

CDH

Africa Harassment Guideline



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INTRODUCTION

Workplace harassment has wide-reaching damage on employee wellness and productivity, business objectives, key performance outputs and employer reputation. Employers have a duty to ensure that employees are provided with a safe working environment.

This duty includes the right to work in an environment that is free from all forms of discrimination and harassment. With the introduction of remote working and data protection legislation, employers are faced with new challenges in relation to ensuring that harassment is not perpetuated within the course and scope of an employee's employment, even where the employee may not be present at the employer's premises.

This raises various questions, for example, to what extent does an employer's duty to provide a safe working environment extend beyond its premises; what are the implications in dealing with harassment claims in light of the

introduction of data protection legislation in various jurisdictions; and what liability, does an employer face where they fail to deal with harassment in the workplace.

Addressing workplace harassment on the African continent is particularly challenging owing to the fact that many jurisdictions still have no specific legislation dealing with workplace harassment and employers are required to consider and integrate the provisions of various pieces of legislation in order to understand their rights and obligations in this regard.

The purpose of this Africa Harassment Guideline is to simplify the position in relation to workplace harassment in various African jurisdictions and to provide employers with an overview of their obligations in relation to ensuring that their workplace is free from harassment.

This guideline is not intended to be legal advice and may only be used for information purposes. We thank all our contributors to this guide. You demonstrate our ability to collaborate and produce work that is important and timely.





Angola

Interesting Facts about Angola



Official language
Portuguese



Capital
Luanda



Currency
Angolan Kwanza



Main exports
Crude oil & diamonds



Retirement age
60



Minimum working age
Between 14 and 18, with authorisation from a parent or legal guardian



Percentage of female participation in the workforce
75,29%



Oil production
Angola produces approximately 1,16 million barrels of oil per day



Unemployment rate
29,6% in 2022



The name Angola
comes from the title "Ngola" of the Kings of Ndongo, a vassal state of the historic Kingdom of the Kongo located east of Luanda



Average age of the population
16,3 years



Independence
Angola finally gained full independence on 11 November 1975 after the brutal Angolan War of Independence



António Vicente Marques
Partner

AVM Advogado

AVM Advogados was founded in 2003. The firm originally began assisting clients as a full-service law firm operating through its various offices in Africa and Europe with an integrated team of more than 40 lawyers. AVM Advogados has grown from a Luanda-based law firm into a truly international practice.

AVM has offices in Luanda and Cabinda (Angola), Lisbon and Porto (Portugal) and Maputo (Mozambique). It is a full-service law firm with market leading strengths in labour law, energy, financial services, as well as EPCs and PPPs projects.

AVM advises clients on all aspects of international and national transactions and litigation. Our multidisciplinary team allows us to anticipate trends and respond in a streamlined manner to complex business and legal issues.

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List of relevant legislation

(including regulations, codes of good practice, etc.)

- The Angolan Constitution of 5 February 2010, as amended and republished by Law no. 18/21, of 16 August 2021 (Angolan Constitution)
- Law no. 38/20, of 11 November 2020, which approves the Criminal Code (Angolan Criminal Code)
- Law no. 39/20, of 11 November 2020, which approves the Criminal Procedure Code, as amended (Angolan Criminal Procedure Code)
- Law no. 7/15, of 15 June 2015, which approves the General Labour Law (Angolan GLL)
- The 1958 International Labour Organization Convention no. 111 on Discrimination (Employment and Occupation)
- Presidential Decree no. 90/22, of 18 April 2022, which approves the Organic Statute of the General Labour Inspectorate (PD 90/22)
- Presidential Decree no. 52/22, of 17 February 2022, which governs the Exercise of the Labour Activity under the Regime of Remote Work (PD 52/22)
- Law no. 22/11, of 17 June 2011 (Angolan Data Protection Law)



1. What is the definition of workplace harassment in Angola? What requirements must be fulfilled in order for conduct to constitute harassment?

The Angolan legal framework does not provide for a definition nor a specific regime for workplace harassment.

In fact, this is a topic that has been under discussion by legal scholars and civil society in general. The Angolan Parliament on 23 February 2022 approved, on the whole, the new draft law to amend the Angolan GLL. Although the amendment has not been published yet, we understand that the version that was under discussion had no reference to a definition or a specific regime for workplace harassment.

Notwithstanding the above, we would like to note that the Angolan legal framework offers some principles that are related to the protection of employees from workplace harassment, as follows:

Angolan Constitution

The Constitution sets out the fundamental rights, freedoms and guarantees of individuals that the state must respect and protect, which include, *inter alia*, (i) the inviolability of moral, intellectual and physical integrity; (ii) privacy and intimacy; (iii) human dignity; and (iv) freedom of speech and thought.

The Angolan Constitution further provides that, to ensure the right to work, the state is responsible for promoting equal opportunities in the choice of profession or type of work and conditions so that it is not prohibited or restricted by any type of discrimination (cf. Article 76(3)b).

As the state must act on these principles, it is necessary for it to put in place specific measures to implement them, namely by means of the relevant laws in this regard.

Angolan Criminal Code

The Angolan Criminal Code is one of the structural legal statutes governing the protection of individual rights, freedoms and guarantees foreseen in the Angolan Constitution. Although the code does not contain provisions specifically covering workplace harassment, it covers all kinds of situations and scenarios that may well also be applied to labour relations and trigger criminal liability for perpetrators – provided that the requirements foreseen in the Angolan Criminal Code are complied with and due criminal procedure is duly observed or put in place.

This is the case, for example, with the individual rights, freedoms and guarantees that are protected in crimes against personal/individual freedom, such as threats, coercion or persecution, as well as crimes against personal dignity, such as discrimination, insults, defamation or slander.

When applied in the workplace, or outside the workplace and there is legal-labour relationship between the individuals, all the above mentioned crimes may constitute situations of labour related psychological harassment, which is punished in accordance with the provisions of the Angolan Criminal Code.

We highlight the specific case of sexual harassment, which is foreseen in Article 186 of the Angolan Criminal Code. This article provides that, *“Whoever, abusing of his/her authority which results from a domination, hierarchical or work dependency relationship, attempts to force another person to suffer or to perform a sexual act, with the agent or with another person, by means of order, threat, coercion or fraud, shall be punished with a prison sentence of three years or with a fine of up to 360 days.”* This is a crime against sexual freedom that will apply to employees who fit the hierarchical/work dependency requirement.

In the case of a crime committed between employees in the hierarchical level within the company’s structure, different provisions from the Angolan Criminal Code may apply.



Angola



Kalandula Waterfalls | Angola

Angolan General Labour Law

The Angolan GLL includes some principles and provisions which may be regarded as evidencing the protection of employees from workplace harassment, from which we highlight the following:

- The conditions under which work is performed shall respect the liberties and dignity of the employee (cf. Article 4(4)).
- The employer is required to, *inter alia*:
 - Ensure a working environment conducive to the proper performance of the work activity (cf. Article 36(1)(k)).
 - Treat and respect employees as collaborators and contribute to the elevation of their material and cultural level and to their human and social advancement (cf. Article 41(1)(a)).
 - Promote good working relationships within the company and contribute to create and maintain conditions of harmony and motivation at work (cf. Article 41(1)(d)).
 - Take due note of the complaints and suggestions of employees regarding their working environment and conditions, and to adopt the appropriate measures (cf. Article 81(1)(f)).
- The employee has the right to, *inter alia*:
 - Be treated with consideration and respect for their integrity and dignity (cf. Article 43(a)).
 - Have good safety, health and hygiene conditions at work, physical integrity and be protected in case of work accidents and occupational diseases (cf. Article 43(g)).
 - Exercise individually the right of complaint and appeal with regards to working conditions and the violation of their rights (cf. Article 43(h)).
- Employees are required to respect and treat their employer, management level employees, co-employees and people who are in (or come into) contact with the company, with courtesy and loyalty, and provide assistance in the event of an accident or danger in the workplace (cf. Article 44(d)).

From the above, one may conclude that the Angolan GLL provides some level of protection to employees, but also imposes some duties on them in their relationship with their employer and co-employees. However, as referred above, no specific provision is included to govern psychological and sexual harassment at work.

To be subjected to a disciplinary action within the company, the harassment between co-employees must constitute a disciplinary infraction, which is defined in the Angolan GLL as *“the culpable behaviour of the employee that violates his or her duties resulting from the legal-labour relationship, namely those established in Article 44 of this law”* (hereafter referred to as, a disciplinary infraction). This covers the example we included above where noncompliance with an obligation may constitute a disciplinary infraction and subject the relevant employee to disciplinary action.

The Angolan GLL also provides for a set of situations in which the employee may terminate the employment contract with just cause in relation to the employer, when the latter infringes, with fault and seriousness, the rights of the employee which are provided for in law, a collective bargaining agreement or by the employment contract. This includes offenses to the physical integrity, honour and dignity of the employee or of their direct relatives, either by the employer or by their representatives (Article 226.2(d) of the Angolan GLL).

International conventions

Angola is a member of the International Labour Organisation (ILO) and has ratified several of the conventions promoted by this organisation. Among the ratified conventions we highlight ILO’s Convention no. 111 on Discrimination (Employment and Occupation), which sets the general principles under which each signing state shall implement national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination. According to the convention, discrimination includes *“any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”*, and employment and occupation is deemed to include the *“access to vocational training, access to employment and to particular occupations, and terms and conditions of employment”*. Although programmatic in nature, we believe

that the principles of this convention would also apply in Angola. We also note that Angola has not ratified the ILO’s Convention no. 190 on Violence and Harassment.

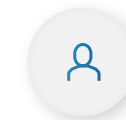
2. What are the different forms of workplace harassment recognised in Angola?

Although the Angolan legal framework does not provide a specific regime for workplace harassment outlining its different forms – please refer to Question 1 where we outlined the current status of the Angolan legal framework in this regard – legal scholars tend to divide workplace harassment in two different forms: (i) psychological harassment (which may lead to mobbing), and (ii) sexual harassment.

Within these two forms of workplace harassment, it is possible to differentiate between vertical harassment (of a subordinate by a superior, or vice versa) and horizontal harassment (between peers) – with the possibility of a mixed type of harassment.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

The Angolan GLL applies to parties to the employment agreement, which are:



Employer



Employees

All the cases of harassment of non-employees shall be governed and decided in accordance with the general terms of the law (i.e. the general terms for civil and criminal liability).

4. Must the harassment take place on the employers’ premises or during working hours for the employer to take disciplinary action?

No. The harassment may take place outside the employers’ premises and during non-working hours. As outlined above, the Angolan legal framework does not provide a specific regime applicable to workplace harassment so the employer must

take disciplinary action against an employee under the general terms applicable to disciplinary infractions or breach of the general principles/duties by the employee (i.e. the aggressor). Please refer to Question 1, in which we have highlighted some of the structural principles, rights and duties granted to employees.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

This depends on the offence at stake and on how explicit the harassment was. There are cases in which a single incident may be sufficient to constitute harassment (e.g. racial slurs, pejorative comments about an employee’s sexual orientation, explicit sexual invitations, etc.). However, in the cases of single incidents it may be more difficult to investigate and (ultimately) prove the harassment, as there is no precedent.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

The Angolan GLL does not provide a specific limitation in this regard. It is generally provided that the employer must take due note of any complaints from employees and adopt the appropriate measures in response, and that employees have the right to exercise the right of complaint with regards to working conditions and the violation of their rights. As there is specific restriction in this regard in the Angolan GLL, we conclude that workplace harassment may be reported directly by the victim or by any co-employee/witness to the competent corporate authority responsible to investigate such cases. In cases where the harassment also constitutes a crime, the legitimacy to initiate criminal proceedings will depend on the underlying crime.

For crimes where the criminal procedure is dependent on a complaint, such legitimacy is granted to the victim and to their legal representative or attorney with special rights (cf. Article 50 of the Angolan

Criminal Procedure Code). For crimes where the criminal procedure is dependent on a private prosecution, legitimacy is also granted to the victim and to their legal representative or attorney with special rights. However, in these cases, the victim is also required to submit a complaint to the public prosecutor’s office, be made an assistant to the public prosecutor, and file a private prosecution (cf. Article 51 of the Angolan Criminal Procedure Code).

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

Harassment that constitutes a disciplinary infraction must be reported within one year from its commission, failing which it shall no longer be considered for the purposes of the execution of a disciplinary action within the company (cf. Article 61(1)(b) of the Angolan GLL). In cases where the harassment constitutes a crime, the victim has a one-year time bar to initiate the criminal procedure, regardless of whether the criminal

procedure is dependent on the simple submission of a complaint or a private prosecution procedure (cf. Article 61(1)(d) of the Angolan GLL and Articles 126(1) and 128 of the Angolan Criminal Code).

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
Right to complain and be heard by the employer.	Right to a prior hearing in which the alleged perpetrator may expose their arguments and present a maximum of three witnesses.
Have their claims duly analysed under a disciplinary proceeding.	

9. What are an employer's obligations once harassment is reported?

The employer is required to take due note of the complaints presented by the victim/whistle-blower and initiate an investigation in order to ascertain the exact facts and circumstances in which the alleged harassment occurred. In cases where the harassment constitutes a disciplinary infraction, the employer must initiate a disciplinary hearing against the alleged perpetrator(s) (cf. Article 46(3) of the Angolan GLL).

10. What is the process(es) that an employer must follow once harassment is reported?

The Angolan GLL does not provide for any specific procedure that an employer is required to adopt when a case of harassment is reported. If the harassment is deemed to be a disciplinary infraction, the employer may initiate an investigation, lasting no more than eight days, to gather information on the infraction and

the alleged perpetrator. Once the employer has sufficient information on these elements, the disciplinary action is initiated with a notice to the alleged perpetrator with information on (i) the facts in relation to which they are accused; (ii) the date on which their hearing will take place; and (iii) that the alleged perpetrator may be accompanied by a maximum of three witnesses to the hearing. Upon hearing the arguments of the alleged perpetrator and considering all the information gathered, the employer must decide and communicate disciplinary measure that will be applied to the perpetrator (cf. Articles 46 to 50 of Angolan GLL). For companies with more robust and complex structures, the procedures to be adopted when harassment is reported are usually outlined in the company's internal regulations. This is a mandatory document for companies with more than 50 employees and it must be drafted and published in each of the company's facilities. It governs the organisation of labour, health and

safety matters, and work discipline (cf. Article 62 of Angolan GLL). Although it is not required under the GLL, most of these companies tend to include the rules and procedures applicable to workplace harassment in their internal regulations (transposing the internal ground rules of the group they are part of, in the case of international companies). In such cases, the harassment incidents are reported to, and the subsequent internal procedures are usually the responsibility of, the legal or compliance department or, in some cases, the human resources department.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

No. Investigation procedures are not mandatory where a complaint of harassment is made anonymously. The Angolan GLL provides that the employer may initiate investigation procedures in cases where the circumstances around the disciplinary infraction and the identity of the alleged perpetrator are sufficiently known.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Yes. If, upon the conclusion of a disciplinary action, the employer understands that a disciplinary measure must be applied, the employer has the powers and authority to do so, even if the victim of the offence does not want to pursue a formal process within the company.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

As mentioned above, workplace harassment may take place outside the workplace premises and during non-working hours. Harassment may still occur even if employees are working remotely. To that extent, we believe that employers' ability to mitigate the risk of workplace harassment has not been particularly impacted by remote working.

14. What can an employer do to combat workplace harassment in the remote working environment?

An employer may do the following:



Implement clear rules.



Trainings and seminars on harassment.



Raise awareness about harassment.



Establish a whistleblowing line.



Regular communication with employees about harassment not being tolerated.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

No. The Angolan GLL does not prescribe any obligation in this regard. Please refer to Question 10 where we outline the current status in the Angolan market in which larger companies are implementing internal regulations that include a workplace harassment policy.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

Implementing clear internal rules on workplace harassment and raising awareness on this topic can be important tools to prevent harassment between employees. In cases where a harassment incident is being investigated, the employer may subject the alleged perpetrator

to some restrictions around access to specific software or areas of the company which could be sensitive to the investigation. Further, the Angolan GLL provides that the employer may suspend the alleged perpetrator if their presence at the workplace is shown to be inconvenient for the investigation or course of the disciplinary action. The alleged perpetrator will be entitled to their base salary for the period of the suspension (cf. Article 53(1) of the Angolan GLL).

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

The Angolan GLL is silent in this regard. Any liability that may arise for the employer for failure to take steps to prevent harassment in the workplace shall be assessed according to the general terms of the law, under civil liability.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

The victim may submit a complaint to the General Labour Inspectorate, in its capacity of supervising authority of labour activities. The General Labour Inspectorate is responsible for (i) ensuring compliance with legal standards prohibiting all forms of discrimination in employment, as well as ensuring and supervising compliance with labour legislation; and (ii) investigating complaints and carrying out material, technical and administrative examinations (c.f. Articles 6(1)(e) and 15(2)(e) of PD 90/22).

19. Do laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment? How so?

Yes. Data privacy matters are governed by the Angolan Data Protection Law, which establishes the rules applicable to the processing of personal data with a view to ensuring respect for the public



Angola



Fishing town | Ramiros | Angola

freedoms, fundamental rights and guarantees of individuals. According to Article 5(b) of the Angolan Data Protection Law, "personal data" includes "any information, regardless of its nature or format, including image and sound, concerning an identified or identifiable natural person (data subject)". As a result, an identifiable person is someone who can be identified, directly or indirectly, in particular by reference to an identification number or to a combination of factors specific to their physical, physiological, mental, economic, cultural or social identity.

The Angolan Data Protection Law sets out specific provisions for the private and co-operative sectors, and it provides that the following information also be considered personal data:

- employee files;
- occupational health files;
- customer management files;
- input and output registers; and
- video surveillance files.

