

EMPLOYMENT SEXUAL HARASSMENT (PREVENTION) ACT, 2017–21

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SCHEDULE

Content of Policy Statement Against Sexual Harassment

BARBADOS

I assent
PHILIP M. GREAVES
Acting Governor-General
27th October, 2017.

2017–21

An Act to make provision for the protection of employees from sexual harassment in the workplace.

[Commencement: by Proclamation]

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Employment Sexual Harassment (Prevention) Act, 2017*.

Interpretation

2. In this Act,

“client” means any person who conducts business with an employer;

“complainant” means the person by whom or on whose behalf a complaint is lodged;

“complaint” means a grievance referred to an employer, the Chief Labour Officer or the Tribunal under this Act;

“contract of service” means any contract of service or apprenticeship, whether written or oral and whether expressed or implied;

“employee” means an individual in the service of another person under a contract of service and includes,

(a) an apprentice;

(b) a person on probation;

(c) a full or part-time employee; and

(d) a person who is remunerated by way of a commission;

“employer” in relation to an employee means the person by whom the employee is employed, and in a case where the employment has ended, the person by whom the employee was employed;

“member” means a member of the Tribunal;

“Minister” means the Minister responsible for Labour;

“respondent” means a person against whom a complaint has been lodged and includes the employer where the employer is held responsible under this Act;

“supervisor” means an employee who by virtue of that person’s employment is in a position of authority over the complainant;

“Tribunal” means the Employment Rights Tribunal established under section 6 of the *Employment Rights Act, 2012* (Act 2012-9);

“workplace” means any location or place where persons work and includes

- (a) any other location or place where an employee is required to conduct the business of the employer; or
- (b) any location or place to which that person is sent by the employer for the purpose of receiving training or attending a conference on the employer’s behalf.

Meaning of sexual harassment

3.(1) For the purposes of this Act, sexual harassment includes

- (a) the use of sexually suggestive words, comments, jokes, gestures or actions that annoy, alarm or abuse a person;
- (b) the initiation of uninvited physical contact with a person;
- (c) the initiation of unwelcome sexual advances or the requests of sexual favours from a person;
- (d) asking a person intrusive questions that are of a sexual nature that pertain to that person’s private life;
- (e) transmitting sexually offensive writing or material of any kind;
- (f) making sexually offensive telephone calls to a person; or
- (g) any other sexually suggestive conduct of an offensive nature

in circumstances where a reasonable person would consider the conduct to be offensive.

(2) Nothing in subsection (1) shall be interpreted as precluding a finding of sexual harassment where there is a single incident.

Policy statement against sexual harassment

4.(1) Every employer shall ensure

- (a) that there is a clear written policy statement against sexual harassment within the workplace for which that employer has responsibility;
- (b) that a statement of that policy is presented to each employee on the commencement of employment with the employer; and
- (c) that procedures are put in place to assist every employee in understanding the policy statement.

(2) Within 6 months of the commencement of this Act, every employer shall ensure that the written policy statement against sexual harassment referred to in subsection (1) is prepared and that the statement is presented to each person who is employed by him.

(3) The policy statement against sexual harassment referred to in subsection (1) may contain any term that is consistent with this Act and an employer may consult with employees and their representatives in the establishment of the statement.

(4) The policy statement against sexual harassment referred to in subsection (1) must contain the terms set out in the *Schedule*.

(5) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 12 months or to both.

(6) The Minister may by order amend the *Schedule*.

Employer not to allow unfair opportunities to be granted

5.(1) An employer or a supervisor of an employee shall not in any manner suggest to an employee that the prospects or working conditions of that employee are contingent upon the employee's acceptance or toleration of sexual advances.

(2) Where subsection (1) is contravened, the aggrieved employee may lodge a complaint with the Chief Labour Officer and the Chief Labour Officer may take such action as he thinks necessary under section 12 to resolve the matter.

Liability of employer where unfair opportunities granted

6.(1) Where an employer grants employment opportunities or benefits as a result of

- (a) an employee's agreement to grant sexual favours to the employer; or
- (b) an employee's agreement to grant sexual favours to a client or an employee's supervisor,

an aggrieved employee who was denied an employment opportunity or benefit may lodge a complaint with the Chief Labour Officer and the Chief Labour Officer may take such action as he thinks necessary under section 12 to resolve the matter.

(2) An employer shall only be liable under subsection (1) for the actions of a client or an employee's supervisor where the arrangement was brought to the attention of the employer and the employer failed to take appropriate action.

