



**Ministry of Labour, Industrial Relations, Employment, Local Government,
Urban Development and Housing**

2008 NATIONAL POLICY

on

SEXUAL HARASSMENT

in the

WORKPLACE

**Developed in consultations with the tripartite social partners and other
stakeholders through the former Labour Advisory Board and the new Employment
Relations Advisory Board**

2008 THE NATIONAL POLICY ON SEXUAL HARRASSMENT IN THE WORKPLACE

1.0 INTRODUCTION

- 1.1 The Government considers sexual harassment in the workplace an important and priority issue that Fiji has to address in order to ensure a quality work environment free of intimidation and sexual harassment, and to enhance productivity.
- 1.2 The Government believes that every working person should be able to enjoy a working environment free from all forms of harassment and discrimination, whether on the basis of ethnicity, national or social origin, religion, political affiliation, gender, or any other form of personal identity. Therefore, behaviour and attitudes respecting the dignity and human rights of a worker should be actively promoted.

2.0 RATIONALE

- 2.1 Sexual harassment is a significant issue for all workplaces in Fiji, including schools, because of its negative impact on the work culture and workforce, which impedes progress and development. Sexual harassment should have no place in any organisation and working environment. It should be prevented, and where it exists, eradicated.
- 2.2 Therefore, it is crucial that employers, workers, and the public at large are educated on the behaviour that constitutes sexual harassment in the workplace in order that they not only know what to do if they are sexually harassed but also that they will not be responsible for sexually harassing others.

3.0 OPERATING PRINCIPLES

3.1 The operating principles of this national policy are:

- (i) To ensure that all stakeholders associated with a 'workplace' and the community at large are safeguarded against sexual harassment;
- (ii) To ensure that behaviour appropriate to promoting and ensuring a harassment-free workplace environment is characterized by mutual respect and support;
- (iii) To empower those persons within an organization who have insufficient power to prevent any form of harassing behaviour from occurring; and
- (iv) To support people who feel sexually harassed to find appropriate solutions. Conversely, to provide appropriate solutions for those persons who may be accused of sexually harassing others in the workplace.

4.0 WHAT IS SEXUAL HARASSMENT?

4.1 Sexual harassment:

- is a form of discrimination and a gross violation of a person's human rights and human dignity; and
- can occur at two levels-
 - (i) in relationships of unequal power or authority, as in staff/student and supervisor/subordinate relationships; and
 - (ii) between peers or co workers (e.g. worker/worker), i.e. colleagues.

- 4.2 It is important to note that while the majority of complainants are females, males are also victims of sexual harassment in the workplace.
- 4.3 Sexual harassment is any form of offensive sexual attention that is uninvited and unwelcomed. It does not need to be a series of incidents or even an ongoing pattern of behaviour. ***One single act can constitute harassment.***
- 4.4 Sexual harassment may include the following:
- Remarks and behaviour that are expressly, or apparently, unwelcomed;
 - Visual material that is sexist, sexually explicit and is displayed in the workplace or placed in somebody's workplace or belongings or on a computer or fax machine or on the Internet;
 - Sexual or suggestive remarks;
 - Making sexually suggestive gestures;
 - Smutty jokes;
 - Leering, patting, pinching, touching;
 - Offensive hand or body gestures and inappropriate posturing;
 - Comments and questions about another person's sexuality, sexual conduct or private relationships;
 - Persistent unwelcomed invitations;
 - Gender-biased bullying or intimidation;
 - Propositions, requests or pressure for sexual favours or activities;
 - The soliciting of sexual favours in exchange for promotion or any work-related benefit or reward;
 - Rejection of behaviour of a sexual nature, by a worker, is used as the basis for decisions affecting that worker's career;
 - Behaviour unreasonably interfering with a worker's performance and overall comfort;

- Continued suggestions for social activity outside the workplace after it has been made clear that such suggestions are unwelcomed;
- Unwelcomed sexual advances;
- Offensive flirtations;
- Offensive written, telephone or electronic mail or other computer system communications; or
- Sexual assault.

4.5 Sexual harassment has nothing to do with mutual attractions, which are considered behaviour welcomed by those who are engaged in it. Such behaviour is essentially friendly and private in nature.

4.6 Some of the problems that may occur if sexual harassment is allowed to happen in the workplace are:

- Increased stress experienced by the complainant;
- Absenteeism of the complainant from work;
- Low morale in the workplace;
- Decreased productivity in the workplace;
- A decrease in the quality of work produced;
- Loss of reputation/image;
- Unnecessary resignations;
- Career stagnation as the complainant may be reluctant to lodge a complaint for fear of retaliation by his or her employer or fellow co-workers;
- Breakdown in communication and trust in the workplace;
- An intimidating, hostile and offensive working environment;
- Workers' rights are compromised and undermined; or
- Increased tension in the workplace.

