

## FREQUENTLY ASKED QUESTIONS

# Sexual Harassment at the Workplace

### 1. What is Sexual Harassment?

Sexual harassment is unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated and/or intimidated.

Sexual harassment can take various forms. It can involve conduct such as:

- ◆ unwelcome touching, hugging or kissing
- ◆ staring or leering
- ◆ suggestive comments or jokes
- ◆ unwanted invitations for sex or persistent requests to go out on dates
- ◆ intrusive questions about another person's private life or body
- ◆ unnecessary familiarity, such as deliberately brushing up against someone
- ◆ insults or taunts of a sexual nature
- ◆ sexually explicit pictures, posters, screen savers, emails, twitters, SMS or instant messages
- ◆ accessing sexually explicit internet sites
- ◆ inappropriate advances on social networking sites
- ◆ behaviour which would also be an offence under the criminal law, such as physical assault indecent exposure sexual assault, stalking or obscene communications

### 2. What is 'Quid pro quo' Sexual Harassment?

Quid pro quo sexual harassment includes unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when either of the following conditions is met.

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; OR
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual.

### 3. What is 'hostile environment' sexual harassment?

Unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature constitute 'hostile environment' sexual harassment when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

### 4. What factors determine whether an environment is 'hostile'?

The following factors can help determine whether the conduct unreasonably interfered with an individual's work performance or created an intimidating, hostile or offensive working environment:

- ◆ whether the conduct was verbal or physical or both;
- ◆ how frequently it was repeated;
- ◆ whether the conduct was hostile or patently offensive;
- ◆ whether the alleged harasser was a co-worker, a client, third party or supervisor;
- ◆ whether others joined in perpetrating the harassment; and
- ◆ whether the harassment was directed at more than one individual.

No single factor will determine whether the conduct is 'hostile'. An assessment needs to be made based on the totality of the circumstances.

### 5. What is unwelcome sexual conduct?

Sexual conduct only becomes sexual harassment if it is unwelcome. The behaviour must be unwelcome in the sense that the person receiving the conduct did not solicit or incite it and in the sense that that person regarded the conduct as undesirable or offensive.

## 6. How do you determine if conduct is unwelcome?

When confronting conflicting evidence as to whether conduct was welcome or unwelcome, employers should look at the record as a whole and at the totality of the circumstances, evaluating each situation on a case-by-case basis. The investigation should determine whether the alleged perpetrator's behaviour could be reasonably seen as offensive, humiliating or unwelcome by the victim as consider whether the victim's conduct was consistent or inconsistent with his/her assertion that the sexual conduct was unwelcome.

In the case of quid pro quo sexual harassment, the victim's behaviour is not relevant for the determination of whether sexual harassment has occurred or not.

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## 7. Who can be a victim of sexual harassment?

Men and women. The victim does not have to be of the opposite sex. The victim does not have to be the person directly harassed, but could be anyone affected by the offensive conduct.

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## 8. Who can be a sexual harasser?

Men and women. He or she can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker or a non-employee.

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## 9. Why do people sexually harass others?

Most people who harass others do so in a conscious or unconscious way to express dominance or power. It may be used as a method for organisational or social control over someone else. Sometimes people sexually harass others in an attempt to keep them in their place. Others harass in front of their peers in an attempt to seek peer approval.

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## 10. Can a sexual harassment claim be made by an employee even if that employee consented to the sexual activity?

Yes. The individual may have consented to the sexual activity due to perceived or actual pressure from the harasser.

## 11. Does the act constituting sexual harassment have to occur at work?

No. Sexual harassment can occur in almost every employment situation and relationship related to work. For example, it could occur in a social event organised by your employer, during work-related travel, at a client or customer's premises, at training events, business lunches or dinners, promotional campaigns or public relations events with clients, customers or prospective partners or during the course of work-related phone conversations or communications via electronic media.

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## 12. What is the difference between sexual harassment and criminal acts of a sexual nature?

Although sexual harassment is not a criminal offence under Indonesia law, some types of sexual harassment may also be offences under the criminal law. These include:

- ♦ physical molestation or assault
- ♦ indecent exposure
- ♦ sexual assault
- ♦ stalking
- ♦ obscene communications and images that are considered pornographic.

If an employer suspects that a criminal offence has occurred, the individual should be advised to report the matter to the police as soon as possible and be provided with any necessary support and assistance.

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## 13. What is the difference between sexual harassment and discrimination?

Sexual harassment is a form of sex-based discrimination at the workplace. It is a violation of fundamental rights of workers and is considered a problem of safety and health, a problem of discrimination and an unacceptable working condition.

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## 14. Should employees be allowed to date co-workers?

Yes. Employees should be permitted to date co-workers. Behaviour based on mutual consent is not considered sexual harassment. Employers should not prohibit workers from forming genuine relationships based on mutual consent with co-workers.

### **15. If I am a victim of sexual harassment, what should I do?**

If you are being sexually harassed at work you should inform someone – either a supervisor, manager or designated sexual harassment officer. If you feel comfortable approaching the harasser yourself, you could also tell the harasser that you find his or her behaviour unwelcome.

Your employer should have internal procedures established to deal with sexual harassment complaints, grievances and questions to enable in-house resolution. There is no particular type of complaint procedure that all workplaces must follow. Therefore the complaint procedure that you will need to follow will depend on what your workplace has established. This will be influenced by its size, structure and resources.