Lodging of sexual harassment complaint with the employer

7. Where an employee alleges that he or she has been sexually harassed by another employee or by a client, the first mentioned employee may, within 3 months of the date of the occurrence of the event that constitutes sexual harassment, lodge a complaint in writing with the employer.

Procedure to be followed by employer where sexual harassment is alleged

8. Where a complaint is lodged with the employer under section 7, the employer shall

- (a) in the case where the complaint is made against the employee, inform him in writing of the complaint and its details within two workdays;
- (b) in the case where the complaint is made against the client, take such action as he considers appropriate in the circumstances to bring the matter to the attention of the client; and
- (c) commence investigation of the complaint within 14 days of the complaint being lodged and shall complete the investigation without delay.

Determination of complaint by employer

9.(1) Where after the investigation is conducted under section 8 the employer finds that sexual harassment has been committed, the employer shall

- (a) in the case of the employee, take such disciplinary action as is appropriate; and
- (b) in the case of the client, take such action as he considers appropriate in the circumstances to remedy the situation.

(2) Where after the investigation is conducted under subsection (1) the employer finds that sexual harassment has not been committed, the employer shall notify the complainant and the respondent in writing of his decision and the reason therefor.

Lodging of complaint with the Chief Labour Officer

10.(1) Where

- (a) sexual harassment continues after a complaint is made under section 7;
or
- (b) sexual harassment continues after action is taken by an employer under section 9,

the aggrieved employee may lodge a complaint in writing with the Chief Labour Officer within 3 months of the date of the occurrence of the event that constitutes a continuation of sexual harassment.

(2) Where the complainant is aggrieved by the findings of the employer under section 9, the aggrieved employee may lodge a complaint in writing with the Chief Labour Officer within 3 months of the notification of the decision.

Lodging a complaint against certain officials

11.(1) Where the allegation of sexual harassment is against the employer or the chief executive officer of an institution, the employee shall lodge the complaint with the Chief Labour Officer within the time specified in section 7.

(2) Where a complaint of sexual harassment is to be made against the Chief Labour Officer, the employee shall lodge the complaint in writing with the Tribunal within 3 months of the date of the occurrence of the event that constitutes sexual harassment.

Procedure where complaints are received by the Chief Labour Officer

12.(1) Where the Chief Labour Officer has received a complaint from an employee pursuant to section 5, 6, 10 or 11(1), the Chief Labour Officer shall

- (a) notify the respondent in writing of the complaint and the nature of the complaint;
- (b) carry out investigations in relation to the complaint; and

(c) endeavour by mediation to effect a resolution of the matter.

(2) The Chief Labour Officer may, with respect to a complaint that is lodged and for the purposes of mediation, make any enquiries that are thought necessary to effect a resolution of the matter.

(3) The Chief Labour Officer shall not carry out investigations into a complaint, or if investigations have commenced shall discontinue investigations, where the Chief Labour Officer is informed by the complainant

(a) that the complainant does not wish the complaint to be investigated; or

(b) that the investigations that have commenced should be discontinued.

(4) The Chief Labour Officer may decide not to carry out investigations or may decide to discontinue any investigations into the complaint where

(a) in the opinion of the Chief Labour Officer,

(i) the complaint is trivial;

(ii) the complaint is frivolous or vexatious; or

(iii) the complaint is not brought in good faith; or

(b) the complaint was not lodged within the period specified in this Act.

(5) Where the Chief Labour Officer decides not to carry out investigations or decides to discontinue an investigation in relation to a complaint, the Chief Labour Officer shall give notice in writing to the complainant and the respondent of that decision and the reason therefor.

(6) Where the complainant is aggrieved with the decision of the Chief Labour Officer made pursuant to subsection (4), that complainant may, within 3 months of the notification of the decision, lodge a complaint in writing with the Tribunal.

Power of Chief Labour Officer to obtain information and documents

13.(1) Where the Chief Labour Officer is carrying out investigations pursuant to section 12, and the Chief Labour Officer has reason to believe that a

person is capable of furnishing any information that may be relevant to the investigation, the Chief Labour Officer may by notice in writing, served on that person, require that person,

- (a) to furnish the Chief Labour Officer with the relevant information; or
- (b) to produce to the Chief Labour Officer any relevant documents as are specified in the notice.

(2) The information and documents referred to in subsection (1) shall be furnished and produced at a place and time specified in the notice.

