



THE LAW SOCIETY
OF SINGAPORE



WORKPLACE HARASSMENT IN THE LEGAL PROFESSION

A RESOURCE GUIDE FOR MEMBERS

**THE LAW SOCIETY OF SINGAPORE
JUNE 2020**

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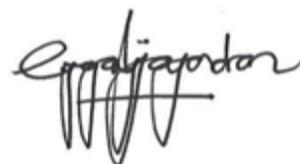
FOREWORD

In 2019, the International Bar Association (IBA) issued a ground-breaking global report illuminating the hidden scourge of bullying and sexual harassment in the legal profession. Towards the end of last year, we had an invaluable opportunity to host Kieran Pender, senior legal advisor with the IBA's Legal Policy and Research Unit in London, who presented the IBA report in a series of roundtables for Managing Partners, our Women in Practice committee, and Junior Bar leaders. Kieran issued a clarion call on the dangers of the twin terrors of workplace bullying and harassment during our roundtable meetings.

The IBA report collated anecdotal and empirical evidence derived from an unparalleled, multilingual survey of 7,000 respondents across 135 countries. We cannot deny that while this mischief in our legal profession has now come under the spotlight (as the IBA survey and study shows), there are some ingrained attitudes that transcend gender, age, ethnicity, culture and national demographics. It is not just a Gen Y or Millennial issue. No wonder the IBA entitled their report "US Too? Bullying and Sexual Harassment in the Legal Profession" and did not mince their words in pronouncing that "The legal profession has a problem".

The Law Society of Singapore is committed to building on the momentum of this sobering and gripping discourse. Our vision is that all members of the legal profession (both lawyers and staff in legal workplaces) are treated fairly, respectfully and with dignity. Looking ahead, at an appropriate juncture post-Circuit Breaker, we will target for a commitment pledge to be signed by our biggest stakeholders in the profession (who are our biggest employers) to make a strong statement reflecting their stand for zero tolerance of workplace harassment (including bullying).

We hope that you will find this Resource Guide a valuable tool to effect cultural change in your workplaces. It begins with each of us. It begins with you, the reader. We live in an era where every one of us can be an advocate for change for the better. And as we do, we will, ineluctably and inexorably, move towards the holy grail of our legal profession as a beacon of light for respect for the dignity of persons.



GREGORY VIJAYENDRAN, SC
PRESIDENT, THE LAW SOCIETY
OF SINGAPORE

LAW SOCIETY OF SINGAPORE'S STATEMENT AGAINST WORKPLACE HARASSMENT IN THE LEGAL PROFESSION



THE LAW SOCIETY
OF SINGAPORE

The Law Society of Singapore stresses a zero-tolerance approach towards any and all forms of harassment in the legal profession. The Law Society remains committed to ensuring a working environment where members of the legal profession, and those engaging with our members, can conduct themselves free from harassment. Harassment is a trespasser in the practice of law and runs counter to the values that the legal profession stands for.

The principles of justice, non-maleficence, integrity, equity and the pursuit of excellence require members of the Bar to treat one another with courtesy, respect and dignity; an advocate and solicitor's personal and professional integrity requires him/her to promote and maintain proper standards of professionalism, respect and courtesy in his/her dealings with staff, colleagues and clients.

PURPOSE & SCOPE OF THE RESOURCE GUIDE

In 2018, the IBA led the largest-ever global survey on bullying and sexual harassment in the legal profession. Its report, released in May 2019, on the findings of the survey highlighted the prevalence of workplace bullying and harassment in the legal profession – the findings were staggering, with approximately one in two female respondents and one in three male respondents globally having been bullied in connection with their employment.

In Singapore, a survey conducted by the Ministry of Manpower (MOM) in 2018 found that 2.4% of Singapore’s resident labour force reported having personally experienced bullying or harassment in their workplace – this referred to incidents where employees were subjected to verbal abuse, threats or assault during the course of their work.

Following the establishment of the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP) resource centre for workplace harassment for both employees and employers, 27 cases relating to workplace harassment have been received between March 2019 and August 2019, with employers taking the necessary corrective measures upon TAFEP’s advice.

This Resource Guide addresses workplace harassment that can occur in law practices, in different forms and to different degrees. The contents of this Resource Guide have been adapted from the Tripartite Advisory on Managing Workplace Harassment, issued by MOM (the ‘MOM Advisory’) in 2015, to focus on considerations specific to the legal profession in Singapore.