In view of the above, the data controller shall be required to:

- obtain consent from the data subject to undertake the processing of their personal data, according to a specific and determined purpose;
- notify or obtain authorisation from the Data Protection Agency (Agência de Protecção de Dados), in its capacity as the regulatory body for this sector, for the processing of personal data;
- comply with the restrictions regarding the transfer of personal data;
- comply with and promote the data subjects' rights, which include the right to information on the data gathered, the right to be informed on the purposes for which the data is processed, and the right to access to such; and
- implement technical and organisational measures for the storage and preservation of the personal data gathered, preventing its destruction, loss, modification or unauthorised access.

In the case of workplace harassment, should the employer be qualified as a data controller (or data processor), the provisions of the Angolan Data Protection Law shall apply. From our experience, we believe that workplace harassment will trigger data privacy concerns in almost all cases, and, to that extent, the employer is required to comply with these requirements and restrictions while processing its employees' personal data in any ongoing harassment related disciplinary procedure.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

As provided in our answer above, the employer may be required to implement a technical and organisational system for the storage and conservation of the personal data, preventing its destruction, loss, modification or unauthorised access – only in cases where the employer is deemed to be a data controller for the purposes of the Angolan Data Protection Law.

The Angolan Data Protection Law provides specific measures that apply to sensitive personal data, which is defined as personal data concerning philosophical or political beliefs, party or trade union membership, religious faith, private life, racial or ethnic origin, and health and sex life, including genetic data. In any such cases, the employer is required to:

- prevent any unauthorised person from having access to the files and to the installations used for the processing of such data;
- prevent the unauthorised reading, copying, modification or removal of the files containing personal data;
- prevent the unauthorised inclusion of personal data and the unauthorised inspection, modification, or deletion of such data;
- prevent the use of automated data-processing systems by unauthorised persons using data transmission facilities;
- ensure that only authorised persons may have access to data covered by the authorisation;
- ensure the verification of the

entities to whom the personal data may be transmitted through the data communication equipment;

- ensure that it can be verified, *a posteriori*, which personal data has been included in the file, and by whom; and
- prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of the file containing such data.

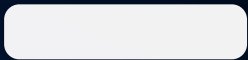
Should the harassment incident be related to sensitive personal data, the processing of the relevant internal disciplinary procedure must comply with these requirements.

21. Is it legally permissible for an employer to request any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

One of the fundamental principles under the Angolan legal framework is the right to work and equal opportunities in the choice of profession or type of work. According

to Article 4(1) of the Angolan GLL, all citizens have the right to freely chosen work, with equal opportunities and without any discrimination in the access to it. Notwithstanding the above, nothing in the law prevents employers from asking candidates for their history of workplace harassment. In the same way, nothing prevents candidates from refusing to present evidence or comment on their history of workplace harassment.

In cases where a history of workplace harassment is provided, the employer is free to analyse and weight such information. However, in line with the provisions of the Angolan GLL, we believe that (at least in theory), employers are not allowed to refuse employment based on a candidate's harassment history background, and such refusal may potentially serve as grounds for a civil liability suit.



Botswana

Interesting Facts about Botswana



Official languages
English and Tswana



Capital
Gaborone



Currency
Pula



Main exports
Diamonds, copper,
nickel, beef & textiles



Retirement age
60



Minimum working age
14



Percentage of female participation in the workforce
60%



Average age of the population
23,8 years



Unemployment rate
24,72%



Botswana
The name Botswana means '*place of the Tswana people*'.



Independence
30 September, 1966



Borders
Botswana is a landlocked country and borders with South Africa, Zimbabwe, Zambia and Namibia



Moemedi Tafa
Partner

Armstrongs Attorneys

Armstrongs is the leading corporate and commercial law firm in Botswana. Armstrongs provides its clients with innovative legal and business solutions of a global standard and is recognised for its pioneering and developmental role in various commercial sectors within Botswana.

Established in 1983, the firm specialises in all aspects of corporate and commercial law including capital raising, listings, corporate and trade finance, competition law, banking etc. The firm, additionally, has an extremely strong litigation and dispute resolution practice which amongst others extends to corporate litigation, arbitrations, employment disputes, civil engineering and/or construction disputes.

The firm has consistently been rated as a leading law firm by Chambers & Partners.

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List of relevant legislation

(including regulations, codes of good practice, etc.)

- Penal Code [CAP 08:01] (Botswana Penal Code)
- Public Service Act [CAP 26:01] (Botswana Public Service Act)
- Whistleblowing Act [CAP 08:11]
- Trade Disputes Act [CAP 48:02] (Botswana Trade Disputes Act)
- National Industrial Relations Code of Good Practice – Prepared in consultation with the Labour Advisory Board and published in terms of section 51(1) of the Botswana Trade Disputes Act



1. What is the definition of workplace harassment in Botswana? What requirements must be fulfilled in order for conduct to constitute harassment?

Legislation in Botswana does not expressly recognise or define workplace harassment in the general sense. The National Industrial Relations Code of Good Practice does, however, recognise that harassment of an employee, whether of a sexual nature or otherwise, constitutes a form of discrimination.

Furthermore, the Botswana Public Service Act and the Botswana National Industrial Relations Code of Good Practice, though not specifically defining workplace harassment, does recognise and define sexual harassment as:

- Unwanted conduct of a sexual nature. The unwanted nature of the conduct distinguishes it from consensual behaviour (National Industrial Relations Code of Good Practice).

- Any unwanted, unsolicited or repeated sexual advance, sexually derogatory statement or sexually discriminatory remark made by an employee to another, whether made in or outside the workplace, which is offensive or objectionable to the recipient, which causes the recipient discomfort or humiliation, which the recipient believes interferes with the performance of their job, their security or their prospects, or which creates a threatening or intimidating work environment (Botswana Public Service Act).

The principles of sexual harassment contained in the Code of Good Practice may, however, be applicable to harassment generally.



Botswana



Gaborone | Botswana

2. What are the different forms of workplace harassment recognised in Botswana?

Form	Examples
Sexual harassment.	<ul style="list-style-type: none"> • Physical conduct constituting sexual harassment includes all unwanted physical contact, ranging from touching to sexual assault and rape, and includes a strip search by or in the presence of the opposite sex. • Verbal forms of sexual harassment include the following types of statements made in the presence of a person or directed toward that person: unwelcome innuendoes, suggestions and hints, sexual advances, sex-related jokes or comments with sexual overtones, insults or unwelcome graphic comments about a person's body or sexual orientation and inappropriate enquiries about a person's sex life or sexual orientation. • Nonverbal forms of sexual harassment include unwelcome conduct, whistling, sexual gestures, indecent exposure, and the display of sexually explicit pictures and objects. • Sexual harassment in the form of "quid pro quo harassment" occurs when an owner, a person of authority or a co-employee attempts to influence any employment related decision affecting an employee in exchange for a sexual favour. Those decisions include a decision to employ, promote, train, discipline, improve terms and conditions of employment or benefits, transfer, or dismiss an employee or job applicant. • Sexual harassment in the form of sexual favouritism exists if a person who is in a position of authority rewards only those who respond to that person's sexual advances, or other deserving employees who do not submit themselves to any sexual advances are denied those rewards. These rewards may be in the form of access to employment opportunities, promotions, merit rating, salary increases, etc. • Sexual harassment warranting disciplinary action includes harassment by an employee of another employee outside of working hours or off work premises, if it impacts on the employment relationship. In these cases, it will be no defence to the disciplinary charges for the alleged perpetrator to claim that the conduct occurred outside working hours or off work premises.
Discrimination.	<ul style="list-style-type: none"> • Discrimination on the basis of race, tribe, place of origin, national extraction, social origin, marital status, political opinions, sex, colour or creed.
Victimisation of a whistle-blower, who happens to be an employee, by his or her employer or by a fellow employee for making a disclosure of impropriety.	<ul style="list-style-type: none"> • Harassment or intimidation by the employer or fellow employees.
Online harassment.	<ul style="list-style-type: none"> • Harassment committed, assisted, or aggravated in part or fully by the use of communications technology.
Other conduct that may constitute harassment.	<ul style="list-style-type: none"> • Slandering or maligning an employee or spreading rumours. • Conduct which humiliates, insults or demeans an employee. • 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.



Botswana

3. To whom does workplace harassment legislation apply? Are non-employees protected?

There is no legislation in Botswana dealing with workplace harassment generally. However, the sexual harassment provisions contained in the Botswana Public Service Act only apply to public officers to the exclusion of members of the:



Botswana Defence Force



Botswana Police Service



Local police services



Botswana Prison Service

The sexual harassment provisions contained in the National Industrial Relations Code of Good Practice apply to all employees in Botswana.

Non-employees are not statutorily protected against harassment, save where such conduct would constitute a criminal offence under the Botswana Penal Code.

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

No. Provided that the harassment occurred, reasonably, as a result of or arising out of the employment or work environment or as a result of the employment relationship.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

A single incident of harassment may constitute harassment.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

There is no limitation on who may report allegations of workplace harassment, including whether it is reported in person or anonymously.

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

There is no timeframe for the reporting of workplace harassment and a delay in reporting allegations of workplace harassment does not affect whether or not disciplinary action may be taken. From an evidentiary point of view, it is advisable that the allegations of harassment be reported as soon as possible.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
The right to a safe working environment.	The right to a safe working environment.
The right to have their claim of harassment dealt with in an expeditious and confidential manner.	The right to be subjected to a fair disciplinary process when accused of harassment or any misconduct.
The right to not be victimised or prejudiced in any way for laying a claim of harassment.	The right to be presumed innocent until proven guilty.
The right to privacy and the right to have their personal information processed and stored in compliance with legislation.	The right to be heard and to be given an opportunity to meaningfully make representations in response to the claim of harassment.
	The right to privacy and the right to have their personal information processed and stored in compliance with legislation.

9. What are an employer's obligations once harassment is reported?

Once a complaint for harassment has been made, an employer must:

- investigate the complaint;
- provide options to the victim on how to address the complaint (formal or informal); and
- where appropriate, take disciplinary action.

10. What is the process(es) that an employer must follow once harassment is reported?

Provide advice and assistance

Harassment by its nature is a sensitive issue and a victim may feel unable to approach the perpetrator, lodge a formal grievance or complaint, or turn to colleagues for support. If possible, employers should designate a person or people outside of line management who victims may approach for confidential advice. Such a person could include persons employed by the organisation to perform, among other things, this function; a trade union representative or co-employee; a member of the human resources department; or an outside professional. The person should have the appropriate counselling and labour relations skills and experience, be given adequate resources, and be able to provide support and advice on a confidential basis.

Provide options to resolve a problem

Employees should be advised of two broad options to resolve a problem relating to harassment, namely in an informal way or in terms of a formal procedure. The employee should be under no duress to accept either option. In more serious cases

it may not be appropriate to try and resolve the problem informally, such as in cases involving physical forms of harassment.

Informal procedure

It may be sufficient for the employee concerned to have the opportunity to explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it is offensive or makes the employee feel uncomfortable, and that it interferes with work. The person against whom the grievance is lodged should then be given an opportunity to apologise for the conduct and to provide a commitment that it will not happen again. If the informal approach has not provided a satisfactory outcome or if the conduct continues, it may be appropriate to embark upon a formal procedure.

Formal procedure

A formal procedure for resolving a grievance should be available and should specify to whom the employee should lodge the grievance, make reference to timeframes to allow the grievance to be dealt with expeditiously, and notify the victim that if the dispute is not resolved satisfactorily it may be referred for resolution in terms of the Botswana Trade Disputes Act.



Botswana

The new central business district | Gaborone | Botswana

Investigation and disciplinary action

Disciplinary action taken against an alleged harasser should follow an established procedure or the procedures set out in the Code on Termination of Employment. The range of disciplinary sanctions to which employees will be liable should be clearly stated in any policy or procedure, and it must also be made clear that it is a disciplinary offence to victimise or retaliate against an employee who in good faith lodges a grievance of harassment.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

Yes. An employer has an obligation to investigate all claims of harassment whether made anonymously or not. The obligation to investigate all allegations of harassment stems from the common law duty of an employer to provide its employees with a safe working environment.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Yes. The employer has an obligation to provide all its employees with a safe working environment. This safety may manifest in the form of physical, mental or emotional safety. Irrespective of whether a victim wants to deal with the alleged harassment through a formal procedure or not, the employer must take reasonable steps to ensure that the harassment is dealt with, at the employer's discretion, and is based on the severity and frequency of the harassment by the perpetrator.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

The advent of remote working has made it difficult for employers to mitigate the risk of workplace harassment on the basis that the employer is no longer in full control of the working environment (premises)

where the employees conduct work and any policies that may have been in place might not, specifically cater for or deal with newer forms of harassment that have resulted as a direct consequence of remote working, such as cyber bullying. Unless reported, it becomes difficult for an employee to mitigate the occurrence of workplace harassment.

14. What can an employer do to combat workplace harassment in the remote working environment?



Implement clear policies.



Train employees.



Clearly outline the procedure to lay a complaint.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

No. An employer is not legally required to have a harassment policy.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

An employer may consider the following:

- providing employees with training in relation to issues of harassment; and
- detailed written policies to address the various forms of harassment and how to deal with allegations of harassment.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

An employer's liability may extend to delictual liability in the form of damages that may arise from its inaction resulting in harm being suffered by an employee, for instance, physical, emotional or psychological harm, and a compensation award in the event that the employee resigns and makes a claim for constructive dismissal. An employee may also sue for damages for breach of contract or an invasion of privacy, or interdict the harasser or the employer, as the case may be.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

Depending on the nature of the harassment, an employee may seek a restraining order or an interdict against the alleged perpetrator and the victim of harassment may report the matter to the police.

The complainant may refer the matter as a trade dispute to the Office of the Labour Commissioner for mediation in accordance with the provisions of the Botswana Trade Disputes Act. Should the dispute remain unresolved after mediation, the dispute may be referred to the Industrial Court in terms of the act.

19. Do laws pertaining to data privacy impact an employers ability to investigate and prosecute claims of harassment? How so?

No.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

An employer must reasonably ensure, at all material times, the rights of all parties (alleged victim and perpetrator) to privacy and it must ensure that their personal information is not disclosed to unauthorised persons. Measures must be put

in place to ensure that personal, confidential and private information is stored in a secure manner such that only authorised personnel will have access to the information. Information relating to a complaint, the investigation and subsequent prosecution of harassment must only be shared with personnel that will be key for the process to be undertaken.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

It is permissible for an employer to require employees to make disclosures of their history of workplace harassment or violence. An employer must, however, expressly request all 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, for instance, senior management positions where there is oversight of more junior employees. The

failure by an applicant to make such a disclosure, when required, may constitute a ground for dismissal should an employer later discover that they failed to make the relevant disclosure, notwithstanding its request for them to do so. Provided the disclosure is deemed to be material to a prospective employee's suitability for the position they were hired for, the employer may require such disclosure. The question of whether or not it is permissible for an employer to outright refuse a job applicant employment owing to their history of violence or harassment in the workplace has not been settled in our law. What is, however, evident is that a job applicant alleging unfair discrimination on the basis of their history of perpetrating harassment or violence would have to show that the ground for differentiation is unfair. The merits of such an allegation by an applicant will depend on the circumstances of each case.



Botswana



**Mohebo Okavango Bridge
near Shakawe, Botswana**



Central African Republic (CAR)

Interesting Facts about Central African Republic



Official languages
French and Sango



Capital
Bangui



Currency
Central African
CFA franc



Main exports
Timber, diamonds,
cotton, and coffee



Retirement age
60



Minimum working age
14



Percentage of female participation in the workforce
63.6%



Average age of the population
14,8 years



Unemployment rate
6,36% in 2022



Population
5,457 million
in 2021



Independence
The United States recognized the Central African Republic on 13 August, 1960



CAR
Central African Republic is the focal point of the Bangui Magnetic Anomaly, one of the largest magnetic anomalies on Earth

JOHN W FFOOKS
& CO



Sitraka Rakotoarisoa
Partner

John W Fooks & Co

John W Fooks & Co is a full-service corporate & commercial law firm providing exclusively local counsel advice, support to business and industry across French-speaking Africa.

From our fully serviced offices in Madagascar, Senegal, Togo, Mauritius and Guinea, and our lawyer-led bureaux in every country across the region, we advise on a full range of commercial legal issues in French-speaking Africa, including Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Gabon, Guinea, Ivory Coast, Mali, Niger, Republic of Congo, Senegal and Togo.

We have senior colleagues in every jurisdiction, making us better able to respond to clients' needs at every level, from on-the-ground operational matters to head office issues.

Contact: sitraka@jwfflegal.com

List of relevant legislation

(including regulations, codes of good practice, etc.)

- Law No. 10.001 dated 6 January 2010 establishing the criminal code (CAR Criminal Code)
- Law No. 10.002 dated 6 January 2010 establishing the code of criminal procedure (CAR Criminal Procedure Code)
- Law No. 09.004 dated 29 January 2009 establishing the labour code (CAR Labour Code)
- Law No. 06.032 dated 27 December 2006 on the protection against violence of women (CAR Law on Violence Against Women)

CAR has ratified the International Labour Convention's Convention No. 190 relating to violence and harassment, which should come into force on 9 June 2023. The information in this questionnaire will therefore focus on our interpretation of only the above listed regulations that are operational at the date of publication.



1. What is the definition of workplace harassment in CAR? What requirements must be fulfilled in order for conduct to constitute harassment?

Workplace harassment is not particularly defined under the CAR Labour Code. However, Article 5 of the CAR Law on Violence Against Women provides that harassment is the act of incessantly attacking and tormenting with obstinacy another person. Therefore, workplace harassment could be considered to be the act of incessantly attacking and tormenting with obstinacy another person, in the workplace.

The law is not entirely clear on the requirements that must be fulfilled in order for conduct to constitute harassment.

Article 25 of the CAR Law on Violence Against Women and Article 96 of the Criminal Code harassment provide that, *"Harassing a woman by using commands, threats or coercion for the purpose of obtaining favours of a sexual nature by a person abusing the authority conferred by his functions or position is punishable."*

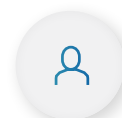
It seems from these articles that it is considered harassment for someone to use orders, threats or constraint, or to abuse the authority conferred by their function or position to subject someone to give favours of a sexual nature.

