



**TỔNG LIÊN ĐOÀN
LAO ĐỘNG VIỆT NAM**



**BỘ LAO ĐỘNG
THƯƠNG BINH VÀ XÃ HỘI**



**PHÒNG THƯƠNG MẠI VÀ
CÔNG NGHIỆP VIỆT NAM**

CODE OF CONDUCT ON SEXUAL HARASSMENT IN THE WORKPLACE

-UNOFFICIAL TRANSLATION-

HA NOI

(May 2015)

INTRODUCTION

Sexual harassment in the workplace is a form of sex discrimination which negatively affects the working environment, undermines gender equality at work, creates unfair practices in employment, and adversely impacts the dignity and well-being of workers. It creates psychological anxiety and stress for victims and if ignored, can result in high costs for companies through loss of productivity, low worker morale, absenteeism, and staff turnover.

To lay the legal groundwork for a safe and healthy work environment, the 2012 Labour Code stipulates that sexual harassment is prohibited in the workplace. It also includes some relevant regulations which for example give employees who are victims of sexual harassment the right to unilaterally terminate their labour contract. In spite of this, the current legal framework remains too general, lacks definitions and specific indicators to determine what type of behaviour constitutes sexual harassment. In practice it is therefore difficult to prevent and address sexual harassment and cope with violations.

In order to implement the laws and combat against sexual harassment, the Industrial Relations Committee, which is chaired by the Ministry of Labour, Invalids and Social Affairs and includes the Viet Nam General Confederation of Labour and the Viet Nam Chamber of Commerce and Industry, have jointly developed this Code of Conduct on Sexual Harassment in the Workplace, hereinafter referred to as “the Code”.

This Code aims to help employers (agencies, organizations, companies, etc.) and workers to develop their own policy or regulation (or integrate this content into their existing policies and regulations), for preventing and addressing sexual harassment, and to promote healthy, safe, and productive workplaces.

In developing the Code, the Industrial Relations Committee received valuable support of the International Labour Organization (ILO) and comments from relevant ministries and authorities. We would like to express sincere thanks to all organizations and individuals who helped with this Code.

INDUSTRIAL RELATIONS COMMITTEE

VIET NAM CHAMBER OF COMMERCE AND INDUSTRY	VIET NAM GENERAL CONFEDERATION OF LABOUR	MINISTRY OF LABOUR, INVALIDS AND SOCIAL AFFAIRS
Hoàng Quang Phòng	Mai Đức Chính	Phạm Minh Huân
Vice President	Vice Chairman	Vice Minister

I. OBJECTIVE

The Code provides practical guidance to employers, employers' organizations, workers and trade unions on the implementation of regulations to effectively prevent and address sexual harassment in the workplace in accordance with the Labour Code. It also recommends the development, implementation and monitoring of a workplace policy on sexual harassment to promote safe and healthy workplaces, where all workers, irrespective of sex or status, are treated with fairness, dignity and respect.

II. SCOPE AND COVERAGE

The Code applies to all companies, including enterprises and factories, in both the public and private sectors, regardless of size. Small companies may need to adapt some of the practical content identified in the Code to fit their operational structures, but adaptations should always be consistent with the general principles of the Code.

The term “*workplace*” in the Code refers not only to the specific location where work is being performed, such as an office or factory, but also to locations where work-related business may be conducted. These could include, but are not limited to:

- Work related social activities, such a reception organized by the enterprise for staff or clients, etc.;
- Conferences and training sessions;
- Official business travel;
- Business meals;
- Work related telephone conversations; and
- Work related communications through electronic media.

III. DEFINITIONS, IDENTIFICATION AND FORMS OF SEXUAL HARASSMENT

1. WHAT IS SEXUAL HARASSMENT

“*Sexual harassment*” is defined as *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.*

“*Quid pro quo*” (*this for that*) sexual harassment is committed when an employer, supervisor, manager or co-worker, undertakes or attempts to influence the process of recruitment, promotion, training, discipline, dismissal, salary increment or other benefit of an existing staff member or job applicant, in exchange for sexual favours.

