

SEXUAL HARASSMENT WORKPLACE POLICY



Policy Control

Ministry, Department & Agency	Planning Institute of Jamaica			
Title	Planning Institute of Jamaica Sexual Harassment Workplace Policy			
Document Status	Approved			
Policy Approvers	 i. Deputy Director General, Corporate Governance & Management ii. Director General 			
Subject Matter	Sexual Harassment (Prevention and Protection) and Workplace Discrimination			
Effective Date	June 28, 2024			
Protective Marking	Official Seal			
Review Period	Amendments by Law			

Revision History

Revision Date	Reviser	Previous Version	Description of Revision

Document Approval

Created By:	Human Resource Unit	Signature: Sulley
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	Corporate Governance and	Date: \$8/06/2024
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		Date: 2000 2004
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Being guided by the Sexual Harassment (Protection and Prevention) Act, 2021, the Director General approved the Planning Institute of Jamaica Sexual Harassment Workplace Policy.

Wayne Henry, CD, JP, PhD

Director General

June 28, 2024

Table of Contents

Policy Statement	5
International Agreements and Policy Linkages	5-6
Definitions	6
Sexual Harassment	6
Forms of Sexual Harassment	6-7
Complainant	8
Client	8
Day	8
Respondent	8
Worker	8
Responsibility	9
Worker	10-11
Management	11-12
Human Resource	
Welfare Officer/Welfare Committee	14-15
Anti-Sexual Harassment Dispute Settlement Committee	15-16
Internal Mechanisms	16
Reporting Procedure	16
Informal Complaint Process	17-18
Formal Complaint Process	19-21
Disciplinary Penalties	22
Applicable Sanctions	22
Protection Against Retaliation	22
False Claims	22
Liability for Harassment/Sanction	23
Confidentiality	23
Appendix	24
Complaint Form for Reporting Sexual Harassment	

Policy Statement

Planning Institute of Jamaica (hereinafter referred to as "the Institute") is committed to providing a safe environment for all its workers free from discrimination on any ground and from harassment at work including sexual harassment. The Institute will operate a zero-tolerance policy for any form of sexual harassment in the workplace, treat all incidents seriously, and promptly investigate all allegations of sexual harassment. Any person found to have sexually harassed another will face disciplinary action, up to and including dismissal from employment.

The physical, emotional and mental health and safety of all workers of the Institute, or other third parties conducting business with the Institute and interacting with its workers is of paramount importance. The Institute prohibits sexual harassment and this policy was established to address any occurrence of sexual harassment at the Institute.

Planning Institute of Jamaica's Zero Tolerance Commitment to Sexual Harassment

The Institute is committed to ensuring that women and men can work in an environment free of sexual harassment, where safety is ensured, and human dignity is valued and protected. The Institute takes a zero-tolerance approach towards sexual harassment and is committed to ensuring that its environment is free of any such behaviour that constitutes sexual harassment.

International Agreements and Policy Linkages

International Protocols and Conventions to which Jamaica is committed which uphold sexual harassment as a form of violence, a human rights issue, and an obstacle to development are utilized in the creation of the Sexual Harassment Workplace Policy.

The International Labour Office has pointed out, that sexual harassment is a violation of the fundamental rights of workers, and it constitutes a health and safety hazard, is an issue of discrimination which creates an unacceptable working condition and is a form of violence, usually against female workers. In its Convention No.111 - Convention concerning Discrimination in Respect of Employment and Occupation, 1958, the ILO cites issues of health and safety to employee welfare and workplace productivity, as they are affected by sexual harassment.

The Sexual Harassment (Protection and Prevention) Act, 2021 is intended to facilitate redress for women and men in the workplace, educational institutions and institutions of accommodation.

The National Policy for Gender Equality (NPGE) approved by Cabinet in 2011 promotes the objective and goal of sustainable behaviour change and an environment where females and males at all stages of the life cycle can enjoy their full human rights and develop their full potential as citizens. The Sexual Harassment Workplace Policy also mandates the Ministry of Culture, Gender, Entertainment & Sport and other entities to create mechanisms for persons to report and have redress for labour issues involving sexual harassment.