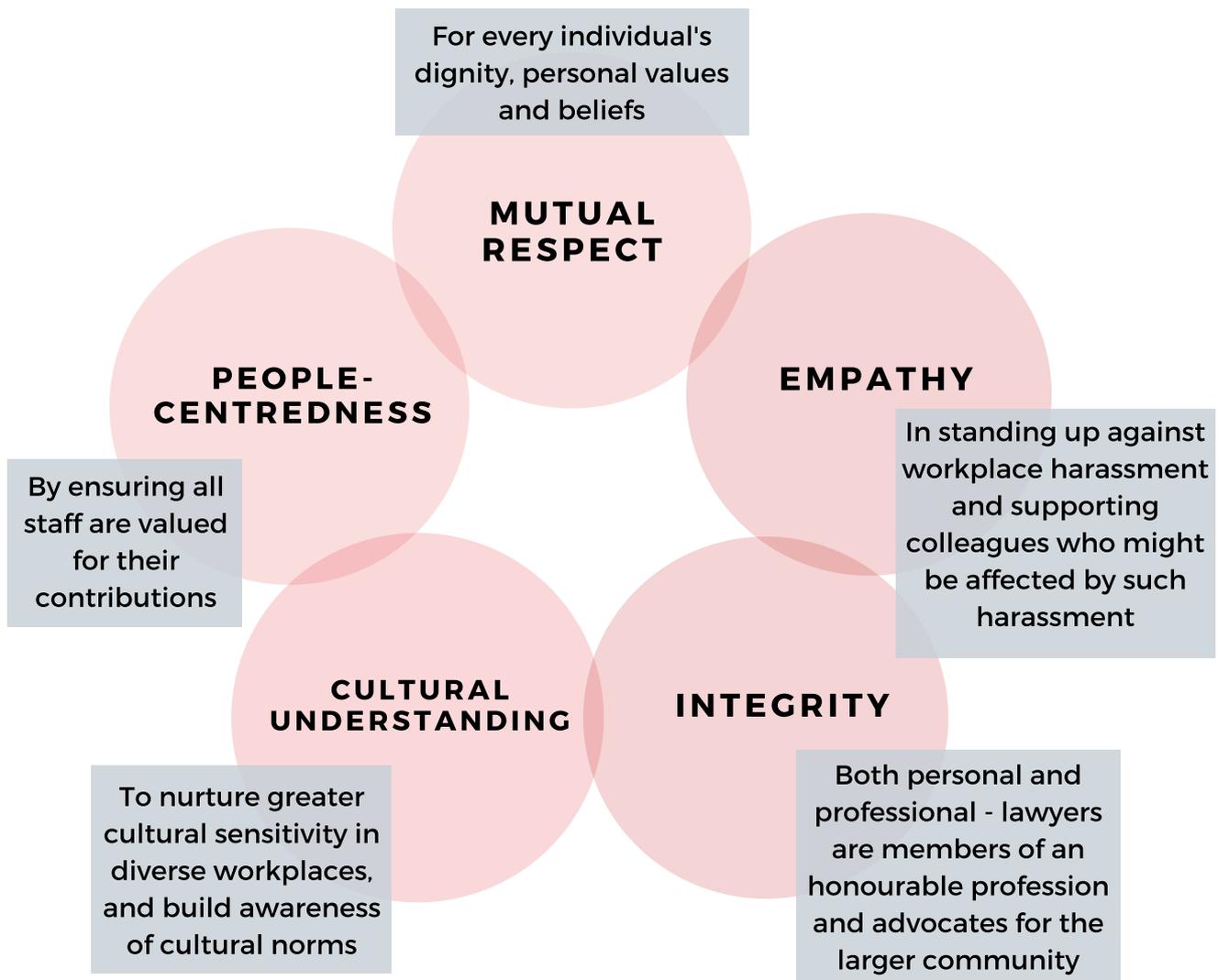
While the MOM Advisory is primarily focused on harassing behaviour that would fall under the purview of the Protection from Harassment Act (Cap. 256A) (POHA), this Resource Guide also addresses instances of workplace harassment that might technically fall outside the purview of POHA (i.e. not regarded as a criminal offence under POHA). Nonetheless, such conduct highlighted here would be fairly regarded as conduct violating a person’s dignity or creating an unfavourable work environment for him/her, thereby posing a risk to the person’s safety and health. Such behaviour should be discountenanced in any self-respecting workplace.