The worst forms of sexual harassment are criminal acts such as sexual assault or rape, which are covered under the Penal Code.

2. WHAT IS NOT SEXUAL HARASSMENT

Occasional compliments that are socially and culturally acceptable and appropriate are not considered sexual harassment. Any interaction of a sexual nature which is consensual (except for those prohibited by the law such as sexual intercourse with children), welcome or reciprocated is not considered sexual harassment.

3. FORMS OF SEXUAL HARASSMENT

Sexual harassment in the workplace can be physical, verbal or non-verbal, and include the major forms as follows:

(a) **Physical** forms of sexual harassment such as any unwanted contact, ranging from intentionally touching, caressing, pinching, hugging or kissing to sexual assault or rape.

(b) **Verbal** forms of sexual harassment include socially and culturally inappropriate and unwelcome comments with sexual overtones such as sexually suggestive jokes or comments about a person’s dress or body, made in their presence or directed toward them. They also include persistent proposals and unwelcome requests or persistent personal invitations to go out.

(c) **Non-verbal** forms of sexual harassment include unwelcome gestures, suggestive body language, indecent exposure, lascivious looks, repeated winks, and gestures with fingers. It also includes the unwelcome display of pornographic materials, sexually explicit pictures and objects, screen savers or posters as well as sexually explicit e-mails, notes or SMS messages.

IV. ROLES AND RESPONSIBILITIES

1. EMPLOYERS

It is the role and responsibility of every employer, regardless of the size of his/her company, to create and maintain a working environment which is free from sexual harassment.

Employers should respond promptly to any accusation of sexual harassment, ensuring that alleged victims do not have fear of reprisals or feel that their grievances are being ignored or trivialised.

In order to effectively prevent sexual harassment at the workplace every employer should adopt, promote, implement and monitor a policy on sexual harassment within workplace regulations, collective agreement or other legal regulations of the company.

The policy should be jointly developed with the trade union to ensure its effective implementation.

2. WORKERS

All workers, regardless of their sex, age, position, type of contract or status, have a responsibility to ensure that the workplace is free from sexual harassment, to discourage and report unacceptable behaviour and to comply with the company's sexual harassment policy.

3. TRADE UNIONS

Trade unions have the responsibility to participate in the development and implementation of a company's sexual harassment policy and ensure that issues related to sexual harassment in the workplace are negotiated in a fair and transparent manner. They should also provide information, advice and representation to workers who have been sexually harassed, as well as to workers against whom allegations of sexual harassment have been made, and include such information on sexual harassment in their regular education and training programmes.

4. EMPLOYERS ORGANIZATIONS

Employers' organizations should ensure that information on sexual harassment is included in their staff orientation, education and training programmes.

5. LABOUR INSPECTORS

Labour inspectors need to carefully review company records and practices with the aim of detecting and appropriately responding to allegations of sexual harassment. It is important for labour inspectors to take the lead in investigating not only allegations of physical sexual

harassment, but any relevant conduct (verbal or non-verbal) which was reported as unwelcome, unwanted or offensive.

Both male and female labour inspectors should receive specialized training to enable them to detect situations and handle complaints of sexual harassment because in general female victims of sexual harassment feel more comfortable discussing their situation with female inspectors rather than male inspectors.

V. RECOMMENDATIONS ON PROCEDURES RELEVANT TO SEXUAL HARASSMENT IN THE WORKPLACE

1. COMPANY POLICY ON SEXUAL HARASSMENT

A company policy on sexual harassment should generally be stand-alone. In the case of smaller companies, however, it might be appropriate to link it to the company's policy on equality and non-discrimination. It should be written in simple, direct language and should be easily understandable to all workplace participants, including illiterate workers. A policy should include the following key elements:

- Prohibition of sexual harassment in the workplace;
- A clear definition of sexual harassment;
- A clear and easy-to-understand complaints/grievance procedure;
- Disciplinary rules against the harasser and against anyone who makes a false accusation; and
- Protective and remedial measures for the victim.

