



Prevention of Sexual Harassment Law 5758-1998

10 Mar 1998

Purpose of the law.

1. The purpose of this law is to prohibit sexual harassment in order to defend human dignity, freedom and privacy and in order to promote equality between the sexes.

Definitions.

2. In this Law -

“Service” means service in the defense forces, where no employer/employee relationship exists between them and the person serving therein;

“demonstrated” means by word or conduct, and provided that there is no reasonable doubt as to the meaning of such conduct;

“reference” means written, spoken, by means of visual or sound presentation, including by means of computer or of computer material, or by conduct,

“Equal Opportunities Law” means the Equal Employment Opportunities Law 5748-1988.

“Penal Law” means the Penal Law 5737-1977,

“helpless person” as defined in Section 368A of the Penal Law;

“defense forces” means the Israel Defense Forces, the Israel Police, the Prisons Service, and the other defense organisations of the State;

“computer” and “computer material” as defined in the Computers Law 5755-1995

“realm of Labour relations” means the workplace, any other place in which activity on behalf of the employer takes place, in the course of employment, or by the exploitation of authority in labour relations at any place whatsoever;

“manpower contractor” as defined in section 1 of the Employment of Employees by manpower contractors law 5756-1996’

“minor” means a person who has not yet reached the age of 18.

Sexual harassment and persecution.

3. (a) Sexual harassment is any one of the following acts:

(1) extortion by threat, within the meaning thereof in Section 428 of the Penal Law 5737-1977 (hereinafter referred to as – the Penal Law), when the act that the person is required to perform is of a sexual nature;

(2) indecent acts, within their meaning in Sections 348 and 349 of the Penal Law;

(3) repeated propositions of a sexual nature, addressed to a person who has demonstrated to the harasser that he is not interested in the said propositions;

(4) repeated references addressed to a person and focused on his sexuality, when that person has demonstrated to the harasser that he is not interested in the said references;

(5) an insulting or debasing reference to a person in connection with his gender or sexuality, including his sexual preference;

(6) propositions or references as referred to in paragraphs (3) or (4), addressed to one of the persons enumerated in sub-paragraphs (a) to (c) under circumstances specified in those subparagraphs, even if the harassed person has not demonstrated to the harasser that he is not interested in the said propositions or references;

(a) toward a minor or helpless person, by exploiting a disciplinary, educational or treatment relationship;

(b) toward a patient within the framework of psychological or medical treatment, by exploiting the patient’s dependence on the person treating him;

(c) toward an employee within the framework of an employment

relationship, and toward a person in service within the framework of such service, by exploitation of authority and discipline in labour relations or in the service.

(b) Persecution is any harm stemming from sexual harassment or from a complaint or an action brought because of sexual harassment.

Prohibition of sexual harassment and persecution.

4. A person shall not harass another sexually nor persecute such person.

Sexual harassment and persecution as offences.

5. (a) Where a person harasses another sexually, as provided in Section 3(a)(3) to (6), he shall be liable to 2 years imprisonment.

(b) Where a person persecutes another, as provided in Section 3(b) he shall be liable to 3 years imprisonment.

(c) Where a person has harassed another sexually as provided in subsection (a) and has persecuted such person as provided in subsection (b) he shall be liable to 4 years imprisonment.

(d) The provisions of Sections 2A and 2B of the Law Procedure Amendment (Interrogation of Witnesses) Law 5718-1957 shall apply to the interrogation of a person who has been harmed by an offence under this section and to the testimony of such person in respect of such an offence.

(e) The provisions of Section 352 of the Penal Law shall apply to publication of the name of a person harmed by an offence under this section.

Sexual harassment and persecution are civil wrongs.

6. (a) Sexual harassment and persecution are civil wrongs and the provisions of the Civil Wrongs ordinance (New Version) shall apply to them, subject to the provisions of this Law.

(b) The Court may award compensation of up to NIS 50,000 for sexual harassment and persecution, without proof of damage; this amount shall be updated on the 16th of each month at the rate of increase of the new index over the basic index; for the purposes of this section -

“index” means the Consumer Price Index published by the Central Bureau of Statistics;

“new index” means the index for the month preceding the month of updating;

“basic index” means the index for March 1998.

(c) A Court or a Labour Court as the case may be, shall not entertain a claim for a civil wrong under this section or under Section 7, if it is submitted after 3 years have elapsed from the date on which the grounds for it arose.

