

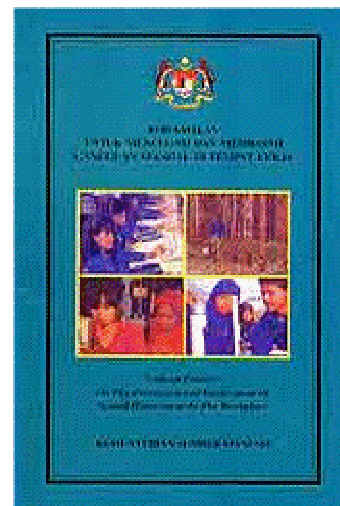
**CODE OF PRACTICE ON THE
PREVENTION AND ERADICATION OF
SEXUAL HARASSMENT IN THE
WORKPLACE**

Ministry of Human Resource, Malaysia

FOREWORD

(Excerpts from the Keynote Address of Y.B. Dato' Lim Ah Lek, Minister of Human Resources, Malaysia at the official opening of the National Workshop On Sexual Harassment In The Workplace on 1 March 1999 at Kuala Lumpur).

Surveys carried out in a number of industrialized countries showed that the proportions of female employees who had been subjected to sexual harassment in those countries ranged from 42 to 70 per cent. There may be no conclusive research findings on the incidence of sexual harassment in this country, but we are very sure that the problem does exist at least in certain workplaces especially those with large female workforce, and we are convinced that the situation already warrants due attention and remedial action so that it does not get worse.



There is ample evidence everywhere that a high percentage of sexual harassment cases occurring in the workplace goes unreported. Due to embarrassment, helplessness and fear of being ridiculed or, worse still, of losing their jobs, most of the victims of sexual harassment were prevented from raising the problem and therefore had to suffer in silence.

In Malaysia the unfortunate victims are presently facing distressing constraints to report sexual harassment because there is no established procedure to guide them how and where to report. At the enterprise level, very few employers have so far provided complaints or grievance procedure for reporting sexual harassment.

Sexual harassment is one of the most offensive and demeaning experiences an employee can suffer. For the victims, it often produces feelings of revulsion, disgust, anger, and helplessness. It damages the victim's health. It results in emotional and physical stress and stress-related illnesses. Victims may experience severe emotional trauma, anxiety, nervousness, depression and feelings of low self-esteem.

Sexual harassment adversely affects employee morale and job performance. It reduces productivity and increases the rate of sick leave and absenteeism among affected employees. Moreover, many female employees who face sexual harassment choose to resign from their jobs rather than fight or endure the offensive conditions. This results in a higher rate of employee turnover with all the associated costs in training and lost production. The greatest danger of sexual harassment is that when it goes unchecked it can spread throughout an organization like an infectious disease.

It has also been found that unchecked sexual harassment in the workplace creates intimidating, hostile and offensive work environment which can adversely affect the industrial relations climate in the organization. An employer who ignores or condones sexual harassment in this establishment may also expose himself to legal action by the aggrieved employee who has been subjected to the harassment. Sexual harassment in the workplace is also an employment-related safety and health problem.

By requiring a person to exchange sexual favours for economic survival, sexual harassment denigrates the victims and relegates them to a second-class status in the workplace. Viewed from this angle, sexual harassment is a gender discrimination which goes against the principle of equality of treatment in employment between the genders. Therefore, it inhibits the growth of a caring and just society. It also undermines the policy of the government to increase participation rate of the women in the labour force.

There are many others adverse consequences of sexual harassment in the workplace, but what I have mention earlier would suffice to show the potential harm it could bring about. More and more developed and developing countries have embarked on specific national programmes aimed at preventing and eradicating sexual harassment in the workplace. Malaysia needs to have such national programme to ensure that our workplaces are free from offensive and intimidating environment caused by the spread sexual harassment.