[Commitment against sexual harassment at the workplace](#)

The policy statement against sexual harassment at the workplace should be articulated by top management to ensure acceptance and compliance by all workers including supervisors and managers. It should clearly indicate (a) the company's commitment to ensuring a workplace free from sexual harassment; (b) that sexual harassment will not be tolerated under any circumstances; (c) that swift disciplinary action will be taken against any male or female staff member found to be in breach of the policy; and (d) that supervisors and managers have a duty both to implement the policy and demonstrate leadership by example.

The definition

A detailed definition should be included to ensure that all staff – workers, supervisors and managers - understands what constitutes sexual harassment. The most important element to be emphasized is that sexual harassment is unwelcome behaviour of a sexual nature. A list (which could be non-exhaustive) of examples should be provided. It should also be made clear that any interaction which is consensual, welcome and reciprocated (except for those prohibited by the laws) is not sexual harassment.

Complaints/grievance procedures

The complaints procedure should be clearly explained using simple language. If necessary, it should be made available in suitable formats for those who are unable to read the language. The procedure should ensure that any worker wishing to make a complaint has no doubt about what to do and whom to approach. The procedure should be appropriate for the company's size and structure. If necessary, an existing procedure addressing other types of work-related grievances may be used or adapted for this purpose.

It is recommended that both informal and formal grievance mechanisms be offered.

Detailed information on these procedures is provided at Annex 1.

The penalties and compensation

The company policy on sexual harassment should clearly indicate the disciplinary action to be expected in the case of non-compliance. Depending on the severity of the case, consequences can range from an apology to the victim or disciplinary warning to counselling, transfer, demotion or dismissal; such disciplinary action should be included in the company's regulations. It should be clear that immediate disciplinary action will be taken against anyone who victimises or retaliates against a person who has complained of sexual harassment.

If a victim of sexual harassment has suffered damages, such as a demotion or denial of a promotion, as a consequence of the harassment, it is appropriate that this person be compensated appropriately. 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/her.

Non-staff members, such as clients or contractors should also be informed that if a complaint against them is rightfully upheld, it could result in termination of a contract, suspension of service or business cooperation.

Other measures

The company policy on sexual harassment should propose measures which will ensure maximum confidentiality for all parties concerned, both at the time of reporting and while the complaint is being investigated. It should be made clear that staff members will not be victimised or subject to sanctions for (a) making a complaint in good faith; (b) giving evidence in proceedings; or (c) giving notice of intention to do so. It should also be made clear that in the course of investigating a complaint the employer will make no assumptions about the guilt or innocence of the alleged harasser.

VI. RECOMMENDATIONS ON COMMUNICATING AND IMPLEMENTING THE POLICY ON SEXUAL HARASSMENT IN THE WORKPLACE

Implementation of the company regulations on sexual harassment should be carefully monitored by preparing annual reports on the number and type of complaints that were raised and the manner in which they were resolved.

This information should be immediately analysed and appropriate revisions made to the policy if necessary.

1. COMMUNICATING THE POLICY

The policy on sexual harassment and its specific contents should be effectively communicated to all staff members, including managers, supervisors, workers, customers, clients, contractors, and any other business contacts, including those who supply and receive goods and services. Special efforts should be made for workers in remote areas.

Effective means of communicating the policy include through newsletters, training manuals, training courses, leaflets, websites, e-mails and displaying anti-sexual harassment posters on notice boards in shared work areas. Verbal communication of the policy is particularly important in workplaces where staff may be illiterate.

USEFUL TIPS FOR EMPLOYERS

- The policy on sexual harassment should be officially launched at a full staff meeting.
- The policy should be endorsed by the chief executive officer or a senior management representative emphasizing that all staff are required to comply with it.
- The policy should be distributed to and signed by all staff, acknowledging that they have received and understood it.
- The policy should be placed on the company's website and intranet.
- The policy should be included in induction manuals for new staff.
- The policy should be displayed on notice boards.

