

# PREVENTING AND ELIMINATING HARASSMENT IN THE WORKPLACE



## HARASSMENT AT THE WORKPLACE

All forms of harassment against women, men and LGBTQIA+ and vulnerable persons in the workplace (formal or informal) must not be tolerated.

Harassment, particularly affects employees in the most vulnerable work situations, who have poor access to labour rights such as freedom of association, collective bargaining, decent work, non-discriminatory practices and access to justice. Each individual should be treated with dignity and respect at work. Harassment may be in the form of a single incident or multiple incidents.

The content of this information sheet follows the guidelines provided in the Code of Good Practice for the Prevention and Elimination of Harassment in the Workplace (2022), issued in terms of the Employment Equity Act 55 of 1998 (EEA).

## WHAT IS HARASSMENT?

Harassment is an act or omission (or more than one act or omission) directed towards an individual at the workplace that is unwanted, impairs human dignity, creates a hostile work environment and is intended to induce submission by actual or threatened adverse consequences. The protection provided by the EEA against acts of harassment is limited harassment related to one or more grounds of unfair discrimination, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic- or social origin, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or any other arbitrary ground.

Examples of harassment are—

### Sexual harassment:

Unwanted and unwelcome conduct of a sexual nature – physical, verbal, non-verbal – including:

- physical conduct ranging from rape to touching, kissing, hugging;

- strip searching, including by a person of the same or opposite sex;
- following, watching, accosting or pursuing a person;
- sexual attention, advances, proposals, suggestions, messages or proposals of a sexual nature;
- implied or express threats of reprisal or actual reprisal to comply with sexually oriented requests, advances, attention or proposals;
- innuendos, suggestions, hints, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body, inappropriate enquiries about a person's sex life; whistling of a sexual nature; sending of sexually explicit text or messages;
- unwelcome gestures, indecent exposure, sending or displaying of sexually explicit pictures of objects;
- *quid-pro-quo* sexual harassment - where a senior person influences or attempts to influence an employee's employment circumstances by coercing or attempting to coerce an employee to surrender to sexual advances; and
- sexual favoritism - where a person in authority seeks to utilize this power to reward those who respond to sexual advances.

**Racial-, ethnic- or social origin harassment** includes, but is not limited to-

- racist verbal and non-verbal conduct, remarks, abusive language, racist name calling, jokes, offensive behaviour, gestures, cartoons, memes or innuendo, including communications that amount to hate speech;
- racially offensive written or visual material, online racial harassment;
- open hostility to persons;
- subtle or blatant exclusion from workplace interaction and activities; marginalization; and
- threatening behaviour.

The Constitutional Court has emphasized that when determining whether conduct or language is racist and derogatory, the test to be applied is whether it is whether the conduct or language is reasonably capable of conveying a racist meaning to the reasonable hearer of the message.

## Bullying:

While bullying may be experienced differently by different people, for bullying to constitute a form of harassment in terms of the EEA, it needs to link to one or more of the grounds for unfair discrimination discussed above.

Some examples of bullying in the workplace include the following:

- An ongoing and escalating process in which the complainant ends up in an inferior position and the target of systematic negative social acts. It is intentional behaviour which would cause a person to fear injury or harm or to feel discomfort.
- Verbal bullying; shaming; hostile teasing; insults; constant negative judgement or criticism; racist, sexist or LGBTQIA+ phobic language.
- Spreading malicious rumours, or insulting someone, particularly on gender, race or disability grounds; making negative and discriminatory jokes; sarcasm; condescending eye contact or facial expressions; mimicking to ridicule; deliberately causing embarrassment; invisible treatment; marginalization; social exclusion; professional isolation.
- Ridiculing or degrading someone – picking on them or setting them up to fail.  
Deliberate exclusion or victimisation.
- Unfair treatment or abuse, for example based on race, gender sexual orientation, pregnancy, age, disability, religion, HIV status, etc.
- Overbearing supervision or other misuses of power or position.
- Unwelcome sexual advances – touching, standing too close and displaying of offensive material.
- Making threats/comments about job security without foundation.
- Violence, physical attacks or abuse (simulated, threatened or actual) and sexual abuse.
- Psychological harassment; emotional abuse.

