

**EMPLOYMENT LAW :
SEXUAL HARASSMENT AT WORK**

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DISCLAIMER

The contents of this presentation have been prepared for ease of reference of the readers and any sections referred to herein are sections that have been paraphrased and simplified. You are advised to refer to the actual wordings of the Statutes for a complete appreciation of the sections referred. Professional advice should also first be sought before making decisions based on the knowledge provided in this general presentation.

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PART ONE
INTRODUCTION

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Why is this topic Important ?

For Corporate Body / Employer

By being aware and attentive to the employees' working environments and overall being, it will help the company to maintain its growth positively.

Sexual harassment is a critical issue that demands serious attention in any company. Addressing it ensures a safe and respectful work environment, protects employee well-being, and fosters a culture of trust and accountability. Openly discussing this topic is essential for preventing misconduct, promoting awareness, and ensuring everyone understands their role in maintaining harassment-free workplace and care, for the employees.

Individuals / Employees

Addressing sexual harassment is crucial in ensuring safety, dignity and well-being in the workplace. It helps create an environment where everyone feels respected and valued, which in turn boosts morale and productivity.

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment means any unwanted conduct of a sexual nature, whether verbal, nonverbal, visual, gestural or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment.

SECTION 2 OF THE EMPLOYMENT ACT 1955

CONT...

CODE OF PRACTICE ON THE PREVENTION AND ERADICATION OF SEXUAL HARASSMENT IN THE WORKPLACE (1999) BY MINISTRY OF HUMAN RESOURCE

Sexual harassment refers to :

Any unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment

- that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her/his employment; or
- that might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or a threat to his/her well-being, but has no direct link to her/his employment.

ELEMENTS OF SEXUAL HARASSMENT

- The conduct is sexual in nature
- The conduct is perceived as threatening the victim's ability to perform his or her job which is in line with the definition of sexual harassment.
- The conduct is unwanted

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CATEGORIES OF SEXUAL HARASSMENT

Sexual Annoyance

- Conduct that is sexually offensive, hostile or intimidating and no direct link to any job benefits
- Repetitive in nature to annoy the victim

Sexual Coercion

- Directly affecting the victim's employment
- The employee is threatened to lose his/ her employment benefits [possible bonus, promotion]
- Power imbalance between the employer and employee or between the victim and the perpetrator

