

[AS PASSED BY THE SENATE]

A

Bill

to amend the Protection against Harassment of women at the Workplace Act, 2010

Whereas it is expedient to amend the Protection against Harassment of women at the Workplace Act 2010, (IV of 2010) for the purposes appearing hereinafter;

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act shall be called the Protection against Harassment of women at the Workplace (Amendment) Act, 2022.

(2) It shall come into force at once.

2. Amendment of section 2, Act IV of 2010.- In the said Act, in section 2,

(a) In clause (e), for the words "a woman or man", the words "any person" shall be substituted and after the word "harassment", the expression "and shall include a former employee who has been removed or dismissed from service or has resigned, and a parent or guardian where the complainant is a minor" shall be inserted;

(b) for clause (f), the following shall be substituted, namely:-

"(f) "employee" includes a regular, contractual, piece-rate, gig, temporary, part-time, freelance employee whether employed through express or implied contract on daily, weekly, monthly or hourly basis, and shall include a student, a performer, an artist, a sportsperson, an intern, trainee, a domestic worker, a home-based worker or an apprentice whether working for remuneration or not, or whether working on a voluntary basis or otherwise";

(c) in clause (g), in sub-clause (vi), the word "and" at the end shall be omitted and after sub-clause (vii), the following sub-clauses shall be added, namely :-

(viii) person discharging any contractual obligations with respect to his employees and expressly or impliedly procures the services or labour of persons whether as freelancers or part-time employees;

(ix) a person who owns or manages an online or customer to customer or business to customer or any other virtual or remote business; and

(x) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of home-based workers, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the home-based worker;";

(d) for clause (h), the following shall be substituted namely:-

"(h) "harassment" means:

(i) any unwelcome sexual advance, request for sexual favours, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, including any gestures or expression conveying derogatory connotation causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment; or

(ii) discrimination on basis of gender, which may or may not be sexual in nature, but which may embody a discriminatory and prejudicial mind-set or notion, resulting in discriminatory behavior on basis of gender against the complainant;"

(e) for clause (k), the following shall be substituted, namely:-

"(k) "Ombudsperson" means the Ombudsperson appointed under Section 7;"

and elsewhere in Act IV of 2010, for the word "Ombudsman" the word "Ombudsperson" shall be substituted;

(f) in clause (l), for the phrase "Companies Ordinance, 1984 (XLVII of 1984)" the phrase "Companies Act, 2017 (Act No. XIX of 2017)" shall be substituted and after the word "institution", occurring at the end, the words 'or online business' shall be inserted;

(g) for clause (n), the following shall be substituted, namely:-

"(n) "workplace" means the place of work or any place where services are rendered or performed by professionals, including educational institutions, gigs, concerts, studios, performance facilities, courts, highways, sporting facilities and gymnasiums, and shall include any building, factory, open area or a larger geographical area. where the activities of the organization or of employer are carried out and includes any situation that is linked to work or activity outside the office."

3. Amendment of section 4, Act IV of 2010.- In the said Act, in section 4,-

(a) in sub-section (2), at the end of the sentence the full stop shall be omitted and following phrase shall be added namely: -

", and, where applicable, apply appropriate child-sensitive procedures.";

- (b) in sub-section (4), after the word "penalties", occurring at the end, the, and words "as applicable" shall be inserted;
- (c) in sub-section (4) in clause (ii), in sub-clause (d), the word "and" at the end shall be omitted and after sub-clause (d), the following sub-clause (e) shall be added, namely:-
 "(e) suspension or cancellation of a professional license"
- (d) in sub-section (4) in clause (ii), the existing sub-clause (e) shall be re-numbered as clause (f).

4. Amendment of section 5, Act IV of 2010.- In the said Act, in section 5, in sub-section (1) in clause (b), for the word "document", the words "documentary, audio or video evidence" shall be substituted.

5. Amendment of section 8, Act IV of 2010.- In the said Act, in section 8, -

- (a) in sub-section (1), for the word "employee", the word "complainant" shall be substituted; and
- (b) after sub-section (5), the following sub-section shall be added, namely:-

"(6) The Ombudsman shall decide a case or appeal, as the case may be, within a period of ninety days."

6. Amendment of section 9, Act IV of 2010.- In the said Act, in section 9, after the full stop at the end, the expression "The President or the Governor, as the case may be, shall decide such representation within ninety days" shall added.

7. Amendment of Schedule, Act IV of 2010.- In the said Act, in the Schedule,-

- (A) in the first paragraph, in clause (ii), for the definition of "harassment", the following definition shall be substituted, namely: -;

"(ii) "harassment" means:

- (i) any unwelcome sexual advance, request for sexual favours, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, including any gestures or expression conveying derogatory connotation causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment; or
- (ii) discrimination on basis of gender, which may or may not be sexual in nature, but which may embody discriminatory and prejudicial mind-set or notion, resulting in discriminatory behavior on basis of gender against the complainant;

Provided that a single incident having the effect of making a person uncomfortable or creating a sense of fear or panic at the workplace is also harassment."

(B) for Explanation (b) under clause (ii), the following shall be substituted, namely: -

"(b) Creating a hostile environment

Any unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature, which interferes with an individual's work performance or creates an intimidating, hostile, abusive or offensive work environment; or any discrimination on basis of gender, which may or may not be sexual in nature, but which may embody a discriminatory and prejudicial mind-set or notion resulting in discriminatory behavior on basis of gender.

The typical "hostile environment" claim, in general, requires finding of a pattern of offensive conduct, however, in cases where the harassment is particularly severe, such as in cases involving physical contact or gender-based discrimination, a single offensive incident will constitute a violation."

- (C) in clause (xi), after the full stop at the end, the following shall be added, namely: -

"Filing counter-blast suits for defamation etc. are also retaliation. The Ombudsman or Inquiry Committee, as the case may be, should take notice of this in its proceedings."

Statement of Objects and Reasons

This proposed amendment aims to facilitate increased participation of women in the workforce by removing the lacuna present in the existing law. It broadens the ambit and scope of the law to including certain professions and employment models that the current law does not expressly mention. Through these amendments protection from harassment shall be provided to people engaged in all types of work – formal and informal. The Amendment Bill will also provide clarity with respect to different kinds of harassment that take place at the workplace.

This purpose of this amendment is to fulfill Pakistan's Constitutional obligations to its citizens and to guarantee them their dignity and prevention of discrimination on the basis of sex in their professions and to achieve the goal of increased women participation of women in the workplace.

This Bill seeks to achieve the aforesaid objectives.

(Dr. Shireen M. Mazari)