2. What are the different forms of workplace harassment recognised in CAR?

Form	Examples
Sexual harassment	Inappropriate touching of a sexual nature. Asking sexual favours from an employee in exchange for a promotion within the company.
Moral harassment	Threats.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

The provisions of the CAR Criminal Code, CAR Labour Code and CAR Law on Violence Against Women are silent on this point. However, from a strict interpretation of the CAR Criminal Code, these regulations apply to:



Employer



Employees

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

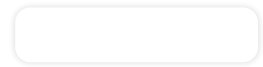
The CAR Criminal Code, CAR Labour Code and CAR Law on Violence Against Women are silent on this point. This means that the harassment could take place on and outside of the employer's premises, during working hours or outside of working hours.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

The laws are silent in relation to whether the conduct needs to be continuous or ongoing to constitute harassment. However, the provisions of the CAR Criminal Code and the CAR Law on Violence Against Women seem to suggest that the conduct needs to be continuous. We are not aware of any case law that could clarify this position.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

Employees (i.e. the victims) and third parties (e.g. judicial police officers, relevant authorities or organisations or associations involved in the protection of women).



7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

The law does not provide whether the harassment should be reported immediately or not. A delay in reporting harassment should not affect whether disciplinary action may be taken.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
<p>The CAR Labour Code does not include provisions for this point. However, we are of the view that victims should be entitled to the following:</p> <ul style="list-style-type: none"> the right to be informed of any existing harassment policy and procedure (if any); the right to be assist by a lawyer or legal representative; and the right to bring the case before the relevant court. 	<p>The CAR Labour Code does not include provisions for this point. However, we are of the view that alleged perpetrator should be entitled to the following:</p> <ul style="list-style-type: none"> the right to be informed of any existing harassment policy and procedure (if any) including possible disciplinary sanctions; and the right to be assist by a lawyer or legal representative.

9. What are an employer’s obligations once harassment is reported?

The CAR Labour Code does not set out an employer’s obligations once harassment is reported.

10. What is the process(es) that an employer must follow once harassment is reported?

The CAR Labour Code does not provide any process to be followed once harassment is reported to the employer.

With this said, we are of the view that harassment may be reported and denounced to judicial police officers.

Before denouncing the harassment, the employer may also proceed with an internal investigation and sanction the alleged perpetrator where the alleged perpetrator is an employee of the employer.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

The CAR Labour Code does not provide obligation for the employer to investigate a claim of harassment that is made anonymously.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

The CAR Labour Code is silent on the requirement for an employer to discipline an alleged perpetrator of harassment. However, we are of the view that an employer may pursue a formal process against an alleged perpetrator, notwithstanding the victim not wanting to pursue an informal process.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

The CAR Labour Code does not contain provisions that intend to prevent any form of harassment, however, remote working does not mitigate workplace harassment in CAR. Sexual harassment can happen either at work, at home or in any other place; and using technology, employees may still face harassment.

14. What can an employer do to combat workplace harassment in the remote working environment?



Implement a policy that also deals with online harassment.



Make reporting procedures clear.



Outline sanctions for transgressions.



Central African Republic



Ubangi River | Central African Republic

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

No. The CAR Labour Code does not require employers to have a harassment policy. However, collective bargaining agreements generally provide information regarding the prohibition of harassment within the workplace. With this said, nothing under local law prohibits employers from implementing such a policy to avoid/mitigate workplace harassment.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

The CAR Labour Code does not specifically provide for measures that can be implemented in order to mitigate the risk of harassment and these may be determined by an employer looking at the particular circumstances of their workplace.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

The law does not contain any provisions pertaining to the reasonable steps to prevent workplace harassment. That said, we do not foresee any liability the employers may face in the event they fail to take reasonable steps to prevent harassment in the workplace.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

The CAR Labour Code and its regulations are silent when it comes to workplace harassment. In all cases, workplace harassment constitutes a danger and may affect the working conditions of the victim. It is therefore possible for a victim to bring their case before a competent court.

19. Does laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment? How so?

The CAR Constitution recognises the right to the inviolability of privacy, which may impact on employers' ability to investigate claims of harassment. This means that all information discovered should be kept confidential to protect the privacy of the individuals concerned. However, this inability of the employer to disclose personal information may be limited in cases where there is judicial procedure or a criminal investigation is opened in respect of the harassment.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

Where required, the employer must:



Keep confidential discovered information.



Obtain/request employees' consent to disclose personal information.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

The CAR laws do not permit or prohibit employers from requiring job applicants to disclose any history of harassment or violence. Likewise, history of harassment should not constitute a ground to refuse employment.



Côte d'Ivoire
(Ivory Coast)

Interesting Facts about Côte d'Ivoire



Official language
French



Capital
Yamoussoukro



Currency
Franc CFA



Main exports
Cocoa, mineral fuels,
gems, precious metals



Retirement age
60



Minimum working age
The minimum age for
employment is 16



**Percentage of female
participation in
the workforce**
49,3%



**Average age of
the population**
17,9 years



Unemployment rate
2,64% in 2022



Population
27,48 million
in 2021



Independence
7 August 1960



Climate
The climate is located
between a transitional
humid equatorial
climate and a dry
tropical climate

JOHN W FFOOKS
& CO



**Sitraka
Rakotoarisoa**
Partner

John W Ffooks & Co

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We have senior colleagues in every jurisdiction, making us better able to respond to clients' needs at every level, from on-the-ground operational matters to head office issues.

Contact: sitraka@jwfllegal.com

List of relevant legislation

(including regulations, codes of good practice, etc.)

- Law No. 2015-532 dated 20 July 2015 relating to the Labour Code (Ivorian Labour Code)
- Law No. 2019-574 dated 26 June 2019 relating to the criminal code, amended by Law No. 2021-893 dated 21 December 2021 (Ivorian Criminal Code)
- Law No. 2018-975 dated 27 December 2018 relating to the code of criminal procedure amended by Law No. 2022-192 dated 11 March 2022 (CCP)



1. What is the definition of workplace harassment in Ivory Coast? What requirements must be fulfilled in order for conduct to constitute harassment?

The Ivorian Labour Code recognises two types of harassment: sexual and psychological harassment.

Form	Examples
The following is considered to be sexual harassment.	Abusive behaviour, threats, attacks, words, intimidation, writings and attitudes; repeated acts against an employee, having a sexual connotation, which purpose is to obtain favours of a sexual nature for their benefit or for third party's benefit.
The following is considered to be psychological harassment.	Abusive behaviour, threats, attacks, words, intimidation, writings and attitudes; repeated actions against an employee, which purpose or effect is the deterioration of their working conditions and which as such are likely to infringe their rights and dignity, to alter their physical or mental health or to compromise their professional future.

2. What are the different forms of workplace harassment recognised in Ivory Coast?

Form	Examples
Psychological harassment	Threats or intimidation.
Sexual harassment	Touching or exhibitions.
Verbal harassment	Insults and humiliation based on a person's gender.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

The following people are protected against harassment:



Employers



Apprentices



Any other person within the entity

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

Workplace harassment may take place outside of the employer's premises or any place where work-related activities are carried out, provided that the harassment could affect the employment relationship or the employee's dignity, physical health or mental health.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

The Ivorian Labour Code and the Ivorian Criminal Code provide for repeated actions. This means that it can be continuous or ongoing.

From a strict interpretation of law, a single incident can also constitute harassment. In fact, an attempt of harassment is punishable under the Ivorian Criminal Code.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

The reporting of harassment is not limited to victims of harassment. Any person within the workplace may report workplace harassment to their employer, to their representative, and to the health and safety committee.

7. When must harassment be reported? Does a delay in reporting harassment affect whether disciplinary action may be taken?

The Ivorian Labour Code provides that employees should immediately inform their employer or its representative and the health and security committee of any situation that they believe presents serious and imminent danger to their health. It seems from this provision that harassment needs to be reported immediately. However, a delay in reporting harassment does not affect whether disciplinary action may be taken. Please note that public action regarding harassment should be taken within three years.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
The right to report the harassment to the employer or its representative.	Verbal or written explanation of the allegations made against them.
The right to have safe working environment.	Assistance of a staff delegate or other legal representative in any disciplinary proceedings.
The right to bring the case before a competent court.	

9. What are an employer's obligations once harassment is reported?

The Ivorian Labour Code does not specifically stipulate an employer's obligations once harassment is reported. The Ivorian Labour Code stipulates that the employer may use dismissal as a last resort in cases of significant wrongdoing and that the employer is required to take all necessary precautions to prevent psychological harassment. If an employee engages in behaviour that could be considered psychological harassment, the employer must use its disciplinary authority to punish the offender, up to and including dismissal in cases of substantial misconduct.

10. What is the process(es) that an employer must follow once harassment is reported?

The Ivorian Labour Code does not provide a specific procedure to be followed in cases of harassment. The procedure is in practice provided for under the internal rules (if any) of the company. With this said, the following steps can be considered:

- The employer may inform the complainant of the procedures available to them to deal with the harassment.

- The employer may notify the alleged perpetrator of the complaint against them and shall request the alleged perpetrator to make representations.
- The employer may investigate the alleged harassment.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

The Ivorian Labour Code does not provide an obligation for an employer to investigate a claim of harassment that is made anonymously.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

The Ivorian Labour Code is silent in respect of this point. With this said, on a strict interpretation of the law, employers are entitled to apply a formal process and a disciplinary sanction to an alleged perpetrator even if the victim does not want to pursue a formal process.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

No. Through technology, employees may still face harassment. The most important aspect to ascertain whether there is harassment is the fact that there is abusive behaviour, threats, attacks, words, intimidation, writings or attitudes; repeated acts against an employee, having a sexual connotation, which purpose is to obtain favours of a sexual nature for their benefit or for a third party's benefit. These acts may be made through technology such as emails, electronic message and the like.

14. What can an employer do to combat workplace harassment in the remote working environment?



Implement internal rules pertaining to the remote working environment.



Ensure that the remote working environment is safe.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

The Ivorian Labour Code is silent on this point. With this said, it seems from a strict interpretation of the Ivorian Labour Code that information/legal provisions regarding the prohibition of harassment may be posted in the workplace or at the entrance of the workplace where hiring is done. In addition, even if not specifically for harassment, an employer is required to implement measures which are suitable for the workplace to ensure the protection of the health and life of its employees. The Ivorian Labour Code does not provide further information on the type of measures that an employer should take.



Côte d'Ivoire
(Ivory Coast)



Assinie-Mafia | Côte d'Ivoire

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

The Ivorian Labour Code does not specifically provide for measures that can be implemented in order to mitigate the risk of harassment. However, if harassment is considered, by the employer, as gross misconduct, an employer may immediately implement a disciplinary sanction against an employee who has been proven to be at fault.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

The law is silent regarding liability and/or sanctions that an employer may face in the event that it fails to take reasonable steps to prevent harassment in the workplace. With this said, as a general comment (not only for harassment) an employer may

be subject to the payment of a fine if it has been proven that the employer has not implemented sufficient measures to ensure the protection of employees' lives and health. The fine ranges from FCFA 500,000 (approx. USD 830) to FCFA 1 million (approx. USD 1,660).

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

In the case of harassment, an employee can report it to the labour inspectorate or file a lawsuit before a competent court.

19. Does laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment? How so?

The relevant law on personal data protection and the Ivorian Constitution recognise the right to inviolability of privacy, and this may impact the employer's ability to

investigate claims for harassment. This is due to the fact that any investigation made by an employer in respect of personal means of the alleged perpetrator may, for example, be subject to their authorisation and all information discovered should be kept confidential to protect the privacy of the individuals concerned. However, this prohibition may be limited in a case where there is judicial procedure or a criminal investigation has been opened in respect of harassment.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

Employers must ensure that personal information discovered during an investigation is kept confidential and not disclosed to unauthorised persons without the consent of the individuals concerned. In addition, employers should ensure the protection of the privacy of the persons concerned.

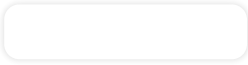
The employer is, however, entitled to share the information it discovers during an investigation in the case of criminal prosecution.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

The Ivorian Labour Code is silent on this point. This means that an employer could request job applicants to disclose any history of harassment or violence. However, information provided should not have an impact on the hiring of the employees i.e. it should not be a ground of refusal for appointment.



Democratic Republic of Congo (DRC)



Interesting Facts about Democratic Republic of Congo



Official language
French



Capital
Kinshasa



Currency
Congolese Franc



Main exports
Refined copper, cobalt, raw copper, copper ore and crude petroleum



Retirement age
Age 65 for men, age 60 for women, or age 55 for prematurely aged men and women



Minimum working age
15 with consent from the parents or guardians



Percentage of female participation in the workforce
63,1%



Average age of the population
15,6 years



Unemployment rate
5% in 2022



Population
102,543,792



Independence
Congo achieved independence from Belgium on 30 June 1960



Oil production
Egypt produces 682,904.14 barrels per day of oil



Aimery De Schoutheete
Partner



Serge Badibanga
Deputy General Manager

Liedekerke DRC

From its offices in Kinshasa, Liedekerke DRC, opened in 2015 followed by the creation of Liedekerke Great Lakes in Kigali in 2019, Liedekerke offers its clients unparalleled experience and support in Central Africa, allowing them not only to seize opportunities but also to navigate and overcome the challenges of the African market.

Both offices anchor our presence in the Sub-Saharan region and reflect our commitment to the DRC, Rwanda and Burundi. Liedekerke is very much committed to the region's future.

Our understanding of the local legal systems and cultures enables us to cultivate relationships with skilled law firms in jurisdictions across Africa where we do not have offices, and to select the right local counsel for every assignment.

Contact: s.badibanga@liedekerke.com

List of relevant legislation

(including regulations, codes of good practice, etc.)

- Ministerial Order No 12/CAB.MIN/TPS/114/2005 of 26 October 2005 on the prohibition of sexual or moral harassment in the performance of an employment contract (DRC Ministerial Order)
- Law No 06/018 of 20 July 2006 modifying and completing the Decree of 30 January 1940 establishing the Congolese Criminal Act (DRC Criminal Act)
- Act No 015-2002 of 16 October 2002 on the Labour Code (DRC Labour Code)



What is the definition of workplace harassment in the DRC? What requirements must be fulfilled in order for conduct to constitute harassment?

The DRC Labour Code does not define the broad concept of harassment. The DRC Labour Code does, however, identify two specific types of harassment in the workplace which constitute gross misconduct: (i) sexual harassment and (ii) moral harassment.

Sexual harassment is defined as:

- a person performing acts on another person with the aim of obtaining favours of a sexual nature for their benefit or for the benefit of a third party; and/or
- any practice consisting in using authority to pressure a person in order to obtain favours of a sexual nature, for his/her own benefit or for the benefit of a third party. By pressure, we mean making threats, of giving orders or of subjecting to coercion.

Moral harassment is defined as a set of repeated acts which have the purpose or effect of degrading working conditions likely to undermine the rights of the worker or the employer; to undermine their dignity; to alter their physical or mental health; or to compromise their professional future, and this with the aim of unduly obtaining rights or advantages of any kind.

The laws of the DRC require the meeting of three elements to establish an offence of workplace harassment: the legal element, the material element and the intentional element. The legal element refers to the existence of the offence in the DRC legal system. The material element refers to the constitutive facts required to establish the offence. As for the moral element, it refers to the requirement to report the intention to commit the offence. With regard to the offence of harassment in the workplace, the constitutive elements differ depending on whether it is sexual harassment or moral harassment.

In the case of sexual harassment:

- Legal element: Articles 1 and 2 of the decree, Article 74 of the DRC Labour Code.
- Material element: All acts with the aim of obtaining favours of a sexual nature. These acts include any gesture, word, threat, order or constraint.
- Element of intention: To prove the intention of the perpetrator to commit the offence.

Regarding moral harassment:

- Legal element: Articles 1 and 2 of the decree, Article 74 of the DRC Labour Code.
- Material element: All actions having the effect of degrading working conditions.
- Element of intention: To prove the intention of the perpetrator to commit the offence.

2. What are the different forms of workplace harassment recognised in DRC?

Form	Examples
Sexual harassment	Conduct for the purpose of obtaining favours of a sexual nature.
Moral harassment	Repeated acts that have the purpose or effect of degrading working conditions.



**Democratic
Republic of
Congo**

Bukavu City over Kivu Lake | DRC

3. To whom does workplace harassment legislation apply? Are non-employees protected?

The laws of the DRC provide that any act constituting sexual or moral harassment is prohibited in professional relations, particularly with regard to apprenticeship, hiring, remuneration, training, assignment, transfer, termination or renewal of a contract. The legislation on harassment in the workplace is therefore intended to apply to all employment relationships. As such, the labour legislation does not apply to non-employees. However, it is worth noting that harassment is also regulated by the DRC Criminal Act. As such, this legislation is applicable both in the workplace and outside the workplace. Therefore, non-employees are protected by the provision of the DRC Criminal Act.

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

The laws of the DRC do not specify the place or time within which harassment should occur in order for

it to constitute workplace harassment. It is recognised in legal practices in the DRC that offenses committed outside the employer's premises or outside of working hours may also be sanctioned by the employer, when the nature of the offense is likely to negatively impact the workplace environment, employee performance and the company's integrity. This implies that harassment can take place at or off the employer's premises, during and outside of working hours, and this will not prevent the employer from taking disciplinary action.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

The conduct must be continuous for moral harassment to be proven. A single incident may not constitute harassment for the purposes of the offence of moral harassment as the DRC Labour Code defines moral harassment as "a set of repeated acts". In relation to sexual harassment, a single incident may suffice as harassment; it does not to be a continuous or ongoing conduct.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

In terms of the DRC Labour Code, there is no limitation on persons entitled to report workplace harassment. The reporting is not limited to victims. However, the DRC Criminal Act limits the right to report harassment to judicial authorities to victims of harassment.

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

From the DRC Criminal Act's approach, harassment must be reported to the judicial authorities within 10 years of the offence being committed in terms of Article 24 of the DRC Criminal Act.

