



Empowerment for Diversity



Drafting a Sexual Harassment Policy



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Background

The following is a guide for all employers, companies and organisations who:

- would like to have a Sexual Harassment Policy in place
- are applying for NCPE's Equality Mark Certification

Scope

This document should be read in conjunction with the Equality Policy template. It contains instructions which will aid organisations to define their values and mode of conduct vis-à-vis sexual harassment.

A guide of how to draft a Sexual Harassment Policy is being presented below. It is important to note that the text is to be adapted to the specific needs and context of the organisation.

Definitions of Terms

The following are **definitions of terms** to be used in the Sexual Harassment Policy



Physical conduct of a sexual nature: commonly regarded as meaning unwanted, unwelcome and inappropriate physical conduct ranging from unnecessary touching, patting, pinching or brushing against another employee's body, and coercing sexual intercourse at the place of work. Recourse to such coercive conduct could lead to the institution of criminal charges.



Verbal conduct of a sexual nature: this may include unwelcome sexual advances, propositions or pressure for sexual activity; repeated and unwanted social invitations for dates or physical intimacy after it has been made clear that such suggestions are unwelcome; offensive flirtations, suggestive remarks, insensitive jokes, innuendoes or lewd/obscene comments.



Non-verbal conduct of a sexual nature: refers to the display of pornographic or sexually explicit or suggestive pictures, objects or written materials, and making sexually suggestive gestures, such as whistling and leering.

Harassment takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.



Sex-based conduct: refers to conduct that denigrates, or ridicules, is intimidatory or physically abusive of an employee's gender, such as derogatory or degrading abuse or insults that are gender related and offensive comments about appearance or dress. Such conduct can create an offensive, uncomfortable working environment for the victim.



Abuse of authority: refers to conduct where an employee's refusal or submission to unwanted sexual behaviour is used as a basis for a decision which affects that employee's access to employment, continued employment, training, salary, and promotion opportunities. This form of behaviour involves abuse of authority as only somebody holding direct or indirect (that is capable of influencing) supervisory or managerial authority has the power to threaten or take an employment decision affecting the person harassed.

N.B. The above list is not an exhaustive list and should not be considered as such.

▶▶ 1. Policy aims & applicability

The below section will serve as a basis to:

- Explain the aims and objectives of having a sexual harassment policy in effect
- Define what the organisation perceives as sexual harassment
- Stipulate the procedures that shall be adopted in cases of allegations of sexual harassment within the organisation

It is important for the company to reflect on who is to be bound by this Sexual Harassment policy. This is to be clearly stated in this section of the policy, e.g.

This policy binds all the employees/ clients/ students/ service providers of (Name of Organisation/company/entity, school etc).

Sexual harassment is unwelcome behaviour of a sexual nature or other sex-based conduct which makes a person feel offended, humiliated and/or intimidated. Employees may not always realise that their behaviour constitutes sexual harassment. They must recognize that what is acceptable to one person may not be acceptable to another. Sexual harassment is not sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated. For sexual harassment to arise, the conduct in question must be unwelcome. Sexual harassment takes many forms, from relatively mild sexual comments to actual physical violence.



2. Declaration of Principles

It is important for an organisation to declare its commitment of having a sexual harassment policy which is in line with the Laws of Malta. Hereunder is a list of Articles and Chapters within the Laws of Malta which should be mentioned in an organisation's Sexual Harassment Policy:

- In terms of Article 9 of the Equality for Men and Women Act (Chapter 456) of the Laws of Malta, it is unlawful for any person to sexually harass other persons.
- Sexual harassment is also prohibited in terms of Article 29 of the Employment and Industrial Relations Act (Chapter 452) and Article 251A of the Criminal Code, covering the prohibition of sexual harassment in all spheres.

NCPE suggests providing the employees with this legislation as annex to this policy document. The organisation is then to declare its commitment to an environment free from any form of sexual harassment.

(Name of organisation) believes that sexual harassment is an intolerable violation of the dignity of workers and that preventing sexual harassment is part of good management. It strives to promote a dignified working environment and acknowledges that persons who have been sexually harassed are very likely to experience emotional stress, physical stress, and/or a negative change in job performance. On the other hand, if sexual harassment is not addressed, the organisation/entity may be negatively affected in terms of morale amongst employees, higher rate of absenteeism, job turnover and low job performance.

(Name of organisation) is an **equal opportunity employer** and expects management and all parties to duly safeguard and uphold the principles articulated in this policy document.

All employees, regardless of their position at (Name of Organisation), are covered by and are expected to comply with this sexual harassment policy. They are also expected to take the necessary measures to prevent the prohibited conduct. Appropriate disciplinary action will be taken against any employee who does not comply with this policy. Sexual harassment is never too minor to be dealt with. All claims of sexual harassment will be heard, and the necessary steps will be taken against the harasser/s.

