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Code of Conduct on Adopting Workplace Violence and Harassment Prevention Policies

Introduction

Violence and harassment in the workplace negatively affect the extent to which workers enjoy work and production in a safe work environment, as it negatively affects the dignity and well-being of workers, and develops psychological anxiety and pressure for victims. Consequently, if ignored it may lead to high costs incurred by companies through loss of productivity, low worker morale, absenteeism from work, and in most cases resignation. This means that the facility should incur many losses as a result to losing a workforce and needing to hire and train others all over again.

"Tamkeen for Legal Aid and Human Rights" has developed a code of conduct for the prevention of violence and harassment in the workplace as part of a program implemented in cooperation with the Canadian Fund for Local Initiatives support, entitled "Prevention of Violence and Harassment in the Workplace", which aims to help employers and employees develop their own policies and instructions or integrate this content into their existing policies and instructions, in order to prevent and combat sexual harassment and promote safe, healthy and productive workplaces.

The code of conduct's objective

This Code focuses on providing guidance to employers, employers' organizations, workers and trade unions on how to effectively implement instructions to prevent and combat sexual violence and harassment in the workplace in accordance with the Labour Law and ILO Convention No. 190 on Violence and Harassment in the World of Work.

Scope and comprehensiveness

This code applies to all private companies and factories regardless of size. Small companies may need to modify some of the practical content specified in the Code to suit their operational structures; nevertheless, modifications must always be consistent with the Code's general principles.

The term “workplace” in the Code refers to:

- ☑ The specific location where the work is carried out.
- ☑ In places where the worker receives a wage, takes a break, eats a meal, or uses sanitary facilities, washing and changing facilities.
- ☑ During trips, travel, training, events, or social activities related to work.
- ☑ During work-related communications.
- ☑ In accommodation provided by the employer.
- ☑ Or when heading to or returning from work.

Definition and identification of forms of sexual harassment

“Sexual harassment” is defined as any act of a sexual nature aimed at degrading the dignity of women and men, and creating a threatening, hostile, degrading or aggressive work environment that is unacceptable to the recipient.

Sexual harassment may take one of the following forms:

1. Quid pro Quo: A work-related benefit – such as an increase in wages, promotion, or even continued employment – conditional on the victim accepting a claim to engage in some form of sexual behavior.

2. Hostile work environment: in which the behavior creates an environment characterized by intimidation or humiliation of the victim.

☑ What qualify as sexual harassment

Behaviors that can be considered as sexual harassment: physical violence, groping, unnecessarily close proximity, verbal comments and questions about appearance, lifestyle, sexual orientation, obscene phone calls, non-verbal whistling, sexual innuendo, and display of sexual material.

☑ What does not qualify as sexual harassment

Socially, culturally acceptable, and appropriate occasional compliments are not considered sexual harassment. And any relationship which is consensual except for sexual relations with children

Forms of sexual harassment

Sexual harassment in the workplace can be physical, verbal or non-verbal, and the main forms include as follows:

A. Physical forms of sexual harassment, such as any unwanted contact, ranging from intentional touching, foreplay, hugging or kissing for the purpose of sexual assault or rape.

B. Verbal forms of sexual harassment involve comments that are socially and culturally inappropriate and undesirable with sexual overtones such as sexy jokes or comments about a person's dress or body, made in their presence or directed at them. It also includes ongoing offers, unsolicited requests or ongoing personal invitations to hang out.

C. Nonverbal forms of sexual harassment would encompass unwanted gestures, sexually suggestive body language, inappropriate exposure, lewd looks, frequent winks, and finger gestures. They also include the unwanted display of pornography, sexually explicit images, screen savers or stickers as well as sexually explicit emails, notes or text messages.

Roles and Responsibilities

☑ Employers

The role and responsibility of every employer is to create and maintain a work environment free of sexual harassment, so every employer must adopt, promote, implement and monitor anti-sexual harassment policies within the workplace instructions, collective agreement or other legal instructions of the company. Policies must be developed jointly with the union to ensure their effective implementation. Employers should respond immediately to any accusation of sexual harassment, ensuring that victims of alleged harassment do not fear reprisals or feel that their complaints are ignored or minimized.

☑ Workers

All workers, regardless of their gender, position, age, or contract type, are responsible for complying with workplace sexual harassment prevention policies, refraining from committing any act that constitutes harassment and reporting any unacceptable behavior.

☑ Trade Unions

Trade unions have a responsibility to participate in the development and implementation of sexual harassment prevention policies and to ensure that issues related to sexual harassment in the workplace are negotiated fairly and transparently. Trade unions must also provide information, advice and representation to workers who have been sexually harassed, as well as for workers against whom allegations of sexual harassment have been made and integrate such information on sexual harassment into routine education and training programs.

☑ Employers' Organizations

Employers' organizations should ensure that employers adopt policies that combat harassment in the workplace and incorporate sexual harassment information into employee orientation, training, and education programs.