The Gender Sector Plan of the Vision 2030 National Development Plan finalized in 2010 specifically identifies sexual harassment as a deterrent to national development. The plan identifies the absence of sexual harassment policy and legislation as a weakness in the economy

as an output indicator of the Plan.

A. Definitions

1. Sexual Harassment1

Sexual Harassment means the making of any unwelcome sexual advance towards a person, by another person, which-

- a. is regarded as offensive or humiliating by the person towards whom the sexual advance is made; or
- b. has the effect of
 - i. interfering with the work performance of the person to whom the sexual advance is made; or
 - ii. creating an intimidating, offensive or hostile work environment.

2. Forms of Sexual Harassment

The various forms of sexual harassment include:

- a. **Physical Harassment** unwanted pinching, patting, touching, kissing, groping, and hugging which has clear sexual undertones.
- b. Verbal Harassment unwelcomed comments on appearance/ physical attributes private/personal life, sexually suggestive or explicit jokes, insults and 'put-downs' based on a person's sex. (It is important to note that oftentimes, harassers hide behind the argument that comments are "compliments". This does not mean that the behaviour is acceptable.)
- c. Non-verbal/Gestural Harassment sexually suggestive gestures example: winks, licking of lips, gestures with hands, fingers, and legs.
- d. **Psychological/Emotional Harassment** consists of persistent proposals and unwelcome requests, unwanted invitations to go out on dates, insults, taunts or innuendos of a sexual nature.
- e. Written/graphic/visual/audio Harassment via internet communication (including electronic message attachments), letters, landline telephone, cellular telephones, distribution and display of pornographic materials (visual and audio), obscene and sexually explicit language.
- f. Quid Pro Quo this form of sexual harassment is recognized where harassers use a position of power and authority to negotiate job benefits (employment, re-employment, continued employment, individual favourable compensation, terms and conditions, promotions, privileges). This also applies to public goods (social services, security, social benefits, natural resources), socially and economically valued goods (housing,

¹ Section (2) - Sexual Harassment (Protection and Prevention) Act, 2021.

school admission, scholarships, security) which are conditional on an exchange of sex or physical contact, and refusal leads to failure to access any of the above.

- g. Stalking/Cyber Stalking Obsessively following, besetting, contacting and watching a person, either in person or using the internet, telephone, mail, and other media, which is motivated by what the perpetrator believes are feelings of desire and love, constitute sexual harassment.
- h. Voyeurism ("Peeping Tom") The act of watching, taping, recording, or photographing a person without their knowledge, in a clandestine manner or otherwise, while the person uses or inhabits a space where they have an expectation of privacy such as their home, a public bathroom, changing room etc., is a sexually harassing act.
- Intimidation/Bully/Retaliation Persons often use non-sexual behaviour to accommodate sexual harassment. Therefore, any act of intimidation meant to prevent someone from reporting sexually harassing behaviour must be considered as a type of sexual harassment.
- j. Unintentional Sexual Harassment Acts or comments of a sexual nature, not intended to harass, can constitute sexual harassment if another person feels uncomfortable with such actions. Claiming not to understand or failing to know that an act is harassing does not mean that it is not harassment.
- k. Toxic Environment A combination of the above, can create a toxic and oppressive environment for the direct target but also for other persons who are not targeted. Even if a person is not the direct target of sexual harassment but is made uncomfortable and offended by the creation of a toxic environment, they should be able to make a report of sexual harassment.
- Reasonableness of Conduct Measuring reasonableness in sexual harassment can be done by identifying whether the behaviour leading to a sexual harassment conduct is making the victim feel uncomfortable, offended, ashamed or afraid.
 - An objective test can be taken based on the condition that a person could have anticipated such conduct would cause a humiliating and intimidating effect. Further, the conduct must be considered within the context in which 'it occurs'. Certain conduct does not only refer to the frequency of occurrence or intimidating conditions but also refers to different situations.
- m. Unwelcome Behaviour this occurs when the person subjected to sexual conduct considers it unwelcome in the specific circumstance that the offence occurs.

The Institute has a zero-tolerance approach to the aforementioned behaviours and shall take reasonable steps to prevent sexual harassment.

