

POLICY FOR PREVENTION, PROHIBITION AND REDRESSAL OF SEXUAL HARASSMENT AT WORKPLACE



**NATIONAL INSTITUTE OF
PHARMACEUTICAL EDUCATION AND
RESEARCH (NIPER) S.A.S. NAGAR
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I. INTRODUCTION

In pursuance of Gazette of India Extraordinary Notification No. S.O. 3606 (E) dated 09.12.2013, the National Institute of Pharmaceutical Education and Research (NIPER) S.A.S. Nagar as an employer is committed for creating a healthy and safe work environment for the women employees, students and workers. It enables them to work to full of their capabilities. Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Often it is excused as 'natural' male behavior or 'harmless flirtation' which women enjoy. Whereas in reality contrary to such perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the work place.

Though sexual harassment at the workplace has assumed serious proportions, women do not report the matter to the concerned authorities in most cases due to fear of reprisal from the harasser, losing one's livelihood, being stigmatized, or losing professional standing and personal reputation.

Therefore, in order to deal with sexual harassment at workplace the institute has set out a policy for the Prohibition, Prevention and Redress of Sexual Harassment cases. This policy is in accordance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The policy shall be in effect from the date of approved by the competent authority till further revision (if any). It is the responsibility of all those connected with the institute to comply with this policy. The objective of the policy is to provide its women employees, a workplace, free from harassment / discrimination and every employee is treated with dignity and respect.

This may be called as "Policy of NIPER S.A.S. Nagar for Prevention, Prohibition and Redressal of Sexual Harassment of Women at Workplace".

II. COMMITMENT:

1. NIPER is committed to provide a work environment that ensures every woman employee / student / worker is treated with dignity and respect and afforded equitable treatment.
2. The Institute is also committed to promote a work environment that is conducive to the professional growth of its women employees / students / workers and encourages equality of opportunity.
3. The Institute will not tolerate any form of sexual harassment and is committed to take all necessary steps to ensure that its women employees / students / workers are not subjected to any form of harassment.

In other words, the three key obligations of the institute in this regard are:

1. Prohibition
2. Prevention and
3. Redress

III. SCOPE:

This policy applies to all employees / students / workers whether engaged directly or through an agent including with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied. She could be a student of the institute, co-worker, a contract worker, probationer, trainee, and apprentice or called by any other such name. She may be working in a dwelling place or house.

IV. DEFINITIONS

Sexual Harassment

It includes any one or more of the following

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 sexual nature.
6. Harassment through social media or e-mail

In other words, workplace sexual harassment is behavior that is unwelcome, sexual in nature, a subjective experience. It is the impact not intent what matters and it often occurs in a matrix of power.

Some examples of sexual harassment

1. Making sexually suggestive remarks or innuendos.
2. Serious or repeated offensive remarks, such as teasing related to a person's body or appearance.
3. Offensive comments or jokes, in social media or otherwise.
4. Inappropriate questions, suggestions or remarks about a person's sex life.
5. Displaying sexist or other offensive pictures, posters, mms, sms, whatsapp, or e-mails.
6. Intimidation, threats, blackmail around sexual favours.

7. Threats, intimidation or retaliation against an employee who speaks up about unwelcome behaviour with sexual overtones.
8. Unwelcome social invitations, with sexual overtones commonly understood as flirting.
9. Unwelcome sexual advances which may or may not be accompanied by promises or threats, explicit or implicit.
10. Physical contact such as touching or pinching
11. Caressing, kissing or fondling someone against her will (could be considered assault).
12. Invasion of personal space (getting too close or no reason, brushing against or cornering someone)
13. Persistently asking someone out, despite being turned down.
14. Stalking an individual.
15. Abuse of authority or power to threaten a person's job or undermine her performance against sexual favours.
16. Falsely accusing and undermining a person behind closed doors for sexual favours.
17. Controlling a person's reputation by rumour-mongering about her private life, for example, by posting on social media like Facebook, etc.