2. GOOD PRACTICES

REGULAR TRAINING

Regular training sessions on sexual harassment should be conducted for all staff members, including managers, supervisors and workers. The purpose of this training is to: (a) raise awareness of what constitutes sexual harassment; (b) provide details of the company's sexual harassment policy; and (c) provide updates on any changes which may have been made to it. Regular refresher training is recommended.

Managers and supervisors should also be specifically trained to distinguish between appropriate and inappropriate behaviour, in order to effectively carry out their role in ensuring that the workplace is free from sexual harassment.

Those identified in the policy as having responsibility for handling complaints should receive special in-depth training on how to prevent and address sexual harassment.

Depending on the type of training being conducted, and the number of staff members involved, sessions may vary from a few hours to an entire day.

CONFIDENTIALITY

Employers should take every measure to ensure that sexual harassment complaints are investigated and handled in a confidential manner without exposing the identities of the parties involved. Only the persons specifically appointed by the employer are entitled to handle such cases; the complainant, his/her representative, the alleged harasser, his/her

representative, witnesses and interpreters (if required), are entitled to participate in the investigation process.

Employers should disclose any information requested in preparation for the disciplinary enquiry.

EFFECTIVE MANAGEMENT MODELLING

All managers and supervisors should demonstrate a strong commitment to the sexual harassment policy by modelling appropriate behaviour at all times and this should be regularly looked at by employers through performance reviews.

In addition, when appointing managers and supervisors, employers should ensure that the proposed candidates have a demonstrated understanding of and ability to handle sexual harassment matters, or should provide appropriate training to them prior to or immediately following the appointment.

GOOD WORKPLACE MODELLING

Employers should create and maintain a working environment which is free from sexual harassment. Effective ways of ensuring this include:

- The removal of offensive, pornography or sexually explicit materials from the workplace;
- Regular monitoring of the policy and procedures to deal with sexual harassment;
- Mixed (male/female) panels for job interviews; and
- Well-lit work areas equipped with an electronic monitoring system.

ANNEX 1 – GRIEVANCE PROCEDURES

Informal processes include conciliation, mediation, counseling or other forms such as discussions in order to resolve complaints. The terms “conciliation” and “mediation” are sometimes used interchangeably, though in some countries, a distinction is made in terms of process, with a mediator making recommendations, and a conciliator facilitating dialogue between the parties but not making any recommendations. Informal action is usually appropriate when:

- The parties concerned are able to sustain the working relationship;
- The allegations are of a less serious nature and the complainant wants it to stop;

Informal ways of dealing with sexual harassment include the following:

- The complainant wants to deal with the situation him/herself but wishes to seek advice on possible solutions;
- The complainant requests that the supervisor speak to the alleged harasser on their behalf. The supervisor privately conveys the complainant’s concerns, reiterating the company’s sexual harassment policy to the alleged harasser without assessing the merits of the case;
- A complaint is made, the alleged harasser admits the behavior, investigation is not required and the complaint is resolved through conciliation or at the request of the harasser;
- A supervisor or manager observes unacceptable conduct and takes independent action even though no complaint has been made.

Where both parties agree, conciliation or mediation can be used at any time during the process. For example, should the complainant initially decide on a formal process but during the process agree to mediation instead, the formal process could be suspended pending the outcome of the informal one. The role of the conciliator or mediator is not to impose an agreement but to help the parties reach a mutually acceptable agreement.

Conciliators and mediators therefore need to be knowledgeable about labour laws, equality and non-discrimination regulations, sexual harassment-related legislation, the terms of any collective agreement, the company’s regulation or policy on sexual harassment. The conciliator or mediator must remain impartial throughout the complaints process. In most cases, conciliators and mediators have specialized training and come from outside the company. By using informal procedures, the complainant does not waive the right to go through the formal procedures or use procedures available under the law.

If the informal approach has not provided a satisfactory outcome, if the case is of serious nature or if the behavior continues, it may be more appropriate to embark on a formal procedure.

