



CODE OF GOOD PRACTICE ON THE PREVENTION AND ELIMINATION OF HARASSMENT IN THE WORKPLACE

“End harassment in the Workplace Now!”







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employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA



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Why this Code?

This Code is guided by the ILO Convention 190 and its Recommendation concerning the elimination of Violence and Harassment in the World of Work, 2019; the Discrimination (Employment and Occupation) Convention 111 of 1958 (Convention 111); and the ILO Convention 151 relating to Occupational Health and Safety.

This Code repeals the Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace issued in the Government Gazette No.27865 of 4 August 2005.

The Objectives of the Code

This Code of Good Practice is intended to address the prevention, elimination, and management of all forms of harassment that pervade the workplace.

This Code provides guidelines –

- to employers, and employees on the prevention and elimination of all forms of harassment, as a form of unfair discrimination, in the workplace; and
- on human resources policies, procedures and practices related to harassment and appropriate procedures to deal with harassment and prevent its recurrence.

Who is covered by Code?

Although this Code applies to the working environment as a guide to employers, employees and applicants for employment, the perpetrators and victims of harassment may include, but is not limited to:

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| • owners; | • volunteers; |
| • employers; | • clients and customers; |
| • managers; | • suppliers; |
| • supervisors; | • contractors; and |
| • employees; | • others having dealings with a business. |
| • job seekers and job applicants; | • persons in training including interns, apprentices and persons on learnerships; |

In which situations does the Code apply?

The protection of employees against harassment applies in any situation in which the employee is working, or which is related to their work. This includes, but not limited to:

- the workplace which includes both public and private spaces in which people perform their work;
- places where the employee is paid, takes a rest break or a meal, or uses sanitary, washing or changing, breastfeeding and medical facilities;
- work-related trips, travel, training, events, or social activities;
- work-related communications, including those enabled by information and communication technologies and internet based platforms;
- employer-provided accommodation;¹ which includes housing;
- when commuting to and from work in transport provided or controlled by the employer;

1. Biggar v City of Johannesburg (2011) 32 ILJ 1665 (LC).





- in the case of domestic workers and health care workers who are employed in the residence of their employers, or residence of the individual to whom they are providing care, the residence is the workplace; and
- in the case of employees who work virtually from their homes, or any place other than the employer's premises, the location where they are working constitutes the workplace.

What is Harassment?

Harassment is generally understood to be:

- unwanted conduct, which impairs dignity;
- which creates a hostile or intimidating work environment for one or more employees or is calculated to, or has the effect of, inducing submission by actual or threatened adverse consequences; and
- is related to one or more grounds in respect of which discrimination is prohibited in terms of section 6(1) of the EEA.

Types of harassment

Harassment may be the result of **physical, verbal, or psychological conduct**.

- **Physical** harassment includes physical attacks, simulated or threatened violence, or gestures (such as raising a fist as if to strike a person or throwing objects near a person).
- **Verbal** bullying may include threats, shaming, hostile teasing, insults, constant negative judgment, and criticism, or racist, sexist, or LGBTQIA+ phobic language.
- **Psychological** harassment in the workplace may be associated with emotional abuse and involves behaviour that has serious negative psychological consequences for the complainant(s) such as is often the case with verbal abuse, bullying and mobbing.
- **Bullying** – where harassment involves the abuse of coercive power by an individual or group of individuals in the workplace. Intimidation – this is intentional behaviour that would cause a person of ordinary sensibilities to fear injury or harm. Workplace bullying may involve aggressive behaviour in which someone repeatedly causes another person injury or discomfort.
- **Mobbing** is a form of harassment by a group of people targeted at one or more individuals.
- **Online** harassment is harassment which is committed, assisted, or aggravated in part or fully, by the use of information and communications technology such as mobile phones, smart phones, the Internet, social media platforms or email. Bullying when conducted online is referred to as cyber-bullying.

