

THE PROTECTION AGAINST HARASSMENT OF WOMEN AT
THE WORKPLACE ACT, 2010

Ft

:

CONTENTS

SECTIONS:

1. Short title, extent and commencement.
2. Definitions.
3. Inquiry Committee.
4. Procedure for holding inquiry.
5. Powers of the Inquiry Committee.
6. Appeal against minor and major penalties.
7. Ombudsperson.
8. Ombudsperson to enquire into complaint.
9. Representation to President or Governor.
10. Powers of the Ombudsperson.
11. Responsibility of employer.
12. Provisions of the Act in addition to and not in derogation of any other law.
13. Power to make rules.

SCHEDULE

PROTECTION AGAINST HARASSMENT OF WOMEN AT THE WORKPLACE ACT, 2010

ACT IV OF 2010
[6 March, 2010]

An Act to make provisions for the protection against harassment of women at the workplace

WHEREAS the Constitution of the Islamic Republic of Pakistan recognizes the fundamental right of citizens to dignity of person;

And WHEREAS it is expedient to make this provision for the protection of women from harassment at the workplace;

It is hereby enacted as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Protection against Harassment of women at the Workplace Act, 2010.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions. In this Act, unless there is anything repugnant in the subject or context—

(a) “accused” means an employee or employer of an organization against whom complaint has been made under this Act;

(b) “CBA” means Collective Bargaining Agent as provided in the Industrial Relations Act, 2008 (IV of 2008) or any other law for the time being in force.

(c) “Code” means the Code of Conduct as mentioned in the Schedule to this Act;

(d) “Competent Authority” means the authority as may be designated by the management for the purposes of this Act;

(e) “complainant” means [any person] who has made a complaint to the [Ombudsperson] or to the Inquiry Committee on being aggrieved by an act of harassment [and shall include a former employee who has been removed or dismissed from service or has resigned, and a parent or guardian where the complainant is a minor];

‘T(f) “employee” includes a regular, contractual, piece-rate, gig, temporary, part-time, freelance employee whether employed through express or implied contract on daily, weekly, monthly or hourly basis, and shall include a student, a performer, an artist, a sportsperson, an intern, trainee, a domestic worker, a home-based worker or an apprentice whether working for remuneration or not, or whether working on a voluntary basis or otherwise;]

‘Subs. and Ins. by Protection against Harassment of women at the Workplace (Amendment) Act, 2022 (V)

(g) "employer" in relation to an organization, means any person or body of persons whether incorporated or not, who or which employs workers in an organization under a contract of employment or in any other manner whosoever and includes—

(i) an heir, successor or assign, as the case may be, of such person or body as aforesaid;

(ii) any person responsible for the direction, administration, management and control of the management;

(iii) the authority, in relation of an organization or a group of organizations run by or under the authority of any Ministry or department of the Federal Government or a Provincial Government, appointed in this behalf or, where no authority is appointed, the head of the Ministry or department as the case may be;

(iv) _ the office bearer, in relation to an organization run by or on behalf of the local authority, appointed in this behalf, or where no officer is so appointed, the chief executive officer bearer of that authority;

(v) the proprietor, in relation to any other organization, of such organization and every director, manager, secretary, agent or office bearer or person concerned with the management of the affairs thereof;

(vi) a contractor or an organization of a contractor who or which undertakes to procure the labour or services of employees for use by another person or in another organization for any purpose whatsoever and for payment in any form and on any basis whatsoever; ![*]

(vii) Office bearers of a department or a Division of a Federal or a Provincial or local authority who belong to the managerial, Secretarial or directional cadre or categories of supervisors or agents and those who have been notified for this purpose in the official Gazette;

'I(viii) person discharging any contractual obligations with respect to his employees and expressly or impliedly procures the services or labour of persons whether as freelancers or part-time employees;

(ix) | a person who owns or manages an online or customer to customer or business to customer or any other virtual or remote business; and

(x) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of home-based workers, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the home-based worker;]

