

Code of Conduct and Guidelines  
to Prevent and Address  
Sexual Harassment  
in Workplaces

International Labour Organization  
Employers' Federation of Ceylon

2013  
Employers' Federation of Ceylon (EFC) and International Labour Organization (ILO)

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## Preamble

The right to work is an inalienable right of all human beings.

The right to safe working conditions and equality in treatment at the workplace are inseparable from the right to work. The right to work can be seriously impaired when employees are subjected to sexual and gender based forms of violence such as sexual harassment in the workplace.

Furthermore, the right to work with dignity is a fundamental human right. This requires respect for one another and behaviour that is courteous and considerate.

Workplaces are committed towards ensuring employees' rights to safety and dignity as per this code of conduct and guidelines on addressing and preventing sexual harassment.

Sexual harassment results from the unequal power relations between men and women in society (including in workplaces) and is a form of sex and gender based violence often targeting women than men.

Sexual harassment is a violation of the fundamental rights of workers. It is a form of sex-based discrimination in the workplace. It is also an issue of safety and health, as well as an issue that creates unacceptable working conditions.

The costs of sexual harassment are very high. Efficient and productive outputs cannot be delivered if people cannot work with dignity. Sexual and other forms of harassment can adversely affect organizational and workforce performances.

Sri Lankan law criminalizes sexual harassment. International and national policies condemn sexual harassment.

Work organizations should not accede to any form of harassment at the workplace. They should take the responsibility to ensure that employees are treated equally and with respect, and undertake to provide a safe working environment devoid of sexual harassment.

It should be the duty of all employees to abide by the organizational position and policies on sexual harassment and comply with this code of conduct.

This Code of Conduct and Guidelines to Address and Prevent Sexual Harassment in Workplaces can provide guidance to employers and employees of all forms of enterprises in the public and private sectors to address and prevent sexual harassment in the workplace. These enterprises include, but are not limited to, government ministries, national, provincial and local government departments, government agencies, state enterprises, private sector companies, establishments and organizations, NGOs, non-profit organizations, voluntary bodies, trade unions, employers' organizations, academic institutions, public and private employment agencies and professional training institutions.

# Sexual Harassment

## What is Sexual Harassment?

Sexual harassment is a criminal offence under the Penal Code of Sri Lanka.

Sexual harassment is conduct that is sexual in nature. It can be conduct that is overt or covert. It is conduct that is offensive, unwelcome, uninvited, unreasonable and unacceptable. Whether a particular behaviour is defined as sexual harassment depends largely on whether the conduct is unwelcome to the person to whom the act or acts are directed along with the circumstances surrounding it.

Therefore, irrespective of whether the conduct is unintentional or deliberate, if it is unwanted and especially if it is repeated - it can qualify as sexual harassment. Some forms of sexual behaviour are so offensive that they are considered deliberate, inappropriate, and even criminal acts even if they are performed once. Other behaviours may have to be repeated for them to be considered harassment.

Faced with an act or acts of sexual harassment, employees will find the overall work environment intimidating, demeaning or hostile. But sometimes, employees may not feel safe or strong enough to actively object to specific conduct. The mere fact that an employee appears to acquiesce (agree, comply with, accept, submit to, give in) or does not protest against the harassment, thereby creating an impression that the conduct was consensual, it does not mean that sexual harassment has not occurred.

Both men and women can be targets of sexual harassment. Sexual harassment can involve a man harassing a woman or another man, or a woman harassing another woman or a man. Sexual harassment of women is much more widely prevalent because of unequal social ideologies and practices that denigrate women.

## How does Sexual Harassment occur in the workplace?

In the workplace, sexual harassment occurs in two forms –

- As "quid pro quo"
- As a "hostile working environment."

## Quid Pro Quo

This is a direct threat or sexual bargaining by a person in a position of power connecting the threat or bargaining associated with –



- Terms and conditions of employment (hiring, promotion, retention, transfer etc.) or
- Workplace prospects/rewards (accessing training opportunities, appraisals, bonuses, etc.).