This Resource Guide places an emphasis on senior management and executive leadership in law practices to be proactive in raising awareness of these issues and promoting a workplace culture that eradicates and counteracts all forms of harassment.

CORE VALUES IN THE LEGAL PROFESSION

Under Rule 35(1) of the Legal Profession (Professional Conduct) Rules 2015, the management of a law practice must make reasonable efforts to ensure that every individual working in the law practice works in an environment which prioritises competence, professionalism and ethical consciousness.

It follows from this principle that law practices play an important role in emphasising zero-tolerance against all forms of harassment. Philosophically and practically speaking, a safe and conducive legal workplace culture must be grounded in the following values:



WORKPLACE HARASSMENT UNDER POHA

The MOM Advisory defines workplace harassment as a situation where one party at the workplace demonstrates behaviour that causes or is likely to cause harassment, alarm or distress to another party. MOM utilises the legal definition under POHA on what would amount to workplace harassment. Examples of harassing behaviour that could occur in a workplace and are adapted from POHA are included in the MOM Advisory.

The following are non-exhaustive examples of behaviour that could be objectively construed as harassment under the MOM Advisory (and constitute criminal offences under POHA):

- Threatening, abusive, or insulting language, comments or other non-verbal gestures
- Cyber-bullying
- Sexual harassment
- Stalking

These include sending of unwarranted lewd messages to co-workers with intent to cause harassment, alarm or distress. However, whether or not conduct is deemed harassment for the purposes of POHA depends on the circumstances of each case. It is a fact-sensitive inquiry.

WORKPLACE HARASSMENT NOT UNDER POHA

There are also other examples of workplace harassment not typically regarded as criminal offences under POHA. Nevertheless, these aberrational behaviours are inappropriate conduct creating an unfavourable work environment for the victim (e.g. a colleague or fellow co-worker), and posing a risk to the victim's safety and wellbeing.

The Law Council of Australia has itemised examples of such behaviour (albeit not exhaustive), including:¹

- Name-calling
- Vandalising personal belongings or sabotaging work
- Spreading misinformation or rumours
- Humiliating initiation practices/hazing
- Exclusion from work events/activities
- Refusing annual leave, sick leave or compassionate leave without reasonable grounds
- Deliberately withholding information, supervision, consultation, training or resources
- Changing work arrangements deliberately
- Playing mind games or ganging up against the target

¹ Law Council of Australia, 'Bullying and harassment in the workplace' <<https://www.lawcouncil.asn.au/policy-agenda/advancing-the-profession/equal-opportunities-in-the-law/bullying-and-harassment-in-the-workplace>>

WORKPLACE HARASSMENT NOT UNDER POHA

Workplace harassment, even if not falling under the purview of POHA, could constitute a repudiatory breach on the part of the employer of the employment contract with the employee. This is based on the bedrock of principles in modern jurisprudence reappraising employment contracts as relationships of mutual trust and confidence.

Case Study 1: Changing an employer's job scope significantly or hiring a replacement

In **Cheah Peng Hock v Luzhou Bio-Chem Technology Ltd** [2013] SGHC 32, the Plaintiff, a CEO, was excluded from Board meetings and his proposed changes for the company were reversed without his knowledge. A joint-CEO was appointed and took over the Plaintiff's office; the Plaintiff's e-mail access was also discontinued.

The High Court held that the Plaintiff's exclusion from the meetings was a clear breach of the implied term of mutual trust and confidence and a repudiatory breach, by undermining the Plaintiff's position and stymieing his efforts to carry out his duties. This also caused the Plaintiff to resign and be constructively dismissed.

Case Study 2: Use of profane and disrespectful, abusive language

In the Canadian case of **Boucher v Wal-Mart Canada Corp** [2014] ONCA 419, the employee was subject to a torrent of abuse by her supervisor after refusing to falsify records at the supervisor's request. She was belittled, humiliated and demeaned continuously and unrelentingly for over 5 months, often in front of co-workers and customers (e.g. telling her she was stupid and that she was blowing her career away).

In the culminating incident, the supervisor grabbed the employee by the elbow and challenged her, in front of a group of employees, to prove that she knew how to count to ten. He prompted her by initiating the count, then told her to count out loud along with him. The employee was so humiliated that she left the store and never returned to work. The jury found that the employee had been constructively dismissed; she was also awarded additional damages for the intentional inflicting of mental suffering.