In terms of the DRC Labour Code, there is no reporting period. However, a person who wants to terminate an employment contract for gross misconduct due to harassment has the obligation to notify the termination decision to the other party within 15 days from becoming aware of the harassment. Where an employer or employee fails to act within the aforementioned timeline, any other disciplinary action may be taken, except the termination of the employment contract on account of a gross misconduct.

8. What are the rights/ consequences of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
Right to seek termination of the employment contract of the alleged perpetrator for gross misconduct.	Possibility of being sentenced to penal servitude from one year to 12 years.
Right to damages.	Possibility of being sentenced to a fine of CDF 50,000 to CDF 100,000.
	Possibility of being dismissed for gross misconduct.

9. What are an employer's obligations once harassment is reported?

The employer has the obligation to take disciplinary action against the alleged perpetrator of the harassment, including the termination of the employment contract for gross misconduct within 15 days from becoming aware of the harassment. The termination of the employment contract for misconduct, which is the highest disciplinary measure, implies that the employment contract will be terminated without a formal notice. When the employment contract is terminated without a formal notice, the employee will lose the benefit of any amount due to them in relation to their notice period. This has a financial impact on the final settlement the employee is entitled to as result of the termination of the employment contract.

10. What is the process(es) that an employer must follow once harassment is reported?

The DRC Labour Code's process in case of harassment is not highly developed. The DRC Labour Code has established a general process when an act of gross misconduct

is committed in the workplace. The employer has the right to investigate when harassment is reported. For this purpose, the employer can suspend the alleged perpetrator from their function for a period of 15 days. In practice, employers are free to set additional processes when harassment is reported in order to have a clear and more detailed process with respect to the particular circumstances, subject to the above legal provisions. For instance, the establishment of a disciplinary committee and the rules applicable to such committee may be defined in the company's policies to ensure fairness in the decision to be taken.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

No. But the employer must ensure the truthfulness of the alleged harassment and the real responsibility of the alleged perpetrator prior to taking any disciplinary action against the alleged perpetrator. Failure to do so may result in the alleged perpetrator making a claim for damages for unjust sanction.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Yes. The employer is considered the master of the workplace and must ensure a safe environment. Thus, an employer has the right to sanction the alleged perpetrator even if the victim refuses to pursue a formal process. The consent of the victim is solely required when it comes to instituting criminal action against the alleged perpetrator according to the DRC Criminal Act.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

We are unable to assess the impact that remote work has had on employers' ability to mitigate the risk of harassment in the workplace. This is because there are no reliable statistics on the effectiveness and efficiency of remote work in the DRC that can shed light on assessing such an impact.

14. What can an employer do to combat workplace harassment in the remote working environment?

The law does not provide a list of means an employer may put in place to combat workplace harassment in a remote working environment. However, an employer may consider the following:



Organise regular training to sensitise employees on workplace harassment.



Set up a whistleblowing channel where employees can report harassment cases.



Define clear policies on harassment within the organisation.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

Article 5 of the DRC Ministerial Order provides that "*company regulations or collective agreements may provide for disciplinary sanctions proportionate to the seriousness of the facts*". It is worth noting that the DRC Labour Code does not require employees to have a harassment policy, but it is within the employer's prerogative to implement one. The law does not list the mandatory provisions to include in a harassment policy, an employer may therefore include provisions it deems appropriate provided they are consistent with the prevailing laws and regulations in the DRC.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

An employer remains free to determine the measures to mitigate the risk of harassment provided that these measures remain proportional to the seriousness of the acts of harassment.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

An employer may be liable to the victim if the harassment was reported and the employer failed to take appropriate measures either to prevent it or to sanction the alleged perpetrator. The victim has the right to claim damages in such an instance and the liability is likely to be financial.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

If a victim is not satisfied with the employer's actions, they can file a criminal complaint against the alleged perpetrator in terms of the DRC Criminal Act. The victim may also pursue recourse against the employer if he/she is of the opinion that the inappropriateness of the employer's action is a result of the employer's complicity or lack of impartiality.

19. Does laws pertaining to data privacy impact an employers ability to investigate and prosecute claims of harassment? How so?

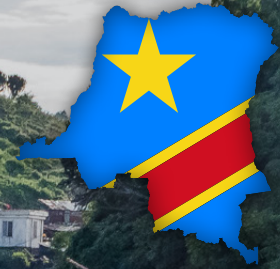
The DRC does not currently have data protection regulations. So, this regulation does not impact the employer's ability to investigate or prosecute claims of harassment.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

As stated above, data protection regulation does not yet exist in the DRC.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

This is not provided for in the DRC. If an employer were to require a history of harassment as a condition of employment, this would not be considered illegal in the DRC.



Democratic Republic of Congo



Lake Kivu | DRC



Egypt

Interesting Facts about Egypt



Official language
Arabic



Capital
Cairo



Currency
Egyptian Pound



Main exports
Oil and other mineral products



Retirement age
60



Minimum working age
14 (Restricted hours)



Percentage of female participation in the workforce
15,12% in 2022



Oil production
Egypt produces 682,904.14 barrels per day of oil



Unemployment rate
Egypt unemployment rate for 2021 was 9,33%



The name Egypt
comes from the Greek Aegyptos which was the Greek pronunciation of the Ancient Egyptian name 'Hwt-Ka-Ptah' (Mansion of the Spirit of Ptah)



Average age of the population
In 2020, the median age of the Egyptian population was 23.8 years



Independence
The UK unilaterally declared Egyptian independence on 28 February 1922



Omar S Bassiouny
Partner



Tamer Fawki
Deputy General Manager

Matouk Bassiouny

Matouk Bassiouny is a leading, full-service MENA law firm with offices in Algiers, Algeria (Matouk Bassiouny in association with SH-Avocats), Cairo, Egypt (Matouk Bassiouny & Hennawy), Khartoum, Sudan (Matouk Bassiouny in association with AIH Law Firm) and Abu Dhabi and Dubai, UAE (Matouk Bassiouny), as well as a country desk covering our Libya practice.

Our team of over 200 lawyers specializes in advising multinationals, corporations, financial institutions and governmental entities on all legal aspects of investing and doing business in the MENA region. Trained both locally and internationally in civil and common law systems, our lawyers are fully conversant in English, Arabic and French.

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List of relevant legislation

(including regulations, codes of good practice, etc.)

- The Egyptian Labor Law No. 12 of 2003 (Egyptian Labor Law)
- The Egyptian Penal Code No. 58 of 1937 (Egyptian Penal Code)
- The Egyptian Data Protection Law No. 151 of 2020 (Egyptian DPL)
- The Disciplinary Sanctions Regulations, issued by the Ministry of Manpower Decree No. 185 of 2003 (Egyptian DSR)



1. What is the definition of workplace harassment in Egypt? What requirements must be fulfilled in order for conduct to constitute harassment?

The Egyptian Labor Law does not expressly define workplace harassment; however, the Egyptian DSR prohibits employees from certain actions that can be classified as workplace harassment, such as:



Being disrespectful towards the religious or personal beliefs of other employees.



Verbally or physically assaulting employers, employees or subordinates.



Behaving in a manner that is deemed inappropriate or lacking in decency and/or dignity.

In order for an action to constitute workplace harassment that subjects the perpetrator to a disciplinary action, an internal investigation must be undertaken by the employer in accordance with the regulations set out under the Egyptian Labor Law.

It should also be noted that while sexual harassment in the workplace is not regulated under the Egyptian Labor Law, it is criminalised under the Egyptian Penal Code, where it is defined as all sexual or pornographic acts, insinuations or allusions, committed in public, private, or off the beaten path, whether physically, verbally, by gestures or by any other means, noting that verbal harassment extends to all forms of electronic, wired or wireless communication or any other technology available.

2. What are the different forms of workplace harassment recognised in Egypt?



Disrespecting religious or personal beliefs



Verbal assault



Physical assault



Inappropriate behaviour

3. To whom does workplace harassment legislation apply? Are non-employees protected?

The workplace harassment legislation under the Egyptian Labor Law would likely apply to employees only, unless an employer adopts an internal policy that non-employees are also required to comply with. As for the relevant provisions of the Egyptian Penal Code, they would apply to both employees and non-employees.

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

The harassment has to be work regulated for the employer to be able to conduct an investigation to take disciplinary action, but it does not necessarily have to take place on the employers' premises or during working hours. It should be noted that if the harassment incident is of a criminal nature that falls under the jurisdiction of the Egyptian Penal Code, then the ensuing investigation is not confined to any location or time.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

A single incident can constitute harassment, and if the incident reoccurs, the applicable disciplinary measure is more severe.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

Anyone can report workplace harassment, as the Egyptian Labor Law does not limit reporting to victims of harassment.

7. When must harassment be reported? Does a delay in reporting harassment affect whether disciplinary action may be taken?

The Egyptian Labor Law does not require reporting to be done within a specific timeframe; however, employers are required to start the internal investigation within seven days from the date the incident is reported.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

If a victim reports an incident to their employer, the employer is required to start an internal investigation within seven days from the date the incident was reported, and the

victim's statement must be taken as part of the investigation. The victim can also file a lawsuit against the perpetrator if the harassment is of a criminal nature. As for the alleged perpetrators, they must be notified in writing of the allegations made against them so that the employer can impose disciplinary action. During the investigation, they have the right to: (i) defend themselves against such allegations, and (ii) be accompanied by a representative from a relevant labour union.

9. What are an employer's obligations once harassment is reported?

An employer is required to start an internal investigation within seven days from the date the incident is reported.

10. What is the process(es) that an employer must follow once harassment is reported?

Once harassment has been reported, an employer must:

- notify the alleged perpetrator of the allegations made against them in writing;
- start investigating the harassment incident;

- take statements from the victim, the alleged perpetrator and any witnesses;
- document the investigation in the alleged perpetrator's file; and
- notify the alleged perpetrator of the outcome of the investigation and the applicable disciplinary action, which must be imposed within 30 days after the investigation has concluded.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

If an employer wishes to impose disciplinary action on an alleged perpetrator, then it must investigate the harassment claim, even if it was made anonymously.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

An employer must conduct an internal investigation regarding the claims of harassment made against an alleged perpetrator in order to be able to impose disciplinary action, even if the victim does not wish to pursue a formal process.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

Remote working, in general, has not had an adverse effect on workplace harassment due to the reduced number of physical interactions between employees and the fact that most communications between employees working from home are digitally documented (email, text message, etc.) so workers are more conscious of what they send to their fellow employees.

14. What can an employer do to combat workplace harassment in the remote working environment?

Employers are advised to set clear guidelines and create safe reporting systems, where employees do not feel intimidated to bring forward complaints related to workplace harassment. Clear disciplinary measures and quick action from the employer are imperative to combat

and deter workplace harassment. Moreover, it is advisable for employers to adopt a whistle-blowing policy so that employees are encouraged to report any incidents of harassment that occur in the workplace.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

Employers are not legally required to adopt a harassment policy, only the Egyptian DSR, but it is advisable to have one.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

An employer is entitled to suspend the alleged perpetrator, with pay, during the investigation into the allegations of harassment, for no more than 60 days.



Egypt



Sphinx | Giza | Egypt

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

Failure to take appropriate steps to comply with the provisions of the Egyptian Labor Law regarding the necessary processes of dealing with workplace harassment may subject the employer to a fine of EGP 500, which is multiplied by the number of relevant employees and doubled in cases of recurrence.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

The victim can file a criminal or civil lawsuit against their alleged perpetrator where they can seek reparations or jail time for sustained damages, as applicable.

19. Does laws pertaining to data privacy impact an employers ability to investigate and prosecute claims of harassment? How so?

The Egyptian DPL does not preclude employers investigating harassment. It is likely that such investigations would be considered a "legal right" as per the Egyptian DPL, and as such, employers would be allowed to gather and process information on this basis. However, this legal opinion may have to be revised once the Executive Regulations of the Egyptian DPL are issued, as they may provide more details on this issue.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

As a general rule, employers need to adhere to the framework of basic rights guaranteed to data subjects under the Egyptian DPL, which can be summarised as follows:

- knowing their personal data is in the possession of the data holder/controller/processor, and being able to access, attain and observe said data;
- being able to renege on previous consent given for the storage or processing of their personal data;
- being able to correct, alter, delete, add or update personal data;
- being able to limit the processing to a specific range or context;
- knowing about any violation or breach of the data; and
- being able to object to the processing of personal data or the results of the processing when it violates their basic rights.

The legal basis of data processing under the Egyptian DPL is the consent of the data subject to their data being processed for a certain purpose, which is necessary to carry out a contractual obligation or legal action. Such data should be valid and secured and should not be saved/stored for a period longer than is needed for the purposes required.













21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

With regards to job applicants, there is nothing in the Egyptian DPL that precludes asking applicants to disclose their history of violence or harassment, as long as the fundamental rights of the applicants as per the Egyptian DPL are maintained. Employers may refuse to accept job applicants on the basis of a history of sexual harassment or violence.



Ethiopia

Interesting Facts about Ethiopia

 <p>Official language Oromo, Amharic, Somali, Tigrinya & Sidama</p>	 <p>Capital Addis Ababa</p>	 <p>Currency Ethiopian Birr</p>
 <p>Main exports Gold and coffee</p>	 <p>Retirement age 60 years of age</p>	 <p>Minimum working age 15 years old</p>
 <p>Percentage of female participation in the workforce 75%</p>	 <p>Oil production 354 barrels per day of oil</p>	 <p>Unemployment rate 4,02% in 2022</p>
 <p>Ethiopia means "Burnt-face," which the Greeks used to distinguish between those in Africa and those from the Middle East, who had lighter skin</p>	 <p>Average age of the population 19.5 years</p>	 <p>Independence A provisional treaty of peace was concluded at Addis Ababa on October 26, 1896, which acknowledged the independence of Ethiopia</p>



Haymanot Belay
Senior Associate

Mesfin Tafesse and Associates (MTA)

Mesfin Tafesse and Associates (MTA) is a leading law office in Ethiopia providing high quality legal advisory services. MTA's legal practice spans corporate and commercial law, banking and finance, mergers and acquisitions, manufacturing and industries, power and energy, mining, taxation, construction and real estate, IT and Telecom, employment and immigration, and dispute resolution. MTA is a dynamic and rapidly expanding law office dedicated to and with the aspiration to providing its clients with world class services.

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List of relevant legislation

(including regulations, codes of good practice, etc.)

- Ethiopian Labour Proclamation No. 1156/2019 (Ethiopian Labour Proclamation)
- Federal Civil Servants Proclamation No. 1064/2017 (Ethiopian Civil Servants Proclamation)
- Criminal Code of Ethiopia (Ethiopian Criminal Code)



1. What is the definition of workplace harassment in Ethiopia? What requirements must be fulfilled for conduct to constitute harassment?

Under Ethiopian law, private and government employees are subjected to two different sets of laws, the Ethiopian Labour Proclamation and the Ethiopian Civil Servants Proclamation, respectively. Both laws recognise sexual harassment and violence as workplace harassment, but they also prohibit any kind of physical abuse at the workplace.

According to the Ethiopian Labour Proclamation, sexual harassment is defined as the act of persuading or convincing another through utterances, signs or any other manner, to submit to sexual favours without his/her consent. It can be derived that the use of any sign to display sexual desire towards a co-worker in any manner would be labelled as sexual harassment. In addition, the Ethiopian Labour Proclamation defines the term sexual violence as sexual harassment accompanied by force or attempted force.

On the other hand, the Ethiopian Civil Servants Proclamation defines the term sexual harassment as an unwelcome sexual advance or request or other verbal or physical conduct of a sexual nature and includes:




-  Unwelcome kissing, patting, pinching or making other similar bodily contact.
-  Following a victim or blocking the path of a victim in a manner that is of a sexual nature.
-  Demanding sexual favours as a prerequisite for employment, promotion, transfer, redeployment, training, education, benefits or for executing or authorising any human resources functions.

2. What are the different forms of workplace harassment recognised in Ethiopia?

Form	Examples
Sexual harassment	Kissing, patting, pinching or making other similar bodily contact. Following the victim or blocking the path of the victim in a manner that is of a sexual nature. Any physical utterance or attempt to persuade or convince another to submit to a sexual favour. Demanding a sexual favour as a prerequisite for employment, promotion, transfer, redeployment, training, education, benefits or for executing or authorizing any human resources function.
Sexual violence	Any sexual act accompanied by force.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

The legislation related to harassment in Ethiopia applies to:

-  Employer
-  Employee
-  Any other person

Both the Ethiopian Labour Proclamation and the Ethiopian Civil Servants Proclamation render workplace harassment against any person unlawful.

4. Must the harassment take place on the employers’ premises or during working hours for the employer to take disciplinary action?

Pursuant to the Ethiopian Labour Proclamation and Ethiopian Civil Servants Proclamation, sexual harassment or violence that takes place at a workplace is subject to disciplinary action. “Workplace” is not defined under Ethiopian law; however it would have the meaning of a place where an employee normally undertakes their work. Apart from indicating that sexual harassment is subject to disciplinary action where it is committed at the workplace, the law does not require it to be during working hours. Thus, sexual harassment or violence committed at the workplace at any time is subject to disciplinary action.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

No. The conduct does not need to be continuous. The definitions of sexual harassment and sexual violence do

not include time or the repetition of identified acts. A single incident would constitute sexual harassment.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

No. There is no legal limitation on who can report workplace harassment. Anyone who is aware of a case of workplace harassment may report the harassment.

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

The law does not provide for any reference to a timeline for reporting harassment. Thus, unless there is a workplace policy or rule setting a reporting timeline, there is no time limitation with regards to reporting harassment. However, after a harassment case is reported or an employer is aware of the harassment by any other means, the disciplinary action to be taken by the employer must be taken within 30 working days of the employer becoming aware of the harassment. If this time limit

for disciplinary action is not adhered to, the employer will not be able to take disciplinary action in terms of the Ethiopian Labour Proclamation. According to the Ethiopian Civil Servants Proclamation, an employer is required to take a disciplinary measure within the time limit provided to bring a criminal suit for sexual harassment under the Ethiopian Criminal Code, which ranges from 10 to 25 years from the date of occurrence.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
The right to a safe working environment.	The right to be heard and defend themselves against the claim of harassment.
The right to bring a civil and/or criminal suit.	
The right to report harassment and to demand action from their employer.	

