

SEXUAL HARASSMENT LAWS IN THE USA

Compiled for the Association of Women for Action and Research by Chua Vernon,
Ong Wee Kai & Mohan Gopalan, National University of Singapore, 2007.

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1 Introduction

Federal and state legislation in the USA is capable of dealing with sexual harassment in three main contexts: employment, education and housing. This paper will focus on sexual harassment in an employment context.¹

2 Federal Legislation

2.1 Definition

The Equal Employment Opportunity Commission's *Guidelines on Discrimination Because of Sex*² defines sexual harassment in the following manner:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.³

This definition covers both *quid pro quo* cases as well as hostile work environment claims.

2.2 Title VII

Claims of sexual harassment in the workplace are usually brought under Title VII of the *Civil Rights Act of 1964*⁴, whose main provision reads as follows:

It shall be an unlawful employment practice for an employer –

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities

¹ Sexual harassment claims in an education context come under Title IX, which is discussed at Section 2.3 of this paper. On sexual harassment in a housing context, see Regina Cahan, "Home is No Haven: An Analysis of Sexual Harassment in Housing" [1987] Wis. L. Rev. 1061, Kathleen Butler, "Sexual Harassment in Rental Housing" [1989] U. Ill. L. Rev. 175 and William Litt *et al.*, "Recent Developments: Sexual Harassment Hits Home" (1992) 2 UCLA Women's L.J. 227.

² 29 C.F.R. §1604 *et seq.* (§ 1604.11, which is concerned with sexual harassment, is reproduced in full at Appendix A).

³ *Ibid.*, §1604.11(a).

⁴ 42 U.S.C. § 2000e *et seq.* (relevant sections reproduced at Appendix B). See, generally, *Corpus Juris Secundum*, vol. 14A (St Paul, Minn.: West, 2006) at 91, § 259.

or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.⁵

Although Title VII does not specifically refer to sexual *harassment*, it has been held that sexual harassment is a form of sex discrimination and therefore amounts to a Title VII violation.⁶

Title VII established the Equal Employment Opportunity Commission (EEOC) and charged it with investigating complaints of discrimination and then attempting conciliation. The EEOC may bring a civil suit against an employer when it cannot otherwise resolve the issue, or it may issue a "right to sue" letter to the aggrieved individual who may then pursue his complaint in the courts.⁷

If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice, the court may enjoin the respondent from engaging in that practice. The court may also order appropriate affirmative action, which can include reinstatement, hiring and promotion. Equitable remedies, such as back pay and front pay, are also available.⁸ Compensatory damages, including those for pain and suffering, as well as pecuniary damages, may also be awarded.⁹

Title VII is broad in its application, covering harassment of an employee by supervisors¹⁰, co-workers and non-employees, such as customers¹¹. In respect of non-employees, the EEOC's *Guidelines* read as follows:

An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.¹²

⁵ 42 U.S.C. § 2000e-2(a).

⁶ This common law development is documented in Catharine A. MacKinnon, "The Logic of Experience: Reflections on the Development of Sexual Harassment Law" (2002) 90 Geo. L.J. 813 at 818-826 and Ellen Frankel Paul, "Sexual Harassment as Sex Discrimination: A Defective Paradigm" (1990) 8 Yale L. & Pol'y Rev. 333 at 336-345. In addition, § 1604.11(a) of the EEOC's *Guidelines*, *supra* note 2, explicitly provides that harassment on the basis of sex is a violation of Title VII.

⁷ 42 U.S.C. § 2000e-5(f)(1) (reproduced at Appendix B).

⁸ *Ibid.*, § 2000e-5(g)(1) (reproduced at Appendix B). See, generally, *Corpus Juris Secundum*, vol. 14A (St Paul, Minn.: West, 2006) at 504-528, §§ 666-692.

⁹ 42 U.S.C. § 1981a(a)(1). See, generally, *Corpus Juris Secundum*, vol. 14A (St Paul, Minn.: West, 2006) at 528-531, §§ 693-695.

¹⁰ See "Sexual advances by employee's superior as sex discrimination within Title VII of Civil Rights Act of 1964, as amended (42 U.S.C.A. §§ 2000e et seq.);" 46 A.L.R. Fed. 224.