Sexual harassment problem arises out of general workplace relationships involving personal behavior of people within the enterprise. Therefore, the most effective way of dealing with the problem is to tackle it at the level of the enterprise so that it can be confronted on the spot and nipped in the bud. Based on experiences in others countries which have successfully implemented anti-sexual harassment programmes, the best approach to combat sexual harassment at work is through the establishment of preventive and redress mechanism at the enterprise level.

Since this popular approach has proven to be the most effective in other countries, a decision has been that this approach will form the basis of our national policy and practice in dealing with sexual harassment at work. In this regard, I am pleased to announce that The Ministry of Human Resources will prepare and issue a Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace which will contain guidelines on the establishment and implementation of in-house preventive and redress mechanism for dealing with sexual harassment at the enterprise level.

The purpose of the Code of Practice is to provide practical guidance to employers, employees, trade unions and others relevant parties on the protection of the dignity of men and women at work. The aim is to ensure that sexual harassment does not occur and, if it does occur, to ensure that adequate procedures are available to deal with the problem and prevent its recurrence. The Code thus seeks to

encourage the development and implementation of policies and practices which will ensure a safe and healthy working environment in every place of employment where individual employees, irrespective of status or position, are treated with dignity and free from any form of harassment, humiliation and intimidation of a sexual nature.

Employers should accept and implement the Code of Practice in the spirit of discharging their corporate and social responsibility to prevent and eradicate sexual harassment in the workplace. A workplace free from sexual harassment is a condition of work which employees of either gender are entitled to expect. Social justice demands a fair treatment of all employees and due respect for their human dignity and the existence of sexual harassment is a denial of a fundamental principle of social justice.

Employees and their trade unions have a clear role to play in helping to create a climate at work which is free from sexual harassment. Employees can do much to discourage sexual harassment by making it clear that they regard such behaviour unwelcome and unacceptable.

Trade unions should co-operate with employees in carrying out promotional and educational programmes for the employees and in the implementation of in-house mechanism to prevent and eradicate sexual harassment in the workplace. The inclusion of specific clauses on sexual harassment in collective agreements as a means of dealing with the problem jointly between the employers and the trade unions has become a common practice in the industrialized countries. Such practice should be encouraged in this country.

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AIM

1. The aim of this Code of Practice is to provide guidelines to employers on the establishment of in-house mechanisms at the enterprise level to prevent and eradicate sexual harassment in the workplace.

RATIONALE

2. Sexual harassment problem arises out of general workplace relationships involving personal behaviour of people within the enterprise. Therefore, the most effective way of dealing with the problem is to tackle it at workplace itself so that it can be confronted on the spot and nipped in the bud.
3. The best approach to combat sexual harassment in the workplace is through the establishment of preventive and redress mechanism at the enterprise level. A decision has been made that this approach will form the basis of our national policy and practice in dealing with sexual harassment in the workplace.

MEANING OF SEXUAL HARASSMENT

4. For the purpose of this Code, sexual harassment means:

Any unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment:

- that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her/his employment; or
- that might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or a threat to his/her well-being, but has no direct link to her/his employment

5. Based on the definition in article 4 above, sexual harassment may be divided into two categories, namely sexual coercion and sexual annoyance

Sexual coercion is sexual harassment that results in some direct consequence to the victim's employment. An example of sexual harassment of this coercive kind is where a superior, who has the power over salary and promotion, attempts to coercive kind is where a superior, who

has the power over salary and promotion, attempts to coerce a subordinate to grant sexual favours. If the subordinate accedes to the superior's sexual solicitation, job benefits will follow. Conversely, if the subordinate refuses, job benefits are denied.

Sexual annoyance, the second type of sexual harassment, is sexually-related conduct that is offensive, hostile or intimidating to the recipient, but nonetheless has no direct link to any job benefit. However, the annoying conduct creates a bothersome working environment which the recipient has to tolerate in order to continue working. A sexual harassment by an employee against a co-employee falls into this category. Similarly, harassment by a company's client against an employee also falls into this category.

