

ANTI-SEXUAL HARASSMENT LAW – APPLICABLE?



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Concepts such as ‘Happy Workplace’, ‘work-life balance’, ‘gender neutral workplaces’ are often touted amongst companies globally. Unfortunately, this does not necessarily translate into better compliance with mandatory employment law requirements. In fact, despite the growing public awareness and indignation against sexual harassment at the workplace, several businesses in India continue to turn a blind eye to the requirements of the new anti-sexual harassment law in India. It is not uncommon to hear senior management discuss how their company has hardly any or no female employees and that therefore the law does apply to them or how they have never had complaints of sexual

harassment and why invite trouble where none exists.

In truth, most cases of sexual harassment go unreported or are covered up. The problem needs to be addressed and is unlikely to go away if we just stick our heads in the sand. A failure to address sexual harassment at the workplace has huge hidden cost implications for an organisation and the sooner management address this issue, the more likely it is that the organisation will become a safer and happier and therefore more productive workplace. Sexual harassment at the workplace affects profits in a big way: loss of employee morale, decline in productivity, absenteeism and employee losses / turnover are only some of the HR related costs, but perhaps bigger and more hard-hitting is the loss of public image and brand value that follows negative publicity for failures to provide a safe work environment or quick and effective action against perpetrators of sexual harassment.

All organisations (whether in the organised or unorganised sector) and irrespective of form i.e. a company, partnership firm, trust, association or any other body, whether for profit or

not for profit, whether in business or not, whether an educational institution or a hospital or a hotel, are all required by law to have in place an anti-sexual harassment policy dealing with the prevention and redressal of sexual harassment at the workplace. Organisations with 10 or more employees (whether women or men) are required to also appoint an internal complaints committee with a certain minimum number of members including at least one external member well acquainted with the relevant law, to address complaints of sexual harassment and conduct inquiries and investigations where necessary. The law also mandates that employee trainings to ensure employed under contract or not, whether paid employees or volunteers or trainees or apprentices, detailed trainings and workshops sensitising employees on the law against sexual harassment and discrimination and promoting a safer and more equal workplace. Not just the company /organisation, but also senior management may also be held responsible for non-compliances or inaction by the Company under this law and it is therefore prudent for companies to ensure compliance with The Sexual Harassment of Women at Workplace (Prevention, Prohibition

and Redressal) Act 2013 (“Act”) and the rules thereunder.

A few tips and pointers main points for organisations to be in compliance with the main provisions of the law are as under: Note that these requirements apply to all organisations, whether domestic entities or foreign entities with only branches or offices in India. It also applies to each office of an organisation in India.

- a. Constitute an Internal Complaints Committee with a minimum of four members, of which one must be a non-employee member with relevant expertise in law or social service or from a non-governmental organisation in this field;
- b. Ensure that the company has a written anti-sexual harassment policy. In addition to this, ensure that the names and contact details of the Internal Complaints Committee members and the penal provisions under the law are clearly displayed on notice boards in every office or unit;
- c. Organise trainings and workshops for all employees on the provisions of this law at regular intervals during the

year. Conduct trainings in the local language where required. The key is that all employees should understand and grasp the trainings.

- d. Organise orientation workshops for the members of the complaints committee to ensure they understand the law, their role and decision-making powers, the inquiry and investigation process etc. sensitising the committee on dealing with the complainant, the accused and the witnesses, understanding the concepts of natural justice and judging without bias.
- e. Prepare and file Annual Reports – Certain details on sexual harassment complaints received need to be included in the Annual Report of the Company and in the report to the relevant District Officer. Companies need to ensure this is done.

A failure to abide by these provisions of the law may lead to fine and cancellation of the registration and license of the relevant company and given the recent press releases by the government, it is expected that strict

action may be taken against organisations that fail to comply. Also, it remains unclear to what extent senior management may be held liable for failures of the Company to comply with this law. The detrimental effect of public scrutiny and ridicule for failures by a company to provide adequate protection against sexual harassment at its workplace and to its employees is perhaps more of a deterrent and will hopefully push more and more companies to comply at the earliest. In today's quick paced world of digital media and instant messaging, perhaps proactive and preventive action is the need of the hour.

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