¹¹ See "Liability of employer, under Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.) for sexual harassment of employee by customer, client, or patron" 163 A.L.R. Fed. 445.

¹² 29 C.F.R. § 1604.11(e).

Title VII also covers situations in which the victim and the harasser are both of the same sex¹³ but it does not apply where the perpetrator harasses victims of both sexes to the same extent, often referred to as “equal opportunity” or bisexual harassment. In this situation, there is no discrimination based on sex, because both sexes are harassed equally. Therefore Title VII, which is premised on discrimination, cannot apply.¹⁴

2.3 Title IX

Where a federally-funded education or training programme is carried out in the employment context, Title IX of the *Education Amendments of 1972*¹⁵ will prove useful in sexual harassment cases. Title IX provides that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.¹⁶

As was the case with Title VII, sexual harassment has been held to constitute sex discrimination under Title IX. Title IX applies regardless of whether the harasser was a teacher¹⁷ or a fellow student¹⁸. Like Title VII, Title IX covers same-sex harassment but not bisexual harassment. The requirement that the education programme receive federal financial assistance limits the applicability of Title IX.

2.4 Civil Action for Deprivation of Rights

42 U.S.C. § 1983 allows an action against state or local officials for intentional gender discrimination, including sexual harassment, as a violation of the right to equal protection of the laws which is enshrined in the Fourteenth Amendment to the United States Constitution.¹⁹ The relevant parts read as follows:

1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory..., subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

¹³ See “Same-Sex Sexual Harassment under Title VII (42 U.S.C.A. §§ 2000e et seq.) of Civil Rights Act” 135 A.L.R. Fed. 307.

¹⁴ For discussions of this problem, see Richard A. Epstein, *Forbidden Grounds: The Case Against Employment Discrimination Laws* (London: Harvard University Press, 1992) at 357-358 and Sandra Fredman, *Women and the Law* (New York: Oxford University Press, 1997) at 322-323.

¹⁵ 20 U.S.C. § 1681 *et seq.* See, generally, *Corpus Juris Secundum*, vol. 14 (St Paul, Minn.: West, 2006) at 683, § 169 and vol. 14A at 90, § 258.

¹⁶ 20 U.S.C. § 1681(a).

¹⁷ See, generally, *Corpus Juris Secundum*, vol. 14 (St Paul, Minn.: West, 2006) at 684, § 170.

¹⁸ See, generally, *Corpus Juris Secundum*, vol. 14 (St Paul, Minn.: West, 2006) at 686, § 171.

¹⁹ See, generally, *Corpus Juris Secundum*, vol. 14A (St Paul, Minn.: West, 2006) at 89, § 258.

Amendment 14

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Because the offending act has to be committed under colour of law, § 1983's use is limited to situations in which the victim is in public employment. By contrast, Title VII applies to all forms of employment.

3 State Legislation

Most states have "fair employment practice" laws, but many of these simply track Title VII's wording and provide coverage that is almost identical to Title VII. Four states have slightly different legislation: Texas, Delaware, Iowa and Puerto Rico.

3.1 Texas

The Texas Penal Code criminalises sexual harassment by public servants:

(a) A public servant acting under color of his office or employment commits an offense if he: ...

(3) intentionally subjects another to sexual harassment.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) In this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.²⁰

3.2 Delaware

Delaware has a criminal provision against sexual harassment which is of more general application:

A person is guilty of sexual harassment when:

(1) The person threatens to engage in conduct likely to result in the commission of a sexual offense against any person; or

²⁰ V.T.C.A., Penal Code § 39.03 (state statutes have not been cited in accordance with the Blue Book, but if you type the citation into Westlaw's "FIND" function, you will find what you seek). For discussion, see Carrie N. Baker, "Sexual Extortion: Criminalizing Quid Pro Quo Sexual Harassment" (1994) 13 Law & Inequality 213 at 244-247, 251.

(2) The person suggests, solicits, requests, commands, importunes or otherwise attempts to induce another person to have sexual contact or sexual intercourse or unlawful sexual penetration with the actor, knowing that the actor is thereby likely to cause annoyance, offense or alarm to that person.²¹

3.3 Iowa

While most states adopt a definition of sexual harassment that is at most a variation of that given in the EEOC *Guidelines*²², Iowa's definition is slightly more elaborate:

1. An employee in a supervisory position shall not threaten or insinuate, explicitly or implicitly, that another employee's refusal to submit to sexual advances will adversely affect the employee's employment, evaluation, salary advancement, job assignments, or other terms, conditions, or privileges of employment.