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FORMS OF SEXUAL HARASSMENT

- Physical
- Psychological
- Visual
- Non-verbal
- Verbal

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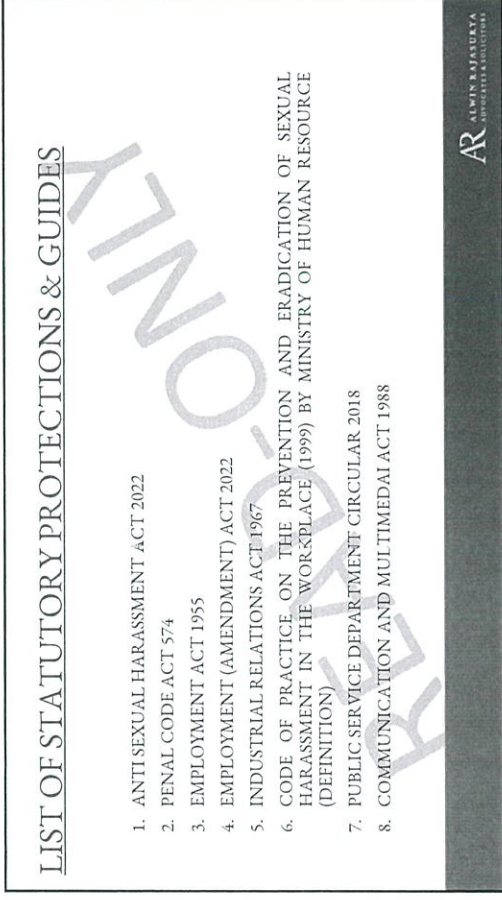
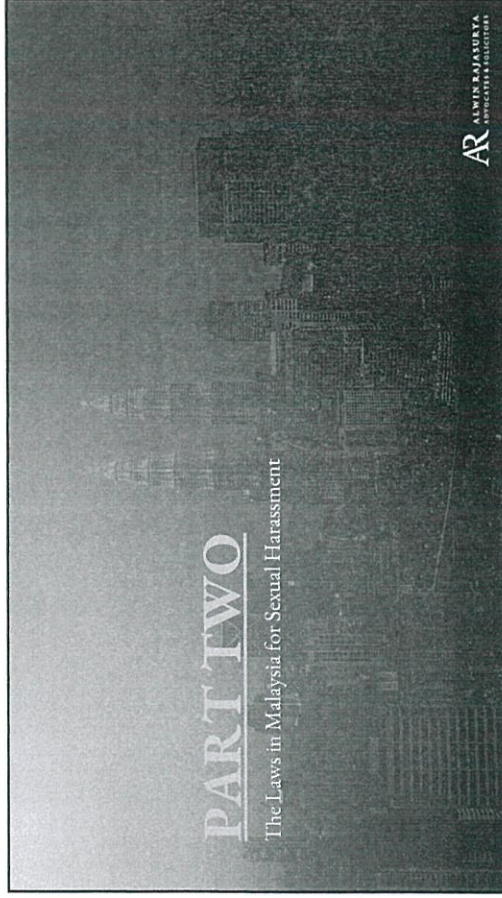
HOW SEXUAL HARASSMENT AFFECTS THE VICTIM

