

Republic Act No. 11313

SAFE SPACES ACT



PRIMER ON THE SAFE SPACES ACT (REPUBLIC ACT NO. 11313)

Introduction

Ever since Republic Act No. 7877 was passed into law in 1997, it has provided protection for women in the areas of employment, education and training. However, two decades after, the issue of sexual harassment still remains to be a major threat against the cultivation of conducive learning and working environments. Not only that, the law has also a limited scope and coverage, thus, leaving many incidents of sexual harassment outside the ambit of the law.

Given this context, the Safe Spaces Act, passed in 2019, provides for enhanced protection in three areas. First, it penalizes gender-based sexual harassment (GBSH). Homophobic, transphobic, misogynistic and sexist remarks are now punishable by law. It frames gender-based sexual harassment as a human rights issue that must be addressed. While the fight for the passage of the SOGIE Equality Bill has been going on for over two decades, this law is viewed as a significant step towards the recognition of LGBTQIA++ community and the further protection of women and girls, who comprise the majority of victims of sexual harassment and other forms of gender-based violence.

Second, it covers sexual harassment in public areas, which is one of the limitations of the Anti- Sexual Harassment Law. For many years, the only sexual harassment complaints covered by this law are those confined to the work, education, and training set-up, with the requirement that the perpetrator is someone who has a moral ascendancy over the victim. Our experience in the academe, particularly in UP Diliman, demonstrates the many faces of sexual harassment, including same-sex harassment, peer-harassment, and even reversed sexual harassment, where subordinates harass their supervisors or students their teachers. This only shows that power can come from various sources – including sex, gender, age, and employment status; as such, anyone can be an offender. These many faces of sexual harassment have been recognized by the University, and are thus included in the UP Anti-Sexual Harassment Code (ASH Code) as approved by the Board of Regents in 2017. The UP ASH Code can now become a model for other schools, government agencies, and even industries in the private sector. GBSH that occur in public utility vehicles, including private cars being used for business, (such as Angkas, Grab, and so on) are likewise included in the Safe Spaces Act.

Third, the law also penalizes gender-based sexual harassment in the virtual or online world. This is especially relevant in this time of the COVID-19 pandemic, when most work and education arrangements and relationships take place online. Cyberstalking, online sexual harassment, online voyeurism, and related acts are now punishable by law.

With all these in mind, the UP Diliman Gender Office presents to you the primer on the Republic Act No. 11313 or the Safe Spaces Act. It is now part of our duty to monitor the strict implementation of the law, especially during these trying times when top officials of our government commit gender-based sexual harassment in both words and in actions. The primer is also one of our projects in line with our celebration of the UP Diliman Pride Month 2021, with the theme *“Sama All, Pantay All: Sumusulong, Yumayabong ang Pride sa Panahon ng Pandemya.”*

We thank Attys. Alnie G. Foja and Frank Lloyd B. Tiongson of Foja Law Office for drafting this primer.

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1. Why is there a need for another law that criminalizes sexual harassment when there is already an Anti-Sexual Harassment Act (R.A. 7877)?

There are acts of sexual harassment that are not covered by the definition of a crime of sexual harassment under R.A. 7877.

2. What are examples of sexual harassment that are not covered by R.A. 7877?

Sexual harassments that are committed in the streets and in public places and in the internet and those that are committed between peers in education, training or employment setting are not considered as crimes under R.A. 7877, hence, the need for a law that will make public spaces also safe from sexual harassment.

3. When did the Safe Spaces Act (R.A. 11313) take effect?

August 3, 2019.

4. What is the Safe Spaces Act about?

It is a law that aims to make our streets and public spaces and the internet safe from gender-based sexual harassment by criminalizing gender-based sexual harassment (GBSH) in these spaces. It also criminalizes GBSH among peers in education, training and employment.

5. Did the Safe Spaces Act repeal the Anti-Sexual Harassment Act?

No.

6. Did it amend the Anti-Sexual Harassment Act?

No. The two laws co-exist independently of each other.

7. What are the differences between the Safe Spaces Act and the Anti-Sexual Harassment Act?

- a) The Anti-Sexual Harassment Act is limited to the context of work, education, and/or training while the Safe Spaces Act also covers the streets, public spaces, internet or cyberspace;
- b) The Safe Spaces Act is directly addressed against the commission of harassments that are gender-based;

- c) The crime of sexual harassment under the Anti-Sexual Harassment Act requires that the offender has authority, influence or moral ascendancy over the victim while the Safe Spaces Act dispenses with this requirement.