3. As used in this section, "*sexual harassment*" means persistent, repetitive, or highly egregious conduct directed at a specific individual or group of individuals that a reasonable person would interpret as intentional harassment of a sexual nature, taking into consideration the full context in which the conduct occurs, which conduct threatens to impair the ability of a person to perform the duties of employment, or otherwise function normally within an institution responsible for the person's care, rehabilitation, education, or training.

"*Sexual harassment*" may include, but is not limited to, the following:

a. Unsolicited sexual advances by a person toward another person who has clearly communicated the other person's desire not to be the subject of those advances.

b. Sexual advances or propositions made by a person having superior authority toward another person within the workplace or institution.

c. Instances of offensive sexual remarks or speech or graphic sexual displays directed at a person in the workplace or institution, who has clearly communicated the person's objection to that conduct, and where the person is not free to avoid that conduct due to the requirements of the employment or the confines or operations of the institution.

d. Dress requirements that bear no relation to the person's employment responsibilities or institutional status.²³

3.4 Puerto Rico

Puerto Rico has an interesting provision that makes employers liable to colleagues of an employee who has submitted to sexual harassment:

When the employer grants employment opportunities or benefits as the result of a person's submission to sexual approaches and demands of the employer or of his agents

²¹ 11 Del.C. § 763. For discussion, see Baker, "Sexual Extortion" *ibid*.

²² See *supra* note 3 and accompanying text.

²³ I.C.A. § 19B.12.

or supervisors, the former shall be held liable for sexual harassment in employment with regard to the persons who were denied such opportunity or benefit.²⁴

4 Reactions to Existing Legislation

Most academic discussions on sexual harassment laws in the USA focus primarily on Title VII, as this is the most widely-used provision. However, most objections to the use of Title VII as a sexual harassment provision have at their core the contention that sexual harassment is not a form of sex discrimination. Other laws that are based on discrimination principles, such as Title IX and 42 U.S.C. § 1983, will thus also suffer from similar criticisms.

While some commentators such as Professor Catharine MacKinnon have expressed the view that sexual harassment is in fact sex discrimination and that recognising it as such will promote social awareness of the inequality problem, there is a large body of academic opinion subscribing to the contrary view. The primary argument against sexual harassment as a form of sex discrimination focuses on the idea that a victim of sexual harassment suffers a wrong as an individual, and not because he is a member of a particular group, as would be the case with discrimination cases. Professor Ellen Paul explains the matter in this way:

Individual acts of sex discrimination fall into the following pattern: A refuses to do X for B because B is a member of group Y (where X stands for hire, promote, etc. and Y stands for blacks, women, etc.). Sexual harassment of the classic, *quid pro quo* type does not fit this pattern, but another: A refuses to do X for B unless B provides A with sexual favors. In sexual harassment, it is not simply the "bare fact" of B's existence as a Y that triggers A's oppressive conduct, but B's unwillingness to do something, namely to provide sexual favors. Thus, sexual harassment seems to be hitched uneasily to Title VII's sex discrimination cart.²⁵

The problem of the bisexual harasser²⁶ has also been used to demonstrate that the use of Title VII to combat sexual harassment is unprincipled. If sexual harassment is indeed sexual discrimination as envisioned by Title VII, then it is absurd that some perpetrators will get off scot-free.²⁷ Also, since anti-discrimination laws only make sense where equal treatment serves to advance the welfare of both classes, when both groups lose equally from any anti-discrimination law (as in the case of the bisexual harasser), its continued use can no longer be justified.²⁸

There are other details that make Title VII unsuitable as a sexual harassment law. No matter how extreme the harassing behaviour, Title VII will not hold the perpetrator personally liable

²⁴ 29 L.P.R.A. § 155g.

²⁵ Paul, "Sexual Harassment as Sex Discrimination" *supra* note 6 at 352-353.

²⁶ For an explanation of this problem see *supra* note 14 and accompanying text.

²⁷ Paul, "Sexual Harassment as Sex Discrimination" *supra* note 6 at 351-352 and Epstein, *Forbidden Grounds*, *supra* note 14 at 357-358.

