

THE HORIZON

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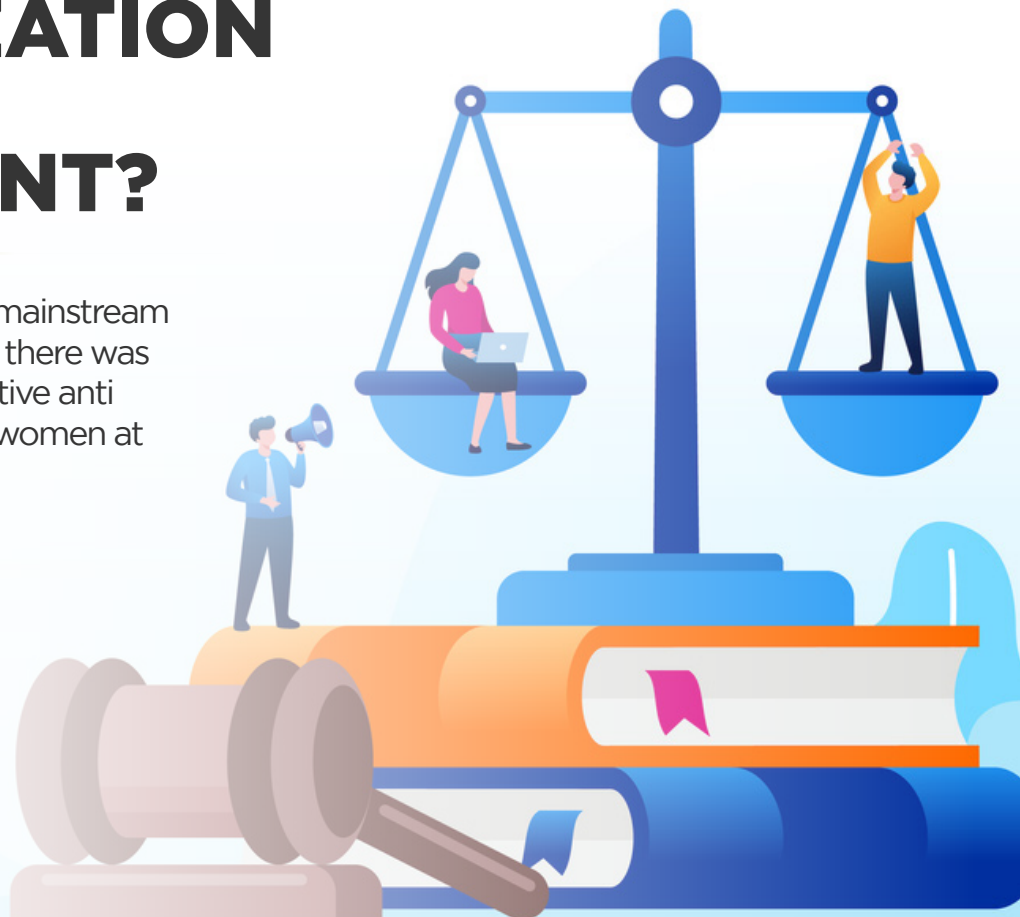
IS YOUR ORGANIZATION POSH COMPLIANT?

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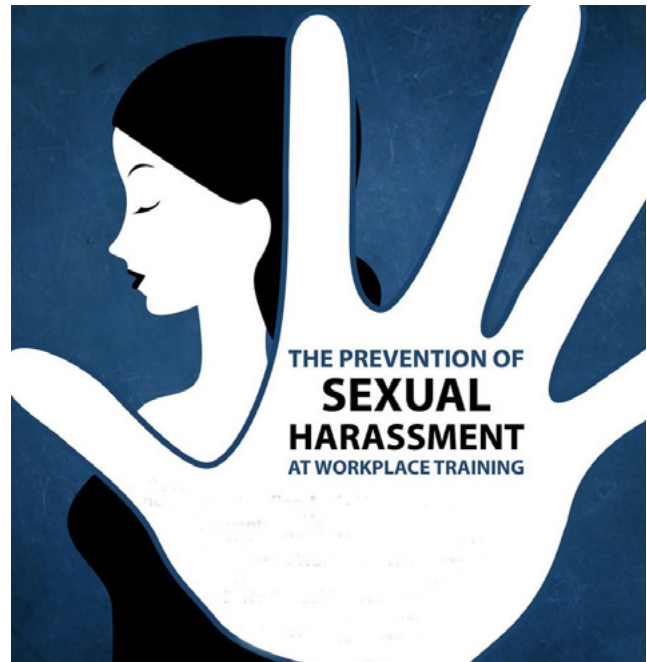


