

Applicability of POSH Act on Private Limited Companies: A Comprehensive Guide

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

(10th February 2025)

SHORT SUMMARY:

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act) was established to guarantee a secure working environment for women. The Act, frequently linked to huge enterprises, is also applicable to Private Limited Companies provided they satisfy specific standards. This article delineates the applicability, compliance obligations, penalties, best practices, and requisite formats to assist Private Limited Companies in maintaining compliance.

I. What is the POSH Act?

The **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)** is an Indian law enacted to protect women from sexual harassment at the workplace and provide a redressal mechanism.

Applicability of the POSH Act to Private Limited Companies

The POSH Act applies to **every workplace, establishment, and employer** in India, including:

- **Private companies**, regardless of size or industry.
- **Companies with 10 or more employees** (including contractual, temporary, or part-time staff, interns, or consultants).
- Companies with fewer than 10 employees with some less compliances.

II. Does the POSH Act apply to private limited companies?

Yes, the POSH Act applies to all workplaces, including private limited companies, irrespective of their size, sector, or industry.

III. Who is considered an ‘employee’ under the POSH Act?

The Act defines an employee broadly to include:

- Regular, contractual, ad hoc, or temporary employees
- Interns, consultants, apprentices, and trainees
- Part-time or work-from-home employees

A. Mandatory Compliance Requirements

Private Limited Companies employing **10 or more workers** must adhere to the following key compliance requirements:

1. **Committee:** Each organization with more than 10 employees is required to form an Internal Complaints Committee headed by a “female presiding officer”,
2. **Policy:** Formulation of an internal POSH policy for the prevention and redressal of sexual harassment at workplaces.
3. **Training Programme:** Orientation and training programmes are also required to be carried out by the organisation.
4. **Annual Report:** The organizations are also required to file an annual report with the information of the number of sexual harassment complaints received in a year, the number of complaints disposed of in a year, cases pending for more than 90 days, etc.

B. Mandatory Compliance Requirements

Private Limited Companies employing **less than 10 workers** must adhere to the following key compliance requirements:

1. **Policy:** Formulation of an internal POSH policy for the prevention and redressal of sexual harassment at workplaces.
2. **Training Program:** Orientation and training programs are also required to be carried out by the organization.

Reporting under Directors Report:

In accordance with the request made by the Ministry of Women and Child Welfare, the Ministry of Corporate Affairs, through a Notification dated July 31, 2018, amended the Companies (Accounts) Rules 2014. By this amendment, it is now mandatory to disclose that the company has implemented the provisions of the Sexual Harassment Act.

Specifically speaking, it is now compulsory for a company to make a statement in the Director's Report that it has complied with the provisions regarding the constitution of the Internal Complaints Committee (ICC).

This amendment comes as a major step towards making the workplaces in the private sector safer for women, thereby casting higher responsibility on the Board of Directors to ensure compliance under the POSH Laws. Penal provisions that ensue in case of non-disclosure under Section 134 of the Companies Act will now be levied in the matters of non-disclosure of the implementation of the Sexual Harassment Act as well.

1. Internal Control Committee:

Every employer is obliged to constitute an ICC through a written order. The ICC will be composed of the following members:

No	Member	Eligibility
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1.	Chairperson	Women employed as senior level employee; if not available then nominate one from other office/units/department/workplace, of the same employer.
2.	2 Members (minimum)	At least two members, must be employees committed to the cause of women/having legal knowledge/experience in social work
3.	Other Member/ External Member	A person from an NGO or legal background with experience in dealing with cases of sexual harassment

2. Sexual Harassment at Workplace Policy

Employers/District Officers are responsible for complying with prohibition, prevention and redress of workplace sexual harassment. In practice, this means having a policy that:

- Define **sexual harassment** as per the POSH Act.
- Explain the process for lodging complaints and the **redressal mechanism**.
- Communicate clear **zero-tolerance policies** and ensure employees understand their rights and responsibilities.

3. Conducting Awareness and Training Programs

- Companies must conduct **regular awareness sessions** for employees.
- Specialized **training for ICC members** on handling complaints effectively.
- Display posters/notices at conspicuous places about the company's POSH policy and IC members.
- Ensure capacity and skill building of Complaints Committees.

- Widely publicize names and contact details of Complaints Committee members.

IV. Is POSH training mandatory for private limited companies?

Yes, organizations must sensitize employees and train ICC members regularly. The absence of training may be viewed as non-compliance.

4. Complaint Handling & Redressal Process

- Employees must file complaints **within 3 months** of the incident (extendable in certain cases).
- The IC must initiate an inquiry **within 7 days** and complete it **within 90 days**.
- If allegations are proven, the company must take **appropriate action**, including **penalties, warnings, termination, or compensation** to the victim.

5. Annual Report Filing

The IC must submit an **Annual Report** to the District Officer, containing:

- Number of complaints received.
- Cases resolved.
- Actions taken.
- Training and awareness sessions conducted.

WHO IS A DISTRICT OFFICER (DO)?

State Governments will notify a District Magistrate/Additional District Magistrate/ Collector/ Deputy Collector as a District Officer at the local level. The District Officer will be responsible for carrying out the powers and functions under the Act at the district levels (including every block, taluka, tehsil, ward, and municipality).

PENALTY PROVISIONS:

An employer can be subjected to a penalty of up to INR 50,000 for:

- Failure to constitute Internal Complaints Committee
- Failure to act upon recommendations of the Complaints Committee;
or
- Failure to file an annual report to the District Officer where required;
or
- Contravening or attempting to contravene or abetting contravention of the Act or Rules.

Where an employer repeats a breach under the Act, they shall be subject to:

- Twice the punishment or higher punishment if prescribed under any other law for the same offence.
- Cancellation/Withdrawal/Non-renewal of registration/license required for carrying on business or activities.

ADVISORY FOR PRIVATE COMPANIES

1. **Proactive Compliance:** Implement a robust POSH policy and train employees regularly.
2. **Confidentiality:** Ensure strict confidentiality of complaints and inquiry proceedings.
3. **Legal Consultation:** Engage POSH experts or legal professionals for compliance.
4. **Gender Sensitivity Programs:** Encourage gender inclusivity and safe workplace discussions.

V. Can men file complaints under the POSH Act?

No, the POSH Act specifically protects women employees. However, men can seek recourse under workplace policies or other legal provisions

Conclusion

Private limited companies are required under the POSH Act to establish a safe working environment for female employees. Not only does ensuring compliance help with adhering to legal requirements, but it also helps to build a positive environment at work. Building a workplace that is free of harassment and mitigating hazards can be accomplished by Private Limited Companies through the establishment of an IC, the implementation of policies, the provision of training, and the proper handling of complaints.

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