²⁸ Epstein, *Forbidden Grounds*, *supra* note 14 at 358.

for his misconduct. Title VII will only be effective against an employer. Even then, Title VII will only apply to workplaces with no fewer than fifteen employees.²⁹

There is also nothing in Title VII's legislative history that justifies its use as a sexual harassment law. In fact, "sex" was added to the Title at the last minute by an opponent of the entire act, who intended thereby to torpedo the whole business. This amendment has even been called a "joke".³⁰

5 Alternative Solutions

5.1 *The Adequacy of Existing Tort Law*

While it is the consensus that sexual harassment is reprehensible, not all commentators think that laws specifically targeting sexual harassment are necessary. Professor Richard Epstein argues that existing common law torts like battery, assault, intentional infliction of emotional distress and invasion of privacy are capable of adequately addressing sexual harassment problems. He points out that claims under these torts will be less problematic than those under Title VII because Title VII claims require proof of discriminatory intention that these torts are not concerned with.³¹ Although the torts of intentional infliction of emotional distress and invasion of privacy have not been recognised in Singapore, the tort of harassment has³², and thus it is likely that Epstein's views will remain true in the Singapore context.

5.2 *A Solution in Contract Law*

Epstein also proposes a solution in contract, suggesting that firms establish a set of rules that make certain specified forms of sexual conduct a violation. That violation can then become the basis of a private contract right of action against the offending party, an action to which that party consents as a condition for obtaining his job.³³

5.3 *A Solution in Criminal Law*

Some commentators have argued for a criminal law solution³⁴, but any solution that is purely criminal in nature has several drawbacks. Victims are unlikely to be willing to face the

²⁹ Stephen J. Schulhofer, *Unwanted Sex: The Culture of Intimidation and the Failure of Law* (Cambridge, Mass.: Harvard University Press, 1998) at 180-181.

³⁰ Paul, "Sexual Harassment as Sex Discrimination" *supra* note 6 at 339, 346.

³¹ Epstein, *Forbidden Grounds*, *supra* note 14 at 352-354.

³² *Malcomson Nicholas Hugh Bertram v. Naresh Kumar Mehta*, [2001] 4 Sing. L.R. 454 (H.C.). 'Harassment' was defined as "a course of conduct by a person, whether by words or action, directly or through third parties, sufficiently repetitive in nature as would cause, and which he ought reasonably to know would cause, worry, emotional distress or annoyance to another person" (*ibid.* at 464E).

³³ Epstein, *Forbidden Grounds*, *supra* note 14 at 354-355.

³⁴ Janet Dine & Bob Watt, "Sexual Harassment: Moving Away from Discrimination" (1995) 58 Mod. L. Rev. 343 and Carrie N. Baker, "Sexual Extortion" *supra* note 20, which incorporates a model provision at 247. Note that Singapore has *Penal Code* (Cap. 224, 1985 Rev. Ed. Sing.), s. 509: "Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the

publicity and risk of adverse treatment that usually accompanies a formal complaint. Also, while criminal law may act as a deterrent to future harassers, it can place no pressure on employers of harassers to institute preventative measures.³⁵

5.4 *Specific Legislation*

Legislation that specifically targets sexual harassment has been the solution of choice for most commentators. Specific legislation would avoid the anomaly that arises under Title VII of sexual harassment being classified as sex discrimination and would instead better reflect the nature of sexual harassment as an individual wrong. Thus Professor Paul has proposed a legislated tort of sexual harassment, based on the tort of intentional infliction of emotional distress:

- (1) Sexual harassment is comprised of
 - (a) unwelcome sexual propositions incorporating overt or implicit threats of reprisal, and/or
 - (b) other sexual overtures or conduct so persistent and offensive that a reasonable person when apprised of the conduct would find it extreme and outrageous.
- (2) To be held liable, the harasser must have acted either intentionally or recklessly and the victim must have suffered, thereby, economic detriment and/or extreme emotional distress.
- (3) In the employment context,
 - (a) the employer is liable when the plaintiff had notified an appropriate officer of the company (not himself the alleged harasser) of the offensive conduct, and the employer failed to take good faith action to forestall future incidents;
 - (b) The employer is liable, also, when he should have known of the offending incident(s) (that is, when he failed to provide an appropriate complaint mechanism).³⁶

Also cited as a positive example is Israel's *Prevention of Sexual Harassment Law*³⁷, which is essentially a codification of case law interpreting Title VII in a sexual harassment context.

privacy of such woman, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both."