If you have not been informed about a procedure or if your workplace does not have a sexual harassment policy, ask your supervisor, manager, LKS Bipartite or trade union representative for guidance.

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### **16. If my supervisor is harassing me, what can I do?**

If your supervisor is harassing you, you should inform another manager, a trade union representative LKS Bipartite representative who you trust or a designated person who deals with sexual harassment complaints in your workplace.

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### **17. What can I do if I witness sexual harassment in the workplace?**

If you witness sexual harassment occurring at the workplace, you should tell your employer or a supervisor. It might be appropriate to also tell the harasser that his or her behaviour is not acceptable in the workplace environment.

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### **18. Is it sexual harassment if someone I used to date won't leave me alone at work?**

It may be, if you make it clear to the person you used to date that you are no longer interested in a relationship. If the person persists in seeking to continue the relationship or in making sexual advances or comments or gestures to you, this may be considered sexual harassment.

### **19. Do all employers have to have a sexual harassment policy?**

Yes, all employers, whether in a small or large workplace should establish a policy to deal with sexual harassment. The Code of Practice is designed for all types of employers, including enterprises in the public and private sectors, including ministries, central and local government departments, state enterprises, non-government organisations, not-for profit organisations, voluntary bodies, unions, employers' organisations, academic institutions, public and private employment agencies and training institutions.

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### **20. Why should employers have a sexual harassment policy?**

An established sexual harassment policy at the workplace supports the creation of an effective, productive and healthy working environment. The key to preventing sexual harassment is for employers and management to make it very clear to all workers and those who interact with the workplace that sexual harassment is unacceptable behaviour.

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### **21. What if my employer does not have a sexual harassment policy?**

If your employer does not have a sexual harassment policy, you should contact your enterprise trade union, LKS Bipartite representative or supervisor to suggest formulating a policy. You may also contact one of the national trade union confederations, Apindo or the Ministry of Manpower and Transmigration to assist your workplace to develop an appropriate policy.

All trade unions should include provisions for the development and implementation of a sexual harassment policy in collective bargaining agreements.

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### **22. How can an employer communicate a sexual harassment policy?**

There are many ways an employer can get workers to understand the workplace sexual harassment policy. These methods include:

- ◆ Conduct an official launch of a sexual harassment policy at a full staff meeting and conduct regular updates
- ◆ senior management should enforce the policy and emphasize that all staff are required to comply with it

- ♦ email copies of the policy to employees, put a copy on the intranet and place an automatic shortcut on employee desktop screens
- ♦ provide the policy to new staff as a standard part of induction
- ♦ request all employees, fixed-term contractors and sub-contracted workers to sign a copy of the policy acknowledging they have received and understood it.
- ♦ display the policy on notice boards and include it in induction manuals

### 23. How can an employer prevent sexual harassment in the workplace?

Employers should take the following steps to prevent sexual harassment:

- ♦ Get high-level management support for implementing a strategy to address sexual harassment
- ♦ Write and implement a sexual harassment policy
  - ♦ Ensure this is accessible to all staff members and is discussed and reinforced at staff meetings
  - ♦ Review the policy to ensure it is up-to-date
- ♦ Provide regular training and information on sexual harassment to all staff and management
  - ♦ Ensure the training is specific about the types of behaviour that may constitute sexual harassment.
  - ♦ Display anti-sexual harassment posters on notice boards in common work areas and distribute relevant information
- ♦ Encourage appropriate conduct by managers. Managers should model professional conduct at all times. Ensure that selection criteria for management positions include the requirement that managers have a demonstrated understanding of and ability to deal with discrimination and harassment issues as part of their overall responsibility for human resources. Employers should also review managers' fulfilment of these duties through performance appraisal schemes.
- ♦ Create a positive workplace environment by removing offensive, explicit or pornographic materials such as calendars, posters and literature from the workplace. Employers should also develop a policy prohibiting inappropriate use of computer technology such as email, screen savers and the internet. Workplace audits should also be periodically conducted to monitor the working environment and incidence of sexual harassment.

### 24. What if an employer does not respond to a victim's complaints?

It is an employer's responsibility to respond to complaints of sexual harassment and protect victims from further harassment. If an employer does not promptly investigate the claim, the victim may request mediation with the local Disnaker office and pursue legal action through the Industrial Relations Court for the employer's non-compliance with Art 6 in the Manpower Act concerning the equal treatment of workers without discrimination.

### 25. What is an appropriate remedy for a victim of sexual harassment?

The appropriate remedy for a victim of sexual harassment will depend on the victim's claim and the effects of the conduct on that particular individual. If the victim can establish a valid case for sexual harassment, the employer should automatically grant all reasonable claims. This can include reimbursement for expenses such as counselling, medical treatment, and restoration of sick and/or personal leave.

### 26. What do most people want as a result of making a complaint about sexual harassment?

Studies have shown that most people merely want the harassment to stop.

### 27. Should employers make staff uniforms compulsory to prevent sexual harassment from occurring?

No. Preventative measures should not take the form of 'protective' measures. Employers should look at ways to empower women and male workers rather than attempt to protect them by trying to create a 'sameness' among workers.

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