- 3. Complainant means the party who makes the sexual harassment complaint, which includes a worker or a client conducting business with the Planning Institute of Jamaica.
- 4. Client³ means a person who conducts business with the Planning Institute of Jamaica.
- 5. Day defined for this policy as a business day.
- **6.** Respondent⁴ in relation to a complaint, means the person who is alleged to have committed the act to which the complaint relates.
- 7. Worker⁵ means a person who carries out work in any capacity or an employer including work as:
 - a. An employee, whether in the private or public sector;
 - b. A domestic worker;
 - c. A person engaged under a contract for services, or a subcontractor of that person;
 - d. An employee of a person or subcontractor referred to in paragraph (c);
 - e. A person whose services are procured or arranged by a company which is in the business of supplying workers for other businesses, and who has been assigned to work in the business or undertaking;
 - f. An apprentice, a trainee or an intern;
 - g. A student gaining work experience;
 - h. A volunteer;
 - A person of a class prescribed by the Minister for the purposes of this definition, after consultation with the Minister with responsibility for labour.

This policy shall be effective as of June 28, 2024.

² Section (2) of the Sexual Harassment (Protection and Prevention) Act, 2021.

³ Section (2) of the Sexual Harassment (Protection and Prevention) Act, 2021.

⁴ Section (2) of the Sexual Harassment (Protection and Prevention) Act, 2021.

⁵ Section (2) of the Sexual Harassment (Protection and Prevention) Act, 2021.

B. Responsibility

The following roles and responsibilities will apply under this policy:

- 1. Worker
- 2. Management (Senior Directors, Directors/Managers) Responsible Officer
- 3. Human Resource Director/Manager Responsible Officer
- 4. Welfare Officer/Welfare Committee Responsible Officer
- 5. Anti-Sexual Harassment Dispute Settlement Committee

Note: If a Responsible Officer discloses to a third party any information relating to a Complainant of the circumstances of a complaint, that Responsible Officer will be in contravention of section 3(f) of the Sexual Harassment (Protection and Prevention) Act, 2021, and will be liable for such disclosure. The Complainant who is aggrieved by the disclosure may make a complaint in this respect to the Sexual Harassment Tribunal⁶ and will trigger the procedures for making Complaints, Investigations and Hearing by the Tribunal.⁷

⁶ S. 4 (5) of the Sexual Harassment (Protection and Prevention) Act, 2021.

⁷ S. 27 of the Sexual Harassment (Protection and Prevention) Act, 2021.

1. Worker

If a worker feels that he or she is being subjected to sexual harassment he or she may immediately inform the harasser that the conduct is unwelcome and needs to stop. If the unwelcome conduct does not cease, or if the worker is unable to, or is uncomfortable addressing the alleged harasser directly, he or she should report the incident to a Responsible Officer (Senior Director, Director/Manager, Human Resource Director /Manager or a member of the Welfare Committee). It is helpful, but not required, to provide a written record of the date, time, location and nature of the incident(s) and the names of any witnesses. Once a complaint is reported to a Welfare Officer the details of your complaint will trigger the Formal Complaint Process.

The Welfare Officer must be made aware of the situation to conduct an immediate and impartial investigation and take appropriate action to remediate or prevent the prohibited conduct from continuing.⁸

It is important to report all incidents of sexual harassment to a Responsible Officer as soon as possible.

⁸ Section 5 of the Sexual Harassment (Protection and Prevention) Act, 2021.

Worker Complaint Process

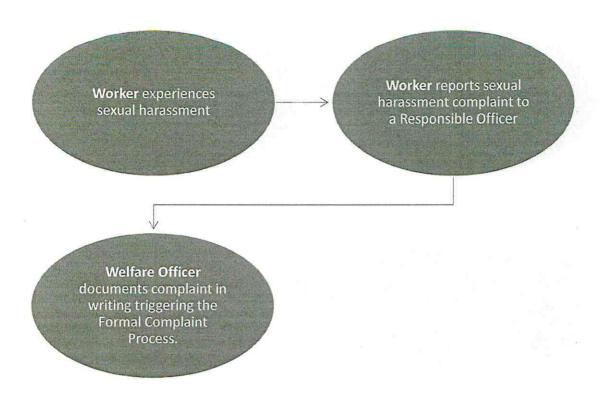


Figure 1

2. Management

Senior Directors, Directors/Managers must deal expeditiously and fairly when they have any knowledge of sexual harassment, whether or not there has been an oral or written complaint. They must ensure that:

- a. all observations, complaints or concerns of the alleged or possible sexual harassment are taken seriously no matter how minor, or who is involved, and
- b. refer the Complainant to a designated Welfare Officer/the Welfare Committee immediately to report incidents so that a prompt investigation can occur.

Management Complaint Process

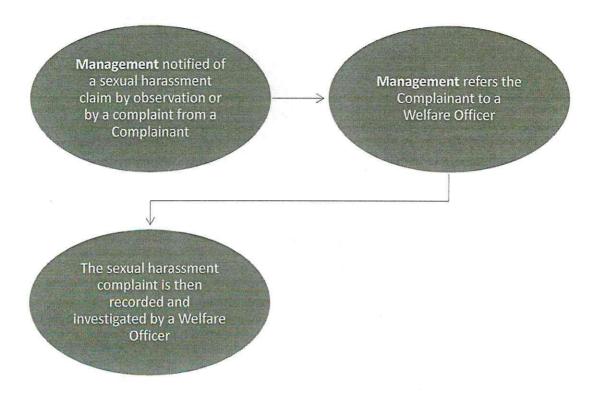


Figure 2

3. Human Resource

The HR Director and/or Manager is responsible for:

- 1. Ensuring that both the Complainant and the Respondent are aware of the seriousness of a sexual harassment complaint.
- 2. Explaining the Planning Institute of Jamaica's Sexual Harassment Workplace Policy and the Reporting Procedures available to all parties involved.
- 3. Arranging a meeting with a Welfare Officer (this is done in instances where the Complainant did not report the complaint to a Welfare Officer).

Human Resource Complaint Process

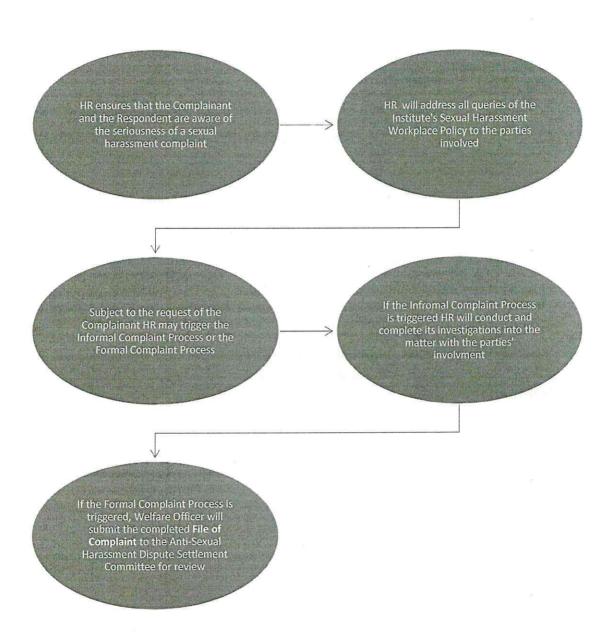


Figure 3

Note: Where an allegation of sexual harassment is made against a Worker at the Senior Management Level or Board of Directors, the Complainant may make a complaint directly to the Sexual Harassment Tribunal (section 7 of the Sexual Harassment (Protection and Prevention) Act, 2021), without exercising the Institute's Internal Mechanisms and Procedures.

4. Welfare Officer/Welfare Committee

The Institute will designate four (4) Welfare Officers to constitute a Welfare Committee responsible for accepting complaints and preparing the File of Complaints of sexual harassment.

The Welfare Officer will record complaints in writing. The Welfare Officer, after receiving a complaint, will then trigger the Formal Complaint Process by notifying the alleged accuser (Respondent) in writing, by electronic means or by hardcopy of the complaint(s) made against him/her within two (2) days of receipt of the complaint⁹, requesting a response to the complaint within seven (7) days from the date of notification.

