



~~HARASSMENT~~





**BETTER WORK**  
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# GUIDELINES on THE PREVENTION of WORKPLACE HARASSMENT

Guideline for Employers

 Better Work Indonesia

 Betterworkindo



International  
Labour  
Office



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# LEGAL BASIS

The drafting of these Guidelines is based on national and international labor standards as well as relevant legislation, including:

1. The Constitution of the Republic of Indonesia
2. Law Number 39, 1999 on Human Rights;
3. Law Number 13, 2004 on Manpower;
4. Law Number 2, 2004 on Settlement of Industrial Relations Dispute;
5. Criminal Code (KUHP);
6. ILO Convention 100, 1951 on Equal Remuneration for Men and Women Workers for Work of Equal Value, ratified by Law Number 80, 1957;
7. ILO Convention 111, 1958 on Discrimination in Respect of Employment and Occupation, ratified by Law Number 21, 1999;
8. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), ratified by Law Number 7, 1984;
9. Circular Letter No.SE.60/MEN/SJ-HK/II/2006 on the Guidelines on Equal Employment Opportunity in Indonesia.

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# INTRODUCTION

A safe working environment is conducive to achieving strong and productive industrial relations. In order to create such a working environment, it is vital to ensure that the workplace is free from all forms of discrimination, including harassment.

Anyone at the workplace may be prone to various forms of harassment, including sexual harassment and bullying. Each and every form of workplace harassment will disadvantage all parties. For workers, it can result in poor performance, which subsequently reduces work productivity and affects the welfare of the workers and their families. Increased turnover rates and low productivity can potentially affect the economic competitiveness of factories. Harassment in garment factories has been highlighted as a problematic issue by international activists and made big headlines in international media. Violations as well as mere rumors about problems of workplace harassment can seriously impact the relationship between international, reputation-conscious buyers and factories. It is therefore our common concern to create a positive working environment through the prevention of workplace harassment.

Despite this, reports of workplace harassment remain widely prevalent. In particular, many cases of workplace harassment seem to occur in the garment industry. This may be due to a variety of reasons, such as the presence of large numbers of young, inexperienced, rural migrant female workers under the supervision of few men, high

levels of production pressure and abusive disciplinary practices. According to the baseline survey that was conducted by Better Work Indonesia from September 2011 to February 2012, more than 80 percent of female employees reported that they were concerned with sexual harassment.

Such circumstances demand that concrete measures are introduced to offer workers more protection from harassment. It is for this reason that Better Work Indonesia has developed these Guidelines on the Prevention of Workplace Harassment, mainly based on the Guidelines on the Prevention of Sexual Harassment developed by the Indonesian government. These Guidelines are not legally binding, nevertheless, they provide critical guidance and may be referred to by employers, workers and enterprises who are attempting to prevent and effectively respond to workplace harassment.

# WHAT IS WORKPLACE HARASSMENT?

## 1.1 DEFINITIONS

In order to understand workplace harassment and its prevention and necessary responses, the following definitions are provided.

### A. Harassment

Any conduct based on age, disability, HIV status, domestic circumstances, sex, sexual orientation, gender reassignment, race, color, language, religion, political, trade union or other opinion or belief, national or social origin, association with a minority, property, birth or other status that is unreciprocated or unwanted and that affects the dignity of men and women at work.<sup>1</sup>

Harassment frequently involves an abuse of power where the targets can experience difficulties in defending themselves. Harassment at the workplace is any unwelcome or offensive action, repeated or unreasonable act, addressed to a worker or a group of workers that causes difficulty in the performance of an assigned job or causes a worker to feel that he/she is working in a hostile working environment. This can also cause risk to the health and safety of the worker.



### B. Workplace

Based on Law no.1 of 1970, a 'workplace' means a physical place where workers work or that is frequently entered by a worker for business and where there is a source of danger. This includes all rooms, fields, lawns and surrounding areas that constitute parts of, or are connected with the place of work, whether open or closed, moveable or stationary.

From the above definition, it can be inferred that a workplace does not only include physical places where work is performed during the eight daily working hours, such as the office or factory. A workplace also includes all locations where employment-related business is conducted as a result of employment responsibilities or the employment relationship, in locations such as work-related social functions, conferences, training sessions, official business travels, business lunches and dinners, promotional campaigns organized for clients or partners, telephone conversations and communications through electronic media. A workplace therefore extends to locations and working hours outside the eight daily working hours in the office or factory.

