




Small Business  
ASSOCIATION



## THE EMPLOYMENT RIGHTS ACT – IMPACT ON SECTOR


Members' Meeting  
Tuesday, April 24, 2018  
6:00 p.m.



# EMPLOYMENT SEXUAL HARASSMENT (PREVENTION) ACT 2017-12

Presenter: Ms. Donna Hope





It should be the policy of all work places that every person has the right to be treated with dignity and respect and to be free from all forms of sexual harassment in the workplace. All forms of sexual harassment are contrary to the high standards of conduct required of all businesses in accordance to The Employment Sexual Harassment (Prevention) Act, 2017.



# WHEN WAS THE ACT PROCLAIMED?

- ▶ The Sexual Harassment (Prevention) Act, 2017 was proclaimed on **December 15, 2017**.
- ▶ It must be implemented within 6 months of the commencement of the Act - i.e **June 15, 2018**



# OBJECTS AND REASONS AS OUTLINED IN THE ACT

- ▶ “The Act makes provision for the protection of employees in both the public sector and the private sector from sexual harassment at their workplace;
- ▶ It provides a framework for reporting of sexual harassment cases by employees and a method of resolving such cases;
- ▶ It establishes a procedure for the hearing and determination of matters related to sexual harassment; and
- ▶ Provide for related matters.”

# DEFINITIONS

## ▶ Who is a “complainant?”

- A person by whom or on whose behalf a complaint is lodged.

## ➤ Who is an “Alleged harasser/Respondent?”

- A person against whom a complaint has been lodged; or who is the allegedly perpetrator of the behavior that could be construed as sexual harassment.



# DEFINITIONS (CONT'D)

## ► What is the meaning of "Workplace?"

- Any location or place where persons work and includes any other location or place where an employee is required to conduct the business of the employer; or 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.

# ► What is Sexual Harassment?


In accordance with the *Employment Sexual Harassment (Prevention) Act, 2017* section 3. (1), sexual harassment includes:





- ▶ The use of sexually suggestive words, comments, jokes, gestures or actions that annoy, alarm or abuse a person;
- ▶ The initiation of uninvited physical contact with a person;




- 
- ▶ The initiation of unwelcome sexual advances or the requests of sexual favours from a person;
  - ▶ Asking a person intrusive questions that are of a sexual nature that pertain to that person's private life;





- ▶ Transmitting sexually offensive writing or material of any kind;
- ▶ Making sexually offensive telephone calls to a person; or



- 
- ▶ Any other sexually suggestive conduct of an offensive nature





# EXAMPLES OF SEXUAL HARASSMENT:

- ❖ Sharing sexually inappropriate images or videos, such as pornography, with co-workers



# EXAMPLES OF SEXUAL HARASSMENT:

- ❖ Sending suggestive letters, notes or emails





# EXAMPLES OF SEXUAL HARASSMENT:

- ❖ Displaying inappropriate sexual images or posters in the workplace



# EXAMPLES OF SEXUAL HARASSMENT:

- ❖ Telling lewd jokes or sharing sexual stories





# EXAMPLES OF SEXUAL HARASSMENT:

- ❖ Making sexual comments about appearance, clothing or body parts



# EXAMPLES OF SEXUAL HARASSMENT:

- ❖ Making sexual gestures





# EXAMPLES OF SEXUAL HARASSMENT:

- ❖ Staring in a sexually suggestive or offensive manner or even whistling



# EXAMPLES OF SEXUAL HARASSMENT:

- ❖ Touching- Includes pinching, patting, rubbing or purposely brushing against another person





# EXAMPLES OF SEXUAL HARASSMENT:

- ❖ Asking sexual questions, such as questions about someone's history, or their sexual orientation



# EXAMPLES OF SEXUAL HARASSMENT:

- ❖ Making offensive comments about someone's sexual orientation or gender identity





## VALUABLE POINTS TO NOTE

Victim and harasser could be:

- ▶ Opposite sex
- ▶ Same sex
- ▶ Co-worker – At any level
- ▶ Non-Employee



# WHAT ARE THE EMPLOYEES' OBLIGATIONS?

Should any of the above listed allegations occur, the employee should:

- ▶ Lodge a complaint in writing to the employer.
- ▶ Under the Act, complaints must be made to the Chief Labour Officer, no later than 3 months from the date of the occurrence, or from the date of notification of the decision from his/her employer.