6. Within the context of this Code, sexual harassment in the workplace includes any employment-related sexual harassment occurring outside the workplace as a result of employment responsibilities or employment relationship. Situations under which such employment-related sexual harassment may take place includes, but is not limited to:
- at work-related social functions;
 - in the course of work assignments outside the workplace;
 - at work-related conferences or training sessions;
 - during work-related travel;
 - over the phone; and
 - through electronic media.
7. It is essential to emphasize that sexual harassment refers to sexual conduct which is unwanted and unwelcome to the recipient, It is also a sexual conduct which is imposed on and unsolicited or unreciprocated by the recipient.

FORMS OF SEXUAL HARRASMENT

8. Sexual harassment encompasses various conducts of a sexual nature which can manifest themselves in five possible forms, namely:
- verbal harassment :
e.g. offensive or suggestive remarks, comments, jokes, jesting, kidding, sounds, questioning.
 - non-verbal/gestural harassment :

e.g. leering or ogling with suggestive overtones, licking lips or holding or eating food provocatively, hand signal or sign language denoting sexual activity, persistent flirting.

- visual harassment :
e.g. showing pornographic materials, drawing sex-based sketches or writing sex-based letters, sexual exposure.
- psychological harassment :
e.g. repeated unwanted social invitations, relentless proposals for dates or physical intimacy.
- physical harassment :
e.g. inappropriate touching, patting, pinching, stroking, brushing up against the body, hugging, kissing, fondling, sexual assault.

OUTLINES OF IN-HOUSE MECHANISM TO COMBAT SEXUAL HARRASMENT IN THE WORKPLACE

9. A comprehensive in-house mechanism that employers are encouraged to establish at the enterprise level to prevent, handle and eradicate sexual harassment in the workplace should include at least the following elements:
 - a policy statement prohibiting sexual harassment in the organisation;
 - a clear definition of sexual harassment;
 - a complaints/grievance procedure;
 - disciplinary rules and penalties against the harasser and against those who make false accusation;
 - protective and remedial measures for the victim; and
 - promotional and educational programmes to explain the company's policy on sexual harassment and to raise awareness of sexual harassment and its adverse consequences among the company's employees, supervisors and managers.

POLICY STATEMENT PROHIBITING SEXUAL HARRASMENT

10. A policy statement on sexual harassment is a documented message from the management to the management to the employees expressing the company's policy, philosophy and commitment to prevent and eradicate sexual harassment in order to create a positive and conducive working environment in the organization.
11. The policy statement should come from the top management to ensure its acceptance and compliance by the shop-floor employees, supervisors and managers throughout the organization.
12. The policy statement should contain at least the following matters:
 - a declaration prohibiting sexual harassment in the organization;
 - a caution stating that sexual harassment constitutes breach of the company's policy and will incur disciplinary actions up to and including dismissal;
 - a directive stating that supervisors and managers have a positive duty to implement the policy and to demonstrate leadership by example.

A CLEAR DEFINITION OF SEXUAL HARRASMENT

13. A clear definition of sexual harassment constitutes a vital component of an in-house mechanism for dealing with the problem. A detailed definition is necessary to ensure that employees as well the management have a clear idea of conducts that constitute sexual harassment.
14. The main objective of the definition is to make individuals in the organization fully aware of certain conducts and attitudes that can be regarded as unwelcome and offensive to others, and therefore prohibit such conducts in the organization.

COMPLAINT/GRIEVANCE PROCEDURE

15. Although an effective preventive action and programme may be successful in deterring sexual harassment, but problems are bound to arise. Therefore, there is necessity for the establishment of a complaint or grievance procedure to deal with each problem as and when it arises.
16. Due to of the sensitive and personal nature of sexual harassment complaints, employers should develop a separate complaint procedure to deal specifically with such complaints. The normal complaint procedure is often unsuitable for sexual harassment complaint.

