



# HARASSMENT IN THE WORKPLACE: THE NEW CODE OF GOOD PRACTICE



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In terms of the Employment Equity Act 55 of 1998 (Act), harassment of an employee is a form of unfair discrimination and is prohibited on any one or combination of the grounds of unfair discrimination listed in the Act, including any arbitrary ground. The Code of Good

Practice on the Prevention and Elimination of Harassment in the Workplace (Code) aims to eliminate all forms of harassment in the workplace by providing guidance on the policies and procedures to be implemented in the event that harassment occurs in the workplace. The Code recognises various forms of harassment that may amount to unfair discrimination and goes beyond only the recognition of sexual harassment, unlike its predecessor, the 2005 Code of Good Practice on the Prevention of Sexual Harassment in the Workplace.

The scope and ambit of the Code are broad, and it is important for employers to understand the nature and application of the Code for the workplace in order to mitigate the risk of being found vicariously liable in terms of section 60 of the Act. The Code is also an extension of an employer's obligation to ensure, insofar as reasonably practically possible, a safe working environment, which includes an environment free from violence and harassment. The purpose of this guide is to outline the various forms of harassment recognised in terms of the Code, as well as the obligations placed on employers and employees to eliminate harassment within the workplace.



In light of the introduction of the Code, employers are advised to take the following steps:



### RISK ASSESSMENT

- Identify the historical and current risks for harassment in the workplace.
- Identify the manner in which the company will address the risks identified.



### REVIEW POLICIES

- Review and update company policies (harassment policy, disciplinary code and procedure, etc.) in line with the Code.
- Adopt a zero tolerance approach to harassment.
- Consult all relevant stakeholders, where applicable.



### TRAINING AND AWARENESS

- Ensure employees are educated about their rights and obligations in terms of the Code and the company's policies.
- Make the company harassment policy known to all employees and other parties that have dealings with the company.
- Ensure the harassment policy is available on the relevant company platforms.
- Make reporting mechanisms clear.
- Create ongoing awareness about the duty to report harassment.



### ESTABLISH RESOURCES

- Establish a committee that will investigate claims of harassment and ensure that the committee has sufficient capacity and training.

## THE NEW CODE AND THE DEFINITION OF HARASSMENT

To whom does the Code apply?



### What is Harassment?

The Code defines harassment as:

- unwanted conduct that impairs dignity;
- which creates a hostile working 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 Act – which includes both listed grounds and an arbitrary ground.



## WHAT ARE THE TYPES OF HARASSMENT RECOGNISED BY THE CODE?

The following is a non-exhaustive list of forms of harassment recognised in terms of the Code:

### PHYSICAL HARASSMENT

- Physical attacks and violence
- Simulated or threatened attacks or violence
- Gestures – e.g. raising a fist, throwing objects

### ONLINE HARASSMENT

Harassment committed, assisted or aggravated in part or fully by the use of communications technology

### BULLYING

The abuse of coercive power by an individual or group of individuals in the workplace  
When bullying is conducted online it is referred to as cyber-bullying  
Bullying may involve aggressive behaviour in which someone repeatedly causes another person injury or harm

### INTIMIDATION

Intentional behaviour that would cause a person of ordinary sensibilities to fear injury or harm

### OTHER CONDUCT THAT MAY CONSTITUTE HARASSMENT

- Slandering or maligning an employee or spreading rumours
- Conduct which humiliates, insults or demeans someone
- Withholding work related information or supplying incorrect information
- Sabotaging or impeding the performance of work
- Demotion without justification
- Ostracising, boycotting or excluding an employee from work or work-related activities

### VERBAL BULLYING

- Threats
- Shaming
- Hostile teasing
- Insults
- Constant negative judgement
- Constant criticism
- Racist, sexist or LGBTQIA+ phobic language

### PSYCHOLOGICAL ABUSE

- Emotional abuse
- Behaviour having serious negative psychological consequences

### COVERT HARASSMENT

- Negative gossiping or joking at someone's expense
- Sarcasm
- Condescending eye contact, facial expressions or gestures
- Mimicking to ridicule
- Deliberately causing embarrassment or insecurity
- Invisible treatment and marginalisation
- Social exclusion or professional isolation
- Deliberately sabotaging someone's happiness, dignity, well-being, success or career performance

