FREQUENTLY ASKED QUESTIONS

SEXUAL HARASSMENT OF WOMEN AT WORKPLACES (PREVENTION, PROHIBITION & REDRESSAL) ACT, 2013

1. **WHAT IS SEXUAL HARASSMENT**?
   According to Section 2(n) of the Sexual Harassment of Women at Workplaces (Prevention, Prohibition & Redressal) Act, 2013 –

   "Sexual harassment includes any one or more of the following unwelcome acts or behavior (whether directly or by implication), namely:-
   - Physical contact and advances; or
   - A demand or request for sexual favors; or
   - Making sexually coloured remarks; or
   - Showing pornography; or
   - Any other unwelcome physical, verbal or non-verbal conduct of sexual nature"

   Further, according to Section 3(2) of the said Act, if any of the following circumstances occurs or is present in relation to or connected with any act or behavior of sexual harassment among other circumstances, it may amount to sexual harassment –
   - Implied or explicit promise of preferential treatment in her employment; or
   - Implied or explicit threat of detrimental treatment in her employment; or
   - Implied or explicit threat about her present or future employment status; or
   - Interference with her work or creating an intimidating or offensive or hostile work environment for her; or
   - Humiliating treatment likely to affect her health or safety

2. **IS SEXUAL HARASSMENT ONLY PHYSICAL IN NATURE?**
   No, Sexual Harassment is not only physical. It can be verbal or non-verbal too
   Physical, Verbal and Non-verbal conduct of sexual nature includes, but is not limited to the following

   Physical conduct:
   - Unwelcome physical contact including patting, pinching, stroking, kissing, hugging, fondling, or inappropriate touching
   - Physical violence, including sexual assault
   - Physical contact, e.g. touching, pinching
   - The use of job-related threats or rewards to solicit sexual favours

   Verbal conduct:
   - Comments on a worker's appearance, age, private life, etc.
   - Sexual comments, stories and jokes
   - Sexual advances
   - Repeated and unwanted social invitations for dates or physical intimacy
   - Insults based on the gender of the worker
   - Paternalistic remarks
   - Sending sexually explicit messages (by phone or by email)
   - Indecent, vulgar discussion with or in front of the a woman

   Non-verbal conduct:
   - Display of sexually explicit or suggestive material
   - Sexually-suggestive gestures
   - Whistling, staring

3. **WHO IS AN AGGRIEVED WOMAN?**
   Aggrieved Woman mean a woman employee who alleges to have been subjected to any act of sexual harassment in the workplace

4. **CAN A PERSON OTHER THAN WOMAN BE VICTIMS OF SEXUAL HARASSMENT AT WORKPLACE?**
   Yes, they can be victim of sexual harassment at workplace, but the Sexual Harassment of Women at Workplaces (Prevention, Prohibition & Redressal) Act, 2013, protects only women

5. **WHAT IS WORKPLACE?**
   "Workplace" includes any place visited by an employee, arising out of, or during the course of employment, including transportation provided by the employer, or undertaking such a journey. Workplace may also extend to communications over social networks, telephone, messaging, chat messengers etc.

6. **WILL SEXUAL HARASSMENT COMMITTED AT COMPANY ANY EVENT OUTSIDE THE WORKING HOURS IS CONSIDERED AS SEXUAL HARASSMENT AT WORKPLACE?**
   The definition of "Workplace" under Section 2(o) includes its ambit any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey. Hence any form of sexual harassment at a company sponsored event would also be within the scope of the statute.

7. **WHAT IS INTERNAL COMPLAINT COMMITTEE?**
   The Internal Compliant Committee (hereinafter referred as ICC), is a committee constituted by the Company in every branch in accordance with Section 4 of the Act, for providing redressal to the aggrieved woman employee who has been subjected to the Sexual Harassment at the Workplace

8. **WHERE CAN AN AGGRIEVED WOMAN FILE A COMPLAINT AGAINST SEXUAL HARASSMENT?**
   An aggrieved woman can file the complaint to the ICC

9. **WHO CAN FILE A COMPLAINT ON BEHALF OF THE AGGRIEVED WOMAN?**
   In case of **physical/mental in capacity** of the aggrieved woman following person can complaint against the Sexual Harassment to the ICC:
   - Aggrieved woman's family
   - Aggrieved woman's friend
   - Co-worker
   - Any person who has knowledge of the incident
   - Special educator
   - Qualified psychiatrist/psychologist
   - Guardian/Authority under whose care the aggrieved woman us receiving treatment/care

   With the written consent of the aggrieved woman

10. **WHAT SHOULD THE COMPLAINT CONTAIN?**
    The written complaint should contain:
    - Description of each incident(s)
    - Name of the Respondent/Offender
    - Dates of each incident(s)
    - Timings
    - Locations
    - Working relationship between the Parties

11. **WHAT IS THE TIME-LIMIT FOR FILING A COMPLAINT OF SEXUAL HARASSMENT?**
    According to Section 9 of the Act, the Complaint of sexual harassment needs filed within a period of three months from the date of the last incident and in case of the series of incident, within the period of three month from the date of last incident. Such time limit shall be extended for a period not exceeding three month, if the ICC is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period