3. Procedures

These procedures are intended to serve as guidelines for both management and staff (or other parties as outlined by the organisation) on how to tackle sexual harassment cases fairly, consistently, constructively, promptly and with utmost confidentiality. The procedures reflect the current standards of good practice and follow the basic principles of fairness:


- Anyone who is subject to sexual harassment should, if possible, inform the alleged harasser that the conduct is unwanted and unwelcome. Having said that, (Name of Organisation) recognises that sexual harassment may occur in unequal relationships, (for example, between a manager and an employee), and that it may not be possible for the victim to inform the alleged harasser.
- If the victim cannot inform the alleged harasser, he/she can approach the staff member responsible of receiving such complaints of sexual harassment, such as the Human Resources Manager, or another supervisor.
- The alleged harasser should be given the opportunity to state his/her case prior to the undertaking of any disciplinary action.
- Those presiding over both investigative and disciplinary hearings are to act in good faith prior to reaching any decisions.

The primary purpose of this procedural framework is to deal with cases of sexual harassment in a constructive manner by providing employees the possibility of improving their conduct. These procedures aim to achieve this by dealing with minor breaches of code of conduct informally, where appropriate.

4. Advice and assistance

- Employees who are victims of sexual harassment may refer their complaints to the National Commission for the Promotion of Equality (NCPE) by visiting www.ncpe.gov.mt or calling on 2295 7850 for more information.
- If needed, employees may also, seek the advice of the Manager (or another person identified by the organisation). The victim of harassment will be advised on the possible course of action depending on the severity of the case. When the harasser is the Manager advice should be sought from the next higher authority.



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- It is the duty of management and employees to maintain the workplace free of sexual harassment. Should any sexual harassment be taking place, any other employee, not being the victim, is in duty bound to bring this to the attention of management.
 - Persons making a complaint or assisting a colleague/client in making a complaint about discrimination and/or sexual harassment at the place of work may do so without fearing reproach or victimization (unfair treatment). Anyone found to have engaged in victimization or made victimization threats will be subject to appropriate disciplinary action as per Chapter 452 of the Laws of Malta, Employment and Industrial Relations Act, Article 28¹ (see point 5).
 - People who feel that they have been harassed are encouraged to put forward their case in spite of perceived lack of evidence.

4.1. Dealing with sexual harassment informally

- ▶▶ If the victim wishes to, she/he may opt to take informal action by approaching the person concerned and attempting to resolve issues informally.
- ▶▶ This is done, primarily, by making it clear to the harasser that the behaviour is unacceptable and must stop.
- ▶▶ Such informal action is intended to avoid seeking redress through formal procedures that may lead to a disciplinary hearing depending on the severity of the alleged offence.
- ▶▶ It remains within the rights of the victim of sexual harassment to seek redress through the formal procedures outlined in this policy.

4.2. Formal Complaints

- ▶▶ Where informal methods do not lead to a satisfactory outcome for the victim, employees are advised to lodge a formal complaint. When a formal complaint is lodged, both parties may seek assistance from any person of their choice.

¹ https://www.legislationline.org/download/id/5658/file/Malta_employment_industrial_relations_act_2002_en.pdf

▶▶ The complaint should be made in writing and shall include:

- ▶▶ The name of the person making the complaint
- ▶▶ The name of the alleged harasser
- ▶▶ The nature of the alleged harassment
- ▶▶ Dates and times when the alleged harassment occurred
- ▶▶ Name of potential witness to the alleged incident
- ▶▶ Any action taken by the complainant to stop the alleged harassment

The complaint, once signed by the complainant, should be sent, in confidence, to (name/s and position of designated person/s within the organisation).

NCPE suggests that the investigation should be carried out by more than one person within the organisation.

▶▶ The designated person/s who receive/s the complaint should:


- ▶▶ Give an opportunity to the alleged harasser to respond to the complaint and ensure that the alleged harasser comprehends the complaints mechanism
- ▶▶ Facilitate discussion between both parties in order to reach an informal resolution which is acceptable to the complainant
- ▶▶ Ensure that a record is kept of what happens, and that said record is confidential
- ▶▶ Follow up on the matter to make sure the inappropriate behaviour has ceased

▶▶ If the complainant, and/or the alleged harasser are victimized by other colleagues because of their actual or alleged behaviour, the latter are liable to disciplinary action.

5. Disciplinary measures

The organisation is to adopt a procedure for the filing and investigation of alleged cases of sexual harassment.

Any employee who is found to have sexually harassed a colleague/ student/etc. at (Name of organisation) under the terms of this policy is liable to any of the following sanctions:

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- ▶▶ Verbal or written warning
 - ▶▶ Transfer
 - ▶▶ Demotion
 - ▶▶ Suspension
 - ▶▶ Dismissal

The nature of the sanctions will be proportional to the gravity and extent of the harassment and will be determined after due investigation is carried out as per above sections in this policy.