### MOBBING

Harassment by a group of people targeted at one or more individuals

## Who can be a victim or perpetrator of harassment?

Although the Act deals with the relationship between employer and employee, employees are not the only possible victims or perpetrators of harassment in the working environment. Victims and perpetrators of harassment do not have to be co-workers, and include, but are not limited to, the following persons:



**Must the harassment take place on the employer's premises or within working hours in order for the employer to take disciplinary action?**

No. The protection of employees against harassment applies in any situation in which an employee is working, or which is related to their work, which includes but is not limited to the following instances:

- the workplace – which includes both public and private spaces where employees perform their work, including remote working locations, which may include an employee's home;
- the places where the employee is paid, takes rest or meal breaks or uses sanitary, washing, changing, breastfeeding or medical facilities.
- work-related trips, travel, training, events or social activities;
- employer-provided accommodation or housing;
- when commuting to and from work in transport provided or controlled by the company;
- work-related communications, including those enabled by information; and communication technologies and internet-based platforms.

In *Campbell Scientific Africa (Pty) Ltd v Simmers and Others* (CA 14/2014) [2015] ZALCCT 62, the sexual harassment occurred away from the employer's premises and after working hours. The court held that the employer was entitled to discipline the employee as the sexual harassment occurred in the context of a work-related social event and affected the employment relationship.

**Must the perpetrator of the harassment hold a more senior position than the victim?**

No. Harassment is not limited to any hierarchical order. It may be perpetrated by a co-worker, a supplier or even a subordinate towards a superior. The Code expressly recognises both horizontal and vertical forms of harassment. Vertical harassment involves the use of formal power or material leverage and refers to harassment between an employer/manager and employees. Horizontal forms of harassment, however, refer to harassment between employees at the same level or in the same position.

**Does a complainant have to expressly state that the conduct is unwanted in order for it to constitute harassment?**

No. A complainant may communicate that the conduct is unwanted, both verbally or non-verbally, and the communication may be either directly to the perpetrator or indirect. Where there is no such communication, the employer must assess whether the conduct is of such a nature that the perpetrator knew or should have known that the conduct complained of is generally considered unacceptable.

**What is the test to determine whether the conduct constitutes harassment?**

The employer must assess the conduct on an objective basis, from the perspective of the person who alleges the harassment. The primary focus is on the impact of the conduct with reference to the "reasonable person" test.

**Does the conduct need to be continuous, ongoing or repetitive to constitute harassment?**

No. Where the conduct is of a serious nature, a single instance is sufficient to constitute harassment. The Code specifies the following factors to consider when determining whether harassment has occurred:

- the context of the harassment;
- the circumstances of the complainant and the impact that the conduct has had on the complainant; and
- the respective positions of the perpetrator and complainant.

**Does the complainant need to prove intent in order for the conduct to constitute harassment?**

No. It not necessary to establish the intention or the state of mind of the perpetrator in order to prove harassment for purposes of the Act or the Code. However, intention may be used as an aggravating factor.

**What does it mean for the unwanted conduct to be said to create a hostile working environment?**

The conduct in question will be said to have created a hostile working environment where it impairs the dignity of one or more employees. This can be evidenced by a negative impact on an employee's ability to work and/or their personal well-being. Importantly, a hostile working environment may also be present where an employer should anticipate that employees will be subject to abusive conduct related to prohibited grounds of discrimination by either members of the public, customers or clients, and fails to take reasonable steps to prevent it. A hostile working environment is also not limited to showing that the complainant has not received a particular benefit.

**What is the distinction between direct and indirect harassment?**

Direct harassment is harassment that is aimed at the complainant while indirect harassment, while not aimed at the complainant, has the effect of undermining their dignity or safety.

**Does the harassment need to be on a listed ground in section 6 of the act in order to qualify as harassment?**

No. It is possible for the complainant to establish that the harassment was based on an arbitrary ground, as contemplated in section 6(1) of the Act.

## RACIAL, ETHNIC OR SOCIAL ORIGIN HARASSMENT

### What is racial, ethnic or social origin harassment?

Racial harassment is a form of unfair discrimination, prohibited by section 6 of the Act, which is related to a person's membership or presumed membership to a group identified by one or more of the listed grounds of discrimination or a characteristic associated with said group.

### What is the test for racial, ethnic or social origin harassment?

Racial harassment must be assessed objectively with reference to the reaction of a normal or reasonable person in keeping with the values of the constitutional order. An employer must assess, on a balance of probabilities, whether the conduct complained of was related to race, ethnic or social origin, or a characteristic associated or assumed to be associated with such a group.