# WHAT ARE THE OBLIGATIONS OF THE EMPLOYER?

- ▶ Under Section 4.(1) of the Act, 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/her.

# WHAT ARE THE OBLIGATIONS OF THE EMPLOYER?

- ▶ To thoroughly investigate ALL reported cases of sexual harassment within 14 days of the complaint being lodged
- ▶ To inform an accused employee, in writing, of the complaint and its details within 2 working days of receipt of the complaint
- ▶ To respond to the complainant, in writing, indicating the outcome of your investigations and the next steps in the process



# WHAT ARE THE OBLIGATIONS OF THE EMPLOYER?

- ▶ To have a clearly established disciplinary procedure for substantiated cases of sexual harassment, which is known to all members of staff.
- ▶ To cooperate fully with the Chief Labour Officer, or his agent, in the event that the matter reaches his/her attention.




# PENALTY FOR CONTRAVENING THE ACT

- ▶ A person who contravenes subsection (1) or (2) is guilty of an offence and is liable to summary conviction to a fine of

*\$5,000 or to imprisonment for a term of  
12 months or to both.*

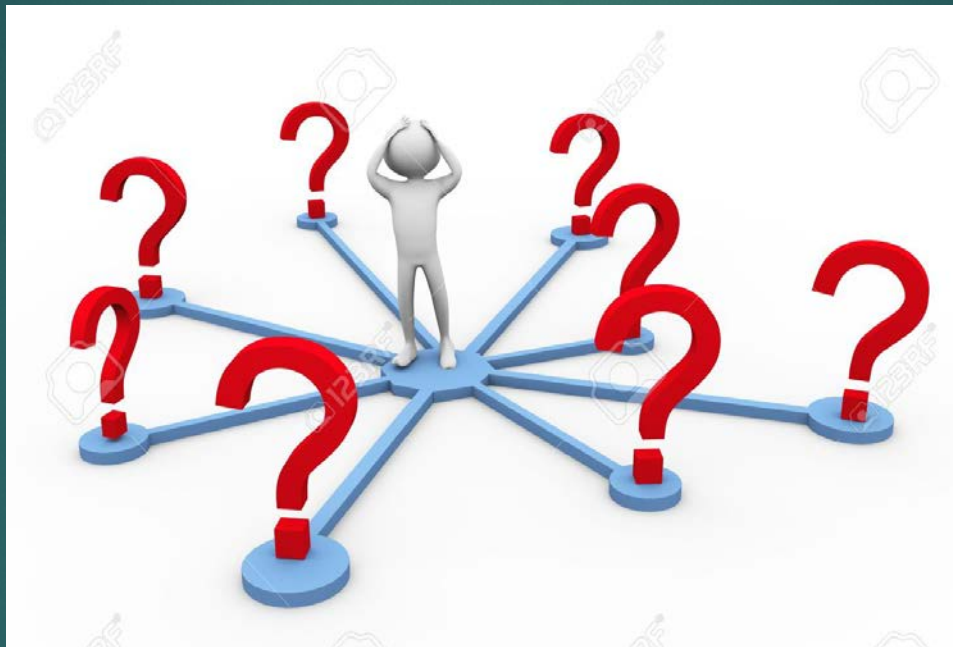




More details should be given in the form of a written policy developed by your Human Resources Department or Consultant to foster more awareness and understanding of this Act.



# QUESTIONS







# EMPLOYMENT (PREVENTION OF DISCRIMINATION) BILL

Presented By: Mr. Tony Walcott

# LEARNING OBJECTIVES

- ▶ Definition of discrimination
- ▶ Types of discriminatory behaviors
- ▶ Early responses to prevent possible discriminatory behaviors
- ▶ Benefits and challenges of having a diverse workplace
- ▶ How claims of discrimination should be investigated
- ▶ How to establish a grievance procedure





# DEFINITION

- ▶ **Oxford Definition:**

- ▶ Making or showing an unfair or prejudicial distinction between different categories of people or things, especially on the grounds of race, age, or sex