Action to be taken by the employer.

7. (a) An employer must take steps that are reasonable under the circumstances, in order to prevent sexual harassment and persecution within the realm of labour relations by his employee or by a person who has been put in charge on his behalf, even if he is not his employee, and to that end he shall -

(1) provide an effective method for the submission of complaints of sexual harassment or persecution and for the investigation of such complaints.

(2) take effective action in cases of sexual harassment or persecution of which he is aware and do all that he can to prevent a repetition of the aforesaid acts and to make good any harm caused to the complainant as a result of such sexual harassment or persecution;

(b) where an employer employs more than 25 employees, he must – in addition to what is provided in subsection (a) prescribe a set of rules that encompasses the main provisions of this Law on sexual harassment and persecution in the realm of labour relations, and which specify therein the methods of the submission and handling of complaints concerning sexual harassment or persecution, as prescribed by the employer (hereinafter – the set of rules); the employer shall bring the set of rules to the attention of his employees.

(c) Where an employer has not complied with his obligations under subsections (a)(1) and (2) and (b), he shall be liable for a civil wrong under Section 6 or for a civil wrong for harm caused as provided Section 7 of the Equal Opportunities Law, committed by his employee or a person in charge on his behalf, even if he is not his employee, within the realm of labour relations.

(d) The Minister of Justice – with the agreement of the Minister of Labour and Social

Affairs and with the approval of the Knesset Committee for the Advancement of the Status of Women, shall prescribe -

- (1) Rules for compliance with an employer's obligations under this Section; the aforesaid rules may be couched in general terms or for categories of workplaces, for branches of employment or for professions;
- (2) A sample set of rules as an example for employers (hereinafter referred to as – sample rules).

(e) For the purpose of compliance with the employer's obligations under subsection (b), the employer shall make the necessary modifications to the sample rules.

(f) For the purposes of this section, "persecution" – includes harm caused as provided in Section 7 of the Equal Opportunities Law.

(g) The provisions of this Section shall also apply, mutatis mutandis, to institutions that provide academic or vocational training, for adults and for this purpose such institutions shall be treated as an employer, the teacher or lecturer shall be treated like an employee or person in charge on behalf of the employer, and a trainee or student shall be treated like an employee.

Failure to publicize a set of rules is an offence.

8. Where an employer fails to make public a set of rules as provided in Section 7(b), he shall be liable to a fine and to an additional fine for each week in which the offence continues, of the amount prescribed in Section 61(c) of the Penal Law.

Expansion of applicability.

9. The provisions of this Law in relation to employers and employees shall also apply, mutatis mutandis, and as the case may be, to a person who actually employs a person through a manpower contractor and to such a person employed as aforesaid.

Powers of the Labour Court.

10. (a) The Labour Court shall have sole jurisdiction to hear civil proceedings under Sections 6, 7 and 9, on any of the following subjects:

- (1) sexual harassment committed by an employer or by a person in charge on his behalf against an employee, or committed by one employee against another, within the realm of Labour relations;
- (2) persecution by an employer or by a person in charge on behalf of an employer of an employee, by one employee of another, within the realm of labour relations.
- (3) the employer's responsibility as provided on Section 7 for sexual harassment of persecution, which a person in charge on the employer's behalf has committed against another, within the realm of labour relations.

(b) The provisions of this section shall not apply to a civil proceeding for sexual harassment or persecution committed in a service.

(c) The provisions of Sections 10, 10A, 12 and 13 of the Equal Opportunities Law shall apply to proceedings under this section.

Applicability to the State.

11. This Law applies to the State, for the purposes of Sections 7 and 8, the defense forces shall, where no employer/employee relationship exists between them and those serving in them, be treated like an employer and the person serving in them shall be treated like an employee.

Saving of laws.

12. The provisions of this Law shall not derogate from the provisions of any enactment.

Implementation and regulations.

13. The Minister of Justice is charged with the implementation of this Law and he may, with the approval of the Knesset Committee for the Advancement of the Status of Women, make regulations on any matter relating to its implementation.

Obligation to make regulations.

14. Regulations for the purposes of Section 7 shall first be submitted to the Knesset Committee for the Advancement of the Status of Women for approval, within five months from the date on which this Law is published.

Amendment of Equal Opportunities Law 5748-1988 -

15. In the Equal Opportunities Law 5748-1988 -

(1) Section 7 shall be replaced by the following:

"Harm caused against a background of sexual harassment.