³⁵ Fredman, *Women and the Law*, *supra* note 14 at 326-327.

³⁶ Paul, "Sexual Harassment as Sex Discrimination" *supra* note 6 at 362.

³⁷ 5758-1998, S.H. 166 (reproduced in full at Appendix C), cited in MacKinnon, "The Logic of Experience" *supra* note 6 at 832. For discussion of this statute, see Tzili Mor, "Law as a Tool for a Sexual Revolution: Israel's Prevention of Sexual Harassment Law-1998" (2001) 7 Mich. J. Gender & L. 291.

The statute provides for both criminal sanctions and civil remedies.³⁸ It also places a duty on employers to take preventative measures.³⁹ Its main provision reads as follows:

Sexual harassment is any one of the following acts:

- (1) extortion by threat, within the meaning thereof in Section 428 of the Penal Law 5737-1977 (hereinafter referred to as – the Penal Law), when the act that the person is required to perform is of a sexual nature;
- (2) indecent acts, within their meaning in Sections 348 and 349 of the Penal Law;
- (3) repeated propositions of a sexual nature, addressed to a person who has demonstrated to the harasser that he is not interested in the said propositions;
- (4) repeated references addressed to a person and focused on his sexuality, when that person has demonstrated to the harasser that he is not interested in the said references;
- (5) an insulting or debasing reference to a person in connection with his gender or sexuality, including his sexual preference;
- (6) propositions or references as referred to in paragraphs (3) or (4), addressed to one of the persons enumerated in sub-paragraphs (a) to (c) under circumstances specified in those subparagraphs, even if the harassed person has not demonstrated to the harasser that he is not interested in the said propositions or references;
 - (a) toward a minor or helpless person, by exploiting a disciplinary, educational or treatment relationship;
 - (b) toward a patient within the framework of psychological or medical treatment, by exploiting the patient's dependence on the person treating him;
 - (c) toward an employee within the framework of an employment relationship, and toward a person in service within the framework of such service, by exploitation of authority and discipline in labour relations or in the service.⁴⁰

6 Recommendations

Given the amount of academic criticism that has been made of Title VII being used to cover cases of sexual harassment, AWARE would be well advised to stay clear of any proposed

³⁸ *Prevention of Sexual Harassment Law, ibid.*, ss. 5 and 6 respectively.

³⁹ *Ibid.*, s. 7.

⁴⁰ *Ibid.*, s. 3(a).

legislation that has gender equality as its basis. Legislation that specifically targets sexual harassment is likely to be less problematic and much more palatable.

Appendix A – EEOC Guidelines on Discrimination Because of Sex

(29 C.F.R. § 1604 *et seq.*)

1604.11 Sexual harassment.

(a) Harassment on the basis of sex is a violation of section 703 of title VII.¹ Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

¹ The principles involved here continue to apply to race, color, religion or national origin.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) [Reserved]

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

Appendix B – Title VII of the Civil Rights Act

(42 U.S.C. § 2000e *et seq.*)

2000e-2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer –

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization -

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion
Notwithstanding any other provision of this subchapter,

(1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and

(2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C. 781 et seq.].

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if –

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to

employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of title 29.

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1)

(A) An unlawful employment practice based on disparate impact is established under this subchapter only if -

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)

(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the

complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C. 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

2000e-3. Other unlawful employment practices

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor

organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

2000e-5. Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that

the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) [FN1] of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within

ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment

practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2)

(A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.

(B) On a claim in which an individual proves a violation under section 2000e-2(m) of this title and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court--

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of chapter 6 of Title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of Title 29 shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders

In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28.

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

2000e-10. Posting of notices; penalties

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

Appendix C – Prevention of Sexual Harassment Law (Israel)

(5758-1998, S.H. 166)

Purpose of the law.

1. The purpose of this law is to prohibit sexual harassment in order to defend human dignity, freedom and privacy and in order to promote equality between the sexes.

Definitions.

