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SEXUAL HARASSMENT RULES AND REGULATIONS COMMISSION ON FILIPINOS OVERSEAS

In line with the provisions of Republic Act 7877, otherwise known as the "Anti-Sexual Harassment Act of 1995" which took effect on 5 March 1995 and implemented through CSC Memorandum Circular No. 01-0940, s. 2001, the Commission on Filipinos Overseas adopts the herein Sexual Harassment Rules and Regulations.

I. Coverage

These Rules shall apply to all officials and employees of the Commission on Filipinos Overseas, whether presidential appointees, permanent, casual and contractual.

II. Definition of Terms

The administrative offense of sexual harassment is an act, or a series of acts, involving any unwelcome sexual advance, request or demand for a sexual favor, or other verbal or physical behavior of a sexual nature, committed by a CFO official or employee in a work-related environment against a co-employee.

Work-related sexual harassment is committed under the following circumstances:

- Submission to or rejection of the act or series of acts, which is used as a basis for any employment decision (including, but not limited to, matters related to hiring, promotion, raise in salary, benefits and any other personnel action) affecting an applicant/employee;
- The act or series of acts have the purpose or effect of interfering with the complainant's work performance, or creating an intimidating, hostile or offensive work environment; or
- The act or series of acts may reasonably be expected to cause discrimination, insecurity, discomfort, offense, difficulty or humiliation to a complainant who may be a co-employee, applicant, client, or ward of the person complained of.

Sexual harassment may take place:

- In the premises of the workplace or office;
- In any place where parties were found as a result of work or training responsibilities or relations;
- At work or training-related social functions;
- While on official business outside the office or training institution or during work or training-related travel;
- At official conferences, fora, symposia or training sessions; or
- By telephone, cellular phone, fax machine, telegraph, snail mail, electronic mail, or other means of communication or correspondence.

III. Forms of Sexual Harassment

The following are illustrative forms of sexual harassment:

- a) Physical
 - Malicious touching
 - Overt sexual advances
 - Gestures with lewd insinuation
- b) Verbal, but not limited to, requests or demands for sexual favors, and lewd remarks
- c) Use of objects, pictures or graphics, letters or written notes with sexual underpinnings
- d) Other forms analogous to the foregoing

IV. Classification of Acts of Sexual Harassment

Sexual harassment is classified as grave, less grave and light offenses.

A. Grave Offenses shall include but are not limited to:

- Unwanted touching of private parts of the body (genitalia, buttocks, and breast);
- Sexual assault;
- Malicious touching;
- Requesting for sexual favor in exchange for employment, promotion, local or foreign travels, favorable working conditions or assignments, passing grade, granting of honors or scholarship, or grant of benefits or payment of a stipend or allowance; and
- Other analogous cases

B. Less Grave Offenses shall include but are not limited to:

- Unwanted touching or brushing against a victim's body;
- Pinching not falling under grave offenses;

- Derogatory or degrading remarks or innuendoes directed toward the members of one sex or one's sexual orientation or used to describe a person;
- Verbal abuse or threats with sexual overtones; and
- Other analogous cases.

C. Light Offenses

- Surreptitiously looking or stealing a look at a person's private part or worn undergarments;
- Telling sexist/smUTTY jokes or sending these through text, electronic mail or other similar means, causing embarrassment or offense and carried out after the offender has been advised that they are offensive or embarrassing or, even without such advise, when they are by their nature clearly embarrassing, offensive or vulgar;
- Malicious leering or ogling;
- The display of sexually offensive pictures, materials or graffiti;
- Unwelcome inquiries or comments about a person's sex life;
- Unwelcome sexual flirtation, advances or propositions;
- Making offensive hand or body gestures at an employee;
- Persistent unwanted attention with sexual overtones;
- Unwelcome phone calls with sexual overtones, causing discomfort, embarrassment, offense or insult to the receiver; and
- Other analogous cases.