'T(h) "harassment" means:—

'Omitted, Added and Subs. by Protection against Harassment of women at the Workplace (Amendment)

(i) any unwelcome sexual advance, request for sexual favours, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, including any gestures or expression conveying derogatory connotation causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment; or

(ii) discrimination on basis of gender, which may or may not be sexual in nature, but which may embody a discriminatory and prejudicial mind set or notion, resulting in discriminatory behavior on basis of gender against the complainant;]

(i) "Inquiry Committee" means the Inquiry Committee established under subsection (1) of section 3;

G) "management" means a person or body of persons responsible for the management of the affairs of an organization and includes an employer;

I(k) "Ombudsperson" means the Ombudsperson appointed under Section 7;]

(1) "organization" means a Federal or Provincial Government Ministry, Division or department, a corporation or any autonomous or semi autonomous body, Educational Institutes, Medical facilities established or controlled by the Federal or Provincial Government or District Government or registered civil society associations or privately managed a commercial or an industrial establishment or institution, a company as defined in the '[Companies Act, 2017 (Act No. XIX of 2017)] and includes any other registered private sector organization or institution '[or online business];

(m) "Schedule" means Schedule annexed to this Act; and

\(n) "workplace" means the place of work or any place where services are rendered or performed by professionals, including educational institutions, gigs, concerts, studios, performance facilities, courts, highways, sporting facilities and gyms, and shall include any building, factory, open area or a larger geographical area, where the activities of the organization or of employer are carried out and includes any situation that is linked to work or activity outside the office.]

3. Inquiry Committee.—(1) Each organization shall constitute an Inquiry Committee within thirty days of the enactment of this Act to enquire into complaints under this Act.

(2) The Committee shall consist of three members of whom at least one member shall be a woman. One member shall be from senior management and one shall be a senior representative of the employees or a senior employee where there is no CBA.

'Subs. and Ins. by Protection against Harassment of women at the Workplace (Amendment) Act, 2022 (V)

One or more members can be co-opted from outside the organization if the organization is unable to designate three members from within as described above. A Chairperson shall be designated from amongst them.

(3) In case a complaint is made against one of the members of the Inquiry Committee that member should be replaced by another for that particular case. Such member may be from within or outside the organization.

(4) In case where no competent authority is designated the organization shall within thirty days of the enactment of this Act designate a competent authority.

4. Procedure for holding inquiry.—(1) The Inquiry Committee, within three days of receipt of a written complaint, shall—

(a)

(b)

(c)

communicate to the accused the charges and statement of allegations leveled against him, the formal written receipt of which will be given;

require the accused within seven days from the day the charge is communicated to him to submit a written defense and on his failure to do so without reasonable cause, the Committee shall proceed ex-parte; and

enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defense of the accused as the Committee may consider necessary and each party shall be entitled to cross-examine the witnesses against him.

(2) Subject to the provisions of this Act and any rules made thereunder the Inquiry Committee shall have power to regulate its own procedure for conducting inquiry and for the fixing place and time of its sitting [and, where applicable, apply appropriate child-sensitive procedures.]

(3) The following provisions inter alia shall be followed by the Committee in relation to inquiry:

(a)

(b)

(c)

@d)

(e)

the statements and other evidence acquired in the inquiry process shall be considered as confidential;

an officer in an organization; if considered necessary, may be nominated to provide advice and assistance to each party;

both parties, the complainant and the accused, shall have the right to be represented or accompanied by a Collective Bargaining Agent representative, a friend or a colleague;

adverse action shall not be taken against the complainant or the witnesses;

the Inquiry Committee shall ensure that the employer or accused shall in no case create any hostile environment for the complainant so as to pressurize her from freely pursuing her complaint; and

'Subs. by Protection against Harassment of women at the Workplace (Amendment) Act, 2022 (V of 2022), s. 3

(f) the Inquiry Committee shall give its findings in writing by recording reasons thereof.

