



Republic of Mauritius



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# **SEXUAL HARASSMENT WORKPLACE POLICY**

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# **THE EMPLOYMENT RELATIONS TRIBUNAL**

## **1. INTRODUCTION**

- 1.1 The Employment Relations Tribunal is committed to maintaining a work environment characterised by mutual trust, respect and the absence of intimidation that will promote an enabling workplace free from sexual harassment. All Public Officers and any other person employed in the Public Service, regardless of their grade and gender, shall comply with this Policy.
- 1.2 Sexual harassment is a criminal offence, whether in the course of or as a result of work. It takes place within or outside the Ministries'/Departments' premises, including during social events, posting overseas, missions abroad, training sessions or conferences sponsored by Ministries/Departments.
- 1.3 The Sexual Harassment Workplace Policy aims at developing a workplace which is free from sexual harassment and any conduct of a sexual nature, where Public Officers respect one another's dignity, privacy and right to equity.
- 1.4 The Policy sets out the Employment Relations Tribunal's responsibility to take measures to prevent sexual harassment of Public Officers at work and where they do occur, to appropriately deal with the case. It explains what behaviour or conduct constitutes sexual harassment and emphasises that sexual harassment in the workplace shall not be tolerated or condoned.
- 1.5 The Policy also sets forth the procedures for filing complaints and handling sexual harassment claims. Both employers and employees shall have active roles in addressing sexual harassment, within the course and scope of their functions at the Employment Relations Tribunal.
- 1.6 The Policy highlights the role of Supervising Officers in their respective Ministries/Departments in building a respectful gender-responsive culture.

## **2. POLICY STATEMENT**

- 2.1 The Employment Relations Tribunal is committed:
- (i) to provide a safe and healthy working environment for all its employees, free from sexual harassment at work, in compliance with existing legislations;
  - (ii) to prevent cases of sexual harassment or any incident related thereto and to address related complaints;

- (iii) to adopt a zero-tolerance policy on any form of sexual harassment at the workplace, respond promptly to all incidents reported, treat them seriously and investigate into all allegations thoroughly and in an objective manner; and
  - (iv) to treat all employees with dignity and respect.
- 2.2 No employee shall be victimised or subjected to retaliation for making a complaint of sexual harassment.
- 2.3 Complaints shall be handled with due respect to the sensitivity of the matter and to the rights of both the complainant and the alleged harasser.
- 2.4 Where a complaint is reported to the Supervising Officer or he/she becomes aware of any alleged case of sexual harassment, the incident shall be inquired into and prompt action shall be taken to address the issue.
- 2.5 All cases and records pertaining to reported complaints of sexual harassment shall be kept confidential.

### **3. DEFINITION OF SEXUAL HARASSMENT**

- 3.1 Sexual harassment is defined as any unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated. It includes situations where a person is asked to engage in sexual activity in exchange of a job benefit, as well as situations which create an environment which is hostile, intimidating or humiliating for the individual. (Source: *International Labour Organisation (ILO)*).
- 3.2 Sexual harassment also includes any behaviour of a sexual nature that affects the dignity of women and men, which is considered as unwanted, unacceptable, inappropriate and offensive to the recipient, and that creates an intimidating, hostile, unstable or offensive work environment. (Source: *ILO Code of Conduct on Sexual Harassment in the Workplace Brochure 25 May 2015*).
- 3.3 According to section 25 of the Equal Opportunities Act (EOA), a person sexually harasses another person where he/she makes an unwelcome sexual advance, or an unwelcome request for a sexual favour, to another person or he/she engages in any other unwelcome conduct of a sexual nature towards another person, in circumstances in which a reasonable person would have foreseen that the other person would be humiliated, offended or intimidated.

#### **4. EXAMPLES OF SEXUAL HARASSMENT**

Sexual harassment can be physical, verbal and non-verbal. Examples of conducts or behaviours that may be construed as sexual harassment include, but are not limited to:

- (i) unwelcome touching, hugging or kissing;
- (ii) staring or leering;
- (iii) unwelcome suggestive comments or jokes;
- (iv) unwanted invitations for sex or persistent requests to go out on dates;
- (v) making or issuing an unwelcome oral or written statement of a sexual nature to a person or in the presence of a person;
- (vi) intrusive questions about another person's private life or body;
- (vii) unnecessary familiarity –such as frequently brushing up against someone;
- (viii) insults or taunts of a sexual nature;
- (ix) showing sexually explicit pictures, posters, screen savers, emails, twitters, SMS or instant messages to another person or, accessing sexually explicit internet sites in presence of another person in circumstances where the other person feels humiliated, offended or intimidated;
- (x) inappropriate advances on social networking sites;
- (xi) behaviour which would also constitute a criminal offence such as physical assault, indecent exposure, sexual assault, stalking or obscene communications; and
- (xii) any of the above as a form of threat or blackmail for employment and/or advancement, or lack of same or dismissal or any other occupational detriments if the recipient refuses.