Formal complaints are usually managed by the human resources department or an individual specifically appointed by the employer. If the complaint is against this department or specific individual working in this department, an independent external person should manage it. Complaints should be investigated and dealt with promptly. In the case of formal investigations, allegations must be in writing and signed by the complainant(s). Trade unions or staff representatives should also be able to submit complaints on behalf of one or more workers. The alleged harasser should receive a copy of the allegations and be given an opportunity to respond before the investigation begins.

A thorough investigation should:

- Include interviews with complainants, their witnesses, alleged harassers and their witnesses. It is good practice that interviewees be accompanied by a trusted colleague or trade union representative.
- Examine all relevant documents, records and personnel files if necessary;
- Provide a written summary of the full investigation to the complainant and the alleged harasser;
- Both parties should be given the opportunity to provide comments on the content of this summary before the full report is finalized;
- If the report is drafted by an independent investigator, the full report should be submitted to the person and/or department responsible for handling sexual harassment complaints. This report should include who was interviewed, what questions were asked, the investigator's conclusions, and what possible remedies, sanctions or other action may be appropriate.

Support from outside the company may be used if the complainant is not satisfied with the outcome of internal processes, or has grounds to lack confidence in them.

Committees handling sexual harassment cases should include an equal representation of men and women to ensure that the perspectives of both women and men are taken into consideration. They also need to include representatives of both management and workers. Victims should be represented or accompanied by a representative of their choice to participate in the handling process.

ANNEX 2 – SAMPLE COMPANY POLICY ON SEXUAL HARASSMENT

(NAME OF COMPANY/ORGANIZATION/AGENCY) is committed to providing a healthy, effective work environment where sexual harassment is not accepted because it is against the law, against social ethics and will not be tolerated. **(NAME OF COMPANY/ORGANIZATION/AGENCY)** will implement this policy in accordance with the Code of Conduct on Sexual Harassment in the Workplace. When **(NAME OF COMPANY/ORGANIZATION/AGENCY)** determines that an allegation of sexual harassment is credible, it will take prompt and appropriate corrective action.

*“Sexual harassment” is defined as 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.*

Sexual harassment in the workplace can be physical, verbal or non-verbal, and include the major forms as follows:

(a) **Physical** forms of sexual harassment such as any unwanted contact, ranging from intentionally touching, caressing, pinching, hugging or kissing to sexual assault or rape.

(b) **Verbal** forms of sexual harassment include socially and culturally inappropriate and unwelcome comments with sexual overtones such as sexually suggestive jokes or comments about a person’s dress or body, made in their presence or directed toward them. They also include persistent proposals and unwelcome requests or persistent personal invitations to go out.

(c) **Non-verbal** forms of sexual harassment include unwelcome gestures, suggestive body language, indecent exposure, lascivious looks, repeated winks, and gestures with fingers. It also includes the unwelcome display of pornographic materials, sexually explicit pictures and objects, screen savers or posters as well as sexually explicit e-mails, notes or SMS messages.

“Quid pro quo” (this for that) sexual harassment is committed when an employer, supervisor, manager or co-worker, undertakes or attempts to influence the process of recruitment, promotion, training, discipline, dismissal, salary increment or other benefit of an existing staff member or job applicant, in exchange for sexual favours.

“Workplace” refers not only to the specific location where work is being performed, such as an office or factory, but also to locations where work-related business may be conducted. These could include:

- Work related social activities, such as a reception organized by the enterprise for staff or clients, etc.;
- Conferences and training sessions;

- Official business travel;
- Business meals;
- Work related telephone conversations; and
- Work related communications through electronic media.

The Company's responsibilities in preventing and addressing sexual harassment

Any employee or those working for the company who believes that he or she is a victim of sexual harassment must immediately report any incident to **(NAME AND CONTACT DETAILS OF PERSON/DEPARTMENT)**.

(NAME OF COMPANY/ORGANIZATION/AGENCY) will not tolerate retaliation against any person who makes a complaint of sexual harassment. It will take the necessary steps to ensure that the matter is thoroughly investigated and promptly addressed. If the allegation is determined to be credible, **(NAME OF COMPANY/ORGANIZATION/AGENCY)** will take immediate and effective measures to end the unwelcome behaviour. **(NAME OF COMPANY/ORGANIZATION/AGENCY)** is committed to taking action if it learns of possible sexual harassment, even without a formal complaint.