### What are the factors an employer must take into account when considering if the conduct amounts to racial harassment?

An employer should consider the following when determining whether language or conduct amounts to racial harassment:

- whether the conduct was persistent and harmful;
- whether the language or conduct complained of was abusive, demeaning, humiliating or impaired dignity and/or created a hostile working environment;
- whether the conduct or language was calculated to induce submission by actual or threatened adverse consequences;
- whether the language or conduct was directed at a particular employee or employees;
- whether the conduct or language was insulting, abusive or derogatory;
- the extent and degree of abuse or impairment to a person's dignity; and
- the impact of the conduct.

### What are the forms that racial harassment may take?

Racial harassment may take, among others, the following forms:

FORM	EXAMPLES
Language	Racist language and racist jokes, cartoons or memes including communication that may amount to hate speech.
Written	Racially offensive written or visual material, including online material.
Behaviour	Offensive behaviour in the form of open hostility to persons of specific racial or ethnic groups.
Spatial	Subtle or blatant forms of exclusion from workplace interaction and activities and other forms of marginalisation.
Physical	Threatening behaviour, which intimidates a person or creates a hostile working environment.



## SEXUAL HARASSMENT

### What is sexual harassment?

In terms of the Code, sexual harassment is unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equality in the workplace, taking into account all of the following factors:

- whether the harassment is on a prohibited ground;
- grounds of sex and/or gender and/or sexual orientation;
- whether the sexual conduct was unwelcome;
- the nature and the extent of the sexual conduct; and
- the impact of the sexual conduct on the employee.

### Must the conduct be unwelcome in order for it to amount to sexual harassment?

Yes. There are a number of ways that an employee can indicate that the sexual conduct is unwelcome. An employee may indicate this through verbal means (by telling the perpetrator that the conduct is unwelcome) or through non-verbal means.

### What if the sexual conduct was previously welcomed?

The fact that someone may previously have welcomed or participated in the conduct does not mean that the conduct remains welcome. An employee is not precluded from lodging a sexual harassment complaint against a perpetrator when the attention becomes unwelcome, even if the employee was previously in a relationship with the perpetrator.

### What are the ways in which an employee can indicate that the behaviour is not welcome?

An employee may indicate that the sexual conduct is unwelcome either verbally or non-verbally. Non-verbal conduct indicating that the behaviour is unwelcome includes conduct such as walking away or not responding to the perpetrator. Where an employee has difficulty indicating to the perpetrator that the conduct is unwelcome, the employee may seek the assistance and intervention of another person such as a co-worker, superior, counsellor, human resource official, family member or friend.

**Must the conduct be of a sexual nature to constitute sexual harassment?**

Yes. This type of conduct may include physical, verbal or non-verbal conduct.

Physical conduct may include unwelcome physical conduct ranging from touching to sexual assault and rape.

Verbal conduct includes unwelcome innuendos, suggestions, hints, sexual advances, comments with sexual overtones, sex-related jokes, inappropriate enquiries about a person's sex life, whistling of a sexual nature and the sending via electronic means or otherwise of sexually explicit text or material.

Non-verbal conduct includes unwelcome gestures, indecent exposure and the displaying or sending of sexually explicit pictures or objects.

**What is sexual favouritism?**

Sexual harassment includes sexual favouritism. This occurs when a person in authority favours those who respond to their sexual advances. Victimization often occurs where an employee fails to submit to these advances.

**What is *quid pro quo* harassment?**

*Quid pro quo* harassment occurs where a person influences or tries to influence an employee's employment circumstances (usually promotion or increases) by forcing or attempting to force the employee to surrender to sexual advances.

