

WORKERS RIGHTS WATCH WITH SUPPORT FROM WOMEN WORKING WORLDWIDE

DETAILED GUIDELINES TO DEAL WITH COMPLAINTS OF SEXUAL HARASSMENT

Compiled by WRW and WWW

Last revised: 01.03.15

Introduction: These guidelines are intended to assist complaint-receiving officials with managing allegations of sexual harassment against employees and/or third parties (e.g. clients, service providers, auditors). The Guidelines are not intended to regulate the day-to-day management of ordinary workplace issues and grievances.

Discrimination, sexual and other forms of harassment, bullying, violence and threatening behavior are unacceptable. It is incumbent on a manager and the designated committee to act promptly where a complaint is observed or brought to his or her attention.

Any action taken in response to a complaint will be consistent with the following principles:

Responsiveness:

Any complaint will be acted upon—even those that may seem frivolous
Complaints will be acted upon immediately

Integrity and Impartiality:

Management will strive to earn and sustain a high level of workers' trust
Management will make decisions and provide advice on merit and without bias, caprice, favouritism or self-interest, considering all relevant facts
Management will ensure that the company's policy is applied to all employees, equitably, regardless of gender, seniority level, contractual status or others
The Employer will make sure that the person(s) carrying out the investigations is (are) seen as having credibility.

Respect:

Complaint-receiving officials and company's management will demonstrate respect, they will treat complainants and witnesses sensitively, fairly and objectively.

Confidentiality:

The Company shall protect the privacy of individuals involved in a complaint of sexual harassment to the extent required by law and by the Company's policy and will ensure that all the parties involved are not subjected to any form of retaliation for filing a charge.

Accountability:

Management will work in a transparent manner and submit to appropriate scrutiny.

Guidance on Dealing with Complaints of Sexual Harassment

1. Dealing with informal complaints of SH

The timescale for resolving an informal complaints procedure should not exceed 10 working days.

An employee who believes that s/he has been sexually harassed can raise her/his concern informally with a counselor, if present, or a section representative of the gender committee or any member of the HRD. The objective of this process will be to provide appropriate relief to the aggrieved party, sensitize the alleged harasser to the effects of such behavior, and resolve the complaint to the mutual satisfaction of both parties.

Upon receiving the initial complaint, gender committee or other designated complaint-receiving officials will schedule a meeting with the alleged victim, to establish the facts from the complainant's viewpoint. A separate meeting will be scheduled with the alleged offender, to discuss the reported case.

Interim action:

- All parties involved will be advised on the duty of confidentiality and the company's responsibility to protect complainant and witnesses from any form of retaliation.
- The gender committee members will discuss with HRM whether any steps need be taken to limit or remove contact between the complainant and alleged harasser.

Agreeing on an outcome:

After interviewing both the Complainant and Respondent, the Investigator should determine whether there is:

- An opportunity to resolve the matter informally with the agreement of the Complainant,
- A need to investigate further by interviewing relevant witnesses for both the Complainant and respondent.

Based on the information gathered, gender committee members will discuss the suggested course of action and timescales with both parties. Where agreement cannot be reached, gender committee members should consult with Human Resources for advice.

Written records of the informal meetings will be kept, including name and job title of the parties involved, dates of meetings, name of complaint-receiving officials who have handled the case, summary of key points discussed, agreed outcome.

Follow up action:

Complaint-receiving officials will arrange a follow up meeting to review the situation and to ensure that no victimization or reoccurrence of offenses take place.

2. Dealing with filed complaints of SH

The aggrieved party may opt to initiate a formal grievance procedure. The timescale for resolution of a formal grievance should not exceed 20 working days.

INITIAL STAGE: *Planning and Organizing a Formal Investigation*

- The GC– or other complaint-receiving officials- will advise the complainant to submit a written and signed grievance.
- The GC– or other complaint-receiving officials - will promptly notify the GC Chairperson
- Upon receipt of a complaint, the GC Chairperson will inform the HRM and seek permission to institute an investigation.

- The Chair of the Gender Committee will call a meeting with the GCMs and set out the terms of reference of the investigation (see Box 1).
- The Chair will request time off for the committee members to investigate the allegations

Box 1: Setting out the terms of reference

The terms of reference should contain the following information:

- What the complaint is about,
- When the incident(s) was said to have taken place,
- Who is said to have witnessed what,
- From whom statements will be taken/who needs to be interviewed,
- Who is the investigating manager/team,
- How the process will be managed and in what timeframe,
- Venue of the meetings.

