



## **Preventing Sexual Harassment in the Workplace**

### **Formulating Corporate Policy on Anti-Sexual Harassment**

#### **I. Introduction**

##### **Background:**

Sexual harassment is not a harmless play, but an offensive unlawful act. Under the Sex Discrimination Ordinance (SDO), sexual harassment in the employment field is unlawful. One of the characteristics of sexual harassment cases is that the victims are usually reluctant to lodge complaints with their employer. Some victims think that it would not help much even though complaints were made. In addition, some employees are in fear of being regarded as trouble-maker or exposing themselves to ridicule or being victimised. Hence, even though a company has not received any sexual harassment complaints from employees, it does not necessarily mean that there is no occurrence of sexual harassment incidents.

Under the SDO, apart from the personal liability to be borne by individuals for unlawful acts of sexual harassment, the employer may also be vicariously liable even he/she had no knowledge about the acts. In recent years, the SDO has been amended to further expand the scope of protection against sexual harassment. Provisions to protect providers of goods, facilities or services against sexual harassment by customers were added in 2014, while amendments were made to outlaw sexual harassment between workplace participants in common workplaces in 2020.

The consequences of sexual harassment can be costly. Affected employees may face emotional stress, anxiety and even depression. Employers may face low staff morale, tarnished reputation and payouts for legal costs. The Equal Opportunities Commission (EOC) believes that it would be too late to redress the wrongs afterwards; instead, proactive adoption of preventive measures is the desirable approach. It is necessary for employers to formulate an anti-sexual harassment policy and review the policy regularly.



## **Developing an anti-sexual harassment policy**

Some parts of an anti-sexual harassment policy, for instance, the legal definition of sexual harassment, are standardised. However, quite a number of particulars should be tailor-made, subject to the needs and resources of individual companies. For instance, it may not be feasible for a small-size company to set up a panel to handle the complaints.

In addition, through the formulation process, the employer and company management develop a deeper understanding of the nature of sexual harassment and hence, they will implement the anti-sexual harassment measures more proactively in future. If the employees or representatives of employees are consulted or engaged in the discussion before the adoption of the policy, the legitimacy of the anti-sexual harassment policy will be enhanced. A successful implementation of the policy can be envisaged.

Although there is no "one-size-fits-all" policy, some elements are essential for an anti-sexual harassment policy. The EOC has compiled all the important elements into a "Framework for Sexual Harassment Policies" for reference.

## **II. Framework for Corporate Policy on Anti-Sexual Harassment**

Regardless of whether an anti-sexual harassment policy has been formulated in your company or not, you may take the elements listed in this Framework as a checklist to check against the anti-sexual harassment policy which is to be / has been adopted, and to consider whether it is required to make any further improvements.



## **Framework for Corporate Policy on Anti-Sexual Harassment**

### **1. Principle: zero tolerance for sexual harassment**

The policy should clearly state that everyone has the rights to be respected and be equally treated. It should also point out that sexual harassment is discriminatory and unlawful. Sexual harassment may lead to disciplinary measures of company, and may also entail civil liability and even criminal consequences. Once an act of sexual harassment occurred, any person in the company has a right to lodge a complaint. The determination of company to eliminate and prevent sexual harassment should be clearly conveyed. Sexual harassment will not be tolerated in the company.



### **2. Objectives and Responsibilities of the Employer & Management**

The objectives of anti-sexual harassment policy should be listed out so that all parties in company have a clear understanding of the objectives. The objectives also set a direction for future development of specific measures.

The objectives of anti-sexual harassment policy and the liability of company include but not limited to:

- ensuring all employees, partners and commission agents (including prospective employees and persons who sought for employment / the position as a partner), other common workplace participants (including volunteers, interns, apprentices, consignment workers, contract workers, service providers, and agents), and customers are able to work, conduct activities or provide / have access to services in a safe and sexual hostile-free environment;
- informing all employees, through effective means, the anti-sexual harassment policy and the channels to lodge complaints;
- providing appropriate training and the latest information about the law to employees and management staff in order to raise their awareness on sexual harassment and to nurture the right and proper value of respecting others;