9. What are an employer’s obligations once harassment is reported?

An employer is required to take appropriate measures in due time once sexual harassment is reported to it. What an appropriate measure is, and when such measures need to be taken, are not defined in law, and as such, appropriate measures and procedures of investigation of the conduct after it has been reported are generally regulated in terms of workplace rules or policies. The employer is, however, legally permitted to terminate an employee’s employment without notice if they have committed sexual harassment, in accordance with the Ethiopian Labour Proclamation.



Ethiopia



Lalibela | Ethiopia



The Ethiopian Civil Servants Proclamation also does not provide for the procedural obligations of an employer in cases of harassment reporting. However, an employer is required to take rigorous disciplinary measures against a person committing sexual harassment. Rigorous disciplinary measures include:

- a fine worth up to three months' salary;
- demotion for a period of up to two years; and/or
- dismissal.

10. What is the process(es) that an employer must follow once harassment is reported?

There is no legal established procedure to be undertaken by an employer in relation to investigating or prosecuting a claim of harassment.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

There is no express procedure laid out for employers to investigate workplace harassment. However, anonymity would not make the

incident less serious, and an employer has a general legal obligation to take appropriate measures to ensure a safe work environment for its employees. Thus, an employer is required to respond to complaints of sexual harassment and protect victims regardless of the anonymity of the report.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Yes. There is no legal prohibition against an employer taking disciplinary measures against an alleged perpetrator, even where the victim does not want to pursue a formal process. Thus, the employer may act against the alleged perpetrator in accordance with the law without the consent of the victim in the interests of upholding workplace safety.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

Yes. We are of the opinion that an employer would not be in a position to prevent or take action as it would have had if the employees were working from the workplace. Thus, the employees may be subjected to online or other kinds of harassment when working remotely, which the employer would be unable to easily control.

14. What can an employer do to combat workplace harassment in the remote working environment?

An employer may address such issues under its organisational policies and by providing training for employees.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

No. An employer is not legally required to have a harassment policy.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

An employer can do the following:



maintain the confidentiality of all persons involved;



create more accessible, efficient, and effective complaint and redressing processes will open doors for other potential victims to be protected;



issue a strict regulatory framework and policy; and



provide training to employees.

An employer must also conduct effective investigations for accuracy of decisions and implement the necessary corrective measures.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

The Ethiopian Labour Proclamation provides that an employer has an obligation to ensure occupational safety and adhere to any safety guidelines that may be given by the appropriate regulatory authority. The relevant labour regulatory authorities have not yet issued any guidelines in terms of workplace harassment. Nonetheless, where an employee fails to comply with its obligation of ensuring occupational safety and regulatory authorities' guideline on harassment, where they are issued in the future, the employer will be subjected to the following liabilities:

- a fine of between ETB 10,000 and ETB 20,000 if the violation is for the first time;
- a fine of between ETB 20,000 and ETB 40,000 if it is committed for the second time;
- a fine of between ETB 40,000 and ETB 60,000 if it is committed for the third time; and
- if the act is committed more than three times, it may result closure of the undertaking.

The Ethiopian Civil Servants Proclamation recognises an employer's obligation to ensure workplace safety, but no liability is provided towards the employer, which is a Government organisation, in case of failure to act based on this obligation.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

Pursuant to the Ethiopian Labour Proclamation, where an employer fails to take appropriate measures once sexual harassment has been reported, an employee who is a victim of harassment can terminate their employment without notice, and they will be entitled to:

Severance pay: that amounts one month's salary for every one year of service, and one month's salary of the employee plus a third of the one month's salary for each additional year of service, provided that total amount does not exceed 12 months' worth of wages of the employee.

Compensation: that amounts 90 days' worth of the employee's salary.

The Ethiopian Civil Servants Proclamation does not provide any recourse to victims where the employer takes unsatisfying measures.

In addition to the compensation set out in the Ethiopian Labour Proclamation, victims of harassment may bring civil and/or criminal claims against an employer or the alleged perpetrator, or against both.

19. Does laws pertaining to data privacy impact an employers ability to investigate and prosecute claims of harassment? How so?

The right to privacy is a constitutionally recognised right in Ethiopia and every person has the right to the inviolability of their notes and correspondence, including postal letters and communications made by means of telephone, telecommunications and electronic devices, as per Article 26 of the Constitution of Ethiopia. However, apart from this basic law, there are no further detailed and comprehensive data protection laws that lay down the procedure for accessing of data of persons, or that provide for any

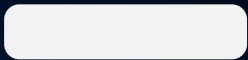
liability for failure to respect the privacy of individuals. The specific data privacy law regime of Ethiopia is in draft form. Accordingly, an employer is, in general, expected to recognise the privacy right of its employees in investigating claims of harassment, but there is no well-established data privacy law or provision that would as such impact an employer's ability to investigate and prosecute claims of harassment.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

In the interest of industrial peace and respecting the right to privacy of individuals, an employer should ensure security and confidentiality of the information that may be provided by employees for the investigation of a particular harassment case. The employer should also, as much as possible, endeavour to obtain the consent of the individuals when accessing their communications or information for purposes of the investigation.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

Yes. There is no legal prohibition against an employer requesting job applicants to disclose their history of harassment or violence. Similarly, an employer is not precluded from refusing employment based on the ground of harassment history.



Ghana

Interesting Facts about Ghana



Official language
English



Capital
Accra



Currency
Ghanaian Cedi



Main exports
Cocoa, gold, and oil



Retirement age
60



Minimum working age
15 years. However, children may be employed at the age of 13 to do light work



Percentage of female participation in the workforce
65.3% in 2022



Average age of the population
20,7 years



Unemployment rate
3,9% in 2022



Ghana
Means 'Warrior King' in Mande (a language spoken all over Western Africa)



Population
32,83 million in 2021



Independence
On 6 March 1957, the Gold Coast (now known as Ghana) gained independence from Britain



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Kimathi Kuenyehia, Sr
Managing Partner,
Solicitor & Barrister



Enid Baaba Dadzie
Team Lead,
Technology Media and Telecommunications

List of relevant legislation

(including regulations, codes of good practice, etc.)

- Constitution, 1992 (Ghanaian Constitution)
- Labour Act 651 of 2003 (Ghanaian Labour Act)
- Data Protection Act 843 of 2012 (Ghanaian DPA)



1. What is the definition of workplace harassment in Ghana? What requirements must be fulfilled in order for conduct to constitute harassment?

There is no definition of workplace harassment under Ghanaian law. However, sexual harassment is defined as any unwelcome, offensive or importunate sexual advance or request made by an employer or superior officer or a co-worker to a worker, whether the worker is a man or woman.

The requirements for conduct to constitute sexual harassment under Ghanaian law are:

- it must be unwelcome, offensive, importunate sexual advances or requests; and
- must be made by an employer, superior officer or a co-worker to a worker, whether the worker is a man or a woman.

Some institutions, however, have their own internal harassment policies which may define “*harassment*”, and employees and other stakeholders would be bound by such policies.

2. What are the different forms of workplace harassment recognised in Ghana?

Sexual harassment is the only form of workplace harassment recognised under Ghanaian law. Apart from the provisions in the Ghanaian Labour Act on sexual harassment, some organisations and institutions have adopted sexual harassment policies which govern the conduct of employees, and in some cases clients, of such institutions. However, these policies are only binding on each specific institution and are not generally recognised as law.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

The Ghanaian Labour Act applies to all workers and to all employers except:



The armed forces



The police service



The prison service



The securities and intelligence agencies

A worker is defined as a person employed under a contract of employment, whether on a continuous, part-time, temporary or casual basis. As such, the Ghanaian Labour Act does not extend to non-employees.

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

Ghanaian law does not contain specific provisions on when and where harassment must take place before the employer can take disciplinary action. However, institutions may prepare internal policies which prescribe rules on when and where harassment may occur in order for the employer to take disciplinary action.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

In terms of the Ghanaian Labour Act, sexual harassment is defined as any unwelcome, offensive or importunate sexual advances or requests made by an employer or superior officer or a co-worker, whether the worker is a man or woman. Although the Ghanaian Labour Act does not specify whether harassment needs to be continuous or ongoing to constitute sexual harassment, from the definition of sexual harassment, it appears that a single incident can constitute sexual harassment.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

The Ghanaian Labour Act only defines sexual harassment. It does not specify who may report sexual harassment. So, it would appear that the victim of harassment may report the sexual harassment. However, institutions may prepare internal policies which prescribe rules related to reporting workplace harassment.

7. When must harassment be reported? Does a delay in reporting harassment affect whether disciplinary action may be taken?

The Ghanaian Labour Act does not contain specific provisions on when sexual harassment may be reported. Institutions may prepare internal policies which prescribe rules related to reporting workplace harassment. Generally, such institutions encourage prompt reporting of workplace harassment although a delay in reporting may not affect whether disciplinary action may be taken.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

In terms of the Ghanaian Labour Act, an employee has the following general rights, which would also apply in instances of allegations of harassment, and would apply to both victims and perpetrators:

Victims	Alleged Perpetrators
The right to a safe working environment.	The right to a safe working environment.
The right to dignity.	The right to dignity.
The right to make a claim of unfair termination in the event where, with or without the employer's notice, a worker terminates the contract of employment because the employer has failed to take action on repeated complaints of sexual harassment of the worker at the workplace.	The right to make a claim of unfair termination in the event where, with or without the employer's notice, a worker terminates the contract of employment because the employer has failed to take action on repeated complaints of sexual harassment of the worker at the workplace.
The right to not be victimised or prejudiced in any way for laying a claim of harassment.	The right to not be victimised or prejudiced in any way for laying a claim of harassment.
The right to privacy.	The right to privacy.
The right to their personal information processed and stored in compliance with legislation.	The right to their personal information processed and stored in compliance with legislation.
The right to be heard and to be given an opportunity to make representations in response to the claim of harassment.	The right to be heard and to be given an opportunity to make representations in response to the claim of harassment.

9. What are an employer's obligations once harassment is reported?

Pursuant to an employer's duty to provide a safe and healthy working environment, the employer must promptly investigate cases of harassment once they are reported. Further, an employer is required to ensure the operation of an adequate procedure for the discipline of its workers. The law also provides that where an employer fails to act on repeated complaints of sexual harassment of a worker at the workplace and the worker terminates the contract as a result, the worker's employment would be deemed to be unfairly terminated.

10. What is the process(es) that an employer must follow once harassment is reported?

The law does not provide a specific process an employer must follow once sexual harassment is reported. However, since a worker has the right to work under safe, satisfactory and healthy conditions, an employer must put measures in place to ensure that a process is set out for dealing with issues of sexual harassment to create a safe working environment for its workers.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

Ghanaian law does not specifically state that an employer has an obligation to investigate a claim of sexual harassment made anonymously. However, Ghanaian law recognises workers' rights to work under satisfactory, safe and healthy conditions. Further, in terms of the Ghanaian Labour Act, a worker's employment will be deemed to be unfairly terminated if, with or without notice to the employer, the worker terminates the contract of employment because the employer has failed to take action on repeated complaints of sexual harassment. On this basis, an employer has an obligation to investigate claims of sexual harassment whether made anonymously or not.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Yes. Generally, employers have the right to discipline workers and to provide and ensure the operation of an adequate procedure for the disciplining of workers. As such, employers are not restricted from disciplining an alleged perpetrator even where the victim does not want to pursue a formal process.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

Remote working minimises physical interaction at workplaces. However, this only reduces the risk of in-person workplace harassment. Other forms of harassment such as cyberbullying may occur in remote working environments.

14. What can an employer do to combat workplace harassment in the remote working environment?

Given that the Ghanaian Labour Act does not adequately provide for all forms of harassment in the workplace, it is largely the employer's duty to ensure that adequate rules are in place to provide a safe and healthy environment for workers as prescribed by law.

As such, employers can adopt the following measures to combat workplace harassment in the remote working environment:



Adopt a detailed workplace harassment policy that adequately caters for all forms of harassment, including harassment in the remote working environment.



Ensure that all employees are adequately informed of the content of the workplace harassment policy.



Adopt adequate disciplinary procedures to ensure that workplace harassment in remote working environments is discouraged.



Constantly review and revise the workplace policy to ensure improvements to the workplace policy, where necessary.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

No. The law only prescribes that employers must ensure that workers are provided with a safe and healthy work environment. An internal harassment policy is therefore not a legal requirement.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

An employer may take the following measures to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated.



conduct regular workshops to educate workers and to reinforce a zero-tolerance policy for harassment in the workplace;



encourage workers to report cases of harassment including anonymous reports; and



ensure that a transparent disciplinary procedure is instituted to deter people from engaging in workplace harassment.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

The Ghanaian Labour Act only makes provision for sexual harassment. Under the law, where an employer fails to take action on repeated complaints of sexual harassment of a worker at the workplace, the worker's employment will be deemed to be unfairly terminated, if, with or without notice to the employer, the worker terminates the contract of employment.

In the case of unfair termination, the Ghanaian Labour Commission may:

- order the employer to re-instate the worker from the date of the termination of their employment;
- order the employer to re-employ the worker, either in the work for which the worker was employed before the termination or in other reasonably suitable work on the same terms and conditions enjoyed by the worker before the termination; or
- order the employer to pay compensation to the worker.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

The victim may make a complaint to the Ghanaian Labour Commission, whose function is to investigate labour related complaints, and take necessary steps to prevent labour disputes.

19. Do laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment?

Generally, the Ghanaian DPA requires that persons who process personal data must ensure that the data is processed:

- without infringing the privacy rights of the data subject;
- in a lawful manner; and
- in a reasonable manner.

Further, the Ghanaian DPA requires that persons may not process personal data which relates to the sexual life or criminal behaviour of an individual unless the processing is necessary, or the data subject consents to the processing.

Processing of special personal data is deemed necessary where it is for the exercise or performance of a right or an obligation conferred or imposed by law on an employer. As such, provided that the employer complies with the requirements stipulated above, that employer may investigate claims of harassment.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

Employers may implement the following measures to ensure compliance with data protection or the right to privacy while investigating claims of harassment:

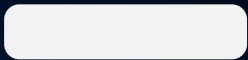
- Ensure that confidential information is kept secure during investigations by adopting appropriate reasonable, technical and organisational measures to prevent the:
 - loss of, damage to, or unauthorised destruction of personal data; and
 - unlawful access to or unauthorised processing of personal data.
- Obtain the consent of the affected persons where necessary, prior to disseminating personal information during investigations.
- Avoid retaining records of personal information for longer than necessary to complete the investigations.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

Ghanaian law does not prohibit employers from requesting job applicants to disclose any history of harassment or violence. Generally, employers are permitted to determine the criteria for granting employment provided that the criteria are not discriminatory. The law protects all persons from discrimination on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status. However, we note that Ghanaian law has not definitively addressed whether a history of harassment is a permissible ground to refuse employment.



Ghana



Kenya

Interesting Facts about Kenya



Official languages
Kiswahili (Swahili)
and English



Capital
Nairobi



Currency
Kenyan Shillings



Main exports
Horticulture exports,
coffee and clothing



Retirement age
60



Minimum working age
A child of between
thirteen years of age
and sixteen years of
age may be employed
to perform light work



**Percentage of female
participation in
the workforce**
49,7%



**Average age of
the population**
20,1 years in 2020



Unemployment rate
5,5% in 2022



Population
53,01 million
in 2021



Independence
Kenya became fully
independent on
12 December, 1963



Nobel Peace Prize
Wangari Muta Maathai,
from Kenya, was first
woman to win a
Nobel Peace Prize
in 2004



1. What is the definition of workplace harassment in Kenya? What requirements must be fulfilled in order for conduct to constitute harassment?

The Kenyan Employment Act legislates against the discrimination or harassment of employees or prospective employees by an employer on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, marital status or health status. This emanates from the Kenyan Constitution, which provides for the right to equality and freedom from discrimination.

