

Regulatory Procedure

HOW TO APPROACH THE FEDERAL OMBUDSMAN FOR PROTECTION AGAINST HARRASMENT AT THE WORKPLACE.



Small and Medium Enterprises Development Authority

**Ministry of Industries & Production
Government of Pakistan**

www.smeda.org.pk

HEAD OFFICE

4th Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road,
Lahore
Tel: (92 42) 111 111 456, Fax: (92 42) 36304926-7
helpdesk@smeda.org.pk

REGIONAL OFFICE PUNJAB	REGIONAL OFFICE SINDH	REGIONAL OFFICE KPK	REGIONAL OFFICE BALOCHISTAN
3 rd Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road Lahore, Tel: (042) 111-111-456 Fax: (042) 36304926-7 helpdesk.punjab@smeda.org.pk	5 TH Floor, Bahria Complex II, M.T. Khan Road, Karachi. Tel: (021) 111-111-456 Fax: (021) 5610572 helpdesk-khi@smeda.org.pk	Ground Floor State Life Building The Mall, Peshawar. Tel: (091) 9213046-47 Fax: (091) 286908 helpdesk-pew@smeda.org.pk	Bungalow No. 15-A Chaman Housing Scheme Airport Road, Quetta. Tel: (081) 831623, 831702 Fax: (081) 831922 helpdesk-qta@smeda.org.pk

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1 Introduction of SMEDA

The Small and Medium Enterprises Development Authority (SMEDA) was established with the objective to provide a fresh impetus to the economy through the launch of an aggressive SME development strategy. Since its inception in October 1998, SMEDA has adopted a sectoral SME development approach. A few priority sectors were selected on the criterion of SME presence. In depth research was conducted and comprehensive development plans were formulated after identification of impediments and retardants. The all-encompassing sectoral development strategy involved overhauling of the regulatory environment by taking into consideration other important aspects including finance, marketing, technology and human resource development.

After successfully qualifying in the first phase of sector development SMEDA reorganized its operations in January 2001 with the task of SME development at a broader scale and enhanced outreach in terms of SMEDA's areas of operation. Currently, SMEDA along with sectoral focus offers a range of services to SMEs including over the counter support systems, exclusive business development facilities, training and development and information dissemination through a wide range of publications. SMEDA's activities can now be classified into following broad areas:

Creating a Conducive Environment; includes collaboration with policymakers to devise facilitating mechanisms for SMEs by removing regulatory impediments across numerous policy areas

Cluster/Sector Development; comprises formulation and implementation of projects for SME clusters/sectors in collaboration with industry/trade associations and chambers

Enhancing Access to Business Development Services development and provision of services to meet business management, strategic and operational requirements of SMEs.

SMEDA has so far successfully formulated strategies for sectors including fruits and vegetables, marble and granite, gems and jewelry, marine fisheries, leather and footwear, textiles, surgical instruments, transport and dairy.

Along with the sectoral focus a broad spectrum of services are now being offered to the SMEs by SMEDA, which are driven by factors such as enhanced interaction amongst the stakeholders, need based sectoral research, over the counter support systems, exclusive business development facilities, training and development for SMEs and information dissemination through a wide range of publications.

2 Role of Legal Services Cell, SMEDA

The Legal Services Cell (LSC) is a part of Business & Sector Development Services Division of SMEDA and plays a key role in providing an overall facilitation and support to SMEs. The LSC provides guidance based on field realities pertaining to SMEs in Pakistan.

LSC believes that information dissemination to SMEs on the existing regulatory environment is of paramount importance and plays a pivotal role in their sustainable development.

In order to facilitate SMEs at the individual level LSC has developed user-friendly systems, which provide them with detailed description of laws and regulations including processes and steps required for compliance.

The purpose of this document is to provide SMEs, service providers, companies and firms with information pertaining to procedural requirements regarding filing a complaint with the Federal Ombudsman for Protection against Harassment at the Workplace.

3 Disclaimer

Information in this document is provided only for general information purpose and on an "as is" basis without any warranties of any kind, as laws and ancillary rules and regulations are subject to change. SMEDA assumes no responsibility for the accuracy or completeness of this information and shall not be liable for any loss arising from its use.

4 Who is the Federal Ombudsman for Protection against Harassment at the Workplace

The office of the Federal Ombudsman for Protection against Harassment has been established to create a safe working environment for women that is free from abuse, intimidation and harassment with a view towards fulfillment of their right to work with dignity. The Act aims to enable higher productivity for women and a better quality of life at work. For this purpose this institution has been given certain powers and responsibilities by virtue of applicable law.

