

SEXUAL ABUSE AND HARASSMENT



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What does sexual abuse and harassment mean?

When a sexual act is done against someone by another person without the persons consent.

The 'sexual act' can be in the form of words, writings, drawings, images, sounds, acts, movements, look or any other act which causes the victim to deduce, understand and/or interpret sexual intention.

Sexual abuse and harassment includes the following acts:

- (1) whistling;
- (2) staring at a sexual organ in manner that will make the victim feel uncomfortable;
- (3) touching any part of the body;
- (4) hugging;
- (5) lingering after a handshake and squeezing or tickling the hand;
- (6) showing pictures, drawings, or videos of sexual acts being performed;
- (7) making inappropriate jokes about body parts as a form of harassment;
- (8) direct or indirect propositions which imply that employment may be secured or remaining in employment or promotions will be granted, or any other benefits due to the employee will be available only if a sexual desire is fulfilled or by agreeing to acts of sexual abuse and harassment in return.

EMPLOYER GUIDELINES: SEXUAL HARASSMENT IN THE WORKPLACE

- Employers or employees cannot commit sexual abuse and harassment against a co-worker or a person working in a lower rank or position.
- Employers cannot conduct themselves or speak in a manner that gives a person seeking employment that they would have to consent to acts of sexual abuse and harassment in order to secure a job.
- Employers cannot conduct himself in a manner that would give the employee the impression that in order to retain the job or receive a promotion, they would have to consent to acts of sexual abuse and harassment.
- Employers must take necessary steps to ensure that the workplace is free of and protected from acts of sexual abuse and harassment.
- If the employer has knowledge of any incident of sexual abuse and harassment, the employer must take steps to prevent it from further occurring and to protect the victim from suffering further.
- If the employer has knowledge of any incident of sexual abuse and harassment, the employer will be held responsible for damages suffered by the victim.
- All workplaces must openly display their policy on sexual harassment. This includes emphasizing that it is prohibited by law and there are measures that will be taken should there be any incident reported.
- Employers must ensure that their employees are aware that there are means for them to make complaints. This would include having a process in place where complaint forms may be submitted and procedures are documented.
- Employers must ensure that all employees are adequately briefed on the workplace Sexual Harassment Policy.

COMMITTEE ON PREVENTION OF SEXUAL ABUSE

- Where a workplace consists of more than 30 employees, it is compulsory to establish a committee for investigating and taking measures with respect to complaints made about sexual abuse and harassment. This committee will be named 'Committee on Prevention of Sexual Abuse and Harassment'.
- It is also compulsory for every ministry, President's Office, independent institutions, People's Majlis and all courts established under the law to establish a committee.
- There are no restrictions for smaller workplaces with less than 30 employees. Committees may be formed in any main secretariat, holding company or if it is a department, in the relevant ministry.

Requirements for establishing the Committee

- The Committee must be established within 6 months from the date the Prevention of Sexual Abuse and Harassment Act (16/2014) came in to force: 13 May 2014. Failing to do so could result in a fine of MVR5,000.
- The Committee must be established by the human resources department of the workplace or institution. In circumstances where there is no human resources department, then the most senior official is responsible for forming the committee.
- There should be 3 members in the Committee, 1 of which must be a female, comprising of senior management.
- A chairperson must be elected from among the members.
- A person against whom a complaint of sexual abuse and harassment has been made, or a person found to have committed such an act and has been penalized cannot be appointed as a member of the committee

Penalties for not establishing the committee

Failure to establish a committee within 6 months from the date the Prevention of Sexual Abuse and Harassment Act is an offence. Any person also has the right to complain to the Employment Tribunal where a workplace or institution failed to establish Committee on Prevention of Sexual Abuse and

Harassment. After investigation, if the Tribunal finds that there was no committee established, the workplace or institution may be fined MVR5,000.