<ul style="list-style-type: none"><li>• setting up effective channels for lodging complaints, which should be sensitive to the feelings and needs of complainants, in order to make the complaint handling mechanism more user-friendly;</li><li>• handling complaints on the principles of fairness, impartiality and confidentiality, and in a serious and discreet manner; and</li><li>• ensuring that nobody will be punished because of lodging a complaint in good faith.</li></ul>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>
<b>3. Obligation and Responsibility of Employer and All Employees</b>	
<ul style="list-style-type: none"><li>• The work environment is created by both the employer and the employees. The policy should clearly state that the employer, company management, all employees and workplace participants have the obligation and responsibility to prevent and eliminate sexual harassment, including respecting the will and feelings of others, refusing to tolerate any sexual harassment behavior, and supporting co-workers to take reasonable steps to stop sexual harassment.</li><li>• The policy should clearly state that any employee can lodge a complaint with the company management / person-in-charge of handling sexual harassment complaints if the employee was sexually harassed or witnessed any other employee committed any sexual harassment act.</li></ul>	<input type="checkbox"/>  <input type="checkbox"/>
<b>4. Definition of Sexual Harassment</b>	
<p><b><u>Definition:</u></b></p> <ul style="list-style-type: none"><li>• The policy should explain the meaning of sexual harassment in plain and simple language. For instance, sexual harassment means a person makes an unwelcome conduct of a sexual nature to another person. The unwelcome conduct includes unwelcome sexual attention, physical contact, talking about issues of a sexual nature, or making a sexual advance. It also amounts to sexual harassment if you find the environment you work is sexually hostile, in which you feel intimidated.</li></ul>	<input type="checkbox"/>



- Section 2(5) of Sex Discrimination Ordinance (SDO) provides the definition of sexual harassment. In addition, sections 2(7), 2(8), 9, 23, 23A, 39, 39A and 40 are relevant provisions in relation to sexual harassment. Under the SDO, the legal definition of sexual harassment is:

(a) If any person

(i) makes an unwelcome sexual advance, or an unwelcome request for sexual favors, to another person; or

(ii) engages in other unwelcome conduct of a sexual nature in relation to that person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that she would be offended, humiliated or intimidated; or

(b) The person, alone or together with other persons, engages in conduct of a sexual nature which creates a hostile or intimidating environment for another person.

- The SDO renders unlawful sexual harassment between persons in an employment relationship, and that between providers and users of goods, facilities or services. The amendments to SDO as enacted in 2020 expand the scope of protection to prohibit sexual harassment of club members by club management, and sexual harassment between workplace participants at a common workplace where they both work or attend. S23(A) provides that workplace participants means an employee; an employer; a contract worker; the principal of a contract worker or a commission agent; a commission agent; a partner in a firm; an intern; or a volunteer.

**Clarification of common myths:**

- **Regardless of gender:** the policy should state that sexual harassment may occur to any person, regardless of gender; all provisions in the SDO and the company policy related to sexual harassment are applicable to both men and women as well as sexual harassment to persons of the same sex.



<ul style="list-style-type: none"><li>● <b>Intention is irrelevant:</b> the policy should state that even if the act of sexual harassment is not intentional, it amounts to sexual harassment once the act meets the definition of sexual harassment. Hence, no matter whether the act is intentional or not, or even if the act is of a playful nature, it may amount to sexual harassment.</li><li>● <b>Single incident:</b> the policy should state that a single incident may also amount to sexual harassment.</li><li>● <b>Power relationship:</b> Although sexual harassment incidents are usually related to a power relationship, i.e., the powerful harass the weak, for example, a supervisor harassed an intern. Sexual harassment may also occur between peers. It is also possible for a person weaker in power to harass a more powerful person, e.g., an employee harasses the employer.</li></ul>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>
<b>5. Examples of Sexual Harassment</b>	
<p>It may not be easy for the general public to master the definition of sexual harassment. Therefore, it is useful to provide examples as illustration, for example, display offensive or pornographic information, inappropriate touching or kisses, or quid pro quo harassment, etc. Please refer to the website of the EOC for relevant examples.</p>	<input type="checkbox"/>
<b>6. Rights of victim and various actions to be taken</b>	
<ul style="list-style-type: none"><li>● Every person has a right to lodge a complaint on sexual harassment.</li><li>● When a person is sexually harassed, he/she may take the following actions:<ul style="list-style-type: none"><li>■ Speak up at the time. Tell the harasser that his/her act is unwelcome and should be stopped immediately.</li><li>■ Keep a written record of the incidents, including the dates, time, location, witnesses and nature (what the harasser has said or done) and his/her own response.</li><li>■ Tell someone he/she trusts and ask for emotional support and advice.</li></ul></li></ul>	<input type="checkbox"/>  <input type="checkbox"/>



