

Summary of *The Sexual Harassment (Protection and Prevention) Act, 2021*, from the Laws of Jamaica

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PART I. Preliminary (Sections 1-2)

- **Short title and commencement (Section 1)**
 - o The Act is cited as the Sexual Harassment (Protection and Prevention) Act, 2021.
 - o It shall come into operation on a day appointed by the Minister, with the possibility of different provisions being enacted on different days as published in the Gazette.
- **Interpretation and application (Section 2)**
 - o Provides definitions for key terms used within the Act, including:
 - “Accommodation” includes both residential and business accommodation.
 - “Institution” includes various types of establishments such as schools, colleges, universities, correctional institutions, places of safety for minors, nursing homes, medical and psychiatric facilities, and any other place designated by the Minister.
 - “Complainant” refers to a person who makes a complaint under the Act.
 - “Employer” is defined as a person who engages a worker in any form.
 - “Sexual advance” is defined as any act, conduct, or behavior of a sexual nature, including physical contact, demands or requests for sexual favors, sexual suggestions or remarks, the display of pornography, and any other conduct of a sexual nature.
 - “Sexual harassment” is defined as any unwelcome sexual advance that is offensive or humiliating, interferes with work performance, or creates a hostile work environment.
 - “Tribunal” means the Sexual Harassment Tribunal established under Part V.
 - o Outlines the criteria for determining whether conduct constitutes sexual harassment, considering all circumstances and whether it is a course of conduct or a significant single instance.
 - o Specifies that the Act does not apply to individuals under the age of sixteen.

- o Establishes the fit and proper eligibility requirements for appointments to the Sexual Harassment Tribunal. A person is considered fit and proper for certain roles if they meet specific legal and ethical criteria, including not having convictions for certain offenses and being in compliance with statutory requirements.

PART II. Prevention of Sexual Harassment (Sections 3-8)

- **Duty to ensure environment free of sexual harassment (Section 3)**

- o Employers are required to make every reasonable effort to ensure that workers are not sexually harassed during their employment.
- o Persons in charge of institutions must ensure that students, residents, wards, inmates, patients, or members are not sexually harassed.

- **Duty of employer and person in charge of institution to issue policy statement (Section 4)**

- o Employers must issue a written policy statement on the prevention of sexual harassment and protection of workers.
- o Persons in charge of institutions must issue a similar policy statement for the protection of students, residents, wards, inmates, patients, or members.
- o The policy statement must align with the Sexual Harassment Framework Document set out in the First Schedule and include:
 - A definition of sexual harassment consistent with the Act.
 - A statement affirming the right to an environment free of sexual harassment.
 - Disciplinary measures for those who commit sexual harassment.
 - Internal mechanisms for making complaints and resolving them.
 - Assurance of confidentiality for complainants.
 - Information on the right to seek redress from the Tribunal.
- o Employers and persons in charge must ensure the policy is prepared within twelve months of the Act's commencement and communicated to all relevant parties.

- **Procedure for lodging sexual harassment claim and duty of employer (Section 5)**

- o Workers alleging sexual harassment by another worker or client may lodge a claim in writing with the employer.
- o Employers must notify the accused worker within two days of receiving the claim or take appropriate action to bring the matter to the attention of a client.
- o An investigation must commence within fourteen days and be completed without delay.
- o Employers failing to act shall be liable, and aggrieved workers may make a complaint to the Tribunal.

- **Procedure for lodging sexual harassment claim and duty of person in charge of an institution (Section 6)**

- o Students, residents, inmates, wards, patients, or members alleging harassment by staff or peers may lodge a claim with the person in charge.
- o The person in charge must notify the person subject to the complaint in writing within two days and start an investigation within fourteen days.
- o Failure to act shall result in liability, and aggrieved parties can make a complaint to the Tribunal.

- **Making of complaint against employer or person in charge of an institution (Section 7)**

- o Allegations of harassment against an employer or person in charge can be made directly to the Tribunal.

