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Sexual Harassment at Workplace– The Impetus on the Employer

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On April 23, 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Act") came into force. The objective of the Act is to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints in such regard. The aforesaid legislation is in furtherance to and in compliance with the Supreme Court's directive, issued in the case of Vishaka v. State of Rajasthan, AIR 1997 SC 3011 ("Vishaka Guidelines"), for the government to legislate a law to curb the problem of 'Sexual Harassment' at workplace.

With the advent of the Act, understanding what it means for businesses assumes paramount significance. In view thereof, we have answered below some of the basic questions on this subject, to assist our clients and acquaintances in understanding and preparing for this change:

A. How does the Act affect us – we already comply with the Vishaka Guidelines?

While the Act is in principle based on the Vishaka Guidelines, there are some significant enhancements to base structure prescribed under the Vishaka Guidelines. The Act is a detail and compliance oriented legislation providing for every facet of the offence, punishments, procedure to be followed and the compliances that are to be met by an organisation.

Further, the Act has defined 'Sexual Harassment' in a comprehensive manner, in keeping with the definition laid down in the Vishaka Guidelines, and broadening it further to cover circumstances of implied or explicit promise or threat to a woman's employment prospects or creation of hostile work environment or humiliating treatment, which can affect her health or safety. The Act has defined the term 'Sexual Harassment' as under:

"(n) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:—

(i) physical contact and advances; or
(ii) a demand or request for sexual favours; or
(iii) making sexually coloured remarks; or
(iv) showing pornography; or
(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;"

Further, the Vishaka Guidelines bestowed a generic responsibility on the employers, "to prevent or deter the commission of acts of sexual harassment ...", on the other hand the Act, puts forth comprehensive compliances that are required to be abided by a workplace covered under the Act. For instance, the employers are required to organize workshops and awareness programmes at regular intervals for sensitizing the employees about the provision of the legislation, and display notices regarding the constitution of the committee to redress the complaints of sexual harassment and the penal consequences of sexual harassment, etc. Furthermore, the employers are also cast with a responsibility to forward the complaints to the police within seven days from instituting an inquiry, in case a prima facie case of sexual harassment exists.

Failure to comply with the requirements of the Act may expose an employer to a monetary fine, for the first instance and which will double up for any subsequent violation. The employer may also be penalised in the form of cancellation of its licence or registration, which in the language of the Act are the ones, required for carrying out the activity or business of an entity.

B. What establishments are covered under the Act, who is responsible to comply with the requirements prescribed thereunder?

All establishments falling under the definition of a 'workplace' defined in the Act are required to comply with the Act. Keeping in view the private sector, Section 2 (o) (ii) defines a 'workplace' to include:

"(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainmental, industrial, health services or financial activities including production, supply, sale, distribution or service;"

The aforesaid definition is wide and inclusive in nature and would effectively cover establishments of most descriptions including educational, medical, sports, hospitality industries in addition to pure business and commercial concerns.

Further, the responsibility of compliance vests on the 'employer'. The term has been defined, in reference to a non-governmental organisation, in Section 2 (g) (ii) of the Act, as under:

"(ii) ... any person responsible for the management, supervision and control of the workplace.

Explanation.—For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of polices for such organisation."

The definition of employee is also wide in its amplitude and includes, in addition to regular employees, ad-hoc employees, trainees, temporary staff, contract labour, apprentice etc. and even persons working on a voluntary basis without any remuneration.

C. What should we do?

In view of the stipulations of the Act and its relevant infancy, it is time that you:

- understand what are the duties/obligations prescribed under the Act and implement them as appropriate in your organisation;
- have clear policies and procedures keeping in view the express requirements of the Act; and
- inform, train and sensitize your employees on the provisions and "dos and don'ts" in view of the Act.

The Act and the compliance thereof is a clear must for all businesses, specially keeping in mind the hard mandate of the legislation. Any failures, may affect the reputation and even continuity of the business.

Now that the Act is effectively notified, the businesses should start putting the system, training and compliance mechanisms required under the Act in place.

Feedback