**Can a single incident of unwelcome sexual conduct constitute sexual harassment?**

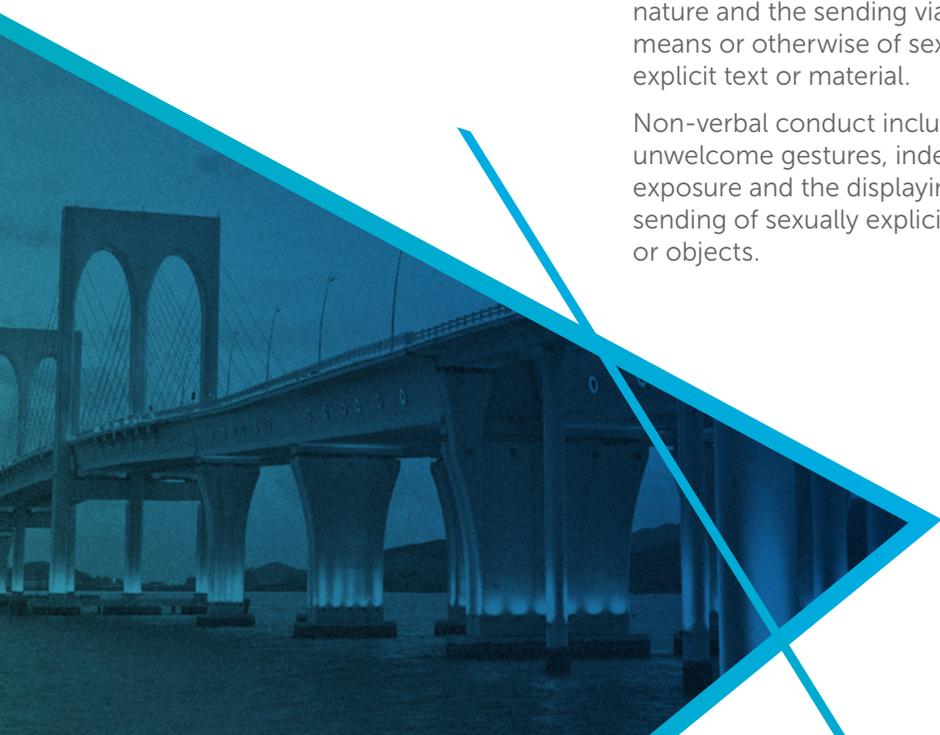
Yes.

**Can sexual harassment be perpetrated virtually?**

Yes. Technology has not only enabled remote work but has also introduced new forms of sexual harassment. Where the harassment satisfies the definition of sexual harassment, irrespective of the fact that it is perpetuated virtually, the conduct will still constitute sexual harassment.

**What are some examples of behaviour that may constitute virtual sexual harassment?**

Some of the behaviours which may constitute virtual sexual harassment include inappropriate dress during online meetings, online stalking, forcing employees to attend video calls well after working hours, making personal remarks on a colleague's social media, sending inappropriate or sexual memes and other multimedia material online and/or sending inappropriate emojis or messages online.



## A SUMMARY OF THE TYPES OF SEXUAL HARASSMENT

The following is a non-exhaustive summary of some of the conduct that may constitute sexual harassment:

FORM	EXAMPLES
Physical	<ul style="list-style-type: none"><li>• All unwanted physical contact, ranging from touching to sexual assault and rape as the extreme.</li><li>• Includes a strip search by or in the presence of the opposite sex without consent.</li><li>• Any physical conduct of a sexual nature.</li></ul>
Verbal	<ul style="list-style-type: none"><li>• Unwelcome innuendoes, suggestions and hints.</li><li>• Sexual advances.</li><li>• Comments with sexual overtones.</li><li>• Sex-related jokes or insults.</li><li>• Unwelcome graphic comments about a person's body made in their presence or directed toward them.</li><li>• Unwelcome and inappropriate enquires about a person's sex life.</li><li>• Unwelcome whistling directed at a person or group of people.</li></ul>
Non-verbal	<ul style="list-style-type: none"><li>• Unwelcome gestures.</li><li>• Indecent exposure.</li><li>• Unwelcome displaying of sexually explicit pictures and objects, including pornography downloaded off the internet. This is known as creating a hostile environment.</li></ul>
<i>Quid pro quo</i>	<p>This occurs where an owner, employer, supervisor, member of management or co-employee undertakes or attempts to influence or influences the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of an employee or job applicant, in exchange for sexual favours.</p>

## MEASURES BY EMPLOYERS

### Are employers required to take active steps to mitigate harassment in the workplace?

Yes. In the Labour Court judgment of *Piliso v Old Mutual Life Assurance Co (SA) Limited and Others (C32/2005)* [2006] ZALC 107, in relation to sexual harassment, the court held that employers must take active steps in advance to prevent unfair discrimination and that employers "may not simply sit back and wait to be informed of its happening before doing something".

### Should employers have a harassment policy?

Yes. The Code requires all employers to have a policy dealing with the issue of harassment in the workplace.

