

MODEL LAW ON SEXUAL HARASSMENT

The Protection  Project

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Chapter I: General Provisions

Article 1: [Title]

This Act may be cited as the [Anti-Sexual Harassment Act] of [name of state] [year of adoption].

Article 2: Purpose

The purpose of this law is to prohibit sexual harassment in order to protect human dignity, liberty and privacy, to promote equality between the sexes, to prevent all forms of sexual harassment, to protect and assist victims of harassment and to penalize harassers and those who through omission of duty become liable.

Article 3: Application

This Act shall be equally applicable to all women without discrimination as to race, color, language, religion, political or other opinion, national or social origin, property, marital status, sexual orientation, HIV/AIDS status, migrant or refugee status, age or disability.

Article 4: Prohibition of Sexual Harassment

Sexual harassment in all forms is prohibited by law, including specific forms defined under this Act and within sporting activities and any institution.

1. Sexual harassment shall be considered either;
 - a. A single severe, prolonged or very serious incident of offensive behavior; or
 - b. A number of acts that amount to sexual harassment even if some of the acts may appear to be trivial or minor.
2. One act of sexual harassment as defined in this Act shall be sufficient to constitute an offense punishable by criminal law and liable to sanctions under civil law within the domestic law and penalties of imprisonment, fines and/or compensatory damages to the victim.
3. No custom, tradition, culture or religion may be invoked to justify any form of violence against women or to exculpate any perpetrator of such violence.

Article 5: Definitions

In the context of this law;

Co-worker: in relation to an employee, means another person who is employed by the employer of that first-mentioned employee;

Educational institution: shall include schools, colleges, universities, and places of learning or training.

Employee: shall include apprentices, full and Part-time employees, commission agents, persons on leave, applicants and probationary employees;

Employer: shall include the Government, public officials, statutory authorities, and any other employer;

Employment: includes full and Part-time employment and work under a contract of services;

Functions: includes powers, duties, obligations and rights;

Harasser: shall mean one who perpetrates an act of sexual harassment

Respondent: in relation to a complaint, means the person who is alleged to have done the act to which the complaint relates;

Supervisor: in relation to a person, means a co-worker who by virtue of his employment is in a position of authority over that first-mentioned person;

Chapter II: Forms of Sexual Harassment

Article 6: Sexual Harassment in Public Places

It is unlawful to commit gender-based violence that results in, or is likely to result in, physical sexual or psychological harm or suffering to women including sexual harassment in any public setting.

Article 7: Prohibition of Sexual Harassment in the Workplace

No employer, prospective employer, supervisor or co-worker shall sexually harass any woman employee or co-worker.

Article 8: Definition of Sexual Harassment in the Workplace

Sexual harassment in the workplace shall be defined as making unwelcome sexually determined advances that create a hostile work environment, or when the advances are perceived as offensive by the recipient, or when the refusal of sexual advances would have or are perceived to have an adverse impact on current or potential working conditions.

1. Unwelcome sexually determined advances include;
 - a. Physical conduct and advances;

- b. Demanding, requesting or otherwise requiring sexual favors;
 - c. Making sexually colored remarks;
 - d. Displaying sexually explicit posters, pictures or graffiti;
 - e. Making an insulting or debasing reference to a person based on generalizations of gender or sexuality;
 - f. Making any other unwelcome physical, verbal or non-verbal advances of a sexual nature in either a direct or implied manner.
2. Unwelcome sexually determined advances create a hostile work environment when;
 - a. There exists an intimidating, hostile, demeaning or threatening atmosphere; or
 - b. There is unreasonable interference with the harassed person's work performance; or
 - c. The harassed person suffers any form of disadvantage in connection with employment, promotion, re-employment or continued employment.
 3. Refusal of sexual advances has an adverse impact on working conditions when an offer or terms of employment, promotion, re-employment or continued employment is contingent on the person's acceptance or tolerance of the unwelcome sexual advances.

Article 9: Employer Obligations

An employer or other responsible person in the work place has a duty to take such steps as are reasonable in the circumstances, so as to prevent or deter sexual harassment towards an employee or on the part of a person in charge on the employee's behalf, even where such a person is not an employee. Towards this end, the employer or responsible person shall;

1. Disseminate or post a copy of this Act for the information of all concerned.
2. Develop measures to prevent sexual harassment, such as the provision of educational programs.
3. An employer shall promulgate appropriate rules and regulations in the form of a code of conduct or workplace policy that is formulated in consultation with jointly approved employees, or through their duly designated representative that shall include provisions that;
 - a. Expressly prohibit sexual harassment;
 - b. Protect the harassed person from retaliation;
 - c. Guarantee confidentiality to the greatest extent possible;
 - d. Assure immediate action upon receipt of complaint;
 - e. Prescribe an effective complaints and investigative procedure in conformity with Article 9(4) and 9(5);
 - f. Outline potential administrative sanctions, with the understanding that administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment.
4. Create an effective complaints and investigative procedure that ensures timely response and confidentiality of the complainant to the greatest possible extent.

5. Establish or make an appropriate complaint mechanism available for redress of the complaint made by the victim and should
 - a. Ensure timely response to the complaints;
 - b. Be adequate to provide a special counselor or support service;
 - c. Ensure confidentiality to the greatest extent possible;
 - d. Be headed by a woman and not less than half of its members should be women;
 - e. Involve an NGO or other element of civil society who is familiar with the issue of sexual harassment;
 - f. Be composed of at least one representative each from the management, the union, if any, the employees from the supervisory rank, and from the rank and file employees;
 - g. Conduct investigation of the alleged cases constituting sexual harassment;
 - h. After examination of the complaint, submit its recommendations to the head of the workplace and recommend a penalty.
6. Maintain appropriate work conditions in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places so that no woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Article 10: Employer Liability

An employer shall be liable for sexual harassment in the workplace when

1. The harassment is committed by the harassed person's supervisor or manager in circumstances as defined in Article 8(3).
2. The harassment is committed by the harassed person's supervisor or co-worker in circumstances as defined in Article 8(2) if the employer knew or should have known about the harassment unless the employer fulfilled the duties defined in Article 9 and took immediate corrective action.
3. The harassment is committed by non-employees in the workplace as defined in Article 8(2) if the employer knew or should have known about the harassment unless the employer fulfilled the duties defined in Article 9 and took immediate corrective action.