This is where such terms and conditions or prospects and rewards are offered and/or given based on or dependant on the employee providing sexual favors to the person in power.

### **A Hostile Working Environment**

A "hostile working environment" refers to any unwelcome physical approaches, speech, gestures or conduct of a sexually discriminatory nature, from superiors/co-workers/subordinates that could result in an abusive working environment.

It is important to note that the boundaries of a work environment are not determined by physical location. It includes a person being involved in an activity related to his/her job at the time of harassment.

Sexual harassment is intended to coerce a person, not to attract him/her. When a target of sexual harassment has no choice in the encounter, or has reason to fear the repercussions if she/he rejects the overture, the exchange has moved out of the domain of courtship or sociable interaction into an arena of intimidation and aggression.

Sexual harassment should not be condoned or justified as a harmless form of flirtation or socialization between men and women.

The difference between an invitation and harassment is based on whether the overture is welcome or acceptable to the recipient.

**Sexual harassment may be based on sex and/or sexuality but it is essentially about the exertion of power. Most often than not, it is a method of exerting power and control over the person who is subject to the harassment. This power and control can have devastating effects on women (particularly) and men who are victimized.**

### **Sexual harassment can involve:**

- The harassment of women by men
- The harassment of men by women
- Same sex harassment (men can harass men/women can harass women)
- Peer harassment
- The harassment of a subordinate by a supervisor
- The harassment of a supervisor by a subordinate/s
- Third party harassment by non-employees, such as clients, students, parents, vendors, external service staff and suppliers.

### **The following are examples of sexual harassment Physical**

- Making unnecessary physical contact
- Standing unnecessarily close
- Touching, patting, stroking, squeezing, hugging or pinching
- Brushing or rubbing one's genitalia against someone
- Sexual assault

### **Verbal**

- Making sexual comments or insinuations
- Insulting a person's sex, or sexual identity
- Commenting on a person's physical appearance, age, private life, single or marital condition, maternal or non-maternal status
- Relating sexual jokes or stories, or inquiring about sexual fantasies
- Directing work discussions to sexual topics
- Requesting sexual favours
- Requesting sexual favours in return for employment prospects (quid pro quo)
- Whistling or making sexually suggestive sounds
- Using obscene and offensive language
- Making anonymous phone calls
- Making repeated unwelcome social invitations
- Gossiping, slandering or spreading rumours

### **Gestural**

- Staring, leering, ogling, winking or watching
- Blowing kisses, wagging the tongue or licking lips
- Making sexually expressive hand/finger movements
- Imitating sexually suggestive acts

### **Visual**

- Sending unwanted e-mails, text messages or posting sexually explicit jokes
- Sending anonymous letters, emails, twitters, paging messages or SMSs
- Making inappropriate advances via social networks
- Writing graffiti of a sexual nature
- Displaying sexually explicit pictures, photographs, posters, calendars, desktop wallpaper or pornographic sites
- Posting another person's intimate pictures/videos taken without their knowledge/consent on line

### **What are the costs of Sexual Harassment?**

Sexual harassment is not trivial, amusing or harmless.

Depending on the situation, the person and the incident it will have far-reaching consequences. It will have negative implications for an employee's:

- Safety and comfort,
- Physical health,
- Psychological wellbeing
- Productivity,
- Terms of work and work environment, and
- The right to his or her body

An employee may feel shock, disgust, confusion, anger, shame, humiliation, fear, helplessness, indignation, self-pity, guilt, vulnerability, resentment, distress and psychological trauma as a result of sexual harassment. This can affect the employee's psychological state of mind, and in turn, impact on his/her work - leading to impaired judgment, demotivation, absenteeism, and reduced productivity.