5 Applicable Law

The Federal Ombudsman for Women is an independent institution established under The Protection against Harassment at Workplace Act, 2010. Protection against Harassment at Workplace (Amendment) Act, 2022 also sheds light on the subject.

6. Meaning of ‘Harassment ‘under the Act

The Protection against Harassment at Workplace Act 2010 denotes ‘harassment’ as that which creates a hostile, intimidating and uncomfortable work environment vis a vis the following acts/actions:

- a) Verbal/visual/written communication or physical conduct of a sexual nature
- b) Unwelcome sexual advances or requests for sexual favors
- c) Stalking or cyberstalking
- d) Sexually demeaning attitudes
- e) Discrimination which may or may not be sexual in nature, on the basis of gender
- f) Gestures or expressions conveying derogatory connotations causing interference with work performance/environment
- g) Attempting to punish a complainant for refusing to comply to such a request
- h) Compliance to such a request made to be a condition for employment for the complainant.
- i) Discrimination on the basis of gender

7. Code of Conduct

The Act devises a Code of Conduct for an Organization's employees to follow and adhere to. Section 11 of the Act lays down that the Code of Conduct in the Schedule to the Act shall be incorporated and made a part of the workplace's management policy and that the Code of Conduct shall be displayed at a prominent place within the Organization both in the English and Urdu languages. (Please refer to Annexure 1)

8. Inquiry Committee

The Act also makes it mandatory for every Organization to constitute an Inquiry Committee to enquire into complaints made under the Act.

The Inquiry Committee shall address a complaint within 3 days of the complaint being submitted and following deliberations and investigation shall submit a decision to the Competent Authority in the form of findings and recommendations within 30 days.

If the inquiry committee finds the accused guilty it shall recommend to the Competent Authority to impose either minor or major penalties on the accused. The Competent Authority shall impose such penalties within a week of them being recommended by the Inquiry committee.

9. Minor and Major Penalties

S. 4 (4) (i) & (ii) of the Act list out the following minor and major penalties that the Inquiry committee and Ombudsman may recommend to be imposed on the accused:

a) Minor Penalties

- b) Censure
- c) Withholding promotion or increment for a specific period
- d) Stopping for a specific period in the time scale of the efficiency bar
- e) Payment of compensation to the complainant

b) Major Penalties

- a) Demotion to a lower post or time scale or to a lower stage in time-scale
- b) Compulsory retirement
- c) Removal from service

- d) Dismissal from service
- e) Suspension or Cancellation of Professional License
- f) Fine, a part of which can be used as compensation to the complainant.

10. Instances when the Federal Ombudsman can be approached

The Federal Ombudsman can be approached in the following instances:

- a) By the Inquiry Committee, if it concludes that the allegations made against the accused were false and made with malicious intent.
- b) By the aggrieved party, on whom a minor or major penalty has been imposed by the Competent Authority.
- c) By the complainant, if aggrieved by the decision of the Competent Authority.
- d) Any aggrieved party can also make a complaint directly to the Ombudsman instead of making a complaint to the Inquiry Committee.

11. The Federal Ombudsman for Protection against Harassment Office

The Federal Ombudsman for Protection against Harassment shall head the Federal Ombudsman Secretariat for Protection against Harassment (FOSPAH) which has been established under The Protection against Harassment at Workplace Act, 2010.

The Federal Ombudsman shall be a judge of the High Court or qualified to be appointed as the Judge of a High Court.

There shall be an Ombudsman Office at the Federal and the respective Provincial levels pursuant to the Act.

12. Advantages of Approaching the Federal Ombudsman

Approaching the Federal Ombudsman for Protection against Harassment is advantageous for the following reasons:

- Accessible, friendly and flexible
- Unlike the courts, formal legal representation is not required
- Complainants retain the right to take the matter to the court if not satisfied
- A cost free service for complainants
- Hence cost effective

13. Procedure to file a Complaint

Any person may file a Complaint to the Ombudsman's office either in person or through postal mail. The Complaint may be filed according to the region where the employee's organization is located as there are regional Ombudsman office branches including the head office in Islamabad.