8. What is gender-based sexual harassment or GBSH?

It refers to conducts that cause or likely to cause mental, emotional or psychological distress to a person on the basis of gender, gender identity and/or expression.

9. Under the Safe Spaces Act, in what specific spaces are GBSH criminalized?

- 1) Streets and public spaces
- 2) Online or cyberspace
- 3) Workplace
- 4) Educational and training institutions

GENDER-BASED STREETS AND PUBLIC SPACES SEXUAL HARASSMENT

10. How is gender-based streets and public spaces sexual harassment committed?

It is committed through “any unwanted and uninvited sexual actions or remarks against any person regardless of the motive for committing such action or remarks”.

11. Do public places only refer to places owned by the public or the government?

No. These include privately-owned areas, spaces or buildings that are open to the public. It also includes public utility vehicles (jeeps, buses, etc.) as well as private vehicles covered by app-based transport network services (Grab, Angkas, etc.).

12. What are the examples of privately-owned spaces that are open to the public?

Malls, restaurants, churches, schools, cinema halls, spas, bars and clubs, resorts, hotels, and casinos, among others.

13. What are examples of “gender-based streets and public spaces sexual harassment”?

- a. Catcalling, wolf-whistling, unwanted invitations, misogynistic, transphobic, homophobic, and sexist slurs;
- b. Persistent uninvited comments or gestures on a person's appearance;
- c. Relentless requests for personal details;
- d. Statements of sexual comments and suggestions;
- e. Public masturbation or flashing or private parts;

- f. Groping, making offensive body gestures at someone, and similar lewd sexual actions;
- g. Persistent telling of sexual jokes;
- h. Stalking

14. What is “homophobic remarks or slurs”?

“Statements in whatever form or however delivered, which are indicative of fear, hatred, or aversion towards persons who are perceived to be or actually identify as lesbian, gay, bisexual, queer, pansexual and such other persons of diverse sexual orientation, gender identity or expression, or towards any person perceived to or actually have experienced same-sex attraction”.

15. What is “misogynistic remarks or slurs”?

“Statements in whatever form or however delivered that are indicative of the feeling of hating women or the belief that men are inherently better than women”.

16. What is “sexist remarks or slurs”?

“Statements in whatever form or however delivered that are indicative of prejudice, stereotyping, or discrimination on the basis of sex, typically against women”.

17. What is “transphobic remarks or slurs”?

“Statements in whatever form or however delivered that are indicative of fear, hatred, or aversion towards persons whose gender identity and/or expression do not conform with their sex assigned at birth.

18. What is “catcalling”?

“Unwanted remarks, directed towards a person, commonly done in the form of wolf-whistling and misogynistic, transphobic, homophobic, and sexist slurs”.

19. What is “stalking”?

“Conduct directed at a person involving the repeated visual or physical proximity, non-consensual communication, or a combination thereof that cause or will likely cause a person to fear for one’s own safety or the safety of others, or to suffer emotional distress”.

20. In order to make restaurants and cafes, bars and clubs, resorts and waters parks, hotels and casinos, cinemas, malls, buildings and other privately-owned spaces open to the public safe from GBSH, what should their management do?

They should:

- a. Adopt a zero-tolerance policy against gender-based streets and public spaces sexual harassment.

- b. Provide assistance to victims of gender-based sexual harassment.
- c. Install clearly-visible warning signs against gender-based public spaces sexual harassment.

21. What additional penalty does the law impose on the driver who commits GBSH in public utility vehicles?

The Land Transportation Office (LTO) may cancel the license of the driver who committed GBSH in a public utility vehicle. Moreover, the Land Transportation Franchise and Regulatory Board (LTFRB) may suspend or revoke the franchise of his/her operator.

22. How is a citizen arrest applied in GBSH?

A security personnel or a person who witnessed the crime may conduct a citizen's arrest and apprehend the perpetrator under the following circumstances:

- a. When in the presence of the private person, the person to be arrested has committed, is actually committing or is attempting to commit GBSH; and
- b. When GBSH has in fact just been committed, and the private person has personal knowledge of facts indicating that the person to be arrested has committed it.