<ul style="list-style-type: none"><li>■ Lodge a formal or informal complaint to the employer / company management or the designated person responsible for handling sexual harassment complaints in the company. An informal complaint can be made verbally to let the parties concerned understand the issue from a different perspective in a communicative approach, and to settle the dispute. A formal complaint is normally made in written form and should be formally investigated in accordance to the general complaint handling procedures. The process and findings of the investigation (including disciplinary or other appropriate actions, if any) should be properly recorded, with recommendations. If the complainant dissatisfies with the outcome of the informal complaint, he / she can lodge a formal complaint.</li><li>■ Before deciding to file a complaint at the EOC or not, one may call the EOC's Anti-Sexual Harassment Hotline at 2106 2222 to seek information about sexual harassment, including definition of sexual harassment, relevant legal provisions, complaint procedures and other community resources, and other related information and assistance.</li><li>■ Lodge a complaint with the EOC. In case conciliation fails, the complainant may seek legal assistance from the EOC. EOC Online Complaint Form can be found at the EOC website: <a href="http://www.eoc.org.hk/eoc/graphicsfolder/complaint.aspx">http://www.eoc.org.hk/eoc/graphicsfolder/complaint.aspx</a></li><li>■ Consult a lawyer; report to the police or to file a civil law suit against the harasser.</li></ul> <ul style="list-style-type: none"><li>● It should be clearly stated that the complaint handling procedure does not affect the complainant's right of lodging complaints with the EOC, reporting to the police or filing a lawsuit in the District Court.</li></ul>	<input type="checkbox"/>
<b>7. Principles of handling sexual harassment complaints</b>	
<ul style="list-style-type: none"><li>● <b>Fairness:</b> Enquiries and complaints should be handled in a just and impartial manner to ensure that the complainant and the alleged harasser are fairly treated, and both parties have chances to present their case.</li></ul>	<input type="checkbox"/>



<ul style="list-style-type: none"><li>● <b>Confidentiality:</b> Assurance should be given to all employees that all information and records related to a sexual harassment complaint must be confidential and only be disclosed to relevant staff on a need-to-know basis. Under the principle of natural justice, the alleged harasser should be informed about the details of the allegation.</li><li>● <b>Avoiding any delay:</b> Complaints should be handled promptly because both the complainant and the alleged harasser are under pressure. Employer/company management or the person-in-charge of handling complaints should deal with the case without any delay.</li><li>● <b>Transparent procedures:</b> Companies should incorporate the handling procedures related to sexual harassment complaints in their complaint policy/ anti-sexual harassment policy and make them known to all staff and other workers in the company.</li><li>● <b>Protection for complainants and witnesses:</b> Complainants and witnesses should be protected against victimisation i.e. being treated less favourably, including being retaliated (which in itself is an unlawful act of discrimination under section 9 of the SDO) because of the complaint case.</li><li>● <b>Avoid conflict of interest:</b> If the employee who handles the enquiry / complaint case is closely related to the complainant or the alleged harasser (for instance, relatives), or the alleged harasser is the person-in-charge of handling sexual harassment complaints, the case should be handled by another person.</li><li>● <b>Anonymous complaint:</b> Whether the complaints are anonymous or not, companies may need to make inquiries or to conduct investigation. If the anonymous complaint involves a minor or a person with disability, the decision to follow up with the complaint or not should be made more carefully.</li></ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>





<ul style="list-style-type: none"><li>● <b>Avoid further distressing the complainant:</b> Showing empathy to the feelings of complainants, for instance, documenting information in a complete manner to avoid asking the complainant to keep telling the unpleasant experience again and again, respecting the complainant's preference in appointing investigators of the same sex to conduct the interview, etc. in order to ensure that the complainant would not be unnecessarily further distressed or humiliated. Complaint cases should be handled discreetly so that the other related parties would not be unnecessarily distressed.</li></ul>	<input type="checkbox"/>
<b>8. Mechanism for handling sexual harassment complaints</b>	
<ul style="list-style-type: none"><li>● Names and contacts of the management or the designated person(s) responsible for handling complaints should be listed.</li><li>● Both informal and formal complaint handling mechanisms for sexual harassment complaints should be established.</li><li>● Before deciding on using formal or informal ways to resolve the conflict, the complainant should be informed of the difference in purposes, procedures and possible results for informal and formal handling mechanisms.</li><li>● The complainant may ask the designated person to handle the complaint using the formal handling mechanism when he / she finds the informal process has failed to effectively resolve the issue.</li><li>● Taking into account the education level, and disability status of the complainant, communication difficulties, and the distress suffered by the complainant after the sexual harassment incident, the employers/management staff should allow the complainant to lodge a formal or informal complaint in various ways. For example, the person-in-charge of complaint handling may consider assisting in writing the complaint based on the complainant's oral account.</li><li>● Sexual harassment acts may also amount to criminal offences such as indecent assault, distribution or display of indecent and obscene articles. The employer may consider referring those cases to the police.</li></ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>