### What should the harassment policy contain?

The harassment policy should be guided by the Code. It should record matters such as reporting, the obligations of the employer, advice and assistance available to a victim of harassment, what procedures should be followed when harassment has been reported, and the possible disciplinary sanctions if the perpetrator is found guilty of harassment.

In terms of the Code, a harassment policy must include at least the following statements:

- harassment, including acts of violence, will not be tolerated in the workplace;
- harassment on a prohibited ground is a form of unfair discrimination which infringes on the rights of the complainant and constitutes a barrier to equality in the workplace;
- harassment related to any prohibited ground in the workplace will not be permitted, tolerated or condoned;
- grievances about harassment will be investigated and handled in a confidential manner;
- complainants in harassment matters have the right to follow the procedures in the policy and appropriate action must be taken by the employer; and
- it will be a disciplinary offence to victimise or retaliate against an employee who, in good faith, lodges a grievance about harassment, whether in respect of themselves or other employees.

Employers must communicate the contents of the harassment policy to their employees effectively. It must be included in any employee orientation and education and training programmes.

Employers must ensure that their policies make it clear that harassment perpetuated online is prohibited and punishable and specify the range of disciplinary sanctions that may be imposed.

With the world of work becoming remote, it is imperative that employers cater for online harassment in their policies and that employees are made aware of what constitutes online harassment.

Allegations of harassment should be dealt with seriously, expeditiously, sensitively and confidentially.

### Why is it important to have a harassment policy?

A harassment policy assists in the elimination of harassment in the workplace. It educates employees and provides for appropriate and consistent procedures to deal with harassment and to prevent its recurrence. The contents of the harassment policy and how it is communicated to employees are among the factors that will be considered when determining whether an employer took the necessary steps to eliminate harassment and comply with the Act.

### What other measures can an employer implement to mitigate harassment in the workplace?

It is advisable for employers to train employees on what constitutes harassment and what they should do if it occurs. An employer may also send regular communications to employees regarding the prohibition on harassment and include signage and posters in its workplaces regarding the nature and reporting of harassment.

Employers must also make it clear to all contractors, suppliers or any external personnel with whom the business interacts that harassment will not be tolerated at its workplace.

## EMPLOYER'S OBLIGATIONS WHEN HARASSMENT OCCURS

### When must harassment be reported to the employer?

The Act and Code require that the harassment be reported immediately.

The Code states that the word immediately means that the harassment must be reported "as soon as reasonably possible in the circumstances and without undue delay, taking into account the nature of the harassment, including that it is a sensitive issue, that the complainant may fear reprisals and the relative positions of the complainant and the alleged perpetrator in the workplace".

### Does the code apply to non-employees? What obligations does an employer have in relation to harassment perpetrated by non-employees?

Yes. The Code applies to clients, customers and contractors, amongst others. Where the harassment is perpetrated by a non-employee, the employer still has an obligation to investigate the complaint and to take steps to protect its employees against any form of harassment within their scope of employment. Furthermore, where possible, an employer may report the allegations of harassment to the perpetrator's employer.

### May a third party, who is not the victim, report allegations of harassment?

Yes. Other employees or other third parties may also report harassment in the workplace and have a duty to do so.

### What should the employer do once it is aware of the harassment?

As soon as the complaint of harassment is brought to the employer's attention the employer should:



### When the employer receives the harassment complaint what should the employer do?

The steps an employer should take as soon as it receives a complaint include, but are not limited to the following:

- inform the complainant of the procedures available to them to deal with the harassment (both informal and formal procedures);
- explain what the procedures entail and that they may choose which procedure to follow;
- confirm that the complainant will not face adverse consequences if they choose to follow a particular procedure;
- offer advice, assistance and counselling where reasonably practical to the complainant in accordance with the Code; and
- inform the complainant that the complaint will be dealt with confidentially should they so choose.

The Code also encourages employers to consider, in cases of serious harassment, providing employees with additional paid sick leave where they have exhausted their sick leave provisions and to refer them for medical trauma counselling. Where the harassment results in an employee being ill for longer than two weeks, the employee may be entitled to illness benefits in terms of section 20 of the Unemployment Insurance Act 63 of 2001.

### What are the informal procedures?

Informal procedures may be appropriate in cases of less serious harassment. The complainant may prefer to remain anonymous.