7(a) An employer or a person in charge on his behalf shall not, within the realm of labour relations, cause harm to an employee or applicant for employment in the respect of any of the matters specified in Section 2 or in any other manner, when the basis for the harm that is caused is one of the following:

(1) Sexual harassment of the employee or for the applicant for employment, committed by the employer, by a person in charge on his behalf or by another employee;

In this Law, "sexual harassment" shall have the meaning assigned to it in the Prevention of Sexual Harassment Law 5758 - 1998 (hereinafter referred to as - Prevention of Sexual Harassment Law); provided that for the purposes of harm caused by sexual harassment under Section 3(a)(3) and (4) of the said Law a single proposition or reference shall be sufficient;

(2) An employee's complaint or claim in respect of harm as provided in this Section;

(3) An employee's assistance to another employee in connection with a complaint or claim in respect of harm as provided in this Section.

(b) The provisions of Section 6(b) shall apply to harm stemming from a complaint or claim as provided in subsection (a)(2) and (3).

(c) The provisions of this Section in respect of employers and employees shall also apply, mutatis mutandis, and as the case may be, to a person who actually employs a person through a manpower contractor and to a person so employed as aforesaid.

(2) In Section 9, subsection (b) shall be replaced by the following:

(b) In an action by an employee or by an applicant for employment for an offence committed in contravention of the provisions of Section 7(a), the burden of proving that he has not committed an offence under the said Section as aforesaid shall be upon the employer, where the employee or applicant for employment has proved that the events specified in paragraphs (1) to (3) of Section 7(a) did occur".

(3) In Section 10 -

(a) The contents thereof shall be marked (a) and the following shall be added at the end of paragraph (1): "however, in a civil proceeding in respect of harm caused as provided in Section 7, the Labour Court may award compensation of not more than NIS 50,000 without proof of damage";

(b) Insert after subsection(a);

(b) - The amount specified in subsection (a)(1) shall be updated on the 16th of each month at the rate of increase of the new index over the basic index; for the purposes of this subsection -

"index" means the Consumer Price Index published by the Central bureau of Statistics;

"new index" means the index for the month preceding the month of updating;

"basic index" means the index for March 1998.

(4) In Section 10A subsection (a) shall be replaced by the following:

"10A (a) in any proceeding under this Law for harm arising out of one of the matters enumerated in Section 7(a), or out of discrimination because of sexual preference as provided in Section 2(a), the Labour Court may conduct hearings in camera; if a Plaintiff or Complainant requests that the hearing be in camera, the Court shall grant such request unless it decides otherwise for special reasons which shall be recorded".

(5) At the end of Section 14 add: "provided that for the purposes of a civil action for harm as provided in section 7, the prescription period shall be 3 years from the date on which the grounds for such action arose".

(6) In Section 15 -

(a) In subsection (a), replace "6, 7, or 8" with "6 or 8";

(b) Insert the following after subsection (a):

"(a1)(1) Where a person has committed an offence under the provisions of Section 7, he shall be liable for imprisonment as provided in Section 5(b) of the Prevention of Sexual Harassment Law;

(2) Where an employer or a person on his behalf has sexually harassed his employee as provided in Section 3 (a) of the Prevention of Sexual Harassment Law and if he has caused him harm as provided in Section 7, he shall be liable to a term of imprisonment as provided in Section 5(c) of the said Law.

(a2) The provisions of Section 5(d) and (e) of the Prevention of Sexual Harassment Law shall apply in regard to an offence under subsection (a1).

(7) In Section 18, the following shall be inserted after subsection (d):

"(e) An Inspector appointed pursuant to subsection (a) shall also supervise the implementation of the provisions of Section 7(b) of the Prevention of Sexual Harassment Law, and for such purpose he shall have the powers vested in him by this Section".

Amendment of Labour Courts Law - No. 29

16. At the end of Second Schedule of the Labour Courts Law 5729-1969, add: "Section 8 of the Prevention of Sexual Harassment Law 5758-1998".

Amendment of Courts of Justice Law - No. 24

17. At the end of Section 68(b)(5) of the Courts of Justice Law (Consolidated Version) 5744-1984, add: "or of an offence under the Prevention of Sexual Harassment Law 5758-1998".

Commencement.

18. (a) This Law shall come into force 6 months after its publication.

(b) Notwithstanding the provision of subsection (a), Section 7 shall only come into force 1 month after the regulations made thereunder have been published.