(4) The Inquiry Committee shall submit its findings and recommendations to the Competent Authority within thirty days of the initiation of inquiry. If the Inquiry Committee finds the accused to be guilty it shall recommend to the Competent Authority for imposing one or more of the following penalties '[, as applicable]:

(i) Minor penalties:

- (a) censure;
- (b) withholding, for a specific period, promotion or increment;

(c) stoppage, for a specific period, at an efficiency bar in the time-scale, otherwise than for unfitness to cross such bar; and

(d) recovery of the compensation payable to the complainant from pay or any other source of the accused;

(ii) Major penalties:

(a) reduction to. a lower post or time-scale, or to a lower stage in a time-scale;

(b) compulsory retirement;

(c) removal from service;

(d) dismissal from service; ![*]

'[(da)_ suspension or cancellation of a professional license; and]

(e) Fine. A part of the fine can be used as compensation for the complainant. In case of the owner, the fine shall be payable to the complainant.

(5) The Competent Authority shall impose the penalty recommended by the Inquiry Committee under subsection (4) within one week of the receipt of the recommendations of the Inquiry Committee.

(6) The Inquiry Committee shall meet on regular basis and monitor the situation regularly until they are satisfied that their recommendations subject to decision, if any of Competent Authority and Appellate Authority have been implemented.

(7) In case the complainant is in trauma the organization will arrange for psycho-social counseling or medical treatment and for additional medical leave.

(8) The organization may also offer compensation to the complainant in case of loss of salary or other damages.

Ins. and Omission by Protection against Harassment of women at the Workplace (Amendment) Act, 2022

5. Powers of the Inquiry Committee.—(1) The Inquiry Committee shall have power—

(a) to summon and enforce attendance of any person and examine him on oath;

(b) to require the discovery and production of any '[documentary, audio or video evidence]';

(c) to receive evidence on affidavits; and

(d) to record evidence.

(2) The Inquiry Committee shall have the power to inquire into the matters of harassment under this Act, to get the complainant or the accused medically examined by an authorized doctor, if necessary, and may recommend appropriate penalty against the accused within the meaning of subsection (4) of section 4.

(3) The Inquiry Committee may recommend to '[Ombudsperson]' for appropriate action against the complainant if allegations leveled against the accused found to be false and made with mala fide intentions.

(4) The Inquiry Committee can instruct to treat the proceedings confidential.

6. Appeal against minor and major penalties.—(1) Any party aggrieved by decision of the Competent Authority on whom minor or major penalty is imposed may within thirty days of written communication of decision prefer an appeal to an '[Ombudsperson]' established under section 7.

(2) A complainant aggrieved by the decision of the Competent Authority may also prefer appeal within thirty days of the decision to the '[Ombudsperson]'.

(3) The Appellate Authority may, on consideration of the appeal and any other relevant material, confirm, set aside, vary or modify the decision within thirty days in respect of which such appeal is made. It shall communicate the decision to both the parties and the employer.

(4) Until such a time that the '[Ombudsperson]' is appointed the District Court shall have the jurisdiction to hear appeals against the decisions of Competent Authority and the provisions of subsections (1) to (3) shall mutatis mutandis apply.

(5) On the appointment of '[Ombudsperson]' all appeals pending before the District Court shall stand transferred to '[Ombudsperson]' who may proceed with the case from the stage at which it was pending immediately before such transfer.

7. '[Ombudsperson].—(1) The respective Governments shall appoint an '[Ombudsperson]' at the Federal and Provincial levels.

(2) A person shall be qualified to be appointed as an '[Ombudsperson]' who has been a judge of High Court or qualified to be appointed as a judge of High Court. The '[Ombudsperson]' may recruit such staff as required to achieve the purposes of this Act and the finances will be provided by the respective Governments.

'Subs. by Protection against Harassment of women at the Workplace (Amendment) Act, 2022 (V of 2022)

8. '[Ombudsperson] to enquire into complaint—(1) Any '[complainant] shall have the option to prefer a complaint either to the '[Ombudsperson] or the Inquiry Committee.