- Depression
- Low Self-Esteem
- Anxiety
- Sleeping disorder

&
in turns, affecting working performance

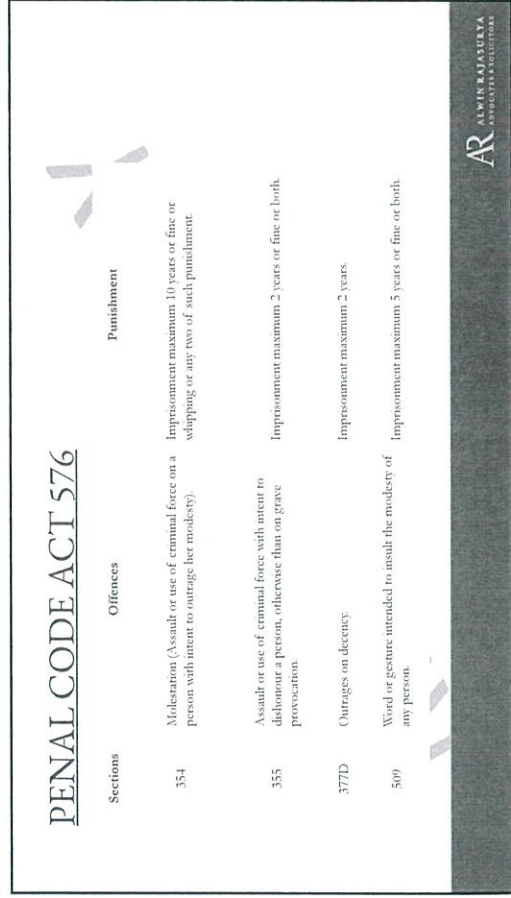
Good Morning

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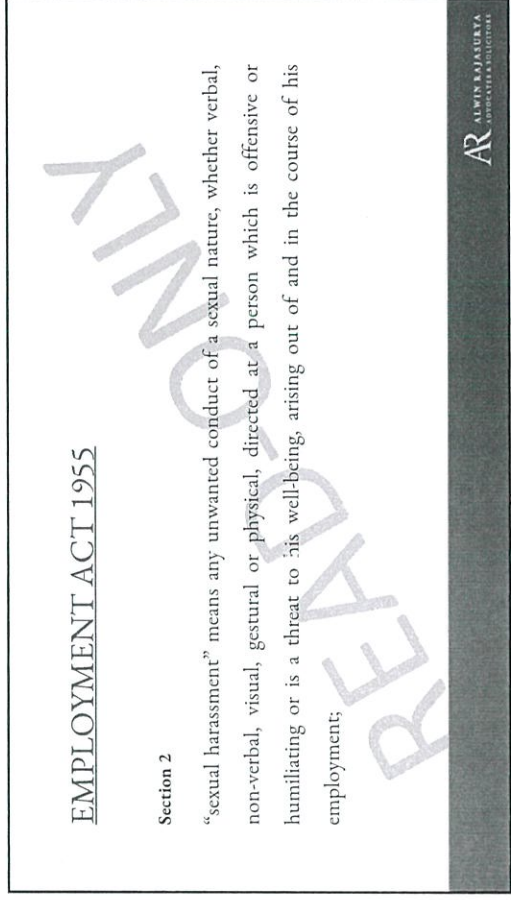
LIST OF STATUTORY PROTECTIONS & GUIDES

1. ANTI SEXUAL HARASSMENT ACT 2022
2. PENAL CODE ACT 574
3. EMPLOYMENT ACT 1955
4. EMPLOYMENT (AMENDMENT) ACT 2022
5. INDUSTRIAL RELATIONS ACT 1967
6. CODE OF PRACTICE ON THE PREVENTION AND ERADICATION OF SEXUAL HARASSMENT IN THE WORKPLACE (1999) BY MINISTRY OF HUMAN RESOURCE (DEFINITION)
7. PUBLIC SERVICE DEPARTMENT CIRCULAR 2018
8. COMMUNICATION AND MULTIMEDIA ACT 1988



PENAL CODE ACT 576

Sections	Offences	Punishment
354	Molestation (Assault or use of criminal force on a person with intent to outrage her modesty).	Imprisonment maximum 10 years or fine or whipping or any two of such punishment.
355	Assault or use of criminal force with intent to dishonour a person, otherwise than on grave provocation.	Imprisonment maximum 2 years or fine or both.
377D	Outrages on decency.	Imprisonment maximum 2 years.
509	Word or gesture intended to insult the modesty of any person.	Imprisonment maximum 5 years or fine or both.



EMPLOYMENT ACT 1955

Section 2

“sexual harassment” means any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment;

EMPLOYMENT (AMENDMENT) ACT 1955

Section 81A

1. S.81A - "complaint of sexual harassment" means any complaint relating to sexual harassment made—
- i. by an employee against another employee;
 - ii. by an employee against any employer; or
 - iii. by an employer against an employee.

CONT...

Section 81H

An employee shall at any time exhibit conspicuously at the place of employment a notice to raise awareness on sexual harassment.

INDUSTRIAL RELATIONS ACT 196Z

Section 20

A workman who is dismissed or who considers his / her dismissal to be without just cause or excuse may file a written representation to the Director General of Industrial Relations. This representation must be filed in writing to the Department of Industrial Relations nearest to the place of employment from which the workman was dismissed within sixty (60) days of the dismissal. It may also be filed during the period of notice of such dismissal.

PUBLIC SERVICE DEPARTMENT CIRCULARS 2018

Introduced in 2018 by the Public Service Department with comprehensive guidelines for handling sexual harassment in the workplace for the civil servants.

PERKARA 1975/11

NO. 9482



BERSEKUTU MUDA
PENJAJARAN PERKHIDMATAN BELANGA'S FAIR'S 2018
GABUNGAN PASUKAN PENGAMALAN KEKAWANGAN SPANAU
DI TEMPAT KERJA.

TUJUAN

Pelbagai perkhidmatan di lingkungan Kementerian Pendidikan dan Kebudayaan
Adapun program yang telah dilaksanakan
Berikut ini adalah hasil dari kegiatan tersebut

THE COMMUNICATIONS & MULTIMEDIA ACT 1998

Improper use of network facilities or network service, etc.