Article 11: Sexual Harassment within an Educational Facility

Sexual harassment within an educational facility shall be defined as making unwelcome sexual advances as defined in Article 8(1) towards a student or making it reasonably appear that sexual favor is a condition to favorable educational conditions or creating a hostile educational environment.

1. A student is defined as;
 - a. Anyone under the care, custody or supervision of the offender; or
 - b. A trainee or apprentice.
2. Favorable educational conditions include;
 - a. A passing grade or advancement to the next educational level

- b. The granting of honors and scholarships; or
 - c. The payment of a stipend, allowance or other benefits, privileges or considerations.
3. Sexual advances create a hostile educational environment when;
 - a. There is an intimidating, hostile, demeaning or threatening atmosphere; or
 - b. There is unreasonable interference with the harassed person's academic performance; or
 - c. The harassed person suffers any form of disadvantage in academic life.

Article 12: Obligations of an Educational Facility

It shall be the duty of the educational facility to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. To this end, the educational facility shall ensure;

1. Dissemination of policy and rules that shall include but are not limited to;
 - a. Prohibition of sexual harassment;
 - b. Procedure for investigation and complaints as defined in Article 9(4) and 9(5);
 - c. Guidelines on proper behavior in the educational facility;
2. Create a committee on proper behavior and investigation of cases on sexual harassment. The committee shall conduct meetings with teachers, instructors, trainers, coaches, professors, and students or trainees to increase understanding and prevent incidents of sexual harassment. The committee shall also conduct the investigation of the alleged cases constituting sexual harassment. The committee shall be composed of at least one representative from the administration, trainers, teachers, instructors, professors or coaches and students or trainees, as applicable.

Article 13: Liability within an Educational Facility

The educational facility shall be liable for acts of sexual harassment committed in an educational facility when;

1. Sexual harassment is committed by a person in a position of authority as defined in Article 11(2).
2. Sexual harassment is committed by any fellow student or staff as defined in Article 11(3) when the head of the facility knew or should have known about the harassment and has taken no immediate action.

Chapter III: Judicial Proceedings

Optional Article: Specialized Courts and Proceedings

Option A: Establishment of an Adjudicatory Body

There shall be specialized adjudicatory bodies for cases involving all forms of sexual harassment.

Option B: Creation of a Tribunal

There shall be a specialized tribunal set up to resolve issues of all forms of sexual harassment.

Article 14: Application to Court

Any person who considers that he has been sexually harassed may apply to the relevant Court alleging that she has been sexually harassed within the meaning of this Act.

Article 15: Rights to Legal Aid

A victim of sexual harassment who brings legal proceedings against the harasser or a negligent authority shall be entitled to free legal aid if the victim is unable to afford legal assistance

Article 16: Inquiries by Court

Where a complaint relating to an alleged incident of sexual harassment is brought the Court may carry out investigations in relation to the act and endeavor by conciliation, to effect a settlement of the matter to which the act relates.

1. The Court may, for the purposes of investigation, obtain information from any person and make such inquiries as it thinks fit.
2. The Court-
 - a. May endeavor by such means as it considers reasonable to resolve a complaint which is the subject of an inquiry; or
 - b. Shall take all steps as it considers reasonable to effect an amicable settlement of a complaint and for this purpose may adjourn an enquiry at any stage to enable the Parties to negotiate with a view to settlement by amicable arrangements.
 - c. The Court may take evidence on oath, affirmation or affidavit and for that purpose the Court may administer an oath or affirmation.

Article 17: Proceedings Held in Camera

Evidence of all persons in trials involving sexual offences may be received by the court in camera.

Article 18: Past Sexual History

The sexual history or reputation of the complainant may not be taken into account in the course of an inquiry on any form of sexual harassment

Article 19: Removal of Adverse Inferences

The Court shall draw no adverse inference from a reasonable delay by the victim in reporting an incidence of sexual harassment.

Article 20: Civil Compensation

1. The court may make a determination that compensation is owed to the complainant when;
 - a. An employer or educational facility or other responsible party has failed to comply with duties to prevent and correct incidences of sexual harassment as defined under the relevant Articles of this Act; or
 - b. The Court determines such compensation is necessary.
2. Any respondent who fails to comply with a determination for payment of compensation shall be liable to be proceeded against and punished in like manner as if he were found guilty of contempt of Court.
3. The sum so payable may be recovered by the complainant in a court of competent jurisdiction as a civil debt.
4. The harasser may additionally be ordered to make non-monetary reparation, apology, or other amends.

Article 21: National Strategy Plan

There shall be a national strategy plan that contains benchmarks and indicators that ensure an appropriate framework exist for a comprehensive and coordinated approach to the implementation of the legislation.

Article 22: Training and Capacity Building

There shall be gender-sensitivity training and capacity building on all forms of violence against women, specifically all forms of sexual harassment for public officials, especially when new legislation is enacted, and training and capacity building shall be carried out in consultation with NGOs and service providers.

Article 23: Monitoring

There shall be a mechanism created to oversee the implementation of legislation and this mechanism shall gather information, analyze conditions of sexual harassment, interview relevant Parties and give regular reports. These reports, data collection and statistical information shall support, if necessary, amendments to legislation.