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PERSEKUTUAN MAJIKAN-MAJIKAN MALAYSIA

MALAYSIAN EMPLOYERS FEDERATION (Reg. No: 1357-SELANGOR)

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MEDIA RELEASE

MEF COLLABORATES WITH INTERNATIONAL LABOUR ORGANISATION TO GUIDE EMPLOYERS TO MEET INTERNATIONAL STANDARDS ON ISSUES RELATING TO FLEXIBLE WORK ARRANGEMENT, DISCRIMINATION, VIOLENCE, HARASSMENT, AND SEXUAL HARASSMENT IN THE WORLD OF WORK

PETALING JAYA: The Malaysian Employers Federation, in collaboration with the International Labour Organisation (“ILO”), is pleased to introduce three policy templates otherwise known as knowledge tools for businesses to operate within the framework of global safe and fair project. The first one-day workshop on 18th July 2023 at Avante Hotel, Petaling Jaya, was attended by about 90 participants from both manufacturing and non-manufacturing sectors. The representative from ILO, Ms Catherine Laws, the Technical Officer for the Migrant Workers Empowerment and Advocacy (MWEA) Project and the Improved Migration Governance (IMG) Project, was present to grace the occasion.

The amended Employment Act 1955 with effect from 1st January 2023, especially its First Schedule that extended the application of the Act to all employees irrespective of wages has far-reaching implications. Among others the amended Employment Act provide the increase of maternity leave to 98 days; the right to 7 days paternity leave for married male employees; the requirement for employers to exhibit conspicuously at the place of employment, a notice to raise awareness on sexual harassment; provision on anti-discrimination; reduction of maximum working hours per week to 45 hours; and the introduction of Flexible Working Arrangement.

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Hence, MEF has put in place mechanisms to educate, align, and support its member companies to provide a safe and fair working environment across the industries. One such initiative is the Policy Template on Flexible Work Arrangements which, in general, aims to guide employers on the processes involved in the implementation of Flexible Work Arrangements (FWAs) at the workplace. FWAs may be adapted based on the nature, conditions and requirements of each employer .

The MEF President Datuk Dr Syed Hussain Syed Husman, P.J.N, J.P., states that, “according to an ILO report, reduced working hours and more flexible working time arrangements can bring benefits for economies, businesses, and workers, including greater productivity and improved work-life balance. Evidence shows that work–life balance policies provide significant benefits to enterprises, supporting the argument that such policies are a ‘win-win’ for both employers and employees. Employees who enjoy a healthy work-life balance are likely to have a more positive outlook about work, their managers, and colleagues. This balance nurtures all-out employee engagement and productivity, which, consequently, will have a knock-on effect on the overall profitability of the companies.”

“The Policy Template in Eliminating Discrimination in the World of Work will assist companies to create awareness and maintain a world of work safe and free from all forms of discrimination, and ensure that workers feel safe, confident, and comfortable at work. The template ensures that any complaint on violation of such policy will be heard, investigated and resolved appropriately. Affected victims may access to internal grievance mechanisms before seeking remedies from the government.

Datuk Dr Syed Hussain states further that “When employers take initiatives to increase awareness on discrimination in their own place of work, workers would enjoy equality of treatment and opportunity, hence, job satisfaction and commitment to organisation increase, coupled with a renewed sense of belonging and trust to perform better in roles assigned to them. In perspective, a heightened sense of high morale offers a platform for efficiency and productivity that respective businesses desire.

The MEF-ILO collaboration also produced another policy template that provide guidelines to conduct internal investigations on complaints related to violence, harassment and sexual harassment at the workplace. The template assist employers in Malaysia to integrate policies related to violence, harassment and sexual harassment in their respective organisations. “

The Guidelines on violence, harassment and sexual harassment further expands the role of businesses to provide a safe, nurturing, and inclusive environment to achieve equality in treatment, efficiency at work, and productivity in performance. The Guidelines will assist employers, among others, in understanding and implementing investigation processes and procedures, parameters for investigation, preparing a comprehensive investigation report and employers' duties in taking relevant and appropriate disciplinary actions against the accused employee / offender who committed the act(s) of violence, harassment, including sexual harassment, in their organizations, and most importantly, employers' duties to provide safe, fair and conducive working environment and culture for all employees across the board, including men and women migrant workers.

“MEF envisions to fill the changing business ecosystem at the global stage and as part and parcel of the need for business sustainability training and education of Malaysian employers, in line with the latest amendments to the Employment Act 1955. Employers must embark on a policy of inclusivity with a zero tolerance to discrimination, therefore building trust between employers and workers for business sustainability” adds Datuk Dr Syed Hussain.

MEF will conduct similar workshops in Johor Bahru (26th July 2023), Penang (3rd August 2023), Kuala Terengganu (8th August 2023) and Kuching (17th August 2023). The ultimate adoption of the three knowledge tools will increase awareness and understanding of the issues and eventually, to apply these tools in the company's day to day operations. The three knowledge tools are accompanied with the respective animated videos that will be available soon.

“For further information, please contact the MEF Secretariat at 03-7955 7778 or fax 03-7955-9008 or email mef-hq@mef.org.my”

21st July 2023



COMPANY POLICY TEMPLATE FOR FLEXIBLE WORK ARRANGEMENTS (HOURS OF WORK, DAYS OF WORK AND PLACE OF WORK)

“This publication has been produced with the technical support of the International Labour Organization (ILO) through the SAFE and FAIR: Realizing Women Migrant Workers’ Rights and Opportunities in ASEAN Region Programme, with funding from the European Union. The responsibility for opinions expressed in this publication rests solely with their authors, and publication does not constitute an endorsement by the ILO or the European Union of the opinions expressed in them.”

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COMPANY POLICY TEMPLATE FOR FLEXIBLE WORK ARRANGEMENTS (HOURS OF WORK, DAYS OF WORK AND PLACE OF WORK)

1. POLICY STATEMENT

[**Organization name**] (“**The Company**”) is committed to provide a work environment that fosters enhanced organisational productivity whilst promoting a work-life balance for our employees. The Company recognises that a better work-life balance can improve employee motivation, performance and productivity, and reduce stress.

This policy sets out the Company’s vision towards achieving the goal of a mutually benefitting and productive work environment for the organisation and the well-being of its employees’ work-life balance through the implementation of Flexible Work Arrangements. For the avoidance of doubt, the abbreviation “**FWA**” refers to “Flexible Work Arrangements” (in the plural) or “Flexible Work Arrangement” (in the singular), where the context so requires.

The Company believes that an adaptive working environment with Flexible Work Arrangements is a key tool to build a conducive work environment that supports harmonious and productive industrial relations between the Company and its employees.

2. OBJECTIVES OF THE FLEXIBLE WORK ARRANGEMENT POLICY

- 2.1. To create and foster a flexible, productive, harmonious work environment that seeks to enhance employee productivity whilst recognising the need to maintain a critical work-life balance between the Company’s goals and our employee’s personal life needs and commitments.
- 2.2. To provide the framework to support and ensure that implementation of FWA is carried out effectively and efficiently in proportion to the organisational goals and our employee’s personal life needs and commitments.
- 2.3. To provide the guidelines, eligibility and implementation details of the FWA that goes together with all the other written policies of the Company.

3. DEFINITION OF FLEXIBLE WORK ARRANGEMENTS

3.1 **STATUTORY DEFINITION** *** EMPLOYMENT ACT 1955**

The Employment Act 1955 was amended in 2022 to include a provision for Flexible Working Arrangement. **Section 60P(1)** states:

*“Subject to Part XII [of the Employment Act 1955] or anything contained in the contract of service, an employee may apply to an employer for a flexible working arrangement to **vary the hours of work, days of work or place of work in relation to his employment.**”*

Section 60P(2) states :

“Where there is a Collective Agreement, any application made by the employee under subsection (1) shall be consistent with the terms and conditions in the Collective Agreement.”

- 3.2 FWA is a range of different working arrangements specified in this policy, that gives the employee a degree of flexibility to adopt an arrangement on how long (contractual work hours within the legal limits), when (days of work) and where (location of workplace) she /he works.
- 3.3 The employee shall apply for FWA in writing, and in the form and manner determined in this policy. The employee’s application for FWA is subject to the approval of the Company.

4. SCOPE AND APPLICATION OF THE POLICY

- 4.1 An employee as per Section 60P of the Employment Act 1955 may apply to the Company for a FWA to vary **the hours of work, days of work or place of work in relation to his/her employment contract within the legal limits**, subject to the eligibility conditions set out below.

This is always subject to the overriding principle in contract law that once a contract has been duly accepted, neither party would be able to unilaterally vary any of the terms and conditions therein. Any subsequent proposed variation to the terms and conditions of a contract must be mutually agreed upon by the parties to the contract.

- 4.2 This policy is applicable to all employees in the Company, whether full-time or part-time who may apply for FWA.
- 4.3 FWA is a privilege granted by the management, and not an automatic right or entitlement. As such, the terms and conditions of the FWA granted remains at the sole discretion of the management.
- 4.4 This policy and procedures may be updated at any time. The Company may review the criteria for FWA based on changing business conditions, and employees granted the FWA privilege may be required to resume normal work schedule as and when required. The Company shall inform employees of any changes to the FWA in advance within a reasonable notice period.

5. TYPES OF FLEXIBLE WORK ARRANGMENT

The Company allows the following types of FWA arrangements: -

5.1 PLACE OF WORK-

Work from home (WFH)

- (a) Work From Home (WFH) is defined as work done at the employee's home (or any other approved location as mutually agreed by the company and the employee) without the need to come to the company premises.
- (b) WFH is available to all positions or roles that have been identified as having the potential to be on WFH mode identified by the Company and it will be done in consultation with Union and/or employee representatives unless it is not possible to do so due to overriding business exigencies.
- (c) The Company reserves the final right to decide positions or roles suitable for WFH.
- (d) Roles identified by the Company that by the job nature and function require the employee presence on site at the Company premises may not qualify for some WFH arrangements.
- (e) WFH arrangement may take place on any of the following arrangements: -
 - i. For a fixed term period of time;
 - ii. On a temporary or as and when required basis;
 - iii. Long term or permanent basis (subject always to the policy of the company)

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5.2 PLACE OF WORK-

Hybrid Work Arrangement (HWA)

- (a) HWA is defined as a combination of in-office work and working from home or another remote location.
- (b) HWA is available for all positions or roles that have been identified as having the potential to be hybrid work suitable as identified by the Company and it will be done in consultation with Union and/or employee representatives unless it is not possible to do so due to overriding business exigencies.
- (c) The Company reserves the right to make a final decision on the positions or roles suitable for HWA. Roles not suitable for hybrid work that require continuous onsite presence as identified by the Company may not qualify as hybrid work but may qualify for other forms of flexible work detailed below.

- (d) HWA may take place on the following basis: -
- i. For a fixed term period of time;
 - ii. On a temporary or as and when required basis;
 - iii. Long Term or permanent basis (subject always to the policy terms).

5.3. HOURS OF WORK-
Flexible working hours (FWH)

- (a) FWH is defined as a work arrangement where the employee has the flexibility to choose his/her working hours within a framework agreed with the Company.
- (b) It may be for a temporary period or for an extended period of time.
- (c) Employees may choose to fulfil their contractual work hours obligation by having the flexibility to vary the timing of their actual work hours on a daily basis with a cumulative total weekly working hours as per their contractual obligation.
- (d) FWH involves the variation in the hours of work by mutual agreement.
- (e) Employees may choose any of the below daily FWH -

OPTION	FLEXI WORK HOURS (INCLUSIVE OF ONE (1) HOUR LUNCH BREAK)
Option 1	7.30am – 4.30pm
Option 2	8.00am – 5.00pm
Option 3	8.30am – 5.30pm
Option 4	9.00am – 6.00pm
Option 5	9.30am – 6.30pm

5.4 DAYS OF WORK-
Shorter working week (SWW)

- (a) SWW gives employees the option of completing their contractual work hours in fewer working days in a week instead of a full work week.
- (b) Employee may apply for variation and shall be decided by the Company at its sole discretion.
- (c) Example of SWW are as follows and shall fulfil forty (40) hours excluding one (1) hour lunch: -

Day	Option 1	Option 2	Option 3	Option 4
Monday	10 hours	-nil-	5 hours	10 hours
Tuesday	10 hours	10 hours	5 hours	10 hours
Wednesday	10 hours	10 hours	10 hours	10 hours
Thursday	10 hours	10 hours	10 hours	5 hours
Friday	-nil-	10 hours	10 hours	5 hours
TOTAL HOURS	40	40	40	40

6. RESPONSIBILITIES OF EMPLOYERS AND EMPLOYEES

6.1 EMPLOYERS RESPONSIBILITIES:

- (a) To ensure that employees who are granted FWA shall carry out their work duties in accordance with the conditions of FWA policy and adhere to all the Company's policies and procedures at all times during the FWA.
- (b) To monitor and supervise employees on a daily or regular basis and ensure records of the hours worked are properly logged into the system. The respective employee's immediate superior is responsible for the overall monitoring, supervision and performance appraisal of employees during the FWA.
- (c) To ensure regular communication/meetings (including methods of communicating work-related information) to employees who are on FWA.
- (d) To obtain regular feedback from employees on FWA on any problems and/or issues encountered during FWA. This will enable the employer to make necessary adjustments thereto.
- (e) To ensure where it is necessary to provide the required equipment and tools needed to perform the work tasks during FWA. Where such equipment is provided, proper documentation is to be done to record the ownership and use of the Company equipment and any other assets provided to the employee during FWA.