The Welfare Officer after receiving the sexual harassment complaint must commence an investigation into the particulars of the complaint within fourteen (14) days of the complaint being reported by the Complainant and complete the investigation without delay.¹⁰

During the investigative process, the Welfare Officer must advise the Anti-Sexual Harassment Dispute Settlement Committee of concerns of retaliation, so that the same may be addressed by the Committee.

After the investigations, the Welfare Officer's findings and recommendations (known as the File of Complaint) will be documented and referred to the Anti-Sexual Harassment Committee to deliberate the claim.

It is noteworthy to mention that a Complainant is encouraged to exhaust all internal mechanisms and procedures that are available to him or her before making a complaint to the Sexual Harassment Tribunal¹¹ according to Part V of the Sexual Harassment (Protection and Prevention) Act, 2021.

⁹ Section 5 (2) (a) of the Sexual Harassment (Protection and Prevention) Act, 2021.

¹⁰ Section 5 (2) (c) of the Sexual Harassment (Protection and Prevention) Act, 2021.

¹¹ Section 27 (4) of the Sexual Harassment (protection and Prevention) Act, 2021.

Welfare Officer/Welfare Committee Complaint Process

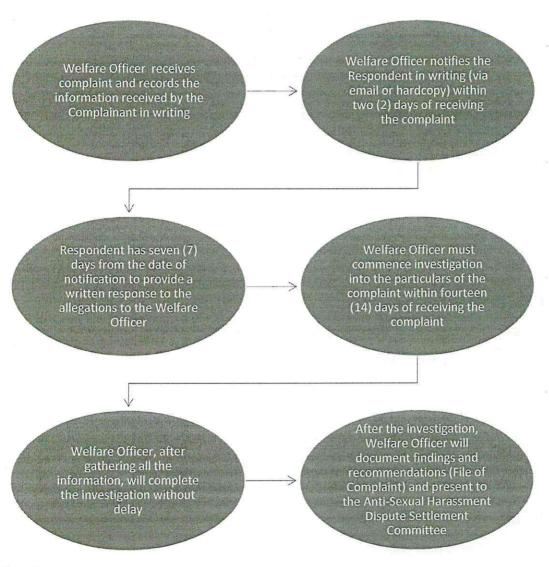


Figure 4

4. Anti-Sexual Harassment Dispute Settlement Committee

A committee for sexual harassment dispute settlement will be established within the Planning Institute of Jamaica. The Committee will consist of the following:

- 2. Two (2) parties (within the current start complement) trained to handle disputes of this nature. These members may come from a qualified resource determined by the Head of Entity; and
- 3. Human Resource Representative.

Responsibilities of the Committee:

- 1. Notify employees of their rights, depending on the nature of the sexual harassment;
- 2. Report the matter to the Jamaica Constabulary Force where criminal proceedings are required;
- 3. Take care not to prejudice the Respondent;
- 4. Provide the Respondent with an opportunity to tell his/her version of the incident and to identify all supporting witnesses (which may take the form of a hearing conducted by the Committee);
- 5. Ensure the investigations and grievances relating to the matter under their purview are handled in a manner that ensures the identities of the persons involved and all records relating to the harassment complaint are kept confidential;
- 6. Address false claims;
- 7. Ensure the protection of the Complainant against retaliation to ensure that the Complainant and Respondent continue working in a safe environment while the case is being investigated (e.g. temporary relocation of the Complainant/Respondent); and
- 8. Determine the liability for harassment and the sanctions.

C. Internal Mechanisms

Workers/Clients who wish to bring forth a claim of sexual harassment may do so by:

- 1. Documenting the incident(s)/condition(s) in writing; or
- 2. Making a report to a Responsible Officer (Senior Director, Director/Manager, HR or a member of the Welfare Committee).

Once such a report is made, it is the responsibility of the organization and the Responsible Officer(s) to report the matter of sexual harassment to a Welfare Officer for the same to be recorded in writing and for the investigation of the claim to be pursued.