<ul style="list-style-type: none"><li>• Company may consider using a flow chart to clearly indicate each step of the complaint handling procedure.</li></ul>	<input type="checkbox"/>
<ul style="list-style-type: none"><li>• If necessary, support can be offered to the complainant. Such support may include but not limited to rearrangement of duties or leave, and counselling provided by the company or third parties.</li></ul>	<input type="checkbox"/>
<ul style="list-style-type: none"><li>• <b>Informal handling mechanism:</b><ul style="list-style-type: none"><li>■ Generally speaking, informal complaint handling mechanism is suitable for handling relatively minor or single incidents of sexual harassment. This complaint handling mechanism focuses on resolving the conflict and stopping the act of alleged sexual harassment. It does not involve an investigation. Sometimes, the alleged harasser admits to his / her conduct but may not realise the concerned acts amount to sexual harassment. If that is the case, then an investigation is not needed to prove the alleged act has been done. Sometimes, the complainant's primary concern is to stop the acts of sexual harassment as soon as possible rather than conducting an investigation to prove something inappropriate has happened and to penalise the alleged harasser, the complaint may then be handled informally, subject to the consent of the complainant.</li><li>■ An informal mechanism may include the complainant seeking the advice of the designated persons for handling sexual harassment complaints and then dealing with the situation himself or herself. The complainant may also ask the designated persons for handling sexual harassment complaints to speak to the other party for them. The person-in-charge of complaint handling may talk to the other party about the matter, ask the other party to stop doing the act, and reaffirm the organisation's policy on zero-tolerance of sexual harassment.</li></ul></li></ul>	<input type="checkbox"/>



- Informal complaint handling mechanism is potentially quicker to process and to solve the problem. It provides an opportunity to inform/remind the alleged harassers of the company's anti-sexual harassment policy and of how their behaviour is affecting others. However, complaints handled under this mechanism are less easy to monitor. The company's knowledge about the process and outcome may be easily lost unless documented. The power dynamics between the parties may also affect the effectiveness of this informal mechanism. In addition, the alleged harasser may also feel that they have been treated unfairly as they have no chance to put the record straight.

- **Formal handling mechanism:**



- A formal handling mechanism is followed for more serious or repetitive sexual harassment complaints, or when sexual harassment continues or the dispute between the two parties cannot be resolved using an informal mechanism.
- A formal mechanism involves investigation. The complainant will be formally interviewed. The alleged harasser will be informed about the complaint and be given the opportunity to respond to the allegation. Witnesses, if any, may also be interviewed. It also involves making a finding on the balance of probabilities, i.e. is it more likely than not that sexual harassment has occurred.
- If the complainant or alleged harasser is a minor, a person with intellectual disability or with communication difficulties, he/she is entitled to be accompanied by his/her parent/guardian/family member/carer to attend the relevant interview so as to safeguard his/her rights.
- If a panel is formed to handle the sexual harassment complaint, it should be composed of an equal, or almost equal, number of members of both sexes.
- The interviews and the statements of both the complainant and the alleged harasser should be documented under formal handling process.



<ul style="list-style-type: none"><li>■ If necessary, arrangements should be made to avoid the complainant and the alleged harasser from getting into unnecessary contact, in particular, private contact, during the period of investigation.</li><li>■ A written report should be prepared to give an account of the investigation outcome, disciplinary or other appropriate actions (if any) and the considerations behind to both the complainant and the alleged harasser.</li><li>■ If one party does not accept the investigation outcome, the party may request to the appeal mechanism set up by the company for a review of the case.</li><li>■ If a case proceeds to conciliation, the person to be in charge of the conciliation process should be agreed by both the complainant and the alleged harasser. The mutually agreed terms of settlement agreement, for instance, the need for making apologies and paying compensation, should be documented.</li></ul>	
<b>9. Time bar for lodging a complaint</b>	
<ul style="list-style-type: none"><li>● There is a time bar for lodging a complaint with the EOC or to take legal action. If the person who is sexually harassed intends to lodge a complaint with the EOC, he/she should take action within 12 months after the incident occurred. Otherwise, the EOC will not handle the case unless there are justifiable reasons for the delay. Any decision to take legal proceedings to the District Court should be made within 24 months after the incident occurred.</li><li>● Having considered that any delay could cause difficulty to the investigation and the collection of evidence, the company can set a time bar for lodging complaints. However, the time bar should be reasonable and should take into account that the victim may postpone lodging a complaint due to the post-incident anxiety and distress suffered by him/her. With a view to avoiding victims being discouraged by the time bar, companies may specify that delayed complaints with justifiable reasons would be handled at the company's own discretion.</li></ul>	<input type="checkbox"/>  <input type="checkbox"/>