17. A complaint procedure should provide for measures to protect victims from further embarrassment in the course of reporting and investigation into the complaint.
18. A complaint procedure should contain at least the following elements:
 - a step-by-step procedure for reporting and processing of a complaint with a suitable time-limit for each step;
 - an investigation procedure; and
 - an appeal procedure to enable dissatisfied party to appeal against the outcome of an investigation to a higher authority.

DISCIPLINARY RULES AND PENALTIES

19. To ensure that a policy and a mechanism to prevent sexual harassment is effective, it is essential that offenders be disciplined.
20. The disciplinary rules should set out the penalties to which the harasser will be liable if the offence is committed. The nature and type of penalty should depend upon the severity of the offence.
21. Since sexual harassment is a form of misconduct, any disciplinary action against the accused employee should be preceded by a proper domestic inquiry.
22. To deter false and fabricated accusation against any person, the rule should also set out disciplinary penalties against those who make such accusations.

PROTECTIVE AND REMEDIAL MEASURES FOR THE VICTIM

23. To encourage victims to report sexual harassment, there should be adequate measures to ensure maximum confidentiality so as to minimise embarrassment to the victim especially at the time of reporting and in the course of investigation into the complaint.
24. In a case where the victim of sexual harassment has suffered a loss, such as a demotion or a denial of a promotion, it is appropriate to restore such person to his or her proper position on the job.
25. The victim should also be compensated for any monetary loss arising out of a denial of employment-related benefits which were rightfully due to him or her.

26. Where the complaints is found to be unjustified and baseless, appropriate remedy should be granted to the accused person if there has been any loss suffered by such person.

PROMOTIONAL AND EDUCATIONAL PROGRAMMES

27. Prevention is the most effective tool and employer can use to eradicate sexual harassment in the workplace. Preventive action includes:
- communication
 - education; and
 - training.
28. Merely developing a corporate policy and preventive mechanism on sexual harassment is not sufficient. It is the dissemination of the policy and mechanism among the employees and supervisors could be educated in the area of sexual harassment.
29. In addition to the need for communication, the employer should provide a programme by which employees and supervisors could be educated in the area of sexual harassment.
30. The employer should also provide special training sessions for supervisory and managerial staff to train them to recognize potential problems and learn how to deal with them as and when they arise. The necessity to provide training is much greater for those who are assigned to function as investigators and counselors.

THE INVOLVEMENT AND ROLE OF TRADE UNION

31. Sexual harassment can be prevented, handled and eradicated most effectively if there is a joint employer/trade union action.
32. In the formulation and establishment of an in-house mechanism to prevent, handle and eradicate sexual harassment, the employer should adopt a consultative approach by involving the trade union. The involvement of trade union can pave the way for a stronger commitment by the employees to accept and comply with the in-house mechanism
33. Trade unions have a clear role to play in helping to create a climate at work which is free from sexual harassment. Trade unions can contribute to the prevention of sexual harassment

through an awareness and sensitivity towards the issues among the members and by ensuring that the standards of conduct of their members do not cause offence.

34. Trade unions should also co-operate with employers in carrying out promotional and educational programmes towards creating a work culture that will ensure a safe and healthy working environment where individual employees, irrespective of status or position, are treated with dignity and free from any form of harassment, humiliation and intimidation of a sexual nature.

ACKNOWLEDGEMENTS

The preparation and introduction of this Code of Practice was inspired by Y.B Dato' Lim Ah Lek, Minister of Human Resources Malaysia arising out of his sympathy with the employees who had been subjected to sexual harassment and his desire and commitment to prevent any eradicate sexual harassment in the workplace.

This Code of Practice was prepared and issued by the Ministry of Human Resources. The Code was drafted by the Director General of Labour, Y.M Tengku Dato' Omar bin Tengku Bot, who also chaired the Technical Committee which was established to provide a forum for consultation and adoption of the draft Code. The Ministry wishes to thank the following organizations and distinguished individuals for the valuable contributions during the deliberations in the Technical Committee:

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