2. In this Law -

“Service” means service in the defense forces, where no employer/employee relationship exists between them and the person serving therein;

“demonstrated” means by word or conduct, and provided that there is no reasonable doubt as to the meaning of such conduct;

“reference” means written, spoken, by means of visual or sound presentation, including by means of computer or of computer material, or by conduct,

“Equal Opportunities Law” means the Equal Employment Opportunities Law 5748-1988.

“Penal Law” means the Penal Law 5737-1977,

“helpless person” as defined in Section 368A of the Penal Law;

“defense forces” means the Israel Defense Forces, the Israel Police, the Prisons Service, and the other defense organisations of the State;

“computer” and “computer material” as defined in the Computers Law 5755-1995

“realm of Labour relations” means the workplace, any other place in which activity on behalf of the employer takes place, in the course of employment, or by the exploitation of authority in labour relations at any place whatsoever;

“manpower contractor” as defined in section 1 of the Employment of Employees by manpower contractors law 5756-1996’

“minor” means a person who has not yet reached the age of 18.

Sexual harassment and persecution.

3. (a) Sexual harassment is any one of the following acts:

(1) extortion by threat, within the meaning thereof in Section 428 of the Penal Law 5737-1977 (hereinafter referred to as – the Penal Law), when the act that the person is required to perform is of a sexual nature;

(2) indecent acts, within their meaning in Sections 348 and 349 of the Penal Law;

(3) repeated propositions of a sexual nature, addressed to a person who has demonstrated to the harasser that he is not interested in the said propositions;

(4) repeated references addressed to a person and focused on his sexuality, when that person has demonstrated to the harasser that he is not interested in the said references;

(5) an insulting or debasing reference to a person in connection with his gender or sexuality, including his sexual preference;

(6) propositions or references as referred to in paragraphs (3) or (4), addressed to one of the persons enumerated in sub-paragraphs (a) to (c) under circumstances specified in those subparagraphs, even if the harassed person has not demonstrated to the harasser that he is not interested in the said propositions or references;

(a) toward a minor or helpless person, by exploiting a disciplinary, educational or treatment relationship;

(b) toward a patient within the framework of psychological or medical treatment, by exploiting the patient's dependence on the person treating him;

(c) toward an employee within the framework of an employment relationship, and toward a person in service within the framework of such service, by exploitation of authority and discipline in labour relations or in the service.

(b) Persecution is any harm stemming from sexual harassment or from a complaint or an action brought because of sexual harassment.

Prohibition of sexual harassment and persecution.

4. A person shall not harass another sexually nor persecute such person.

Sexual harassment and persecution as offences.

5. (a) Where a person harasses another sexually, as provided in Section 3(a)(3) to (6), he shall be liable to 2 years imprisonment.

(b) Where a person persecutes another, as provided in Section 3(b) he shall be liable to 3 years imprisonment.

(c) Where a person has harassed another sexually as provided in subsection (a) and has persecuted such person as provided in subsection (b) he shall be liable to 4 years imprisonment.

(d) The provisions of Sections 2A and 2B of the Law Procedure Amendment (Interrogation of Witnesses) Law 5718-1957 shall apply to the interrogation of a person who has been harmed by an offence under this section and to the testimony of such person in respect of such an offence.

(e) The provisions of Section 352 of the Penal Law shall apply to publication of the name of a person harmed by an offence under this section.

Sexual harassment and persecution are civil wrongs.

6. (a) Sexual harassment and persecution are civil wrongs and the provisions of the Civil Wrongs ordinance (New Version) shall apply to them, subject to the provisions of this Law.

(b) The Court may award compensation of up to NIS 50,000 for sexual harassment and persecution, without proof of damage; this amount shall be updated on the 16th of each month at the rate of increase of the new index over the basic index; for the purposes of this section -

“index” means the Consumer Price Index published by the Central Bureau of Statistics;

“new index” means the index for the month preceding the month of updating;

“basic index” means the index for March 1998.

(c) A Court or a Labour Court as the case may be, shall not entertain a claim for a civil wrong under this section or under Section 7, if it is submitted after 3 years have elapsed from the date on which the grounds for it arose.

Action to be taken by the employer.

7. (a) An employer must take steps that are reasonable under the circumstances, in order to prevent sexual harassment and persecution within the realm of labour relations by his employee or by a person who has been put in charge on his behalf, even if he is not his employee, and to that end he shall -

(1) provide an effective method for the submission of complaints of sexual harassment or persecution and for the investigation of such complaints.