Case Study 3: Failure to investigate allegations of sexual harassment in the workplace

In **Bracebridge Engineering Ltd v Darby** [1990] IRLR 3, the company's general management failed to respond appropriately to a report of sexual assault from an employee by her two male supervisors, leading to her resignation as a result.

The Employment Appeal Tribunal held that the employee had been constructively dismissed due to the company's failure to treat her allegation of sexual harassment seriously and with the gravity that the allegation should have been treated.

WHAT IS NOT CONSIDERED WORKPLACE HARASSMENT?

Individuals need to be mindful that each situation of workplace harassment has to be considered in its context. For example, yelling at a colleague to warn them about a hazard might be appropriate given the situation, but calling someone demeaning names in front of clients or other colleagues would not.

Not every unpleasant interaction, instance of disrespectful behaviour or workplace conflict is tantamount to workplace harassment. For example, reasonable management action is not considered workplace harassment. The Workers' Compensation Board of British Columbia has set out some examples of such behaviour² that are **not** workplace harassment:

- Expressing a difference of opinion
- Offering constructive feedback or advice about work-related behaviour or performance
- Making a legitimate complaint through established procedures about a manager's or another worker's conduct

Managers and supervisors have many responsibilities – these include directing and supervising how work is performed, monitoring workflow, and providing feedback on performance. Reasonable management action might include decisions relating to:

- Job duties and/or work to be performed
- Workloads and deadlines
- Layoffs, transfers, promotions, and re-organisations
- Work instruction, supervision, or feedback
- Work evaluation
- Performance management
- Discipline, suspensions, or terminations

Managers and supervisors should ensure that work performance issues are identified and addressed constructively and objectively, in a manner that does not humiliate or intimidate their staff and associates through the use of personal insults or derogatory remarks.

While workplace harassment is contextual in nature, stressful workplace cultures can precipitate and amplify unreasonable behaviour and workplace harassment. Law practices need to proactively work to create cultures that inhibit such behaviour. This could also achieve the salutary object of promoting mental wellness and wellbeing while reducing and eliminating employee mental health issues.

² Adapted from the Workers' Compensation Board of British Columbia, "Towards a respectful workplace: a handbook on preventing and addressing workplace bullying and harassment" (2013).

CASE STUDIES

These examples are intended to be illustrative case-studies of how workplace harassment (that might not fall under the purview of POHA) has been addressed in Singapore and in other jurisdictions, including Australia and Canada. These illustrations include cases of workplace harassment where the lawyers who engaged in the harassing conduct were subject to disciplinary sanctions.

In **Swaran Lata Kumar v Macquarie Partnership Lawyers** [2005] NSWIRCOMM 202, a legal secretary was the victim of workplace harassment in a law firm for a period of six months and forced to resign thereafter. The victim alleged that the workplace harassment involved the following:

- Changing working hours with one working day's notice and without explanation
- Discussion of the victim's work performance with her in-laws in a telephone call
- Sending the victim a letter raising concerns about her honesty in observing her hours of work, using the firm's resources for personal use and not accepting instructions
- Raising performance issues about minor clerical mistakes
- Accusing the victim of arguing with supervisors

The New South Wales Industrial Relations Commission found that the respondent had "embarked on a deliberate, disgraceful and relentless campaign to force the applicant's resignation", and that the worker was subject to 'a pattern of victimisation'. The Commission considered that reinstatement would be impractical in view of the appalling conduct of the respondent and the complete breakdown in the relationship between the applicant and the partners of the firm. Accordingly, monetary compensation for unfair dismissal was ordered.

In **Swan v Monash Law Book Co-operative** [2013] VSC 326, the Plaintiff was working as a retail sales assistant alongside her manager. She alleged that she was subject to sarcasm, hostility, and rudeness on the part of the manager, who created an intimidating atmosphere which the Plaintiff found oppressive. He was also regularly unnecessarily sarcastic towards the Plaintiff in conversation, and was overly nit-picking of the Plaintiff's work by an approach of constant observation and correction about insignificant or irrelevant matters. He would also assign her meaningless tasks (e.g. to go down to the bank in person for a refund of \$3 to his account).

On two separate occasions, the manager had thrown a book and a calculator at the Plaintiff. She suffered a nervous breakdown as a result and was subsequently terminated from employment. The Court held that the Plaintiff had suffered psychiatric injury as a result of the workplace harassment and awarded damages for pain and suffering and pecuniary loss to the Plaintiff.