<sup>1</sup>.Adapted from Human Rights Act, United Kingdom

# BASIS AND FORMS OF HARASSMENT

## 2.1 BASIS OF HARASSMENT

Harassment is classified as a form of discrimination if it is based on one of the prohibited grounds of discrimination defined in the International Convention or in national legislation. Harassment may be based on factors such as:

- Race
- Gender
- Culture
- Age
- Sexual orientation
- Religious preference

The basis of harassment can differ from one country to another and from one social context to another.

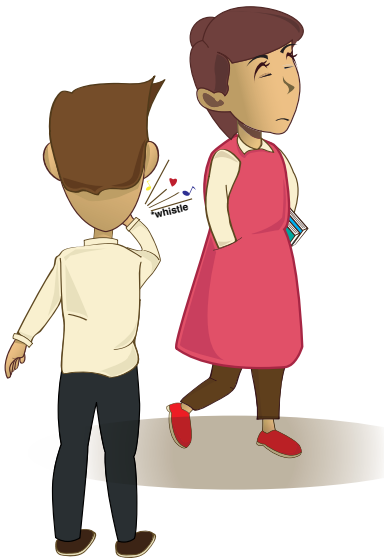
## 2.2 FORMS OF HARASSMENT

Harassment may take the form of words, gestures or actions that tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or that create an intimidating, hostile or offensive work environment. Generally, there are three forms of harassment.

- Physical harassment:** e.g. (sexual) violence or unwelcome physical contact such as kissing or touching
- Verbal harassment:** e.g. comments, offensive jokes, personal insults, derogatory language
- Non-verbal/Visual harassment:** e.g. staring, leering, whistling, threatening behavior, sexually suggestive gestures, or 'freezing' somebody out

- **Examples of Harassment:** Use of ethically derogatory words, phrases, epithets / Demonstration of a racial or ethnic nature such as a use of gestures, pictures or drawings which would offend a particular racial or ethnic group / Comments about an individual's skin color or other racial- ethnic characteristics / Making disparaging remarks about an individual's gender that are not sexual in nature / Negative comments about an employee's religious beliefs (or lack of religious beliefs) / Expressing negative stereotypes regarding an employee's birthplace or ancestry / Negative comments regarding an employee's age / Derogatory or intimidating references to an employee's mental or physical impairment / Prejudiced remarks or tasteless jokes that have to do with an individual's personal beliefs, age, or sexual orientation.

Certain forms of workplace harassment are more common than other forms for various reasons. Sexual harassment and bullying are two of the most prevalent forms of workplace harassment.



# SEXUAL HARASSMENT AT THE WORKPLACE

## 3.1 DEFINITIONS

### A. Sexual Harassment

Sexual harassment is any unwanted verbal or physical conduct or gesture of a sexual nature, request for sexual favors, or other behavior of a sexual nature that makes the recipient feel humiliated, offended and/or intimidated. Sexual harassment also covers situations when such aforementioned conduct is made into a working requirement or when such conduct creates an intimidating, hostile or inappropriate working environment. The recipient's reaction must be reasonable considering the situation and circumstances at hand. In other words, sexual harassment is:

- 1) Misuse of sexual behavior
- 2) Request for sexual favors
- 3) Verbal statement or physical action or gesture that describes a sexual act, or
- 4) Unwanted action of a sexual nature
  - a. The recipient has made it clear that the behavior is unwanted;
  - b. The recipient feels humiliated, offended and/or intimidated by the conduct; or
  - c. The perpetrator should have reasonably anticipated that the other person would be offended, humiliated and/or intimidated by the conduct.

### B. Unwanted Conduct

Unwanted conduct is any conduct that is not requested or invited by the recipient, and that the recipient finds to be undesirable or disrespectful. Whether the behavior is unwelcome is a subjective question judged by the person alleging harassment. In this regard, how the conduct is perceived and experienced by the recipient is important, not the intention behind the conduct. Unwanted conduct can be identified by the following characteristics:

- 1) The victim has explained that the conduct is unwanted,
- 2) The victim feels humiliated, offended and/or intimidated by the conduct, or
- 3) The perpetrator has anticipated that the other person would be offended, humiliated and/or intimidated by the conduct.

Unwanted conduct is any behavior that is not requested or wanted by the victim and that is considered inappropriate.



### C. Reasonableness of Conduct

Reasonableness of conduct can be measured by identifying whether the behavior that led to the conduct that constitutes sexual harassment made the victim feel offended, ashamed or afraid.