- ▶ **Barbados Discrimination Bill Definition:**

- ▶ the person, on a ground specified in subsection (2), directly or indirectly, whether intentionally or not, makes a distinction, creates an exclusion or shows a preference, the intent or effect of which is to subject the other person to any disadvantage, restriction or other detriment; or
- ▶ directly or indirectly, whether intentionally or not, subjects the other person to any disadvantage, restriction or other detriment in the following circumstances:
  - ▶ a ground specified in subsection (2) applies to the other person;
  - ▶ as a consequence of the ground the other person does not comply, or is not able to comply, with a particular requirement of the first mentioned person;

# TYPES OF DISCRIMINATORY BEHAVIORS

- ▶ **Direct discrimination:**

This is an unfair treatment of another person because of specific **protected characteristics**, or perceived characteristic, or their association with someone with that protected characteristic.



# TYPES OF DISCRIMINATORY BEHAVIORS

- ▶ **Indirect discrimination:**

Sometimes there are laws and policies that put a person in a disadvantaged position. Such policies apply to every person in that circle (school, workplace or community) but because of some particular characteristic that you have, the law hits you harder than others.

- ▶ If the policy makers can prove that they considered your characteristics and ended up with the policy with the least effect, it can be disqualified as discrimination.

# TYPES OF DISCRIMINATORY BEHAVIORS

- ▶ **Discrimination arising from disability:**  
Treating an employee unfavorably because of something arising in consequence of his disability.
- ▶ Employer must know, or be reasonably expected to have known, that the employee in question has a disability.



# TYPES OF DISCRIMINATORY BEHAVIORS

- ▶ **Harassment:**

This is an unwanted, offensive, humiliating and intimidation act directed at you because of your age, disability, gender, race, sexual orientation or religion.

- ▶ Harassment can be in the form of gestures, spoken or written words, images or jokes.

# TYPES OF DISCRIMINATORY BEHAVIOURS

- ▶ **Sexual harassment:**  
This is a kind of harassment, as explained above, but sexual in nature.
- ▶ Sexual harassment incidents often leave you degraded, humiliated, and offended. It tends to violate your dignity and makes one feel inferior in many ways.
- ▶ This kind of discrimination may also come with threats and promises that make you feel vulnerable.





# TYPES OF DISCRIMINATORY BEHAVIOURS



- ▶ **Victimization:**  
This is the unfavorable treatment one receives, often as a reaction to the person's claim of discrimination, or because the person is supporting someone's claim of discrimination, or the person's intentions about something.
- ▶ In an office setting, the person can be excluded from many activities as a punishment, until the person decides to leave the job at his own will.

# How to Prevent Discrimination

- ▶ The best way to prevent discrimination in employment is to have a well written policy that clearly states the definition of discrimination and the consequences if an employee fails to act within the policy.



# Benefits of having a diverse workplace

- ▶ **Benefits:**
- ▶ Diverse cultural perspectives can inspire creativity and drive innovation
- ▶ Local market knowledge and insight makes a business more competitive and profitable
- ▶ Cultural sensitivity, insight, and local knowledge means higher quality, targeted marketing
- ▶ Drawing from a culturally diverse talent pool allows an organization to attract and retain the best talent
- ▶ A diverse skills base allows an organization to offer a broader and more adaptable range of products and services
- ▶ Diverse teams are more productive and perform better
- ▶ Greater opportunity for personal and professional growth





# Challenges of having a diverse workplace

- ▶ **Challenges:**
- ▶ Colleagues from some cultures may be less likely to let their voices be heard
- ▶ Integration across multicultural teams can be difficult in the face of prejudice or negative cultural stereotypes
- ▶ Professional communication can be misinterpreted or difficult to understand across languages and cultures
- ▶ Different understandings of professional etiquette
- ▶ Conflicting working styles across teams



How claims of discrimination should be investigated



# How to establish a grievance procedure

- ▶ There are steps to the procedure:
- ▶ Step 1- All requests, complaints and differences must in the first instance be discussed with your immediate supervisor.
- ▶ Step 2 - After the procedure laid down in step 1 (above) has been carried out and no satisfactory settlement has been arrived at, the employee shall discuss the grievance with the department manager.
- ▶ Step 3 - If the grievance is not settled in step 2 (above), the employee shall consult the Operations Manager.
- ▶ Step 4 - Failing settlement under step 3 (above), the employee shall consult the General Manager/Human Resource Director to resolve such grievance.





Questions



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