(3) Where a document is produced in accordance with subsection (1), the Chief Labour Officer may

- (a) take possession of the document and make a copy of the document or take a copy of an extract from the document;
- (b) retain possession of the document for such period as is necessary for the purposes of the inquiry to which that document relates; or
- (c) during the period when he has possession of the document, permit a person who would be entitled to inspect the document, if it was not in the possession of the Chief Labour Officer, to inspect the document at any reasonable time.

Determination of complaint by the Chief Labour Officer

14.(1) Where a complaint is lodged under section 10 with the Chief Labour Officer, and the Chief Labour Officer makes a finding, he shall notify the complainant and the respondent in writing of his decision.

(2) Where the Chief Labour Officer makes a finding that sexual harassment was committed by the respondent, the Chief Labour Officer

- (a) may, where the respondent is a co-worker, direct the employer, within a specified time, to take such disciplinary action as is appropriate in the circumstances;

- (b) shall in all cases, direct the employer to take appropriate action, within a specified time, to ensure that the sexual harassment ceases; and
- (c) may direct the employer to submit a report to him within a specified time on the status of the situation for any period of time.

Appeal from decision of the Chief Labour Officer

15. Where a person is aggrieved by a decision of the Chief Labour Officer under section 14, that person may, within 30 days of the date of the decision, appeal to the Tribunal against the decision.

Referral by Chief Labour Officer of matter to the Tribunal

16. Where the Chief Labour Officer

- (a) is of the opinion that the respondent has failed without reasonable cause to comply with a direction given to him under section 14;
- (b) is of the opinion that a matter referred to him under this Act cannot be settled by mediation;
- (c) has endeavoured to settle a matter by mediation but has not been successful after 42 days of the lodging of the complaint;
- (d) is of the opinion that a matter is of such a nature that an inquiry should be conducted by the Tribunal; or
- (e) is of the opinion that due to the seriousness of a matter, it should be heard by the Tribunal,

the Chief Labour Officer shall refer the matter to the Tribunal, and the Tribunal may take such action as it thinks fit in the circumstances, including any action specified in section 21.

Hearing of complaints by the Tribunal

17.(1) The Employment Rights Tribunal shall, in accordance with this Act, hear complaints in respect of sexual harassment and any ancillary matters relating thereto.

(2) The procedure for hearing complaints under the *Employments Rights Act, 2012* (Act 2012-19) shall apply to complaints brought under this Act, unless this Act otherwise provides.

Procedure regarding inquiry by the Tribunal

18.(1) Subject to subsection (3), the Tribunal shall conduct an inquiry into any matter referred to it under this Act.

(2) The proceedings of the Tribunal shall be held *in camera*.

(3) The Tribunal shall not conduct an inquiry into any matter, or shall discontinue a matter that was commenced where the complainant advises the Tribunal in writing that the complainant does not wish an inquiry to be held or continued.

(4) The Tribunal shall endeavour by such means as it considers reasonable to resolve a complaint which has been referred to it and may take all reasonable steps to effect a resolution of such complaint.

(5) In order to effect a resolution of a complaint, the Tribunal may adjourn its enquiry into any matter at any stage to facilitate negotiation by the parties with a view to reaching a resolution.

Powers with respect to evidence

19. In the course of an inquiry, the Tribunal may

- (a) receive in evidence the transcript of evidence in any proceedings before a court or other tribunal and may draw any inferences of fact that it considers proper;

- (b) adopt any findings, decisions or judgements of a relevant court or tribunal that may be applicable to the enquiry; and
- (c) receive in evidence any reports of fact made by the Chief Labour Officer.

Attendance at enquiry

20. The Tribunal may by notice in writing direct

- (a) the complainant;
- (b) the respondent; or
- (c) any other person who in the opinion of the Tribunal may be able to provide information on a complaint,

to attend an inquiry for the purpose of resolving the matter.

Determination of complaint by Tribunal

21.(1) Where the Tribunal has held an inquiry under section 18, it may

- (a) dismiss the complaint; or
- (b) find in favour of the complainant that the respondent has engaged in conduct that amounts to sexual harassment, and that the respondent should not repeat or continue such conduct.

(2) Where a finding is made under subsection (1)(b), the Tribunal may make the following declarations:

- (a) that the respondent should compensate the complainant in an amount that the Tribunal determines; and such compensation may include compensation for injury to feelings and punitive and exemplary damages;
- (b) the respondent should pay the costs of the complainant.

(3) Where the Tribunal finds that the complainant has been dismissed from employment by the respondent as a result of a sexual harassment complaint made

under this Act, the Tribunal may take such action as it thinks fit in accordance with the *Employments Rights Act, 2012* (Act 2012-9).

