

Promoting Zero Tolerance for Sexual Harassment

CODE OF CONDUCT

Adoption of this Code makes your organization fully in compliance with the Protection Against Harassment of Women at Workplace Act 2010

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THE UNACCEPTABLE BEHAVIOUR

(1) Sexual Harassment, the behavior described in Clause 1 (i), i.e.

any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment,

is unacceptable behavior in the workplace, including any interaction or situation that is linked to official work or official activity outside the office. It constitutes a violation of this Code.

(2) The management of organizations mentioned in clause 1 (m) is required to incorporate this Code of Conduct as part of their workplace policy.

RESPONSIBILITIES OF THE MANAGEMENT

(3) Management will be responsible to follow this Code in letter and spirit to ensure that each complaint of sexual harassment is addressed responsibly. The management will be impartial in the process and will facilitate a just and fair inquiry without retaliation. The management will not victimize the complainant or the witnesses in the case.

Establishing an Inquiry Committee

(4) The organization shall constitute a standing Inquiry Committee to look into complaints under this Code. The Committee shall consist of three members, of whom at least one member shall be a woman. One member shall be from senior management and one shall be a senior representative of the employees or a senior employee where there is no CBA. One or more members can be co-opted from outside the organization if the organization is unable to designate three members from within as described above. A Chairperson of the Committee shall be designated from amongst them.

(5) In case a complaint is made against one of the members of the Inquiry Committee that member shall be replaced by another for that particular case. Such a member may be from within or outside the organization;

Designating Competent Authority

(6) The management should designate a Competent Authority for implementation of this Code, and as prescribed in the Act.

Awareness Raising and Education of the Employees regarding this Issue

(7) The management shall display copies of the Code in English as well as in languages understood by the majority of employees at conspicuous places in the organization and the work place within one month of the commencement of the Act.

(8) The management will conduct awareness sessions about the Code and the consequences of such harassment at workplace for its employees.

Management's Obligation Towards the Ombudsperson

(19) The Government shall establish an Office of Ombudsperson for the purpose of addressing sexual harassment cases. The Ombudsperson may be requested by an employee to hear cases where an employee feels a fair hearing cannot be obtained within the organization. The management shall respond to any and all queries of the Ombudsperson. In case an employee files a complaint directly with the Ombudsperson or if an employee, after being dissatisfied with the decision of the Inquiry Committee, files an appeal with the Ombudsperson, the management shall abide by the decision made by the Ombudsperson.

PUNISHMENT FOR NON-COMPLIANCE

(10) On failure of an employer to comply with the provisions of this Code, any employee of an organization may file a petition before a District Court and on having been found guilty, the employer shall be liable to a fine which may extend to one hundred thousand rupees, but shall not be less than twenty-five thousand rupees.

(11) In case the management fails to follow instructions from the Ombudsperson for information related to the inquiry process or fails to abide by the decision made by him/her the management will be punished with the same punishment as for contempt of high court.

INFORMAL PROCEDURE OF COMPLAINT

(12) An informal approach to resolve a complaint of harassment may be through mediation between the parties involved and by providing advice and counseling on a strictly confidential basis;

- i) A complainant or a staff member designated by the complainant for the purpose may report an incident of harassment informally to his/her supervisor, or a member of the Inquiry Committee, in which case the supervisor or the Committee member may address the issue at her discretion in the spirit of this Code. The request may be made orally or in writing;
- ii) If the case is taken up for investigation at an informal level, a senior manager from the office or the head office will conduct the investigation in a confidential manner. The alleged accused will be approached with the intention of resolving the matter in a confidential manner;
- iii) If the incident or the case reported does constitute sexual harassment of a higher degree and the officer or a member reviewing the case feels that it needs to be pursued formally for a disciplinary action, with the consent of the complainant, the case can be taken as a formal complaint;
- iv) A complainant does not necessarily have to take a complaint of harassment through the informal channel. S/he can launch a formal complaint at any time;
- v) The complainant may make formal complaint through her supervisor, CBA nominee or worker's representative, as the case may be, or directly to any member of the Inquiry Committee. The Committee member approached is obligated to

initiate the process of investigation. The supervisor shall facilitate the process and is obligated not to cover up or obstruct the inquiry;

- vi) Assistance in the inquiry procedure can be sought from any member of the organization who should be contacted to assist in such a case;
- vii) The employer shall do its best to temporarily make adjustments so that the accused and the complainant do not have to interact for official purposes during the investigation period. This would include temporarily changing the office, in case both sit in one office, or taking away any extra charge over and above their contract which may give one party excessive powers over the other's job conditions. The employer can also decide to send the accused on leave, or suspend the accused in accordance with the applicable procedures for dealing with the cases of misconduct, if required;
- viii) Retaliation from either party should be strictly monitored. During the process of the investigation work, evaluation, daily duties, reporting structure and any parallel inquiries initiated should be strictly monitored to avoid any retaliation from either side;
- ix) The harassment usually occurs between colleagues when they are alone; therefore usually it is difficult to produce evidence. It is strongly recommended that staff should report an offensive behavior immediately to someone they trust, even if they do not wish to make a formal complaint at the time. Although not reporting immediately shall not affect the merits of the case;

FORMAL INQUIRY PROCEDURE

Working of the Inquiry Committee

(13) The Inquiry Committee set up under clause (5) will determine a chairperson among themselves and will fix the time and place for its meetings.

