

Kenan Foundation Asia Discrimination, Harassment and Bullying Policy

Approved On [Date]	April 10 2020
Approved by:	Endorsed by Executive Director, subject to approval by Board of Trustees
Effective On [Date]	April 20 2020
Responsible for Enforcement	All managers

Policy Scope

This policy applies to all employees of Kenan Foundation Asia (the “Foundation”). This policy also applies to board members, permanent and temporary or fixed term staff, interns, volunteers, activists and freelancers/contractors.

Policy Goals

All employees should enjoy a working environment that is free from sexual harassment, bullying and all forms of discrimination. No employee, sub-contractor, customer or visitor, should be subjected to any forms of harassment under any circumstances and disciplinary action will be taken against any employee who breaches this policy.

The Foundation is committed to:

- Ensure that at all times the workplace is free from discrimination, harassment and bullying for all employees.
- Ensure that all employees understand their rights, obligations and responsibilities in maintaining an environment free from discrimination, harassment and bullying.
- Provide a clear and comprehensive procedure for dealing with any grievances of discrimination, harassment or bullying.
- Ensure all human relations' policies and practices are based on the merit principle. This means selecting and/or rewarding the “best” (most suitable) person in each situation; and
- Ensure that no employees are treated less or more favorably based on an irrelevant characteristic(s) throughout the course of their employment or during the recruitment and termination processes.

What is Harassment?

Harassment is any unwelcome and/or uninvited verbal or physical behavior or conduct that has no legitimate workplace function and intimidates, humiliates, vilifies or offends another person.

Harassment does not just refer to sexual harassment but also to harassment on any basis including, but not limited to, age, race, disability, pregnancy, potential pregnancy, a person's sexual orientation, personal characteristics, appearance, taste or beliefs.

Harassment includes '**vilification**', a public act which incites, encourages, or urges others to hate, have serious contempt for, or severely ridicule a person or group of people because they are (or are thought to be) members of a particular group.

What is Sexual Harassment?

A person sexually harasses another person if he or she:

- Makes an unwelcome sexual advance, or an unwelcome request for sexual favors, to the other person; or
- Engages in any other unwelcome conduct of a sexual nature in relation to the other person in circumstances in which a reasonable person would have anticipated that the other person would be offended, humiliated or intimidated.

"Conduct of a sexual nature" includes:

- Subjecting a person to any act of physical intimacy;
- Making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence; or
- Making any gesture, action or comment of a sexual nature in a person's presence.

Conduct Which May Constitute Sexual Harassment

Some examples of sexual harassment include the following:

- Unwelcome or unwanted sexual advances, which include staring, patting, pinching, brushing up against, hugging, cornering, kissing, fondling, or any other similar physical contact considered unacceptable by another individual;
- Requests or demands for sexual favors or dates, which include subtle or blatant expectations, pressures, or requests of any type of sexual favor accompanied by an implied or stated promise of preferential treatment or negative consequences concerning one's employment;

- Verbal abuse or kidding that is sex-oriented and considered unacceptable by another individual, which includes comments about an individual's body, appearance or private life, off-color jokes that are clearly unwanted or considered offensive by others; or any other tasteless, sex-oriented comments, innuendoes, or offensive actions;
- Any sexually oriented conduct that would unreasonably interfere with another's work performance, which includes extending unwanted sexual attention to someone, which reduces personal productivity;
- Participation in fostering a work environment that is generally intimidating, hostile, or offensive because of unwelcome or unwanted sexually oriented conversations, suggestions, requests, demands, physical contacts, or attention;
- Downloading, uploading or distributing emails, images or other electronic material on a work computer that is sex-orientated; or
- Displays of sexually graphic material including posters, pinups, cartoons, graffiti or messages left on notice boards, kitchen, reception or common areas.

Sexual harassment is prohibited at the Foundation's workplace.

What is Racial Harassment?

Racial harassment may involve hostile or offensive physical, verbal or non-verbal behavior directed towards a person because of their race, color or national or ethnic origin.

For example, racial harassment includes, but is not limited to:

- Abusive language, racist jokes, racist name calling.
- Display or circulation of racially offensive written or visual material.
- Physical threats/assault or insulting behaviors/ gestures.
- Open hostility or humiliation.
- Unfair allocation of work and responsibilities.
- Exclusion from normal workplace conversation or social events.
- Offensive emails or other correspondence of a racist nature; or
- Racial vilification

What is Discrimination?

Discrimination can occur in two forms, either directly or indirectly.

1. **Direct Discrimination** is any action that specifically excludes a person, or a group of people from a benefit or opportunity, or significantly reduces their chances of obtaining it because a personal characteristic irrelevant to the situation is applied as a barrier.

- 2. Indirect Discrimination** may occur if the outcomes of rules, practices and decisions in relation to employees, which appear to treat people equally and to be neutral, actually have an adverse effect on an individual or a group of employees, thus reducing their access to a benefit or opportunity (i.e. practices that appear fair in form but are discriminatory in outcome).