6.2 EMPLOYEES RESPONSIBILITIES:

- (a) Employees granted FWA shall adhere to all the Company's policies and procedures at all times during the FWA.
- (b) Employees on FWA must comply with the Terms and Conditions of the FWA.
- (c) Employees on FWA are required to check-in with the immediate superior at least twice a day usually at the beginning of the workday and at the end of workday of the FWA. If this cannot be done the employee shall inform the superior in writing or through electronic means.

- (d) Employees on FWA are expected to reasonably respond to all e-mails, phone calls and any other method of communications from their superiors, colleagues, clients or any other parties necessary to their work tasks anytime during the normal hours of work of the FWA.
- (e) Employees must accept and attend to all Company's face to face/ online meetings that involves their work functions during the period of FWA. Where possible, reasonable advance notice of such requirement will be given to such employees.
- (f) Employees are responsible to maintain proper documented and up-to-date records of hours worked during the FWA.
- (g) Employees must ensure they comply with all deadlines and submit reports as required by their superiors during the FWA.
- (h) Employees must ensure the specific location of their workspace/setting used during the FWA arrangement is safe, meet health standards and conducive for a productive work environment. Employees who have any queries or concerns may contact the Human Resources Department for further guidance/clarification.
- (i) Employee who are supplied with Company equipment and or assets during the FWA are required to sign an acknowledgement that s/he has received the Company's property/equipment in good condition. As such, employees must take reasonable care of the Company's properties and can be held accountable if Company supplied property/properties is /are damaged in any way during their possession. Employee will be given opportunity to explain in writing if any damage occurs before any further action is taken.
- (j) Employees must ensure that all their workspace/setting complies with safety and health requirements at all times. Employees who encounter any safety, health and wellbeing incidents, issues or problems are required to report such matters immediately to their superior.
- (k) Employees who need to be away from their workspace/setting during the FWA due to personal, unexpected, urgent situations shall inform their superior immediately of their absence.
- (l) Employees are required where necessary, within the laws of the country, to provide access to the Company or any approved persons for inspection of their workspace/setting, Company supplied equipment as and when required.
- (m) Employees who breach any of the terms and conditions of the FWA agreement can be subject to disciplinary action and the Company may withdraw the privilege of the FWA at the discretion of the Management. Any disciplinary action will only be imposed after the due process inquiry is conducted into any breach.

7. IMPLEMENTATION OF THE FWA

7.1 APPLICATION FOR FWA

- (a) Employee application for FWA should be put in writing/electronically to their Line Manager or Department Head or any other approved person using the prescribed form.
- (b) Upon receipt of a request, the manager will process the application, taking into account, inter alia, any impact on the business operations arising from the proposed FWA request / application.

7.2 THE DECISION

- (a) The Company may approve/ reject the FWA application.
- (b) As per Section 60Q(2) of the Employment Act 1955, upon the application made for FWA, the Company shall, within sixty (60) days from the date such application is received, approve or refuse the application.
- (c) Once a decision has been made, the Line Manager or Department Head or any other approved person will inform the employee of the decision in writing.
- (d) If the decision is made to approve the FWA application then the relevant terms and conditions of the FWA will be made known to the employee in writing.
- (e) If the FWA application is rejected the Line Manager or Department Head shall inform the employee the reasons for the rejection in writing.

7.3 RIGHT TO APPEAL

- (a) An employee may appeal in writing any decision to reject the FWA application within 14 days of the original decision being officially communicated to the employee.
- (b) Upon receipt of such an appeal the Management shall appoint a suitable Manager or any other authorised person(s) to consider the appeal.
- (c) The relevant Manager or authorised person(s) will make a final decision on whether the appeal should be allowed or rejected with reasons given. The appeal decision will be communicated in writing to the employee within 14 days of the employee's appeal being officially submitted. The appeal decision shall be final.

8. ROLE OF HUMAN RESOURCES DEPARTMENT

- 8.1 To specify the appropriate procedures, coordinate and monitor the FWA process to ensure the efficient implementation of the terms and conditions of the FWA are aligned with the Company's aims and objectives.
- 8.2 To ensure the FWA terms and conditions are in line with the Company's policies, Business and operational needs and requirements.
- 8.3 To provide guidance and advice to employees and Management on the implementation of the FWA.
- 8.4 To continuously monitor, review, evaluate and provide feedback to the Management once the FWA is implemented. This is done in consultation with Union and/or employee representatives.
- 8.5 To provide the necessary administrative support to ensure the FWA benefits the employees and the company.

9. INTERPRETATION OF THE POLICY

The General Manager, Human Capital Division is responsible for the official interpretation and review of this policy as and when required.

10. POLICY REVIEW

This policy may be amended as and when necessary, to ensure both its relevance to the promotion of a conducive work environment.

11. EMPLOYEE ACKNOWLEDGEMENT OF THE POLICY

I acknowledge that I have received a copy of the [Name of Company]'s **Policy on FLEXIBLE WORK ARRANGMENTS (FWA)**.

I am aware that I am expected to read, understand, and comply with this policy which represent part of my terms and conditions of employment with the Company.

I understand that if I have any question regarding the contents of this policy, I should ask my supervisor or the Human Resources Department for clarification and assistance.

(Employee Signature)

(Name)

NRIC No.:

Employee No.:

Date:

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**APPLICATION FOR FLEXIBLE WORK ARRANGEMENT
(WORK FROM HOME)**

Name of Employee: _____

Department: _____

Name of Supervisor: _____

Reason(s) for this application:

Location of Work From Home- please specify address:

- 1)
- 2)
- 3)

Impact on work of co-workers (include name(s) of co-workers consulted) and how concerns are resolved:

Supervisor's justifications to approve/ decline the application:

Optional Agreement on specific work expectations i.e. outcomes & standards for accountability, quality and timeliness:

Proposed Commencement Date for WFH: _____

Duration for arrangement of WFH: _____

When arrangement would be reviewed: _____

Name & signature of Employee:

Date: _____

Name & signature of Supervisor:

Date: _____

**APPLICATION FOR FLEXIBLE WORK ARRANGEMENT
(HYBRID WORK ARRANGEMENT)**

Name of Employee: _____

Department: _____

Name of Supervisor: _____

Reason(s) for request:

Location of Work From Home- please specify address:

- 1)
- 2)
- 3)

Days / dates / of working from home:-

- 1)
- 2)
- 3)

Days / dates / of working in office:-

- 1)
- 2)
- 3)

Impact on work of co-workers (include name(s) of co-workers consulted) and how concerns are resolved:

Supervisor's justifications to approve /decline the application:

Optional Agreement on specific work expectations i.e. outcomes & standards for accountability, quality and timeliness:

Proposed Commencement Date for Hybrid Work Arrangement: _____

Duration for arrangement of hybrid work arrangement: _____

When arrangement would be reviewed: _____

**REQUEST FOR FLEXIBLE WORK ARRANGEMENT
(HYBRID WORK ARRANGEMENT)**

Name & signature of Employee:

Date: _____

Name & signature of approving Supervisor:

Date: _____

REQUEST FOR FLEXIBLE WORKING HOURS

Name of Employee: _____
Department: _____
Name of Supervisor: _____
Review Date for Flexible Work Arrangement: _____
Duration of arrangement: _____

Option applied for flexible working hours:

OPTION	FLEXI WORK HOURS (INCLUDING ONE (1) HOUR LUNCH BREAK)	
Option 1	7.30am – 4.30pm	
Option 2	8.00am – 5.00pm	
Option 3	8.30am – 5.30pm	
Option 4	9.00am – 6.00pm	
Option 5	9.30am – 6.30pm	

Reasons for request by Employee:

Supervisor's justifications to approve/ decline the application:

Modification of Flexible Working Hours if any:

When arrangement would be next reviewed: _____

Name & signature of Employee:

Date: _____

Name & signature of approving Supervisor:

Date: _____

REQUEST FOR SHORTER WORKING WEEK

Name of Employee: _____
Department: _____
Name of Supervisor: _____

Option of Shorter Working Week:

Day	Option 1	Option 2	Option 3	Option 4
Monday	10 hours	-nil-	5 hours	10 hours
Tuesday	10 hours	10 hours	5 hours	10 hours
Wednesday	10 hours	10 hours	10 hours	10 hours
Thursday	10 hours	10 hours	10 hours	5 hours
Friday	-nil-	10 hours	10 hours	5 hours
TOTAL HOURS	40	40	40	40

Reason(s) for request:

Impact on work of co-workers (include name(s) of co-workers consulted) and how concerns are resolved:

Supervisor's justifications to approve/decline this application:

Optional Agreement on specific work expectations i.e. outcomes & standards for accountability, quality and timeliness:

APPLICATION FOR SHORTER WORKING WEEK

Proposed Commencement Date for Shorter Working Week: _____

Duration for arrangement of Shorter Working Week: _____

When arrangement would be reviewed: _____

Name & signature of Employee:

Date: _____

Name & signature of approving Supervisor:

Date: _____

FLEXIBLE WORK ARRANGEMENT (FWA) AGREEMENT
(to be completed for Employees on any of the optional FWA)

This document will serve as an agreement between

_____ (the Employee) and
_____ (the Supervisor) with regard to the
following Flexible Work Arrangement: -

<i>(Please select the Flexible Work Arrangement)</i>	
PLACE OF WORK	<i>(Please select / tick the FWA)</i>
Work From Home	
Hybrid Work Arrangement	

HOURS OF WORK	<i>(Please select / tick the FWA, and indicate the Option)</i>
Flexible Working Hours	Option:

DAYS OF WORK	<i>(Please select / tick the FWA)</i>
Shorter Working week	

that was agreed to commence from

_____ (date) and end on (if applicable) _____ (date).

1. Off-site work will take place at the following location and according to the following schedule:

_____ (days, hours, weeks, months)

2. Variations to the hours of work, should extenuating circumstances arise, are to be discussed between the employee and manager and agreed in writing.

3. Employees are required to be contactable when working off-site. For employees who need to be contactable at all times, the same arrangements remain. For all other employees, they should be contactable within reasonable expectations, to be agreed between the supervisor and employee. The employee will keep in touch with his/her supervisor and colleagues at the office in the following ways:

- 4. The employee agrees to be at the office when required by current job responsibilities. The supervisor agrees to give consideration to the above FWA hours of work when planning meetings and functions, but it is agreed that work requirements will take precedence.
- 5. As per current processes, performance requirements and targets have been agreed and regular review meeting will be scheduled to monitor employee performance.
- 6. The employee will ensure that the off-site workspace conforms to all guidelines of the organisation, particularly those which relate to the health and safety of the world of work, and that the supervisor is allowed access to it, with appropriate notice, as required, within the legal limits of the law.
- 7. The Employee is to ensure that confidentiality of all information is handled securely and responsibly, in the same way as required in the office environment.
- 8. The Employee shall undertake all necessary steps to ensure that work is performed in a professional manner.
- 9. All organisation property, resources, and proprietary information installed and used at the off-site workplace is to be suitably secured and kept in working order at all times. Breakages are to be notified to the manager immediately.
- 10. This agreement will be reviewed as and when deemed necessary by management.

We agree to the conditions set forth in this agreement.

<i>Employee's signature</i>	<i>Employee's name</i>	<i>Date</i>

<i>Manager's signature</i>	<i>Manager's name</i>	<i>Date</i>

on behalf of *[Insert name of organisation]*



ADVANCED INVESTIGATION GUIDELINES RELATING TO VIOLENCE AND HARASSMENT IN THE WORLD OF WORK INCLUDING SEXUAL HARASSMENT IN MALAYSIA, WITH A FOCUS ON WOMEN MIGRANT WORKERS

SAFE AND FAIR: REALIZING WOMEN MIGRANT WORKERS' RIGHTS AND OPPORTUNITIES IN THE ASEAN REGION

This publication has been produced with the technical support of the International Labour Organization (ILO) through the SAFE and FAIR: Realizing Women Migrant Workers' Rights and Opportunities in ASEAN Region Programme, with funding from the European Union. The responsibility for opinions expressed in this publication rests solely with their authors, and publication does not constitute an endorsement by the ILO or the European Union of the opinions expressed in them.

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Key Terms

<p>Gender norms</p>	<p>Social norms are acceptable and appropriate actions for women and men in a given group or society. They are embedded in constitutions as per Article 8 of the Malaysian Federal Constitution¹ on equality before the Law and enforced by formal enforcement agencies such as police and informal institutions, nested in the mind, and produced and reproduced through social interaction, among others. They play a role in shaping women and men's (often unequal) access to resources and freedoms, thus affecting their voice, power, and sense of self.</p> <p>Gender norms are social norms with gender-specific components.</p>
<p>Migrant worker</p>	<p>A person who migrates from one country to another with a view to being employed otherwise than on his or her own account and includes any person regularly admitted as a migrant for employment.²</p> <p>A person who “is to be engaged or has been engaged in a remunerated activity in a state of which he or she is not a national.”³</p>
<p>Sexual harassment</p>	<p>ILO: Sexual harassment is a serious manifestation of sex discrimination and a violation of human rights, which is addressed in the context of the ILO Discrimination (Employment and Occupation) Convention 1958 (No. 111)⁴. Under Convention No. 190, sexual harassment is not defined, but it is clearly included within the definition of gender-based violence and harassment (Article 1(1)(b)). Within the framework of ILO Convention No. 111, and according to the 2002 General Observation of the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO Committee of Experts), definitions of sexual harassment contain the following key elements:</p> <p><i>“(1) (quid pro quo) Any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient; and a person’s rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person’s job; or</i></p> <p><i>(2) (hostile work environment) Conduct that creates an intimidating, hostile or humiliating working environment for the recipient.”</i></p>

¹ Malaysian Federal Constitution, Article 8

² ILO Migration for Employment Convention (Revised), 1949 (No. 97), Article 11

³ United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990, Article 2(1))

⁴ ILO. 2012. Giving globalization a human face. Report III (Part 1B). International Labour Conference, 101th Session, Geneva, para. 789.