Is Your Organization POSH Compliant for Women?

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Associate Partner

With women entering the mainstream workforce with full motion, there was a greater need for an effective anti-sexual harassment law for women at workplace in India. The Supreme Court of India for the very first time in its landmark judgement *Vishaka & Others Vs. State of Rajasthan* dealt with the question of safety of women from any kind of sexual harassment at the workplace and laid down guidelines, famously known as “Vishaka Guidelines” to address and deal with the same, which inter alia mandated for every employer to set up an internal complaint committee and provide a mechanism to redress grievances pertaining to workplace sexual harassment. The Supreme Court also noted the absence of appropriate legislation specifically addressing the issue of workplace sexual harassment and issued directions to the Union of India to enact an appropriate law for combating workplace sexual harassment. Vishaka Guidelines were later superseded by the Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (the “POSH Act”), enacted in 2013 by the Ministry of Women and Child Development, i.e. after 16 years following the Vishaka Judgement. The key objective of the POSH Act is to prevent and protect women against sexual harassment at workplace, while also ensuring effective and time bound redressal of sexual harassment complaint made by a complainant.

The POSH Act defines ‘sexual harassment’ to include unwelcome sexually tinted



behaviour, whether directly or by implication, such as (a) physical contact and advances, (b) demand or request for sexual favours, (c) making sexually coloured remarks, (d) showing pornography, or (e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature. The aforesaid definition is not exhaustive and companies in India are free to include certain other acts amounting to sexual harassment or behaviour or circumstances that may amount to sexual harassment. The POSH Act further provides for certain circumstances, among other circumstances, if they occur or are present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment. The definition of an ‘employee’ under the POSH Act is fairly wide to cover regular, temporary, ad hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal

employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied. Interestingly, the POSH Act introduces the concept of 'extended workplace' which is in contrast to the concept of traditional office set-up.

'Workplace' under the POSH Act is defined to include any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer. In the case of *Saurabh Kumar Mallick v. Comptroller & Auditor General of India*, the respondent was facing departmental inquiry for allegedly indulging in sexual harassment of his senior woman officer. The respondent contended that as the alleged sexual harassment and misconduct took place at an official mess and not at the workplace, he cannot be accused of sexual harassment and owing to the seniority of the woman officer, no favour could be extracted by the respondent from the complainant, hence not an act of sexual harassment. However, the Delhi High Court while concluding, held that the official mess where the employee was alleged to have been sexually harassed definitely falls under 'workplace' for the detailed reasons set forth in the judgment.

After the POSH Act and Rules came into effect, Indian legal landscape witnessed tremendous changes. Indian companies started putting in place a written policy on Sexual Harassment broadly based on the POSH Act and has been progressive in implementing it and the POSH Act and Rules framed thereunder. There is a greater awareness of the issue of sexual harassment at workplace now, which has created a safe and secure environment for women by preventing, prohibiting, and redressing instances of sexual harassment at workplaces in India. That said, there is still lack of clarity on various aspects pertaining to the POSH Act, including what constitutes sexual harassment, procedure of investigation, safeguards available to the victim, how to handle wrong or malicious complaints,

legal or criminal consequences of sexual harassment etc. The understanding of the difference between terms 'harassment' and 'sexual harassment' is extremely important. On one hand the term harassment in common parlance is any situation or act that makes a person uncomfortable to work and creates a hostile work environment. On the other hand, term sexual harassment is any situation or act which is sexually abusive in nature and thereafter creates a hostile work environment in an organization. Therefore, it is imperative to draft POSH Policy with care and diligence, keeping in mind the following key aspects, including virtual or digitized sexual harassment, which companies in India are dealing with owing to employees working from home or remotely through electronic/digitized platforms:

- While the POSH Act is applicable to only women and does not offer protection against sexual harassment to other gender including transgender, it may be worthwhile to have the POSH Policy which is gender neutral, specially in the era of globalization.
- The POSH Policy must have clear definitions in line with the POSH Act, including what constitutes sexual harassment, behavior or circumstance, constitution of IC must be clear and names of IC members should be made available in the POSH Policy itself and the procedure for right from lodging a complaint to completion of investigation within specified timelines and delivery of order must be set forth with clarity and without any ambiguity. The employer must check whether their current POSH Policy contains provision pertaining to lodging an online complaint within the organization. With the outbreak of COVID-19, many companies have resorted to working from home or remote location. While some companies have drafted a well informed work from home policy which contains provisions of POSH, while working from home or remotely or connects with the existing POSH Policy, others have revised their existing POSH policies to update/include provisions pertaining to any sexually

colored remark or making any advance of sexual nature on electronic medium, lodging an online complaint/email, conducting online investigation (via video conferencing or phone and written or electronic recordings of it be maintained) with the main focus on protection of confidential information by including privacy clause to ensure protection of confidential information, complainant, respondent, witnesses, evidence placed on record, details of investigation process etc.

- POSH Policy must also define workplace clearly. As mentioned above, with employees working from home, whether the existing POSH Policy acknowledges the same or virtual sexual harassment or any work done or e-interaction with fellow colleagues, seniors or third party on electronic platform such as Skype, WhatsApp video calls, M-teams etc. while working from home or during the course of her employment. Further, employee must be aware if any sexual harassment incident has happened while working from home, which is now her workplace, through electronic medium such as on email, audio call or video conferencing, such employee is well within her rights to lodge a complaint with the IC.

- The POSH Policy should clearly specify timeframe of the complaint process. Some companies even provide a format for easy understanding of complainant. The companies must follow the timeframe specified therein including handling of any complaint filed via e-mail by employee working from home. This timeframe has to be adhered to even if the complaint has been filed by an employee working from home or in remote location.

- The procedure to communicate the findings of the investigation should be mentioned along with procedures pertaining to filing an appeal. Companies may also consider providing compensation procedures for the complainant.

The POSH Act also mandates employer to take necessary steps to create awareness among its employees regarding issue of sexual harassment, prevention and redressal of the same by holding on-site sessions, e-learning sessions, posters and banners or a video on the same. While holding any awareness session, employers must ensure that all employees attend the same including those who are not available on site. During the times of COVID-19, with employees working from home or remotely, e-learning sessions are excellent tool to create awareness against sexual harassment. Employees must be made aware of difference between harassment and sexual harassment or inappropriate behaviour that constitutes sexual harassment. Employer must also make efforts to create awareness regarding 'virtual' etiquettes, sending text messages or attending an audio or video call, dress codes and promoting a zero-tolerance policy for both on-site of virtual sexual harassment.

Make POSH Practical:

- In some developed countries policies on disclosure of any romantic relationship should be considered. On receipt of such disclosures – HR should attempt to keep the concerned in two different teams or appropriate measures as per policy. It has been observed that with such relationships going sour – inappropriate use of POSH has happened.

- Non-Retaliation policy to be followed in the organisation in writing & spirit.