D. Reporting Procedure

The principles of natural justice will be followed in the handling of all reporting procedures (Informal Complaint Process or Formal Complaint Process) relating to a sexual harassment complaint. The reporting procedures will serve to ensure that all matters are handled objectively and that each party affected is given an equal opportunity to present their case in the matter, as it relates to both the Complainant and the Respondent.

1. Informal Complaint Process

The focus of the informal process is to settle the matter between the parties amicably in a confidential and conciliatory manner and is geared towards stopping the "unwelcome" behaviour. The informal process must be settled within thirty (30) days.

Step 1

The Complainant makes a report in person to the HR Director/ Manager, which becomes the complaint, to be recorded in writing. The report should accurately specify the Respondent(s), the nature of the sexual harassment incident, the time, location, witnesses (if any) and any other critical information.

Step 2

On receiving this report HR will convey in writing (electronically or hardcopy) the complaint/report to the Respondent within two (2) days of receipt of the complaint. The Respondent is given seven (7) days from the date of notification to respond to the allegations.

Step 3

The HR assesses the accounts of the parties involved and conducts further investigation by collecting witness statements and evidential documentation relevant to the matter.

Step 4

The HR will convene a meeting with the parties involved (jointly and/or separately) and to ensure transparency, the parties would have to consent to this meeting and be given the opportunity to have a representative, whereby the recommended course of action(s) and/or sanctions will be imposed. The disciplinary sanctions shall align with those classified as "Very Serious Offences" and the disciplinary penalties should be effected according to the Schedule of Disciplinary Breaches and Penalties referenced in the Disciplinary Policy for Public Bodies.

Step 5

Upon an amicable settlement, the parties are required to provide a written confirmation (through signature and/or statement) indicating their satisfaction with the outcome of the matter.

Step 6

HR will follow up with the parties fourteen (14) days after the closure of the matter.

Note: During <u>Step 3</u> HR will assess the evidence presented to determine whether the matter can proceed informally. Based on the findings, HR will consult with the Complainant and advise him or her of the options available, which may include triggering the Formal Complaint Process.

If the Informal Complaint Process is continued HR may provide the Complainant and the Respondent with external/internal counselling and behaviour management training options.

required to sign a statement reflecting this resolution.

If after the completion of the Informal Complaint Process, the matter is not satisfactorily resolved between the parties, the Formal Complaint Process will be activated.

Informal Complaint Process

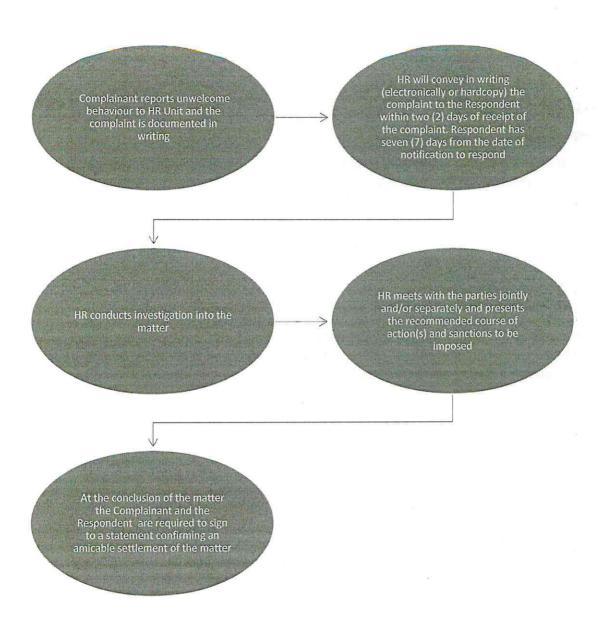


Figure 5

Note: By utilizing the Informal Complaint Process the sexual harassment complaints do not escalate to the Anti-Sexual Harassment Dispute Settlement Committee or higher.

Step 1

The Complainant reports the sexual harassment complaint to a Welfare Officer.

Step 2

The Welfare Officer records a statement in writing and ensures that the written complaint is signed by the Complainant.

Step 3

The Welfare Officer will convey in writing (electronically or hardcopy) the complaint to the Respondent within two (2) days of receipt of the complaint.

Step 4

The Respondent should then submit a written reply to the complaint within seven (7) days from the date of notification of the complaint to the Welfare Officer.