Key Terms

	<p>Malaysia: Any unwanted (by the victim) conduct of a sexual nature, whether verbal, non-verbal, gesture or physical, directed at a person which is offensive or humiliating or is a threat to his well-being arising out of and in the course of his employment.⁵</p>
Violence and harassment	<p>Refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment, and includes sexual harassment.⁶</p>
World of work	<p>Broadly, it includes places or things linked with or arising out of and in the course of employment. Convention No. 190 use of the term “world of work” extends the concept of the workplace and meets the reality that act(s) of violence and harassment (including sexual harassment)) can take place:-</p> <ul style="list-style-type: none">(a) in the workplace, including public and private spaces where they are a place of work;(b) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities;(c) during work-related trips, travel, training, events or social activities;(d) through work-related communications, including those enabled by information and communication technologies;(e) in employer-provided accommodation;(f) when commuting to and from work.⁷

⁵ Employment Act 1955 (Amendment 2012 & 2022)(“EA”), Section 2

⁶ Violence and Harassment Convention, 2019 (Convention No. 190), Article 1(1)(a) & (b)

⁷ Violence and Harassment Convention, 2019 (Convention No. 190), Article 3

A. INTRODUCTION

1. As an employers' organization of private sector employers in Malaysia, Malaysian Employers Federation's (MEF) main role is to promote good employment practices and harmonious industrial relations with a view to achieving national objectives. Thus, in this Guideline, we will discuss in depth on the issues relating to investigation of violence, harassment and sexual harassment complaints by referring to provisions of current applicable laws in Malaysia, latest views and positions by the Courts, particularly case laws from the Industrial Court of Malaysia and Civil Courts, as well as the views and suggestions given by employers (MEF members), employees/trade union and the Government agencies during consultation and validation sessions that had been conducted.
2. Since in the first investigative guide on violence and harassment at the workplace 2021/2022 developed by MEF with Safe and Fair Project support, we had assisted employers in Malaysia to have specific policies related to violence, harassment and sexual harassment in their respective organizations. In this Guideline, we will assist them further, amongst others, in understanding and implementing investigation processes and procedures, parameters for investigation, preparing a comprehensive investigation report and employers' duties in taking relevant and appropriate disciplinary actions against the accused employee / offender who committed the act(s) of violence, harassment, including sexual harassment, in their organizations, and most importantly, employers' duties to provide safe, fair and conducive working environment and culture for all employees across the board, including men and women migrant workers.
3. Malaysia has ratified the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and had earlier worked towards meeting the requirements of Malaysia and the United States Labour Consistency Plan under the aborted Trans-Pacific partnership Agreement (TPPA). By ratifying the CPTPP on 30th September 2022, Malaysia has undertaken to ensure that its labour laws to be in compliance with international standards and align to all the International Labour Organization (ILO) conventions as specified under Chapter 19 of the said Agreement on "Labour". The ILO Convention (No. 190) Violence and Harassment Convention, 2019 ("**C190**") and its accompanying Recommendation (No. 206) of 2019 incorporate equality and non-discrimination on the safety and health and comprehensively covers all instances of violence and harassment, including sexual harassment for all workers, including men and women migrant workers.
4. There are legally-binding international and regional instruments, which Malaysia has agreed to be bound with, amongst others, the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1995, ratified on 5th July 1995, Forced Labor Convention 1930 (No. 29), ratified on 21st March 2022, Promotional Framework for Occupational Safety and Health Convention 2006 (No. 187), Declaration on the Elimination of Violence Against Women in the

ASEAN Region in 2004, and the ASEAN Regional Plan of Action on the Elimination of Violence Against Women.

5. All these international and regional instruments require Malaysia, as a member state of ILO to adopt an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work, including sexual harassment for all workers, including men and women migrant workers. Violence and harassment including sexual harassment goes against the most fundamental principles and core values of the United Nations (UN) and International Labour Organization (ILO). As a member state of both established international organizations, Malaysia holds a joint responsibility to create a safe, fair and conducive working environment free from violence and harassment, including sexual harassment. A safe and healthy working environment is included in the ILO's framework of fundamental principles and rights at work and therefore all member countries are tasked to uphold this fundamental right.
6. Under the Occupational Safety and Health Act 1994 (Act 514), it is the duty of every employer and every self-employed person to ensure, so far as is practicable, the safety, health and welfare at work of all its employees⁸. Apart from that, every employee while at work shall be duty bound to take reasonable care for the safety and health of himself (or herself) and other persons who may be affected by his acts or omissions at work⁹. Health covers both physiological and psychological (physical and mental) health. Further, all forms of discrimination are not acceptable and not tolerated¹⁰.
7. It is thus imperative upon employers to adhere to the legal framework and ensure that every complaint of or incident arising out of an act of violence, harassment and sexual harassment in the world of work be investigated into.
8. Violence, harassment and sexual harassment in the world of work is a persistent and significant challenge faced by enterprises worldwide. Failure to recognize, prevent and respond to inappropriate conduct and illegal behaviour in the world of work create organization-wide distrust, individually and collectively lowers morale and ultimately impedes enterprise performance. Heightened social awareness and public conversation about the prevalence of unacceptable behaviours and practices have opened up in recent years, pushing up the importance for enterprises to proactively address violence, harassment and sexual harassment at work and revisit the adequacy and fitness of the company's policies and practices. Regardless of the location, size, sector or type of enterprise, anyone and any workplace can be subject to the display or threats of unacceptable behaviours and practices. Consequently, violence, harassment and sexual harassment, be it physical, psychological, sexual or psychosocial, creates a risk to the safety and health of individuals at work and imposes a range of costs that impact workers,

⁸ Occupational Safety and Health Act 1994, Section 15(1),

⁹ Occupational Safety and Health Act 1994, Section 24(1)(a), Act 514

¹⁰ Occupational Safety and Health Act 1994, Section 27, Act 514

enterprises, the government and society. These costs include the loss of productivity, higher workforce turnover and increased absenteeism, time and money spent on healthcare, filing complaints and pursuing investigations, and most importantly the victims' loss of well-being. Due to the complex nature and multiplicity of impact that violence, harassment and sexual harassment has on the workforce, quantifying the cost in monetary terms is not straight-forward. While the main efforts should be towards preventing violence, harassment and sexual harassment at work, companies do have situations where it is necessary to conduct investigations followed by taking necessary disciplinary actions upon receipt of a complaint of violence, harassment or sexual harassment.

B. DEFINITION & GENERAL UNDERSTANDING

9. What is "World of Work?"

- It covers:-
 - (a) in the workplace, including public and private spaces where they are a place of work;
 - (b) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities;
 - (c) during work-related trips, travel, training, events or social activities;
 - (d) through work-related communications, including those enabled by information and communication technologies;
 - (e) in employer-provided accommodation;
 - (f) when commuting to and from work.¹¹

10. What is "Violence and Harassment in the World of Work"?

- Violence and harassment refer to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment, and might include sexual harassment¹². Convention No. 190 recognizes that violence and harassment in the world of work can constitute a human rights violation or abuse.
- Harassment means any inappropriate conduct or comment by a person towards a co-employee or anyone working irrespective of their contractual status, third party or employers that will cause that other person to be humiliated or intimidated. The nature of harassment including bullying and

¹¹ Violence and Harassment Convention, 2019 (Convention No. 190), Article 3

¹² Violence and Harassment Convention, 2019 (Convention No. 190), Article 1(1)(a) & (b)

discrimination are often characterized through insulting, hurtful, hostile, vindictive, cruel or malicious behaviours which undermine, disrupt or negatively impact another's ability to do his or her job and results in a harmful work environment of the employee. An employee is bullied at work when an individual, or group of individuals repeatedly behave unreasonably towards the employee and the behaviour creates a risk to health and safety of the individual. The use of superior influence to get sexual favours as a quid pro quo is a common example of sexual harassment.

- Violence and harassment may include:
 - The use of or attempt to use physical force or intimidation against or by an employee that causes or could cause physical and/or psychological harm to another person in the world of work. This includes, but is not limited to, physical acts such as punching, hitting, kicking, pushing, damaging property or throwing objects that cause injury to the other party;
 - Any action(s) or statement(s) that reasonably amounts to be a threat of physical or psychological harm or as a threat to safety or security in the world of work;
 - Any form of sexual violence whether in a physical or non-physical manner;
 - Any form of verbal / emotional / psychological abuse that causes physical, non-physical, psychological and/or economic / monetary harm to another person;
 - Any form of bullying in the world of work such as repeated and persistent negative acts towards one or more individuals, which creates a hostile work environment;
 - Any conduct which demeans, embarrasses, humiliates or is unwelcome in any way to the party affected by such prohibited conduct.

11. What is "Sexual Harassment in the World of Work"?

- The ILO established that sexual harassment in the world of work can encompass a range of behaviours and practices of a sexual nature, such as unwanted sexual comments or advances, "jokes", displaying pictures or posters objectifying women, physical contact or sexual assault. Sexual harassment may be perpetrated by different individuals, including colleagues, supervisors, subordinates and third parties. It includes:

Quid pro quo – Any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient; and a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job; or

Hostile work environment – Conduct that creates an intimidating, hostile or humiliating working environment for the recipient.¹³

- Prior to 1999, sexual harassment in the workplace was not regulated under the Malaysian Employment Act 1955. During that time, sexual harassment cases were not reported, it was considered as a taboo by the society, and victims remained silent due to embarrassment, helplessness and fear of reprisals, being ridiculed, or worse still, of losing their jobs, most of the victims of sexual harassment were prevented from raising the problem and had to suffer in silence.
- In 1999, the Malaysian Ministry of Human Resources had issued a Code of Practice¹⁴ to provide practical guidance to employers, employees, trade unions and others relevant parties on the protection of the dignity of men and women at work. The aim is to ensure that sexual harassment does not occur and, if it does occur, to ensure that adequate procedures are available to deal with the problem and prevent its recurrence. The Code thus seeks to encourage the development and implementation of policies and practices which will ensure a safe and healthy working environment in every place of employment where individual employees, irrespective of status or position, are treated with dignity and free from any form of harassment, humiliation and intimidation of a sexual nature. This Code is now legally binding since 1st January 2021 by the enactment of Section 30(5A) of the Industrial Relations Act 1967.
- The Code defined “sexual harassment” as:-
 - *“Any unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment:*
 - *that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her/his employment; or*
 - *that might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or a threat to his/her well-being, but has no direct link to her/his employment”*
- As a guide, the 1999 Code of Practice looks at the impact on the employee i.e. quid pro quo:

Sexual coercion is sexual harassment that results in some direct consequence to the victim’s employment. An example of sexual harassment of this coercive kind is where a superior, who has the power over salary and promotion, attempts to coercive kind is where a superior, who has the power

¹³ https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_738115.pdf

¹⁴ Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace 1999

over salary and promotion, attempts to coerce a subordinate to grant sexual favours. If the subordinate accedes to the superior's sexual solicitation, job benefits will follow. Conversely, if the subordinate refuses, job benefits are denied.

and the other intimidating to get sexual favours as per:

Sexual annoyance, the second type of sexual harassment, is sexually-related conduct that is offensive, hostile or intimidating to the recipient, but nonetheless has no direct link to any job benefit. However, the annoying conduct creates a bothersome working environment which the recipient has to tolerate in order to continue working. A sexual harassment by an employee against a co-employee falls into this category. Similarly, harassment by a company's client against an employee also falls into this category.

Whatever form it takes, sexual harassment results in an unsafe and hostile work environment for the person experiencing it, as well as for witnesses and co-workers.

- The 1999 Code of Practice recognized that sexual harassment in the workplace includes any employment-related sexual harassment occurring outside the workplace as a result of employment responsibilities or employment relationship. This included work-related social functions, conference or training sessions, in the course of work assignments outside the workplace, during work-related travel, over the phone, and through electronic media.
- Employment Act 1955 (Amendment 2012 & 2022) has comprehensively defined sexual harassment as follows:

“Any unwanted conduct of a sexual nature, whether verbal, non-verbal, gesture or physical, directed at a person which is offensive or humiliating or is a threat to his wellbeing arising out of and in the course of his employment.”¹⁵

- At this part of this Guideline, the following terms have the following meanings:

“Victim/alleged victim” means the person in the world of work or in connection with work towards whom the conduct constituting possible sexual harassment is directed.

“Complainant” is the person who lodged the formal complaint of sexual harassment to the relevant authority in the company and not necessarily the victim/alleged victim.

¹⁵ Employment Act 1955 (Amendment 2022), Section 2

“Offender/alleged offender” is the person in the world of work or in connection with work whose conduct constitutes sexual harassment.

COMMON EXAMPLES OF SEXUAL HARASSMENT

- (i) Inappropriate to victim i.e. grab hand
- (ii) Touching
- (iii) Touching on pretext of helping
- (iv) Use of crude, vulgar and abusive language
- (v) Endearment or buying of gift
- (vi) Acceding to request or in return of favour
- (vii) Posture, mannerism and behaviour

(for detail explanation, see **APPENDIX 1**)

Some groups may face discrimination, violence and harassment because of personal attributes, such as race, sex, gender, migrant status, disability, age, etc. To fully prevent and address violence and harassment in the world of work, it is important to address its root causes, such as multiple and intersecting forms of discrimination; unequal power relations; harmful stereotypes; and social and cultural norms that support violence and harassment. The importance of an inclusive, integrated and gender-responsive approach which includes, protection and prevention, enforcement and remedies and training, guidance and awareness-raising on violence, harassment (and sexual harassment) in the world of work is to ensure that the employers, HR practitioners and the companies as a whole understand and ensure the effective prevention¹⁶ of, and protection against, any form of violence, harassment and sexual harassment in the world of work, including safe and fair working environment and opportunity to migrant workers in Malaysia.