- Adequate CCTVs to be deployed (other than private areas like washroom)

- Annual employee survey on POSH to be conducted and transparent results to be shared to the board & employees

- Diversity & Inclusion trainings in addition to POSH trainings

- Adoption of elements of Covington Report



Key Updates - Labour & Employment

1. EPFO Circular Towards Settlement of Death Claims on Priority Basis In Events of Industrial Accident Claim

Employee Provident Fund Organization (EPFO) vide circular no EDLI/3(39) SOM/2020/246 has directed Additional Central PF Commissioner (Zones) and Regional Provident Fund Commissioner (in-charge of Regions) to take immediate initiative to settle death claims of any concerned members in the event of any incident of industrial accidents resulting in death of employees of a covered establishment. Further, upon becoming aware the RPF should immediately depute an Enforcement Officer to ascertain the complete details of incident, death cases etc. from the concerned covered establishment and ensure that due guidance is provided to the family members/ legal beneficiaries of the deceased members for immediate filing of claims under the provisions of the schemes under EPF & MP Act, 1952. Furthermore, a complete action taken report in respect of the above should be sent to the Head Office through concerned ACC (Zones) within two (2) days of any such industrial incident.

2. Circular on Online Submission Of Annual Report Under POSH Act Within 14th August 2020 In Mumbai

Government of Maharashtra vide circular no. DWCDOMC/POSH Act 2013/2020-21/ has issued a mandate to all Government

establishments, semi Government, private establishments, educational institutions, Government/private companies etc. to submit the Annual Reports for the year 2019 by every establishments' Internal Committee to the employer and employer to forward the same to the District Officer, Mumbai City till August 14, 2020 evening @ dwcdmumbai@gmail.com in the format as provided.

3. Mandatory Submission of Mobile Number and Bank Account Details for Registration Under ESIC

ESIC vide circular No: F.No. I-11/13/04/2020-ICT has mandated the submission of mobile number and bank account details (Bank name, Branch name, and IFSC) with effect from July 1 2020 for registration of employees under ESIC to improve the efficiency in the disbursement of ESIC benefits (including claim reimbursement) and bring transparency. As per the aforesaid circular, while registering a new insured person, the employer are required to mandatorily provide mobile number and also update mobile numbers and bank account details of existing employees registered under the ESI Scheme as well and Cash benefits/Claim reimbursements will be settled only if the correct bank account details of the beneficiary are available in the system. The manuals pertaining to the changes will be available soon on the ESIC website. Hence with these changes, ESIC is ensuring that the insured persons receive benefits such as hospitalization, monetary benefits as applicable seamlessly without any hassle.

4. Centre publishes draft Rules under the Transgender Persons Act, 2019 on July 13, 2020 invites suggestions/objections from stakeholders

The Ministry of Social Justice and Empowerment, Government of India, published the draft Transgender Persons (Protection of Rights) Rules, 2020 on July 13, 2020 which it proposes to notify under the Transgender Persons (Protection of Rights) Act, 2019. The same have been published to invite suggestion/objections from stakeholder for a period of 30 days.

The draft Rules propose the definition of 'discrimination' to "means any distinction, exclusion or restriction on the basis of gender identity and expression which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination, including denial of reasonable accommodation". As per the draft Rules, the Central Government or the State Governments, as the case may be, shall also take adequate steps to prohibit discrimination in any Government or private organisation or establishment including in the areas of education, employment, healthcare, public transportation, participation in public life, sports, leisure and recreation and opportunity to hold public or private office.

Rule 12 of the draft rules imposes a mandatory obligation on the employers to implement measures to prevent discrimination against any transgender person in any matter relating to employment. Further, establishments are mandated to publish an equal opportunity policy for

transgender persons and display the same preferably on their website or otherwise in a conspicuous place in the premises for easy access. The Policy should inter alia provide the facilities (such as unisex toilets) and the safety measures to be provided by the employer for the benefit of transgender persons.

Under the Act, every establishment shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act. States will be responsible for "timely prosecution of individuals" charged under Section 18, which prescribes offences against the transgender community and penalties therein. The offences would be punishable with imprisonment for six (6) months upto two (2) years, with a fine. State governments will have to set up a Transgender Protection Cell under the District Magistrate and DGP to monitor cases of offences against transgender persons and implement Section 18.