Where the identity of the complainant is revealed, either the complainant or an appropriate person can explain to the perpetrator that the conduct is unwelcome, offensive to the complainant and interferes with the complainant's work.

Where the identity of the complainant is not revealed, an appropriate person can explain to the perpetrator that certain forms of conduct are unwelcome, make employees uncomfortable, amount to harassment and interfere with the work of other employees. The employer should also consider any further steps that can be taken to assist in dealing with the complaint.

### What are the requirements for a formal procedure?

The formal procedure should address at least the following:

- with whom the grievance or complaint should be lodged;
- the internal grievance procedures that must be followed in dealing with the complaint, including the outcome desired by the complainant;
- time frames to deal with the grievance expeditiously;

- that the Commission for Conciliation, Mediation and Arbitration (CCMA) can be approached if the complaint is not satisfactorily resolved, or if the alleged perpetrator is not satisfied with disciplinary action taken by the employer against them; and
- it will be a disciplinary offence if a complainant is victimised or retaliated against for lodging a harassment grievance in good faith.

### What if the complainant does not want to follow a formal procedure?

The employer should still assess the risk to other persons in the workplace. The assessment must take into account all relevant factors, including the severity of the harassment and whether the perpetrator has a history of harassment. If it appears that there is a significant risk of harm to other people in the workplace, the employer may follow a formal procedure, irrespective of the wishes of the complainant, and advise the complainant accordingly.

### Can the complainant follow a formal procedure even where the company is of the view that an informal procedure is more appropriate?

Yes. The complainant may elect to follow a formal procedure either with or without first following an informal procedure.

## NON-COMPLIANCE

### What are the consequences if the employer does not take the necessary steps to eliminate the harassment?

In terms of the Act, an employer is deemed to have contravened the Act where it is proved that its employee (the perpetrator) contravened the Act and the employer failed to take the necessary steps to eliminate the harassment. This means that the employer can be liable to pay damages or compensation to the victim of the harassment. An employer will not be liable if it is able to prove that it did all that was reasonably practical to ensure that there was no harassment in the workplace.

### What can an employee do if they are dissatisfied with the steps taken by the employer?

The Act obliges employers to eliminate unfair discrimination in any employment policy or practice. If an employee is not satisfied with the steps taken by the employer, then they may refer a harassment dispute

to the CCMA. If the dispute remains unresolved after conciliation, the harassment dispute can be referred to arbitration at the CCMA or to the Labour Court. If the harassment is proved, the payment of compensation and damages can be awarded against the employer. Where a dispute is referred to the CCMA it may not award damages in excess of the earnings threshold, which is R224,080.30 per year at the date of publication.

**Who bears the burden of proof?  
Has the code changed who bears the onus?**

No. In terms of section 11 of the Act, which deals with discrimination by the employer on the basis of a listed ground, the employer bears the onus of proving, on a balance of probabilities, that it is fair. However, where a victim alleges harassment on an arbitrary ground, the victim bears the onus of proving that the discrimination is unfair.

**DISCIPLINARY ACTION  
AGAINST A PERPETRATOR**

**What if it is found that the allegations of harassment are false?**

The Code requires that employers and employees must ensure that grievances about harassment are investigated and handled in a manner that ensures that the identities of the people involved are kept confidential. This also applies to the disciplinary

proceedings. Harassment policies should also make it clear that it is a disciplinary offence to bring false complaints of harassment against any person and that this type of misconduct may warrant dismissal.

**If the victim accepts the perpetrator's apology for the harassment, is the employer precluded from taking disciplinary action?**

No. The resolution of a dispute between the parties does not prevent the employer from taking disciplinary action against an employee who has perpetrated harassment. The employer is obliged to eliminate harassment in the workplace and, where it does occur, to prevent its recurrence.

**Must a perpetrator always be dismissed if found guilty of harassment?**

No. There are a range of appropriate sanctions proportionate to the seriousness of the harassment. Warnings may be issued for minor instances of harassment. In appropriate circumstances a perpetrator may be transferred to another position. Where the harassment is serious then summary dismissal may be appropriate. The Code provides that the sanctions imposed must be proportional to the seriousness of the conduct and that the range of sanctions should be listed in the employer's disciplinary code and procedure.

**Is an employer obliged to take disciplinary action against someone who is not an employee?**

No. The employer should, however, make it clear that such conduct will not be tolerated in its workplace. It may wish to report the person's conduct to their employer or some other appropriate body.