The conduct must also be considered within the context in which 'it occurred'. The following factors may be considered: the frequency of occurrence, the intimidated condition, the different situation, etc.

## 3.2 FORMS OF SEXUAL HARASSMENT

Sexual harassment can take various forms. Generally, there are five forms of sexual harassment.

- i. **Physical harassment** includes unwelcome touching in a sexual manner such as kissing, patting, pinching, glancing and staring with lust
- ii. **Verbal harassment** includes unwelcome comments about a person's private life, body parts or appearance, sexually suggestive jokes and comments
- iii. **Gestural harassment** includes sexually suggestive body language and/or gestures, repeated winks, licking lips and gestures with fingers
- iv. **Written or graphic harassment** includes displays of pornographic materials, sexually explicit pictures, screen savers or posters and harassment via emails and other modes of electronic communication
- v. **Psychological/emotional harassment** consists of persistent proposals and unwelcome requests, unwanted invitations to go out on dates, insults, taunts and innuendos of a sexual nature.

## 3.3 WHAT CONSTITUTES SEXUAL HARASSMENT

- i. When the conduct has the effect of creating an intimidating, hostile or offensive work environment.
- ii. In a quid-pro-quo or 'this for that' situation when an owner, employer, supervisor, member of management or co-employee undertakes or attempts to influence the process of employment, terms or conditions of employment or other benefit of an employee or job applicant in exchange for sexual favors.
- iii. When such conduct is offensive and unacceptable for the victim (subjective test, based on the perspective of the recipient).

## 3.4 WHAT DOES NOT CONSTITUTE SEXUAL HARASSMENT

The decisive factor in classifying certain behavior as sexual harassment is the unwelcome nature of the behavior. Besides the 'unwanted' criterion, offensive behavior can also lead to sexual harassment. Interaction which is based on mutual consent is not sexual harassment. Sexual harassment does not refer to occasional compliments that are socially and culturally acceptable and appropriate.





### 3.5 CRIMINAL ACT

Workers and management play key roles in ensuring that the working environment is safe and industrial relations are strong. This requires an agreeable working atmosphere and regular communication between workers and employers based on good faith. High levels of productivity can be achieved if an accommodating, effective and pleasant atmosphere is maintained. To maintain such conditions, it is vital that no indecent conduct, including sexual harassment, occurs in the workplace.

Sexual harassment is a crime triggered by formal complaint or charge, under the Criminal Code. Accordingly, there has to be a complaint from the victim or another party that is aware of the incident. The Criminal Code covers the following forms of sexual harassment:

1. Violence or threat of violence to have sexual intercourse (Article 285)
2. Unpleasant conduct that violates the decency norm, such as molestation, kissing, groping genital parts or the breast area

The 'act of decency', regulated by the KUHP (Penal Code), is based on the morality sense of community on whether an act is deemed as an offense to moral or not, such as people having a bath naked in a public bathroom. A victim of an immoral act has the right to press separate criminal and/or civil charges against an alleged perpetrator.



# BULLYING AT THE WORKPLACE

Workplace bullying is a form of workplace harassment and violence that is becoming more and more widely recognized.

## 4.1 DEFINITION

### a. Workplace Bullying

Workplace bullying means any behavior that is repeated over time, systematic and directed towards an employee or a group of employees. A reasonable person, having regard to the circumstances, must expect such behavior to victimize, humiliate, undermine or threaten and to create a risk to health and safety<sup>2</sup>

### b. Repeated

Repeated refers to the persistent or ongoing nature of the behavior. It can refer to a range of different types of behavior over time.