(4) Where the Tribunal determines that sexual harassment has been committed by the respondent, the Tribunal may

- (a) direct the respondent or the employer to take any action necessary to ensure that the sexual harassment ceases; and
- (b) direct the employer to submit a report to the Tribunal within such time as is specified by the Tribunal setting out what action has been taken and the effect of the action.

(5) The decision of the Tribunal shall be in writing and shall include reasons for the decision, a statement of its findings on material questions of fact and a reference to the evidence or other material on which the findings are based.

(6) The Tribunal shall ensure that the decision is served on each party to the proceedings.

Enforcement of Tribunal decisions and orders

22. Where a person fails to comply with any order or direction given by the Tribunal under section 16 or 21 that person shall be liable to be proceeded against and shall be punished in like manner as if he were found guilty of contempt of court.

Appeal from decision of the Tribunal

23. Any person aggrieved by a decision made by the Tribunal may, within 30 days of the notification of the decision, appeal against the decision to a Judge in Chambers.

Particulars of offence not to be communicated

24.(1) Where a complaint has been received under this Act, a person shall not, unless the Tribunal otherwise permits, divulge or communicate to any person any particulars of that complaint.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 2 years or to both.

Prohibition of publication of proceedings

25.(1) No person shall publish a report of any proceedings held under this Act or publish any information relating to proceedings under this Act.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 2 years or to both.

Prohibition of victimization of employees

26.(1) No employer shall carry out any action which adversely affects the opportunities and terms and conditions of service of an employee who has

- (a) rejected that employer's acts of sexual harassment;
- (b) lodged a complaint under this Act;
- (c) given testimony with respect to any investigation conducted or hearing held under this Act in connection with a complaint of sexual harassment; or
- (d) participated in an investigation, procedure or hearing under this Act.

(2) No person shall subject or threaten to subject another person to any detriment on the ground that the other person

- (a) has made or proposes to make a complaint under this Act;
- (b) has furnished or proposes to furnish any information or any documents to a person exercising or performing any power or function under this Act; or
- (c) has attended or proposes to attend an inquiry under this Act or to appear there as a witness.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 2 years or to both.

Offences related to the inquiry

27.(1) Any person who is directed to attend an inquiry for the purposes of section 20 and who fails without reasonable excuse to do so is guilty of an offence and is liable on summary conviction to a fine of \$1 000 or to imprisonment for a term of 6 months or to both.

(2) Any person who

- (a) furnishes to the Chief Labour Officer or the Tribunal any information or makes a statement at an inquiry knowing that the information or statement is false or misleading in a material particular;
- (b) hinders or obstructs the Chief Labour Officer or any other labour officer or any member of the Tribunal in the exercise of any of the powers conferred upon them by this Act,

is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 12 months or to both.

Penalty for making false complaint

28. A person who makes a false complaint of sexual harassment against another person is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 2 years or to both.

Immunity

29. No action shall be brought against the Chief Labour Officer or any officer who is acting on the behalf of the Chief Labour Officer in respect of anything done in good faith in the execution of the powers and duties conferred on the Chief Labour Officer under this Act.

Prosecutions

30. The Chief Labour Officer may, although not an attorney-at-law, prosecute or conduct before a court of summary jurisdiction, any proceedings relating to an offence committed under this Act.

Regulations

31. The Minister may make regulations for the proper administration of this Act.

Act to bind the Crown

32. This Act binds the Crown.

Commencement

33. This Act comes into operation on a date to be fixed by Proclamation.

SCHEDULE

(Section 4(4))

Content of Policy Statement Against Sexual Harassment

The policy statement against sexual harassment referred to in section 4(1) must contain the following provisions:

- (a) a definition of sexual harassment that is substantially the same as the definition in section 3;
- (b) a statement to the effect that every employee is entitled to employment free of sexual harassment;
- (c) a statement to the effect that the employer will make every reasonable effort to ensure that no employee is subjected to sexual harassment;
- (d) a statement to the effect that the employer will take such disciplinary measures as the employer deems appropriate against any person under the employer's direction who subjects any employee to sexual harassment;
- (e) a statement explaining how complaints of sexual harassment may be brought to the attention of the employer;
- (f) a statement to the effect that no person shall disclose the name of a complainant or the name of the respondent or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures in relation thereto; and
- (g) a statement informing employees of the provisions in this Act which gives them a right to make a complaint where sexual harassment is committed against them and the relevant authority to whom the complaint must be made.