12. **CAN THE COMPLAINT OF SEXUAL HARASSMENT BE CONCILIATED BETWEEN THE PARTIES?**
    Yes, according to Section 10 of the Act the ICC, before initiating an inquiry and on request of the aggrieved woman, take steps to settle the matter between her and the respondent through conciliation, provided that no monetary settlement shall be made as a basis of the conciliation

13. **HOW WILL THE ICC INQUIRE INTO COMPLAINTS?**
    The ICC shall make an inquiry into the complaint in accordance with the provisions of Section 11 of the Act and Rule 7 of the Rules made thereunder

14. **CAN ICC FORWARD A COMPLAINT TO THE POLICE?**
    Yes, according to Section 11(1) of the Act, the ICC can forward the complaint to the Police for registering the case under Indian Penal Code, 1860, within a period of 7 days of receipt of the complaint

15. **CAN A WOMAN EMPLOYEE DIRECTLY CHOOSE TO FILE FIR WITH THE POLICE UNDER INDIAN PENAL CODE, 1860, INSTEAD OF MAKING A COMPLAINT TO THE ICC?**
    Yes, a woman can file FIR with the Police under Indian Penal Code, 1860, instead of making a complaint to the ICC and according to Section 19 of the Act, the Employer/ICC shall provide assistance to the aggrieved woman to do the needful

16. **WHAT ARE THE ACTIONS THAT ICC WILL TAKE IF THE ALLEGATION AGAINST THE OFFENDER/RESPONDENT IS PROVED?**
    Where the ICC finds the allegation against the respondent has been proved-
    (a) It may take actions depending upon the gravity of the offence, which shall include but is not limited to:
        - Warning
        - Written Apology from the offender
        - Reprimand or censure
        - Withholding of promotion
        - withholding of pay rise or increments
        - Suspension
        - Terminating the offender from services
        - Undergoing a counselling session
        - Carrying out community services
        - Or any other punishment as the ICC deems fit

    (b) If ICC finds that the offence committed is covered under the Indian Penal Code, 1860, then the ICC or the Management shall initiate appropriate actions for making a Police complaint supported by the investigation report of the ICC, provided that the aggrieved woman wishes to forward the complaint to the Police

17. **WHAT IS THE TIME-LIMIT FOR COMPLETION OF THE INQUIRY?**
    The ICC is required to complete the inquiry within the period of 90 days

18. **CAN THE A PERSON MAKE AN APPEAL AGAINST THE ORDER/RECOMMENDATION OF THE ICC?**
    Yes, subject to the provision of Section 18, any person aggrieved from the recommendations made under:
    - sub-section (2) of Section 13; or
    - under Clause (ii) of sub-section (3) of Section 13; or
    - sub-section (1) or subsection (2) of Section 14;
    - or Section 17;
    - or non-implementation of such recommendation

    may prefer an appeal to the Appellate Authority as notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946

19. **CAN CONTENTS OF THE COMPLAINT AND INQUIRY PROCEEDINGS BE MADE PUBLIC?**
    No, the contents of the complaint and the inquiry proceedings cannot be made public.
    According to Section 16 of the Act
    - The contents of the complaint
    - The identity and addresses of the aggrieved woman, offender & witnesses
    - Any information relating to the conciliation and inquiry proceedings
    - Recommendations of the Internal Complaint Committee
    - The actions taken by the employer or the ICC under this Act

    Shall not be published, communicated or made known to the public press and media in any manner

Provided that the information may be disseminated regarding the justice secure to any victim of sexual harassment under this Act, without disclosing the names addresses or any other particulars calculated to lead to the identification of the aggrieved woman and the witness

20. **WHAT ARE THE DUTIES OF THE EMPLOYER**

According to Section 19 of the Act, Every employer shall:

- provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under subsection (1) of Section 4;
- organize workshops and awareness programs at regular intervals for sensitizing the employees with the provisions of the Act and orientation programs for the members of the Internal Committee in the manner as may be prescribed;
- provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub section (1) of Section 9;
- provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code(45 of 1860) or any other law for the time being in force;
- cause to initiate action, under the Indian Penal Code,1860 (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- monitor the timely submission of reports by the Internal Committee.

21. **WHAT IS THE PENALTY/PUNISHMENT FOR PUBLISHNG OR MAKING KNOWN TE CONTNTS OF THE COMPLAINT OR INQUIRY PROCEEDINGS?**

According to Rule 12, if any person contravenes the provisions of Section 16, the employer shall recover a sum of five thousand rupees as a penalty from such person

22. **WHAT IS THE PENALTY FOR NON-COMPLIANCE UNDER THE ACT?**

(a) Where the employer fails to –

- constitute an Internal Committee under subsection (1) of Section 4;
- take action under Sections 13, 14 and 22; and c. contravenes or attempts to contravene or
- abets contravention of other provisions of this Act or any rules made thereunder,

he shall be punishable with fine which may extend to fifty thousand rupees.

(b) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to

- twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:
  Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;
- cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

Thanks & Regards

Iram Sayed
Legal Advisor
Corporate Employment Relations

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