



# Sexual harassment at place of work

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# Putting it into perspective

- ▶ FRA report on violence against women 2014 on sexual harassment:-
  - ▶ Women as young as the age of 15 have experienced some form to sexual harassment.
  - ▶ More commonly experienced by women that have a university degree or in high employment:-
    - 75% women in top management**
    - 74% women in professional occupation**
    - 44% women in skilled manual work**
    - 41% women that have never done paid work**



# Report sexual harassment

- 35% kept the incident to themselves
- 28% talked to a friend
- 24% spoke to a family member
- 4% reported to the police
- 4% spoke to an employer or boss
- 1% consulted a lawyer, victim support organisation or trade union representative

# Defining sexual harassment at place of work

## ► **Employment and Industrial Relations Act – Chp. 452 Laws of Malta**

Art 29(1) defines sexual harassment as:-

‘It shall not be lawful for an employer or an employee to harass another employee or to harass the employer by subjecting such person to any unwelcome act, request or conduct, including spoken words, gestures or the production, display or circulation of written words, pictures or other material, which in respect of that person is based on sexual discrimination and which could reasonably be regarded as offensive, humiliating or intimidating to such person.’

# Defining sexual harassment at place of work

Article 29 (2) It shall not be lawful for an employer or an employee to sexually harass another employee or the employer (hereinafter in this article referred to as "the victim") by:

(a) subjecting the victim to an act of physical intimacy; or

(b) requesting sexual favours from the victim; or

(c) subjecting the victim to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of written words, pictures or other material where

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(i) the act, request or conduct is unwelcome to the victim and could reasonably be regarded as offensive, humiliating or intimidating to the victim;

(ii) the victim is treated differently, or it could reasonably be anticipated that the victim could be so treated, by reason of the victim's rejection of or submission to the act, request or conduct.

# Equal Treatment in Employment Regulations – Sub. Leg. 452.95

- ▶ These regulations state that sexual harassment also tantamount to discrimination when:-
  - ▶ another person is subjecting to 'unwanted conduct or requests relating to any of the grounds referred to in sub regulation (1), when such conduct or request takes place with the purpose, or which has the effect of -
    - (a) violating the dignity of the person who is so subjected, and
    - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the person who is so subjected. (Art. 3(3))
  
- ▶ It further goes on to state that:-

'No person shall sexually harass another person by subjecting him to any form of unwanted verbal, non-verbal or physical conduct or request of a sexual nature, when such conduct or request takes place with the purpose, or which has the effect of violating the dignity of the person who is so subjected, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment for the person who is so subjected.' (Art. 3(5))

# Equality for Men and Women Act – Chp. 456

- Article 9 also defines sexual harassment so as to include:-
- Without prejudice to the provisions of article 29 of the Employment and Industrial Relations Act, it shall be unlawful for any person to sexually harass other persons, that is to say:
  - (a) to subject other persons to an act of physical intimacy; or
  - (b) to request sexual favours from other persons; or
  - (c) to subject other persons to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of any written words, pictures or other material, where the act, words or conduct is unwelcome to the persons to whom they are directed and could reasonably be regarded as offensive, humiliating or intimidating to the persons to whom they are directed; or
  - (d) the persons so subjected or requested are treated less favourably by reason of such persons' rejection of or submission to such subjection or request, it could reasonably be anticipated that such persons would be so treated.



# International Instruments

## ➤ Article 40 – Sexual harassment – Istanbul Convention

“Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.”





# International Instruments

## ► Article 11 CEDAW

17. Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

18. Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.



# International Labour Organisation - ILO

- ▶ ILO define sexual harassment as a sex based behaviour that is unwelcome and offensive to its recipient. Sexual may take the following forms:-
  1. Quid pro quo – when a job benefit – such as pay rise, promotion etc. is made conditional on the victim acceding to demands to engage in some form of sexual behaviour.
  2. Hostile working environment in which the conduct creates conditions that are intimidating or humiliating for the victim.

Behaviour that qualifies as sexual harassment:-

- Physical
- Verbal
- Non-verbal



# European Union Instruments

- ▶ The definitions of harassment and sexual harassment are a reproduction of those given in Article 2(1)(c) and (d) of Directive 2006/54 of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation , and in Article 2(c) and (d) of Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

# What is the law really saying?

- The law applies equally to both employers and employees.
- **How does the law define sexual harassment?**
  - unwelcome act, request or conduct.
- **What can constitute an unwelcome act?**
  - spoken words, gestures or the production, display or circulation of written words, pictures or other material, sexual favours. Eg. Unwelcome hugging, kissing, inappropriate physical contact, gestures of a sexual nature, sexually suggestive jokes or comments, inappropriate staring, sexually explicit text messages, images, phone calls or emails .
- **What makes it sexual harassment?**
  - is based on sexual discrimination and which could reasonably be regarded as offensive, humiliating or intimidating to such person. Rejection of such acts by the victim would lead to discrimination.



