

## **Disclosure of Compliance under Sexual Harassment of Women at Workplace Act in the Annual Reports of companies NOW MADE MANDATORY**

### **Background**

In order to ensure safe working environment for women in the private sector and acting on request of the [Indian Ministry of Women and Child Welfare](#), the Ministry of Corporate Affairs, India has now **mandated the disclosure of Compliance under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in the Annual Reports** of all the Companies.

The Ministry of Corporate Affairs vide its notification dated 31.07.2018 has amended section 134 of Companies Act, which contains the disclosure framework in Board Report. This Section also includes the penal provisions for non-disclosure. The inclusion of the compliance under the Sexual Harassment of Women at Workplace Act in the non-financial disclosures will ensure that the issue gets into the focus in the Board of Directors of the companies.

### **What Companies will have to do to comply with Sexual Harassment Act?**

1. Drafting and implementation of Sexual Harassment Policy and approval of the same by the Board.
  - This policy shall include the process for Resolution, settlement, prosecution, enquiry and trial procedure to deal with the cases of sexual harassment.
  - Formation of Internal Complaint Committee ("ICC") under this policy. **The structure of the ICC should constitute of**
    - ❖ a woman "Presiding Officer" at a prominent designation,
    - ❖ two employees within the organisation who have had experience in social work or have legal knowledge,
    - ❖ one person who is familiar with the sexual harassment issues or a person from Non Governmental Organisations or associations, and
    - ❖ it is mandated that more than 50% of the members are women in the committee.
2. Treat sexual harassment as a misconduct under the service rules of the Company.
3. The ICC, shall in every calendar year, prepare and submit, an annual report including, the number of cases filed and their disposal, to the employer, in case there are any incidence of Sexual Harassment at workplace.

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4. Assist the aggrieved women in filing a complaint or FIR to police, if required.

## Penalty for Non-compliance

### **Under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act**

Where an employer fails to constitute an ICC, or fails to take action against any complaint, then he shall be punishable with fine which may extend to Fifty thousand rupees (INR 50.000 or EUR 625).

If the employer repeats the same offence, authorities can double the financial penalty or cancel the registration of the entity or revoke any statutory business licenses.

### **Under the Companies Act**

If the Company fails to make required disclosure under the Board Report, then it shall be punishable with a fine which shall not be less than Fifty thousand Rupees (INR 50.000 or EUR 625) and which may extend to twenty five lakh rupees (INR 2.500.000 or EUR 31.250) and every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees (INR 50.000) but which may extend to five lakh rupees (INR 500.000 or EUR 6250), or with both.

## Frequently Asked Questions (FAQs)

### **1. Does this Act applies to all Companies irrespective of Number of employees?**

Yes, the Act applies to all the Companies irrespective of number of Employees. All Private Limited Companies fall under the definition of workplace and are covered under this Act.

### **2. If my Company does not have any women employee, do I still have to comply with this Act.**

The Act provides for a safe environment for all women 'working or visiting' the Workplace / company's premises. This includes women visiting the office for the purpose of an official meeting or as a Cleaner or any other purpose. So, even if all the staff of the Company consists of male employees, the Company has to comply with the provisions of this Act.

### **3. What will constitute Sexual Harassment at Workplace?**

"Sexual Harassment" includes anyone or more of the following unwelcome acts or behaviour (whether directly or by implication), namely:

1. Physical contact or advances;
2. A demand or request for sexual favours;
3. Making sexually coloured remarks;
4. Showing pornography;
5. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

**4. What if my company does not have sufficient number of employees to constitute Internal Complaints Committee (ICC)?**

Even if the Company does not have sufficient employees, at all times a Company will have at least two Directors in order to be called as a Private Limited Company. So, out of the four persons constituting ICC, two Directors can be the members of the Committee and the position of Presiding Officer (Female Senior Official) and the person from NGO (Non-Government Organisations) or familiar with these issues could be external members (females from NGO or legal background, need not be employees of the Company) and can be appointed on these positions.

**5. What are the Objectives of the said Act?**

The aim of this Act is to provide:

- Protection against sexual harassment of women at workplace
- Prevention of acts of sexual harassment of women
- Redressal of complaints of sexual harassment

**How can Octagona assist?**

Octagona can assist in preparing a detailed policy and its implementation in your company and further compliances under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, at a mutually agreed fee. For any doubts, please feel free to contact the following persons of our team for further information and assistance:

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