


I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 212-31(COR)

Introduced by:

V. Anthony Ada 

AN ACT TO ADD A NEW ARTICLE 4 TO CHAPTER 4 OF
4GCA RELATIVE TO SEXUAL HARASSMENT
COMPLAINTS

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** A new Article 7 is *added* to Chapter 4 of 4GCA to read as follows:

3
4 **Article 7**

5 **Reports of Sexual Harassment**

6
7 **§4701. Legislative Findings and intent.**

8
9 *I Liheslaturan Guåhan* finds that sexual harassment is a form of sex
10 discrimination that violates *Title VII of the Civil Rights Act of 1964*. Title VII
11 applies to employers with 15 or more employees, including state and local
12 governments. It also applies to employment agencies and to labor
13 organizations, as well as to the federal government.

14 Unwelcome sexual advances, requests for sexual favors, and other verbal or
15 physical conduct of a sexual nature constitute sexual harassment when this
16 conduct explicitly or implicitly affects an individual's employment,
17 unreasonably interferes with an individual's work performance, or creates an
18 intimidating, hostile, or offensive work environment.

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1 Sexual harassment can occur in a variety of circumstances, including but not
2 limited to the following:

- 3 • The victim as well as the harasser may be a woman or a man. The
4 victim does not have to be of the opposite sex.
- 5 • The harasser can be the victim's supervisor, an agent of the
6 employer, a supervisor in another area, a co-worker, or a non-
7 employee.
- 8 • The victim does not have to be the person harassed but could be
9 anyone affected by the offensive conduct.
- 10 • Unlawful sexual harassment may occur without economic injury to
11 or discharge of the victim.
- 12 • The conduct may include the use of profanity, offensive language
13 and expletives, derogatory comments or sexually offensive speech to
14 berate, discipline or intimidate employees, subordinates.
- 15 • The harasser's conduct must be unwelcome.

16 *I Liheslatura* further finds that it is helpful for the victim to inform the harasser
17 directly that the conduct is unwelcome and must stop. The victim should use any
18 employer complaint mechanism or grievance system available.

19 When investigating allegations of sexual harassment, the federal Equal
20 Employment Opportunity Commission (EEOC) looks at the whole record: the
21 circumstances, such as the nature of the sexual advances, and the context in

1 which the alleged incidents occurred. A determination on the allegations is made
2 from the facts on a case-by-case basis.

3 Prevention is the best tool to eliminate sexual harassment in the workplace.
4 Employers are encouraged to take steps necessary to prevent sexual harassment
5 from occurring. They should clearly communicate to employees that sexual
6 harassment will not be tolerated. They can do so by providing sexual harassment
7 training to their employees and by establishing an effective complaint or
8 grievance process and taking immediate and appropriate action when an
9 employee complains.

10 It is also unlawful to retaliate against an individual for opposing employment
11 practices that discriminate based on sex or for filing a discrimination charge,
12 testifying, or participating in any way in an investigation, proceeding, or
13 litigation under Title VII.

14

15 **§4702. Jurisdiction Over Sexual Harassment Complaints For All Employees.**

16 As specified in this Chapter, employees in the context of Equal Employment
17 Opportunity complaints involving Sexual Harassment as defined by *Title VII of*
18 *the Civil Rights Act of 1964* and this Article shall include all classified and
19 unclassified employees of the Executive Branch of the Government of Guam.

20

21 **§4703. Sexual Harassment Defined:** For purposes of this Article Sexual
22 Harassment shall include:

23

1 (a). Sexual harassment as defined by the federal Equal Employment Opportunity
2 Commission.

3

4 (b). Unwelcome sexual advances, requests for sexual favors, or other verbal or
5 physical conduct of a sexual nature when:

6 (1) Submission to such conduct was made either explicitly or implicitly a
7 term or condition of an individual's employment,

8 (2) Submission to or rejection of such conduct by an individual was used as
9 the basis for employment decisions affecting such individual, or

10 (3) Such conduct has the purpose or effect of unreasonably interfering with
11 an individual's work performance or creating an intimidating, hostile, or
12 offensive working environment.

13

14 (c). Conduct that includes the use denotatively or connotatively defined sexual
15 language that includes but is not limited to profanity, offensive language and
16 expletives, derogatory comments or sexually offensive speech which is used to
17 berate, bully, discipline or intimidate employees.