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- Slandering, maligning, spreading rumours and malicious gossip; humiliating-, insulting- or demeaning conduct; withholding information; supplying incorrect information.
- Sabotaging or impeding the performance of work.
- Ostracising, isolating, excluding, degrading an employee.
- Surveillance without the knowledge of an employee.
- Demotion without justification.
- Abuse or selective use of disciplinary proceedings.
- Pressuring an employee to resign.
- Deliberately undermining a competent employee by overloading and constant criticism.
- Preventing individuals progressing by intentionally blocking promotion or training opportunities.
- Mobbing is a form of harassment by a group of people targeted at another person or persons.
- Online harassment and cyber bullying.

## DUTIES OF EMPLOYERS

Employers have a duty to proactively protect their employees from harassment by colleagues or any other person who has dealings with the company and to inform and educate them about this issue. Employers are encouraged to conduct a risk assessment in the workplace and to develop a code of conduct on harassment. This can be done in consultation with employees and employee representatives.

The dignity of all employees should be respected in the workplace and a climate must be created and maintained in which employees will not feel that their grievances and complaints are trivialized or ignored

Procedures to follow by a complainant should be clear and outlined in a policy. Grievances and complaints should be handled in a confidential manner and counselling, treatment and support made available for complainants.

## WHY DO EMPLOYEES NEED TO TAKE ACTION ON HARASSMENT?

Harassment is not only unacceptable on moral grounds, but may create problems for an organisation including—

- violating human rights;
- poor morale and poor employee relations;
- threatening the physical, psychological performance of employees;
- resulting in unexplained absenteeism, late coming, high staff turnover and poor concentration at work; and
- creating a hostile, intimidating and offensive work environment which can lead to loss of productivity and employee resignations.

## WHAT YOU CAN DO WHEN YOU ARE BEING HARASSED?

Keep a record of all incidents, taking notes on dates and times, potential witnesses and what was done.

Where reasonable, confront the harasser. Firstly, you can act informally and speak to the harasser directly, taking a witness with you.

You can also use a grievance or disciplinary procedure as a formal way of dealing with harassment cases. Report the matter to the appropriate person at work:

- If you are a member of a union or employees' association, contact your shop steward or representative.
- If you are not a union member, contact the company's Human Resources Manager or someone else in a position of authority, like your supervisor or Senior Manager.
- If you work in a very small business and the above options are not open to you, contact the CCMA for assistance regarding your rights in terms of the labour laws.

Once the case has been reported, the company management must investigate the case. Depending on the outcome of the investigation, a formal disciplinary inquiry may be instituted to

establish the facts, hear both sides of the story and decide on the appropriate disciplinary measures for the alleged harasser.

The matter can be referred to the CCMA for conciliation and, if unresolved, through conciliation, the employee may elect to either refer the matter to the Labour Court for adjudication or to the CCMA for arbitration.

Arbitration is an option only if the matter relates to sexual harassment, or if the employee earns EQUAL TO OR LESS THAN the amount set by the Minister of Employment and Labour in Chapter Two of the Basic Condition of Employment Act (BCEA) (the threshold), or, irrespective of earnings, both sides agree in writing to CCMA arbitration.

In harassment matters concerning promotion, demotion, probation, training, disciplinary action short of dismissal or provision of benefits, an unfair labour practice as per section 186(2) may also be referred to the CCMA

If the harasser and the aggrieved person are not in an employment relationship, the aggrieved person may refer the matter to the Equality Court (which is attached to the Magistrate Court).

## RELEVANT LEGISLATION:

- Employment Equity Act 55 of 1998, as amended.
- Basic Conditions of Employment Act 75 of 1997, as amended.
- Labour Relations Act 66 of 1995, as amended.
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, as amended.
- Occupational Health and Safety Act 85 of 1993, as amended.
- Protected Disclosures Act 26 of 2000, (Whistleblower protection), as amended.
- Protection from Harassment Act 17 of 2011 (protection orders may be obtained).