Section 233.

- (1) A person who—
 - (a) by means of any network facilities or network service or applications service knowingly—
 - (i) makes, creates or solicits; and
 - (ii) initiates the transmission of, any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person; or

CONT...

commits an offence.

- (3) A person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both, and shall also be liable to a further fine of one thousand ringgit for every day during which the offence is continued after conviction.

PART THREE

The Legal Recourse For Victim Of Sexual Harassment

MELEWAR CORPORATION BERHAD V ABU OSMAN [1994] 2 ILR 807

“Finally and before making its ruling the Court would add that an employer who had received credible information or complaints that one of its employees is engaged in sexual harassment of another of his employees has the duty to inquire into the allegations of misconduct. If, pursuant to a due inquiry, the allegations of sexual harassment are found to have been proven, **the employer has the duty to act firmly against the errant employee.**”

(3) FILE A CIVIL SUIT AGAINST THE PERPETRATOR

- In addition to the employee taking disciplinary action against the perpetrator of the sexual harassment the victim can file a civil action as the Malaysian Courts have now recognized the tort of sexual harassment as a cause of action.
- It is crucial for the victim to possess material evidence to support the allegation of sexual harassment, for instance, WhatsApp communication, recording of verbal conversations, physical contact by the perpetrator communicated to third parties (potential witnesses), medical report from psychiatrist, etc.
- The results of a domestic investigation or an internal organization over a sexual harassment accusation are pertinent to legal proceedings.

TRIBUNAL PURSUANT TO SECTION 3 OF THE ANTI-SEXUAL HARASSMENT ACT 2022

TRIBUNAL

(1) Jurisdiction of Tribunal (S.7 of ASHA)

- The Tribunal has the power to hear and determine any complaint of sexual harassment made by any persons. As such, this would mean to include anyone who is working within the corporation where they have the choice to file for a complaint against the employers in involving the Tribunal itself.

(2) Sittings of Tribunal (S.12 of ASHA)

- It consists of a panel of three (3) members of the Tribunal who are either the President or the Deputy President of the members of the Tribunal, together with 2 more members of the Tribunal.

CONT...

(3) Power of Tribunal (S.19 & S.20 of ASHA)

- Order for the Respondent to issue a statement of apology to the complainant as specified in the order;
- If the complaint related to any act of sexual harassment which was carried out in public, an order for the Respondent to publish a statement of apology to the complainant in any manner as specified in the order;
- An order for the Respondent to pay any compensation or damages not exceeding two hundred and fifty thousand ringgit (RM250,000.00) for any loss or damage suffered by the complainant in respect of the act of sexual harassments; or
- An order for the parties to attend any programme as the Tribunal thinks necessary.

(4) Appeal to High Court (S.23 of ASHA)

- Any party to the proceedings of the Tribunal may, upon notice to the other party and to the Tribunal, apply to the High Court challenging an award in the proceedings only on the ground of serious irregularity affecting the award.

CONT...

PROCEDURES

- > Any victim or his/her next friend/ guardian ad litem for a victim under the age of 18 or with a disability can file a sexual harassment complaint with TAGS by filling in the complaint form using Form 1.
- > Form 1 can be obtained at TAGS' counter or downloaded from the KPWKM's website. The complainant should fill in four (4) copies of Form 1 and submit the copies at TAGS' counter.
- > Fee payment of RM30.00 to the Tribunal.
- > No party shall be represented by a lawyer at a hearing unless, in the opinion of the Tribunal, the matter in question involves complex issues of law. If one party is allowed to be represented by a lawyer, the other party shall also be so entitled.

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CONT...