Acts of discrimination may include, but are not limited to:

- Less favorable treatment of an employee as a direct result of an irrelevant situation or characteristic such as age, marital status, gender, physical appearance or physical or psychological disability;
- Unnecessarily intrusive personal inquiries regarding a person's medical condition; or
- Making assumptions about a person based on a stereotype.

What is Workplace Bullying?

Workplace bullying is defined as "repeated, unreasonable behavior directed toward an employee, or group of employees, that creates a risk to health and safety".

Within this definition:

- "**Unreasonable behavior**" means behavior that a reasonable person, having regard to all the circumstances, would be expected to victimize, humiliate, undermine or threaten another person.
- "**Behavior**" includes actions of individuals or a group, and may involve using a system of work as a means of victimizing, humiliating, undermining or threatening.
- "**Risk to health and safety**" includes risk to the mental or physical health of an employee.

Bullying in the workplace can take place between:

- An employee and a Manager;
- Co-workers, including trainees; or
- A worker and another person in the workplace (e.g. a donor, customer, client or supplier)

Bullying may be overt or covert. The following types of behavior, where repeated or occurring as part of a pattern of behavior, could be considered bullying:

Overt Bullying:

- Abusive behavior towards another employee, such as threatening gestures or actual violence;

- Aggressive or abusive or offensive language, including threats, yelling, screaming abuse, inappropriate comments about a person's appearance or lifestyle;
- Demeaning remarks; or
- Constant unreasonable and unconstructive criticism.

Covert Bullying:

- Deliberate exclusion, isolation or alienation of the employee from normal work interaction, such as intentionally excluding the employee from meetings or lunches;
- Placing unreasonably high work demands on one employee but not others;
- Allocation of demeaning jobs or meaningless tasks;
- Unreasonably ignoring the employee;
- Undermining an employee, including encouraging others to "gang up" on the employee;
- Deliberately withholding information that is vital for effective work performance;
- Repeated refusal of requests for leave or training without adequate explanation and suggestion of alternatives.

This list is not exhaustive and other types of behavior may also constitute bullying.

Workplace Bullying is not:-

- Legitimate comment and advice from a Manager including constructive criticism or negative comment about an employee's work performance;
- Occasional difference of opinion.
- Approved disciplinary action against an employee.
- Appropriate action by a Manager to manage the poor performance or inappropriate behavior of an employee; or

Victimisation

The Foundation will not tolerate an employee being victimized as a result of the employee coming forward to report allegations of harassment, discrimination or workplace bullying. Any individual who resorts to such a tactic will be disciplined in accordance with the Foundation's work rules & regulations and, in serious cases they may be dismissed from the Foundation.

Responsibilities of Staff

All staff and employees of the Foundation have a responsibility to:

- Comply with the Foundation's Discrimination, Harassment and Bullying Policy.

- Offer support to anyone who is being bullied, harassed or discriminated against and to let them know where they can get help and advice; and
- Maintain complete confidentiality if they provide or receive information during the investigation of a complaint.

Handling a violation of the Policy

There are options that a staff member can decide on relating to reporting violations of this Discrimination, Harassment and Bullying Policy. These are by no means designed to be sequential. These options are available to the staff, who can assess them based on the perceived violation and they can decide which approach is the most appropriate.

1. Talk to the person directly - It is suggested that the staff should first consider if it is possible to talk to the person of concern directly. The goal is to foster a climate of trust and openness, where mutual respect prevails. Most of the time, there is a good and reasonable reason for the behavior. In some cases, it may be a simple misunderstanding, or a mistake, or the reasons for a decision have not been properly understood. If that is the case, the person of concern or the person who was perceived to have committed a violation of this policy, can correct the mistake directly. If the situation persists then the violation should be formally reported. A staff member is not obliged to talk directly to the person of concern if it can reasonably be assumed that doing so would harm their own interests, or if the staff feels afraid of negative consequences. This may also be the case when there is a suspicion of a violation by a member of management. In certain cases, the offense may be too severe, or there may be questions of personal safety. Then it may not be feasible to talk to the person directly, and other channels should be followed.
2. Line Managers – A staff member who is subject to bullying, harassment or discrimination can contact his/her Manager in the case of a suspected violation of this Policy, or if the staff member feels that he/she may have committed a violation himself/herself. The Line Manager must report a suspected violation to the Foundation's Human Resources (HR) Manager. If no action is taken despite reporting the suspicion of violation to the Line Manager, or if the Line Manager is suspected of violating the Policy, the staff member may go directly to the Foundation's HR Manager, or go up the chain of command to the next level of management in the Foundation.

3. HR Manager - The staff can also refer complaints of harassment to the HR Manager. The line manager with the help of the HR Manager shall listen to and work with the staff member to identify constructive approaches to empower the staff to resolve conflicts with other staff.