# Where does workplace harassment take place?

- At the place of work
- Educational establishments
- Entities providing vocational training or guidance
- Establishments providing goods and services
- Accommodation facilities

# Rights and Duties of the Employers

- ▶ Employers have the duty to promote a healthy work environment. Complaints of sexual harassment are to be duly dealt with. Encouraged to create a sexual harassment policy.
- ▶ An employer may be liable for acts of sexual harassment committed by one or more of his employees unless all steps as are reasonably practicable have been taken to prevent sexual harassment from taking place. (Sexual Harassment- A code of Practice, NCPE 2005).
- ▶ The duty not to permit a person that has a right to be present or avail themselves of goods or services or premises to be subject to sexual harassment (Chap. 456, Art. 9(2))
- ▶ the duty draw up a report on allegations made or procedures used by the employer. This has to be done within 10 working days. It may be requested by the person claiming that they have been sexually harassed or the Commissioner for the Promotion of Equality. (Art. 5(1) Chp. 456)
- ▶ Employers have a right to claim expenses for the expenses incurred for the drawing up of the report from the person requesting the report, however as long as they are reasonable and may be claimed from the person responsible for sexual harassment. (Art. 5(2) Chp. 456)



# Rights and Duties of the Employees

- ▶ the right to work in an environment that is free from harassment and discrimination.
- ▶ Not to sexually harass any other person at the place of work – This includes employers, co-workers, persons to whom they are providing a service.
- ▶ They have the right to file a complaint against the person that is sexually harassing them.
- ▶ Although not written in law, it is the duty of any person witnessing sexual harassment, to report such harassment.



# European Commission - Code of practice to clamp down on sexual harassment at work

- ▶ Recommendations to Employers

Prevention: Employers should issue policy statement against sexual harassment and with a clear procedure for obtaining assistance and overview of disciplinary measures. Managers to explain policy to their staff. Importance of training managers and supervisors.

Procedures: Should give practical guidance and bring to employees' attention their legal rights and any time limits. Employees should be advised to first try and resolve issue informally. If unable file a complaint, there is a set a formal procedure for filing complaint. Should be resolved speedily and confidentially.

- ▶ Recommendations made to trade unions: Trade unions to issue clear policy statements and take steps to raise awareness. Ensure that there are sufficient female representatives to support women subjected to sexual harassment.

- ▶ Employees' responsibilities: Awareness and sensitivity towards issue. Ensure that standards of conduct do not cause offence. Employees should lend support to victims and inform management / staff representative.



# Remedies

- **Out of court settlements:-**

- Employers:-

- to implement an internal system for dealing with sexual harassment and complaints procedure, ensure that the organisation policy on sexual harassment is provided to employees, carry out the necessary investigations under strict confidentiality, take the appropriate disciplinary measures in cases where the allegation is proved and where the allegation is frivolous or malicious.

- Employees:-

- to be given information on how to deal with harassers, approach supervisors, managers or other officers who are responsible to deal with sexual harassment, lodge a complaint, approach external organisations

# Remedies

- ▶ **NCPE** – They do not have judicial powers but may issue opinions as to whether there was sexual harassment at place of work. This is sent to the complainant and the person against whom the complaint is filed and the police. The Commissioner may refer the matter to the Industrial Tribunal or to the competent court depending on the case. Furthermore, the Commissioner is to file a complaint with the Commissioner of Police should the findings constitute a criminal offence.
- ▶ **Public Service Commission** - This role of the Commission is to staff and discipline in the public sector. It is an independent body that is set up by the Constitution of Malta. The Commission has to power to investigate complaints against public officers, including complaints of sexual harassment.

# Remedies

- **Industrial Tribunal** - Complaints of sexual harassment may also be made directly to the Industrial Tribunal that unlike other complaint remedies described above, has the competence to award pecuniary damages and punitive punishment of up to 6 months imprisonment. However, the Tribunal is only in the position to examine cases brought against the employer and cannot decide on matters related sexual harassment committed by employees.
- **Criminal Court** - Complaints may be filed directly to the person committing the act. As described above, the criminal code sanctions actions of harassment, however there are no specific offences in terms of the Code relating directly to sexual harassment at place of work.

**Episode of Sexual Harassment**  
Ch 456 & Ch 452 Art 26