- > All hearings before the Tribunal are also closed to the public.
- > At the hearing, both parties shall be entitled to adduce evidence, call any witness or produce any document, record or thing in support of their cases.
- > The Tribunal must pronounce an Award within sixty (60) days from the completion of the hearing and the Awards made by the Tribunal is final and is deemed to be an order of a court.
- > Any party to the proceedings of the Tribunal may apply to the High Court challenging an award in the proceedings only on the ground of serious irregularity affecting the award.

NOTE: ASHA does not prevent employees from filing a claim before the Tribunal even if they have already filed an internal grievance complaint with the employer.

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TRIBUNAL FORM 1

FORM 1
AMBIUSUAL HAKIMAHAN KE-2022
KUALIFIKASI HAKIMAHAN (TUNJUKAN KE AJARAN HAKIMAHAN)
REGISTRASI 2024
DI BAWAH TUNJUKAN HAKIMAHAN HAKIMAHAN
KE-2022
KUALIFIKASI HAKIMAHAN
KE-2022

IN THE TRIBUNAL FOR INTERNAL DISPUTE RESOLUTION
(COMPLAINT FORM)

COMPLAINANT'S INFORMATION

Name of Complainant	
Address of Complainant	
Telephone and Fax Number	
Signature and Date of Complainant	
Particulars of Complaint or Issues	

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CONT...

(For the record of Tribunal for each Sexual Harassment only)
(COMPLAINT FORM)

Name of Complainant	
NEP No. of Complainant	
Address of Complainant	
Telephone and Fax Number	
Address of Complainant	
Particulars of Complaint or Issues	

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CONT...

Order received. *Order received and ready*

I hereby declare that I have read and fully understand the contents of this complaint and I am filing it voluntarily.

(SPAK)

Signature of Complainant (Print name and full name)

 Date: _____


Signature/Stamp of the Tribunal

 Date of Filing: _____

RECEIVED

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Employers have a duty of care to provide a safe and healthy working environment for their employees, including protection from workplace bullying and harassment.

The implications of ASHA for victims and survivors of sexual harassment are significant. By acknowledging the trauma they have experienced, the Act shows that the Government empathizes with them. Furthermore, it sanctions those who have committed sexual harassment and offers remedies to victims. Implementing this Act may finally provide some measure of justice for victims who have previously endured a lonely journey with few avenues to report or discuss their experience.

PART FOUR
CASE INVOLVING SEXUAL HARASSMENT AT WORK

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Lim Po Seng v Resort Villa Golf Course Berhad
 (Award No. 471 of 2023)

Facts:

- Complainant informed her superior of the alleged sexual harassment incident, lodging a police report on the same day, and lodging a written complaint to the Human Resource Department. In response to the said complaint, the Company issued the Claimant a suspension letter on allegations he had committed serious misconduct in sexually-harassing the Complainant.
- The Company **did not issue a show cause letter to the Claimant or take any statements from the Claimant**, and after conducting an internal investigation proceeded to notify the Claimant that a domestic inquiry will be held to consider three charges of misconduct (in brief – grabbing the Complainant’s hand and moving it towards his crotch, trying to hug her without consent, and using sexually suggestive language).
- The panel of inquiry at the domestic inquiry found the Claimant guilty of all the charges, and the Company dismissed the Claimant.

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Lim Po Seng v Resort Villa Golf Course Berhad
(Award No. 471 of 2023)

Court held:

- The Claimant was dismissed without just cause or excuse and awarded him 30 months wages (maximum backwages of 24 months, plus compensation in lieu of reinstatement of 6 months wages).
- The Industrial Court relied on a Court of Appeal decision (*Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other Appeals*), where the Court of Appeal stated that the fact that an employer has conducted a domestic inquiry is "entirely irrelevant" to whether the employee was fairly dismissed, **as the findings of a domestic inquiry are not binding on the Industrial Court.**

Lim Po Seng v Resort Villa Golf Course Berhad
(Award No. 471 of 2023)

Court findings:

- The **tone of the suspension letter issued** to the Claimant suggested that the Company did not even care to state that it was only an allegation which required further investigation. The problematic language appears to be that the letter read: **"In view of the above report and misconduct, you are being suspended [...]"**.
- Regarding the charge that the Claimant had grabbed the Complainant's hand and moved it towards his crotch, **the Company did not produce any evidence to support this.**
- The Company "rushed" to obtain "hasty statements" from witnesses two days before the domestic inquiry. The Company also "conveniently omitted" to obtain a statement from the Claimant, and issue a show cause letter to seek his explanation.