C. RECENT DEVELOPMENT (SEXUAL HARASSMENT) **Amendments to Part XVA (Sexual Harassment) in the** **Employment Act 1955 (Amendment 2022)**

12. Generally, it is an employer’s duties to provide a safe and conducive working environment for all employees. When facing with a sexual harassment complaint, an employer is responsible to inquire into such complaint and to act firmly against the offender if sexual harassment allegation(s) are proven after due inquiry.

¹⁶ Violence and Harassment Convention, 2019 (Convention No. 190), Article 2

- Hence, an employer shall have:-
 - (i) A policy statement prohibiting sexual harassment in the company.
 - (ii) A clear definition of sexual harassment.
 - (iii) A complaint / grievance procedure.
 - (iv) A notice to raise awareness on sexual harassment (S. 81H EA).
13. An employer commits an offence and on conviction, be liable to a fine not exceeding **RM50,000.00**¹⁷, if failure to:-
 - (i) inquire into a complaint¹⁸;
 - (ii) inform the complainant of the refusal¹⁹;
 - (iii) inquire into a complaint when directed by DGL & submit report of inquiry²⁰.
 14. If the employer refuses to inquire into a complaint, as soon as practicable / not later than 30 days after receipt of the complaint, inform the complainant of the refusal and reasons for refusal in writing pursuant to:-
 - (i) the complainant has previously been inquired into and no sexual harassment has been proven; or
 - (ii) the employer is of the opinion that the complaint of sexual harassment is frivolous, vexatious or is not made in good faith.
 15. An employee who is dissatisfied with the employer's refusal to inquire into the sexual harassment complaint may refer the matter to the Director General of Labour (DGL)²¹.
 16. The DGL after reviewing the matter referred to him, may:
 - (i) if he thinks the matter should be inquired into, direct the employer to conduct an inquiry; or
 - (ii) if he agrees with the decision of the employer not to conduct the inquiry, inform the complainant that no further action will be taken.²²
 17. Where the DGL directs that the employer inquire into the complaint, the employer shall do so and submit a report of the inquiry to the DGL within 30 days from the date of such direction²³.
 18. All employer **SHALL** at all times, exhibit conspicuously at the place of employment, a notice to raise awareness on sexual harassment²⁴.

¹⁷ Employment Act 1955 (Amendment 2022), Section 81F

¹⁸ Employment Act 1955 (Amendment 2022), Section 81B(1)

¹⁹ Employment Act 1955 (Amendment 2022), Section 81B(2)

²⁰ Employment Act 1955 (Amendment 2022), Section 81D(2)

²¹ Employment Act 1955 (Amendment 2022), Section 81B(4)

²² Employment Act 1955 (Amendment 2022), Section 81B(5)

²³ Employment Act 1955 (Amendment 2022), Section 81D(2)

²⁴ Employment Act 1955 (Amendment 2022), Section 81H

19. **Anti-Sexual Harassment Act 2022**

- New Legislation - **Anti-Sexual Harassment Act 2022** (passed by both House of Parliament and House of Senate, Date of Royal Assent on 8th October 2022 and Date of Publication in Gazette on 18th October 2022 and came into force on 28th March 2023, by stages)
- Pursuant to this new Act, the following are among the new provisions / legislations included, such as:-
 - (i) Victims no longer need to wait for employers to take action against their offenders – victims may lodge their complaint directly to the Tribunal (**Victim v Offender**)
 - (ii) Hearing in Tribunal shall be closed to public (**S. 14**)
 - (iii) Award within 60 days from 1st Hearing day (**S. 19**)
 - (iv) Tribunal may order: (a) statement of apology to the complainant;
(b) publish a statement of apology (public);
(c) compensation up to RM250,000;
(d) order the parties to attend any programme as the tribunal thinks necessary; or
(e) dismiss the sexual harassment complaint if it considers it to be frivolous or vexatious.

D. INVESTIGATION

20. Due to the various types of violence, harassment including sexual harassment, it is important that investigators be trained in conducting investigation and to ensure that:-
- Elements of particular misconduct are met;
 - Evidence gathered that indicates potential acts(s) of misconduct; and
 - Importance of impartiality, fairness and confidentiality of the investigation are essential to protect the privacy of the complainant and the accused
21. Employers in Malaysia have right to take relevant disciplinary action as per the company's policies or procedures, Employee handbooks, rules and regulations and terms and conditions of employment once there is a complaint on violence, harassment or sexual harassment in the world of work. Once the complaint is established, it constitutes a misconduct case and if the offender is found guilty, the employer may impose any relevant punishment, including punishment of dismissal from service. However, the employer must follow due inquiry²⁵ process before imposing any form of punishment against the offender. To avoid retribution from either party in the form of threat or violence, there is a need for the victim /

²⁵ Employment Act 1955 (Amendment 2022), Section 14(2)

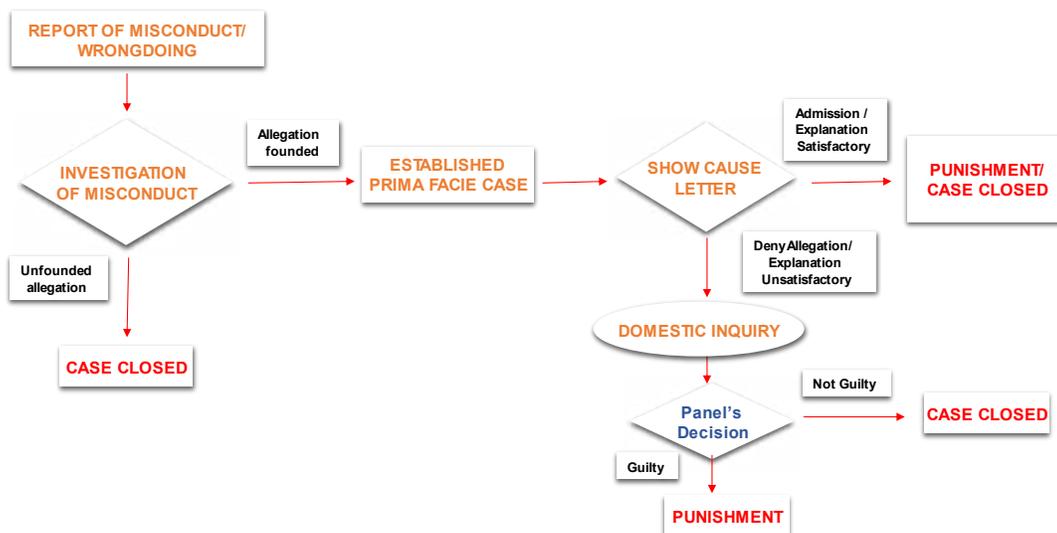
complainant and the accused to be separated and not to be in direct contact in the world of work.

22. In Malaysia, other than the Employment Act 1955, which now applies to all employees and sectors of work with no salary ceiling (except those on contract for service, independent contractor and contractors for labour), according to the Industrial Relations Act 1967, any employee who is terminated from service by his/her employer and if he/she feels that the termination is without just cause or excuse²⁶, he/she can lodge a complaint at the Industrial Relations Department, which then will be referred to the Industrial Court to hear the unfair dismissal claim. Whilst 'just cause or excuse' is not defined by the statute, valid reasons for dismissal include gross misconduct on the part of the employee, redundancy, poor performance or negligence.
23. Hence, in case of termination due to misconduct, the burden is on the employer, on a balance of probabilities²⁷, to prove of the following:-
 - (i) Whether the charges of misconduct proffered against the offender are proved on a balance of probabilities;
 - (ii) Whether there was compliance with natural justice in the company's disciplinary process and/or Domestic Inquiry proceedings; and
 - (iii) Whether the punishment of dismissal that was based on the charges of misconduct was proportionate.
24. Thus, a flowchart in conducting an impartial and a fair investigation on the complaint of violence, harassment or sexual harassment, or any other misconducts is required, as follows:-

²⁶ Industrial Relations Act 1967, Section 20(3)

²⁷ Milan Auto Sdn Bhd v. Wong Seh Yen [1995] 4 CLJ 449

1.1 Flowchart Starting Disciplinary Action



25. Details of flowchart for investigation of complaints on violence, harassment and sexual harassment in the world of work, are as follows:-

25.1 Grievance Procedure in Handling Complaint/Grievance of Violence, Harassment and Sexual Harassment

- Due to the sensitivity and personal nature of the complaint, the following internal grievance procedure shall be followed (the victim maintains the liberty to avail of external complaints mechanism):-

Step 1: A victim employee may lodge a verbal or written complaint / grievance to his immediate superior. If the victim employee is literate, the immediate superior will secure a written complaint with his/her signature, whereas if the victim employee is illiterate, the role of the immediate superior and/or any trusted person within the organization to assist him/her to put the complaint in writing by reading it back and obtaining prior confirmation from the illiterate victim employee (The use of a qualified interpreter is encouraged). However, if the complaint

is against the immediate superior, the employee may proceed directly to Step 3.

(In case there is HR, victim should be able to go to Step 2 without going through Step 1)

Step 2: The immediate superior will forward the matter to the Human Resources (HR) Department for investigation. However, if the complaint is against the HR, the employee may proceed to Step 4.

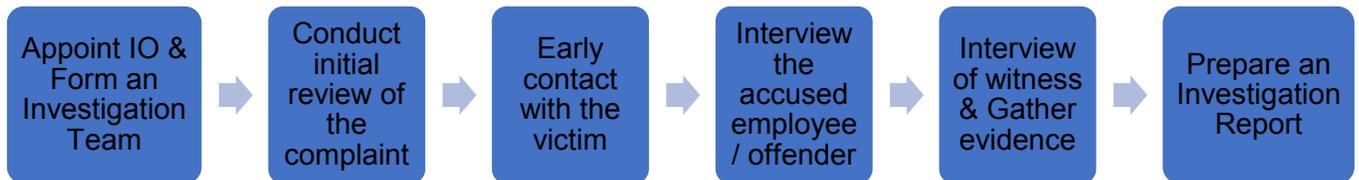
Step 3: The HR Department would request the victim employee to lodge a complaint through the company's complaint form and where appropriate only, advise the victim to lodge a police report. There should be no compulsion for the victim to file a police report as not all acts of violence or harassment (or even sexual harassment) are categorized as crime (based on case-to-case basis and/or upon obtaining legal opinion from relevant body such as MEF). If the victim employee is literate, secure a written complaint with his/her signature, whereas if the victim employee is illiterate, the role of the HR Department officer and/or any trusted person within the organization to assist him/her to put the complaint in writing by obtaining prior confirmation from the illiterate victim employee. In any event, the HR Department shall investigate the complaint. However, if the complaint is against the HR employee, the victim employee may proceed to Step 4.

Step 4: If the complaint / grievance is against the HR Department, the victim employee may proceed to the higher authority of the company where the victim lodges a written complaint / grievance through the complaint form. If the victim employee is literate, secure a written complaint with his/her signature, whereas if the victim employee is illiterate, the role of the higher authority and/or any trusted person within the organization to assist him/her to put the complaint in writing by obtaining prior confirmation from the illiterate victim employee.

- If a complaint / grievance is made by a victim employee of a company against a Third Party (in the course of work example of a Third Party i.e. client, subcontractor etc.), Steps 1, 2 and 3 would apply and upon investigation, the company / HR Department of the company would write officially to the Third Party regarding the said complaint made.

- If a complaint / grievance is made by a victim Third Party (in the course of work example of a Third Party i.e. client, subcontractor etc.) against the employee of the company, Step 3 above would apply.

1.2 Flowchart Investigation Process



Key Points:-

➤ **WHO CAN REPORT?**²⁸

- Any employee – local or foreign
- Employer against another employee
- Employer against employer
- Employer against employee
- Employee/employer against third party
- Third party against employee

➤ **INVESTIGATING A COMPLAINT**

- For sexual harassment case, Sections 81A to 81G, Employment Act 1955 (Amendment 2022) (applicable to all employees irrespective of pay);
- Complaint – Appoint an Investigating Officer (IO) and form an Investigation Team;
- Interview complainant/victim employee – discreetly and confidentially;
- If complainant/victim employee – not local or cannot speak Malay/English – use service of interpreter;
- Gather information, time, date, place, witness, CCTV coverage, documents, WhatsApp/email, phone conversation etc;

²⁸ Employment Act 1955 (Amendment 2022), Section 81A

- When appropriate, suspend offender²⁹ to protect victim and prevent retaliation. C190 also requires the victim must at all times be protected before, during and after investigation from work situation which he/she/they reasonably will be put in imminent danger to life and safety;
- Record statements from all witness who have information, saw or heard conversation between offender and victim. Time/place, instances and frequency;
- Interview alleged offender separately;
 - Treat investigation in a confidential manner and a “*need to know*” basis.

25.2 Appointment of an Investigation Officer (IO) and Form an Investigation Team & Initial Review

- Appoint a focal point or an Investigating Officer (IO) (preferably someone from HR Department with experience in investigating / handling misconduct cases in the organization) who is to serve as a contact point for the victim. He/she remains the centre of investigations and all information gathered is only to be given to him/her. He/she too remains as the focal point for both the victim and alleged offender during the course of investigation.
- The focal point will first conduct initial review of the complaint. He/she shall discreetly gather information as to what is stated in the complaint. This is important as one complaint may or not be given by the victim. If it was through a whistle blower, the victim’s identity confirmation of the allegations made must be verified. The reliability of the source must be checked through supporting documents or facts. Anonymous complaints must be treated with caution and supporting facts, circumstances or conditions be taken before even pushing it to the victim.
- If necessary, the IO may form an Investigation Team to assist him/her throughout the investigation process. Selection of the Investigation Team must be with extra careful consideration as this process must be done confidentially.
- Timely and well-coordinated investigation will hasten the effort to establish a *prima facie* case. *Prima facie* means gathering credible facts and evidence for the company to decide the guilt or otherwise of the offenders of the act of misconduct.