☑ Labour Inspectors

Labor inspectors should carefully review company records and practices in order to detect and respond appropriately to allegations of sexual harassment. Labour inspectors should also take the lead in investigating not only allegations of sexual harassment, but any relevant behavior (verbal or non-verbal) reported as undesirable or offensive.

Male and female labour inspectors should engage in specialized training to enable them to detect cases and handle sexual harassment complaints given that female victims of sexual harassment generally feel more comfortable discussing their experience with female inspectors rather than male inspectors.

Recommendations on actions related to sexual harassment in the workplace

1. Company Policies on Sexual Harassment

The company's policies regarding sexual harassment should generally be self-contained. In the case of smaller companies, however, it may be appropriate to link them with the company's policies relating to equality and non-discrimination. It should be written in a simple, straightforward language and easily understood by all participants in the workplace, including illiterate workers. Policies should include the following key items:

- ☑ Prohibition of sexual harassment in the workplace.
- ☑ A clear definition of sexual harassment.
- ☑ Clear and understandable complaint/grievance procedures.
- ☑ Disciplinary rules against the harasser and against anyone making false accusations.
- ☑ Preventive and remedial measures for the victim.

2. Commitment against sexual harassment in the workplace

The policy statement against sexual harassment in the workplace must be clarified by senior management to ensure acceptance and compliance by all workers including supervisors and managers. The policy statement should clearly indicate (a) the company's commitment to ensuring a workplace free of sexual harassment; (b) sexual harassment will not be tolerated under any circumstances; (c) immediate disciplinary action will be taken against any employee if he/she is found to have violated the policies; and (d) supervisors and managers be duty-bound to implement policies with the aim of implementation and leadership by example.

3. Definition

A detailed definition should be included in policies to ensure that all employees – workers, supervisors, and managers – understand what sexual harassment constitutes. And most importantly, emphasizing that sexual harassment is a behavior of an undesirable sexual nature. A list of examples (which may not be exhaustive) needs to be provided. It should also be clear that any consensual, welcoming and reciprocal interaction (except prohibited by laws) is not sexual harassment.

4. Complaint/Grievance Procedure

The complaints procedure should be explained clearly and using simple language. If necessary, these procedures should be presented in formats suitable for those who cannot read the language. The procedures should include that no worker who wants to file a complaint has doubts about what to do and to whom to go. Procedures must be compatible with the size and structure of the company. If necessary, any existing procedures addressing other types of related work may be used or modified. It is recommended that formal and informal grievance mechanisms be introduced. Annex A contains detailed information on these procedures.

5. Penalties and compensation

The company's policies on sexual harassment should clearly indicate the expected disciplinary action to be taken in case of non-compliance. Depending on the severity of the case, penalties can range from apology to the victim or disciplinary warning to counseling, transfer, dismissal or demotion; this disciplinary action should be included in the company's instructions. It should be clear that immediate disciplinary action will be taken against anyone who retaliates against the person who complained of sexual harassment.

If the victim of sexual harassment has suffered damages, such as demotion or cancellation of promotion due to the harassment, it is appropriate to compensate that person reasonably. The victim should also be compensated for any financial loss arising from the denial of work-related benefits that were due to him/her.

Non-employees, such as customers or contractors, should also be notified that if a complaint is filed against them that has been rightfully acknowledged, this may result in termination of the contract, suspension of service or commercial cooperation.

Other procedures:

☑ The company's policies on sexual harassment should propose procedures that ensure maximum confidentiality for all parties involved, both at the time of reporting and during the investigation of the complaint. It must be made clear that staff members will not be victims or subject to penalties for (a) making a complaint in good faith; (b) providing evidence during the proceedings; or (c) giving notice of intent to do so. It should also be clear that during the investigation of the complaint, the employer will not make any assumptions about the guilt or innocence of the alleged harasser.

☑ The implementation of the company's instructions regarding sexual harassment should be carefully monitored by preparing annual reports on the number and type of complaints raised and the method used to resolve them. This information should be analyzed immediately and, if necessary, appropriate policy reviews conducted.

☑ Sexual harassment policies and their specific content should be effectively reported to all employees, including managers, supervisors, workers, clients, customers, contractors, and any other business contacts, including those supplying and receiving goods and services. Moreover, special efforts must be made for workers in remote areas.

☑ Effective means of reporting policies include newsletters, training brochures, training courses, publications, websites, emails, and the display of anti-sexual harassment posters on bulletin boards in co-working areas. And in case workers lack literacy, it is essential to communicate policies verbally.

Good Practices:

1. Regular Training

Regular training sessions on sexual harassment should be held for all employees, including managers, supervisors and workers. The purpose of this training is to: (a) raise awareness about what constitutes sexual harassment; (b) provide details of the company's policies regarding sexual harassment and (c) provide updates or changes made to these policies.

Regular refresher exercises are recommended. Managers and supervisors should be specifically trained to distinguish between appropriate and inappropriate behavior, for the purpose of effectively exercising their role in ensuring that the workplace is free of sexual harassment.

Those identified in the policies as responsible for handling complaints should share special in-depth training on how to prevent sexual harassment. Sessions may vary from a few hours to a full day depending on the type of training being held and the number of staff involved.