#### **5. LEGAL PROVISIONS**

5.1 Section 114 of the Workers' Rights Act 2019, which is applicable to Public Officers, provides that no person shall harass, sexually or otherwise, a worker, including any person undergoing training under any training scheme, in the course of or as a result of his/her work or training.

Any person committing such offence shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding five (5) years.

5.2 Under section 254 of the Criminal Code, any person who, by abuse of the authority conferred upon him/her by his/her functions, harasses another person by means of orders, threats or constraints in order to obtain favours of a sexual nature, shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 10 years and to a fine not exceeding 200,000 rupees.

- 5.3 Under section 26 of the Equal Opportunities Act (EOA):-
- "(1) No employer, or agent of an employer, shall sexually harass an employee or a person seeking employment from the employer.*
  - (2) No job contractor or principal shall sexually harass a contract worker.*
  - (3) No employee shall sexually harass a fellow employee or a person seeking employment from his employer.*
  - (4) No agent of an employment agency shall sexually harass a person in the course of providing or offering to provide any of the agency's services to that person."*
- 5.4 Under section 26(11) of the EOA, any person who contravenes the abovementioned provisions shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding two (2) years.

## **6. LODGING AND HANDLING A SEXUAL HARASSMENT COMPLAINT**

- 6.1 Depending upon circumstances, an officer who is subject to sexual harassment may inform the alleged harasser that the conduct is unwanted and unwelcome. If the aggrieved officer cannot directly approach the alleged harasser, he/she can approach one of the designated officer(s) responsible for receiving complaints of sexual harassment. The designated officer shall record the complaint of the aggrieved officer in writing.
- 6.2 The designated officer shall be appointed by their respective Supervising Officers and shall be responsible for receiving and attending to complaints of sexual harassment. The designated officer may be an officer of the Human Resource Section or any other appropriately trained officer, not below the rank of Assistant Manager, Human Resources.
- 6.3 When the designated officer receives the complaint, he/she shall:
- (i) immediately record the name, residential address, grade, posting and contact details of the aggrieved officer, as well as the date, time, place and other facts of the alleged incident(s);
  - (ii) record the name, grade and posting of the alleged harasser;
  - (iii) inform the aggrieved officer of his/her rights to:
    - a. report the matter to the Commissioner of Police, where the alleged conduct constitutes a criminal offence;

- b. report the matter to the Equal Opportunities Commission, under the Equal Opportunities Act where applicable;
  - c. report the matter to the Ministry of Labour, Human Resource Development and Training; and
  - d. pursue the matter at the level of the Ministry/Department through the informal and the formal procedures.
- (iv) ensure that the aggrieved officer understands the Ministry's/Department's informal and formal procedures for dealing with the complaint;
  - (v) discuss and agree on the next step. If the aggrieved officer wishes to pursue the matter at the level of the Ministry/Department, he/she shall opt for either an informal or formal complaint, on the understanding that choosing to resolve the matter informally does not preclude the aggrieved officer from pursuing a formal complaint if he/she is not satisfied with the outcome and does not prejudice the exercise of the rights of the aggrieved officer under paragraph 6.3 (iii) (a), (b) and (c) above;
  - (vi) keep a confidential record of all discussions; and
  - (vii) inform the officer of the counselling service provided by the Ministry of Gender Equality and Family Welfare.

6.4 In case the aggrieved officer reports the matter to the Police or the Ministry of Labour, Human Resource Development and Training whilst the informal or formal procedure is ongoing, he/she shall inform the designated officer of such reporting. Consequently, the matter shall no longer be pursued at the level of the Ministry/Department and paragraph 10.2 shall apply.

## **7. INFORMAL PROCEDURES**

7.1 If the aggrieved officer wishes to deal with the matter informally, the designated officer shall:

- (i) report the case forthwith to the Supervising Officer for his/her cognizance, thereof;
- (ii) give an opportunity to the alleged harasser to respond to the complaint;

- (iii) ensure that the alleged harasser is informed and understands the complaint procedures;
- (iv) submit the case to the Supervising Officer for a decision to either hold a discussion with both parties, if agreed by the aggrieved officer, or to designate a mediator within the Ministry to resolve the matter, whilst taking into consideration the grades of both parties concerned. Where the alleged harasser is the Supervising Officer, the aggrieved officer shall lodge a formal complaint to the Secretary to Cabinet and Head of the Civil Service;
- (v) keep confidential record of discussions and outcomes;
- (vi) ensure that the above procedures are done within **15** working days of being notified of the sexual harassment complaint;
- (vii) follow up after the outcome of the discussions to ensure that the inappropriate behaviour has stopped;
- (viii) provide feedback to the Supervising Officer;
- (ix) keep confidential information on all sexual harassment cases reported and handled; and
- (x) shall where required, take appropriate action, to ensure that the aggrieved officer and the alleged harasser do not work in close proximity.