IV. Persons Liable for Sexual Harassment

Any CFO official or employee, regardless of sex, is liable for sexual harassment when he/she:

- a) Directly participates in the execution of any act of sexual harassment as defined by these Rules;
- b) Induces or directs another or others to commit sexual harassment as defined by these Rules;
- c) Cooperates in the commission of sexual harassment by another through an act without which the sexual harassment would not have been accomplished;
- d) Cooperates in the commission of sexual harassment by another through previous or simultaneous acts.

V. Committee on Decorum and Investigation of Sexual Harassment Cases

A Committee on Decorum and Investigation (CODI) is hereby created in the CFO to perform the following functions:

- a) Receive complaints of sexual harassment;
- b) Investigate sexual harassment complaints in accordance with the prescribed procedure;

- c) submit a report of its findings with the corresponding recommendation to the disciplining authority for decision;
- d) Lead in the conduct of discussions about sexual harassment within the agency or institution to increase understanding and prevent incidents of sexual harassment.

The CFO CODI shall be composed of the following officers and personnel:

- Mary Grace A. Tirona - Chairperson
- Lucille A. Ronda - Vice Chairperson / AFD
- Golda Myra R. Roma - Representative, PPRD
- Maria Regina Angela G. Galias - Representative, MIED
- Minda C. Valencia - Representative, PMD
- Romeo M. Rosas II - Representative, MISD
- CFOEA Representative for the 2nd level employees
- CFOEA Representative for the 1st level employees

When a member of the Committee is the complainant or the person complained of in a sexual harassment case, he/she shall be disqualified from being a member of the Committee.

The members of the CODI shall serve for a term not exceeding two (2) years. Any vacancy resulting from the retirement, resignation, transfer or related personnel actions should be filled out not more than one (1) month from the date such vacancy came about. The filling out of the vacant seat in the CODI will be done through election from the level concerned.

VI. Standard Procedural Requirements

The following are the standard requirements in handling a sexual harassment case:

Complaint

- a) The complaint may be filed at any time with the Head of Office or with the Committee on Decorum and Investigation. Upon receipt of the complaint by the Head of Office, the same shall be forwarded to the CODI.
- b) The complaint must be in writing, signed and sworn to by the complainant. It shall contain the following information:
- Full name and address of the complainant;
 - Full name, address and position of the respondent;
 - A brief statement of the relevant facts;
 - Evidence, in support of the complaint, if any, and
 - A certification of non-forum shopping without prejudice to the filing of case in court.

In the absence of any one of the aforementioned requirements, the complaint shall be dismissed without prejudice to its refiling.

Where the complaint is not under oath, the complainant shall be summoned by the Committee to swear to the truth of the allegations in the complaint.

- c) Complaints sent by telegram, radiogram, electronic mail or similar means shall be considered non-filed unless the complainant shall comply with the requirements provided in IV(B) within ten (10) days from receipt of the notice for compliance.
- d) Withdrawal of the complaint at any stage of the proceedings shall not preclude the Committee from proceeding with the investigation where there is obvious truth or merit to the allegations in the complaint or where there is documentary or direct evidence that can prove the guilt of the person complained of.

Action on the Complaint

Upon receipt of a complaint that is sufficient in form and substance, the CODI shall require the person complained of to submit a counter-affidavit/comment under oath within three (3) days from receipt of the notice, furnishing a copy thereof to the complainant, otherwise the counter-affidavit/comment shall be considered as not filed.

Preliminary Investigation

A preliminary investigation shall be conducted by the CODI. The investigation involves ex parte examination of documents submitted by the complainant and the person complained of, as well as documents readily available from other government agencies.

During the investigation, the parties may submit affidavits and counter-affidavits.

Upon receipt of the counter-affidavit or comment under oath, the CODI may now recommend whether a prima facie case exists to warrant the issuance of a formal charge.

During the preliminary investigation, proceedings before the CODI shall be held under strict confidentiality.

Duration of the Investigation

A preliminary investigation shall commence not later than five (5) days from receipt of the complaint by the CODI and shall be terminated within fifteen (15) working days thereafter.

Investigation Report

Within five (5) working days from the termination of the preliminary investigation, the CODI shall submit the investigation report and the complete records of the case to the disciplining authority.