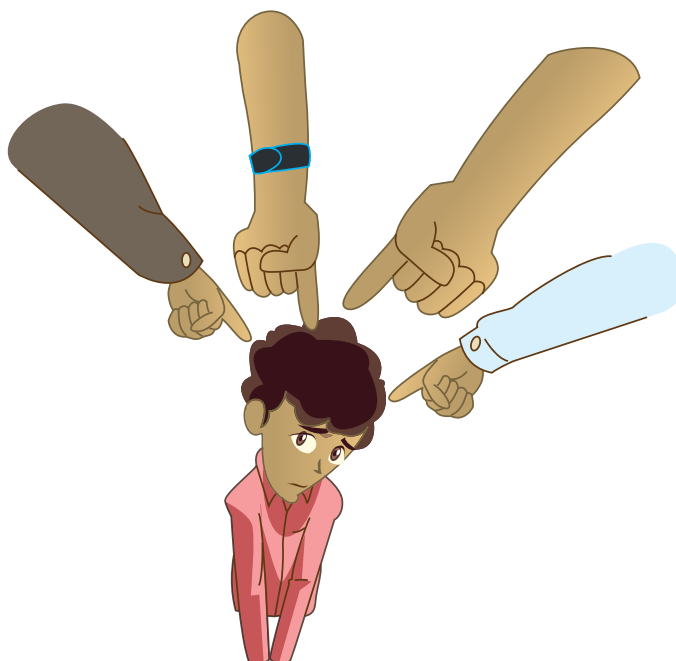
### c. Systematic

Systematic refers to having, showing or involving a method or plan. Whether behavior is systematic or not will depend on an analysis of the circumstances of each individual case, with reference to the general guidelines.

### d. Risk to Health and Safety

Risk to health and safety includes the risk to the emotional, mental or physical health of the person(s) in the workplace.

- **Examples of Workplace Bullying:** *Use of abusive, insulting or offensive language / Behavior or language that frightens, humiliates, belittles or degrades – including criticism that is delivered through yelling and screaming / Teasing or regularly making someone the brunt of practical jokes / Displaying materials that are degrading or offending / Spreading gossip, rumors and innuendos of a malicious nature.*



2. Adapted from ILO (Chappell, D.; Di Martino, V. (2000). Violence at work. Geneva, ILO).

Violence, assault and stalking are extreme forms of bullying that constitute a criminal offense. Such behavior should be reported directly to the police. Examples include, but are not limited to, harmful or offensive initiation practices, physical assault or unlawful threats.

Workplace bullying can also be subtle, including such behavior as:

- Deliberately excluding, isolating or marginalizing a person from normal workplace activities;
- Intruding on a person's space by pestering, spying or tampering with their personal items or work equipment;
- Intimidating a person through inappropriate personal comments, belittling opinions or unjustified criticism.

Covert behavior that undermines, treats less favorably or disempowers others is also bullying, for example:

- Overloading a person with work;
- Setting deadlines that are very difficult to meet or constantly changing deadlines;
- Setting tasks that are unreasonably beyond a person's ability;
- Ignoring or isolating a person;
- Deliberately denying access to information, consultation or resources;
- Unfair treatment in relation to accessing workplace entitlements, such as leave or training.

#### 4.2 WHAT DOES NOT CONSTITUTE WORKPLACE BULLYING?

Workplace bullying does not include:

- Reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline, counsel, retrench or dismiss an employee;
- A decision by an employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with an employee's employment;
- Reasonable administrative action taken in a reasonable manner by an employer in connection with an employee's employment.



# POTENTIAL CONSEQUENCES OF WORKPLACE HARASSMENT

Workplace harassment can have a significant negative impact on individual employees, colleagues and the enterprise, as outlined in the following sections.

## 5.1 CONSEQUENCES TO VICTIMS OF HARASSMENT

- Stress, anxiety, sleep disturbances, Post Traumatic Stress Disorder (PTSD)
- Incapacity to work, loss of self-esteem and self confidence
- Reduced output and performance
- Feelings of social isolation at work
- Physical symptoms of stress, such as headaches, backaches, stomach cramps
- Pain attacks, severe tiredness
- Deterioration of personal relationships
- Depression



## 5.2 CONSEQUENCES TO THE ENTERPRISE

Each of the above mentioned individual consequences can be very costly for the enterprise.

- Increased staff turnover, cost of training new employees
- The breakdown of teams and individual relationships
- Unsafe and hostile work environment
- Bad publicity, poor public image, loss of public confidence
- Deterioration in relations between a factory and international buyers



# HOW TO PREVENT HARASSMENT AT THE WORKPLACE

## 6.1 MINIMUM REQUIREMENTS FOR PREVENTING WORKPLACE HARASSMENT

- **Workers:**

In relation to the harassment issue, workers have to prevent all types of harassment by communicating all company policies on workplace harassment to all workers and by pursuing effective remedial measures.

- **Employers:**

As a minimum, there are two main actions that all employers should take to prevent and settle cases of workplace harassment:

1. Develop, endorse and communicate a workplace harassment policy to all employees. The policy should be disseminated to all employees during recruitment and induction; and
2. Take effective and appropriate remedial action if workplace harassment occurs.

Employers/management are required to refrain from committing acts of harassment. Employers/management should contribute towards creating and maintaining a work environment that is free from harassment by regulating standards to eliminate all forms of harassment.