Employer

An employer refers to:

1. The head of the department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the Appropriate Government or local authority or such officer specified in this behalf.
2. Any person (whether contractual or not) responsible for the management, supervision and control of a designated workplace not covered above.
3. A person or a household who employs or benefits from the employment of domestic worker or women employees.

In case of NIPER S.A.S. Nagar, the employer (in the context of ICCSH) refers to Director of the Institute.

Workplace

It is defined as any place visited by the women employee or student or worker of the institute arising out of or during the course of employment or study, including transportation provided by the employer for undertaking such a journey, a dwelling place or house.

V. RESPONSIBILITIES REGARDING SEXUAL HARASSMENT:

1. All employees of the institute have a personal responsibility to ensure that their behaviour is not contrary to this policy.
2. All employees are encouraged to reinforce the maintenance of a work environment free from sexual harassment.

VI. INTERNAL COMPLAINTS COMMITTEE AGAINST SEXUAL HARASSMENT

The Institute has constituted an Internal Complaints Committee against Sexual Harassment (ICCSH) for redressal of sexual harassment complaint (made by the victim) and for ensuring time bound treatment of such complaints.

In accordance with the sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Internal Complaints Committee will comprise of the following:

1. Chairperson : Women working at senior level as employee; if not available then nominated from other office/units/ department/ workplace of the same employer
2. Members (3-4): From amongst employees committed to the cause of women/ having legal (minimum) knowledge/experience in social work
3. Member : From amongst NGO/associations committed to the cause of women or a person familiar with the issue of Sexual Harassment
4. Member Secretary: From amongst any of the employees of NIPER S.A.S. Nagar having knowledge of the provisions of the SHWW(PPR) Act, 2013 and CCS Conduct Rules, 1964.

In case of the absence of the Chairperson (on account of leave, tour, etc.), next senior most woman employee member shall assume the responsibility of the Chairperson in case of emergent cases. Similarly, in the absence of the Member Secretary (on account of leave, tour, etc.), the Chairperson may direct any of the members to discharge the duties of the Member Secretary in case of emergent cases.

VII. KEY RESPONSIBILITIES OF THE INTERNAL COMPLAINTS COMMITTEE AGAINST SEXUAL HARASSMENT (ICCSH)

The ICCSH is responsible for:

To effectively address workplace sexual harassment complaints, a Complaints Committees must first be aware of their key responsibilities, some of which are highlighted below:

1. Be thoroughly prepared
2. Know the Act, Policy and/or relevant Service Rules
3. Gather and record all relevant information
4. Determine the main issues in the complaint
5. Prepare relevant interview questions

6. Conduct necessary interviews
7. Ensure parties are made aware of the process and their rights/responsibilities within it
8. Analyse information gathered
9. Prepare the report with findings/recommendations

VIII. KNOWLEDGE, SKILLS, TRAINING

Dealing with workplace sexual harassment complaints is often complex. Hence Complaints Committee/s must possess critical skills/capacity to effectively carry out their role. That includes a sound grasp of the Act, Vishaka Guidelines, applicable Service Rules, relevant laws and an understanding of workplace sexual harassment and related issues. Complaints Committee skills must include an ability to synthesize information i.e. relevant documents, the law and interviews. They should also be able to communicate effectively, write clearly, listen actively and conduct interviews. They should be competent at showing empathy, being impartial and being thorough. They should be able to identify sexual harassment and its impact.

IX. Do's and Don'ts for the Complaints Committee

DO'S

1. Create an enabling meeting environment.
2. Use body language that communicates complete attention to the parties.
3. Treat the complainant with respect.
4. Discard pre-determined ideas.
5. Determine the harm.

DON'TS

1. Get aggressive.
2. Insist on a graphic description of the sexual harassment.
3. Interrupt.
4. Discuss the complaint in the presence of the complainant or the respondent.