Decision or Resolution After Preliminary Investigation

If a prima facie case is established during the investigation, a formal charge shall be issued by the Head of Office within three (3) working days from receipt of the investigation report.

In the absence of a prima facie case, the complaint shall be dismissed within the same period.

Formal Charge

After finding a prima facie case, the Disciplining Authority shall formally charge the person complained of. The formal charge shall contain a specification of the charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath in not less than seventy-two hours from receipt thereof, an advice for the respondent to indicate his/her answer whether or not he/she elects a formal investigation of the charges(s), and a notice that he/she is entitled to be assisted by a counsel of his/her choice.

If the respondent has submitted his/her comment and counter-affidavits during the preliminary investigation, he/she shall be given the opportunity to submit additional evidence.

The CODI shall not entertain requests for clarification, bills of particulars or motions to dismiss which are obviously designed to delay the administrative proceeding. If any of these pleadings is filed by the respondent, the same shall be considered as part of his/her answer which he/she may file within the remaining period for filing the answer.

Answer

The answer, which must be in writing and under oath, shall be specific and shall contain material facts and applicable laws, if any.

including documentary evidence, sworn statements covering testimonies of witnesses, if any, in support of the respondent's case. It shall also include a statement indicating whether he/she elects a formal investigation.

Failure to File and Answer

If the respondent fails or refuses to file his/her answer to the formal charge within seventy-two (72) hours from receipt thereof without justifiable cause, he/she shall be considered to have waived his right thereto and formal investigation may commence.

Preventive Suspension

Upon petition of the complainant or motu proprio upon the recommendation of the CODI, at any time after the service of the formal charge to the respondent, the proper disciplining authority may order the preventive suspension of the respondent during the formal investigation, if there are reasons to believe that he/she is probably guilty of the charges which would warrant his/her removal from the service.

An order of preventive suspension may be issued to temporarily remove the respondent from the scene of his/her misfeasance or malfeasance, and to preclude the possibility of his/her exerting undue influence or pressure on the witnesses against him/her, or tampering of documentary evidence on file with the CODI.

When the administrative case against the respondent under preventive suspension is not finally decided by the disciplining authority within a period of ninety (90) days after his/her preventive suspension, unless otherwise provided by special law, he/she shall be automatically reinstated into the service; provided that when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay should not be included in the counting of the ninety (90) calendar days period of preventive suspension. Provided further that should the respondent be on paternity/maternity leave, said preventive suspension shall be deferred or interrupted until such time that said leave has been fully enjoyed.

The respondent may file a motion for reconsideration with the Disciplining Authority or may elevate the same to the Civil Service Commission by way of an appeal within fifteen (15) days from receipt thereof.

Formal Investigation

Although the respondent does not request a formal investigation, one shall nevertheless be conducted by the CODI if it deems such investigation is necessary to decide the case judiciously.

The investigation shall be held not earlier than five (5) days nor later than ten (10) days from receipt of the respondent's answer. Said investigation shall be finished within thirty (30) days from the issuance of the formal charge or the receipt of answer unless the period is extended by the Head of Office in meritorious cases.

Pre-Hearing Conference

At the commencement of the formal investigation, the CODI may conduct a pre-hearing conference for the parties to appear, consider and agree on any of the following:

- a) Stipulation of facts;
- b) Simplification of issues;
- c) Identification and marking of evidence of the parties;
- d) Waiver of objections to admissibility of evidence;
- e) Limiting the number of witnesses, and their names;
- f) Dates of subsequent hearings; and
- g) Such other matters as may aid in the prompt and just resolution of the case.

The parties may submit position papers/memoranda and submit the case resolution based on the result of the pre-hearing conference without any need for further hearing.

Continuous Hearing until Terminated; Postponement

Hearings shall be conducted on the hearing dates set by the CODI or as agreed upon during a pre-hearing conference.

Where no pre-hearing conference is conducted, the parties, their counsel and witnesses, if any, shall be given a notice of least five (5) days before the first scheduled hearing specifying the time, date and place of the said hearing and subsequent hearings. Thereafter, the schedule of hearings previously set shall be strictly followed without further notice. A party shall be granted only three (3) postponements upon oral or written requests. A further postponement may be granted only upon written request and subject to the discretion of the CODI.