Lim Po Seng v Resort Villa Golf Course Berhad
(Award No. 471 of 2023)

Court findings (cont):

- The formulation of the three charges of misconduct which led to the Claimant's dismissal was based on "a proven false" police report and complaint, and the evidence against the Claimant was rife with "contradiction and inconsistency".
- The manner in which the domestic inquiry was conducted was "unsatisfactory" and the Company reached a "biased conclusion" **without properly considering all material evidence.**
- The Court found that **there was overwhelming evidence that the Company had a "premeditated intention" of finding the Claimant guilty.** The Claimant had informed the Company that there was a CCTV at the location of the alleged incident which would prove his innocence, and also raised this during the domestic inquiry. However, the Company did not take any steps to produce the CCTV recording during the domestic inquiry or at the Industrial Court proceedings.

PART FIVE
TAKEAWAYS FOR EMPLOYERS

TAKEAWAYS FOR EMPLOYERS

- If there is a code, guideline, policy or other document in place, **it must be followed**.
- Any code, guideline, or policy in relation to complaints-handling or disciplinary processes **should include clear timelines so that all parties have a reasonable expectation and target to work towards**. These timelines should also be reasonable.
- All complaints **must be handled consistently in terms of the process and the time taken to investigate and make a decision**.
- **The complainant should always be kept updated regarding the status of the complaint**. Again, the code, guideline, or policy should set out clear milestones at which these reminders should be sent out. This will ensure that the employer's representatives handling the matter will know that they should update the complainant, and also sets expectations for the complainant regarding the process.

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CONT ...

- The punishment handed out for similar offences **should be consistent** to avoid allegations of bias or unfair treatment.
- Employers should always **ensure that an accused employee is allowed an opportunity to give his/her side of the story**.
- Employers should care to **ensure that any investigation is conducted fairly and thoroughly before formulating any charges**.

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PART SIX

MANAGING COMPLAINS & CURBING SEXUAL HARASSMENT ISSUES AT WORK

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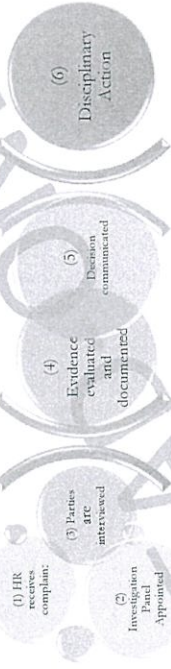
BRIEF COMPLAINT PROCEDURE

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    graph LR
      A[Step by step procedure for reporting and processing a complaint within certain time limit] --> B[An investigation procedure]
      B --> C[Dissatisfied party may appeal against the outcome of the investigation to higher authority]
    
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INVESTIGATIVE METHODS



PROTECTION MEASURES FOR EMPLOYEES

- Encourage victims to report sexual harassment;
- Provide adequate measures to ensure maximum confidentiality in order to minimise embarrassment to the victim (especially at the time of reporting & course of investigations);
- In cases where victim suffered loss such as demotion, it is appropriate to restore such a person to his or her original position on the job;
- Victim should be compensated for any monetary loss arising out of a denial of employment-related benefits which were rightfully due; and
- Where complaint is found to be unjustified & baseless, appropriate remedy should be granted to the accused person if there has been any loss suffered by such person.

QUESTIONS?

THANK YOU

For any queries, please contact:

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