Costs of Sexual Harassment for Employees	Cost of Sexual harassment for Employers	Costs of Sexual harassment for Society
<ul style="list-style-type: none"> <li>● Missing out on career opportunities</li> <li>● Feelings ranging from irritation and nervousness to anger, powerlessness and humiliation</li> <li>● Loss of self-esteem</li> <li>● Deteriorating relationships</li> <li>● Social isolation</li> <li>● Depression, stress, high blood pressure and other stress related illnesses</li> <li>● Drug and alcohol abuse</li> <li>● Resignation</li> <li>● Suicide</li> </ul>	<ul style="list-style-type: none"> <li>● Low productivity</li> <li>● Impaired judgment</li> <li>● Lack of trust</li> <li>● Lack of team work</li> <li>● De-motivation of employees</li> <li>● High absenteeism</li> <li>● High turnover of staff</li> <li>● Risk of workplace accidents</li> <li>● Loss of valuable employees</li> <li>● Financial costs of sick pay</li> <li>● Medical costs</li> <li>● Legal bills for court actions</li> <li>● A negative corporate image</li> <li>● Sexual discrimination within the institution</li> </ul>	<ul style="list-style-type: none"> <li>● Cost of welfare benefits</li> <li>● Rehabilitation costs</li> <li>● Legal and criminal justice related expenses</li> <li>● Healthcare expenditure</li> <li>● Denial of (particularly women's) access to employment</li> </ul>

In certain institutions where there is no awareness of sexual harassment or mechanisms to address sexual harassment, employees complaining of sexual harassment or seeking redress could be unfairly further penalized, transferred to other departments, forced to resign or unfairly dismissed, thereby compounding the injustice.

Effective action to prevent sexual harassment in work institutions require greater awareness of the issue at workplaces, the commitment of management, organizational policies and mechanisms for redress, as well as their strict enforcement.

# Prevention

## What can Organizations/Institutions/Companies do?

### Make a commitment

- Recognize sexual harassment as a form of misconduct in employment law and a disciplinary offense under the organization's/institution's/ company's disciplinary procedure.
- Adopt a zero-tolerance organization/institutional/company policy with regard to sexual harassment at the workplace. Publicize this policy on sexual harassment.
- Ensure that the policy on sexual harassment is reviewed from time to time for relevance.

### Commitment to action


- Ensure that sexual harassment does not take place within the workplace and around the workplace (as far as possible and practicable) thereby ensuring the security of employees (from sexual harassment).
- Display rules and penalties against sexual harassment in the workplace, in prominent locations throughout the workplace in English, Sinhala and Tamil.
- Put in place workplace mentoring schemes for employees.

### Create awareness

- Generate awareness amongst all employees (at all levels) that sexual harassment is a criminal offense and that instances of harassment will be dealt with severely.
- Make sure that managers are aware of their responsibilities with regard to monitoring, and ensuring compliance with the sexual harassment policy within their respective departments.

### Address the issue

- Provide guidance and support to managers on prompt and effective methods of dealing with situations of sexual harassment.
- Ensure that management, human resources personnel and supervisors are vigilant and proactive towards recognizing and addressing issues of sexual harassment in the workplace.
- Establish a system to encourage reporting on sexual harassment by persons subject to such violence as well as third parties (co workers, supervisors etc).
- Treat all complaints of sexual harassment seriously and confidentially.

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- Set in place a grievance addressing system that is systematic, comprehensive, confidential, impartial, transparent, accountable, and just and equitable, stemming from the organisation's/institution's/ company's commitment to zero-tolerance of sexual harassment.

## Action

### **How should employees respond to Sexual Harassment?**

Do not ignore sexual harassment.

If possible, let the perpetrator know that such advances are offensive, uninvited and unwelcome - verbally and in writing.

Collect evidence and keep a record of sexual harassment (incidents, dates, times and other relevant details) in a secure place such as at home.

Report the instances according to procedure set out in the sexual harassment grievance addressing system in the workplace

If there is no sexual harassment grievance addressing system in the workplace, file a complaint with a superior officer, the Manager of the Unit, the Human Resources Department, or a trade union.