The Kenyan Employment Act expressly prohibits sexual harassment and provides that an employee is sexually harassed if the employer or a representative of that employer or fellow employee:

"a) directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or

express: (i) promise of preferential treatment in employment; (ii) threat of detrimental treatment in employment; or (iii) threat about the present or future employment status of the employee;

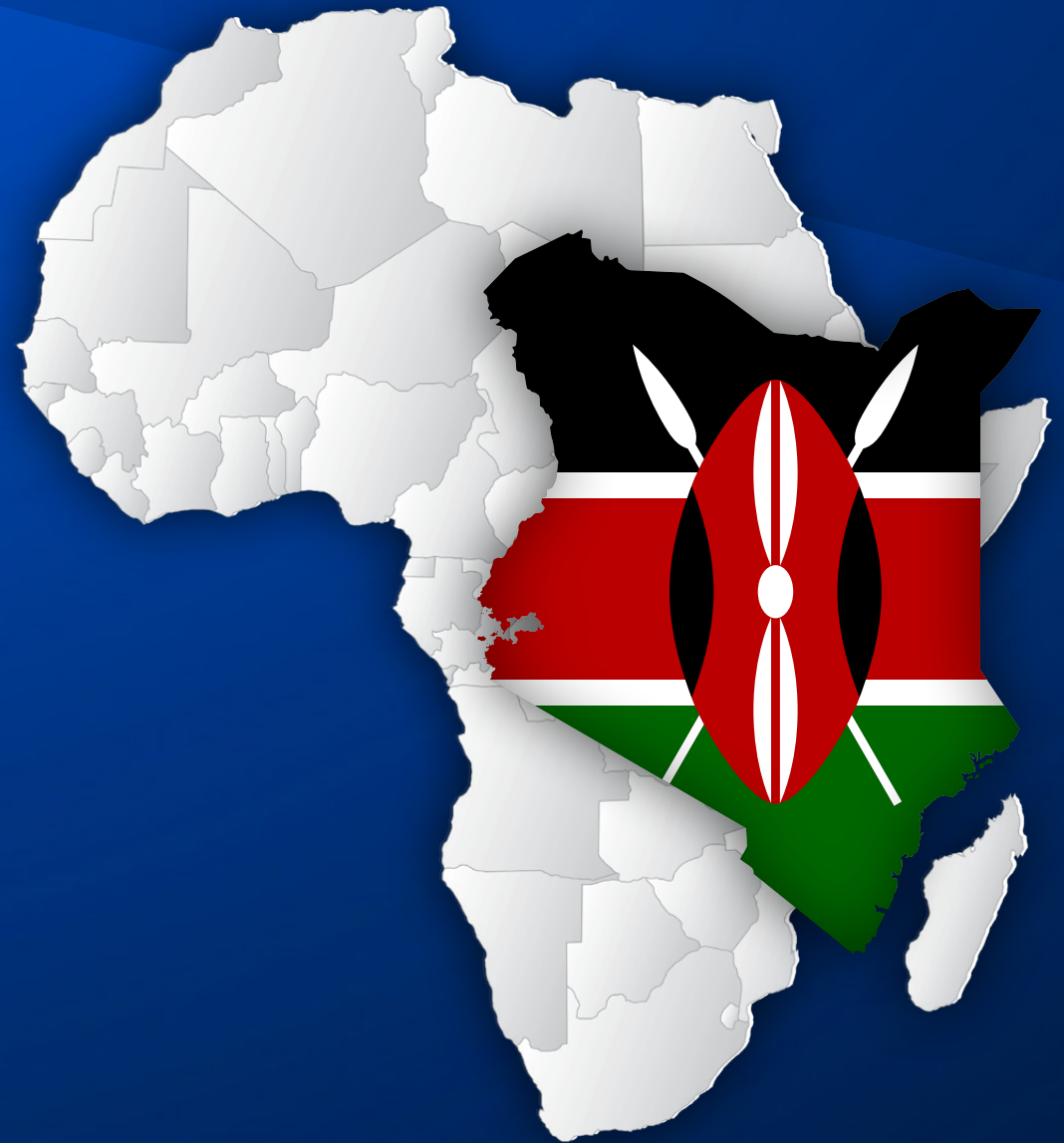
- b) uses language, whether written or spoken, of a sexual nature;
- c) uses visual material of a sexual nature; or
- d) shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction."

Further to this, employers are statutorily mandated to ensure the health, safety and well-being of all their employees as provided in the judgment of *P O v Board of Trustees, A F and Two Others* [2014] eKLR where the court stated that in terms of Kenyan legislation, sexual harassment should be deemed a workplace health and safety issue and should therefore fall under the purview of the Kenyan OSHA.

List of relevant legislation

(including regulations, codes of good practice, etc.)

- The Constitution of Kenya, 2010 (Kenyan Constitution)
- Employment Act 11 of 2007 (Kenyan Employment Act)
- Occupational Health and Safety Act (Kenyan OSHA)



Aside from the definition of sexual harassment, Kenyan employment law does not expressly provide for other forms of workplace harassment. However, one can infer from the Kenyan Employment Act, the Kenyan Constitution and the Kenyan OSHA that all types of harassment are prohibited in the workplace. In this respect, the definition of workplace harassment in Kenya is broad and can cover any word or conduct directed at a specific person that causes substantial emotional distress.

Other than the Kenyan Constitution, the Kenyan Employment Act and the Kenyan OSHA, no other legislation provides protection against workplace harassment. This has led to different organisations developing their own policies against workplace harassment, such as the sexual harassment guide and anti-bullying policy developed and relied on by the Law Society of Kenya in 2019, which applies to all employees in the legal profession.

2. What are the different forms of workplace harassment recognised in Kenya

Form	Examples
Occupational harassment	Deliberate sabotage or obstruction of a person's work, giving work inadequate to the position, removing areas of responsibility without cause, establishing impossible deadlines that will set an individual up to fail, withholding necessary information or purposefully giving the wrong information, assigning an unreasonable workload which is unfavourable to one person, undermining of work output, assigning meaningless tasks unrelated to the job, or deliberately changing work rosters to inconvenience a particular employee.
Cyberbullying	Entails any form of bullying that occurs online or via any electronic device.
Emotional harassment	Malicious exclusion, spreading rumours, intruding on a person's privacy by pestering, spying or stalking, ridiculing a person, belittling a person's opinion, unreasonably denying applications for training, leave or promotion, tampering with personal belongings or work equipment, and threats.
Verbal harassment	Name-calling, insulting someone about an attribute, quality in personal characteristics, yelling, screaming and using profanity.
Physical harassment	Hitting, pushing, shoving or physically hurting another person.
Sexual harassment	Language, either written or spoken of a sexual nature. Insults, remarks, insinuations and inappropriate comments on a person's dress, physique, age or family situation, and a condescending or paternalistic attitude undermining dignity, unwelcome invitations or requests that are implicit or explicit, whether or not accompanied by threats, lascivious looks or other gestures associated with sexuality, unnecessary physical contact such as touching, caresses, pinching, or assault.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

Workplace harassment relates to the following relationships as provided in terms of section 5(8) of the Kenyan Employment Act and section 5 of the Kenyan Labour Relations Act, 2007:

-  Employer–employee relationship
-  Employer–potential employee relationship
-  Employee–employee relationship

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

Harassment does not have to take place on the employer's premises or during working hours for an employer to take disciplinary action. This was stated in the case of *PO v Board of Trustees, AF and Two Others* [2014] eKLR where the first respondent, a senior employee of the second respondent, sexually harassed and physically abused the claimant during a work trip. The sexual harassment and physical abuse occurred outside the work premises and outside of normal working hours. The court found in favour of the claimant and awarded her damages for the sexual harassment and subsequent unfair and wrongful termination. The court held that it is the duty of the employer, or other responsible persons in the workplace, to prevent or deter acts of sexual harassment and to provide the procedure for resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

However, please note that with regard to employment matters, it has been observed that decisions from the courts are varied on the interpretation and application of different points of law. Therefore, it is possible for a court to arrive at a different conclusion while considering the same facts. This was observed in the case of *BWK v EK and Another* [2017] eKLR where, despite partially relying on the case above, the court ruled that a company is not responsible for the actions of its employees where the action is outside of the company's control and is conducted outside the company's workplace.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

No. The conduct does not need to be continuous or ongoing to constitute harassment. A single incident may suffice to constitute harassment. As stated in Question 1, employers are statutorily mandated by the Kenyan OSHA to ensure all their employees'

health, safety and well-being. As different forms of harassment can negatively impact the affected employee's health, the employer needs to take immediate action against any form of harassment in the workplace as soon as it occurs.

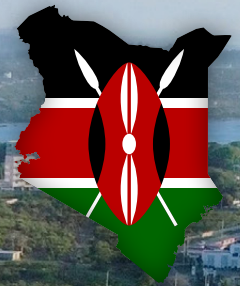
6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

The reporting of workplace harassment is not limited to just the victims of harassment. Section 14 of the Kenyan OSHA provides that every "employee shall report to the immediate supervisor any situation which the employee has reasonable grounds to believe presents an imminent or serious danger to the safety or health of that employee or of other employees in the same premises, and until the employer has taken remedial action". In general, if an employee witnesses any workplace harassment against another employee, they may report the incident to their immediate supervisor directly or through the reporting mechanisms set out in the company's policies.

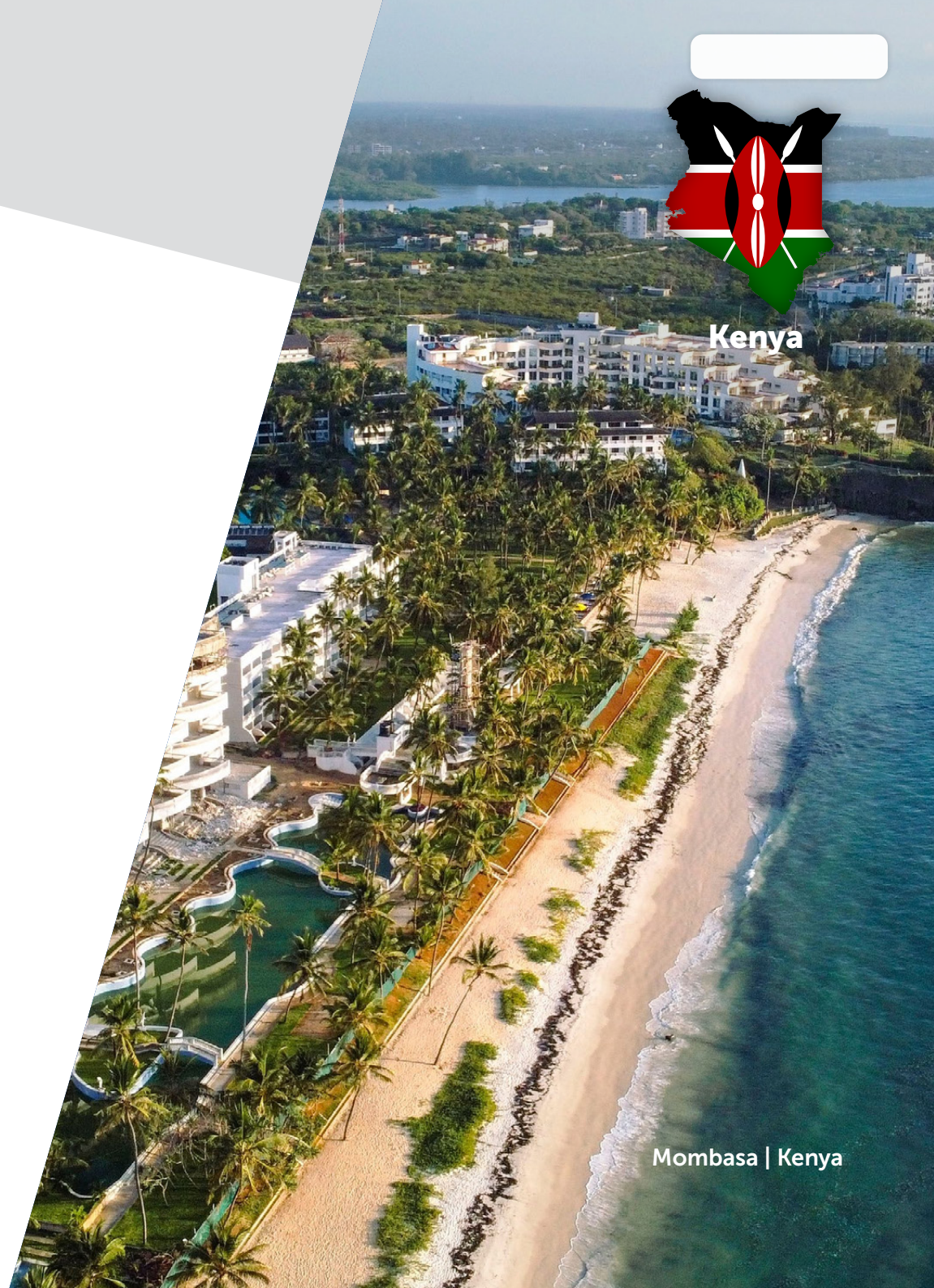
7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

Section 90 of the Kenyan Employment Act provides that no civil action or proceeding based on or arising out of the Kenyan Employment Act should be instituted unless it commences within three years of the act, neglect or default complained of, or in the case of continuing injury or damage, within 12 months after the cessation thereof. Harassment can be reported at any time, and there is no specific deadline for reporting it unless specified in the company policy. However, it is advisable to report harassment as soon as possible after it occurs to ensure that appropriate action can be taken to address the issue. If an employee experiences

harassment, they should report it to their employer or supervisor as soon as possible. The employer is then responsible for investigating and taking appropriate action to address the issue. Despite the fact that section 90 of the Kenyan Employment Act provides that *"no civil action or proceeding based or arising out of the Employment Act should be instituted unless it is commenced within three years of the act,"* sexual harassment is a criminal offence. There is no time limit for instituting a criminal harassment case against a perpetrator.



Kenya



Mombasa | Kenya

8. What are the different forms of workplace harassment recognised in Kenya

Victims	Alleged Perpetrators
The right to a safe working environment.	The right to a safe working environment.
The right to protection from harassment and discrimination.	The right to be notified and taken through a disciplinary hearing before termination on the grounds of misconduct.
The right to file a complaint should harassment or discrimination occur.	The right to have a representative with them during the disciplinary procedures.
The right to not be discriminated against for filing a complaint against harassment.	The right to a fair hearing once disciplinary procedures have begun.
The right to privacy in relation to the complaint of harassment or the circumstances of the harassment.	The right to be informed about the grounds for termination.
	The right to complain to a court about being summarily or unfairly dismissed.
	The right to privacy in relation to the complaint of harassment or the circumstances of the harassment.

9. What are an employer’s obligations once harassment is reported?

It is the employer’s obligation to take immediate action regarding a report on workplace harassment. The employer is required to investigate the claim made, consult both parties and take steps to stop the harassment by any means possible. In the case of *Ooko and Another v SRM and Two Others*, the court held that upon receipt of a sexual harassment complaint, an obligation falls on the employer to follow up on the complaint and ensure that sexual harassment is eradicated, redressed and does not occur again. If harassment continues even after a formal warning has been given to an employee accused of harassment, the employer must follow up that warning with further disciplinary action. Failure to follow through with a harassment complaint is a breach by the employer of an employee’s right.

10. What is the process(es) that an employer must follow once harassment is reported?

Where a complaint of harassment has been filed, an employer is required to take immediate action to remedy the situation. Section 6(3) of the Kenyan Employment Act further states that an employer should take disciplinary measures against any employee who subjects another to sexual harassment. This should be done in accordance with the company’s sexual harassment handbook. The procedure is required to be substantively and procedurally fair, as provided for in the Kenyan Employment Act.

Section 6 (3)(v) of the Kenyan Employment Act provides that the employer must keep the name of a complainant and the circumstances related to the complaint confidential, except where disclosure is necessary for the purpose of investigating the complaint or for the purpose of taking disciplinary measures in relation to the complaint. Once investigations are complete, if the accused employee is to be dismissed on account of the harassment, section 41(2) of the Kenyan Employment Act requires the employer to allow and consider any representations that the accused employee may make in their defence.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

Yes. An employer is obliged to ensure the safety of all of its employees in accordance with the Kenyan OSHA. The employer must therefore investigate all claims of harassment received to establish if there is a legitimate claim.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Employers are statutorily mandated to ensure the health, safety and well-being of all their employees in accordance with the Kenyan OSHA. Therefore, if a victim does not want to lodge a complaint, the employer's obligation to ensure the health and safety of its employees is not waived, as the employer is not only required to ensure the safety and protection of the affected employee but also the safety and protection of all other employees. If the employer omits to take action against an accused employee, they

are effectively exposing all employees to harassment. Further, section 88 of the Kenyan Employment Act states that nothing in the Kenyan Employment Act "prevents an employer or employee from being proceeded against according to law for an offense punishable under any other law in force". Therefore, if the harassment conducted amounts to a punishable offence under the law, an employer may proceed to institute proceedings under other legislation.








13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

Remote working has negatively impacted employers' ability to mitigate the risk of workplace harassment. The Kenyan OSHA defines the workplace to include any "land, premises, location, vessel or thing, at, in, upon, or near which, a worker is, in the course of employment". In this respect, the workplace includes any location where the employee is carrying out remote work, be it at home, a co-working space or a restaurant.

Remote working makes it difficult for employers to monitor and address potential incidents of workplace harassment. In a traditional workplace, managers and human resources staff can observe employees and intervene if they witness any form of harassment. In a remote work environment, it is more difficult to monitor employee interactions, especially if they occur outside of official work channels.

14. What can an employer do to combat workplace harassment in the remote working environment?

The employer should:

-  Develop a workplace harassment policy.
-  Ensure that all employees sign the policy.
-  Ensure that the policy extends to remote working environments.
-  Include in the policy statements against online or verbal harassment and inform their employees about the addition.
-  Ensure that the policy adopts international best practice.
-  Conduct training on workplace harassment.
-  Provide employees with a safe and optionally anonymous online method of submitting workplace harassment complaints.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

An employer is not legally required to have a harassment policy. However, with respect to sexual harassment, specifically, section 6 of the Kenyan Employment Act, an employer who employs 20 or more employees is required to issue a policy statement on sexual harassment after consulting its employees or their representatives, if any. The employer can adopt any term that they think appropriate in the policy statement on sexual harassment, but it must also contain:

- the definition of sexual harassment outlined in Question 1;
- a statement prohibiting sexual harassment and harassment generally;
- a complaint procedure;
- an investigation procedure;
- a sanction provision;
- an appeal process;
- a statement on protection against retaliation;
- a statement on the employer's responsibility; and
- penalties.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

The employer should:

- for purposes of preventing harassment, adopt the practices outlined in Question 14; and
- for purposes of ensuring that an investigation is carried out accordingly:



implement a process that ensures confidentiality during the investigation;



ensure that the process is fair for both the victim and alleged perpetrator;



suspend the employee from work up until the investigations are complete or allow the employee to work from home;



use independent investigators to investigate the harassment claims; and



keep a proper record of the complaint and the investigation process.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

Section 5 of the Kenyan Employment Act provides that it is an offence for an employer to discriminate directly or indirectly against an employee. Further, section 6 of the Kenyan Employment Act provides that if an employer has more than 20 employees, it must issue a policy statement on sexual harassment. An employer who contravenes any of these provisions commits an offence and shall, on conviction, be liable to a fine not exceeding KES 50,000 (USD 394.32) or to imprisonment for a term not exceeding three months, or both. This was implemented in

the judgment of *SWM v Hardware Trading Store Limited and Another* [2021] eKLR where the court awarded KES 50,000 (USD 394.32) to the employee as the employer had failed to protect her, leading to a violation of the employees' rights at work and exposing her to sexual harassment.