²⁹ Employment Act 1955 (Amendment 2022), Section 14(2)

25.3 Early Contact & Interview the Victim

- Once the initial review shows possibility of violence, harassment or sexual harassment acts where the offender's and victim's identities have been identified, early contact must be carried out with the victim. The victim must be made aware of the identity of the focal point.
- The focal point must give assurance of confidentiality, assistance, supports including physical and psychological and protection against retaliation and seek for medical attention, if necessary.
- The victims may nominate a support person who will assist and protect him/her during the course of investigation and thereafter should there be any disciplinary proceedings the company takes (legal support).
- He/She must be assured that his/her confidentiality will not be compromised.
- The victim must be encouraged to give all information relevant including meetings, modus operandi, text messages, emails and witnesses.
- The victim too may under strict confidentiality be asked as to whether he/she is the only victim or heard that there are others and their particulars, if available.
- The assurance by the focal point that the victim will be kept informed of every step and outcome of the investigation.

25.4 Interview the Alleged Offender

- Initial / alleged offender must only be approached after the focal point had gathered all the documents necessary from the victim and evidence to support the victim's evidence.
- This is to prevent the alleged offender of interfering with investigation, destroy evidence i.e. texts, documents, emails or reactionary action against the victim.
- The alleged offender then should be called for an interview and the appropriate evidence be put to her/him by the focal point.

- Appropriate measures such as suspension pending investigation³⁰ may also be taken against the alleged offender, as relevant. Throughout the suspension period, the alleged offender shall give her/his full cooperation to the Investigation Team and to be on standby at all times in case to be called for further investigation at the company's premises.
- The statement of the alleged offender is then investigated into. The alleged offender should also be afforded confidentiality and be informed that retaliation will not be tolerated³¹.
- The focal point must also decide (and suggest to the Management) whether the alleged offender should be transferred or reassign for the general well-being of the victim, if necessary.

25.5 Interview Other Witness & Gather Evidence

- Hold interviews with those who are witnesses or could provide support for the (alleged) victim/offender and information for a particular case.
- Get confirmation and take all documents, texts, emails, letters, SMS or phone conversations.
- Take pictures of place of incidents to support possibility of violence, harassment or sexual harassment to be carried out.
- Evidence that could corroborate the victim's version.
- Check the credibility of victim from friends or other staff.
- All above interviews to be done in confidential settings away from office or outside office hours and immediate world of work and they should be reminded that their info will be kept confidential, and they will be protected from any retaliation. They should be assured that they are doing their duty to take reasonable care for the safety and health of himself and of other persons who may be affected by his acts or omissions at work, to co-operate with his employer.
- All witnesses shall be treated with dignity, safety and well-being.
- Do not use inappropriate method (including any form of force or coercion, threat, undue influence, pressure etc.) as it may result in

³⁰ Employment Act 1955 (Amendment 2022), Section 14(2)

³¹ Violence and Harassment Convention, 2019 (Convention No. 190), Article 10(c)

witnesses not giving their cooperation and only say “*I don’t know anything.*”

- Gather all documents related i.e. digital evidence, text messages which are important to corroborate victim’s story that it was not mutual or that the victim was the initiator.
- These supporting documents may show whether there is a pattern or if it was a single act.
- If there are CCTV footage and/or other electronic devices (if the misconduct of violence, harassment or sexual harassment is captured by electronic device). The use of electronic devices as evidence is allowed under the Malaysian Evidence Act 1960³².
- Communication with victim immediately after incident through phone call, text, SMS must be captured and downloaded as corroborative evidence.
- Get the digital evidence to be translated into forensic evidence.
- If there is evidence of wear and tear of garments or injury to physical during the commission of violence, harassment or sexual harassment, must be recovered.
- Evidence of attendance records, medical leave would be taken to corroborate victim’s account of impact of sexual harassment.
- Record of negative performance can also indicate the result of sexual harassment.
- The collection and preservation of evidence is of crucial importance documentary evidence and chain should be handled properly as the evidence may be required for subsequent claim by or against the company.
- The IO must be trained on gathering evidence through:-
 - (a) Testimonies from the alleged victim/offender;
 - (b) Original documents i.e. emails, text messages, social media posts etc;
 - (c) Photographs and/or videos as necessary; and
 - (d) Notes / statements from witness(es).

³² Evidence Act 1960, Section 2

- Engagement of a Forensic Technology Expert is needed in the case involving electronic evidence, in cases of violence and harassment, including sexual harassment.
- For cases involving physical violence to the victim, need medical doctor's report in support of allegations of physical abuse or mental health due to the act(s) of violence or harassment or sexual harassment.

25.6 Prepare an Investigation Report

- An investigation culminates with an Investigation Report. An Investigation Report is a document that details the findings of an investigation that was carried out as soon as a formal complaint is filed or an incident of violence, harassment or sexual harassment in the world of work occurred. This is where investigators record the issue of the matter, analyze the evidence, and formulate a conclusion. It is impartial and based on evidence, not on the opinions of an investigator or the parties involved.
- A complete Investigation Report, depends on the complexity and should be put up within 1 month (or subject to the specific time period mentioned in the company's policies or procedures, Employee handbooks, rules and regulations and terms and conditions of employment), shall consist of the following:-
 - ✓ General information on the subject of investigation.
 - ✓ The type of case and complaint summary.
 - ✓ Analysis of all evidence and outcome of investigation interviews.
 - ✓ The disposition of the investigation and reach a conclusion.
 - ✓ The certification of the investigation report with signatures of the IO.
- With proper documentation via an official investigative report, a clear picture of what happened is presented to the decision-makers with the facts needed to determine a course of subsequent action.
- The Investigation Report consists of the comprehensive record of the information about the subject (respondent or accused person) and the details of the complaint with specific descriptions such as times, dates and locations that clarify the issues of the matter.
- The evidence analysis of physical evidence such as footage, email records, documents or papers, physical objects, etc. and document investigative interviews substantiate claims from all parties. The analysis

identifies the relevant facts, assess the credibility of disputed facts, and dismiss irrelevant facts.

- A comprehensive Investigation Report will state a conclusion reached based on the facts that whether the matter is substantiated, unsubstantiated or inconclusive.
- Sample as at **APPENDIX 2** herein below.

26. Investigation challenges based on legal issue(s) / defence(s) that generally applicable to all cases, particularly in sexual harassment cases that commonly brought up in Malaysian Courts:

(a) **Legal Issues:**

- Burden of proof is on the employer, so company **MUST** satisfy itself that there is ground for believing that sexual harassment is committed, hence, it warrants punishment of dismissal.
- In the case of **Milan Auto Sdn Bhd v. Wong Seh Yen [1995] 4 CLJ 449; [1995] 3 MLJ 537**, Federal Court held as follows:-

*“... the function of the Industrial Court in dismissal cases on a reference under s. 20 is twofold firstly, to determine **whether the misconduct complained of by the employer has been established, and secondly whether the proven misconduct constitutes just cause or excuse for the dismissal.**”*

- In **Ireka Construction Berhad v. Chantiravathan Subramaniam James [1995] 2 ILR 11**, it was held that:-

“It is a basic principle of industrial law jurisprudence that in dismissal case the employer must produce convincing evidence that the workman committed the offence or offences the workman is alleged to have committed for which he has been dismissed. The burden of proof lies on the employer to prove that he has just cause or excuse for taking the decision to impose the disciplinary measures of dismissal upon the employees. The just cause must be either a misconduct, negligence or poor performance based on the facts of the case.”

(b) **Issue of Corroboration**

- Not restricted to the oral evidence of a witness - In **Chen Beng Kwee v. ST Microelectronics Sdn Bhd & Anor [2012] 6 CLJ 865**, the High Court agreed with the Industrial Court findings and held that:-

“In finding that incident to have constituted sexual harassment, I find the learned Chairman did consider all the circumstances surrounding the incident and to have come to that conclusion. Since the learned Chairman had heard the witnesses and observed their demeanour, I would not want to disturb his finding of fact where this is concerned.”

- Even if no corroboration, the Industrial Court can access evidence based on credibility of witnesses (**Hairi Abu Nasir v AEON Co. (M) Bhd [2019] 2 LNS 1791** (*supra*)).
- Court can determine the truth or who is lying - In **Tee Soon Kiat v AIA Bhd [2020] 2 ILR 65**, the Industrial Court held as follows:-

“In a case where it is a "he said-she said", the Court must, on a balance of probabilities, evaluate all the evidence to determine who is lying and who is telling the truth. Based on all the evidence adduced, COW2's version had been more probable than the claimant's version. Her testimony that he had only stopped because he had been afraid that someone would come into the toilet had been supported by the CCTV recording. Thus, the company had proven charge 1 against him...”

- No hard and fast rule that in a tort of sexual harassment there must be corroboration, in **Mohd Ridzwan Abdul Razak v Asmah Haji Mohd Nor [2016] 6 CLJ 346** (*supra*), this principle was laid down, where the Federal Court held as follows:-

“To demand corroboration, just because there exists some sexual favour in the complaint will cause the harassed person to be, more often than not helpless, as most of the evidence will consist of the words of the harasser vis-à-vis the victim. And much of such leery harassment invariably takes place in private (FH v. Mc Dougall [2008] SCC 53).

In our judicial system much deference is given to the ability of judges to scrutinise carefully the evidence before them and eventually arrive at a factual finding, but subject to the long-standing rule of the litigant establishing his case on the standard of balance of probabilities. The learned judge who is in an advantageous position, and has the audio visual superiority, will be arriving at a decision based on the facts adduced before him. In short, there is no hard and fast rule that in a tort of sexual harassment case there must be corroboration, though like in any civil case the rule of evidence must be stringently upheld.”

(c) **Weight of Evidence**

- Investigators have the responsibility to collect all evidence and testimonies (from victims, witnesses, and the alleged perpetrator), as thoroughly as possible. This would involve validating information, and cross-checking testimonies, to reduce inconsistencies and to establish a consistent chain of events. Note: Section 114(g) of the Evidence Act 1960 on adverse inference may be invoked in the absence of relevant witness not being called or has left the company or not willing to testify.
- In **Chew Chor Eng v. Golden Palm Tree Resort & Spa Sdn Bhd [2017] 1 ILR 140**, it was held that:-

*“[35] The respondent submits in para. 35 that Ellie had taken steps to communicate the two sexual harassment incidents that occurred between her and the claimant to her colleague COW4 and to her superior COW5 in addition to the written report made by the complainant. The respondent also submitted that the company had taken all the necessary steps to secure Ellie's attendance in respect of this case where Form 0 (summons to appear) was unsuccessfully served on the complainant's last known address. The respondent called both COW4 & COW5 to testify on the sexual harassment incidents on the two even dates. The court finds no adverse inference drawn against the company in not making the complainant available in court. However, the **claimant is now deprived of the opportunity to cross-examine the complainant on the charges of sexual harassment** referred against the claimant. In this respect the court finds the submission of the respondent's counsel in highlighting the principle of corroboration in the case of Jennico Associates (supra) that "an allegation of sexual harassment must be adequately corroborated and to rely on the uncorroborated evidence of the complainant alone will be very dangerous" is without any merits and therefore inapplicable to the factual matrix and circumstances of this case. The **evidence of the complainant Ellie is paramount in this charge of sexual harassment against the claimant.***

*[36] The court is inclined to agree with the submissions of the claimant that the **company has failed to discharge its burden of proving the charge of sexual harassment on the grounds that the complainant (Ellie) did not lodge a police report and she did not give evidence in court.** The court having considered the evidence of COW4 & 5 and in the absence of Ellie's evidence, finds Charge (a) not proven against the claimant on the balance of probabilities.”*

(d) **Delay in Reporting**

- Ashgar Ali in his book “Dismissal from Employment and the Remedies”, Lexis Nexis, 2007 observed that: “*Sometimes there is also a delay in reporting, as in cases where the complainant only plucks up the courage to come forward and report after seeing another colleague filing such a complaint*”.
- In **Abdul Halim Mohd Salleh v. Cagamas Berhad [2021] 4 ILR 284**, the Industrial Court also pointed out that the victims kept silent until a senior employee rallied them, gathered evidence, and gave them enough courage to speak up and report to the company the torment they had been put through by the claimant all these years.
- The claimant, in **Cagamas case (supra)**, pointed out that many of the complainants remained silent and did not lodge reports until years later and the fact that the complainants did not make any earlier reports to the management of the company was inconsistent with the allegation that the sexual harassment did take place. However, the Industrial Court observed that, “*in cases of sexual harassment, silence or passivity does not necessarily mean acquiescence*” and that often “*the victim would remain silent hoping to weather the storm, until they could not tolerate any further*”.
- Get explanation from victim – valid reason. In **Akmad Hidayat Zamhari v BHIC Marine Technology Academy Sdn Bhd [2019] 2 LNS 0480**, the victim was the subordinate to the claimant and after she was afraid of repercussion/retaliation to report – so suffer in silence. The Industrial Court then referred the dicta in **Malaysian Airline System Berhad v. Wan Sa'adi Wan Mustafa [2008] 4 ILR 72**, which held as follows:-

“Logic dictates that no reasonable woman will fabricate such accusation of sexual harassment against another man unless she is mentally ill or in all likelihood she has an axe to grind against him. As a reasonable human being, she will be able to foresee that her false allegations will cause the victim to suffer untold hardship and in all probability be apprehended by the police and be charged in court.”