**Can a victim of harassment bring separate charges?**

Yes. A victim may bring separate civil and/or criminal charges. A victim of harassment who does not fall within the ambit of the Code may also pursue a claim in terms of, amongst other legislation, the Protection from Harassment Act 17 of 2011 and the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. An employer also has an obligation to report criminal conduct to the relevant authorities.

**What recourse is available to an employer where an employee fails to disclose previous allegations of harassment made against them, regardless of the outcome?**

An employer may take disciplinary action against an employee for failure to disclose their history of allegations of harassment where they were required to do so.

**Is it possible to refuse employment to a job applicant who has a record of perpetrating harassment?**

This point has not been settled in our law. However, a job applicant alleging unfair discrimination on the basis of their history of perpetrating harassment would have to show that the ground for differentiation is arbitrary and unfair, in that it deprives them of their right to dignity. An employer should expressly request job applicants to make such a disclosure during the application process, particularly where the nature of the role requires interaction with people who may be at greater risk of harassment. A failure on the part of a job applicant to make such a disclosure goes to the employer's ability to assess a candidate's suitability for a position and may constitute a ground for dismissal should an employer later discover that an employee failed to make the relevant disclosure, notwithstanding its request for them to do so.

**What is the employer's obligation if a complaint is not reported by the victim but somehow or anonymously comes to the attention of management?**

The employer still has an obligation to investigate the complaint and to take the necessary steps in terms of the Code, where it is found that the harassment does indeed exist.

**Where a line manager fails to follow procedure and does not investigate allegations of harassment/sexual harassment and the allegations are later found to be true, would both the perpetrator and the line manager be open to disciplinary action?**

Yes.

**Is there any change to the reporting requirements in terms of the act under the new code?**

No. The reporting requirements remain the same.

**How does the code protect and support job seekers?**

The Code expressly provides protection for job seekers and where complaints of harassment are made by job seekers, an employer has a duty to investigate and take the necessary steps against such conduct.

**What are the consequences for employers who fail to deal with or fail to comply with the code?**

In terms of section 60 of the Act, where an employee contravenes the provisions of the Act and an employer fails to take reasonable steps to eliminate the conduct, the employer shall be held vicariously liable for the conduct. In addition, in terms of section 59 of the Act, any person who discloses confidential information acquired in the performance of their functions in terms of the Act, may be convicted of an offence and may be fined for an amount not exceeding R10,000.

## MARKET RECOGNITION

Our Employment Law team is externally praised for its depth of resources, capabilities and experience.

*Chambers Global 2014–2024* ranked our Employment Law practice in Band 2 for employment. *The Legal 500 EMEA 2020–2024* recommended the South African practice in Tier 1. *The Legal 500 EMEA 2023–2024* recommended the Kenyan practice in Tier 3 for employment.

The way we support and interact with our clients attracts significant external recognition.

**Aadil Patel** is the Practice Head of our Employment Law team, and the Head of our Government & State-Owned Entities sector. *Chambers Global 2024* ranked Aadil in Band 1 for employment. *Chambers Global 2015–2023* ranked him in Band 2 for employment. *The Legal 500 EMEA 2021–2024* recommended Aadil as a 'Leading Individual' for employment and recommended him from 2012–2020.

*The Legal 500 EMEA 2021–2024* recommended **Anli Bezuidenhout** for employment.

*Chambers Global 2018–2024* ranked **Fiona Leppan** in Band 2 for employment. *The Legal 500 EMEA 2022–2024* recommend Fiona for mining. *The Legal 500 EMEA 2019–2024* recommended her as a 'Leading Individual' for employment, and recommended her from 2012–2018.

*Chambers Global 2021–2024* ranked **Imraan Mahomed** in Band 2 for employment and in Band 3 from 2014–2020. *The Legal 500 EMEA 2020–2024* recommended him for employment.

*The Legal 500 EMEA 2023–2024* recommended **Phetheni Nkuna** for employment.

*The Legal 500 EMEA 2022–2024* recommended **Desmond Odhiambo** for dispute resolution.

*The Legal 500 EMEA 2023* recommended **Thabang Rapuleng** for employment.

*Chambers Global 2024* ranked **Njeri Wagacha** in Band 3 for FinTech. *The Legal 500 EMEA 2022–2024* recommended Njeri for employment.

*The Legal 500 EMEA 2023–2024* recommends her for corporate, commercial/M&A.



**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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