Mediation Process

Informal mediation can be tried first for a minor offence that is not willful such as the offender not being aware of his/her behavior breaching this Policy. A mediation meeting between the staff /reporter and the staff or employee of concern shall be chaired by the HR and GA Manager or the Executive Director.

This mediation meeting should be documented which should include the agreement between the parties on the following matters:

- a) the employee of concern agrees to change certain behaviors; and
- b) the staff member that reports the violation of the Policy agrees to the behavioral changes proposed. A follow up of the actions agreed will be monitored by the HR Manager or Line Manager one month later to ascertain that the problem has been addressed. The HR Manager will document this meeting/report. The reporter for the violation of the Policy shall have the right to file a formal written complaint if he/she is not satisfied with the outcome of the mediation process.

Filing a formal complaint regarding breach of the Discrimination, Harassment and Bullying Policy:

Formal complaints must be made in writing and submitted by the affected employee to their Line Manager or to the Foundation's HR Manager. The written complaint should specify details of the violation such as:

- a. Nature of the incident,
- b. Timeline and places the incident took place,
- c. Witnesses if any,
- d. What initial actions were done; and
- e. Other relevant information or evidence to support their allegations.

Once a suspected violation of this Policy is formally made known to the Employee's Line Manager or to the HR Manager, the following shall apply:

1. An initial analysis will be made by the HR Manager to check the plausibility of the Policy violation. If the initial analysis clearly shows that there was no violation committed, a report will be given to the Executive Director of the Foundation. A mediation may then be conducted (if deemed practical by the HR Manager) to ensure there is no strain in the working relationship between the parties. The staff member that reported the incident will be given a response in writing with the reason for the findings. A report will also be filed

with HR Department and it will form part of the documentation of the alleged violation. If the analysis shows, however, that a possible violation may have been made, this will be reported to the Executive Director of the Foundation who in turn will decide that a full investigation be made. In such an instance, the formal process of investigation will commence.

2. In the case of a formal investigation, the **Committee on Harassment** will be convened in preparation for a full investigation. This Committee shall be comprised of the following persons:
 - HR manager
 - Finance and Accounting manager
 - Technical Senior Manager
3. The accused employee (alleged to have breached this Policy) will be formally informed of the suspected violation in a Notice to Explain (NTE) with details of the allegations made against them. They will be asked to provide feedback to the Committee on Harassment within 14 days of receiving the NTE.
4. After the NTE has been issued, interviews will be conducted separately by the Committee on Harassment (or delegated members thereof) with the staff that reported the suspected violation of the Policy, the person alleged to have breached the Policy, and when appropriate, other witnesses that can provide light in the fact finding process.
5. Review of documents and other types of evidence such as emails; CCTV footage may be conducted by the Committee on Harassment to check pertinent information that will be helpful in the investigation & determining facts.
6. The findings of the investigation will be summarized in a report submitted to the HR Manager which will also be submitted later to the Executive Director
7. The staff that reported the violation of the Policy and the person alleged to have breached the Policy will be informed of the outcome of the investigation by the Committee on Harassment.
8. A decision will then be made by Executive Director of the Foundation regarding whether the allegations are proven after they have conducted a review of the findings of the Committee on Harassment.

Deciding on Disciplinary Action

When determining the appropriate consequences as regards a proven violation of the Policy the HR manager and Executive Director of the Foundation shall make the decision based on the advice of the recommendation of the Harassment Committee in compliance with the work rules of the Foundation. In deciding what discipline (if any) shall be applied against a proven violator of the Policy the HR manager and Executive Director of the Foundation must consider various factors including mitigating and aggravating circumstances. The key principle is that disciplinary action must be proportionate to the violation of the Policy that has taken place.

Disciplinary Action for a Proven Breach of the Policy

The disciplinary actions for a proven breach of the Policy may range from a verbal or written warning letter, counseling, suspension up to termination of employment. The levels of disciplinary actions are outlined in the discipline section of the Foundation's work rules and regulations.

Serious cases where the allegations are proven that involve physical violence shall result in immediate dismissal of the offender. It may also be necessary to report such incidents to the relevant authorities.

There are other measures that may be needed other than disciplinary sanctions to ensure staff compliance with this Policy, these include: counselling, training and reinforcement of processes and procedures.

Reporting in good faith

The staffs are expected to keep the complaint confidential and do it in "good faith" which means the complaint was done with honesty for the purpose of allowing the concern to be addressed.

Complaints done in "bad faith" such as malicious personal attack, complaints that are knowingly untrue and done for personal gain, is considered a "gross misconduct" and shall be subject to disciplinary procedures in accordance with the Foundation's work rules and regulations.

Policy Commencement & Revision

This policy shall take effect on the effective date as stated at the beginning of this Policy document & shall be reviewed and updated as and when required by the Foundation.

A handwritten signature in black ink, appearing to read 'Richard Renteria', written in a cursive style.

.....
Executive Director, Kenan Foundation Asia