If the respondent fails to appear during the scheduled hearings despite due notice and without valid cause, the investigation shall proceed ex-parte and the respondent is deemed to have waived his

right to be present and to submit evidence in his favor during those hearings.

Preliminary Matters

At the start of the hearing, the CODI shall note the appearances of the parties and shall proceed with the reception of evidence for the complainant.

If the respondent appears without the aid of a counsel, he/she shall be deemed to have waived his/her right to counsel.

Before taking the testimony of a witness, the CODI shall place him/her under oath and then take his/her name, address, civil status, age, and place of employment.

Appearance of Parties

Any person representing the parties before any hearing or investigation shall manifest orally or in writing his/her appearance for either the respondent or complainant, stating his/her full name and exact address where he/she can be served with notices and other documents. Any pleading or appearance made without complying with the above stated requirements shall not be recognized.

Order of Hearing

Unless the CODI directs otherwise, the order of hearing shall be as follows:

- a) The complainant shall present evidence in support of the charge;
- b) The respondent shall then offer evidence in support of his/her defense, and
- c) The complainant may then offer rebuttal evidence and the respondent, sur-rebuttal evidence.

Every witness may be examined in the following order:

- a) Direct examination by the proponent;
- b) Cross-examination by the opponent;
- c) Re-direct examination by the proponent, and
- d) Re-cross examination by the opponent.

A sworn statement of a witness properly identified and affirmed by the witness before the CODI shall constitute his/her direct testimony.

When the presentation of evidence has been concluded the parties shall formally offer their evidence either orally or in writing and thereafter objections thereto may also be made either orally or in writing. Thereafter, both parties may be given time to submit their respective memorandum which in no case shall be beyond five (5) days after the termination of the investigation. Failure to submit the memorandum within the given period shall be considered a waiver thereof.

Objections

All objections raised during the hearing shall be resolved by the CODI. However, objections that cannot be ruled upon by the CODI shall be noted with the information that the same shall be included in the memorandum of the concerned party to be ruled upon by the Head of Office.

The CODI shall accept all evidence deemed material and relevant to the case. In case of doubt, the CODI shall allow the admission of evidence subject to the objection interposed against its admission.

Markings

All documentary evidence or exhibits shall be properly marked by letters (A, B, C, etc.) if presented by the complainant and by numbers (1, 2, 3, etc.) if presented by the respondent. These shall form part of the complete records of the case.

Request for Subpoena

If a party desires the attendance of a witness or the production of documents or things, he/she shall make a request for the issuance of the necessary subpoena, at least three (3) days before the scheduled hearing.

Issuance of Subpoena

The CODI may issue *ad testificandum* to compel the attendance of witnesses and subpoena *duces tecum* for the production of documents or objects.

Records of Proceedings

The proceedings of the formal investigation must be recorded either through shorthand or stenotype or by any other method.

Effect of Pendency of an Administrative Case

The pendency of any administrative case shall not disqualify the respondent for promotion or from claiming maternity/paternity benefits. For this purpose, an administrative case shall be construed as pending when the Disciplining Authority has issued a formal charge.

Formal Investigation Report

Within fifteen (15) days after the conclusion of the formal investigation, a report containing a narration of the material facts established during the investigation, the findings and the evidence supporting said findings, as well as the recommendations, shall be submitted by the CODI to the Head of Office. The complete records of the case shall be attached to the Report of Investigation.

The complete records shall be systematically and chronologically arranged, paged and securely bound to prevent loss. A table of contents shall be prepared. Whoever is in-charge of the transmittal of the complete records shall be held responsible for any loss or suppression of pages thereof.

When Case is Decided

The Disciplining Authority shall render his decision on the case within thirty (30) days from receipt of the Report of Investigation.