Duties and responsibilities of the committee

- Displaying messages in the workplace or institutions stating sexual abuse and harassment is prohibited by law;
- Conducting awareness programs for employees and customers about prevention of sexual abuse and harassment;
- For institutions that serve as a shelter for children and other persons, conduct awareness programs on prevention of sexual abuse and harassment for children and other persons;
- Where a complaint was filed, or the committee reasonably believes that acts of sexual abuse and harassment has happened, then the committee must summon and obtain witness statements and evidence related to the suspicion of sexual abuse and harassment,
- Obtaining relevant documents in relation to a complaint of sexual abuse and harassment;
- Where the respondent is found to have committed an act of sexual abuse and harassment, the committee must conduct investigations in relation to a complaint, and take measures against the person in a manner within the powers given under the Employment Act;
- Conduct investigations in relation to a complaint, and direct the complainant to file a case in the relevant investigation authority where the complaint relates to a criminal offence, and aid the complainant to proceed in filing such a complaint;
- Conduct investigations in relation to a complaint, and assist the complainant in reinstating a concession, promotions or any other right which the complainant was deprived of, where the respondent is found to have committed an act of sexual abuse and harassment; or where the complaint was filed by a customer of an institution, assist the complainant in reinstating an opportunity or right that the person was deprived of.

Penalties

Upon the conclusion of the investigation, the committee may impose the following penalties based on the seriousness of the offence:

- issue a written advice to the perpetrator;
- issue a written warning to the perpetrator advising the person not to repeat such an act;
- suspend the perpetrator from employment for a certain period of time;
- dismiss the perpetrator from the responsibilities the perpetrator was carrying out;
- demote the perpetrator to a position that is lower than the current position;
- terminate the perpetrator from employment;

Any of the measures stated above are taken against the perpetrator will be recorded in his/her employment record.

SEXUAL HARASSMENT IN INSTITUTIONS

- (1) People who seek services of institutions and children and adults in shelters must be protected from acts of sexual abuse and harassment.
- (2) Senior officials of institutions must take adequate measures to ensure that the institution is not exposed to acts of sexual abuse and harassment by formulating.
- (3) Senior officials and employees cannot conduct themselves in the following manner:
 - (a) someone seeking services of the institution will only be assisted if they consent to act of sexual abuse and harassment;
 - (b) services will be expedited/given priority or a slot in the institution will be provided if the person seeking assistance consents to sexual abuse and harassment;
 - (c) a person who consents to acts of sexual abuse and harassment will not be terminated from working there even though there is valid reason to do so;

- (d) where the institution provides shelter for children and other persons the services will only be provided by agreeing and consenting to acts of sexual abuse and harassment.

Note: for purposes of this section, 'Institution' is defined as educational institutions, jails, children's shelters, shelters for the disabled, drug rehabilitation centres, health services, sports centres, social centres and other places providing services to the public.

What rights do I have after filing a complaint?

As a complainant, you will have to be given the opportunity to provide further details with regards to the incident and you will also be allowed to put forward any relevant witness. Do note that the respondent also has rights. As the accused, the respondent will be provided information on the details of the complaint and will also be given the opportunity to submit a defence.

After lodging a complaint, how long will it take for the investigation to complete?

The investigation should not take more than 60 days to conclude. If 60 days has lapsed and the committee has not completed its investigation, the complainant may submit the complaint directly to the Employment Tribunal.

Can my employer retaliate against me for filing a sexual harassment complaint?

No. By law, the employer cannot create the impression that an employee's rights and benefits are available only on the condition that the employee consents to sexual harassment conduct. Your employer cannot deprive you of any opportunities for advancement, the right to remain employed and other benefits tied to your employment, because of a complaint.

My co-worker told some of us a joke with sexual content. Some people were offended by it, but I found it quite funny. He later received a warning from HR. Is this warranted?

Yes. Based on the interpretation of sexual abuse and harassment, if the conversation leads someone to interpret the words as sexual intention by a person of sound mind. Any employee has the right to submit a complaint to the committee for prevention of sexual abuse and harassment established in the workplace.

My current workplace does not have a Committee on Prevention of Sexual Abuse and Harassment established. Where should I submit my complaint?

Where there is no Committee on Prevention of Sexual Abuse and Harassment, the complaint may be submitted directly to the Employment Tribunal.

What are the conditions for submitting a claim to the Employment Tribunal?

