



ANGUILLA

A BILL FOR

PROTECTION AGAINST SEXUAL HARASSMENT ACT, 2015

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TABLE OF CONTENTS

SECTION

- 1 Interpretation
2. Unlawful sexual harassment in employment
3. Unlawful sexual harassment in the provision of public services
4. Unlawful sexual harassment in education
5. Unlawful sexual harassment in accommodation
6. Determination by Labour Tribunal
7. Labour Tribunal may prevent publication of evidence, etc
8. Court may hear evidence in private
9. Offence of victimisation
- 10 Citation and commencement

I Assent

Christina Scott
Governor

Date

A BILL FOR

PROTECTION AGAINST SEXUAL HARASSMENT ACT

[Gazetted:] [Commencement: section 10]

ENACTED by the Legislature of Anguilla

AN ACT to criminalise and to provide remedies in respect of acts of sexual harassment.

Interpretation

1. (1) In this Act –

"accommodation" includes residential and business accommodation;

"claimant" means the person by whom or on whose behalf that claim is lodged;

"claim" means a claim under section 5 in a dispute before a Labour Tribunal;

"educational institution" means a school, college, university or other institution at which education or training is provided;

"employment" includes part-time and temporary employment and work under a contract of services'

"fellow worker" in relation to an employee means another person who is employed by the employer of that first-mentioned employee;

"functions" include powers and duties;

“public officer” includes public servants, ministers of government, Members of the House of Assembly, special advisers and assistants to government ministers, persons on contract to government, board members and employees of statutory corporations, acting or purporting to act in their public capacity or in the provision of any public service;

"respondent" in relation to a claim, means the person who is alleged to have done the act to which the claim relates;

"supervisor" in relation to a person means a fellow worker who by virtue of the employment of that fellow worker is in a position of authority over that first-mentioned person.

(2) Any reference in this Act to conduct of a sexual nature in relation to a person includes a reference to the making, to or in the presence of, a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

Unlawful sexual harassment in employment

2. (1) It is unlawful for an employer or supervisor of an employee to make it reasonably appear to an employee that the prospects or working conditions of that employee are contingent upon the employee's acceptance of sexual advances or toleration of sexual advances or persistent sexual suggestions or innuendo from the employer or supervisor.

(2) It is unlawful for a prospective employer to make it reasonably appear to a person that -

(a) an offer of employment to that person; or

(b) the terms on which employment is so offered is or are contingent on that person's acceptance of sexual advances or toleration of persistent sexual suggestions or innuendo from the prospective employer.

(3) It is unlawful for an employee to harass sexually a fellow worker.

(4) For the purposes of this section, a person shall be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and -

(a) the other person has reasonable grounds for believing that a rejection of the advance, or refusal of the request or the taking of objection to the conduct would cause the other person to suffer disadvantage in any way

in connection with the other person's employment or work or possible employment or possible work; or

(b) as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person suffers any form of disadvantage in connection with that other person's employment or work or possible employment or possible work.

(5) A person who commits an act of sexual harassment in employment shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty five thousand dollars.

Unlawful sexual harassment in the provision of public services

3. (1) It is unlawful for a public officer to make it reasonably appear to a member of the public seeking the assistance of the officer that the prospects of securing assistance are contingent upon the person's acceptance of sexual advances or toleration of sexual advances or persistent sexual suggestions or innuendo from the officer.

(2) It is unlawful for a public officer to make it reasonably appear to a person that

(a) an offer of assistance to that person; or

(b) the terms on which assistance is so offered is or are contingent on that person's acceptance of sexual advances or toleration of persistent sexual suggestions or innuendo from the officer of government.

(3) It is unlawful for a public officer to harass sexually a member of the public seeking public assistance of whatever kind.

(4) For the purposes of this section, a person shall be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and -

(a) the other person has reasonable grounds for believing that a rejection of the advance, or refusal of the request or the taking of objection to the conduct would cause the other person to suffer disadvantage in any way in connection with the assistance sought; or

(b) as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person suffers any form of disadvantage in connection with the assistance sought.

(5) A public officer who commits an act of sexual harassment shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty five thousand dollars.

Unlawful sexual harassment in education

4. (1) It is unlawful for a person who is a member of staff of an education institution to harass sexually a person who is a student at that educational institution or is seeking admission to that educational institution as a student.

(2) For the purpose of this section, a person shall be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance or an unwelcome request for sexual favours to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and -

(a) the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's studies or the other person's application for admission to an educational institution as a student; or

(b) as a result of the other person's rejection of the advance, refusal of the request or the taking of objection to the conduct, the other person is disadvantaged in any way in connection with the other person's studies or the other person's application for admission to an educational institution as a student.

(3) A person who commits an act of sexual harassment in education shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty five thousand dollars.