Section 8 of the Kenyan OSHA further provides that it is an offence for an employer to discriminate against an employee for making a complaint about a matter which the employee considers a risk to their health. Contravention of this provision by an employer will attract a fine not exceeding KES 100,000 (USD 788.95) or to imprisonment for a term not exceeding three months, or both.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

It is the duty of the labour officers and the court to promote equality of opportunity in employment in order to eliminate discrimination during employment. If a victim is not satisfied with the actions taken by

their employer, the victim can report the matter to the labour officer or the court for action to be taken against the accused employee. Depending on the severity of the circumstances and the redress sought, the victim can report the matter to the police and a criminal case can be opened against the accused employee.

19. Do laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment? How so?

Yes. The Data Protection Act (Kenyan DPA) applies to the processing of personal data by a data controller or data processor. The investigation of a claim of workplace harassment would involve processing personal and/or sensitive personal data.

Before collecting or processing any personal data belonging to an employee, an employer must adhere to the principle of purpose limitation. This means that an employee must be informed of the reason for the collection of the data and, once collected, the data cannot be used for any other purpose than for the investigation.

However, if the employer is of the opinion that there is a serious threat to an employee's life, health or safety, it can rely on section 51 of the Kenya DPA and section 55 of the Data Protection (General) Regulations, 2021 (Kenyan DPA General Regulations), which would exempt the employer from the provisions of the Kenyan DPA. The Kenyan DPA General Regulations provide that the processing of personal data is exempted from the Kenyan DPA on the grounds of public interest where such processing exists as a permitted general situation, which includes (but is not limited to) the lessening or preventing of a serious threat to the life, health or safety of any data subject.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

The processing of personal data during the investigation ought to adhere to the principles of data protection as provided in terms of section 25 of the Kenyan DPA.

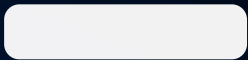
This includes:

- Obtaining consent before collecting or processing personal information related to the harassment claim. This involves explaining the purpose of the investigation, the type of information being collected and how it will be used. The employer must ensure that the employee understands and agrees to the collection and use of their personal information for the investigation.
- Limiting the data collection by only collecting the personal information that is necessary for the investigation. Employers must avoid collecting unnecessary personal information that is not relevant to the investigation.
- Securely storing the information collected and limiting access to this information.
- Anonymising the data to ensure that the individual cannot be identified from the information collected.

Further to this, the employer should ensure that employees are made aware (during onboarding) that if a complaint is lodged against them that their personal data may be collected for investigation purposes. This could be included in the company's privacy policy.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

As an employer is obligated to ensure a safe and healthy work environment for all its employees, it has to be mindful of who is recruited to work at the company. An applicant's history of workplace harassment may not suffice as a ground to refuse their employment application. A previous conviction of workplace harassment is a more acceptable reason for an employer to refuse to employ an applicant. The employer should explicitly provide in the job application that a previous conviction of workplace harassment disqualifies an applicant's application. However, employers should be mindful that an applicant may state that using this criterion to disqualify applicants is discrimination during the recruitment process pursuant to section 5 (3)(b) of the Kenyan Employment Act as the employer is taking into account past actions which may not reflect the current character of the applicant.



Lesotho

Interesting Facts about Lesotho



Official language
Sesotho and English



Capital
Maseru



Currency
South African Rand



Main exports
Clothing and diamonds



Retirement age
The retirement age in Kenya is 60



Minimum working age
15 years



Percentage of female participation in the workforce
45,5% in 2022



Average age of the population
22,3 years



Unemployment rate
18,04% 2022



Population
2,281 million in 2021



Independence
On October 4, 1966, the Kingdom of Lesotho attained full independence



Lesotho royalty
Letsie III is the current king of Lesotho. Reigning since 1996



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Contact: mpt@webberslaw.com



Mateboho Tohlang-Phafane
Partner



Relebohile

List of relevant legislation

(including regulations, codes of good practice, etc.)

- Labour Code Act 24 of 1992, as amended (Lesotho Labour Code)
- The Lesotho Constitution in so far as it deals with the right to dignity and the freedom of association (Lesotho Constitution)
- Labour Code, Codes of Good Practice, Notice No 4 of 2003 (Lesotho Codes of Good Practice)



1. What is the definition of workplace harassment in Lesotho? What requirements must be fulfilled in order for conduct to constitute harassment?

In Lesotho, the word “*harassment*” is not specifically defined. It will accordingly be given its ordinary meaning in the context of the whole scheme (i.e the Lesotho Labour Code). Section 196(2) of the Lesotho Labour Code gives insight into what may amount to “*harassment*”. In terms of section 196 (2) of the Lesotho Labour Code, any person who by acts of intimation, dismissal and/or offers for pay, tries to influence an employer not to associate with others (or rather not to join a trade union) commits an “*unfair labour practice*”. Section 234 of the Lesotho Labour Code on the other hand prohibits acts of intimidation in industrial actions and defines what can constitute intimidation.

Section 200 of the Lesotho Labour Code which defines the term “*sexual harassment*” also gives insight into what may constitute harassment. Paraphrased, section 200 of the Lesotho Labour Code, provides that:

An offer of employment, threat of dismissal or imposition of a penalty against another person in the course of employment as a means of obtaining sexual favours is an unfair labour practice. This definition must be read together with sections 57, 58 and 59 of the Lesotho Codes of Good Practice. Section 58(1) of the Lesotho Codes of Codes of Good Prac-tice defines the term “*sexual harassment*” as “**[any] unwanted conduct of a sexual nature**” and such unwanted conduct includes “**unwanted sexual attention**”, unwelcome innuendos or suggestions, sexual advances, sexual comments/jokes, inappropriate questions about someone’s sexual orientation and other similar inappropriate conduct or statements.

Section 57 of the Lesotho Codes of Good Practice restricts the definition of “*sexual harassment*” as envisaged in the Lesotho Labour Code to *quid pro quo* harassment. This suggests that in Lesotho, sexual harassment is prohibited insofar as it relates to situations where the employer, someone with authority, or a fellow employee tries to encourage a decision involving another employee or prospective employee for a sexual favour.

2. What are the different forms of workplace harassment recognised in Lesotho?

Form	Examples
Sexual harassment, of any nature in the work-place, whether through gestures, comments, overtures, overtones in speech or deeds.	<ul style="list-style-type: none"> • Inappropriate touching, criminal sexual assault, rape, strip search by or in the presence of the opposite sex. • Inappropriate statements made in the presence of one or others, unwelcome innuendos, suggestions and hints. • Sexual advances, sex related jokes or comments with sexual overtones; insult or unwelcome graphic comments about a person’s body or sexual body or sexual orientation. • Inappropriate enquiries about a person’s sex life or sexual orientation. • Whistling; sexual gestures; indecent exposure; and the display of sexually explicit pictures and objects; sexual favouritism – which exists when a person who is in a position of authority rewards only those who respond to his or her sexual advances, whilst other deserving employees who do not submit themselves to any sexual advances are denied those rewards whether in the form of promotions, merit, rating or salary increases.
Intimidation	<ul style="list-style-type: none"> • Any act that may intimidate another.
Inducement	<ul style="list-style-type: none"> • Any act that may have the effect of influencing another to make favourable decisions.



Lesotho

3. To whom does workplace harassment legislation apply? Are non-employees protected?

The following persons fall within the ambit of workplace harassment legislation in Lesotho:



Employees, including interns.



Employers.



Job seekers and job applicants.



All persons that have dealings with the employer e.g. the members of the public served by the employer and the employer's contractors.



Katse Dam | Lesotho

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

The harassment need not be during working hours or only at the workplace. Case law in Lesotho has confirmed that the employer still has a right to take disciplinary action for misconduct committed outside working hours and off the employer's premises, provided the employer can establish prejudice and as long as the employment relationship is affected.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

Single acts of harassment can also constitute harassment. Sections 5 and 63 of the Lesotho Labour Code provide that an employer may terminate a contract of employment either for a single occurrence of misconduct or after persistent cases of harassment. The defining factors are:

- the context of the harassment;
- the position of the perpetrator;

- the circumstance and position of the complainant/victim; and
- the severity of the complaint.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

The Lesotho Codes of Good Practice place the burden of reporting harassment on the victim (which could be the employee or a third party who has dealings with the employer) and in the case of employees, the trade union to which the employee is a member, can and should report the matter. The employer is, however, required to develop means or policies to protect victims of harassment.

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?



The law in Lesotho does not provide any time limits within which harassment may be reported, nor does it provide any adverse effects by late reporting.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
They have a right to an independent person outside the line of management for advice and counselling.	The right to be heard on the matter before any adverse decision is made.
The right to appeal to the Lesotho Directorate of Dispute Prevention and Resolution where they are not satisfied with the outcome of the internal resolution.	The right to be protected against prejudices and victimisation if an in-vestigation absolves the alleged perpetrator.
The right to choose between a formal or informal process to resolve the matter.	The right to a safe working environment.
The right to confidentiality during an investigation and the right to privacy.	
The right to protection from further harassment or victimisation while the investigation is ongoing, and post the investigation.	
The right to sue in the courts of law for other remedies.	
The right to a safe working environment.	
The right to dignity.	

9. What are an employer's obligations once harassment is reported?

As soon as the complaint is brought to the employer's attention, the employer is obliged to:

-  investigate the allegations of harassment;
-  designate a person outside the victim's line management for advice and counselling;
-  protect the victim;
-  provide the victim with support and assistance generally; and
-  enforce the rights above generally.

10. What is the process(es) that an employer must follow once harassment is reported?

The process an employer must follow once harassment is reported is not specifically regulated in Lesotho, however the Lesotho Codes of Good Practice state that the employer must:

- investigate the complaint as soon as possible;
- offer advice, assistance and counselling where reasonably practicable; and
- take disciplinary action where warranted, which disciplinary action should almost invariably lead to termination.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

The law in Lesotho is silent on anonymous reporting, but it is implied that anonymous complaints must be investigated as well.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Employers are mandated by the Lesotho Codes of Good Practice, the Lesotho Labour Code and other protocols and conventions to ensure that their environments are free of harassment and encourage their employees to engage in actions that deter harassment. Depending on the type and individual policies of each employer, they may be allowed to continue to discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process.

For instance, where an employee alleges that a person in authority, co-employee or recruiter sexually harassed them by looking or saying something that he or she was not comfortable with and both parties resolve the matter amicably in an informal manner the employer will be faced with no option but

to abandon the disciplinary action since the deed complained of has been resolved. However, where the alleged harassment is so serious that it has resulted in the personal injury of another person, the employer may be forced to continue with disciplinary action lest ignoring it may be interpreted by others as allowing people to resolve disputes using violence and set the wrong precedent.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

Although there is no available research data in Lesotho to aid in answering this, assessing the impact of remote working on workplace harassment, remote working is likely to have made a huge impact on harassment perpetuated through technology.

14. What can an employer do to combat workplace harassment in the remote working environment?

An employer may do the following:



Consistent education of employees regarding workplace harassment.



Information sharing with employees and other parties in the workplace.



Have a clear policy on what is prohibited and what is not, and how cases of harassment will be dealt with, etc.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

Section 61(1) of the Lesotho Codes of Good Practice obliges the employer to at least issue a policy statement spelling out that workplace harassment is unacceptable and cannot be tolerated, and endorsing the right to dignity. Section 55(3) of the Lesotho Labour Code encourages employers to develop a workplace policy on harassment; the handling of such matters; and how complaints can be raised and dealt with.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

It is important for an employer to continuously educate employees on the various forms of harassment and the likely penalties or consequences of infractions.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

Employment related law in Lesotho does not impute any penalties to an employer for failing to take reasonable steps to prevent harassment.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

An employee is allowed to approach the Lesotho Directorate of Dispute Prevention and Resolution for arbitration where they are not satisfied with the actions of the employer subsequent to an investigation and determination.

19. Does laws pertaining to data privacy impact an employers ability to investigate and prosecute claims of harassment? How so?

The common law right to privacy may impact an employer since without the employee's consent to share the details of the harassment to third parties, the employer may not be able to share the information with such parties as is necessary to investigate and prosecute.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

The Lesotho Codes of Good Practice provide that employers must ensure that a reasonable level of confidentiality is maintained in dealing with sensitive allegations such as sexual harassment. It is advisable that the employer obtains the employee's consent on the further use of the information and with whom the information can be shared.



Lesotho

Maletsunyane Falls | Lesotho

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

The employer is not prohibited from requiring job applicants and employees to disclose a history of workplace harassment and/or violence. But whether or not the employer can reject a job seeker or job applicant on the history of harassment and/or violence is not clear and in fact is novel or has not been raised and decided upon in Lesotho. Refusing a job applicant employment on the basis of a history of violence may amount to unfair discrimination.



Madagascar

Interesting Facts about Madagascar



Official languages
Malagasy and French



Capital
Antananarivo



Currency
Malagasy Ariary



Main exports
Graphite, chromite, shrimp, coffee, vanilla and sugar



Retirement age
60



Minimum working age
15 years old



Percentage of female participation in the workforce
49%



Average age of the population
20,3 years



Unemployment rate
2.1% in 2022



World heritage
The Royal Hill of Ambohimanga is 500 years old and hosts a whole ensemble of sacred places within a city and burial grounds



Population
28,92 million in 2021



Independence
On 26 June 1960 Madagascar became an independent country

JOHN W FFOOKS
& CO



Sitraka Rakotoarisoa
Partner

John W Fooks & Co

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List of relevant legislation

(including regulations, codes of good practice, etc.)

- Law No. 2003-044 on the Labour Code (Madagascan Labour Code)
- Law No. 2014-038 relating to the protection of personal data (Madagascan Personal Data Law)
- Criminal code and its amendments, with the last amendments made by Law No. 2004-051 dated 28 January 2005 (Madagascan Criminal Code)
- Code of criminal procedure (Ordinance No. 62-052 dated 20 September 1962) as amended, especially by Law No. 2016-017 (Madagascan Code of Criminal Procedure)
- Madagascan Code of Civil Procedure
- International Covenant on Civil and Political Rights, ratified by Madagascar on 21 June 1971



1. What is the definition of workplace harassment in Madagascar? What requirements must be fulfilled in order for conduct to constitute harassment?

The Madagascar Labour Code defines sexual harassment at work as any unwanted conduct of a sexual nature that interferes with work, affects employment or the normal development of a career, or creates an intimidating work environment.

In addition, the Madagascar Labour Code provides that an employer, its representative or any other person who abuses the authority conferred by their functions, relations or position in the company, gives instructions, makes threats, imposes constraints or exerts pressure of any kind on an employee with the aim of obtaining favours of a sexual or other nature for their own benefit or for the benefit of a third party, commits acts of sexual harassment.

In addition, the Madagascar Criminal Code does not provide a specific definition of workplace harassment but punishes (i) anyone who makes

the performance of a service or act within the scope of their function conditional on obtaining favours of a sexual nature or who demands favours of a similar nature from a person before obtaining, either for themselves or for another person, a job, a promotion, a reward, a decoration, an advantage of any kind or a favourable decision, and (ii) anyone who has used the threat of sanctions, effective sanctions or serious pressure to induce a person under their authority to grant them favours of a sexual nature or to take revenge on the person who has refused them such favours.

Based on the above, it seems that conduct/behaviour constitutes harassment when there is *inter alia*:

- An abuse on the physical or moral integrity of the employee.
- Abuse of the employer's position in order to obtain sexual advantages for the employee.
- Restriction of the employee's normal work routine.
- The presence of an unwanted intimidating work environment.

2. What are the different forms of workplace harassment recognised in Madagascar?

Form	Examples
Sexual harassment	Asking sexual favours from an employee in exchange for a promotion within the company.
Moral harassment	Denigration of an employee because of his/her origin, physical appearance or academic or professional background, or repeated criticism, public humiliation or vexation.
Physical harassment	Inappropriate touching of a sexual nature without the consent of the employee.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

According to the Madagascar Labour Code, the legal provisions for harassment at work apply to employees only. However, from a strict interpretation of the Madagascar Criminal Code, its provisions are applicable to any individual facing harassment. This would include:



Employees



Non-employees

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

The Madagascar Labour Code is silent on this point. However, we are of the view that sexual harassment can take place outside the employer's premises and/or working hours. Therefore, employers can take disciplinary action if the harassment is carried out outside the workplace or working hours.



Madagascar

Craft stall | Antananarivo | Madagascar

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

The Madagascan Labour Code does not stipulate whether the conduct should be ongoing or continuous to constitute harassment. From a strict interpretation of the law, a single incident can constitute harassment.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

The Madagascan Labour Code does not specifically provide guidance in relation to this point. However, we are of the view that the victims are the primary individuals who have the right to report any harassment at work. Notwithstanding this, staff representatives, if any, and any person aware of harassment could

also report harassment at work. This circumstance may occur, for example, when the employee is afraid for their job or feels ashamed to have been a victim of moral, sexual or physical harassment.

7. When must harassment be reported? Does a delay in reporting harassment affect whether disciplinary action may be taken?

The Madagascan Labour Code is silent on this point. It seems that there is no specific timeline within which harassment must be reported. This means that it can be reported immediately after the occurrence of the harassment, or later. A delay in reporting should not affect the application of disciplinary action.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
The right to report harassment.	The right to defend themselves against allegations of harassment.
The right to summon witnesses.	The right to participate in an internal investigation and interview.
The right to request the labour inspector to settle disputes before bringing the case before the relevant court.	The right to have a legal representative, such as lawyer.
The right to participate in an internal investigation and interview.	
The right to have a legal representative.	
The right to compensation in case of unfair termination of the employment contract due to sexual harassment as pronounced by the relevant court.	
The right to bring the case before the relevant court.	

9. What are an employer's obligations once harassment is reported?

The Madagascar Labour Code is silent on this point. However, in practice, the employer can take disciplinary measures against the alleged perpetrator once harassment is reported.

10. What is the process(es) that an employer must follow once harassment is reported?

The Madagascar Labour Code is silent on this point. However, the following steps can be followed by employers once harassment is reported:

- Informing the victim(s) and the alleged perpetrator(s) of the process to be followed.
- Informing the parties (i.e the victim(s) and the alleged perpetrator(s) of their rights to be assisted by any person of their choice inside or outside of the office).
- Invite the parties to hold a meeting at which they can make representations.
- Interviewing the victim(s) and the alleged perpetrator(s) separately or together, as appropriate.
- Proceeding to an internal investigation, including interviewing witnesses, if any.