Employers/management should attempt to ensure that all third parties dealing with the enterprise, such as customers, job applicants or suppliers, are not subjected to harassment by the employer or employees, and vice versa.

All employers, regardless of the size of the enterprise or organization, should take proper steps to prevent harassment in the workplace. This means that employers must actively implement preventative measures to minimize the occurrence of harassment and to respond appropriately when harassment occurs.



Large enterprises or organizations may need to disseminate information and conduct formal training to ensure that all employees are aware of and understand the company policy regarding harassment. In small companies, the most appropriate strategy might be to provide a copy of a harassment policy to employees and hold informal discussions with employees to ensure they understand the policy.

Due to these reasons, all employers are required to establish a mechanism within the company (in-house mechanism), enterprise, organization or institution to prevent and respond to cases of sexual harassment in the workplace. The mechanism must include the following elements:

- a. A policy statement prohibiting harassment;
- b. A clear definition of what constitutes harassment;
- c. A complaints/grievance procedure;
- d. Disciplinary rules and penalties against the harasser and against those who make false accusations;
- e. Protective and remedial measures for the victim;
- f. Promotional and education programs to explain the company policy regarding harassment and to raise awareness of harassment and adverse consequences for breach of the policy should be provided to all employees, supervisors and managers of the company;
- g. Monitoring.

Mechanisms to respond to cases of harassment will be dealt with in detail in chapter 7.

## 6.2 POLICY STATEMENT

A key element in the successful prevention of harassment in the workplace is a strong commitment from all levels within the enterprise or organization, starting from top level executives and upper management to supervisors and all other employees. A policy statement on harassment is a message from management to employees which states the company's policies, philosophy and commitment to prevent and manage harassment in order to create a positive working environment that is conducive to the enterprise or organization. The policy statement should come from upper management to ensure that the policy is accepted and observed by all employees, supervisors and managers throughout the workplace

The policy statement should contain at least the following:

1. The assertion that all workers, job applicants, and any third party associated with the company reserves the right to be treated with dignity and without distinction;
2. A full explanation of the forms of conduct that constitute harassment;
3. A declaration that harassment is not permitted or condoned in the enterprise on the principle of zero tolerance;
4. An assurance that all persons who have been subjected to harassment at the workplace have a right to raise their grievance and appropriate action shall be taken in accordance with the regulations of the company;
5. An explanation of the procedure that should be followed by employees who are victims of harassment and by management and employees who are tasked to manage complaints;
6. An affirmation stating that harassment constitutes a breach of the enterprise's policy and will incur disciplinary actions in accordance with company regulations; and
7. A directive stating that supervisors and managers have a positive duty to implement the policy and to demonstrate leadership by example.

Policy statements should be specific and avoid legalese so that everyone can easily understand them. To ensure effective implementation of such policies in the workplace, the policies can be made part of the company regulations or part of collective labor agreements that must be met as a condition of employment, with corresponding sanctions and disciplinary measures for non-compliance.

## 6.3 PREVENTION

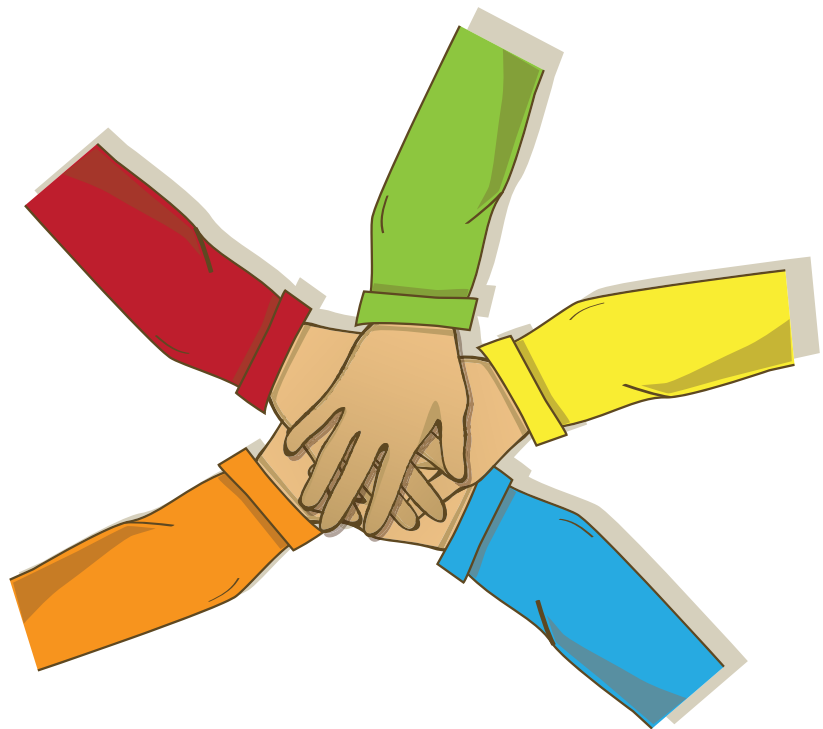
Prevention is the most effective way an employer can address harassment in the workplace. Preventive measures include:

1. Communication: socialize the Guidelines through, for example, a Bipartite Cooperation Forum (LKS Bipartite), Tripartite Cooperation forum (LKS Tripartite) and various print and electronic media.

2. Education: organize orientation and staff induction programs, religious lectures, or specific events such as programmed events.
3. Training: provide specialized training for supervisors and managers to identify problems in the workplace and to develop strategies for prevention; train a Harassment Response Team.
4. Encourage enterprises to commit to the prevention of harassment in the workplace, including taking disciplinary action in the form of:
  - a. Company Policy
  - b. Working Agreement / Company Regulations/ Collective Labor Agreement

Dissemination of policies and mechanisms for the prevention of harassment to all employees and supervisors is equally important. In order to meet the communication needs, employers must in addition provide a program whereby employees and supervisors can be educated about harassment. To this end, all parties must have a high awareness of various ways to create a productive work environment that is free from harassment.

Central and local governments should ensure that guidelines concerning the implementation of these provisions and examples of harassment policies for large, medium and small companies are accessible and available to all employers. Meanwhile, employers have to provide information on harassment in induction programs, as well as education and training for workers. Trade unions should also include information about harassment in the education and training programs for their members.



# MECHANISMS TO RESPOND TO CASES OF HARASSMENT

## 7.1 Grievance Procedures

### I. Grievance Procedures

As part of the enterprise's responsibility to handle harassment in the workplace, employers should implement effective and accessible complaints procedures for employees and other workplace participants. Complaints procedures may differ according to the size and available resources of the enterprise.

An effective complaints procedure conveys the message that the enterprise takes all cases of harassment seriously; is able to prevent harassment and maintain positive workplace relationships; ensures that complaints are dealt with consistently and within a specified timeframe; alerts an enterprise to patterns of unacceptable conduct and highlights the need for prevention strategies in particular areas.

Employers must develop complaints procedures to suit their particular workplace. An effective complaints procedure provides various options to address harassment. For example, a victim can report to his/her supervisors, other managers and staff assigned to handle the complaint. A victim can choose the option that is most suitable to his/her circumstances.

In offering various choices, it is vital that the manager possesses the relevant knowledge and receives the correct training to handle complaints of harassment. Staff should also be made aware that the complaint can be forwarded to the Commission/ Division in the company.

A grievance procedure can be based on:

1. A formal or informal complaint that emphasizes solving the problem instead of the factual evidence or verification of the complaint; or
2. A formal procedure that focuses on whether the factual evidence or verification of the complaint can be proven.

A grievance procedure must at least contain the following elements:

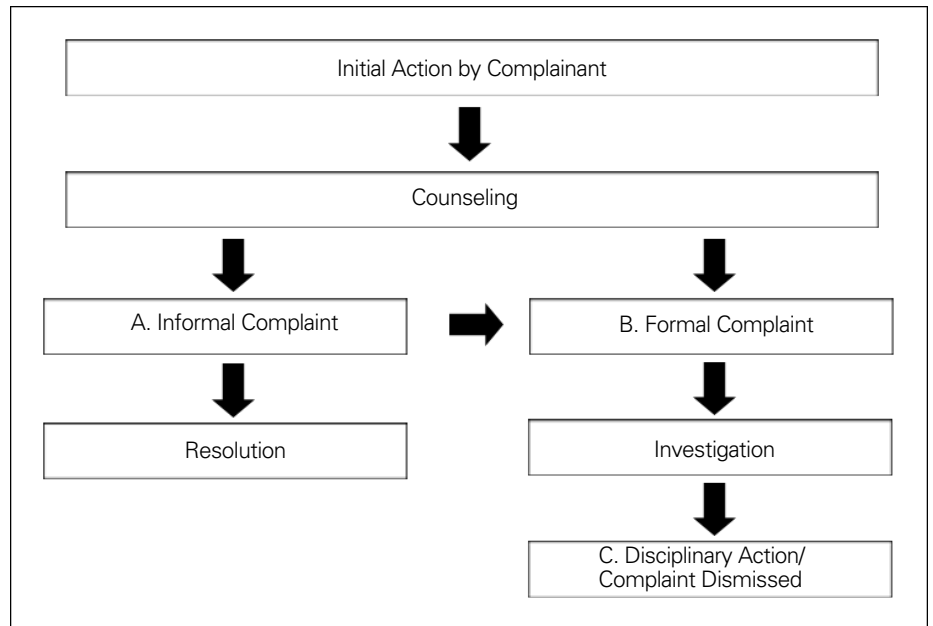
- a. A step by step procedure for the reporting and processing of complaints, with an appropriate timeframe for each step;
- b. Investigation procedures; and
- c. An appeal procedure that allows parties who are not satisfied to appeal against the results of investigations to the higher authorities.