CASE STUDIES

In **Law Society of Singapore v Ismail bin Atan** [2017] 5 SLR 746, the lawyer had asked his assistant to accompany him to a hotel and to pose as a couple under the pretext of gathering evidence for a trial. He followed her inside a room and suggested they have an affair; he also forcibly kissed her and rubbed himself against her.

The assistant resigned after her request to be transferred within the firm to work for another lawyer was rejected. The lawyer was found guilty of grossly improper conduct, breaching professional rules and conduct unbecoming of a lawyer. He was struck off the rolls by the Court of Three Judges.

In **Legal Services Commissioner (Victoria) v PLP (Legal Practice)** [2014] VCAT 793, the lawyer had engaged in 11 instances of sexual harassment against the complainant, who was a female law graduate undertaking her practical legal training.

These included propositioning her for sexual intercourse and filming and recording her without her knowledge or consent.

He was found guilty of professional misconduct and had his local practising certificate cancelled. He was also disqualified from applying for a practising certificate for a period of 8 months and ordered to provide psychological or psychiatric evidence attesting to his fitness to practice at the end of the period of disqualification.

In **Willett v State of Victoria** [2013] VSCA 76, the target was a police officer who was subject to workplace harassment after being moved to a new unit, including by:

- The use of the 'black widow' epithet and other offensive conversations
- Exclusion from social club activities
- **Assignment to a disadvantageous work station and rostering arrangements**
- As her pregnancy progressed, asked to perform duties not within the agreed scope of her job description and undertake menial jobs not consistent with her seniority
- Social ostracism and humiliation

The jury found that the target suffered injury as a result of the employer's negligence. She had also suffered a serious mental disturbance caused by the respondent's conduct.

BEST PRACTICES TO ADDRESS WORKPLACE HARASSMENT

Please note that nothing in these guidelines should be taken as legal advice. You are encouraged to seek independent legal advice with respect to the application of these best practice guidelines to your law practice, lawyers and staff.

Raise Awareness & Support

- Senior management and executive leadership should take the lead in emphasising a zero-tolerance stance towards workplace harassment.
- Stress the importance of implementing independent complaint and disciplinary review mechanisms (e.g. Ombudsman,³ whistle-blowing channels, or grievance procedures) and that HR management is aware of the need to preserve independence in dealing with complaints/allegations of workplace harassment.
- Stress that a lawyer's personal and professional integrity requires him/her to promote and maintain proper standards of professionalism, respect, and courtesy in his/her dealings with staff and colleagues, and not just with clients.

Develop Committed Leaders

- Senior management and executive leadership should ensure that individuals placed in leadership or supervisory roles receive appropriate management and leadership training e.g. for senior associates who are on track for managerial positions.
- Consider setting up a network of mentors within the law practice to assist in the development of effective managers and leaders.
- Current senior management and/or executive leadership should lead by example through a fair and open management style.
- Proactively endeavour to ensure all staff work in a respectful environment that is free from workplace harassment, and take immediate steps to inquire into, and act on, any inappropriate behaviour so as to hold individuals accountable for such behaviour.

³ Here, an 'Ombudsman' refers to an individual who has been officially appointed by the law firm to investigate and address complaints or allegations of workplace harassment and/or bullying.

BEST PRACTICES TO ADDRESS WORKPLACE HARASSMENT

Develop Policies and Practices

- Law practices should regularly review their strategies, policies and practices to ensure all staff conduct themselves appropriately and respectfully.
- Implement clear organisational performance management systems that integrate ensuring a respectful workplace culture; these should be articulated to all employees and applied consistently.
- HR practitioners and managers should work together with senior management/executive leadership to ensure that independent, fair, and effective complaint reporting and enforcement mechanisms (including formal disciplinary procedures or reporting to the relevant authorities) are in place to ensure allegations of workplace harassment are effectively addressed.
- Ensure policies are disseminated to all staff (e.g. through staff intranet, e-mail blasts or circulars).

Provide Training

- Senior management can take the lead and work together with their HR departments to implement training sessions and workshops for all employees (whether in-house or in partnership with external providers).
- These workshops can include, but are not limited to, the following topics:
 - Managing conflict
 - Effective communication skills
 - Managing staff performance / providing feedback
 - Anger management / stress management / emotional regulation
 - Work / Life balance

BEST PRACTICES TO ADDRESS WORKPLACE HARASSMENT

Monitor Progress

- Law practices can consider holding periodic, informal discussions with staff members to assess the workplace environment and use this opportunity for staff to share their concerns (while ensuring that all discussions are confidential; other avenues for staff to provide feedback, such as through an anonymised feedback portal, can also be explored).
- Where incidents of workplace harassment are reported, proper records should be maintained and the progress of any investigations be monitored.
- Effectiveness of actions and intervention should also be assessed and regularly reviewed, if necessary, and modified where relevant.

