

Sexual Harassment Complaint from NON-Employees

What happens when a Non-employee (female) complains about our employee (male) on Sexual Harassment at workplace?

To give an example – one of the recruiters of a Multinational Company, while conducting a campus recruitment in a premier business school, sexually harassed a woman from the institute. During the process of recruitment, he got hold of the phone number of one of the selected female candidates and asked her out for a drink and forced her to meet him in case she needs a job in the company. The girl was being sexually harassed by the recruiter.

She complained of Quid-pro-Quo sexual harassment against the recruiter with the IC of the Multinational Company.

If you look at the above case, the victim is not yet bound by any contractual agreement and is just a potential candidate whereas the alleged harasser is an employee of the company. The IC took up the case and conducted the inquiry proceedings and found the recruiter guilty of having committed the act. He was let go from the company.

Why did the company IC take up the Inquiry even though the aggrieved woman was not an employee? The POSH Act. under section 2 (a) point 1, defines “Aggrieved woman” as –

- (i) In relation to a workplace, a woman, of any age **whether employed or not**, who alleges to have been subjected to any act of sexual harassment by the respondent.

The key word here is “whether employed or not”. Hence the definition covers not only women employees at the workplace but also for those who enter / interact with the organization as clients, customers, students, prospective candidates for interviews, daily wage workers or in any ad hoc capacity. Hence it is not always necessary for a woman to be under a contract of employment with the workplace to complain of sexual harassment at workplace.

However, the alleged harasser has to be an employee of the company for the IC to take up the complaint and investigate the matter (In this case - the alleged harasser is an employee of the company and the complainant is an aggrieved woman who is not an employee).

The aggrieved woman (who is not an employee) will be required to be present for the inquiry proceedings whenever required. She is entitled to get all the documents pertaining to her complaint including the statements, documentation and evidence provided by the other party and witnesses.



She is also entitled to cross examine all the concerned parties including alleged harasser and his witnesses. She will also be given a copy of the final inquiry report by the IC consisting of complete details of the inquiry with conclusion and recommendations.

Employers and the parties in this case need to adhere to Section 16 of the Act and maintain confidentiality. The IC will also ensure that there is no retaliation against the aggrieved woman who has trusted the IC of the company and lodged the complaint of sexual harassment.

However, the aggrieved woman in this case will **not be** entitled to interim relief since she is not an employee. Secondly, in case the IC can prove that the complaint was false or lodged with some malicious intention, the IC cannot recommend any disciplinary action.

Please note that sexual harassment by your employee against an aggrieved woman who is a Non-employee, which has taken place during the course of employment, comes under the scope of Internal Committee's jurisdiction and all steps should be taken to investigate into the matter and provide justice to the victim.