(2) take effective action in cases of sexual harassment or persecution of which he is aware and do all that he can to prevent a repetition of the aforesaid acts and to make good any harm caused to the complainant as a result of such sexual harassment or persecution;

(b) where an employer employs more than 25 employees, he must – in addition to what is provided in subsection (a) prescribe a set of rules that encompasses the main provisions of this Law on sexual harassment and persecution in the realm of labour relations, and which specify therein the methods of the submission and handling of complaints concerning sexual harassment or persecution, as prescribed by the employer (hereinafter – the set of rules); the employer shall bring the set of rules to the attention of his employees.

(c) Where an employer has not complied with his obligations under subsections (a)(1) and (2) and (b), he shall be liable for a civil wrong under Section 6 or for a civil wrong for harm caused as provided Section 7 of the Equal Opportunities Law, committed by his employee or a person in charge on his behalf, even if he is not his employee, within the realm of labour relations.

(d) The Minister of Justice – with the agreement of the Minister of Labour and Social Affairs and with the approval of the Knesset Committee for the Advancement of the Status of Women, shall prescribe -

(1) Rules for compliance with an employer's obligations under this Section; the aforesaid rules may be couched in general terms or for categories of workplaces, for branches of employment or for professions;

(2) A sample set of rules as an example for employers (hereinafter referred to as – sample rules).

(e) For the purpose of compliance with the employer's obligations under subsection (b), the employer shall make the necessary modifications to the sample rules.

(f) For the purposes of this section, "persecution" – includes harm caused as provided in Section 7 of the Equal Opportunities Law.

(g) The provisions of this Section shall also apply, *mutatis mutandis*, to institutions that provide academic or vocational training, for adults and for this purpose such institutions shall be treated as an employer, the teacher or lecturer shall be treated like an employee or person in charge on behalf of the employer, and a trainee or student shall be treated like an employee.

Failure to publicize a set of rules is an offence.

8. Where an employer fails to make public a set of rules as provided in Section 7(b), he shall be liable to a fine and to an additional fine for each week in which the offence continues, of the amount prescribed in Section 61(c) of the Penal Law.

Expansion of applicability.

9. The provisions of this Law in relation to employers and employees shall also apply, *mutatis mutandis*, and as the case may be, to a person who actually employs a person through a manpower contractor and to such a person employed as aforesaid.

Powers of the Labour Court.

10. (a) The Labour Court shall have sole jurisdiction to hear civil proceedings under Sections 6, 7 and 9, on any of the following subjects:

(1) sexual harassment committed by an employer or by a person in charge on his behalf against an employee, or committed by one employee against another, within the realm of Labour relations;

(2) persecution by an employer or by a person in charge on behalf of an employer of an employee, by one employee of another, within the realm of labour relations.

(3) the employer's responsibility as provided on Section 7 for sexual harassment of persecution, which a person in charge on the employer's behalf has committed against another, within the realm of labour relations.

(b) The provisions of this section shall not apply to a civil proceeding for sexual harassment or persecution committed in a service.

(c) The provisions of Sections 10, 10A, 12 and 13 of the Equal Opportunities Law shall apply to proceedings under this section.

Applicability to the State.

11. This Law applies to the State, for the purposes of Sections 7 and 8, the defense forces shall, where no employer/employee relationship exists between them and those serving in them, be treated like an employer and the person serving in them shall be treated like an employee.

Saving of laws.

12. The provisions of this Law shall not derogate from the provisions of any enactment.

Implementation and regulations.

13. The Minister of Justice is charged with the implementation of this Law and he may, with the approval of the Knesset Committee for the Advancement of the Status of Women, make regulations on any matter relating to its implementation.

Obligation to make regulations.

14. Regulations for the purposes of Section 7 shall first be submitted to the Knesset Committee for the Advancement of the Status of Women for approval, within five months from the date on which this Law is published.

Amendment of Equal Opportunities Law 5748-1988 -

15. In the Equal Opportunities Law 5748-1988 -

(1) Section 7 shall be replaced by the following:

"Harm caused against a background of sexual harassment.