(14) The Inquiry Committee after the receipt of a written complaint, shall—

- (a) within three days communicate in writing the charges and statement of allegations to the accused;
- (b) require the accused, within seven days from the day the charge is communicated to him, to submit a written defense and on his failure to do so without reasonable cause, the Committee shall proceed ex-parte;
- (c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defense of the accused as the Committee may consider necessary and each party shall be entitled to cross-examine the witnesses against him/her.

(15) The Inquiry Committee shall have the power to:

- (a) summon and enforce attendance of any person and examine him on oath;
- (b) require the discovery and production of any document;
- (c) receive evidence on affidavits; and

- (d) record evidence.
- (e) get the complaint or the accused medically examined by authorized doctor, if necessary,

(16) The Inquiry Committee shall have the power to inquire into the matters of harassment under this Code, and may recommend appropriate penalty against the accused. The following provisions *inter alia* shall be followed by the Committee in relation to the inquiry.

- (a) The statements and other evidence acquired in the inquiry process shall be considered as confidential;
- (b) The Inquiry Committee can instruct to treat the whole proceedings confidentially, if necessary.
- (b) An officer in an organization, if considered necessary, may be nominated to provide advice and assistance to both parties;
- (c) Both parties, the complainant and the accused, shall have the right to be represented or accompanied by a Collective Bargaining Agency representative, a friend or a colleague;
- (d) Adverse action shall not be taken against the complainant or the witnesses;
- (e) The Inquiry Committee shall ensure that neither the employer nor the accused shall initiate any action that would create a hostile environment for the complainant so as to pressurize him/her from freely pursuing his/her complaint; and
- (f) The Inquiry Committee shall give its findings in writing by recording reasons thereof.

Findings, Recommendations and Penalties

(17) The Inquiry Committee shall submit its findings and recommendations to the Competent Authority within thirty days of the initiation of inquiry. If the Inquiry Committee finds the accused to be guilty it shall recommend to the Competent Authority for imposing one or more of the following penalties:

(i) Minor penalties:

- (a) censure;
- (b) withholding, for a specific period, promotion or increment;
- (c) hold, for a specific period, at an efficiency bar in the time-scale;
- (d) recovery of the compensation payable to the complainant from pay or any other source of the accused;

(ii) Major penalties:

- (a) reduction to a lower post or time-scale, or to a lower stage in a time-scale;
- (b) compulsory retirement;
- (c) removal from service; and
- (d) dismissal from service.
- (e) Payment of a Fine. A part of the fine can be used as compensation for the complainant. In case of the owner, the fine shall be payable to the complainant.

Implementation of the Decision

(18) The Competent Authority shall impose the penalty recommended by the Inquiry Committee under clause (18) within one week of the receipt of the recommendations.

(19) The Inquiry Committee shall meet on a regular basis and monitor the situation regularly until they are satisfied that their recommendations subject to decision, if any of Competent Authority and Appellate Authority, if applicable, have been implemented.

(20) In case the complainant is in trauma the organization will arrange for *psycho-social counseling or medical treatment* and for additional medical leave.

(21) The organization may also offer compensation to the complainant in case of loss of salary or other damages.

Appeal

(22) Any party on whom minor or major penalty is imposed and is dissatisfied by the decision of the Competent Authority may within thirty days of written communication of the decision file an appeal to the Ombudsperson established for this purpose by the respective Governments at the Federal and Provincial levels.

(23) The Appellate Authority may, on consideration of the appeal and any other relevant material, confirm, set aside, vary or modify the decision within thirty days in respect of which such appeal is made. It shall communicate the decision to both the parties and the employer.

(24) Until such time that the Ombudsperson is appointed, the District Court shall have the jurisdiction to hear appeals against the decisions of Competent Authority.

Mala Fide accusation

(25) The Inquiry Committee may recommend to Ombudsperson for appropriate action against the complainant if allegations leveled against the accused are found to be false and made with mala fide intentions.

COMPLAINTS TO OMBUDSPERSON

(26) Any employee shall have the option to file a complaint either to the Inquiry Committee or the Ombudsperson. In case of filing a complaint with the Ombudsperson the management will respond to any inquiries that the Ombudsperson might have regarding information related to the case (as per clause 10). It will be mandatory for the management to abide by the decision of the Ombudsperson.