5.0 EMPLOYER RESPONSIBILITIES

- 5.1 Every employer must have an internal written policy and grievance procedure on sexual harassment in the workplace. It is pivotal that both staff and managers collaborate in developing such a policy so that both parties are committed to the process and its outcome. This approach ensures that such a policy is reflective of employer and worker safety and their needs.
- 5.2 Furthermore, it is important that such a policy is devised by the employer and workers and reflects the basic principle that both complainant and harasser have rights that will be adequately protected by such a policy. The policy statement should articulate that fact that sexual harassment can be verbal, gestural, visual or physical in nature. More importantly, an employer must have a clear and prompt informal and formal procedure for counteracting sexual harassment in the workplace. An employer may wish to consider utilizing the existing Health and Safety Committees within an organization or workplace, if there is one.
- 5.3 A member of the Health and Safety Committee of a workplace could also function as a Sexual Harassment Grievance Officer. This Officer should be experienced and have skills in counselling, mediation, negotiation and conflict resolution in order to resolve complaints of this nature. They must be gender sensitised and fully conversant with worker's rights and responsibilities to enable them to arrive at a proper and informed decision regarding the manner in which the complainant may get his or her grievance addressed.
- 5.4 Measures that may be adopted in reinforcing the prevention and eradication of sexual harassment in the workplace are:

- (i) the use of pamphlets and/or posters to reinforce the message that sexual harassment in the workplace will not be tolerated;
- (ii) orientation programs that include the dissemination of information on sexual harassment;
- (iii) ongoing training for staff members on their responsibility for maintaining a workplace free of harassment; and/or
- (iv) information about employer liability and the monetary related costs of workplace harassment and material such as case studies dealing with incidents of harassment.

6.0 WORKER RESPONSIBILITIES

6.1 Workers need to understand what constitutes sexual harassment in the workplace and the internal mechanisms and legislative framework that deal with the issue.

6.2 In this respect, it may be useful for the employer organisations to work with workers to devise a statement outlining responsibilities of both employer and workers in preventing and eradicating sexual harassment in the workplace.

7.0 COMPLAINANT'S STATUTORY RIGHTS

7.1 Under the existing legislative framework, a victim of sexual harassment in the workplace can elect to bring a complaint or grievance under one of the following legislative regimes:

- (i) The Human Rights Commission Act 1999;
- (ii) Section 154 of the Penal Code; and
- (iii) The personal grievance procedure or as an employment dispute under the Employment Relations Promulgation 2007.

- 7.2 It is important to note that the worker must choose whether to bring the complaint under the Human Rights Commission Act or the Employment Relations Promulgation, as he / she cannot proceed under both.

8.0 HUMAN RIGHTS COMMISSION ACT 1999

- 8.1 Under its principal Act, the Human Rights Commission is mandated to deal with a complaint or grievance of sexual harassment in the workplace. A Complaints Officer is obliged to record the details of the complaint or grievance, at which point the Commission must determine whether to settle the matter immediately or investigate it further.
- 8.2 Before a formal investigation of a complaint or grievance, the Complaints Division of the Commission informs interested parties, including the employer and the worker, of its intentions. It also advises the person being investigated of his or her right to submit a written response to the complaint or grievance.
- 8.3 All investigations are conducted in private and incorporate the principles of natural justice. A Complaints Officer then prepares a report on the case on which the interested parties are then given an opportunity to comment. The report is then considered by the Complaints Division.
- 8.4 If an investigation of a complaint or grievance fails to disclose any harassment or discrimination, the Commission may decline to proceed with the complaint or grievance. If the complainant is not satisfied with the Commission's decision, then he or she can seek redress through the court system.

9.0 PENAL CODE (CAP 21)

9.1 A victim of sexual harassment in the workplace may seek redress under Section 154 of the Penal Code (Cap 21), which deals with indecent assault on females.

9.2 To utilise this section, a victim must lodge a complaint at a police station and make a statement. The victim will usually be required to go to Court and give evidence of the sexual harassment or assault.

9.3 However, the provision is flawed for three reasons:

- (i) it is gender specific, that is, it deals only with indecent assaults made against a female; indecent assaults made against a male are not addressed;
- (ii) the 5 year sentence meted out to an offender under this provision is inadequate, as it may not reflect the seriousness of the offence; and
- (iii) the defence, that the complainant (who is under 16 years of age) consented to such behaviour is sexist.

10.0 THE EMPLOYMENT RELATIONS PROMULGATION 2007

10.1 Any worker who wishes to make a complaint of sexual harassment may do so under the employment grievance provisions in Part 13 of the Employment Relations Promulgation 2007. Under this scheme, the parties must first try to resolve the issue using the employer's internal grievance procedures. If this is unsuccessful, the worker may then refer the matter to Mediation. If the matter cannot be resolved by mediation, it may be referred to the Employment Relations Tribunal.

10.2 Under the Promulgation, all employers have a duty to develop and maintain a policy on sexual harassment in the workplace that is consistent with this National Policy. Further, an employer may be found liable for sexual harassment if the employer fails to take reasonable steps to prevent that sexual harassment from occurring. The alleged perpetrator may also be liable under the Promulgation.

11.0 MONITORING AND EVALUATION

11.1 Every workplace must have a Sexual Harassment Monitoring and Evaluation System in place to maintain and enhance a work culture of mutual respect and understanding. In this regard, all complaints or grievances should be documented thoroughly, and be handled with strict confidentiality by all concerned, so that action taken to address complaints or grievances is effectively addressed.

11.2 These records could then be used as a tool in evaluating the success of the internal strategy, as well as the National Policy, and ensuring that a harassment claim is handled properly and promptly. Should there be any questions later as to whether a harassment claim was properly handled; the records will provide the required information. Records also enable recurring patterns of behaviour, or ongoing problems, in a particular work area to be detected and corrective action to be taken.

12.0 CONCLUSION

12.1 The adoption of the National Policy on Sexual Harassment in the Workplace by all relevant stakeholders will ensure that they consciously and deliberately build a positive, respectful and productive working environment.

12.2 This National Policy on Sexual Harassment in the Workplace is practical and pragmatic in its approach to the issue. It should be noted that this National Policy on Sexual Harassment in the Workplace is an evolving one which must be cognizant of the Fiji Islands' cultural, economic, political and social realities. As such, it should be reviewed and amended as and when required.