- **Maintaining of register (Section 8)**

- o Employers and persons in charge must maintain a register of all sexual harassment claims, including details and actions taken.
- o Information must be kept secure and confidential, with knowing or reckless disclosure being an offence, subject to a fine or no more than five hundred thousand dollars, default in payment of which could result in imprisonment of up to one month.

PART III. Forms of Sexual Harassment and Related Prohibited Conduct (Sections 9-11)

- **Sexual harassment by an employer, supervisor, or co-worker (Section 9)**

- o Employers and supervisors are prohibited from sexually harassing workers.
- o Employers and supervisors must not imply that a worker's job prospects or conditions are contingent on accepting sexual advances.
- o Workers are prohibited from sexually harassing co-workers, clients, supervisors, or employers, and clients are prohibited from sexually harassing a worker.
- o Prospective employers must not sexually harass job seekers or imply that employment offers are contingent on accepting sexual advances.
- o Employers must not retaliate against workers who lodge sexual harassment claims or participate in related investigations or hearings.

- **Sexual harassment at an institution (Section 10)**

- o Staff or those in authority at institutions must not sexually harass students, residents, wards, inmates, patients, or members, or those seeking admission.
- o Staff or those in authority must not imply that preferential treatment is contingent on accepting sexual advances.
- o Staff or those in authority must not retaliate against individuals who file claims or participate in investigations or hearings.
- o Students, residents, wards, inmates, patients, or members must not sexually harass their peers.

- **Sexual harassment in relation to accommodation (Section 11)**

- o Individuals providing or offering accommodation must not sexually harass others.
- o Individuals must not imply that accommodation terms, preferential treatment, or advantages are contingent on accepting sexual advances.

PART IV. Designation of Authorized Officer (Section 12)

- **Designation of authorized officers, etc. (Section 12)**

- o The Minister responsible for gender affairs may designate field officers from the Bureau of Gender Affairs as authorized officers.
- o Authorized officers are tasked with ensuring compliance with sections 3 and 4 of the Act, which pertain to the prevention of sexual harassment and the issuance of policy statements.
- o Authorized officers may also conduct investigations into complaints referred by the Tribunal.
- o Authorized officers must undergo requisite training to perform their functions effectively.
- o Each authorized officer is provided with a certificate of designation, which must be produced when performing their duties.
- o Authorized officers have the power to:
 - Enter places of employment or institutions with a warrant to ensure compliance with sections 3 and 4.

- Inspect and copy documents or require information necessary for enforcing the Act.
- Require employers or persons in charge of institutions to disclose documents or information relevant to investigations.
- Specify time frames within which employers or persons in charge of institutions shall furnish required information.
- Require individuals to attend and provide evidence or documents relevant to investigations.
- o Individuals are not compelled to provide evidence or documents that would not be required in court proceedings.
- o Obstructing or failing to comply with an authorized officer's lawful request is an offence, punishable by a fine or imprisonment.
- o Authorized officers may issue directions for compliance if non-compliance with sections 3 or 4 is found, with a specified time frame for compliance.
- o Failure to comply with such directions is an offence, subject to a fine.

PART V. Sexual Harassment Tribunal (Sections 13-26)

• Establishment and constitution of Tribunal (Section 13)

- o The Sexual Harassment Tribunal is established, consisting of fourteen members appointed by the Minister.
- o Members include four attorneys-at-law with at least ten years of practice, four trained and certified mediators with at least two years of practice, and other members with experience in worker representation, gender affairs, mental health, employer representation, and labor relations.
- o At least half of the Tribunal members must be female.
- o Members must meet the fit and proper eligibility requirements specified in Section 2(5).

• Appointment of chairperson and deputy chairperson of the Tribunal (Section 14)

- o The Minister appoints a chairperson and two deputy chairpersons from among the members who are attorneys.
- o In the chairperson's absence, a deputy chairperson acts as the chairperson.