If there is no Committee on Prevention of Sexual Abuse and Harassment established in your workplace or you have filed a complaint and 60 days has lapsed without the investigation concluding, you may file your complaint with the Employment Tribunal. However, the complaint must be submitted within 12 months from the date of the incident. If the complainant is a child then the complaint must be submitted within 12 months from the date the child turns 18 years old.

What can I expect from a claim with the Employment Tribunal process?

- For sexual abuse and harassment case, the matter will conclude within 90 days. The tribunal holds the discretion as to whether or not to reveal to the public information on the case and also to hold closed hearings in circumstances where public interest is not applicable.
- The cases will be decided on the principles of natural justice. Where the standard applied will be based on a 'balance of

probabilities' (which is a lower standard than that of a criminal matter)

- For cases where the complainant or respondent wishes to appeal the decision of the tribunal, they may do so and it will be in accordance with the requirements of the Employment Act, which is to Maldives High Court.

My complaint is against a member of the Committee on Prevention of Sexual Abuse and Harassment at my workplace, I fear a potential bias and that it will not be addressed and investigated. What can I do?

Not to worry, there are procedures in place to address this type of scenarios. In this circumstance, the committee will deal with it in either of the following:

- (a) advise the complainant to submit the complaint directly to the Tribunal; or
- (b) recusing the respondent from the committee and proceed to investigate the matter without the respondent;
- (c) The human resource section or the senior most official of the workplace will form a temporary committee with the approval from the complainant.

My complaint was filed and investigated. However, I disagree with the decision of the committee and feel this decision should be reviewed. What can I do?

As a complainant, if you are not satisfied with the decision of the committee, you may submit the matter to the Employment Tribunal. It must be done within 180 days from the date the committee makes a decision.

If the respondent is found guilty of an act of sexual abuse and harassment, what type of penalty will be imposed on him/her?

The Employment Tribunal will take into account the gravity of the act when deciding the penalty for the offence. The Tribunal has the power to:

- (a) decide that the act of the respondent amounts to sexual abuse and harassment, and issue a written instruction to

the respondent to immediately cease such acts and not to repeat them;

- (b) order that the victim of sexual abuse harassment be reinstated with any rights he/she was deprived of due to the act of the respondent and issue written instructions to that effect;
- (c) where the complainant and the respondent are co-workers; issue written instructions to the employer to take measures to ensure that the respondent does not repeat the acts of sexual abuse and harassment and to ensure that the acts of the respondent be prevented,
- (d) recover compensation for the victim as a result of damages suffered due to the acts of sexual abuse and harassment of the respondent;
- (e) any other measures which the tribunal may deem appropriate.

In the event the respondent breaches any order by the Tribunal to recover the victim with damages, the Tribunal has the power to order the respondent's employer to pay damages to the victim after setting-off from the respondent's wages.

The entire ordeal took a toll on me. It cost me emotionally and financially. Can I claim for compensation?

Yes, if the respondent is found guilty of an act of sexual abuse and harassment, as the complainant you have the right to put forward a claim in the Employment Tribunal to recover compensation for damages suffered. The Tribunal will take into account the following when considering a claim for compensation:

- (a) psychological trauma suffered by the victim;
- (b) loss of employment opportunities or promotions as a result of the act;
- (c) loss of opportunities or material damages suffered by a person seeking services of an institution;
- (d) costs incurred to obtain medical services or psychological help as a result of the act;
- (e) earnings of the respondent.

I do not work in the same office as my perpetrator. But he sexually harassed me in line of work. Can I submit a complaint against him?

Yes, you may file a complaint to the committee on prevention of sexual abuse and harassment in the respondent's workplace.

I just found out that I was denied a promotion and the position was instead awarded to a colleague who is in a relationship with the hiring manager. Is this sexual abuse or harassment?

This would depend on whether it was an isolated incident. If it is commonly acknowledged in the company that by agreeing to acts of sexual abuse and harassment it will help the employee secure employment or promotion, then it would be sexual abuse or harassment. You have the right to file a complaint against your employer for depriving you of career advancement.