5. Karnataka promulgates The Industrial Disputes And Certain Other Laws (Karnataka Amendment) Ordinance, 2020 on July 31, 2020

Governor of Karnataka vide Ordinance No. 15 of 2020 dated July 31, 2020 has promulgated the Industrial Disputes and Certain other laws (Karnataka Amendment) Ordinance, 2020 ("Ordinance") to amend the Industrial Disputes Act, 1947 ("IDA"), the Factories Act, 1948 ("Factories Act"), the Contract Labour (Regulation and Abolition) Act, 1970 ("CLRA"), as applicable to the State to provide boost to ease of doing business in India. The key changes brought in by the Ordinance are:

Sr. No.	Acts	Changes
1.	IDA	Increase in threshold for applicability of Chapter VB of the IDA from hundred (100) workmen (non-managerial employees) to three hundred (300) workmen. Requirement for seeking permission relating to layoffs, retrenchment, closure of business will now apply to industrial establishment where not less than 300 workmen are employed instead of the existing provision of 100 workmen. Therefore, the requirement for seeking permission from the appropriate government not apply to establishments falling below the increased threshold for the same.
2.	Factories Act	Increase in threshold for applicability of Factories Act from ten (10) or more workers to twenty (20) or more for factories running with the aid of power and from twenty (20) or more workers to forty (40) or more workers for factories running without the aid of power. The number of hours allowed to work overtime has been increased from seventy-five (75) hours to one hundred and twenty-five (25) hours in any quarter under Section of 65 of the Factories Act.
3.	CLRA	Increase in threshold for applicability of the CLRA from twenty (20) or more workmen to fifty (50) or more workmen.

6. Haryana notifies Factories (Haryana Amendment) Act, 2018 on July 20, 2020

The key amendments are as follows:

Threshold for the application of Factories Act has been increased from ten (10) workers to twenty (20) workers for factories running with the aid of power and from twenty (20) workers to forty (40) workers for factories running without the aid of power.

Capping of the number of overtime hours, per quarter, as mentioned under Section 65 has been increased from 75 hours to 115 hours.

In clause (b) of sub-section (1) of section 66 of the Factories Act, for the existing proviso which allows women to work in factories only between 6 AM to 7 PM, the following proviso shall be substituted, namely:- “Provided that the State Government may, by notification in

the Official Gazette, in respect of any factory which provides such adequate safety and security measures or safeguards, as may be prescribed apply for such exemption, allow the women to work in factory between the hours of 7:00 PM to 6:00 AM”.

Introduction of compounding of offences. The offences specified in the Fourth (4th) Schedule (as appended to the notification), if committed for the first time, may be compounded before institution of prosecution for such amount, as may be notified by the State government in the official gazette. The amount of fine will not exceed the fine prescribed under Section 92 of the Factories Act and where an offence has been compounded, no further proceedings shall be taken against the occupier in respect of such offence.

7. The Maharashtra Minimum Wages VDA Notification (July 2020)

Government of Maharashtra has released revised minimum rates of wages (variable

dearness allowance) effective from 1st July 2020 which will be valid till 31st December 2020.

8. Amendment To Applicability Under The Employees State Insurance Act, 1948 For Maharashtra

The Government of Maharashtra vide notification No. ESIC 2015/C.R. 150/RAKAVI-2 has approved the notification dated September 10, 2020 towards amendments under “The Employees State Insurance Act, 1948”. As per the amendment, the Act shall extend to Shops, Hotels, Restaurants, Road Motor Transport Establishments, Cinema including preview theatres, Newspaper establishment as defined in Section 2 of the Working Journalists (Condition of Services) and Miscellaneous Provision Act, 1995, wherein ten (10) or more persons are employed or were employed on any day of the preceding twelve (12) months.