10. Disciplinary or Other Appropriate Actions	
<ul style="list-style-type: none"><li>The policy should state the specific disciplinary or other actions to which sexual harassment acts could lead and what the maximum penalty is, for instance, verbal or written warning, attending counselling sessions / anti-sexual harassment training, making apologies, paying compensation, suspension, being dismissed, etc. Actions that could be taken by the company should also be stated. For instance, if the case involves criminal offences, the company will report it to the police.</li></ul>	<input type="checkbox"/>
11. Measures for prevention of sexual harassment	
<ul style="list-style-type: none"><li><b>Promulgation of policy:</b> Companies should promulgate the policy to all employees on a regular basis. The anti-sexual harassment policy should be distributed and explained to all new employees (including temporary employees).</li></ul>	<input type="checkbox"/>
<ul style="list-style-type: none"><li><b>Accessible information:</b> The policy should be uploaded to the company intranet and/or website (contract service providers and external parties may not be authorized to have access to the company intranet) so that all company management and employees can have access to the policy at any time. Notices of the policy should also be prominently posted for all employees (in particular those who have no access to computer in company) to inform them of the policy, the way to get a copy of it, and the channels to lodge a complaint. All service providers and external parties should know that there is zero-tolerance to any sexual harassment acts and should be provided with the relevant information.</li></ul>	<input type="checkbox"/>
<ul style="list-style-type: none"><li><b>Regular review:</b> The review period for the policy and measures should be specifically set at a regular interval, instead of generally saying "regular" review would be conducted. On top of the regular reviews, review the policy and measures after the investigation of a complaint is completed to see if any revisions are needed to effectively prevent sexual harassment. After investigation, also look at the workplace to understand if there are any unwritten ways in which the office operates which may breed a culture of sexually hostile environment, and make changes to avoid potential problems occur.</li></ul>	<input type="checkbox"/>



<ul style="list-style-type: none"><li>• <b>Regular training:</b> Set specific targets (such as number of people and/or regular period of time) for training and education programmes on gender equality, respecting others and enhancing awareness on the prevention of sexual harassment for employees, for arranging those employees to receive training on how to handle sexual harassment complaints, and also for circulating the policy.</li><li>• <b>Elimination of offensive articles or information:</b> All articles that may possibly lead to sexual harassment and preventing any improper use of computer technology are cleared in order to prevent sexual harassment.</li><li>• <b>Designate employees to implement the measures:</b> Employees of particular positions in the company are designated to implement specific measures for the prevention of sexual harassment. A clear lineation of responsibility can ensure proper implementation of the policy.</li><li>• <b>Code of Conduct:</b> For companies that have a Code of Conduct in place, the companies should include elements related to the prevention of sexual harassment are included.</li></ul>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>
<b>12. Related resources</b>	
<ul style="list-style-type: none"><li>• Information related to sexual harassment may be listed, for instance, links to EOC's website (<a href="http://www.eoc.org.hk/">http://www.eoc.org.hk/</a>) for the anti-sexual harassment resources and the training programmes (<a href="http://www.eoc.org.hk/eoc/graphicsfolder/training.aspx">http://www.eoc.org.hk/eoc/graphicsfolder/training.aspx</a>). Companies may also list the related information and resources that provided Non-Government Organisations.</li></ul>	<input type="checkbox"/>



### **III. Implementation of anti-sexual harassment policy**

Developing a corporate policy on anti-sexual harassment is the first step to prevent sexual harassment. Companies should adopt corresponding measures to implement the policy; otherwise, it will just be empty talk. The following questions may remind the company management to be aware of the progress of policy implementation in their company:

1. Has the anti-sexual harassment policy been reviewed or amended ever since its development and promulgation?
2. When was the last review of the company anti-sexual harassment policy conducted?
3. Do all employees and new employees know about the corporate policy on anti-sexual harassment?
4. When was the last training conducted for employees on gender equality and prevention of sexual harassment?
5. When was the last training conducted for the designated employees for handling sexual harassment complaints?
6. As a policy maker, when did you receive your last training related to prevention of sexual harassment?
7. Has there been any complaint relating to sexual harassment? If so, was the complaint handling procedure followed?

— End —

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