FACT FINDING: The interviews

- The GC will interview the complainant, within 4 working days from receiving a complaint. The complainant is entitled to be accompanied by a union representative or colleague to gather relevant evidence.

The GC will explain to the complainant (witness and alleged offender/respondent):

- the process whereby allegations are investigated and decisions taken about the outcome of the investigations (including approximate timeframe)
 - that there will be no retaliation as a result of the complaint
 - the complaint is being taken seriously and will be thoroughly investigated
 - the complaint and the interview will be treated as confidential, with information only being shared with those proper to have access to it.
 - Notes will be taken and it may be necessary to pause from time to time to record what is said
 - As a result of the interview, notes will be prepared for their signature
 - The complainant will be able to read, comment and make changes before signing the interview notes.
 - The interview notes will be used as part of the report of the investigation, and the report will be forwarded to HRM.
- The GC will interview or obtain written statements from any witnesses, observing the following principles:
 - The committee members won't put words into the witnesses' mouths or ask leading questions – and will give them an opportunity to speak.
 - Where a witness is unwilling to give evidence, committee members will consider whether they can take a statement anonymously.
 - At the end of the interview/meeting, witnesses will be given a copy of the interview notes/record of what they have said, for them to check and sign.
3. The GC will interview the alleged harasser, who is also entitled to be accompanied by a union representative or colleague, at a separate meeting and ask her/him to respond to the complaint. The response shall contain full, direct, and specific responses to each claim in the complaint. At the end of the interview/meeting, the alleged harasser will be given a copy of the interview notes/record of what they have said, to check and sign.

4. The GC will keep written records of all circumstances surrounding the allegation of sexual harassment and of the interviews with the parties involved and the witnesses.
- The GC will make sure that meetings with all the parties involved will be held in a discrete and acceptable venue.

INTERIM ACTION DURING THE INVESTIGATION

- Management will make arrangements to limit or prevent contact between the complainant and the alleged harasser, throughout the investigation. Such measures might include, but are not limited to:
 - Placing the alleged harasser on administrative leave;
 - Placing the complainant on administrative leave, if the complainant so requests;
 - Transferring the alleged harasser, or the complainant *if s/he requests*, to a different area/department or shift so that there is no further business/social contact between the complainant and the alleged harasser;
 - Instructing the alleged harasser to stop the conduct; and
 - Eliminating the alleged harasser's supervisory authority over the complainant.
2. Management will avoid taking any action that could compound discrimination against the alleged harassed, e.g. transferring the complainant (to a lower position), treating her/him less favorably than other colleagues, etc.
 3. The complainant may be offered support and/or counseling appropriate to his or her needs. Whoever provides this service will be independent and mindful of the complainant's right to confidentiality and sensitive to the complainant's needs.
 4. All necessary steps will be taken to establish confidentiality. Information about the investigation will be communicated only to those that need to know about it. Failure to respect confidentiality may result in disciplinary action.
 5. The GC will keep the complainant and the alleged harasser informed of the status of the investigation.
 6. The GC will make follow-up inquiries to ensure that the conduct has not resumed and that neither the complainant nor any witnesses interviewed during the investigation has suffered any retaliation, while the case is being investigated.

EVALUATION OF EVIDENCE: REACHING AND COMMUNICATING A DECISION ON OUTCOME

- The GC will consider whether additional meetings are required with any party to clarify the facts.
- The Committee Chair will call a meeting with the committee members to assess the information gathered, to decide on the outcome, i.e. if the alleged incidents did take place, or accept some and reject some of the allegations, or reject all of the allegations.
- If the Committee determines that sexual harassment has occurred, it will recommend appropriate remedial action. The remedial action will reflect the nature and severity of the incident, the existence of any prior incidents, and the effectiveness or lack thereof of any prior remedial steps. Appropriate corrective action can include, but is not limited to the following:
 - Oral reprimand
 - Written reprimand
 - Harassment training where appropriate
 - Suspension
 - Reassignment of duties
 - Termination

- Counseling
- Any combination of the above.
- The GC Chair will prepare a report, documenting the findings and any conclusions they have made, the recommendation for action. Copies of the report and recommendations will be kept by the GCMs and by its Chair.
- The Chair will forward the report to the HR Department.
- Within five (5) working days from receiving the committee's recommendations, the HRD will enact the recommendations. In the event that HRD is in disagreement with the recommendations formulated by the GC, a meeting will be called with the committee to review the information gathered and come to an agreement on the appropriate remedial action.
- The decision will be communicated in writing by HRD to the accuser, accused, and the accused's appropriate administrative supervisor(s).
- The committee Chair and/or its committee will be responsible for following up on the action taken after forwarding the recommendations for action.
- HRM will inform the complainant of his/her right to appeal, in the event that they are dissatisfied with the outcome of the investigation. HRM will advise both parties of their right to appeal, following the procedures set forth in the company's policy.