Finality of Decisions

A decision rendered by the Disciplining Authority where a penalty of suspension for not more than thirty (30) days or a fine in an amount not exceeding thirty (30) days salary is imposed, shall be final and executory. However, if the penalty imposed is suspension exceeding thirty (30) days or a fine exceeding thirty (30) days salary, the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such pleading has been filed.

VII. Remedies After A Decision

The party adversely affected by the decision may file a motion for reconsideration with the Head of Office within fifteen (15) days from receipt thereof.

A motion for reconsideration shall be based on any of the following:

- a) New evidence has been discovered which materially affects the decision rendered; or
- b) The decision is not supported by the evidence on record; or
- c) Errors of law or irregularities have been committed prejudicial to the interest of the movant.

Limitation

Only one motion for reconsideration shall be entertained.

Effect of Filing

The filing of a motion for reconsideration within the reglementary period of fifteen (15) days shall stay the execution of the decision sought to be reconsidered.

Filing of Appeals

If the decision imposed by the Disciplining Authority exceeds thirty (30) days suspension or fine equivalent to thirty (30) days salary, the same may be appealed to the Civil Service Commission within a period of fifteen (15) days from receipt thereof.

A notice of appeal including the appeal memorandum shall be filed with the appellate authority, copy furnished the Head of Office and Administrative and Finance Division. The AFD shall submit the records of the case, which shall be systematically and chronologically arranged, paged and securely bound to prevent loss with its comment, within fifteen (15) days, to the CSC.

An appeal sent by mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case and in case of personal delivery, the date stamped thereon by the proper office.

The appellant shall pay an appeal fee of Three Hundred Pesos and a copy of the receipt shall be attached to the appeal.

To perfect an appeal, the appellant shall within fifteen (15) days from receipt of the decision submit the following:

- a) Notice of appeal which shall specifically state the date of the decision appealed from and the date of receipt thereof;
- b) Three (3) copies of appeal memorandum containing the grounds relied upon for the appeal, together with the certified true copy of the

- decision, resolution or order appealed from, and certified copies of the documents or evidence;
- c) Proof of service of a copy of the appeal memorandum to the disciplining office;
 - d) Proof of payment of the appeal fee, and
 - e) A statement or certification of non-forum shopping.

Failure to comply with any of the above requirements within the reglementary period shall be construed as failure to perfect an appeal and shall cause its dismissal.

An appeal shall not stop the decision from being executed, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal, in the event he wins the appeal.

When the case is remanded for violation of the respondent's right to due process, the Head of Office, through the CODI shall finish the investigation within three (3) calendar months from the date of receipt of the records from CSC, unless the investigation is delayed due to the fault, negligence, or petition of the person complained of, or an extension is granted by the CSC in meritorious cases. The period of delay shall not be included in the computation of the prescribed period.

The Disciplining Authority shall render a decision within fifteen (15) days from the submission of the investigation report.

Petition for Review

When the complaint is dismissed for lack of prima facie case, the complainant may elevate the decision before the CSC through a Petition for Review within fifteen (15) days from the receipt of said decision.

Petition for Review with the Court of Appeals

A party may elevate a decision of the CSC before the Court of Appeals by way of Petition for Review under Rule 43 of the 1997 Revised Rules of Court.

Petition for Certiorari

When the Disciplining Authority has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law, a person

aggrieved thereby may file a verified petition for certiorari in the proper court under Rule 65 of the Rules of Court.

VIII. Administrative Liabilities

Any person who is found guilty of sexual harassment shall, after the investigation, be meted the penalty corresponding to the gravity and seriousness of the offense.

IX. Penalties

For Light Offenses

- 1st Offense - Reprimand
- 2nd Offense - Fine or suspension not exceeding thirty (30) days
- 3rd Offense - Dismissal

For Less Grave Offenses


- 1st Offense - Fine or suspension not exceeding thirty (30) days and not exceeding six (6) months
- 2nd Offense - Dismissal

For Grave Offenses

- 1st Offense - Dismissal

If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances.

These Rules shall take effect after fifteen (15) days of posting in the CFO Bulletin Board located at the Administrative and Finance Division.


SECRETARY IMELDA M. NICOLAS
Chairperson

25 February 2011