### II. Procedures to Resolve Complaints

Employees should have the option to resolve their harassment grievances through a formal or informal procedure. The diagram below shows the in-house complaints resolution mechanism.



(The Complaints Mechanism)



#### A. Informal Complaints Procedure

Informal procedures emphasize a forward-looking settlement of the conflict, confidentiality and reconciliation, while avoiding questions of liability and compensation. Most people who are subjected to harassment simply want the offensive behavior to stop. Informal complaints must be settled within 30 days with the aim of resolving the case through deliberation. Informal ways of dealing with harassment can include the following actions:

- i. It may be sufficient for the employee concerned to have an opportunity to explain to the offender that their conduct is not welcome.
- ii. The employee concerned may seek confidential advice on possible solutions from a supervisor, trusted colleague or an officer trained to deal with harassment issues.
- iii. The employee concerned may request a supervisor or relevant officer to privately and informally speak with the offender on their behalf.



Employers may also consider creating an alternative informal mechanism for complaints or advice, as follows:

- 1) A telephone information line that can be used by employees to discuss questions or concerns about the harassment without having to reveal their identity, who became the task of an officer trained to deal with harassment issues to explain what action can be taken by employees; and
- 2) A system of mediation between co-workers where the mediators try to find a solution to harassment complaints can be offered to the individual who filed the complaint and the suspected perpetrator(s) of the harassment. Mediation can be a good choice when the alleged perpetrator is a colleague in the enterprise;

- 3) Formal procedures that focus on the broader impact of the harassment and require a sense of responsibility.

#### B. Formal Complaints Procedure

An employee should not be required to exhaust all informal attempts of resolution before choosing to lodge a formal complaint. Employers should ensure that a formal procedure to respond to complaints is established and communicated to all employees. Guided by principles of procedural fairness, the formal procedure should include the following steps:

- i. Conduct a private interview with the complainant and articulate the allegations in writing;
- ii. Convey the allegations to the alleged harasser in full;
- iii. Provide an opportunity for the alleged harasser(s) to respond and defend themselves against the allegations;
- iv. If there is a dispute over facts, investigate the claim, take statements from witnesses and collect other evidence;
- v. A finding is made on whether the complaint is substantiated;
- vi. A written report documenting the investigation process, evidence, findings and recommended outcome(s) is submitted to senior management/the employer;
- vii. The employer/senior management must implement the recommended outcome(s) or decide on an alternative course of action.

In responding to cases of workplace harassment, the following factors must be taken into account:

- 1) Thorough investigation
- 2) Innocent until proven guilty
- 3) Support victim
- 4) Confidentiality
- 5) Transparency
- 6) Time-bound
- 7) Protection of the recipient from retaliation

The committee for the prevention of harassment can conduct the investigations. A small dispute settlement committee should be gender balanced, as well as include a member of senior management and a staff member that is trained in handling harassment.



In handling the complaints, the tasks of the dispute settlement committee are:

- i. To notify employees of their rights and depending on the nature of the harassment, to press separate charges against the alleged harasser.
- ii. Take care to not disadvantage the complainant or to prejudice the alleged harasser if the claim is found to be unwarranted.
- iii. Provide the alleged harasser with an opportunity to tell their version of the story and to identify all supporting witnesses.
- iv. Ensure that the investigation and grievances are handled in a manner that ensures that the identities of the persons involved and all records relating to the harassment complaint are kept confidential.
- v. Ensure that provisional working arrangements are made, if necessary, to ensure the alleged victim and perpetrator may continue working in a safe environment while the case is being investigated. This could include a temporary relocation of the accused to a different workspace.