9. Implementation of Auto-Renewal System Under Ease Of Doing Business In Karnataka

The Government of Karnataka, vide order no. LD 241 LET 2020, in order to enhance “Ease of Doing Business” in the State, has ordered that henceforth, renewal procedures for Certificates / Registration / Licenses for establishments shall be in an auto-renewal system based on prescribed online fee

payment under the following acts with an immediate effect:- (1) Registration under the Shops and Commercial Establishments Act, 1961 (2) License under the Contract Labour (Regulation and Abolition) Act 1970 (3) License under the Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979 (4) License under the Factories Act, 1948. The applicant may download the digitally signed certificate through the department portal.

10. Labour Codes 2020: Parliament Passes three (3) key labour reforms Codes, 2020

The Lok Sabha cleared new versions of three Labour Bills, i.e. Industrial Relations Code Bill, 2020, Code on Social Security Bill, 2020 and Occupational Safety, Health and Working Conditions Code Bill, 2020. While the Occupational Safety, Health and Working Conditions Code, 2020, will consolidate and amend the laws regulating the occupational safety, health and working conditions of persons employed in an establishment and related matters, the Industrial Relations Code, 2020, seeks to consolidate and amend laws relating to trade unions, conditions of employment in industrial establishments or undertaking, investigation and settlement of industrial disputes. The Code on Social Security, 2020, will amend and consolidate laws relating to social security with the goal to extend social security to all employees and workers either in the organised sector or the unorganised sector. The aforesaid three (3) Codes approved by Parliament now awaits President’s assent.



THE FIRM IN NEWS

Alok Dhir & India's Insolvency and Bankruptcy Regime - The Veteran, Views & More



Alok Dhir is an innovative and brilliant litigation lawyer having strong commercial acumen and is renowned for providing creative solutions and developing complex structures for achieving resolution for stakeholders in corporate and commercial insolvencies and M&A transactions. Read the exclusive interview here. [Read More](#)

RBI's push to alleviate COVID-19 Stress - Alok Dhir, Managing Partner, Dhir & Dhir Associates shares his views on ET Now

RBI Releases Kamath Committee Report which recommended financial ratios for 26 sectors. The Kamath Panel recommendations broadly accepted by RBI, restructuring of loans. The parameters are leverage, liquidity, debt serviceability, restructuring of loans, ratios to be considered, total outside liability, adjusted tangible net worth, total debt/EBITDA, current ratio, debt service coverage ratio, average debt service coverage ratio. Where ratios don't apply, lenders shall make their own assessment, lenders to refer to 6th Aug and 7th September circulars. Catch the full debate with Alok Dhir, Managing Partner - Dhir & Dhir Associates, Mythili Bhusnurmath, Consulting Editor, ET NOW and Tamanna Inamdar.

[Watch Now](#)



Deccan Chronicle Bowls Down BCCI, Winning INR 8000 Crores Arbitration

In 2012, BCCI started raking up trivial matters, only with a view to deprive DCHL of a valuable right and issued a show-cause notice for termination of the Franchise on 11.08.2012. And how this turned into an INR 8000 Crores award is worth reading.

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Demystifying The Concept of A Good 'Bad Bank'



Court Held...
IMPORTANT JUDGEMENTS

An article titled 'Demystifying The Concept of A Good 'Bad Bank' authored by Amir Bavani, Principal Associate, Dhir & Dhir Associates was published in [courtheld.com](#).

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THE PODIUM



Speaking on “Liquidation in COVID – challenges” at SIG24 Samvaad Webseries hosted by INSOL India, on Thursday, 20th August 2020



Maneesha Dhir addressing webinar on ‘Arbitration and New Normal’ by Lex Witness on 25th July, 2020



Dhir & Dhir Associates is a leading full-service law firm in India serving as a single-window legal and regulatory advisor globally. It has offices in New Delhi, Mumbai, Hyderabad and a representative office in Japan. The firm's areas of practice include Restructuring and Insolvency, Corporate/Commercial Advisory and M&A, Real Estate, Banking and Finance, Dispute Resolution, Capital Markets, Infrastructure & Energy, Environmental, Social & Governance, IPR, Technology, Media & Telecommunications, Employment Law and Consumer Law.

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