(Name of organisation) will also take disciplinary measures against employees who file false and malicious accusations of sexual harassment.

▶▶ **6. Communicating this policy**

All employees are to be informed of the organisation's Sexual Harassment Policy upon their appointment but also through dissemination via newsletters, weekly emails and the organisation's website, among other.

The below is to be included in the Sexual Harassment Policy so that all employees are aware of the policy, its contents, and its consequences.

(Name of organisation/company/entity, school, etc) will make sure that this policy is widely disseminated to all employees/students/etc upon their appointment but also through dissemination via newsletters, weekly emails and the organisation's website.

It is the responsibility of every manager at (Name of organisation) to ensure that all his/her employees are aware of the policy and aware of the person to contact in case of an alleged sexual harassment.

▶▶ **7. Conclusion**

In this section, the organisation is to specify who is responsible for implementing and updating this policy, making it easier for employees to contact the responsible person/s in case they need to enquire about any part of the policy.

Guidelines to drafting a Sexual Harassment Policy


A Sexual Harassment Policy signifies an organisation/company/entity/school's **commitment to prevent sexual harassment in concrete terms.**

The Sexual Harassment Policy should be:

- In a **written** format
- **Made available** to all employees/students at recruitment stage so they may familiarize themselves with it
- **Reviewed** and updated regularly (approximately every 2 years, or when the need arises)
- In line with **current legislation**
- The subject **of consultation** with individuals and groups within the wider environment of the establishment
- **Widely available and easily accessible** to all those who come in contact with the organisation
- Explicitly **endorsed** by top management officials

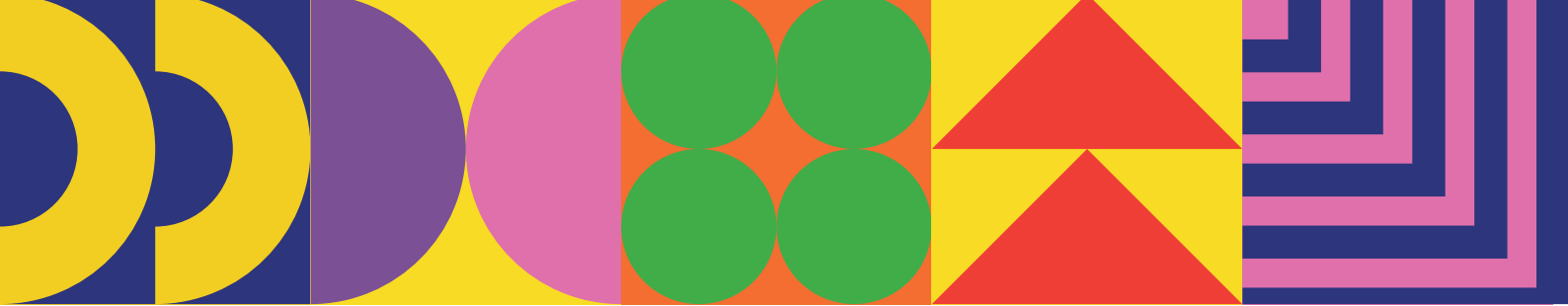
The policy should contain the following details:

- A clear definition of 'equality', 'harassment' and 'sexual harassment' and other terminology, in line with relevant **legislation**:
 - ▶▶ Chapter 456 – Equality for Men and Women Act.
 - ▶▶ Chapter 452 – Employment and Industrial Relations Act.
 - ▶▶ Legal Notice 181/2008 – Access to Goods and Services and their Supply Regulations.
- A clear statement that sexual harassment is **unlawful**:
 - ▶▶ harassment on/by staff
 - ▶▶ harassment on/by management
 - ▶▶ harassment on/by clients
- An example of **what sexual harassment is**
- An example of **what sexual harassment is not**
- A reference to the **effects of sexual harassment**
- A reference to the unlawfulness of **victimisation and its repercussions**
- A reference to **dignity and respect of persons**
- A reference to **responsibilities** of persons:
 - ▶▶ Responsibilities of management
 - ▶▶ Responsibilities of staff
- A reference to how the policy will be **implemented and communicated**
- A reference to **what will happen** if policy is breached including how **false accusations** will be dealt with

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- A reference to **monitoring** the policy and how this will be achieved
 - A reference to **training** of staff about the policy
 - A reference on dealing **formally/informally** with harassment
 - A reference as to where one can access the policy

It is also important to ensure that an organisation's **equality policy** refers to sexual harassment and also makes reference to the sexual harassment policy.

Moreover, **all staff** should be made aware of the sexual harassment policy and its content. It is important for all members of staff to note that once they are made aware of the policy, it is their **personal responsibility** to comply with the policy and if they do not, the organisation is to clearly state what the repercussions will be.



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