23. What happens if gender-based streets and public spaces sexual harassment is committed by a minor?

The Department of Social Welfare and Development (DSWD) shall take necessary disciplinary measures and subject the minor offender to the diversion program under the Juvenile Justice and Welfare Act of 2006 (R.A. 9344).

24. What are the duties of the local government units (LGUs) under the law?

- a. Pass an ordinance localizing the applicability of the law;
- b. Establish an anti-sexual harassment hotline;
- c. Establish a referral system for complainants;
- d. Provide training for barangay officials;
- e. Set up Anti-Sexual Harassment (ASH) desks in all barangays; and
- f. Create mechanisms for handling and documentation of complaints including those in cases covered by the Katarungang Pambarangay system, among others. (Section 9, IRR of R.A. 11313)

25. What are the national bodies responsible for overseeing the implementation of the law?

The Philippine Commission on Women (PCW), the Department of the Interior and Local Government (DILG) and the Department of Information and Communications Technology (DICT).

26. What bodies are authorized to apprehend perpetrators of gender-based streets and public spaces sexual harassment and enforce the law?

The Metro Manila Development Authority (MMDA) local units of the Philippine National Police (PNP) for other provinces, and the Women and Children's Protection Desk (WCPD) of the PNP, provided that they have undergone Gender Sensitivity Training.

27. What are the penalties for gender-based streets and public spaces sexual harassment?

Depending on the gravity of the offense as well the frequency of commission, penalties for gender-based streets and public spaces sexual harassment range from a Php 1,000.00-fine and 12 hours of community service, inclusive of attendance to a Gender Sensitivity Seminar, at least, to arresto mayor (one month and one day to six months imprisonment) or a fine of Php 100,000.00, at most.

The harshest penalty is reserved to a person who, for the third time, commits an act, like stalking, accompanied by touching, pinching, or brushing against the genitalia, face, arms, anus, groin, breasts, inner thighs, buttocks or any part of the victim's body.

GENDER-BASED ONLINE SEXUAL HARASSMENT

28. How is gender-based online sexual harassment committed?

Gender-based online sexual harassment includes acts that use information and communications technology in terrorizing and intimidating victims through:

- a. Physical, psychological, and emotional threat;
- b. Unwanted sexual misogynistic, transphobic, homophobic and sexist remarks and comments online whether publicly or through direct and private messages;
- c. Invasion of victim's privacy through cyberstalking and incessant messaging;
- d. Uploading and sharing without the consent of the victim, any form of media that contains photos, voice, or video with sexual content;

- e. Any unauthorized recording and sharing of any of the victim's photos, videos, or any information online;
- f. Impersonating identities of victims online or posting lies about victims to harm their reputation;
- g. Filing false abuse reports to online platforms to silence victims.

29. Where can complaints for gender-based online sexual harassment be filed?

Complaints may be filed with the prosecution offices of the Department of Justice (DOJ), the PNP Anti-Cybercrime Group, or the National Bureau of Investigation (NBI).

30. What are the penalties imposable for gender-based online sexual harassment?

The penalties for gender-based online sexual harassment is prision correccional in its medium period (six months and one day to six years imprisonment) or a fine of not less than Php100,000.00 but not more than Php500,000.00, or both, at the discretion of the court.

GENDER-BASED SEXUAL HARASSMENT IN THE WORKPLACE

31. What are GBSH in the workplace?

The crime of gender-based sexual harassment in the workplace includes the following:

- a. Any unwelcome sexual advances, requests or demand for sexual favors or any act of sexual nature that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance or opportunities;
- b. A conduct of sexual nature and other conduct based on sex affecting the dignity of a person, which is unwelcome, unreasonable, and offensive to the recipient;
- c. A conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating environment for the recipient.

32. Who are liable to commit GBSH in the workplace?

GBSH in the workplace may be committed between peers, and by a subordinate to a superior officer or vice versa.

33. Is workplace GBSH limited to acts committed inside offices?

No. This is because “workplace” includes all sites, locations, spaces, where work is being undertaken by an employee within or outside the premises of the usual place of business of the employer.

34. What are the duties of employers under the law?

Employers or other persons of authority, influence or moral ascendancy in the workplace shall have the duty to prevent, deter, or punish the commission of acts of GBSH in the workplace.