Box 2. What sort of disciplinary action is appropriate?

THE EMPLOYER WILL PROVIDE DETAILED GUIDANCE ON HOW TO HANDLE THIS STAGE OF THE PROCESS, BASED ON ITS PROCEDURE ON DISCIPLINE AND DISMISSAL, AND THE ACCEPTED STANDARDS FOR DISCIPLINARY ACTION.

ACTION TO TAKE IF THE INVESTIGATION IS INCONCLUSIVE

If the allegation appears plausible investigation, but there is insufficient evidence to prove the case, the Company should consider taking the following steps:

- 1) Write a memorandum to the concerned employees' file documenting the investigation. Make a record of the relevant facts, including factors that raised suspicion one way or another. The memoranda should state "The investigation was inconclusive, but will remain open in case other information surfaces that will assist the Company in making a final determination".
- 2) Meet separately with each individual and provide the results of the investigation, the action the Company will now take, and the content of the memo discussed above.

Annexes

I: GUIDELINES FOR INTERVIEWING THE PARTIES INVOLVED

1. **The person, who conducts the interview, should have an open, concerned and non-judgmental attitude**(avoiding comments such as "You're overreacting")
2. S/he should ask questions in such a way as to ensure that information is **not unnecessarily disclosed**. For example, instead of asking, "Did you see Paul touching Eunice?" ask "Have you seen anyone touching Eunice at work in a way that made her uncomfortable?"
3. The Complainant should be dealt with in a sensitive manner, with an understanding of the distress that can be caused when relating a harassment experience.

4. **S/he should keep in mind that the claimant and/or witness is most likely under stress and afraid of retaliation.** Assurance should be given that retaliation would not be tolerated

5. **S/he should** reassure interviewees that their cases are being heard properly. Active listening involves:

- An open body posture - try to lean slightly towards the interviewee
- Good eye contact (without staring) - this shows you are paying attention
- Affirmative nods/murmurs - such signs confirm that you are following (though not necessarily agreeing with) what the person is saying
- Taking full notes, if possible without interrupting the flow, but showing that you are being thorough
- Repeating or paraphrasing what the person has said to show you have understood
- Asking for facts to be agreed or corrected

* In contacting witnesses, s/he should advise that a sexual harassment complaint has been lodged and they have been identified as a witness.

1. S/he should **keep a note of the areas of disagreement between the testimonies of both parties.** If the accused denies the allegations, probe further to determine with the accused the background, reasons, and motivation that could possibly trigger the complaint.

2. **S/he should meet** the parties involved in a private area.

II- FACT FINDING:

Examples of information that the complaint-handling official should gather

- Name of complainant/witness/alleged offender (at least first name)
- How long the complainant has been working on the farm and department
- Complainant/witness/position/role(e.g. grader, harvester, supervisor, management staff member etc)

- Complainant employment status (e.g. if Permanent, seasonal, temporary)
- Name of the complainant's supervisor/line manager
- Position that the alleged harasser hold in the farm
- Role the alleged harasser/witness has in connection with the complainant's work(e.g. Colleague, line manager, others)

Examples of questions to use during interviews with the complainant and to witness/es, to establish how harassment took place and what the claimant would like to see as the outcome of the investigation

- What is the working atmosphere like in your department?
- Can you tell me what actually happened to you?
- When did this take place? Where?
- Did anyone else witness this behavior? / Was anyone else aware of this happening?
- How did you respond? What exactly did you do? (Was complainant able/in a position to communicate that the behavior in question was unwelcome, and how was this communicated?)
- Was the incident isolated or part of a pattern?
- How often has this behavior occurred? (*Find out whether there was a pattern of previous episodes or similar behavior toward other employees*).
- If the claimant knows of other colleagues who have experienced similar behavior

- What the claimant would like to see as the outcome of this process (e.g. to have the behavior stopped, counseling or discipline, etc.)
- Have you ever been issued with a warning by management? And if the answer is yes, for what reason?

Examples of questions to ask to the alleged harasser/respondent

- A complaint has been reported to us, that on..You have behaved inappropriately towards ... (outline allegation). Will you give me your comments? Tell me in your own words what happened?