### C. Disciplinary Action and Sanctions

To ensure deterrence, it is necessary to establish forms of disciplinary action and sanctions. Disciplinary action and sanctions should be included in the company regulations and/or collective labor agreement. The form of disciplinary action or penalty depends on factors such as:

- i. The severity or frequency of the harassment;
- ii. The wishes of the person who was harassed;
- iii. The extent to which the harasser could have anticipated that such behavior was unacceptable or unwanted;
- iv. The level of remorse; and/or
- v. Whether there have been any prior incidents or warnings.

Disciplinary action should be taken in response to:

- i. Any employee who has retaliated against or victimized another employee who has made a harassment allegation or who has served as a witness in a harassment investigation;
- ii. Any employee who makes malicious or vexatious false accusations.

The penalty recommended should be proportional to the gravity of the harassment and consistent within the enterprise. The types of penalties for harassment include:

- i. Issuing a written warning or reprimand;
- ii. Issuing a transfer or reassignment of duties to the perpetrator;
- iii. Removal of management authority or duties;
- iv. Reduction in wages;
- v. In serious cases, suspending or terminating employment;
- vi. Training or counseling of the harasser may be necessary to ensure that the harasser understands why his or her conduct violated the enterprise's harassment policy. Continued monitoring of their conduct is also needed to ensure behavioral change.

If there is insufficient proof to determine the validity of a harassment claim, employers should ensure that the person who made the complaint is not sanctioned. However, if there is insufficient evidence, the employers should:

- 1) Disseminate information on the possibility of sanction in accordance with the regulations;
- 2) Conduct training and awareness raising activities for staff; and
- 3) Monitor the situation carefully.

### D. Protective & Remedial Action

Retaliation is a matter of serious concern, particularly in cases where the alleged harasser is of superior rank. Employers should make an effort to ensure confidentiality during the investigation and protect the complainant. As part of the follow-up measures, the official responsible for overseeing harassment within the office should periodically check up on the complainant to ensure that no adverse actions have been taken.

In cases where the victim of harassment has suffered a loss as a result of the harassment, such as a demotion, a denial of a promotion or monetary loss arising out of a denial of employment-related benefits, it is appropriate to restore the victim to the position he/she would have been in had the harassment not taken place.

Additional remedial measures might include:

- i. Requesting an apology from the harasser;
- ii. Restoration of sick or annual leave taken because of the harassment;
- iii. Enterprise management should consider granting additional sick leave in cases of harassment where an employee requires trauma counseling;
- iv. Removal of negative evaluations from the personal file of the harassment victim that arose as a result of the harassment;
- v. Reinstating the victim if his/her employment was wrongfully terminated;
- vi. Review of the treatment and employment decisions affecting the complainant and witnesses to ensure that such treatment or decisions are not retaliatory in nature;
- vii. Compensation for losses such as medical expenses.

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

## 7.2 EVALUATION & MONITORING

1. The enterprise should instruct supervisors and managers to take all complaints of harassment seriously, whether or not they conform to the enterprise's complaints procedure.
2. The enterprise should monitor supervisors and managers to ensure that they comply with the enterprise harassment policy.
3. Responsible officers should develop annual reports for employers/management on the number and types of complaints that were raised, the manner in which they were dealt with and recommendations flowing from this data, for policy revision and training.
4. The enterprise should regularly evaluate the effectiveness of the existing mechanisms for preventing and handling harassment at the workplace.

The results of the settlement of a harassment case can be used as a basis for workers who want to pursue termination of work with the institution authorized in handling industrial relation dispute settlements.

# END NOTE/REFERENCES

Government of New South Wales. 1996. Harassment Free Workplace: Policy and Guidelines.

Government of South Australia. 2012. Preventing Workplace Bullying: A Practical Guide for Employers.

Government of South Australia. 2012. Dealing with Workplace Bullying: A Practical Guide for Employers.

International Labour Organization. 2011. Equality and Non-discrimination at Work in East and South-East Asia.

International Labour Organization. 2011. Guidelines on Sexual Harassment Prevention at the Workplace.

International Labour Organization. 2011. Solve: Integrating Health Promotion into Workplace OSH Policies, Trainer's Guide.

Washington State Department of Labor and Industries. 2011., Workplace Bullying and Disruptive Behavior: What Everyone Needs to Know (2011).

Queensland Government. 2010. Workplace Harassment: Human Resources Policy.