment :

e.g. offensive or suggestive remarks, comments, jokes, jesting, kidding, sounds, questioning.

non-verbal/gestural harassment :

e.g. leering or ogling with suggestive overtones, licking lips or holding or eating food provocatively, hand signal or sign language denoting sexual activity, persistent flirting.

visual harassment :

e.g. showing pornographic materials, drawing sex-based sketches or writing sex-based letters, sexual exposure.

psychological harassment :

e.g. repeated unwanted social invitations, relentless proposals for dates or physical intimacy.

physical harassment :

e.g. inappropriate touching, patting, pinching, stroking, brushing up against the body, hugging, kissing, fondling, sexual assault.

OUTLINES OF IN-HOUSE MECHANISM TO COMBAT SEXUAL HARRASMENT IN THE WORKPLACE

9. A comprehensive in-house mechanism that employers are encouraged to establish at the enterprise level to prevent, handle and eradicate sexual harassment in the workplace should include at least the following elements:

- a policy statement prohibiting sexual harassment in the organisation;
- a clear definition of sexual harassment;
- a complaints/grievance procedure;
- disciplinary rules and penalties against the harasser and against those who make false accusation;
- protective and remedial measures for the victim; and
- promotional and educational programmes to explain the company's policy on sexual harassment and to raise awareness of sexual harassment and its adverse consequences among the company's employees, supervisors and managers.

POLICY STATEMENT PROHIBITING SEXUAL HARRASMENT

10. A policy statement on sexual harassment is a documented message from the management to the management to the employees expressing the company's policy, philosophy and commitment to prevent and eradicate sexual harassment in order to create a positive and conducive working environment in the organization.

11. The policy statement should come from the top management to ensure its acceptance and compliance by the shop-floor employees, supervisors and managers throughout the organization.

12. The policy statement should contain at least the following matters:

- a declaration prohibiting sexual harassment in the organization;
- a caution stating that sexual harassment constitutes breach of the company's policy and will incur disciplinary actions up to and including dismissal;
- a directive stating that supervisors and managers have a positive duty to implement the policy and to demonstrate leadership by example.

A CLEAR DEFINITION OF SEXUAL HARRASMENT

13. A clear definition of sexual harassment constitutes a vital component of an in-house mechanism

for dealing with the problem. A detailed definition is necessary to ensure that employees as well as the management have a clear idea of conducts that constitute sexual harassment.

14. The main objective of the definition is to make individuals in the organization fully aware of certain conducts and attitudes that can be regarded as unwelcome and offensive to others, and therefore prohibit such conducts in the organization.

COMPLAINT/GRIEVANCE PROCEDURE

15. Although an effective preventive action and programme may be successful in deterring sexual harassment, but problems are bound to arise. Therefore, there is a necessity for the establishment of a complaint or grievance procedure to deal with each problem as and when it arises.

16. Due to the sensitive and personal nature of sexual harassment complaints, employers should develop a separate complaint procedure to deal specifically with such complaints. The normal complaint procedure is often unsuitable for sexual harassment complaints.

17. A complaint procedure should provide for measures to protect victims from further embarrassment in the course of reporting and investigation into the complaint.

18. A complaint procedure should contain at least the following elements:

- a step-by-step procedure for reporting and processing of a complaint with a suitable time limit for each step;
- an investigation procedure; and
- an appeal procedure to enable a dissatisfied party to appeal against the outcome of an investigation to a higher authority.

DISCIPLINARY RULES AND PENALTIES

19. To ensure that a policy and a mechanism to prevent sexual harassment is effective, it is essential that offenders be disciplined.

20. The disciplinary rules should set out the penalties to which the harasser will be liable if the offence is committed. The nature and type of penalty should depend upon the severity of the offence.

21. Since sexual harassment is a form of misconduct, any disciplinary action against the accused employee should be preceded by a proper domestic inquiry.

22. To deter false and fabricated accusations against any person, the rule should also set out disciplinary penalties against those who make such accusations.

PROTECTIVE AND REMEDIAL MEASURES FOR THE VICTIM

23. To encourage victims to report sexual harassment, there should be adequate measures to ensure maximum confidentiality so as to minimise embarrassment to the victim especially at the time of reporting and in the course of investigation into the complaint.

24. In a case where the victim of sexual harassment has suffered a loss, such as a demotion or a denial of a promotion, it is appropriate to restore such person to his or her proper position on the job.

25. The victim should also be compensated for any monetary loss arising out of a denial of employment-related benefits which were rightfully due to him or her.

26. Where the complaints is found to be unjustified and baseless, appropriate remedy should be granted to the accused person if there has been any loss suffered by such person.

PROMOTIONAL AND EDUCATIONAL PROGRAMMES

27. Prevention is the most effective tool and employer can use to eradicate sexual harassment in the workplace. Preventive action includes:

- communication
- education; and
- training.

28. Merely developing a corporate policy and preventive mechanism on sexual harassment is not sufficient. It is the dissemination of the policy and mechanism among the employees and supervisors could be educated in the area of sexual harassment.

29. In addition to the need for communication, the employer should provide a programme by which

employees and supervisors could be educated in the area of sexual harassment.

30. The employer should also provide special training sessions for supervisory and managerial staff to train them to recognize potential problems and learn how to deal with them as and when they arise. The necessity to provide training is much greater for those who are assigned to function as investigators and counselors.

THE INVOLVEMENT AND ROLE OF TRADE UNION

31. Sexual harassment can be prevented, handled and eradicated most effectively if there is a joint employer/trade union action.

32. In the formulation and establishment of an in-house mechanism to prevent, handle and eradicate sexual harassment, the employer should adopt a consultative approach by involving

the trade union. The involvement of trade union can pave the way for a stronger commitment by the employees to accept and comply with the in-house mechanism

33. Trade unions have a clear role to play in helping to create a climate at work which is free from sexual harassment. Trade unions can contribute to the prevention of sexual harassment through an awareness and sensitivity towards the issues among the members and by ensuring that the standards of conduct of their members do not cause offence.

34. Trade unions should also co-operate with employers in carrying out promotional and educational programmes towards creating a work culture that will ensure a safe and healthy working environment where individual employees, irrespective of status or position, are treated with dignity and free from any form of harassment, humiliation and intimidation of a sexual nature.