7.2 If the aggrieved officer is not satisfied with the outcome of the informal proceedings, he/she may have recourse to formal procedures. He/she may also choose the option of formal procedures without first having recourse to the informal procedure.

## **8. FORMAL PROCEDURES**

8.1 If the aggrieved officer wishes to resolve the matter through formal procedures, the designated officer shall:

- (i) request the aggrieved officer to lodge a formal complaint in writing, or in the event the aggrieved officer refuses, take, in writing, a statement from him/her;
- (ii) report the case to the Supervising Officer who shall call for an enquiry to be carried out into the matter;
- (iii) refer the matter to the Departmental Complaints Committee on Sexual Harassment referred to in paragraph 9, not later than 15 days after the case is reported to him/her and ensure that both parties are given a fair treatment;

- (iv) take necessary follow-up actions based on the report of the Departmental Complaints Committee on Sexual Harassment;
- (v) keep confidential record of discussions and outcomes;
- (vi) provide feedback to the Supervising Officer;
- (vii) keep confidential information on all sexual harassment cases reported and handled; and
- (viii) take immediate and appropriate action where necessary, to ensure that the aggrieved officer and the alleged harasser do not work in close proximity in order to reduce the risk of tensed and uncomfortable situation or victimisation.

## **9. DEPARTMENTAL COMPLAINTS COMMITTEE ON SEXUAL HARASSMENT**

9.1 Upon a formal complaint of sexual harassment by an aggrieved officer, a Departmental Complaints Committee on Sexual Harassment (DCCSH) shall be set up by the Supervising Officer, or where the aggrieved officer or alleged harasser is the Supervising Officer, by the Secretary to Cabinet and Head of the Civil Service. The DCCSH shall be composed of a Chairperson and of at least two members from different sections of the Ministry/Department, other than the section(s) where the aggrieved officer and the alleged harasser are posted, and as far as possible, be gender balanced. The DCCSH may also, if the need arises, enlist the support of a Psychologist from the Ministry of Gender Equality and Family Welfare and the Mauritius Police Force. The Chairperson and the members of the Committee should not have any direct work relationship with the aggrieved officer and the alleged harasser.

9.2 The role of the DCCSH is to:

- (i) treat all complaints, impartially and in strict confidentiality;
- (ii) interview the aggrieved officer and the alleged harasser separately;
- (iii) give an opportunity to the aggrieved officer to explain to the Committee the behaviour and conduct of the alleged harasser that made him/her feel uncomfortable and/or interfere with his/her work;
- (iv) give an opportunity to the alleged harasser to give his/her version;



- (v) interview any other relevant party separately;
- (vi) determine whether or not any incident of sexual harassment took place;
- (vii) submit, within a timeframe set by the Supervising Officer, or the Secretary to Cabinet and Head of the Civil Service, as the case may be, a report setting out the findings of the Committee; and
- (viii) if it cannot be determined that sexual harassment took place, make recommendations, where appropriate, to ensure the proper functioning of the workplace.

## **10. PROCEDURE FOR CASES WHERE SEXUAL HARASSMENT HAS BEEN COMMITTED**

- 10.1 Where the DCCSH considers that there has been sexual harassment, the harasser may be subject to disciplinary action to be initiated by the Supervising Officer or the Secretary to Cabinet and Head of the Civil Service, in accordance with the Public Service Commission(PSC) Regulations, the Disciplined Forces Service Commission (DFSC) Regulations or the Local Government Service Commission (LGSC) Regulations, as the case may be.
- 10.2 In case the aggrieved officer has reported the case of sexual harassment to the Commissioner of Police or the Ministry of Labour, Human Resource Development and Training, the Ministry/Department shall not take any action pending the outcome of the police enquiry, or the enquiry carried out by the Ministry of Labour, Human Resource Development and Training.
- 10.3 Where the Responsible Officer refers the matter to the PSC, the DFSC or the LGSC for disciplinary actions, he/she may decide whether or not to interdict the harasser in accordance with the PSC Regulations, the DFSC Regulations or the LGSC Regulations, as the case may be.
- 10.4 For the avoidance of doubt, where the circumstances so warrant, disciplinary proceedings may be instituted against an alleged harasser under the PSC Regulations, the DFSC Regulations or the LGSC Regulations, as the case may be, without the requirement of a finding of sexual harassment by the DCCSH.

## 11. POLICY IMPLEMENTATION

The Supervising Officer shall ensure:

- (i) the implementation and enforcement of the Sexual Harassment Workplace Policy in the Ministry/Department;
- (ii) the dissemination of the Policy among all employees in the Ministry/Department, through awareness raising and sensitisation programmes and to new staff members during induction courses; and
- (iii) the training of designated officers on sexual harassment in the workplace. Training should include explanations on how to implement the Sexual Harassment Workplace Policy and how to raise awareness within their own organisation.

**Name of Ministry/ Department** : **Employment Relations Tribunal**

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**Seal of Ministry/ Department** :