Unlawful sexual harassment in accommodation

5. (1) It is unlawful for a person to make it reasonably appear to another person that

(a) the terms on which the first-mentioned person offers the other person accommodation;

(b) the first-mentioned person's acceptance of the other person's application for accommodation;

(c) the time of processing of the other person's application for accommodation, or the order of precedence of the other person or any list of applicants for that accommodation;

(d) the other person's access or the extent of such access to any benefit connected with the accommodation;

(e) the failure to evict the other person or to subject that other person to any other detriment in relation to the accommodation,

is or are contingent on that other person's acceptance of sexual advances or toleration of persistent sexual suggestions or innuendo from the first-mentioned person.

(2) A person who commits an act of sexual harassment in relation to accommodation shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty five thousand dollars.

Determination by Labour Tribunal

6. (1) A Tribunal appointed under the Labour Department Act RSA c L005 before whom a claim of sexual harassment in relation to employment has been made whether or not a prosecution has commenced under this Act, may in addition to its powers under the said Labour Department Act

(a) make a determination which may include any one or more of the following declarations, that is to say -

(i) that the respondent has engaged in conduct amounting to sexual harassment and should not repeat or continue such conduct;

(ii) that the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;

(iii) that the respondent should employ or re-employ the claimant;

(iv) that the respondent should pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the conduct of the respondent;

(v) that the respondent should promote the claimant;

(vi) that the termination of a contract or agreement should be varied to redress any loss or damage suffered by the claimant;

(vii) where the claim relates to sexual harassment by a fellow worker, that the employer concerned should take such action as

may be appropriate to ensure that the harassment ceases and to report thereon to the Tribunal; or

(b) make such order as may be appropriate in relation to the claim.

(2) The Tribunal may, in the making of a determination under subsection (1)(a) include injury to the claimant's feelings or humiliation suffered by the complainant.

(3) Where the Tribunal makes a determination by way of a declaration for the payment of compensation to the claimant, the sum so payable may be recovered by the claimant summarily in a Magistrate's Court; without limit of amount, as a civil debt.

(4) Any respondent who fails to comply with a determination by the Tribunal shall be liable to be proceeded against and punished in like manner as if he were found guilty of contempt of Court.

Labour Tribunal may prevent publication of evidence etc.

7. The Tribunal hearing a dispute involving a claim of sexual harassment may direct that

(a) any evidence given before it;

(b) the contents of any document produced to the Tribunal; or

(c) any information that might enable a person who has appeared before the Tribunal to be identified.

shall not be published or shall be published only in such manner, and to such persons, as the Tribunal may specify.

Court may hear evidence in closed court

8. (1) Subject to subsection (2) a complaint in relation to sections 2, 3, 4 or 5 shall be held in public.

(2) The court may, of its own volition or on the application of a party to any proceedings under sections 2, 3, 4 or 5, if it is satisfied that it is appropriate to do so, direct that the proceedings, or part thereof, be held in closed court.

Offence of victimisation

9. (1) A person who commits an act of victimisation against another person shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty five thousand dollars.

(2) For the purposes of subsection (1), a person shall be taken to commit an act of victimisation against another person if the first-mentioned person subjects, or threatens to subject, the other person to any detriment -

(a) on the grounds that the other person -

(i) has made, or proposes to make, a complaint under this Act;

(ii) has brought, or proposes to bring, proceedings under this act against any person;

(iii) has furnished, or proposes to furnish, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act;

(iv) has attended or proposes to attend a Labour Tribunal or to appear thereat as a witness in a claim of sexual harassment in employment;

(v) has made an allegation that a person has done an act that is unlawful by virtue of section 2, 3, 4 or 5; or

(b) on the ground that the first-mentioned person believes that the other person has done, or proposes to do, an act or thing referred to in any of sections 2, 3, 4 or 5.

Citation and commencement

10. This Act may be cited as the Protection Against Sexual Harassment Act, 2015 and shall come into force on such date as the Governor may appoint by Notice published in the *Gazette*.

PROTECTION AGAINST SEXUAL HARASSMENT BILL

OBJECTS AND REASONS

[The Objects and Reasons do not form part of this Bill]

The Protection Against Sexual Harassment Bill seeks to to criminalise sexual harassment in employment, the provision of public services, education, and accommodation, and to give additional powers to a Labour Tribunal appointed under the Labour Department Act to provide suitable remedies where a claim of sexual harassment is proved.

The Bill consists of 10 clauses.

Clause 1 is the Interpretation section of the Bill and defines the key terms used in the Bill.

Clauses 2, 3, 4 and 5 create the offences of sexual harassment in employment, provision of public services, education, and accommodation, and provide a penalty on summary conviction of a maximum fine of EC\$25,000.00.

Clause 6 empowers a Labour Tribunal appointed under the Labour Department Act to consider claims of sexual harassment in employment whether or not a criminal charge has been brought, and if the claim is proved to give various remedies to the worker involved.

Clause 7 provides for a Labour Tribunal hearing a claim of sexual harassment in employment to control or restrict the publication of any evidence given before it.

Clause 8 empowers a court hearing a complaint of an offence of sexual harassment to hear part or all of the evidence in private.

Clause 9 makes it a crime for any person to victimise a person who is involved in proceedings under the Act.

Clause 10 is the commencement and citation clause.