Guidance for Small & Medium-Sized Law Practices

- Appoint a senior member of the practice to implement a policy against workplace harassment.
- For sole proprietors, they can consider establishing liaisons with other law practices or sole practitioners to play to their strengths so as to:
 - Conduct educational and training programmes
 - Hold regular reviews of law practices' policies and procedures
 - Appoint member(s) of a different law practice to act as an advisor, investigator or decision-maker where appropriate

WHAT AFFECTED PERSONS CAN DO

Be Informed

- Find out about any existing workplace harassment policies and complaint procedures.
- If your workplace has implemented a harassment policy and related procedures, you should review the policy and identify if the behaviour you are experiencing can be tantamount to workplace harassment.

Seek Advice

- If possible, you should seek advice from your HR manager or relevant contact person. You should generally avoid making allegations about harassment to individuals not involved in handling complaints but instead, via the appropriate channels in your firm (your immediate superior, HR personnel, Ombudsman, or whistle-blowing channels).

Keep Records

- Do your best to keep a detailed record of all incidences of workplace harassment as far as possible - this would include details such as the places, dates, times, people involved, witnesses, and what was said/done.
- Include hard copies of electronic messages (e.g. text messages, e-mails, screenshots, photographs, audio recordings).

Speak Up

- If you feel safe and comfortable, you might wish to approach the alleged harasser and make it clear that his/her behaviour is unwanted, unacceptable, and will not be tolerated.
- Approach the conversation calmly and assertively, and warn the harasser that action will be taken if he/she persists.
- You can also choose to approach the harasser with a trusted person (e.g. a colleague or friend).
- Report incidences of workplace harassment as soon as possible.

RESOURCES FOR MEMBERS

The Law Society of Singapore has various pastoral care schemes to assist members who may be facing workplace harassment, or wish to seek further guidance on issues relating to workplace harassment.

MACH Helpline

Contact the Members' Assistance & Care Helpline (MACH) at 6530 0213, the Law Society of Singapore's first-stop referral and information point to speak confidentially on issues affecting your work

LawCare

Members can consult a professional counsellor through this paid confidential counselling service administered in conjunction with the Singapore Care and Counselling Centre

Relational Mentorship

Young practitioners can speak with a volunteer senior lawyer on various issues with a focus on the psychological well-being of young practitioners

EXTERNAL RESOURCES

If you prefer to approach an external party for advice, there are various associations and professional organisations that offer support and advice for individuals who are affected by workplace harassment. Please note that this list is non-exhaustive, and you may wish to consult other relevant resources where necessary according to your needs.

Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP)

- Employees facing workplace harassment can call the TAFEP hotline at 6838 0969 or visit its office where they can seek advice and support from an experienced team.
- Employers are also encouraged to visit TAFEP's website at <https://www.tal.sg/tafep/Resources> for further resources on how to deal with workplace harassment.

Ministry of Manpower (MOM)

- Individuals who need further information on workplace harassment can contact MOM at 6438 5122.
- An online enquiry can also be submitted at <https://www.mom.gov.sg/contact-us>.

Health Promotion Board Talk2Us Helpline

- A free and confidential helpline to support working adults with managing workplace-related stress.
- The helpline can be reached at 1800 8255 287.

Association of Women for Action and Research (AWARE)

- AWARE launched a Workplace Harassment and Discrimination Advisory service in 2019.
- individuals aged 18 and above who are working in Singapore and of any nationality can call the helpline at 6950 9191 to make an appointment with a specialised advisor, who will walk them through various recourse options.
- Counselling or pro-bono legal advice may also be scheduled depending on the individual's needs.
- Although primarily aimed at women, men experiencing gender-based discrimination and harassment may also use this service.

Changi General Hospital Trauma Recovery and Corporate Solutions (TraCS)

- Offers organisations and individuals counselling consultations where all information shared is kept strictly confidential. The services can be customised to each organisation and individual's needs.
- For more information, contact TraCS at tracs@cgh.com.sg or 6426 8933.

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