

## **Proposed Sector-wide Anti-Sexual Harassment Policy and Procedures**

Compiled by Workers Rights Watch, with support from Women Working Worldwide  
Last revised: 22 April 2015.

### **Signatories to the Policy**

This Policy becomes effective from the date of signature by the duly authorized persons. It is proposed that this Policy should be reviewed every three years from the effective date.

Signature: *CEO*

Signature: *Head of Departments*

### **LIST OF ABBREVIATIONS AND ACRONYMS**

SH- Sexual Harassment

GC – Gender Committee

HRO-Human Resource Officer

HR- Human Resource

HSE- Health and Safety Executive

HRD- Human Resource Department

HRM- Human Resource Manager

### **1. Introduction**

#### **Purpose of the Policy:**

The objective of this policy is to promote a healthy work place that is free of sexual harassment (herein SH), in which all individuals are treated with respect and dignity.

This policy defines *workplace* as any physical space under the control of the Company/Employer, to which its workers will go while at work or when off-duty, including: canteens, rest /changing rooms, green houses, company-run buses to and from the farm, grading halls, off-site housing, farm dispensary, training halls.

This policy is intended to prevent SH and to set forth the procedures to respond to any incident that might occur promptly and effectively.

#### **Scope of the policy:**

This policy applies to:

1. All employees, whether on a permanent or temporary employment contract,
2. Owners, Executive and non-executive Directors, Managers and Supervisors,
3. All applicants for employment, and
4. All persons dealing with the company, including: clients, service providers, suppliers, trainees and any other with whom employees interact personally or by telephone, or by electronic communication.
5. Union representatives while discharging their responsibilities within the company's workplace

All employees of this company and third parties are expected to become familiar with the contents of this policy and to *abide* by the requirements it establishes.

#### **Policy Statement:**

This Company is committed to providing a work environment that is free of any form of harassment, including SH, in compliance with Kenyan legislation, particularly the 2007 Employment Act, Section 6, the Labour Relations Act Section 2, the Sexual Offences Act Section 23 and the Bill of Rights, section 28.

Any employee's behaviour that fits the definition of sexual harassment represent a form of misconduct, which may result in disciplinary action up to and including dismissal.

### 3. Definition of Sexual Harassment

In line with the (Republic of Kenya) Employment Act, section 6, the Company defines SH as any unwanted conduct of a sexual nature in the workplace or in connection with work, which:

- (a) Creates an uncomfortable, intimidating, hostile or humiliating work environment for that person or
- (b) Contains an implied or expressed (i) promise of preferential treatment in employment; or (ii) threat of detrimental treatment employment; or (iii) threat about the present or future employment status of the employee, for accepting or rejecting a sexual proposition.

No employee or member of management - up to and including the executive director - has the authority to offer any benefits, whether business-related, such as wage rises and promotions, or nonbusiness-related, such as gifts, or any other item, in exchange for sexual favours.

As sexual harassment refers to conduct which is unwanted and unwelcome to the recipient and as this is the key factor that distinguishes it from friendly, flirtatious or other relations that are freely and mutually entered into, it is important that a person who believes that she or he is the victim of sexual harassment clearly **communicates this** - either directly or through a third party - to the employee, manager or client engaging in the unwanted and unwelcome behaviour.

Behaviours that constitute sexual harassment include:

- Physical conduct, such as: Unwanted kissing, hugging, patting, deliberate stroking, leaning over, or pinching; brushing;
- Verbal conduct, including (i)sexual propositions, threats, repeated request for dates when the person has indicated that she/he is not interested;(ii) Referring to an adult as a doll, babe, or honey;(iii)comments about a person's anatomy or looks; (iv)Sexual innuendos or stories (v)insults, humor, and jokes about sex; and jokes about sex; )vi)Spreading rumors about a person's personal sex life
- Non verbal, including : (i)Sexually suggestive or insulting sounds such as howling, smacking, licking lips, kissing noises; (ii)obscene gestures, (iii)sexually suggestive bodily gestures, such as making gestures with hands or through body movements;
- Visual: Posters, signs, pin-ups or slogans of sexual nature, viewing/showing pornographic materials or websites; sexually suggestive notes or cards;
- Texture /Electronic: Posting sexually demeaning or offensive pictures or phrases ,cyber stalking and threats via all forms of electronic communication (email, text/video messages, internet/ online posting, blogs, instant messages and social network websites like face book and twitter

What is not sexual harassment: Generally, sexual harassment does not involve mutually enjoyed relationships or interactions that occur between co-workers.

### 4. Communication of the Policy

The Company will organize periodic training for senior managerson their legal duties and specific responsibilities to ensure prompt and adequate corrective action to complaints of sexual harassment. Senior management will be required to attend these training sessions.

The Company will organize training sessions for Management and Supervisors on how to recognize and handle allegations of sexual harassment brought to their attention, either informally, or as part of the formal grievance procedure, which they will be required to attend.