Step 5

The Welfare Officer then commences its investigation (i.e. collecting statements from witnesses and/or further statements from the Complainant and the Respondent, if necessary) into the particulars of the sexual harassment claim, within fourteen (14) days of the sexual harassment claim being reported by the Complainant.

Step 6

The Welfare Officer is required to complete the investigation without delay.

Step 7

After the completion of the investigation, the Welfare Officer submits the report (File of Complaint) to the Anti-Sexual Harassment Dispute Settlement Committee for review and recommendations. The Anti-Sexual Harassment Dispute Settlement Committee will complete its review of the claim after fourteen (14) days of receiving the File of Complaint or such longer period that is needed to present its findings to the parties involved.

Step 8

(Hearing)

If the matter has not been resolved upon review of the File of Complaint or by the Anti-Sexual Harassment Dispute Settlement Committee's recommendations, the Committee will conduct a hearing. After the hearing of the Committee, the parties will be notified of the outcome.

- The following procedure will apply to a hearing conducted by the Anti-Sexual Harassment Settlement Committee which will be referenced from the Disciplinary Policy for Public Bodies¹²
 - a. Notice of the time and place at which the hearing is to be held will be given to the parties (Complainant, Respondent, witnesses etc) about the complaint, and the

¹² Chapter 7 - Disciplinary Enquiry.

- notice period will not be less than ten (10) days from the date of the Committee determining that the matter should go to hearing;
- b. The Anti-Sexual Harassment Dispute Settlement Committee will allow each party to a hearing, a reasonable opportunity to give evidence, call witnesses, examine and cross-examine witnesses and make submissions to the Committee;
- c. A party to a hearing may be represented by an attorney-at-law or any other person, or may elect to be self-represented;
- d. A record of the evidence adduced before the Anti-Sexual Harassment Dispute Settlement Committee will be made, dated and signed by the members; and
- e. Documents produced as exhibits before the Anti-Sexual Harassment Dispute Settlement Committee shall be marked, dated and initialled by the Chairperson and will be attached to the file of the hearing.

Step 9

(Closure)

The Anti-Sexual Harassment Dispute Settlement Committee will determine the matter and deliver its decision to the parties after fourteen (14) days of the conclusion of the hearing.

Step 10

If the Complainant and/or Respondent is not in agreement with the determination of the Anti-Sexual Harassment Dispute Settlement Committee the matter will be referred to the Sexual Harassment Tribunal¹³.

¹³ S. 27 (1) (d) of the Sexual Harassment (Protection and Prevention) Act, 2021.

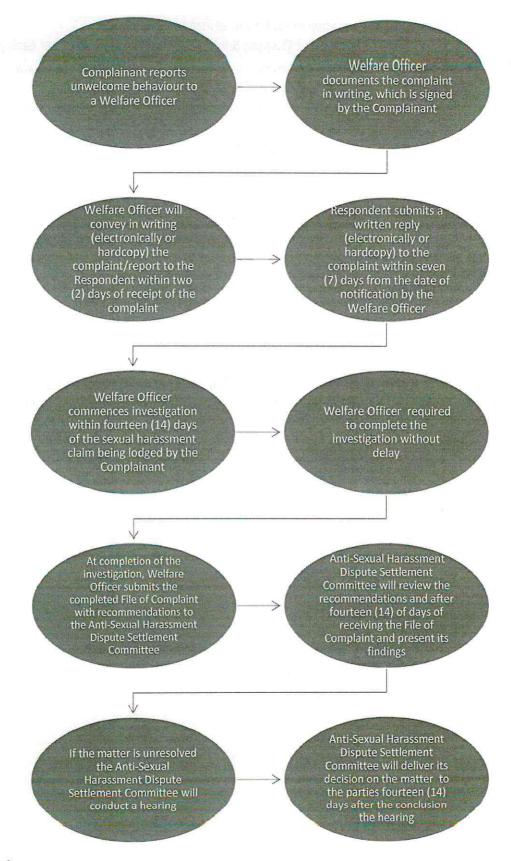


Figure 6

E.