Prohibited grounds

- Harassment of an employee is prohibited in terms of section 6(1) of the EEA, if the harassment is related to one or more of the prohibited grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or any other arbitrary ground.
- It may also be possible for a person who has been harassed to establish that the conduct was a result of an arbitrary ground, as contemplated by section 6(1) of the EEA.

Sexual Harassment

- Sexual harassment of an employee is a form of unfair discrimination and is prohibited on the grounds of sex, gender, or sexual orientation. Same-sex harassment can amount to discrimination on the basis of sex, gender, sexual orientation and gender-based harassment.





Racial, Ethnic or Social Origin Harassment

- Racial harassment is a form of unfair discrimination prohibited by section 6(1) of the EEA which is related to a person's membership or presumed membership of a group identified by one or more of the listed prohibited grounds or a characteristic associated with such group. Racist conduct, including derogatory language, is contrary to the founding principles of the Constitution, in particular the values of non-racialism, dignity, and equality.
- Racial harassment is unwanted conduct which can be persistent or a single incident that is harmful, demeaning, humiliating or creates a hostile or intimidating environment. Conduct that is calculated to induce submission by actual or threatened adverse consequences constitutes harassment although this is not an essential element of its definition.

Forms of racial harassment may include:

- ✓ Abusive language and racist jokes, cartoons, or memes, including communications that amount to hate speech;
- ✓ Racially offensive written or visual material, including on-line harassment;
- ✓ Racist name calling or negative stereotyping impacting on a person's dignity;
- ✓ Offensive behaviour in the form of open hostility to persons of a specific racial or ethnic group;
- ✓ Subtle or blatant exclusion from workplace interaction and activities and other forms of marginalisation; and
- ✓ Threatening behaviour, which intimidates a person or creates a hostile work environment.

Guiding Principles on the Prevention, Elimination and Management of Harassment

- **Employers are under obligation in terms of Section 60 of the EEA to take proactive and remedial steps** to prevent all forms of harassment in the workplace. This includes an assessment of the risk of harassment that employees are exposed to while performing their duties as far as is reasonably practicable.
- Employers should have an attitude of zero-tolerance towards harassment. They should create and maintain a working environment in which the dignity of employees are respected. A climate in the workplace should also be created and maintained in which employees who raise complaints about harassment will not feel that their grievances are ignored or trivialized, or fear reprisals.

Implementing the following guidelines can assist in achieving these ends:

- ✓ Employers and trade unions/ employees are obligated to refrain from committing harassment.
- ✓ All employers and trade unions/ employees have a role to play in contributing towards creating and maintaining a working environment in which harassment is unacceptable. They should ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others.
- ✓ Employers should attempt to ensure that persons such as customers, suppliers, job applicants and others who have dealings with the business are not subjected to harassment by its employees or any person representing the employer.
- ✓ Employers should attempt to ensure that employees in their employ are not subjected to harassment by third parties such as clients, customers, suppliers or others who have dealings with the employer.
- ✓ Policies and procedures adopted by an employer should provide a clear statement of the employer's position regarding the prevention, elimination, and management of the various forms of harassment in the workplace.
- ✓ Employers, where applicable, jointly with trade unions, must implement awareness training initiatives to educate employees at all levels about harassment to reinforce and maintain compliance through ongoing awareness programmes.
- ✓ Employers should take appropriate action in accordance with this Code where instances of harassment occur in the working environment.





Harassment Policies

- Employers should, subject to any existing collective agreements and applicable statutory provisions in respect of harassment, adopt a harassment policy, which should take cognisance of and be guided by the provisions of this Code.
- The contents of harassment policies should be communicated effectively to all employees.
- The adoption of a harassment policy and the communication of the contents of the policy to employees, should, amongst other factors, be taken into consideration in determining whether the employer has discharged its obligations in accordance with the provisions of section 60(2) of the EEA.
- Harassment policies should substantially comply with the provisions of this Code.
- The procedures to be followed by a complainant about harassment and by an employer when harassment is alleged, should be outlined in the policy.
- The availability of counselling, treatment, care and support programs for employees should be outlined in the policy.