• Jurisdiction of Tribunal to hear complaints (Section 15)

- o The Tribunal has jurisdiction to hear and determine complaints made against an employer or institution for failing to act in accordance with Sections 5(2) or 6(2), and other complaints as specified under sections 4(5), 5(3), 6(3), 7, 9, 10, 11, or 27(1)(d).
- o The Tribunal can make awards as specified under Section 36.

• Hearing panel of Tribunal (Section 16)

- o Complaints are heard by a panel of three Tribunal members.
- o The chairperson or a deputy chairperson may chair the panel.
- o The chairperson of the Tribunal will need to ensure gender balance among panel membership and consider their necessary experience and expertise.

• Disclosure of interest in relation to matter before the Tribunal (Section 17)

- o Tribunal members must declare, by notice, any interest in matters before the Tribunal and abstain from related deliberations or decisions.
- o The Minister can replace members with conflicts of interest or otherwise direct that member to abstain from taking part in the proceeding related to the conflict.

- **Tenure of office (Section 18)**
 - o Tribunal members hold office for up to three years and are eligible for re-appointment.
- **Acting appointments (Section 19)**
 - o The Minister may appoint members to act in the place of the chairperson or any other member of the Tribunal, in the absence or inability of the chairperson or other members so to do.
- **Resignation (Section 20)**
 - o Members may resign by written notice to the Minister, effective upon receipt.
- **Disqualification (Section 21)**
 - o Members are disqualified if suffering from a mental disorder or failing to meet fit and proper requirements under Section 2(5).
- **Revocation of appointment (Section 22)**
 - o The Minister may revoke appointments for inability to perform duties due to infirmity, dereliction of duty, or misbehavior.
- **Filling of vacancies (Section 23)**
 - o Vacancies are filled by appointing a person from the same category and gender as the previous member.
- **Publication of membership (Section 24)**
 - o The names of Tribunal members and changes in membership are published in the Gazette.
- **Remuneration of members (Section 25)**
 - o Members receive remuneration for hearings or sittings as determined by the Minister responsible for the public service.
- **Staff of Tribunal (Section 26)**
 - o The Tribunal is provided with a secretary and additional staff as necessary.
 - o The secretary is responsible for keeping records, documents, and statements of witnesses.

PART VI. Procedure for Making Complaints, Investigations, and Hearing by Tribunal (Sections 27-38)

- **Making of complaint (Section 27)**
 - o Individuals may file a complaint in writing to the Tribunal if they allege non-compliance with sections 3(1) or (2), contraventions of sections 5(2), 6(2), 7, 9, 10, or 11, unauthorized disclosure of information, or dissatisfaction with findings related to a sexual harassment claim.
 - o Complaints must be filed within six years from date of alleged contravention, and within twelve months from date of last alleged act, for non-compliance or unauthorized disclosure.
 - o The Tribunal may allow late complaints in exceptional circumstances.
 - o Complainants must exhaust internal mechanisms before filing, unless the Tribunal grants leave due to potential prejudice or inadequate internal procedures.
- **Confidentiality (Section 28)**
 - o All information related to Tribunal matters must be kept confidential by those with official duties under the Act, even after their duties cease.