Under the general law addressing sexual harassment, a formal complaint can be made to the Police.

Support can be received from groups like trade unions, legal aid groups, counselling services, women's rights organizations etc.).

### **How should third parties react to Sexual Harassment?**

Do not ignore sexual harassment.

If you observe sexual harassment speak out against it - irrespective of whether the victim complains or not.

Request a policy/mechanism to prevent and address sexual harassment from your employers and related trade unions if your workplace does not have them.

## Redress

### **What are mechanisms and procedures for redress an organization/ institution/ company can adopt?**

Establish both formal and informal grievance mechanisms and procedures to deal with sexual harassment.

Publicise these grievance mechanisms and procedures.

**Informal procedures** to deal with sexual harassment can include:

- Providing an opportunity and support for employees subject to sexual harassment to explain to the offender that such advances are unwelcome.
- Providing confidential advice on possible solutions from a supervisor, trusted colleague or an officer trained on how to deal with sexual harassment issues.
- Requesting a supervisor or relevant officer to privately and informally speak with the offender on behalf of the victim.

Ensure that these informal grievance addressing procedures result in the immediate and complete cessation of sexual harassment.

**Formal mechanisms** to deal with sexual harassment can include:

- A Panel Investigation, if one has been set up in the organization/ institution/company, or,
- Including a grievance addressing mechanism in the routine disciplinary procedure of the organization/institution/company.
- If a Panel to investigate/inquire into complaints of sexual harassment has been constituted it is recommended that the following be noted:
- Ensure that the Panel comprises at least three members (of which two thirds should be women), and
- Ensure that the Panel includes representatives from the Human Resources Department and/or the Legal Department.
- All panel members should be trained to hear/handle sexual harassment complaints sensitively and confidentially
- The Panel will take on the task of conducting preliminary investigations into a complaint of sexual harassment.
- If the complaint is proved, take disciplinary action including the possibility of the justified termination of services of the offender in conformity with the routine established disciplinary process of the organization/institution/company – i.e.



- show-cause letter and letter of explanation, domestic inquiry and punishment upon establishment of the charge/s, be followed.
- Where the complaint is proved but a lesser form of punishment can be justified, the Panel may determine an appropriate punishment

#### Guidelines for a Panel of Investigators:

Make sure that hearings of the Panel commence within five days of the complaint being made by the person subject to sexual harassment or by a third party.

Ensure that both complainant and alleged perpetrator have the right to be heard or represented.

Take steps to make sure that the identities of all parties are kept confidential.

Take down clear, detailed and precise records of the hearings (with dates, times, and all details of proceedings including representations by both parties, evidence of others if presented and statements by Panel Members).

Guarantee that the inquiry is prompt, thorough, discreet and impartial; and conducted according to the organisation's/institution's/company's grievance procedures/disciplinary investigation/inquiry procedure.

Monitor the situation throughout to make sure that sexual harassment stops immediately and completely starting with the date of commencement of the inquiry/investigation.

Take proactive steps to protect employees against victimization for making or being involved in a complaint (such as social isolation, transfers, denial of promotion, or dismissal).

Take care not to disadvantage the complainant or to prejudice the alleged offender if the claim is found to be untrue or fabricated.

If the complaint is malicious, take necessary action against the complainant in consultation with the Human Resources Department.

Make sure that the victim and the offender are notified of the outcome of the investigation/inquiry in writing within a specified period of time not more than 14 days.

Refer the harasser and victim to a counsellor if required.

Where the Panel is of the opinion that the services of the offender should be suspended pending investigation/ inquiry, request the Human Resources Department to take necessary steps in this regard.

At the completion of the investigation/inquiry, if the Panel is satisfied that the offender has sexually harassed the complainant, recommend appropriate punishment.