7(a) An employer or a person in charge on his behalf shall not, within the realm of labour relations, cause harm to an employee or applicant for employment in the respect of any of the matters specified in Section 2 or in any other manner, when the basis for the harm that is caused is one of the following:

(1) Sexual harassment of the employee or for the applicant for employment, committed by the employer, by a person in charge on his behalf or by another employee;

In this Law, "sexual harassment" shall have the meaning assigned to it in the Prevention of Sexual Harassment Law 5758 - 1998 (hereinafter referred to as - Prevention of Sexual Harassment Law); provided that for the purposes of harm caused by sexual harassment under Section 3(a)(3) and (4) of the said Law a single proposition or reference shall be sufficient;

(2) An employee's complaint or claim in respect of harm as provided in this Section;

(3) An employee's assistance to another employee in connection with a complaint or claim in respect of harm as provided in this Section.

(b) The provisions of Section 6(b) shall apply to harm stemming from a complaint or claim as provided in subsection (a)(2) and (3).

(c) The provisions of this Section in respect of employers and employees shall also apply, *mutatis mutandis*, and as the case may be, to a person who actually employs a person through a manpower contractor and to a person so employed as aforesaid.

(2) In Section 9, subsection (b) shall be replaced by the following:

(b) In an action by an employee or by an applicant for employment for an offence committed in contravention of the provisions of Section 7(a), the burden of proving that he has not committed an offence under the said Section as aforesaid shall be upon the employer, where the employee or applicant for employment has proved that the events specified in paragraphs (1) to (3) of Section 7(a) did occur".

(3) In Section 10 -

(a) The contents thereof shall be marked (a) and the following shall be added at the end of paragraph (1): "however, in a civil proceeding in respect of harm caused as provided in Section 7, the Labour Court may award compensation of not more than NIS 50,000 without proof of damage";

(b) Insert after subsection(a);

(b) - The amount specified in subsection (a)(1) shall be updated on the 16th of each month at the rate of increase of the new index over the basic index; for the purposes of this subsection -

"index" means the Consumer Price Index published by the Central bureau of Statistics;

"new index" means the index for the month preceding the month of updating;

"basic index" means the index for March 1998.

(4) In Section 10A subsection (a) shall be replaced by the following:

"10A (a) in any proceeding under this Law for harm arising out of one of the matters enumerated in Section 7(a), or out of discrimination because of sexual preference as provided in Section 2(a), the Labour Court may conduct hearings in camera; if a Plaintiff or Complainant requests that the hearing be in camera, the Court shall grant such request unless it decides otherwise for special reasons which shall be recorded".

(5) At the end of Section 14 add: "provided that for the purposes of a civil action for harm as provided in section 7, the prescription period shall be 3 years from the date on which the grounds for such action arose".

(6) In Section 15 -

(a) In subsection (a), replace "6, 7, or 8" with "6 or 8";

(b) Insert the following after subsection (a):

"(a1)

(1) Where a person has committed an offence under the provisions of Section 7, he shall be liable for imprisonment as provided in Section 5(b) of the Prevention of Sexual Harassment Law;

(2) Where an employer or a person on his behalf has sexually harassed his employee as provided in Section 3(a) of the Prevention of Sexual Harassment Law and if he has caused him harm as provided in Section 7, he shall be liable to a term of imprisonment as provided in Section 5(c) of the said Law.

(a2) The provisions of Section 5(d) and (e) of the Prevention of Sexual Harassment Law shall apply in regard to an offence under subsection (a1).

(7) In Section 18, the following shall be inserted after subsection (d):

"(e) An Inspector appointed pursuant to subsection (a) shall also supervise the implementation of the provisions of Section 7(b) of the Prevention of Sexual Harassment Law, and for such purpose he shall have the powers vested in him by this Section".

Amendment of Labour Courts Law - No. 29

16. At the end of Second Schedule of the Labour Courts Law 5729-1969, add: "Section 8 of the Prevention of Sexual Harassment Law 5758-1998".

Amendment of Courts of Justice Law - No. 24

17. At the end of Section 68(b)(5) of the Courts of Justice Law (Consolidated Version) 5744-1984, add: "or of an offence under the Prevention of Sexual Harassment Law 5758-1998".

Commencement.

18. (a) This Law shall come into force 6 months after its publication.

(b) Notwithstanding the provision of subsection (a), Section 7 shall only come into force 1 month after the regulations made thereunder have been published.