- **Referral of complaint for investigation (Section 29)**
 - o The Tribunal may refer a complaint to an authorized officer for investigation, who then submits a report of findings.
- **Lack of grounds for making of complaint (Section 30)**
 - o If the Tribunal finds no evidence of sexual harassment or deems a complaint frivolous or vexatious, it informs the complainant and the accused in writing of the facts and reasons for its finding and takes no further action.
- **Procedures to apply in relation to a hearing conducted by Tribunal (Section 31)**
 - o Hearings require at least ten days' notice to parties, and evidence must be recorded, dated and signed.
 - o Exhibits must be marked, dated and attached to the hearing file.
 - o The Tribunal may decide matters *ex parte* if a party fails to attend.
 - o Hearings may be discontinued if the complainant withdraws.
 - o The Tribunal may seek to resolve complaints amicably and adjourn hearings for negotiations.
- **Evidence before Tribunal (Section 32)**
 - o The Tribunal may take evidence under oath or affirmation.
- **Attendance at hearing (Section 33)**
 - o The Tribunal can direct parties and relevant individuals to attend hearings and produce documents.
 - o Parties have the right to call and examine witnesses and make submissions.
- **Right to representation (Section 34)**
 - o Parties may be represented by an attorney or another person, or choose to represent themselves.
- **Tribunal may prohibit publication of evidence, etc. (Section 35)**
 - o The Tribunal can direct that certain information, such as identities and complaint particulars, remain confidential and not be published.
- **Findings of the Tribunal (Section 36)**
 - o After a hearing, the Tribunal may dismiss complaints or rule in favor of the complainant, with possible determinations including orders to cease conduct that amounts to sexual harassment, redress actions, compensate complainant for any loss or damage, or directives for employers to take corrective action.
- **Effect of award (Section 37)**
 - o Tribunal decisions and awards are binding on the parties and take effect from a specified date in the order.
- **Appeal (Section 38)**
 - o Parties dissatisfied with Tribunal decisions or awards may appeal to the Supreme Court.

PART VII. Offences and Penalties (Sections 39-41)

- **Offences in relation to attendance at hearing (Section 39)**
 - o Individuals directed to attend a Tribunal hearing who fail to do so without reasonable excuse commit an offence, punishable by a fine not exceeding one million dollars or imprisonment for up to three months.

- o Failure or refusal to furnish information or produce documents as required by the Act also constitutes an offence and is punishable by a fine not exceeding one million dollars or imprisonment for up to three months.
- o Witnesses who refuse to be sworn in, make an affirmation, or answer questions during a hearing commit an offence, punishable by a fine not exceeding one million dollars or imprisonment for up to three months.
- o Disrupting Tribunal proceedings or using insulting language towards the Tribunal is an offence, punishable by a fine not exceeding five hundred thousand dollars or imprisonment for up to one month.
- o Publishing information in contravention of section 35, unauthorized disclosure of complaint particulars in contravention of section 28, or providing false or misleading information to the Tribunal are offences, punishable by a fine not exceeding one million dollars or imprisonment for up to twelve months.
- **Offence of adverse action (Section 40)**
 - o It is an offence to subject or threaten to subject another person to adverse action for making a complaint, providing information, attending a hearing, or being believed to have done so.
 - o Such offences are punishable by a fine not exceeding one million dollars or imprisonment for up to twelve months.
- **Offence of making false complaint, etc. (Section 41)**
 - o Knowingly making a false sexual harassment claim or complaint is an offence.
 - o Offenders are liable to a fine not exceeding one million dollars or imprisonment for up to three months.

PART VIII. Miscellaneous (Sections 42-46)

- **Regulations (Section 42)**
 - o The Minister is empowered to make regulations for the effective implementation of the Act.
 - o Such regulations are subject to affirmative resolution.
- **Tribunal may regulate its procedures and proceedings (Section 43)**
 - o The Tribunal has the authority to regulate its procedures and proceedings as it deems fit.
 - o It may prescribe forms for use in connection with complaints under the Act.
 - o The rules of the Tribunal and any amendments must be published in the Gazette.
- **Review of Act (Section 44)**
 - o The Act is subject to periodic review by a committee of both Houses of Parliament.
 - o The first review must occur no later than eighteen months after the Act's commencement date.
- **Power of Minister to amend monetary penalties (Section 45)**
 - o The Minister may amend any monetary penalties prescribed by or under the Act through an order published in the Gazette, subject to affirmative resolution.
- **Act binds the Crown (Section 46)**
 - o The provisions of the Act are binding on the Crown.