X. Procedure for making complaint

In case of physical incapacity:

1. Complainant's relative
2. Complainant's friend
3. Co worker

4. Officer
5. Any person who has knowledge of the incident with the written consent of the complainant

In case of mental incapacity:

1. Complainant's relative
2. Complainant's friend
3. Special educator
4. Qualified psychiatrist / psychologist
5. Guardian/authority under whose care the complainant is receiving treatment/care
6. Any person with knowledge of the incident, jointly with any person mentioned above

In case of complainant's death:

Any person with knowledge of the incident with the written consent of her legal heir.

In case complainant is unable to file complaint for any other reason:

By any person who has knowledge of the incident with her written consent.

XI. Contents of the complaint

The written complaint should contain a description of each incident(s). It should include relevant dates, timings and locations; name of the respondent(s) and the working relationship between the parties. A person designated to manage the workplace sexual harassment complaint is required to provide assistance in writing of the complaint if the complainant seeks it for any reason.

XII. Expectations of a complainant

For redressal of issue of workplace sexual harassment, employee/worker/student of the institute has a right to expect a trained, skilled and competent Complaints Committee, a time bound process, information confidentiality, assurance of non-retaliation, counseling or other enabling support where needed and assistance if the complainant opts of criminal proceedings.

XIII. Rights of the complainant

1. An empathetic attitude from the Complaints Committee so that she can state her grievance in a fearless environment.
2. A copy of the statement along with all the evidence and a list of witnesses submitted by the respondent.

3. Keeping her identity confidential throughout the process. Support, in lodging FIR in case she chooses to lodge criminal proceedings.
4. In case of fear of intimidation from the respondent, her statement can be recorded in absence of the respondent
5. Right to appeal, in case, not satisfied with the recommendations/findings of the Complaints Committee

XIV. RIGHTS OF THE RESPONDENT

1. A patient hearing to present his case in a non-biased manner.
2. A copy of the statement along with all the evidence and a list of witnesses submitted by the complainant.
3. Keeping his identity confidential throughout the process.
4. Right to appeal in case not satisfied with the recommendations/findings of the Complaints Committee.

XV. PROCEDURES FOR RESOLUTION, SETTLEMENT OR PROSECUTION OF ACTS OF SEXUAL HARASSMENT:

The Institute is committed to providing a supportive environment in which the concerns of sexual harassment shall be resolved.

A. Informal Resolution Options

If the complainant chooses to adopt the informal process to resolve her complaint/experience of workplace sexual harassment, then it is the responsibility of the person designated to receive and manage the Complaints Committee to explore enabling ways to address the complaint. This can include counselling, educating, orienting, or warning the respondent to promptly stop the unwelcome behaviour or appointing a neutral person to act as a conciliator between the parties to resolve the complaint through conciliation.

However, before recommending conciliation, the Committee must assess the severity of the situation and if necessary, advise and enable the complainant to opt for the formal route. At no point, the Complaints Committee will advise the complainant to resolve the matter directly with the respondent. Where such an informal process is successful, such resolution is to be recorded by the conciliator and forwarded to the ICCSH who in turn will forward the same to the employer/District Officer for further action based on the resolution. Employers/District Officers are responsible for taking steps to ensure that the complainant is not subject to any backlash.

The choice of a formal process rests with the complainant even if the person responsible for managing the complaint believes that this can be resolved through an informal process.

B. Formal Resolution Options

Any women with a harassment concern, who is not comfortable with the informal resolution options or has exhausted such options, may make a formal complaint to the Chairperson of the Internal Complaints Committee constituted by the Management.

1. If the complainant opts for formal redress, or the nature of the complaint is serious which calls for formal redress, then the Complaints Committee responds to the complaint.
2. Complaints Committee/s members must be free of any conflict of interest with either the concerned parties or with the outcome.
3. Ensure that the independent third party member has sound knowledge, skill, and experience in dealing with workplace sexual harassment complaints.