F. Disciplinary Penalties

Depending on the outcome of investigations relating to unwelcome sexual advances towards a person the Anti-Sexual Harassment Dispute Settlement Committee may recommend disciplinary penalties. The disciplinary penalties shall align with those classified as "Very Serious Offences" and the penalties should be effected according to the Schedule of Disciplinary Breaches and Penalties referenced in the <u>Disciplinary Policy for Public Bodies</u>.

Each case will be assessed based on the following:

- a. The severity or frequency of the harassment;
- b. The extent to which the harasser should have anticipated that such behaviour was unacceptable or unwanted;
- c. The level of remorse:
- d. Whether there have been any prior incidents or warnings.

Note: If the Respondent admits to the sexual harassment breach or on the conduct of the hearing the breach is upheld, and the parties have not referred the matter to the Sexual Harassment Tribunal then the penalty is to be applied as prescribed by the Schedule of Disciplinary Breaches and Penalties referenced in the Disciplinary Policy for Public Bodies.

G. Applicable Sanctions

Each sexual harassment case will be assessed based on its merit. The sanctions to be applied by the Institute may include but not be limited to the following:

- Issuing a Final Written Warning;
- Issuing a transfer or reassignment of duties to the Respondent (where this can be facilitated);
- In serious cases, suspension or termination of employment.

Note: The Respondent may receive behaviour counselling and/or behaviour management training where necessary.

H. Protection Against Retaliation

The act of bullying, intimidation and threats which are meant to accommodate sexual harassment or retaliate against an individual/individuals who have made a claim of sexual harassment shall be treated as acts of sexual harassment and shall be treated accordingly.

I. False Claims

Person/persons, who is/are found to wilfully and knowingly bring forth a false claim of sexual harassment against another individual, shall be liable for a breach of the Planning Institute of Jamaica's Sexual Harassment Workplace Policy and shall be reprimanded in accordance with the <u>Planning Institute's Policy and Procedures Manual</u>.

J. Liability for Harassment/Sanction

A person/persons who is/are found to be in breach of this policy shall be found liable for sexual harassment and will be reprimanded accordingly. Failure by the Planning Institute of Jamaica to enforce this policy shall be in contravention of the law and is an offence of summary conviction in the Parish Court, liable to a fine not exceeding one million dollars¹⁴.

K. Confidentiality

All complaints of sexual harassment shall be documented and thoroughly archived for monitoring and evaluation. However, the Planning Institute of Jamaica will endeavour to protect the privacy of all parties involved throughout the investigation pursuant to the Data Protection Act, 2020. If an individual is found to be in breach of the policy, the expectation of privacy shall be relaxed to the extent that it is legally permitted.

¹⁴ S. 12 (9) of the Sexual Harassment (Protection and Prevention) Act, 2021.

APPENDIX

PLANNING INSTITUTE OF JAMAICA

COMPLAINT FORM FOR REPORTING SEXUAL HARASSMENT

The Sexual Harassment (Protection and Prevention) Act, 2021, requires all employers to adopt a sexual harassment workplace policy. Using this complaint form to report alleged incidents of sexual harassment will assist in the documentation of the reporting process.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to a Welfare Officer [Contact information]. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally, your Welfare Officer should complete this form, provide you with a copy and follow its sexual harassment prevention policy by investigating the claims outlined in the **Planning Institute of Jamaica Sexual Harassment Workplace Policy**.

For a review of the law, visit: https://laws.moj.gov.jm/library/act-of-parliament/18-of-2021-the-sexual-harasment-protection-and-prevention-act

COMPLAINANT INFORMATION

Name:			
Work Phone:			
Job Title:	Email:		
Select Preferred Communication Method:	☐ Email	☐ Phone	☐ In-person
SUPERVISORY INFORMATION			
Immediate Supervisor's Name:			
Job Title:			
Email:			
Work Phone & Extension:			

COMPLAINT INFORMATION

Your complaint of S	sexual Harassment i	s made about:		
me: Job Title:				
ork Phone & Extension	n:			
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Date(s) sexual haras	sment occurred:			
Is the sexual harassr	nent continuing?	□Yes □ N	Io	5
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