(2) The '[Ombudsperson] shall within 3 days of receiving a complaint issue a written show cause notice to the accused. The accused, after the receipt of written notice, shall submit written defense to the '[Ombudsperson] within five days and his failure to do so without reasonable cause the '[Ombudsperson] may precede ex-parte. Both the parties can represent themselves before the '[Ombudsperson].

(3) The '[Ombudsperson] shall conduct an inquiry into the matter according to the rules made under this Act and conduct proceedings as the '[Ombudsperson] deems proper.

(4) For the purposes of an investigation under this Act, the '[Ombudsperson] may require any office or member of an organization concerned to furnish any information or to produce any document which in the opinion of the '[Ombudsperson] is relevant and helpful in the conduct of the investigation.

(5) The '[Ombudsperson] shall record his decision and inform both parties and the management of the concerned organization for implementation of the orders.

11(6) The Ombudsperson shall decide a case or appeal, as the case may be, within a period of ninety days.]

9. Representation to President or Governor.—Any person aggrieved by a decision of '[Ombudsperson] under subsection (5) of section 8, may, within thirty days of decision, make a representation to the President or Governor as the case may be, who may pass such order thereon as he may deem fit '[the President or the Governor, as the case may be, shall decide such representation within ninety days.]

10. Powers of the '[Ombudsperson].—The '[Ombudsperson] shall for the purpose of this Act have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908

(Act V of 1908), in respect of the following matters, namely:—

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) — compelling the production of evidence;

(iii) receiving evidence on affidavits;

(iv) issuing commission for the examination of witnesses;

(v) entering any premises for the purpose of making any inspection or investigation, enter any premises where the '[Ombudsperson] has a reason to

believe that any information relevant to the case may be found; and

(vi) the '[Ombudsperson] shall have the same powers as the High Court has to punish any person for its contempt.

'Subs. and Added. by Protection against Harassment of women at the Workplace (Amendment) Act, 2022

(2) '[Ombudsperson] shall while making the decision on the complaint may impose any of the minor or major penalties specified in subsection (4) of section 4.

11. Responsibility of employer.—(1) It shall be the responsibility of 'the employer to ensure implementation of this Act, including but not limited to incorporate the Code of Conduct for protection against harassment at the workplace as a part of their management policy and to form Inquiry Committee referred to in section 3 and designate a Competent Authority referred to in section 4.

(2) The management shall display copies of the Code in English as well as in language understood by the majority of employees at conspicuous place in the organization and the workplace within six months of the commencement of this Act.

(3). On failure of an employer to comply with the provisions of this section any employee of an organization may file a petition before the District Court and on having been found guilty the employer shall be liable to fine which may extend to one hundred thousand rupees but shall not be less than twenty-five thousand rupees.

12. Provisions of the Act in addition to and not in derogation of any other law. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

13. Power to make rules. The Federal Government may make rules to carryout the purposes of this Act.

'Subs. by Protection against Harassment of women at the Workplace (Amendment) Act, 2022 (V of 2022)

SCHEDULE

[See sections 2(c) and 11]

CODE OF CONDUCT FOR PROTECTION AGAINST HARASSMENT OF WOMEN AT THE WORKPLACE

Whereas it is expedient to make the Code of Conduct at the workplace etc. to provide protection and safety to women against harassment it is hereby provided as under:—

(i) the Code provides a guideline for behavior of all employees, including management, and the owners of an organization to ensure a work environment free of harassment and intimidation;

Gi) "harassment" means.—

(a)

(b)

any unwelcome sexual advance, request for sexual favours, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, including any gestures or expression conveying derogatory connotation causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment; or

discrimination on basis of gender, which may or may not be sexual in nature, but which may embody discriminatory and prejudicial mind-set or notion, resulting in discriminatory behavior on basis of gender against the complainant:

Provided that a single incident having the effect of making a person uncomfortable or creating a sense of fear or panic at the workplace is also harassment.]