(NAME OF PERSON OR DEPARTMENT) is the main contact point for questions or concerns about sexual harassment. **(NAME OF PERSON OR DEPARTMENT)** has responsibility for investigating or overseeing investigations of alleged sexual harassment. **(NAME OF COMPANY/ORGANIZATION/AGENCY)** is committed to ensuring that all investigations of sexual harassment are conducted in a prompt, thorough, and impartial manner.

Supervisors and other responsible officials who observe, are informed of, or reasonably suspect incidents of possible sexual harassment must immediately report such incidents to **(NAME OF PERSON OR DEPARTMENT)**, **(who/which)** will either initiate or oversee a prompt investigation. Failure to report such incidents to **(NAME OF PERSON OR DEPARTMENT)** will be considered a violation of this policy and may result in disciplinary action. **(NAME OF PERSON OR DEPARTMENT)** will provide guidance as needed on investigating and handling the alleged harassment. Supervisors should take effective measures to ensure that no further apparent or alleged harassment occurs pending completion of an investigation.

(NAME OF COMPANY/ORGANIZATION/AGENCY) will seek to protect the identities of the alleged victim and harasser, as reasonably necessary (for example, to complete an investigation successfully). **(NAME OF COMPANY/ORGANIZATION/AGENCY)** will also take the necessary steps to protect from retaliation those employees who in good faith report incidents. It is a violation of this policy and of the law to retaliate against someone who has reported possible sexual harassment, and violators may be subject to discipline.

Employees who have been found by **(NAME OF COMPANY/ORGANIZATION/AGENCY)** to have subjected another employee to unwelcome conduct of a sexual nature, and such behaviour meets the definition of sexual harassment, including “*quid pro quo*” sexual harassment identified in the Code of Conduct on Sexual Harassment in the Workplace, will be subject to discipline or other appropriate management measures. Discipline will be appropriate to the nature and the extent of the behaviour, and penalties ranging from a letter of reprimand to dismissal are allowed to be applied.

Employees' Rights and Responsibilities Under This Policy

Any employee who believes he or she has been the target of sexual harassment is encouraged to inform the alleged harasser orally or in writing that such conduct is unwelcome and offensive and must stop.

If the employee does not wish to communicate directly with the alleged harasser, or if such communication has been ineffective, the employee is encouraged to report the unwelcome conduct as soon as possible to **(NAME OF PERSON OR DEPARTMENT)**.

In addition to reporting sexual harassment concerns to **(NAME OF PERSON OR DEPARTMENT)**, employees who believe they have been subjected to sexual harassment may elect to pursue resolution either through informal channels including conciliation, mediation, counseling or informal discussions or through a formal investigation.

All **(NAME OF COMPANY/ORGANIZATION/AGENCY)** employees, including but not limited to staff, supervisors, and senior officials, are required to comply with this policy. Employees are also expected to behave professionally and to exercise good judgment in work-related relationships, whether with fellow employees, business colleagues, or members of the public with whom they come into contact in the course of official professional duties. Further, all employees are expected to take appropriate measures to prevent sexual harassment. Unwelcome behaviour of a sexual nature will not be tolerated.

ANNEX 3 – SOME FREQUENTLY ASKED QUESTIONS ABOUT ON SEXUAL HARASSMENT IN THE WORKPLACE

Q. Should all companies have a sexual harassment policy?

A. Yes. All companies, regardless of size, need to establish a sexual harassment policy. The Code of Conduct on Sexual Harassment in the Workplace applies to both the public and private sectors.

Q. What should I do if my employer does not have a policy or any regulation on sexual harassment?

A. If your employer does not have a policy or any regulation on sexual harassment, you should contact your supervisor, the grassroots or upper-level trade union, or staff representative, or a representative of the Vietnam General Confederation of Labour, suggesting the development of a policy. The Ministry of Labour, Invalids and Social Affairs, Vietnam Chamber of Commerce and Industry or Vietnam General Confederation of Labour are available to assist employers in developing an appropriate policy on sexual harassment.