- Social stigma or fear that the victim will not be believed can also delay reporting. In **Harold Fernandez Sebastian Wilfred Fernandez v Syarikat Pendidikan Staffield Berhad [2011] 2 LNS 1102**, the claimant, who was a resident tutor in the college, which is a residential college, was accused of committing sexual offences on 2 of his students. In cases of this sort it is often one person’s word against another i.e., the complainant/s as against the claimant’s. Hence the credibility of the alleged offender and the alleged victim/s is of utmost importance. Hence, it was held that:-

“It has also to be borne in mind that many cases of sexual harassment may go unreported with the victim suffering in silence, in

view of the social stigma and fears that the complainant may not be believed or taken seriously, and also the fear of reprisal ie, repercussions. Sometimes there is also a delay in reporting, as in cases where the complainant only plucks up the courage to come forward and report after seeing another colleague filing such a complaint.”

- When it happens, sometimes others will speak up. The case of **Berjaya Redang Beach Resort Sdn. Bhd. v. R. Samikannoo Rajoo [2004] 1 ILR 965** is illustrative:-

*“The victim who was an employee of the hotel brought a complaint of sexual harassment against the Claimant who was her supervisor who, as stated in the award: "liked to grab her hands and buttocks." This happened when she was working one shift with him. He had done this many times. The Industrial Court went on to say: "On 30 May 1998 she wrote a complaint to COW1 the Human Resources Manager (COB2). In her report COB2 she had said the incidents took place in April. She explained why there was a delay in making the report to the Human Resources Manager. It was because she was afraid that people would not believe her story and think that she only made it up. But when her friend COW3 made a report of having experienced the same thing with the Claimant she decided to lodge the report.... **There is no reason to believe that this witness had made up these serious allegations against the Claimant. Her other colleague Johana Abd. Aziz (COW5) had a similar encounter with the Claimant.** COW5 had said in her evidence that the Claimant had touched her hand while she was handing him a bunch of keys. She also reported this incident to the Human Resources Manager COW1 (COB3). The Industrial Court held that although the Claimant was not charged for outraging the modesty of COW5 as in the case of COW6, her evidence is relevant in this case since the Claimant had denied he ever committed the misconduct as alleged by the hotel.”*

Note: I.O must record explanation for delay in reporting.

(e) **Defence of Denial / Apology by the Accused Employee**

- “Superior-subordinate” relationship. See **Cagamas case** (*supra*), where it was held that:-

*“The claimant's conduct in instructing COW14 to leave work early and coercing her to have social drinks with her failing which he will nit-pick on her work/performance amounted to psychological sexual harassment. It is akin to **an emotional blackmail on COW14, which she suffered in silence for almost three years** until COW4 offered*

her the necessary assistance, guidance and the courage to finally lodge the complaint against the claimant. The claimant's conduct was unbecoming of a person in such a high position in the company.”

E. NOTIFICATION PROCESS

27. Regardless of how the investigation is concluded, the employer should promptly notify both the complainant and the accused of the result. When an act of misconduct **comes to the knowledge of the company**, investigation or inquiry or disciplinary action should be undertaken **without delay**. Any undue delay or failure to take prompt action may amount to condonation.
28. If the complaint has been upheld in a timely and fair manner, and appropriate action has been taken (disciplinary or other), this may satisfy the complainant and dissuade the complainant from complaining to the Labour Department. Even if no disciplinary action has been taken, informing the complainant of the outcome will at least demonstrate the employer's attention to the matter. Alternatively, if it is determined that the allegation is not well-founded, it may be necessary to consider what steps need to be taken to maintain or restore the accused's credibility.

F. DISCIPLINARY PROCESS (commonly practiced by Malaysian employers)

29. Show Cause & Suspension Letter

- Once all the above requirements have been covered and/or considered and there is sufficient evidence against the alleged offender employee in accordance with legal / disciplinary provisions of the company, a Show Cause Letter and if necessary together with Suspension Letter should be issued to the said employee.
- A Show Cause letter is an internal formal document issued to the alleged offender employee. It sets out details of an alleged offence and gives the receiving party the chance to explain itself or otherwise face some further consequences.
- A dateline would be given for the said employee to reply preferably within 5 to 7 working days, subject to the company's policy on disciplinary procedures. The alleged offender employee should also understand the implications for failing to respond.
- In **Tiong Ee Ping v. Universiti Tunku Abdul Rahman [2019] 2 LNS 0883**, one of the charges leveled against the claimant including the act of harassment towards her colleague and yet she failed to respond to the show cause letter issued to her and the Court held that:-

“[60] The Claimant also did not reply to the Show Cause letter and the letter of charge. Neither did she attend the Domestic Inquiry

hearing on 23rd January 2018. She was given ample opportunity to present her case and challenge the Company's witnesses but yet she failed to do so. That does not mean she is not able to present her case before this Court as the hearing before an Industrial Court would be a de novo hearing (WONG YUEN HOCK v. SYARIKAT HONG LEONG ASSURANCE SDN BHD [1997] 3 ILR 154; [1995] 2 MLJ 753).

[61] The refusal of the Claimant to reply to the show cause letter dated 10th January 2018, the letter of charge dated 17th January 2018 and also her refusal to attend the Domestic Inquiry hearing on 23rd January 2018 in itself tantamount to yet another act of insubordination.”

30. **Domestic Inquiry (DI)**

- The company must consider the alleged offender employee's reply to the Show Cause Letter.

Note: whether his reply is consistent with his earlier recorded statement and statements of victim, witnesses and evidence gathered. If not satisfied or reply inconsistent with evidence then hold a Domestic Inquiry.

31. **Conducting a Domestic Inquiry (DI)**

- A domestic inquiry is an investigative internal hearing held by an employer to ascertain whether the said employee is guilty of misconduct. The purpose of a domestic inquiry is to find out the truth of the charges of sexual harassment made against the employee.
- In conducting a domestic inquiry, principles of natural justice need to be observed, to secure justice and prevent miscarriage of justice – (1) Rule against bias and (2) Right to be heard.
- Guideline in conducting a Domestic Inquiry (DI):-
 - (i) When an Inquiry is to be held it should be instituted as early as practicable.
 - (ii) To convene a Domestic Inquiry, Panel of Domestic Inquiry would be duly appointed. The panel (*odd number of persons*) must consist of other employees who are neither directly nor indirectly connected to the charges. This is to prevent the element of bias. The Chairperson of the Domestic Inquiry should be an employee who is of a higher rank or seniority than the accused employee, whereas the other 2 panel members are those of equal or higher ranking (and preferably should be gender and diverse group). MEF, as an independent body, may be

appointed to sit as the Panel of Domestic Inquiry. However, in this situation, if the accused employee files an unfair dismissal claim to the Industrial Court, MEF cannot represent the company to defend the company's case as the company will be calling MEF to be the company's witness to testify on the Domestic Inquiry proceedings.

- (iii) The company will inform the employee concerned of the charges against him/her, the time, date and location of such an Inquiry and request him to be present to represent his own case. The charges will be given to the employee via a Notice of Domestic Inquiry.
- (iv) The accused employee can be accompanied by a fellow employee or be accompanied by his Trade Union Representative at the Domestic Inquiry.
- (v) The parties who attend the Domestic Inquiry are as follows:
 - (a) Panel of Domestic Inquiry;
 - (b) Prosecuting Officer (PO) (who the Court advised to be other than the IO to prevent biasness);
 - (c) Accused Employee(s);
 - (d) Employee's Representative, if any;
 - (e) Company's Witnesses / Victim(s) / IO;
 - (f) Employee's Witnesses;
 - (g) Minutes Taker.
- (vi) During the course of the Domestic Inquiry, both parties should be able to call on witnesses to testify and provide evidence to support their respective arguments. To ensure objectivity during the Domestic Inquiry, the accused employee should be allowed full opportunity to present his/her case.
- (vii) Verbatim Notes/Minutes in the form of questions and answers to be recorded or minuted to show that Domestic Inquiry was proper and orderly fashion.
- (viii) Upon completion of the Domestic Inquiry, the Panel of Domestic Inquiry would prepare a report on their findings as to whether the Accused employee is guilty or not of the sexual harassment charge(s) imposed and the said report would be given to the management for decision i.e. punishment.

32. **Punishment**

- An employee who has been found guilty having committed an act of misconduct, including violence, harassment or sexual harassment, would be subject to appropriate punishment by the company. The nature of punishment should be stipulated by the company's policy and based on the facts, circumstances and seriousness of the misconduct committed.
- Meeting out punishment to an employee should be done with careful thought and consideration taking into account the facts circumstances and effect to the victim and the company's image. No punishment imposed should be made

arbitrarily, unreasonably, excessively or discriminatory in nature, instead, it must be proportionate with the gravity of misconduct involved.

- The punishment that is to be meted out should be commensurate with the severity of the offence committed.
- The legal provision under the Malaysia Law of Employment with regard to the punishment to the offender for a misconduct case, states as follows:-

“14. Termination of contract for special reasons

(1) An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, after due inquiry --

- (a) dismiss without notice the employee;*
- (b) downgrade the employee; or*
- (c) impose any other lesser punishment as he deems just and fit, and where a punishment of suspension without wages is imposed, it shall not exceed a period of two weeks.”³³*

- Whereas, in sexual harassment case, the law states that:-

“Where the employer conducts an inquiry into a complaint of sexual harassment received under subsection 81B(1) and the employer is satisfied that sexual harassment is proven, the employer shall:-

(a) in the case where the person against whom the complaint of sexual harassment is made is an employee, take disciplinary action which may include the following:

- (i) dismissing the employee without notice;*
- (ii) downgrading the employee; or*
- (iii) imposing any other lesser punishment as he deems just and fit, and where the punishment of suspension without wages is imposed, it shall not exceed a period of two weeks; and*
- (iv) in the case where the person against whom the complaint of sexual harassment is made is a person other than an employee, recommend that the person be brought before an appropriate disciplinary authority to which the person is subject to.”³⁴*

³³ Employment Act 1955 (Amendment 2022), Section 14(1)

³⁴ Employment Act 1955 (Amendment 2022), Section 81C

33. **Appeal**

- Normally, the company, in its Disciplinary Procedures provide for a right to appeal to a higher authority in the company. In such a case, the company is to consider and decide the appeal made by the accused employee, if any.
- In deciding an appeal, the Appeal Board / Board of Directors, may decide whether to:
 - (i) Maintain decision and punishment;
 - (ii) Impose lesser punishment; or
 - (iii) Reverse decision and reinstate.
- Employee should adhere to the company's policy in filing a complaint. However, the employee is free to file a claim at Labour or Civil Court if they dissatisfied with the decision of the company.

G. VIOLENCE, HARASSMENT AND SEXUAL HARASSMENT AGAINST WOMEN MIGRANT WORKERS IN THE WORLD OF WORK

34. Although population growth has remained relatively high in Malaysia, its rapidly expanding economy, increasing urbanization, highly educated population and relatively low labour force participation, significantly among women continue to create major demand for migrant workers to perform low-paid jobs. Official data from the Immigration Department, Ministry of Home Affairs, reported that 1.98 million regular migrant workers were employed in Malaysia by September 2019. It constitutes about 20% of the country's labour force³⁵. However, a World Bank report estimates that 2.96 to 3.26 million migrant workers, including 1.23 to 1.46 million migrant workers in irregular situations, were residing in Malaysia in 2017³⁶. Approximately one-third of workers in the services sector and 25% in agriculture are migrants³⁷, where the majority are women migrant workers. Despite their ubiquity within the labour market, the role migrant workers play in filling the demand for low-paid and largely manual labour has not been readily accepted³⁸. At present, according to the Department of Statistics Malaysia, there were 2.1 million migrant workers in various sectors of the economy in June 2022, up from 1.9 million in 2021.
35. To date, women migrant workers continue to face multiple and intersecting forms of exploitation, discrimination, violence, harassment and sexual harassment in the

³⁵ United Nations Malaysia, 2019

³⁶ United Nations Malaysia, 2019

³⁷ United Nations Malaysia, 2019

³⁸ TRIANGLE in ASEAN Quarterly Briefing Note Malaysia, July – December 2022

world of work not only as women and as migrants, but also on the basis of numerous interconnected characteristics, including age, income, race, ethnicity, nationality, religion, marital and family status, sexual orientation and gender identity, disability, health status, HIV status, pregnancy, place of residence and economic and social situation.³⁹

36. Disadvantaged by their gender, class and status, women migrant workers, including domestic workers, are extremely vulnerable to exploitation, violence, harassment and sexual harassment in the world of work, as well as forced labour⁴⁰ issues.
37. The *Nirmala Bonat* case⁴¹ will be remembered as one of that raised a red flag on the plight of migrant domestic workers in Malaysia, who suffered in silence at the hands of their abusive employers. On top of the criminal convictions against the former employers, she also filed a civil suit in 2010, seeking for compensation against her employers, both husband and wife over the abuse she suffered and the High Court awarded her almost RM130,000.00 in 2014. In 2015, the Court of Appeal had increased the damages to RM350,000.00 following an appeal made by Nirmala against the quantum set by the High Court.
38. The parameters for a conclusive investigation on violence, harassment and sexual harassment among women migrant workers, should dwell upon the following:-
 - Whether women migrant workers have access to decent work, living wage, equal pay for work of equal value, right to organize and bargain collectively, permanent jobs and paid leave.
 - Strengthening the quality, accessibility and affordability of public services which are inclusive of the marginalized female foreign workers.
39. To protect the rights of migrant workers, particularly women migrant workers, there need to be a consistent and comprehensive monitoring system and labour inspection measures (amongst others, shall involve the employers/employees/union representatives, Government agencies such as Labour Department) to ensure domestic compliance with international obligations, transparent complaint mechanisms for those who seek remediation from economic exploitation, and protection from retaliation and punishment throughout the process seeking for justice.