Explanation.—There are three significant manifestations of harassment in the work environment:—

(a)

[(b)

Abuse of authority

A demand by a person in authority, such as a supervisor, for sexual favors in order for the complainant to keep or obtain certain job benefits, be it a wage increase, a promotion, training opportunity, a transfer or the job, itself.

Creating a hostile environment

Any unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature, which interferes with an individual's work

performance or creates an intimidating, hostile, abusive or offensive work environment; or any discrimination on basis of gender, which may or may not be sexual in nature, but which may embody a discriminatory and prejudicial mind-set or notion resulting in discriminatory behavior on basis of gender.

¹Subs. by Protection against Harassment of women at the Workplace (Amendment) Act, 2022 (V of 2022), s.7

(iii)

(iv)

(v)

(vi)

(vii)

(viii)

(ix)

(x)

The typical “hostile environment” claim, in general, requires finding of a pattern of offensive conduct, however, in cases where the harassment is particularly severe, such as in cases involving physical contact or gender-based discrimination, a single offensive incident will constitute a violation.]

(c) Retaliation

The refusal to grant a sexual favor can result in retaliation, which may include limiting the employee’s options for future promotions or training, distorting the evaluation reports, generating gossip against the employee or other ways of limiting access to his/her rights. Such behavior is also a part of the harassment.

an informal approach to resolve a complaint of harassment may be through mediation between the parties involved and by providing advice and counseling on a strictly confidential basis;

a complainant or a staff member designated by the complainant for the purpose may report an incident of harassment informally to her supervisor, or a member of the Inquiry Committee, in which case the supervisor or the Committee member may address the issue at her discretion in the spirit of this Code. The request may be made orally or in writing;

if the case is taken up for investigation at an informal level, a senior manager from the office or the head office will conduct the investigation in a confidential manner. The alleged accused will be approached with the intention of resolving the matter in a confidential manner;

if the incident or the case reported does constitute harassment of a higher degree and the officer or a member reviewing the case feels that it needs to be pursued formally for a disciplinary action, with the consent of the complainant, the case can be taken as a formal complaint;

a complainant does not necessarily have to take a complaint of harassment through the informal channel. She can launch a formal complaint at any time;

the complainant may make formal complaint through her incharge, supervisor, CBA nominee or worker’s representative, as the case may be, or directly to any member of the Inquiry Committee. The Committee member approached is obligated to initiate

the process of investigation. The supervisor shall facilitate the process and is obligated not to cover up or obstruct the inquiry;

assistance in the inquiry procedure can be sought from any member of the organization who should be contacted to assist in such a case;

the employer shall do its best to temporarily make adjustments so that the accused and the complainant do not have to interact for official purposes during the investigation period. This would include temporarily changing the office, in case both sit in one office, or taking away any extra charge over and above their contract which may give one party excessive powers over the other's job conditions. The employer can also

(xi)

(xii)

(xiii)

decide to send the accused on leave, or suspend the accused in accordance with the applicable procedures for dealing with the cases of misconduct, if required:

retaliation from either party should be strictly monitored. During the process of the investigation work, evaluation, daily duties, reporting structure and any parallel inquiries initiated should be strictly monitored to avoid any retaliation from either side.'[Filing counter-blast suits for defamation etc. are also retaliation. The Ombudsperson or Inquiry Committee, as the case may be, should take notice of this in his or its proceedings.]

the harassment usually occurs between colleagues when they are alone, therefore usually it is difficult to produce evidence. It is strongly recommended that staff should report an offensive behavior immediately to someone they trust, even if they do not wish to make a formal complaint at the time. Although not reporting immediately shall not affect the merits of the case; and

the Code lays down the minimum standards of behavior regarding protection of women from harassment at workplace etc. but will not affect any better arrangement that an organization may have developed nor will it bar the grant of protection that employees working in an institute may secure from their employers through negotiation.

'Added by Protection against Harassment of women at the Workplace (Amendment) Act, 2022 (V of 2022)