First Schedule: Sexual Harassment Workplace Policy

- **International Agreements and Policy Linkages**
 - o The policy aligns with international protocols and conventions that recognize sexual harassment as a form of violence and a human rights issue.
 - o The International Labour Organization (ILO) identifies sexual harassment as harmful, a violation of workers' rights, a health and safety hazard, and a form of discrimination.
 - o The policy supports the objectives of the National Policy for Gender Equality (NPGE) and the Vision 2030 National Development Plan, which emphasize the need for mechanisms to report and address sexual harassment.
- **Organization's Zero Tolerance Commitment to Sexual Harassment**
 - o Ensures the organization is committed to a work environment free of sexual harassment, ensuring safety and valuing human dignity.
 - o A zero-tolerance approach is adopted towards any behavior constituting sexual harassment.
- **Definition of Sexual Harassment**
 - o Sexual harassment is defined as unwanted and unwelcome conduct of a sexual nature by one person toward another.
 - o The definition aligns with the Sexual Harassment (Protection and Prevention) Act, 2021.
- **Forms of Sexual Harassment**
 - o Physical harassment includes unwanted touching, pinching, and other physical contact with clear sexual undertones.
 - o Verbal harassment involves unwelcome comments on appearance, sexually suggestive jokes, and insults.
 - o Non-verbal/Gestural harassment includes sexually suggestive gestures.
 - o Psychological/Emotional harassment consists of persistent unwelcome requests and taunts of a sexual nature.
 - o Written/graphic/visual/audio harassment involves inappropriate communication through various media.
 - o Quid Pro Quo harassment occurs when job benefits or other advantages are contingent on sexual favors.
 - o Stalking/Cyber Stalking involves obsessive following or contacting, motivated by perceived feelings of desire.
 - o Voyeurism refers to secretly watching or recording someone in private spaces.
 - o Intimidation/Bullying/Retaliation includes acts meant to prevent or punish reporting of sexual harassment.
 - o A toxic environment is created by a combination of the above behaviors, affecting both direct targets and others.
- **Responsibility**
 - o Roles and responsibilities are outlined for management, employees, the Human Resource Department, Welfare Officer/Committee, and the Anti-Sexual Harassment Dispute Settlement Committee.
- **Internal Mechanisms**
 - o Reporting Procedure: Incidents should be documented and reported in writing to a designated officer.
 - o The organization and the responsible officer are tasked with investigating claims.

- **Welfare Officer/Committee**
 - o Designated officers are responsible for handling reports of sexual harassment.
 - o If a claim is found to have merit, actions are taken in accordance with internal provisions.
 - o Unresolved claims may be referred to the Sexual Harassment Tribunal.
- **Anti-Sexual Harassment Dispute Settlement Committee**
 - o The committee outlines procedures for handling complaints.
- **Protection Against Retaliation**
 - o Acts of bullying, intimidation, and threats related to sexual harassment claims are treated as harassment.
- **False Claims**
 - o Individuals found to have made false claims are liable for breach of policy and will be reprimanded accordingly.
- **Liability for Harassment/Sanctions**
 - o Individuals found in breach of the policy are liable for harassment and subject to reprimand.
 - o The organization is also liable if it fails to enforce the policy.
- **Confidentiality**
 - o All claims are documented and archived, with efforts to protect privacy during investigations.
 - o Privacy expectations are relaxed if a breach of policy is found, within legal limits.
- **Legislation**
 - o The Sexual Harassment (Protection & Prevention) Act, 2021, serves as the legislative framework for the policy.

Second Schedule: Oath of Office for Members of Tribunal

- **Oath of Office**
 - o Members of the Tribunal are required to take an oath or affirmation upon their appointment.
 - o The oath emphasizes the commitment to administer equal justice to all individuals.
 - o Members pledge to perform their duties according to the law and to the best of their knowledge and ability, without fear, favor, or affection.