³⁹ United Nations Malaysia, 2019

⁴⁰ <https://www.reuters.com/world/asia-pacific/malaysia-probes-cases-migrant-workers-left-jobless-without-passports-2023-04-20/>

⁴¹ <https://www.nst.com.my/news/crime-courts/2017/08/274651/appeal-dismissed-housewife-who-abused-nirmala-bonat>

40. Sexual harassment is one of the most offensive and demeaning experiences a woman migrant worker can suffer. For the victims, it often produces feelings of revulsion, disgust, anger and helplessness. It damages the victim's health and results in emotional and physical stress and other stress-related illnesses. Victims may experience severe emotional trauma, anxiety, nervousness, depression and feelings of low self-esteem. A strong group support, especially from the NGOs is needed to provide the necessary assistance to the victims.

H. CONCLUSION

41. There is no place for violence, harassment, including sexual harassment in the world of work for everyone regardless of status. These acts go against the most fundamental principles and core values of every organization and it is our joint responsibility to create safe, open, respectful and inclusive working environment.
42. Preliminary advice may be sought from the **Malaysian Employers Federation (MEF)** to ensure that the investigation is done lawfully, especially in respect of collection of evidence during the process of investigation before issuing notice to show cause, and in the process of taking disciplinary action against the offender.

Common Examples of Sexual Harassment

(i)	Inappropriate to victim i.e. grab hand	Mat Salleh Yusof v Fujikura Federal Cables Sdn Bhd [2013] 2 LNS 1884	The claimant was alleged to have squeeze the victim's hand when she handed to him the telephone receiver and it was <u>unacceptable by the victim</u> when she scolded the claimant for his action.
(ii)	Touching	Mohamed Rosli Hashim v Prasarana Malaysia Bhd [2020] 2 LNS 0891	The claimant was charged for touching the complainant's cheek <u>without her consent</u> . The Court found that his body movement as seen from the CCTV recording was consistent with moving towards COW-1 (the complainant) to touch her cheek rather than shoving an insect away from her face.
(iii)	Touching on pretext of helping	Hairi Abu Nasir v AEON Co. (M) Bhd [2019] 2 LNS 1791	The claimant used the reasons of helping his female colleagues to touch their body parts which were <u>unacceptable by the victims</u> .
(iv)	Use of crude, vulgar and abusive language	Harry Wong Wei Chen v Petroleum Nasional Berhad (PETRONAS) [2021] 1 ILR 341	The charges, among others, the claimant had uttered <u>uncalled for remarks</u> and showed his middle finger to the victim.
(v)	Endearment or buying of gift	Loganathan Maniam v Murphy Sarawak Oil Co Ltd [2020] 2 ILR 275	The claimant was accused of showering the victim with <u>unwanted gifts and attention</u> which had offended her and made her uncomfortable.

(vi)	Acceding to request or in return of favour	Saravanan Muthiah v Kolej Universiti Tunku Abdul Rahman [2017] 4 ILR 524	The claimant, as a lecturer and an examiner had caught the victim / student of cheating during the exam and offered the said student to settle the 'cheating incident' <u>in return for sexual favours</u> by uttering statements with sexual overtones.
(vii)	Posture, mannerism and behaviour	Mohammad Fadzli Adnan v Seri Pacific Hotel Kuala Lumpur [2019] 2 LNS 1161	The claimant had committed acts of <u>indecent behaviours and/or unwanted conduct</u> of sexual nature i.e. in the presence of and/or facing towards one of the victims, he had unbuckled his belt, unzipped his pants and tucked in his shirt which made the victim feel offended, humiliated and/or was disrespectful of her modesty and/or morality.

PRIVATE & CONFIDENTIAL
INVESTIGATION REPORT

Name (alleged offender) : _____
Job Title : _____
Department/Work Location: _____
Contact Number : _____

Summary of the complaint(s) received:

(Describe multiple incidents separately, including times, dates, locations, and people present. Use additional pages if needed)

Gathering Evidence:

1. Witness(es) Interviewed :

2. Document(s) :

Outcome of Investigation:

.....

(Signature)

Name:

Date:



COMPANY POLICY TEMPLATE IN ELIMINATING DISCRIMINATION IN THE WORLD OF WORK

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COMPANY POLICY TEMPLATE IN ELIMINATING DISCRIMINATION IN THE WORLD OF WORK

POLICY STATEMENT

Discrimination is any negative action, attitude or polarisation directed towards a person or group/s of people because of their individual characteristics or preferences of life. **[Name of Company]** strongly believes that every person has the right to life, survive, compete, earn, equal treatment and equal opportunity—in everything they do. Therefore, promoting equality by eliminating various forms of discrimination is essential.

[Name of Company] aims to maintain a world of work that is safe, free from all forms of discrimination and to promote a professional, and productive work environment in which all individuals are treated with dignity and respect. Each individual has the right to work in a professional environment that promotes equal employment opportunities, equal treatment, free of discrimination-based violence or harassment.

[Name of Company] will make every reasonable effort to ensure that all concerned are familiar with this policy and aware that any complaint in violation of such policy will be investigated and resolved appropriately. The Company takes allegations of discrimination seriously and shall respond rapidly, sensitively and effectively to any incidents of discrimination. Further, the Company will not tolerate discrimination-based violence or harassment. **[Name of Company]** will impose such corrective action as is necessary, establish discrimination prevention programmes, including disciplinary action where appropriate. The Company shall not tolerate any form of discrimination of individuals. The Company's zero-tolerance position on discrimination applies to all aspects of employment.

This policy on eliminating discrimination in the world of work details how **[Name of Company]** prevents, detects, responds to all forms of discrimination, including discrimination-based violence and harassment. The policy is not designed or intended to limit the Company's authority to discipline or to take remedial action for workplace conduct which the Company deems unacceptable, regardless of whether that conduct satisfies the definitions of discrimination.

For the purposes of this policy, “**world of work**” also includes job-related settings where the employee attends or participates as part of their job, such events or social events, celebrations and any other locations or settings where **[Name of Company]** is conducting business.

1. INTRODUCTION

Discrimination in the world of work has been a growing concern at the national and international levels. Article 1 of the International Labour Organization (ILO) Convention No. 111, describes discrimination at the workplace as any “distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”

Discrimination occurs when a person is treated less favourably than others because of characteristics that are not related to the person’s competencies or the inherent requirements of the job.

In Malaysia, discrimination is contrary to the norms and values of our society, where **Article 8 (1) of the Federal Constitution**, provides that all persons are equal before the law and entitled to the equal protection of the law.

Article 8(2) of the Federal Constitution also clearly states that “there shall be no discrimination against citizens on the grounds only of religion, race, descent, place of birth or gender...”.

In essence, **Article 8 of the Federal Constitution** prohibits discrimination in any form and in every area of human relationship.

In line with **Article 8(2) of the Federal Constitution**, Malaysia also has other laws to provide protection against discrimination at workplace, such as the Employment Act 1955 and the Industrial Relations Act 1967.

2. MALAYSIAN LAWS ON DISCRIMINATION IN THE WORLD OF WORK

2.1 EMPLOYMENT ACT 1955

With effect from 1.1.2023, under the **Employment Act 1955**, the Director General of Labour may inquire into and decide on any dispute between an employee and his employer in respect of **any matter** relating to discrimination in employment.

Section 69F of the Employment Act 1955 reads as follows:

“Discrimination in employment

69F. (1) The Director General may inquire into and decide any dispute between an employee and his employer in respect of any matter relating to discrimination in employment, and the Director General may, pursuant to such decision, make an order.

(2) An employer who fails to comply with any order of the Director General issued under subsection (1) commits an offence and shall, on conviction,

be liable to a fine not exceeding fifty thousand ringgit; and shall also, in the case of a continuing offence, be liable to a daily fine not exceeding one thousand ringgit for each day the offence continues after conviction.”

The Employment Act 1955 is clear in protecting pregnant female employees from being terminated.

Section 37(4) of the **Employment Act 1955** states:

“Any employer who terminates the service of a female employee during the period in which she is entitled to maternity leave commits an offence.

Provided that for the purposes of this section, such termination shall not include termination on the ground of closure of the employer’s business.”

On the other hand, **Section 41A** of the **Employment Act 1955** restricts termination of a female employee who is pregnant or is suffering from an illness arising out of a pregnancy.

“Restriction on termination of pregnant female employee

41A (1) *Where a female employee is pregnant or is suffering from an illness arising out of her pregnancy, it shall be an offence for her employer to terminate her services or give her notice of termination of service, except on the grounds of—*

(a) willful breach of a condition of the contract of service under subsection 13(2);

(b) misconduct under subsection 14(1); or

(c) closure of the employer’s business.

(2) Where the service of a female employee under subsection (1) is terminated, the burden of proving that such termination is not on the ground of her pregnancy or on the ground of illness arising out of her pregnancy, shall rest on the employer.”

2.2 INDUSTRIAL RELATIONS ACT 1967

The **Industrial Relations Act 1967** aims to promote and maintain industrial harmony and provide regulation of the relations between employers and workmen (men and women) and their trade unions. Employers are prohibited from committing acts of discrimination against employees.

Section 5 (1) (c) Industrial Relations Act 1967 provides that employers shall not discriminate against any person regarding employment, promotion, any condition of employment or working conditions on the ground that he (man and woman) is or is not a member or officer of a trade union.

3. DEFINITION

Discrimination is unjustly or unfairly denying equal treatment or opportunity to individuals or groups with respect to the terms, conditions, or privileges of employment based on any of the characteristics listed below. This unfair denial of equal treatment or opportunity can include but is not limited to hiring, firing, promoting, disciplining, scheduling, training, or deciding how to compensate an individual or group.

Discrimination occurs when a person is treated less favourably than others because of characteristics that are not related to the person's competencies or the inherent requirements of the job. Treating a person less favourable can include harassing or bullying a person.

Discrimination and/or intersectional discrimination arises where unfair treatment is predicated on any of the following actual or perceived characteristics:

- Race, colour, ethnic or national origin;
- Age;
- Religion;
- Sex, sexual orientation, pregnancy or related medical conditions;
- Gender identity, family status, marital status;
- Nationality, citizenship, ancestry;
- Political opinion;
- Social origin;
- Disability.

Intersectional discrimination happens when two or multiple grounds operate simultaneously and interact in an inseparable manner, producing distinct and specific forms of discrimination.

The above is not an exhaustive list as it is not possible to list all the circumstances that may constitute discrimination in violation of this policy, but the above are some instances that may be considered as discrimination. However, any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination.

Where the context so requires, the use of the masculine pronoun shall be deemed to include usage of the feminine and/or neuter pronoun where appropriate.

3.1 DISCRIMINATION MAY BE DIRECT OR INDIRECT

Direct discrimination is when an individual is treated unfairly because of a characteristic the individual has, or is assumed to have such as race, age, gender, etc.

For example, making offensive 'jokes' about another ones' racial or ethnic background, gender, sexuality, social origin, age, marital status or disability, etc. using selection processes based on irrelevant attributes such as age, race or disability rather than on skills really needed for the job. A woman with the same experience and qualifications is paid less than a man doing the job of the same value.

Indirect discrimination occurs when company's policies, procedures or rules which apply to everyone and appear to be neutral but affect people with certain characteristics and they are put at a disadvantage when compared with those who do not share it.

For example, posting an advertisement that fixes the height or gender or preferential language that is not an inherent requirement of the job and indirectly disadvantages a certain group or individuals. On its surface, the requirement appears to be workable to all groups but looking at the effect, it is discriminating against certain people.

Discrimination- based violence and harassment means a course of inappropriate comments or action against an individual in a workplace that is known to be unwelcomed. This would include, without limitation, unwelcomed remarks or gestures or conduct that may be detrimental to an individual's physical, or psychological dignity, or racial, or workplace bullying or verbal harassment.

4. SCOPE AND APPLICATION

This policy applies to:

- All employees regardless of job position, including full-time, part-time, casual or temporary staff.
- All individuals who attend at the company workplace, including but not limited to stakeholders, suppliers, vendors, external contractors, consultants, partners, visitors, and other parties engaged by the company.
- All contract, commission workers, apprentices and work experience internships.
- All aspects of employment practices, recruitment and selection and promotions; conditions and benefits; access to training and employment opportunities; remuneration for work of equal value; task allocation; shifts; hours; leave arrangements; workload; equipment and transport; at work-related functions (including social functions and celebrations); while on trips and attending conferences- whenever and wherever staff may be as a result of their duties.
- Staff treatment of other staff, of clients, and other members of the public encountered in the course of their duties.
- All means of communication, including email and other electronic communication channels.

5. MANAGEMENT'S ROLES AND RESPONSIBILITIES

It is the responsibility of the Management and the Human Resources Department to adapt this policy to the country's legal environment and to ensure that this policy is fully enforced.

These steps include taking the following measures:

- To encourage diversity and inclusivity by creating an inclusive world of work that values and respects differences.

- To provide opportunities for employees to share their experiences, ideas and perspectives.
- To encourage open communication and foster a culture of respect and equality.
- To encourage gender equality by addressing and challenging gender stereotypes.
- To create opportunities for women and members of less represented/ more vulnerable groups to advance in leadership positions and support their career development.
- To promote work life balance for all.
- To tackle the gender pay gap.
- To tackle occupational segregation.
- To recognise and address unconscious biases that can contribute to a culture that enables violence and harassment.
- To provide training and education on diversity, inclusion, and unconscious bias for all employees.
- To promote empathy and understanding among employees to create a world of work that values differences and respects all employees.
- To ensure all employees are aware and familiar of the policy.
- To post the policy in prominent place(s) at the workplace and/or ensure employees have access to the policy on the Company website.
- To ensure that the policy is communicated and integrated in company procurement forms to external contractors, customers and other persons who attend the company workplace.
- To establish a process for reporting and responding to incidents of workplace discrimination.
- To ensure process for reporting and responding to incidents of workplace discrimination is properly communicated, maintained and followed.
- To ensure the policy is reviewed at least on an annual basis.