All new and existing employees, regardless of their employment status and job position will be trained on how to recognize and report incidents of sexual harassment. They will be made aware of this policy by means of:

- Training
- Employee's handbook
- Employment contract,
- By distributing the policy to employees
- By affixing the policy on Departments and HR boards.
- By including the issue of SH in employees' orientation programmes.

All employees are encouraged to ask questions and to seek clarification on any aspect of the policy that they may find unclear.

## **5. Responsibilities for implementing the policy**

### **Responsibility of CEOs / Directors**

Managing Directors are responsible for ensuring the safety, respect and welfare of all employees and of others who may be affected by the Company's operations.

The Managing Director is responsible for:

1. Ensuring that all Directors and Managers understand and fulfil their responsibilities with regard to prevention and handling of allegations of SH
2. Ensuring that the company's responsibilities as Employer are met, in compliance with the legislation cited above;
3. Arranging for funds and facilities to meet the requirements of this policy;
4. Setting a personal example at all times of appropriate behaviour

### **Responsibility of Heads of Department**

Each Manager/Department Head is responsible for the safety and respect for the dignity of all personnel under his or her authority. The Heads of Department will:

1. Ensure that the staff under their authority understand and fulfil their responsibilities with regard to prevention and handling of allegations of SH
2. Ensure that the staff under their authority are provided training and support to be able to fulfil their role in preventing and dealing with SH
3. Reprimand any employee, including managers, supervisors and complaint-receiving officials where there is evidence of failure to discharge their responsibilities
4. Set a personal example of appropriate behaviour

### **Responsibility of HR Managers**

It is the responsibility of the HR managers to promote a workplace free of sexual harassment. This entails a responsibility to:

- a) Educate supervisors and general workers on the Company's policy and procedures to prevent and respond to SH
- b) Ensure that all new employees in the company are provided with a copy of the policy statement and receive training on the policy;
- c) Ensure that reported incidents of SH are dealt with promptly and transparently, respecting parties' right to confidentiality;
- d) Ensure that reported incidents are handled sensitively and with respect for the

- dignity of the persons involved
- e) Ensure fair remediation towards proved victim and harasser
- f) Ensure that retaliation for the filing of a sexual harassment complaint does not occur
- g) Report any sexual harassment that they observe both within and outside of their immediate units to the gender committee or to designated members of the HRD
- h) Periodically review the effectiveness of the policy in deterring SH and plan corrective action as required, in consultation with workers.
- i) Set a personal example of appropriate behaviour.

#### Responsibility of **Supervisors**

It is the responsibility of supervisors to:

- a) Educate and sensitize workers and fellow-supervisors in their units, on the Company's policy and procedures to report and to deal with reported allegations of sexual harassment
- b) Assist complainants in contacting the appropriate complaint-receiving officials
- c) Report to complaint-receiving officials or HRD any incident of SH, which s/he has personally observed, or which has been reported to her/him by an employee.
- d) Set a personal example of appropriate behaviour

Responsibility of **the Committees or Person(s) designated to handle complaints of SH** - i.e. the Gender committee or shop steward or designated members of the HRD.

The individuals designated to receive complaints of sexual harassment on behalf of the employer will:

- a) Document receipt of any complaints
- b) Conduct prompt, neutral investigation into the allegations and write a report of the information gathered,
- c) Keep the complaint confidential to the extent practicable under the circumstances
- d) Monitor that there is no retaliation against the complainant
- e) Monitor that there is no reoccurrence of inappropriate behaviour.

#### Responsibility of the Gender Committee Chairperson

To respond to any incident or complaint promptly and sensitively. This entails a responsibility to:

- 1) Call a meeting with the GC and institute an investigation as soon as a complaint is received
- 2) If a case is proved, recommend appropriate corrective action to HR management, in consultation with the gender committee
- 3) Follow up to ensure that the agreed corrective action is implemented
- 4) Ensure that complainants do not receive any form of victimisation and/or retaliation for the filing of a SH complaint
- 5) Ensure that the complainant and the alleged offender's right to confidentiality is observed
- 6) Produce quarterly reports for HRD on: the number and nature of the complaints received; steps taken upon receipt of complaint; outcome/resolution of the complaint; action taken by HRD; duration of the investigation.
- 7) Set a personal example of appropriate behaviour

#### Responsibility of all other employees

All employees are expected to:

- a) To refrain from any behaviour that constitute sexual harassment

- b) Promote a climate of mutual respect
- c) Maintain confidentiality concerning any complaint or investigation of which s/he aware/informed
- d) If aware of any incident of SH, consult with and/or report to complaint-receiving officials.

### **Responsibility of sub-contractors**

- a) All Sub-Contractors must comply with the aims of this policy as a condition of their sub contract
- b) Every Sub-Contractor will be responsible for providing her/his employees with copy of this policy.

