

Prevention of Sexual Harassment

Employers failing to comply with legal requirements to prevent and address sexual harassment may be subject to significant damages and fines. By meeting certain standards, the core of which are detailed below, employers can significantly mitigate potential liability.

WHAT IS SEXUAL HARASSMENT?

According to the Prevention of Sexual Harassment Law - 1998 (the "**Law**"), 'sexual harassment' constitutes a civil tort¹ as well as a criminal offence, and includes the following conduct:

1. Extortion to commit an act of sexual nature;
2. Indecent acts²;
3. Repeated propositions directed at a person and focused on his or her sexuality, when that person has demonstrated to the harasser that he or she is not interested in such propositions;
4. Repeated references of a sexual nature directed towards a person, when that person has demonstrated to the harasser that he or she is not interested in such references;

5. Degrading or demeaning references towards a person in respect of that person's gender, sex or sexuality, including his or her sexual orientation; and
6. Publication of a photograph, audio or film of a person that focuses on his or her sexuality, under circumstances that may demean or degrade him or her and without the consent of that person (excluding extraordinary incidences, as subscribed by the Law).

It is important to emphasise that the conduct described in sections 3 and 4 above, if carried out within the framework of work relations and through the exploitation of one's position of authority, are deemed sexual harassment, even if the person who is the object of such conduct has not demonstrated that he or she had no interest in these acts³.

OBLIGATION TO PREVENT SEXUAL HARASSMENT

The Law alongside subsequent regulations (the "**Regulations**"), require an employer to take 'reasonable steps under the circumstances' to prevent sexual harassment or any harm stemming from such complaint or action, brought due to sexual harassment ("**Provocation**")⁴ by employees or supervisors. In addition, employers are required to (i) inform all their employees of the prohibition of sexual harassment; (ii) demand that all their employees and supervisors refrain from such conduct in the framework of work relations; and (iii) clarify to them the obligations incumbent on an employer

¹Such exposure may also exist in cases in which damages have not been proven by the complainant. In such case damages may amount to NIS 120,000.

²In cases detailed in both section 1 and 2, as defined under the Penal Law - 1977.

³The Israeli courts have ruled that if a relationship of authority has been proven, it is then presumed that such intimate relations between two employees occurred as a result of the exploitation of one's authority.

⁴This provision may also be translated as "persecution" or "adverse treatment".

with regard to such matters, as determined by the Law.

The Law and Regulations provide several guidelines aimed at assisting employers in complying with these duties. Among other obligations, employers are required:

1. To allow their employees to participate, during work hours, in training exercises and lectures that deal with the prevention of sexual harassment (or alternatively, to provide such training / lectures themselves);
2. To make the Law and Regulations available to their employees (for example, by way of placing such documents in an accessible place, such as in conference rooms or kitchens);
3. An employer employing more than 25 employees is required to establish a 'code of conduct' that reflects the principle provisions of the Law (the "**Code**") and to publish the Code in an accessible place (and, if necessary, in more than one workplace location). It should be noted that failing to publish the Code constitutes a criminal offence;

We recommend that even employers employing fewer than 25 employees establish a Code, as such an act may exempt the employer from some of the above mentioned

obligations. In addition, we recommend that employers inform new employees of the Code; and

4. To establish an effective method and procedure for (i) the filing of a complaint in respect to sexual harassment/Provocation; and (ii) the investigation of such complaints. As part of this requirement, employers are required, *inter alia*, to appoint a supervisor (the "**Supervisor**") who shall be in charge of all matters relating to sexual harassment. Employers should inform each employee of the identity of the Supervisor and provide them with his or her contact details. If possible, a female employee should be appointed to this position. In cases of employers employing more than 25 employees, the Supervisor's contact details should also be included in the Code.

OBLIGATION TO ADDRESS INCIDENTS OF SEXUAL HARASSMENT

In the event of (i) a sexual harassment or Provocation complaint or (ii) learning about a possible incident involving sexual harassment or Provocation, employers must deal with the matter

immediately, professionally, and in the manner prescribed by the Law. Particularly, it is important to refer all such cases to the Supervisor, who is required to conduct an investigation, hear the complainant, the accused and other witnesses and to conduct inquiries into all relevant information he or she may have received on the matter. The Supervisor should also inform the complainant about the various legal channels available to him or her in confronting sexual harassment/Provocation.

It is imperative that the investigation be carried out while safeguarding, to the greatest extent possible, the dignity and privacy of the parties involved. It is also important to ensure that the complainant is in no way harmed and does not suffer from any detrimental consequences as result of the complaint.

Upon conclusion of the investigation, the Supervisor should act with transparency and provide the employer with a summary of the inquiry carried out alongside recommendations for future action.

After receiving such a summary, employers must,



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within seven working days,
issue a written and well-
reasoned decision as to the
actions they intend to take.

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*Please note that the above
provides only a general
overview of certain key
provisions of sexual
harassment law in Israel. The
above memorandum does not
contain all details of the legal
issues presented and should
not be considered a substitute
for legal counsel. We will be
happy to assist you in any
question you may have.*

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