6. EMPLOYEES' RIGHTS AND RESPONSIBILITIES

All employees are entitled to:

- Recruitment and selection decisions based on merit and not affected by irrelevant personal characteristics.
- Work free from discrimination.
- The right to raise issues or to make an enquiry or complaint in a reasonable and respectful manner without being victimized.
- Remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to life, health or safety due to discrimination based-violence and harassment, without suffering retaliation or other undue consequences, and the duty to inform management;
- Reasonable flexibility in working arrangements, especially where needed to accommodate their pregnancy and health conditions, immediate family responsibilities, disability, religious beliefs or culture.

All employees must:

- Observe the regulations in this policy.
- Avoid gossip and respect the confidentiality of complaint resolution procedures.
- Treat all with dignity, courtesy and respect.
- Refrain from any act of discrimination towards other individuals.

The above is not an exhaustive list as it is not possible to list all the circumstances.

7. REPORTING DISCRIMINATION

It should be considered as everyone's responsibility to immediately raise a concern in conformity with this policy as soon as the individual is aware of an unacceptable behaviour.

[Name of Company] expects any individual to speak up any time he or she witness a discriminatory behaviour. If you are aware of behaviour that you believe or suspects violates this policy, please take the following actions immediately:

- Speak with your supervisor/ line manager or to contact Human Resource or Legal and Compliance Executive.
- Fill up the complaint form as provided at Appendix 1.
- Once informed, supervisor/ line manager or Human Resource or Legal and Compliance Executive is required to promptly report within 24 hours any violation or suspected violation of this policy to the Human Resource or Legal and Compliance Manager.
- If the person accused of discrimination is your immediate supervisor or line manager, you may submit your complaint directly to the Human Resource or Legal and Compliance Executive/Manager to handle the complaint.
- If the above said option seems difficult or not appropriate given the sensitivity of the situation, the employee should contact the General Manager or submit the complaint via the Company's whistle blower policy or company's complaint/grievance channel to bring up the complaint.
- You are not obliged under this procedure to complain directly to the offending individual.

8. INVESTIGATING THE COMPLAINT

The Human Resource or Legal and Compliance Department will thoroughly investigate all reported suspected violations of this policy. For each reported violation, a separate investigation officer/team will be formed. The investigating officer /team cannot include any individual who has/likely to has conflict of interest or would otherwise be unable to approach the matter with fairness and independence.

When a designated person receives a complaint of discrimination, he/she will:

- Immediately record the dates, times and facts of the incident(s).
- Ascertain the views of the victim as to what outcome he/she wants.
- Ensure that the victim understands the Company's procedures for dealing with the complaint.

- Discuss and agree the next steps: either informal or formal complaint
- Keep a record of all discussions.
- Respect the choice of the victim.
- Ensure that the victim knows that he/she can lodge the complaint outside of the Company pursuant to Section 69F of Employment Act 1955.

8.1 INFORMAL COMPLAINTS MECHANISM

If the victim wishes to deal with the matter informally, the designated person will facilitate a discussion between both parties to achieve an informal solution which is acceptable to the complainant. The victim may seek the assistance of a trade union representative to facilitate an amicable solution if required.

8.2 FORMAL COMPLAINTS MECHANISM

If the complainant wishes to make a formal complaint or if the informal complaint mechanism has not led to a satisfactory outcome for the complainant, the formal complaint mechanism should be used to resolve the matter.

The designated person who initially received the complaint will refer the matter to the human resource or legal and compliance manager to initiate a formal investigation.

Raising a concern in good faith will not expose the person who raised it to retaliation. Any concern reported in *bad faith* may result in disciplinary action(s) as per the Company's Disciplinary Policy.

8.3 INVESTIGATION PROCEDURE OF A FORMAL COMPLAINT

- i) If informal efforts are not appropriate or successful, the investigating officer/team will investigate to determine whether discrimination has occurred.
- ii) During the investigation, the investigating officer/team may inform the individual alleged to have engaged in discrimination of the complaint and may give the individual the opportunity to respond to the allegations and to submit names of individuals who the employee believes have information on the relevant investigation.
- iii) The investigation may include meeting with the complainant, the accused and other individuals who may have relevant information. Relevant documents may also be reviewed. The investigation will be conducted promptly, thoroughly, impartially and in as confidential a manner as is possible consistent with proper investigation of the complaint. The interview with parties will be conducted separately.
- iv) At the conclusion of the investigation, the investigating officer/team shall decide whether discrimination occurred, recommendations if any, and produce a report.

- v) If the investigation establishes that discrimination has occurred, the company may take prompt and appropriate action. This may include corrective action designed to end and to remedy the discrimination and to prevent it from reoccurring. Action may include imposition of discipline on the discriminator, ranging from reprimand to termination if that person is an employee.
- vi) If the discriminator is an employee of a vendor or any other employing entity, the company may inform the employing entity of the investigations and findings, and request further disciplinary actions be taken by that entity. The company will take all possible steps to ensure that the employee is no longer subject to the discrimination.
- vii) **[Name of Company]** shall inform the complainant or the accused of the outcome of the investigation and, in general terms, of any measures taken to correct the discrimination.
- viii) If the investigation establishes that discrimination has occurred, the company will ensure that the discrimination has not resumed, and that neither the complainant nor any other individual has been subjected to retaliation for having complained of the discrimination.
- ix) If the investigation establishes that there was no discrimination, the company may inform the complainant or the accused the outcome of the investigation and that the company will not proceed with the matter any further action.

**[Note]

Process of Investigating the Complaint is attached as Appendix 2

Process of Formal Complaints Mechanism is attached as Appendix 3

9. FALSE COMPLAINTS OR FALSE INFORMATION REGARDING DISCRIMINATION IS PROHIBITED

It is a violation of this policy for anyone to make a false accusation of discrimination which is found untrue and or otherwise unsupported by facts after investigations. Such complaints which are found to be frivolous, vexatious or scandalous may be investigated and may lead the Company to institute disciplinary process against the complainant.

10. SANCTIONS AND DISCIPLINARY MEASURES

All employees are covered and subjected to this policy. Any employee who violates this policy shall be disciplined and/or subjected to corrective action.

Any employee found to have committed an act of discrimination at the workplace may be subject to punishment at the company's discretion, which may include up to dismissal after the company's disciplinary processes.

The type of punishments may include amongst others the following:

- Dismissal without notice.
- Downgrading/Demotion of the employee.
- Impose any other lesser punishment which company deems just and fit, and where the punishment of suspension without wages is imposed, shall not exceed a period of two weeks (Section 14(1)(c) Employment Act 1955).
- Verbal or written warning.

The nature of the punishment will depend on the gravity and extent of the discriminative action. Suitable deterrent sanctions will be applied to ensure that incidents of discrimination are not treated as trivial.

11. RETALIATION

[Name of Company] protects the rights, prohibits retaliation and shall not discriminate against any individual because such individual has opposed any act made unlawful or because such individual made a complaint, testify, assisted or participated in any manner in an investigation, proceeding or hearing under this policy.

Acts of retaliation occurs when any adverse action is taken against an employee as a result of his or her having raised a concern about a discriminatory practice. Such acts of retaliation are taken to punish the employee for raising a concern or to discourage future attempts to raise concerns.

Acts of retaliation may include:

- Termination
- Demotion
- Withholding of promotion or other financial incentives
- Failure to invite an employee to a meeting;
- Refusal to authorize a training or travel;
- Harassment, bullying, or violence; or-
- Discrimination

12. CONFIDENTIALITY

The company, the investigating officer /team and any parties involved in the complaint process must keep all information confidential and not disclose it to others or discuss the complaint with anyone.

The complainant and those that stand accused of a complaint are prohibited from discussing the matter with anyone including other employees.

Discussing the complaint before and after it has been resolved is prohibited.

13. AMENDMENTS TO THE POLICY

[Name of Company] reserves the right at its discretion to review or amend this policy from time to time, as and when it is necessary, in line with any new development in legislation or practise and shall notify all employees when such amendments have been made.

[Name of Company] should consult with employees' association or trade unions or employees when this policy is reviewed or updated.

14. EMPLOYEE ACKNOWLEDGEMENT OF POLICY

I acknowledge that I have received a copy of the **[Name of Company]'s POLICY ON ELIMINATING DISCRIMINATION IN THE WORLD OF WORK.**

I understand that I am expected to read, understand, and comply with the Policy which represent part of my terms and conditions of employment with the Company.

I understand that if I have any question regarding the contents of this Policy, I should ask my supervisor or the Human Resources Department for clarification and assistance.

(Employee Signature)

Name:

NRIC NO.:

Employee No.:

Date:

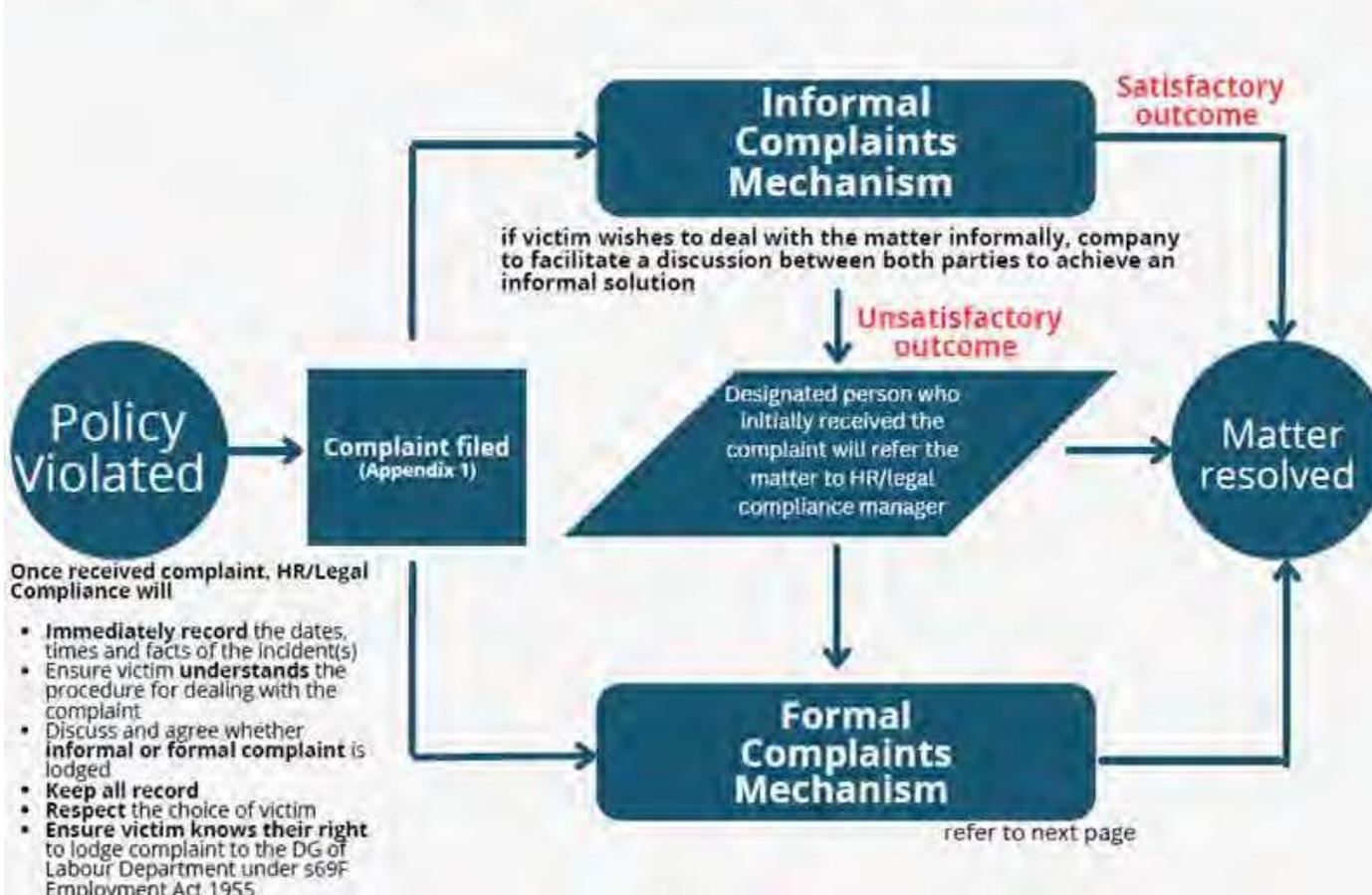
15. INFORMATION ABOUT THIS POLICY

POLICY ON ELIMINATING DISCRIMINATION AT THE WORKPLACE	Effective date:
Inception date:	Next Review:
Policy owner:	Approved by:
Pages:	

**COMPLAINT FORM
(RELATING TO DISCRIMINATION)**

NAME:	DATE:
COMPANY:	
JOB TITLE:	DEPARTMENT:
DETAILS OF EVENT LEADING TO COMPLAINT Date, Time and Location of Event	
Witnesses, If Applicable	
Account Of Event – Please describe the event in detail. Please also describe any incidents giving rise to the complaint.	
SIGNATURES (Your signature below indicates that the information you have provided in this form is truthful)	
Employee Signature:	Date:
Received by:	Date:

Investigating the Complaint



Investigation Procedure of Formal Complaint