### **6. Procedure to report and to resolve allegations of SH**

An employee who either observes or believes that she or he has been or is being sexually harassed is encouraged to take the following steps:

- 1) Inform the offending person that his/her conduct is unwelcome and should cease immediately;
- 2) Record each incident(s) - noting what was said or done, date(s), times, location/places, and the names of any witnesses, complainant's response. Please be aware that having a record of events is not a condition for filing a complaint.
- 3) Where the relative power or status of the persons involved makes direct discussions difficult, the person is encouraged to raise his/her concern formally or informally to the designated officials following the procedures set in this policy.

Anonymous complaints will be accepted and investigated by the designated officials. However, because of the serious implications of sexual harassment charges and the difficulties associated with their investigation, employees are encouraged to raise a complaint in a non-anonymous way.

#### *Informal resolution of allegations prior to or in lieu of filing a complaint*

Where an employee does not relish the prospect of a formal enquiry and is merely seeking assurance that the offensive conduct will not be repeated, s/he can discuss the matter with any of the following complaint-receiving officials:

- a) Section representative of the gender committee
- b) A counsellor, if present
- c) Any member of the HRD,

Accompanied by a union representative or colleague.

The complaint-receiving officials will have meetings with both the alleged victim and the alleged harasser separately. The complaint-receiving official may take whatever steps short of formal sanctions that he or she deems appropriate to affect an informal resolution acceptable to both parties.

The official receiving the complaint will keep records of the complaint and its resolution. If the informal procedure does not resolve the behaviour, the complainant may use the formal grievance procedure to obtain resolution.

#### *Formal resolution of an allegation*

In order to initiate a formal grievance procedure, the individual needs to file a complaint in writing with:

- i) Section representative of the Gender Committee
- ii) Shop steward representative
- iii) Company nurse or counsellor

A complaint can also be filed with a Line manager or designated member of the HRD.

The complainant is encouraged to file a complaint within 24 hours of the occurrence of the behaviour that gave rise to the grievance.

If a complaint is made through the union as a grievance, a meeting will be held with the union representative before and after the investigation.

Within two (2) weeks from receiving the complaint, the Gender Committee and its Chair will investigate the matter and recommend appropriate remedial action to take to the management.

Within (1) week from agreeing to corrective action, HRD will notify the complainant and the accused of the measures it intends to apply and implement the corrective action immediately.

In the event that the HRD and the GC disagree on the corrective action to take, the management will call a meeting with the gender committee within 5 days from receiving the GC's recommendations to review and discuss the evidence gathered.

The parties involved in a case (both the complainant and alleged offender) have the right to appeal using the procedures outlined under "Right of Appeal" in this document.

## **7. Remedial Action towards the harasser**

Misconduct constituting harassment or retaliation will be dealt with appropriately. Depending on the severity of the case, such action may include warning, reprimand, reassignment, temporary suspension without pay, dismissal. The disciplinary action shall be reached by HRMs in consultation with the GC.

## **8. Right of Appeal**

If the complainant is not satisfied with the measures notified by HRD, or no proposal is notified to the individual within four weeks from the filing of the complaint, the complainant shall submit his/her grievance to the chief shop steward for independent investigation.

The Chief shop steward will:

- Conduct an investigation
- Draw up a report comprising a summary of the allegations, the findings from the investigation and the suggested remedial action .
- His/her decision will be transmitted to the HRD, within 4 weeks of the assignment of the case, except where, in the investigator's opinion, exceptional circumstances require additional time.

If the claimant is not satisfied with the decision taken by the Chief shop steward /Trade Union, or if s/he is not a member of a trade union, the claimant has the right to refer the matter to the sub-county labour officer, for mediation in accordance with the provisions of the Labour Disputes Act.

## **9. Counselling**

Management may seek appropriate professional advice and arrange for counselling for the complainant, during and after the investigation of the complaint, as required.

Leave of absence may also be necessary, and Management will give permission for this, and if the complainant's compassionate leave entitlement is exhausted, additional compassionate leave may be granted.

## **10. Confidentiality**

Confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation. All parties and witnesses are expected to keep the identities of the persons involved confidential.

## **11. Retaliation**

Retaliation against any individual who reports an incident of sexual harassment or who participates in an investigation of a claim of sexual harassment is prohibited and represents a serious violation of this policy. It constitutes separate grounds for disciplinary action.

A claim of retaliation by a complainant, respondent or witness may be pursued using the steps set out in the disciplinary procedures. If the Company determines that evidence exists to support that retaliation occurred, appropriate action will be taken, regardless of the outcome of the underlying sexual harassment complaint.

## **12. False or malicious complaint**

Filing a false or malicious complaint of SH or of retaliation is a violation of this policy. Such conduct shall be pursued using the steps set out in the disciplinary procedures.