Reporting harassment

- Section 60(1) of the EEA provides that any allegation of conduct by an employee in contravention of the EEA must *immediately* be brought to the attention of the employer.
- The Labour Appeal Court has held that the word “*immediately*” must be interpreted in light of the purpose of the provision, which is to ensure that instances of harassment are investigated in terms of the EEA, and not technically.² Allegations of harassment which are made within an appropriate time, in the circumstances, must be investigated and appropriate steps must be taken to prevent a re-occurrence. This may include the institution of disciplinary action against alleged perpetrators.

Who should develop procedures to deal with harassment?

- Employers should develop clear procedures to deal with harassment in terms of the EEA. These procedures should enable the resolution of problems in a gender-sensitive, confidential, efficient, and effective manner. When an employee has reported an alleged incident of harassment or laid a complaint, the employer is obliged to investigate the allegation of harassment which has been brought to its attention and advise the complainant of the informal or formal procedures available to deal with the harassment.

Do employers have any obligation when allegation of harassment is brought to their attention?

- Yes, the employer must:
 - ✓ consult all relevant parties;
 - ✓ take the necessary steps to address the complaint in accordance with this Code and the employer’s policy, where applicable, the collective bargaining agreement; and
 - ✓ take the necessary steps to eliminate the harassment.

What if the employer fails to take steps to eliminate harassment?

- Failure to take adequate steps to eliminate harassment once an allegation of harassment by an employee has been submitted within a reasonable time, will render the employer vicariously liable for the conduct of the employee in terms of section 60 of the EEA. This is the case even if the harassment consists of a single incident.

2. Liberty Group Ltd v M (2017) 38 ILJ 1318 (LAC) at paras 48-54.





Disciplinary sanctions

- The employer's harassment policy should specify the range of disciplinary sanctions that may be imposed on a perpetrator. The sanctions must be proportionate to the seriousness of the harassment in question, and should provide that:
 - ✓ warnings may be issued for minor instances of harassment. A warning issued to a perpetrator must describe the essence of the discriminatory misconduct;³
 - ✓ dismissal may ensue for continued minor instances of harassment after warnings, as well as for serious instances of harassment;
 - ✓ in appropriate circumstances upon being found guilty of harassment, a perpetrator may be transferred within the workplace or to another workplace within the company; and
 - ✓ a complainant about harassment has the right to lay a criminal charge or institute civil proceedings against the alleged perpetrator.

Who must ensure confidentiality?

- Employers and employees must ensure that grievances about harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential for the purpose of protecting the confidentiality of all parties involved.
- All internal and external communications related to an incident of harassment should be treated as confidential.
- Considerations of confidentiality do not preclude an employer from taking appropriate steps to protect the safety or dignity of employees, either during the conduct of the investigation or subsequently.

Additional sick leave

- Where an employee's existing sick leave entitlement has been exhausted, the employer should give due consideration to the granting of additional paid sick leave in cases of serious harassment, where the employee, on medical advice, requires trauma counselling.
- If harassment results in an employee being ill for longer than two weeks, the employee may be entitled to claim illness benefits in terms of section 20 of the Unemployment Insurance Act, 2001.
- In appropriate circumstances, employers may give consideration to assisting with the cost of the medical advice and trauma counselling and care, where such amounts are not covered by any applicable medical aid scheme.

Who must provide Information and Education in the Workplace?

- Employers, and where applicable employer organisations, should include the issue of sexual harassment and other types of harassment in their orientation, education, and training programs in an accessible format.
- Trade unions should include the issue of sexual harassment and other types of harassment in their education and training programs for shop stewards and employees in an accessible format.

How to access the full information on the Code?

- Access by visiting the Department of Employment and Labour website: www.labour.gov.za

3. Future of SA Workers Union on behalf of AB & others v Fedics (Pty) Ltd & another (2015) 36 ILJ 1078 (LC) at para 166.







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