In case for punishment not amounting to termination, the following actions can be considered:

- Written reprimand and warning
- Suspension from service without pay, in terms of the contract of employment, collective agreement or company policies
- Transfer and reassignment of the offender in accordance with the sexual harassment policy or other policies of the organisation/institution/company.
- Removal of management authority or duties of offender in accordance with the sexual harassment policy or other policies of the organisation/institution/company.
- The right of appeal from a decision of the Panel imposing a punishment not extending to termination should be taken by the organisation/institution/company based on routine mechanisms for appeal from a disciplinary inquiry and subsequent punitive decision. All terms and conditions for appeals should be expressly stated with grounds, timeframes and modalities specified.

### Domestic Inquiry

Where the Panel, after an investigation/inquiry into a complaint, is of the opinion that the matter should be dealt with according to the routine disciplinary procedure of the organisation/institution/company, ensure that a domestic inquiry into the matter is fixed, and a suitable inquiring officer, whether internal or external, is appointed to conduct such inquiry.

### **What are Remedial Actions?**

Ensure that the person subject to harassment has not lost or continues to lose out on employment opportunities and benefits. For instance,

- Prompt reinstating of the victim if his/her employment had been wrongfully terminated,
- Remedying of demotions or the denial of promotions as a consequence of the harassment,

- Restoration of sick leave or annual leave, if such have been denied
- Removal of any negative evaluations that arose due to sexual harassment, and
- Compensation for losses as deemed fit.

### Counselling

Ensure that the organisation's/institution's/company's Counsellor (whether in-house or external) is trained to handle sexual harassment.

### What are the Legal Definitions of Sexual Harassment in Sri Lanka?

- The criminal law defines sexual harassment as follows:  
**“Unwelcome sexual advances by words or action used by a person in authority, in a working place or any other place shall constitute the offence of sexual harassment.**

**Whoever, by assault or use of criminal force, sexually harasses another person by the use of words or actions, causes sexual annoyance or harassment to such other persons commits the offence of sexual harassment....”**

*Section 345 of the Penal Code (Amendment) Act, No. 22 of 1995*

- The Bribery Act, in the public sector, a public servant can be charged with sexual harassment if he or she (in relation to any other person in the transaction of his/her official duties).  
**“... solicits or accepts any gratification as an inducement or a reward for his performing or abstaining from performing any official act or for such expediting, delaying, hindering, preventing, assisting or favouring...”**

*Bribery Act of 1956, Section 19*

'Gratification' is taken to include sexual gratification, and takes the form of a sexual bribe when demanded in return for recruitment, transfers, promotions and other terms, conditions and benefits of employment.

- Within educational institutions, sexual harassment can take place when a person,

“...whilst committing ragging causes sexual harassment or grievous hurt to any student or a member of the staff, of an educational institution...”

*Act on the Prohibition of Ragging and other forms of Violence in Educational Institutions Act No. 20 of 1998, Section 2 (2)*

All the above stems from the commitment in the Constitution of Sri Lanka which provides for the non-discrimination based on sex.

### **What are the forms of Legal Redress available in Sri Lanka?**

Under the **Penal Code** sexual harassment is punishable with imprisonment with hard labour up to 5 years, a fine, imprisonment and a fine, as well as compensation for the victim.

In the Public Sector, the **Bribery Act** can punish public officials who solicit or accept sexual gratification with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees.

The **Industrial Disputes Act** work related disputes include sexual harassment in the private sector.

Under the **Prohibition of Ragging and other forms of Violence Act**, a person guilty of sexual harassment while ragging (within or outside an educational institution) can be imprisoned for a term not exceeding ten years and in addition ordered to pay compensation to the victim of an amount determined by court.

Where an employee has been terminated as a result of sexual harassment, such termination can be canvassed in a Labour Tribunal. This right is available to victims and offenders. Where the termination is found to have been unjustified, the Labour Tribunal can order reinstatement with or without back wages or compensation in lieu of reinstatement. An employee who resigns consequent to harassment of any kind may file a case before a Labour Tribunal on the basis of constructive termination.