2. Confidentiality

Employers should take all measures to ensure that sexual harassment complaints are investigated and handled in a confidential manner without revealing the identities of the parties involved. Only persons specifically appointed by the employer are allowed to deal with such cases; the complainant, his/her representative, the defendant, his/her representative, witnesses and interpreters (if necessary) are entitled to participate in the investigation process. Employers must disclose any information required for disciplinary investigation.

Practical Advice for Employers:

- ☑ Formally launch sexual harassment policies at a full staff meeting.
- ☑ Policies must be approved by the CEO or senior management representative which confirms that all employees are required to comply with them.
- ☑ Policies must be distributed to all employees and signed while acknowledging that they have received and understood them.
- ☑ Setting policies on the company's website and internet.
- ☑ Incorporate policies into identification guides for new employees
- ☑ View policies on bulletin boards.

Effective measures to counter workplace harassment:

All managers and supervisors must demonstrate a strong commitment to sexual harassment policies by modeling appropriate behavior and should be regularly viewed by employers through performance reviews.

When hiring managers and supervisors, employers should ensure that the proposed candidates can clearly grasp and handle issues related to sexual harassment or that they are considering having the necessary training either before or immediately after their employment.

Employers have to create a work environment free from sexual harassment. Effective ways to ensure this include: removing abusive, pornographic, or sexually explicit material from the workplace; regular monitoring of policies and procedures for dealing with sexual harassment; mixed (male/female) job interview committees; and well-lit work areas with an electronic monitoring system.

Grievance Procedure:

Informal procedures include reconciliation, mediation, consultation or any other forms such as discussions in order to resolve complaints. The terms "reconciliation" and "mediation" are sometimes used as synonyms, although in some countries, a distinction is made in terms of procedure, with a mediator who makes recommendations and a reformer who facilitates dialogue between the parties but makes no recommendations.

An informal procedure is usually appropriate when:

- ☑ The parties concerned are able to maintain the employment relationship;
- ☑ The allegations are of a less serious nature and the complainant wants to stop;

Informal ways to deal with sexual harassment include:

☑ The complainant wishes to deal with the situation by himself/herself but desires to seek advice on possible solutions;

☑ The complainant asks the supervisor to speak to the defendant harasser on their behalf.

☑ The supervisor conveys the complainant's concerns and reads out the company's policies regarding sexual harassment to the defendant without assessing the facts of the case.

☑ If a complaint is made and the defendant acknowledges his actions the investigation is deemed unnecessary, and the issue is settled through reconciliation or at the complainant's request.

☑ The supervisor or manager monitors unacceptable behavior and takes independent action even in the absence of a complaint.

Conciliation or mediation may, when agreed by the parties, be used at any time during the proceedings. For example, if the complainant initially decided that the proceedings should be formal, but during the proceedings he agreed to mediation instead, then the formal proceedings could be suspended pending the outcome of an informal proceeding. The role of the reformer or mediator is not to impose an agreement but to help the parties

reach a mutually acceptable agreement. Repairers and mediators are required to know labor laws, equality and non-discrimination regulations, legislation on sexual harassment, the terms of any collective agreement, or the company's instructions and policies related to sexual harassment. The reformer or mediator must be impartial throughout the complaints process. In most cases, repairers and mediators are often required to be independent contractors with specialized training. By using informal procedures, the complainant does not waive his right to access formal proceedings or to use those available by law.

If the informal approach did not produce satisfactory results, if the case was of a serious nature or if the conduct continued, it might be more appropriate to initiate formal proceedings.

Formal complaints are usually managed by the Human Resources Department or an individual specifically appointed by the employer. If the complaint is against this department or a specific person working in this department, the proceedings must be administered by an independent external person. Complaints must be investigated and dealt with immediately. In the case of formal investigations, the allegations must be in writing and signed by the complainant. Trade union representatives or employees must be able to file complaints on behalf of one or more workers. While the defendant harasser must receive a copy of the allegations and have the opportunity to respond before the investigation begins.

A thorough investigation must:

Include interviews with complainants and their witnesses as well as defendant harassers and their witnesses.

It is good practice for interviewees to be accompanied by a trusted colleague or trade union representative.

And study all relevant documents, records and personnel files if necessary; and provide a written summary of the entire investigation to the complainant and the defendant harasser;

The parties should be given an opportunity to provide feedback on the content of this summary before the completion of the full report.

If the report is drafted by an independent investigator, the full report must be submitted to the person and/or the department responsible for handling sexual harassment complaints. This report should include who was interviewed, what questions the investigator had asked, the results of the investigation, what possible solutions, and what sanction or other measures may be appropriate.

Support from outside the company can be used if the complainant is not satisfied with the outcome of the internal procedures or has reasons not to trust it.

Committees dealing with sexual harassment issues must include equal representation of men and women to ensure that the views of both women and men are taken into account. It should also include representatives of management and workers. The victim must be attended or accompanied by a representative of his choice in order to participate in dealing with the proceedings.

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