Q. How do you determine if certain conduct is unwelcome?

A. When confronting conflicting evidence as to whether conduct was welcome or unwelcome, employers should examine all circumstances, evaluating each situation on a case-by-case basis. The investigation should determine whether the alleged harasser's behaviour could be reasonably seen as offensive, humiliating or unwelcome by the victim and 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.

Q. What factors determine whether an environment is 'hostile'?

A. The following factors can help determine whether an intimidating, hostile or offensive working environment was created as a result of certain conduct/behaviour:

- whether the conduct was verbal or physical or both;*
- how frequently it was repeated;*
- whether the conduct was hostile or offensive;*

- *whether the alleged harasser was a co-worker, supervisor, higher level manager, client or third party (e.g. contractor or service provider) ;*
- *whether others joined in perpetrating the conduct; and*
- *whether the conduct was directed at more than one individual.*

Q. Can a sexual harassment claim be made by an employee who consented to the sexual activity?

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

Q. Should staff members be allowed to date each other?

A. Yes. Staff members should be permitted to date each other. Employers should not prohibit workers from forming genuine relationships which are consensual, welcomed and reciprocated.

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

A. It may be. It is considered sexual harassment if you have made it clear to the person that you used to date that you are no longer interested in a relationship, and that person continues to make sexual advances, comments or gestures to you.

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

A. No. Preventative measures should not take the form of 'protective' measures. Employers should look for ways to educate and empower all workers (female and male) rather than attempt to protect them by creating 'sameness'.

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

A. In general, all forms of sexual harassment violate the laws and need to be prevented and addressed. They need to be investigated in a timely manner and dealt with appropriately.

Based on its nature, if the sexual harassment offence is serious enough to be covered by the Penal Code (serious, very serious, particularly serious), consisting of enough criminal elements, will be addressed according to penal laws (sexual assault and rape). If these offences are discovered, they must be immediately reported to the penal investigation bodies (the police or other authorities).

If the act of sexual harassment is not serious enough to be considered a criminal offence, punishment could be of a financial nature and/or any other measures in accordance with labour laws and laws on administrative sanctions.

DRAFTING COMMITTEE

Mr Ha Dinh Bon, Director, Legal Department, Ministry of Labour, Invalids and Social Affairs

Mr Nguyen Van Binh, Deputy Director, Legal Department, Ministry of Labour, Invalids and Social Affairs

Mr Le Xuan Thanh, Deputy Director, Department of Labour and Wage, Ministry of Labour, Invalids and Social Affairs

Mr Le Dinh Quang, Deputy Director, Industrial Relations Department, Viet Nam General Confederation of Labour

Ms Ho Thi Kim Ngan, Head of Division, Industrial Relations Department, Viet Nam General Confederation of Labour

Ms Nguyen Thi Tuyet Minh, Chairwoman, Viet Nam Women Entrepreneurs Council, Viet Nam Chamber of Commerce and Industry

Ms Mai Thi Dieu Huyen, Head of Division, Viet Nam Women Entrepreneurs Council, Viet Nam Chamber of Commerce and Industry

Mr Ngo Hoang, Deputy Head of Division, Labour Laws Division, Legal Department, Ministry of Labour, Invalids and Social Affairs

Ms Nguyen Thi Van, Legal Department, Ministry of Labour, Invalids and Social Affairs

Ms Nguyen Thi Nhuan, Legal Department, Ministry of Labour, Invalids and Social Affairs

ILO SPECIALISTS

Ms Lisa Wong, Senior Specialist in Non-Discrimination, Fundamental Principles and Rights at Work Branch, ILO Geneva

Ms Tran Quynh Hoa, ILO Country Office for Viet Nam.

(The drafting process of this Code took into account existing codes of practice on sexual harassment in some countries in the world.)