18

19 **§4704. Reports of Sexual Harassment Complaints.** (a) The supervisor of an
20 employee who files either an oral or written sexual harassment complaint shall
21 submit a report to the Department of Administration and the Civil Service
22 Commission that includes:

23 (1) The name, address and telephone number(s) of the complainant,

24 (2) That nature of the complaint,

25 (3) Actions taken to resolve the complaint including disciplinary action
26 taken against the target of the complaint, and

1 (4) Copies of any documents submitted by the complainant, the target of the
2 complaint and witnesses to include any transcripts and affidavits.

3 (b) In the event that the target of the complaint is the complainant's supervisor, the
4 supervisor of the complainant's supervisor shall submit the report.

5 (c) The report shall be submitted by the earlier of ninety (90) days following the
6 date of the complaint or twenty (20) days following resolution of the complaint.

7 In the event that the complaint is not resolved within ninety (90) days following
8 the date of the complaint, the supervisor shall submit all documents, statements
9 and evidence to the Department of Administration and the Civil Service
10 Commission that are related to the complaint along with a signed statement
11 detailing the reasons why the complaint has not been resolved.

12 (d) The reports submitted herein are confidential and are not public information
13 but may be viewed by the complainant. The target of the complaint may also view
14 the report following proper disposition of a discovery motion by an adjudicatory
15 body or court of law.

16 (e) Complaints filed against a non-employee of the complainant's department shall
17 be reported by the complainant's supervisor to the Guam Attorney General's
18 Office within five (5) days following the complaint. In the event that a complaint
19 is filed where the complainant believes her or she is in danger, the supervisor shall
20 file a report with the Guam Police Department upon receipt of such complaint.

21 (f) In the event that a supervisor or other applicable official fails to submit a report
22 required herein, the official commits a violation subject to a fine not to exceed
23 Two Hundred Dollars (\$200). In the event that a supervisor or other applicable
24 official willfully fails to submit a report required herein, the official commits a
25 petty misdemeanor subject to a fine not to exceed Five Hundred Dollars (\$500).

1 Any person who impedes or interferes with the filing of a report required herein
2 commits a third degree felony.

3

4 **§4705. Audits of Reports of Sexual Harassment Complaints.** The Civil Service
5 Commission shall audit all reports of filed pursuant to §4704 of this Chapter and
6 actions taken by the complainant's department and the Department of
7 Administration. The scope of the audit shall include, but not be limited to:

8

- 9 (a) The appropriateness of the actions taken by the complainants department and
10 the Department of Administration to resolve the complaint,
- 11 (b) Recommendations for improvement including the need for training and
12 education of supervisors and employees, and
- 13 (c) Determination of disciplinary action taken against.

14

15 **§4706. Whistle-blower protection.** No person who reports any incident of sexual
16 harassment or suspected sexual harassment to a supervisor, director the
17 Department of Administration, Civil Service Commission, Guam Attorney
18 General or a law enforcement agency of the Government of Guam or Government
19 of the United States shall suffer any loss of wages, title or position or employment
20 as a result of such report.

21

22 **§4707. Timeframe and Rights to file complaints.** The timeframe to file
23 complaints of sexual harassment or suspected sexual harassment shall be the later
24 of two (2) years following the incident or those timeframes established by the
25 federal Equal Employment Opportunity Commission. The right to file complaint

1 shall not be extinguished by termination, transfer or resignation of an employee of
2 a department where the incident occurred.

3

4 **Section 2. Effective Date.** This Article shall be effective upon enactment except
5 that all reports of sexual harassment that occurred between January 1, 2011 and
6 the effective date of this Act shall be reported to the Department of Administration
7 and the Civil Service Commission.

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9 **Section 3. Special Provision.** In the event that a supervisor or other applicable
10 official fails to submit a report an incidence of sexual harassment that occurred
11 between January 1, 2011 and the effective date of this Act, the official commits a
12 violation subject to a fine not to exceed Two Hundred Dollars (\$200). In the event
13 that a supervisor or other applicable official willfully fails to submit a report
14 required herein, the official commits a petty misdemeanor subject to a fine not to
15 exceed Five Hundred Dollars (\$500). Any person who impedes or interferes with
16 the filing of a report required herein commits a third degree felony.