XVI. TIMELINES FOR ATTENDING COMPLAINTS:

1. The complainant shall submit 6(six) copies of the Complaint to the Complaint Committee along with supporting documents and the names and addresses of the witnesses in writing and can be in form of a letter, preferably within 3 months from the date of occurrence of the alleged incident, sent in a sealed envelope. Alternately, the employee can send complaint through an email. The employee is required to disclose her name, department, division and location she is working in, to enable the Chairperson to contact her and take the matter forward.
2. The Complaints Committee shall send 1 (one) of the copies received from the aggrieved woman to the accused (respondent) within a period of 7 working days.
3. The Accused (respondent) shall file his reply to the Complaint along with supporting documents and the names and addresses of the witnesses, within a period not exceeding 10 working days from the date of receipt of the documents.
4. The Complaints committee have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the Aggrieved (complainant) or Accused (respondent) fails, without sufficient cause, to present herself or himself for 3 consecutive hearings convened by the Chairperson, as the case may be, provided that such termination or ex-parte order may not be passed without giving a notice in writing, 15 days in advance, to the party concerned.
5. In conducting the inquiry, a minimum of 3 Members of the Complaints Committee including the chairperson, as the case may be, shall be present.
6. The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.
7. The Internal Complaints Committee shall conduct such investigations in a timely manner and shall submit a written report containing the findings and recommendations to the Employer as soon as practically possible and in any case, not later than 10 days from the date of completion of inquiry. The Employer shall act upon the recommendation **within 60 days of its receipt by him.**

8. The Complaints Committee's report will also be made available to concerned parties.

XVII. MANNER OF TAKING ACTION AGAINST THE RESPONDENT:

Where the Complaints Committee arrives at the conclusion that the allegation against the respondents been proved, it shall recommend to the employer to take action which may include the following:

- a. Written apology;
- b. Warning;
- c. Reprimand or Censure;
- d. Withholding of Promotion;
- e. Withholding of pay rise or increments; or
- f. Terminating the respondent from service; or
- g. Undergoing a counseling session or carrying out community service.

XVIII. PUNISHMENT FOR FALSE OR MALICIOUS COMPLAINT AND FALSE EVIDENCE:

Where the Internal Complaints Committee arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer to take action in accordance with the provisions of the service rules applicable to her or him. In case of students disciplinary guidelines will be followed by the employer i.e. Director of the institute. For outsourced employees action will be taken as per law of the land.

XIX. CONFIDENTIALITY:

The Institute understands that it is difficult for the victim to come forward with a complaint of sexual harassment and recognizes the victim's interest in keeping the matter confidential.

To protect the interests of the victim, the accused person and others who may report incidents of sexual harassment, confidentiality will be maintained throughout any investigatory process by all involved to the extent practicable and appropriate under the circumstances.

XX. ACCESS TO REPORTS AND DOCUMENTS:

All records of complaints, including contents of meetings, results of investigations and other relevant material will be kept confidential by the Institute except where disclosure is required under disciplinary or other remedial processes.

XXI. FREQUENCY OF MEETING OF INTERNAL COMPLAINTS COMMITTEE AGAINST SEXUAL HARASSMENT:

The Internal Complaints Committee against Sexual Harassment will meet once a quarter, even if there is no live case and review preparedness to fulfil all requirements of the procedures of handling the cases.

XXII. SUBMISSION OF ANNUAL REPORT OF THE COMMITTEE:

The Internal Complaint Committee against Sexual Harassment will prepare an annual report relating to the number of cases filed, if any, and their disposal details.

The institute will furnish an annual return (as on 31st March) in the proforma given below to the Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training, Establishment division, Government of India.

NOTE:

Any issue that is not covered or governed under the above laid down policy shall be referred to the appropriate provisions under the SHWWPPR Act 2013 or DoPT instructions/clarifications on the matter.