The following documents are required for making a complaint:

- Complaint/application on a simple piece of paper addressed to the Ombudsman
- Copy of complainant's CNIC
- Postal address and phone number of the accused

Once the complaint is accepted, the complainant is given a complaint number and notices are issued to conduct hearings at the Ombudsman's office. Following the hearings and upon inquiry, investigation and examination of documents, the Ombudsman records his decision and informs both parties and the management of the concerned Organization for the implementation of his orders. The Ombudsman may impose on the accused either minor or major penalties listed at Point 9 a) and b) in addition to any other penalties/directions/recommendations that he may deem fit, in his discretion.

14. How much time may a case take

The office of the Federal Ombudsman for Women tries to resolve most complaints within 90 days. However, depending on complexity, some complaints could take longer to be resolved.

15. Representation to the President or Governor

A party aggrieved by the findings and recommendations of the Ombudsman, may file a representation directly to the President or Governor within 30 days of such findings/recommendations. Such a representation shall be decided within 90 days.

16. Online Complaint

Complainants also have the option to lodge their complaints via the online method. The online complaint form can be viewed and is available at the Federal Ombudsman Secretariat for Protection against Harassment (fospah) website and can be accessed at : www.fospah.gov.pk.

17 CONTACT INFORMATION

Federal Ombudsman Secretariat for Protection against Harassment (FOSPAH)

**1st Floor, LG&RD Complex, Behind SBP, Opposite ILO
Sector G-5/2, Islamabad, Pakistan.
Phone: 051-9264444 Fax: 051-9262945**

Email: info@fospah.gov.pk

Website: www.fospah.gov.pk

Contacts of Regional Offices:

Lahore:

First Floor, Ali Complex, Opposite Radio Station, Near Shimla Pahari,
Empress Road. Lahore.
Phone: (+92-42) 99206482-3

Peshawar:

House No 47, Canal Road, Hasan Ghari, Warsak Road, Near Beacon
House School, Peshawar.
Phone: (+92-91) 2617111

Karachi:

State Life Building no. 11, 3rd Floor, Near Zainab Market, Abdullah
Haroon Road, Saddar, Karachi.
Phone: (+92-21) 9206444

CODE OF CONDUCT

Under Protection against Harassment Act, 2010.

[Schedule Section 2c and 11]

Whereas it is expedient to make the Code of Conduct at the workplace etc to provide protection and safety against harassment it is hereby provided as under:

GUIDELINE TO ENSURE A HARASSMENT FREE WORK ENVIRONMENT

It is the responsibility of every employer to provide a conducive work environment

Types of harassment:

- i. **Abuse of Authority** means demanding sexual favors from subordinate for the subordinate to keep or obtain job benefits.
- ii. **Hostile environment** means one where the complainant feels uneasy, abused and intimidated which interferes with the complainant's work performance.
- iii. **Retaliation** means refusing a sexual favor results in limiting promotion, generating gossip or distorting evaluation reports etc.

Complaint in organization:

- **Every organization must have an inquiry committee**, consisting of three members; at least one woman, to entertain the complaints.
- The names and contact numbers of members of inquiry committee should be publicly displayed.
- Adjustment should be made by the employers such as:
 - i. Complainant and accused should not be required to meet for official business.

- ii. Extra charge, giving one party excessive power over the other, should be taken away.
- iii. Retaliation should be strictly monitored
- If harassment committee does not exist/ functional in an organization, complaint can be filed at FOSPAH.

Appeal at FOSPAH:

- Feeling aggrieved of inquiry committee's decision, an appeal can be filed at FOSPAH within 30 days.

OR

Complaint at FOSPAH:

- A fresh complaint can be filed before the Federal Ombudsman:
 - 1. Online 2. By post 3. In person.

FOSPAH IS EMPOWERED TO PROTECT AND SECURE THE RIGHTS OF OWNERSHIP OF WOMEN IN THE PROPERTY INHERITED OR OWNED

FOSPAH is now empowered under the “Enforcement of Women's Property Rights Act 2020” to deal with all the complaints related to **women's property rights including movable or immovable property**.

- The aggrieved woman or anybody on her behalf can file a complaint at FOSPAH.
- The Ombudsman can even take **sou moto notice** in such cases.
- Decision would be announced in 2 months.

Online Complaint



www.fospah.gov.pk



Islamabad: +92 51 9264444, Karachi: +92 21 99206444
Peshawar: +92 91 2617111, Lahore: +92 42 99206482



@fospah



info@fospah.gov.pk