35. How shall employers comply with their above duties?

- a. Disseminate a copy of the law to all persons in the workplace;
- b. Provide measures to prevent GBSH in the workplace, such as the conduct of anti-sexual harassment seminars;
- c. Create a Committee on Decorum and Investigation (CODI) to investigate and address complaints of GBSH;

- d. Develop and disseminate a code of conduct or workplace policy which shall:
 - (i) expressly reiterate the prohibition on GBSH; (ii) describe the procedures or the internal mechanism created to address complaints of GBSH; and (iii) set administrative penalties.

36. Do employees and co-workers also have responsibilities under the law?

Yes. Employees and co-workers have the duty to:

- a. Refrain from committing acts of GBSH;
- b. Discourage the conduct of GBSH in the workplace;
- c. Provide emotional or social support to fellow employees, co-workers, colleagues or peers who are victims of gender-based sexual harassment; and
- d. Report acts of GBSH witnessed in the workplace.

37. How may reports of GBSH be made to the employer?

- a. Reports may be referred to the employer or any agent of the employer.
- b. It may be anonymous but the employer shall verify the matter and refer it to the CODI for investigation.

- c. If the complaint is made by the victim in her/his own name, it is immediately treated as a formal complaint, in which case, it may be submitted directly to the CODI.
- d. The CODI then follows its set procedures and guidelines to investigate the complaint.

38. What are the potential liabilities of employers under the law?

In addition to liabilities for committing acts of GBSH, employers may also be held responsible for:

- a. Non-implementation of their duties; or
- b. Not taking action on reported acts of gender-based sexual harassment committed in the workplace.

GENDER-BASED SEXUAL HARASSMENT IN EDUCATIONAL AND TRAINING INSTITUTIONS

39. What are the specific obligations of educational and training institutions under the law?

- a. Assign an office or person that must be readily accessible to receive complaints on GBSH;

- b. Adopt and publish grievance procedures to facilitate the filing of complaints by students and faculty members;
- c. Support parties involved in GBSH-related court proceedings, such as excusing students' absences from classes when they need to attend court hearings; and
- d. Their CODI must address GBSH and online sexual harassment.

40. Who are considered as “students” under the law?

Those who are enrolled full-time or part-time in regular courses or short-term and special training offered by the educational or training institutions.

41. Who can commit GBSH in educational and training institutions?

GBSH may be committed by principals, school heads, teachers, instructors, professors, coaches, trainers, or any person who has authority, influence or moral ascendancy over another, students, and trainees.

42. What are the duties of school heads and heads of training institutions?

- a. Disseminate a copy of the law;
- b. Provide measures to prevent GBSH in educational institutions, like information campaigns;

- c. Create a CODI to investigate and address complaints of gender-based sexual harassment;
- d. Provide and disseminate, in consultation with all persons in the educational institution, a code of conduct or school policy which shall:
 - i. Expressly reiterate the prohibition on gender-based sexual harassment;
 - ii. Prescribe the procedures of the internal mechanism created under this Act; and
 - iii. Set administrative penalties.

43. What are the potential liabilities of school heads and heads of training institutions under the law?

In addition to liability for committing acts of GBSH, principals, school heads, teachers, instructors, professors, coaches, trainers, or any other person who has authority, influence or moral ascendancy over another in an educational or training institution may also be held responsible for:

- a. Non-implementation of their duties under Section 22 of R.A. 11313, as provided in the penal provisions; or
- b. Failure to act on reported acts of GBSH committed in the educational institution.

44. How is a minor student who committed acts of GBSH punished?

Minor students who are found to have committed acts of GBSH shall only be held liable for administrative sanctions by the school as stated in their school handbook.

45. What are the prescriptive periods for filing cases for GBSH?

- a) Offenses committed under Section 11(a) (catcalling, wolf-whistling, etc) shall prescribe in one (1) year;
- b) Offenses committed under Section 11 (b) (offensive body gestures, etc) shall prescribe in three (3) years;
- c) Offenses committed under Section 11 (c) (stalking, other acts accompanied by touching of any part of the victim's body) shall prescribe in ten (10) years;
- d) Offenses committed under Section 12 (gender-based online sexual harassment) shall be imprescriptible;
- e) Offenses committed under Section 16 (GBSH in the workplace) and 21 (GBSH in educational and training institutions) shall prescribe in five (5) years.