The employer may also bring a report and denounce the case of harassment directly to a judicial police officer.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

The Madagascar Labour Code does not establish an obligation for an employer to investigate a claim of harassment that is made anonymously. In practice, it would be difficult to investigate a claim of harassment made anonymously as this kind of act may have an impact on a company's reputation or it may take time to investigate the truthfulness of the existence of the alleged harassment.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

The Madagascar Labour Code is silent on this point. However, we are of the view that an employer may pursue a formal process against an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

We are not aware of similar cases where remote working has impacted an employer's ability to mitigate the risk of workplace harassment. Employees may still face harassment through technology; harassment may occur even if the conduct is made through email, short message or a call, for example. To the extent that the conduct has an impact on the working environment of employees or their career and falls within the definition of harassment, then the conduct may constitute harassment. In all cases remote working does not eliminate any risk of harassment.

14. What can an employer do to combat workplace harassment in the remote working environment?

The Madagascar Labour Code is silent on this point. However, the following measures can be taken to combat workplace harassment in the case of remote working:



Inserting provisions regarding harassment in the internal regulations of the employer.



Informing staff about the sanctions and process available to them in case of harassment at work, whether remote or otherwise.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

The Madagascar Labour Code does not include a requirement to have a harassment policy. However, an employer is not prohibited from implementing such a policy.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

The Madagascar Labour Code does not specifically provide for measures that can be implemented in order to mitigate the risk of harassment. However, if harassment is considered to be gross misconduct, an employer may immediately institute a disciplinary sanction against an employee who has been proven to be in fault or accused of harassment.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

The law is silent regarding the liability and/or sanctions that an employer may face in the event they fail to take reasonable steps to prevent harassment in the workplace.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

The Madagascar Labour Code provides that all ill-treatment or violence affecting the physical or moral integrity in all labour relations are sanctioned by the Madagascar Criminal Code. Therefore, a victim of harassment at work, if not satisfied with the employer's actions, can bring the case before the relevant court.

19. Does laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment? How so?

The Madagascar Personal Data Law does not impact an employer's ability to investigate and prosecute claims of harassment. However, personal data is confidential and protected under the Madagascar Personal Data Law. In this regard, during the investigation of harassment complaints, the employer must respect the parties' personal

data. All information discovered should be kept confidential to protect the privacy of the individuals concerned. However, the employer's ability to ensure that the information remains confidential may be limited in case a judicial procedure or criminal investigation is opened in respect of harassment.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

The employer must respect the protection of personal data and the right to privacy of its employees. Therefore, the employer should keep confidential all information shared or discovered unless authorised by the concerned individuals and in case requested by relevant public authority in charge of harassment investigation in case of criminal prosecution.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

The Madagascar Labour Code is silent on this point. This means that an employer could request a job applicant to disclose any history of harassment or violence. However, information provided should not have an impact on the hiring of the applicant i.e. it should not be a ground of refusal of the job.



Madagascar



Isalo National Park | Madagascar



Mauritius

Interesting Facts about Mauritius



Official languages

English, French and Creole



Capital

Port Louis



Currency

Mauritian Rupee



Main exports

Sugar and clothing



Retirement age

65



Minimum working age

16 years



Percentage of female participation in the workforce

39,88% in 2022



Average age of the population

36,30 years in 2021



Unemployment rate

7,37% in 2023



Population

1,266 million in 2021



Public transport

Free for students, people with disabilities and senior citizens



Independence

Mauritius became independent on 12 March 1968

JOHN W FFOOKS
& CO



Preeti Gokulsing
Partner

John W Ffooks & Co

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List of relevant legislation

(including regulations, codes of good practice, etc.)

- Section 114 of the Workers' Rights Act, 2019 (WRA)
- Equal Opportunities Act, 2008 (Equal Opportunities Act)
- Equal Opportunities Commission Guidelines for Employers
- Employment Relations Act, 2008 (Mauritian ERA)



1. What is the definition of workplace harassment in Mauritius? What requirements must be fulfilled in order for conduct to constitute harassment?

The WRA defines harassment as any unwanted conduct towards an employee, whether verbal, non-verbal, visual, psychological or physical, based on age, impairment, HIV status, domestic circumstances, sex, sexual orientation, gender, race, colour, language, religion, political, trade union or other opinion or belief, national or social origin, association with a minority, birth or other status, which occurs in circumstances where a reasonable person would consider the conduct to be harassment of the employee. For conduct to constitute harassment, it must be an act which a reasonable person would regard as unwanted behaviour.

2. What are the different forms of workplace harassment recognised in Mauritius?

Form	Examples
Racial harassment	Insulting or degrading comments about an employee's caste.
Gender harassment	A male nurse facing harassment for having what is perceived to be a woman's job. A female employee being taunted for a promotion because she is not "leader material".
Colour	Offensive or derogatory remarks about a person's colour.
Ethnicity and place of origin	Offensive or derogatory remarks about a person's national origin, accent or ethnicity.
Religious harassment	Intolerance toward religious holidays. Degrading stereotypical comments.
Ability based harassment	Harassment directed towards individuals who either: live with a disability (physical or mental) themselves; or are acquainted with a person with a disability.
Impairment	A handicap that a person may have and could be (i) physical, that is, total or partial loss of a bodily function, total or partial loss of a part of the body, malfunction of a part of the body, malformation or disfigurement of a part of the body, (ii) a mental or psychological disorder or disease, or (iii) the presence in the body of organisms that may cause disease (for example, HIV).
Physical harassment	Direct threats of intent to inflict harm. Physical attacks. Threatening behaviours. Destroying property to intimidate.
Political opinion	Asking a candidate at a job interview if they are a member of a political party, and saying the company will not hire anyone who does not share the employer's beliefs.
Psychological harassment	Isolating or excluding an employee or denying an employee's presence. Belittling or trivializing a worker's thoughts or ideas. Discrediting or spreading rumours about an employee.
Marital status	Asking a job applicant or employee whether they are single, civilly or religiously married, married but living separately from their spouse, divorced, widowed or a single parent.
Sexual orientation	Asking a candidate at a job interview if they are part of the LGBTQ+ community, and saying the company will not hire someone because they form part of that community.

3. To whom does workplace harassment legislation apply? Are non-employees protected?



The WRA applies to all employees without exception when it comes to harassment in the workplace.

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

No. The harassment does not need to only take place on an employer's premises or during working hours for the employer to take disciplinary action, provided that the harassment could affect the employment relationship.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

No. The conduct need not be continuous or ongoing to constitute harassment. A single incident can constitute harassment.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

No. The reporting of harassment is not limited to victims of harassment. Any person may report workplace harassment. Additionally, any person who feels that any of their rights under the Equal Opportunities Act has been infringed may lodge a written complaint with the Equal Opportunities Commission.

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

Harassment must be reported as soon as possible. However, a delay in reporting harassment does not affect whether disciplinary action may be taken.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
To be protected against dismissal for causes related to the harassment until an investigation has been carried out or the matter has been referred to a disciplinary committee.	Until an investigation has been completed or the matter has been presented to a disciplinary body, the alleged perpetrators shall not be subject to discharge for reasons relating to the harassment.

9. What are an employer's obligations once harassment is reported?

An employer must enquire into any case of alleged harassment at work and take appropriate action to protect the rights of the employee not later than 15 days after the case is reported to it or it becomes aware of the case. The employer is also responsible for protecting the employee from additional harassment and protecting the employee from retaliation for having complained.

10. What is the process(es) that an employer must follow once harassment is reported?

An employer must:

- protect the confidentiality of all parties;
- ensure those involved are safe; and
- investigate the complaint.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

An employer has an obligation to investigate a claim of harassment whether made anonymously or not.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

The law does not prevent an employer from initiating disciplinary proceedings against an alleged perpetrator, notwithstanding the victim not wanting to pursue a formal process. However, there may be issues in formulating a charge against an alleged perpetrator if the employer does not have any concrete evidence against the perpetrator.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

No. Remote working has not impacted employers' ability to mitigate the risk of workplace harassment as harassment may still occur online, e.g. bullying an employee on a video call.

14. What can an employer do to combat workplace harassment in the remote working environment?

An employer can do the following:



Ensure that employees are aware of any and all harassment reporting methods they have at their disposal.



Set up hotlines and anonymous reporting channels so employees feel comfortable calling out remote workplace harassment without fear of retaliation.



Regularly check in on the employees to ensure they are not victims of harassment.



Mauritius



Mauritius



Mauritius

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

No. An employer is not legally required to have a harassment policy but it is highly recommended. The harassment policy must:

- explain the prohibited conduct thoroughly;
- take online/remote harassment into consideration;
- contain a section on investigation; and
- ensure confidentiality and protection from reprisal.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

An employer may consider implementing the following measures:

- informing employees that harassment is prohibited;

- identifying and establishing who employees should contact to discuss harassment questions or concerns;
- assuring employees that they will not be punished for asking or sharing concerns;
- responding to harassment questions or concerns and investigating harassment complaints promptly and effectively; and
- ensuring that managers understand their responsibility to stop, address and prevent harassment.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

In terms of section 114 of the WRA, an employer may be liable as follows:

- a fine not exceeding MUR 100,000; and
- imprisonment for a term not exceeding five years.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

A victim could lodge a complaint with:



The Ministry of Labour.



The Equal Opportunities Commission, an independent statutory body set up under the Equal Opportunities Act, promoting anti-discrimination and equal opportunity principles and policies throughout Mauritius.

19. Do laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment? How so?

Yes. Laws on data privacy impact an employer's ability to investigate and prosecute claims of harassment. Employers need to ensure that personal data of employees is safeguarded and used in accordance with the Mauritian DPA.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

In Mauritius, everyone has the right to the protection of their private life, of which personal data forms an integral part. The Mauritian DPA governs the rights of individuals to privacy and the requirements for the collection, processing, storage, transfer and handling of personal information/sensitive personal information. An employer must respect an employee's right to privacy when conducting internal investigations in response to a claim or allegation of harassment.

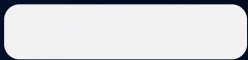
However, at the same time, it is necessary and important for the employer to obtain all of the relevant factual information. In most instances, the investigation must be conducted promptly and thoroughly.

When conducting internal investigations, the following principles must be abided by:

- Obtain consent from the individuals involved.
- Identify other legal bases for processing personal data. In situations where the employee's consent is not forthcoming, employers should consider whether there are other legal grounds for processing personal data.
- Ensure the security of the data.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

There is no restriction in law preventing an employer from requesting job applicants to disclose any history of harassment or violence. A job applicant's history of harassment may be a ground to refuse employment.



Morocco

Interesting Facts about Morocco



Official language
Arabic and Amazigh



Capital
Rabat



Currency
Moroccan Dirham



Main exports
Agricultural produce (fruits and vegetables) and semiprocessed goods



Retirement age
65 for public sector, 60 for private sector



Minimum working age
15 years old



Percentage of female participation in the workforce
20% in 2022



Public transport
Individual and collective taxis, bus, tramway



Unemployment rate
12,90% in Mar 2023



Population
37,08 million in 2021



Average age of the population
29,5 years



Independence
18 November 1965



Salima Bakouchi
Partner

HB Law Firm

HB Law Firm has a significant experience in business Law in the Moroccan market, the firm has conducted many transactions of privatization, restructuring, mergers & acquisitions, joint ventures, due diligence and IPO and has led several restructuring projects, transfer of undertakings and industrial units, and participated in the establishment of several national and international projects and contracts.

The Firm has also significant experience in human resources issues relating to restructuring and employment, commercial litigation & disputes resolution, as well as in the implementation and monitoring of court proceedings and pleadings in commercial courts.

HB Law Firm represents and assists local and foreign clients consisting mostly of international groups, banks, finance institutions, investment funds as well as corporations, in various business sectors including Energy, Oil & Gas, Insurance, manufacturing, Real Estate, tourism, Retail, tobacco and IT sectors ...etc.

The Firm participated in institutional missions related to business law with the National Committee for the Business Environment (CNEA).

The Firm is recognized in the business world, and ranked in the prestigious guide Legal 500 EMEA, IFLR and les décideurs.

Contact: contact@hblaw.ma

List of relevant legislation

(including regulations, codes of good practice, etc.)

- Dahir No. 1-03-194 of 11 September 2003 promulgating Law No. 65-99 relating to the **Moroccan Labour Code**
- Dahir No. 1-59-413 of 26 November 1962 approving the text of the **Moroccan Criminal Code**



1. What is the definition of workplace harassment in Morocco? What requirements must be fulfilled in order for conduct to constitute harassment?

There is no legal definition of workplace harassment either in the Moroccan Labour Code or the Moroccan Criminal Code.

According to Article 40 of the Moroccan Labour Code:

"The following are considered serious misconducts committed by the employer, the head of the company or the establishment against the employee:

- *serious insult;*
- *the practice of any form of violence or aggression directed against the employee;*
- *sexual harassment;*
- *incitement to debauchery.*

Is assimilated to unfair dismissal, the fact for the employee to leave his job due to one of the faults listed in this article, when it is established that the employer committed one of these faults."

We consider that workplace harassment can be defined as any breach of the employee's contractual obligations.

It should be noted, with regards to sexual harassment, it is a criminal offence according to Article 503-1 of the Moroccan Criminal Code, which states that a person can be imprisoned for one to three years and fined MAD 5,000 to 50,000 for *"abusing the authority which confers on him his functions, harasses others by using orders, threats, constraints or any other means, with the aim of obtaining favours of a sexual nature"*.

Insults and any form of violence constitutes a criminal offence. In terms of Article 442 of the Moroccan Criminal Code, *"Any allegation or imputation of a fact which undermines the honour or consideration of the persons or of the body to which the fact is imputed, is defamation."*

2. What are the different forms of workplace harassment recognised in Morocco?

Form	Examples
Sexual harassment.	Verbal and physical threats, insults, and denigration, inappropriate and/or obscene language and inappropriate gestures, intended to obtain sexual favours. Incitement to debauchery.
Verbal bullying.	Verbal threats, insults, denigration.
Any form of violence or aggression directed against the employee.	

3. To whom does workplace harassment legislation apply? Are non-employees protected?

Workplace harassment legislation applies to every person bound by an employment contract, regardless of the terms and conditions of the contract, the nature of the remuneration and the method of payment provided for in the contract, or the nature of the company with which the contract is held.

Non-employees are protected, particularly concerning sexual harassment. The Moroccan legislature has expressly defined the condition in terms of the qualification of a sexual harassment. In this regard, Article 503-1-1 of the Moroccan Criminal Code provides that: *"Is guilty of sexual harassment and is punished by an imprisonment of one month to six months and a fine of MAD 2,000 to 10,000 or one of these two penalties, whoever persists in harassing another person in the following cases:*



in public or other places, by acts, words, gestures of a sexual nature or for a sexual purpose; or



by written, telephone or electronic messages, recordings or images of a sexual nature or for sexual purposes.

The penalty is doubled if the perpetrator is a work colleague or a person in charge of maintaining order and security in public or other spaces."

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

Moroccan legislation does not provide any conditions related to where/when harassment must take place for the employer to take disciplinary action. Nevertheless, in order for an employer to take disciplinary measures, we believe that the harassment must have taken place at the work premises, during working hours, and/or between colleagues working within the same company, regardless of the place. In general, wherever and whenever the employees perform their work.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

Moroccan law has not specified whether workplace harassment should be continuous; the conduct is generally assessed by the court which has the discretionary power to evaluate such behaviour. Generally, the assessment, in particular regarding moral harassment, will be based on continuous acts.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

In principle only the victim of harassment can report workplace harassment, but it could be reported by other employees or a manager. Legal action in the labour context can only be initiated by the victim of the harassment. On the other hand, regarding sexual harassment, owing to the fact that it is a criminal offense, it could be reported to the relevant authorities by employees, managers or anyone.

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

Generally, Moroccan law does not set a limited deadline for reporting or bringing a lawsuit for harassment. We believe that harassment must be reported as soon as it constitutes an offence to an employee's dignity or compromises the employee's professional career. Having said that, once harassment has been reported and if the harassment is committed

by an employee who will be subject to a disciplinary sanction, and the sanction to be taken will be the dismissal of specific disciplinary sanctions (third- or fourth-degree sanction), a particular procedure should be held. A hearing must be held within eight days from the date of the discovery of the harassment, and the disciplinary sanction of dismissal must be communicated to the employee within 48 hours of the hearing.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
The right to a safe, healthy and dignified working environment.	The right to be heard during a hearing and to defend themselves regarding the alleged facts.
The right to have their claim of harassment dealt with in an expeditious and confidential manner.	The right to privacy.
The right to protection from further harassment while a claim of harassment is being investigated.	
The right to initiate legal action within the relevant court whether for a modification of the substantial terms of the employment contract, or when it concerns a sexual harassment.	

9. What are an employer's obligations once harassment is reported?

Firstly, it should be noted that Article 24 of the Moroccan Labour Code provides that the employer is required to take all necessary measures to preserve the safety, health and dignity of employees in the performance of the tasks they perform under their direction and to ensure the maintenance of the rules of good conduct, good morals and good character in its company. Once harassment is reported, the employer must take all the necessary measures to stop and sanction all forms of harassment that have taken place within the workplace and to file the requested legal actions in particular in the case of sexual harassment, insult, aggression etc. which are considered criminal offenses.

10. What is the process(es) that an employer must follow once harassment is reported?

There is no specific process provided in the Moroccan Labour Code or the Moroccan Criminal Code. In principle, the process will be managed

by the employer and the victim of harassment, depending on the type of the harassment and the procedure to be taken. In practice, once the harassment is reported, the employer should investigate the harassment and fulfil the requirements provided for by law in order to take disciplinary sanctions against the employee. A failure to do so will render the employer liable according to the Moroccan Labour Code or the Moroccan Criminal Code, if the harassment is a criminal offence.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

This is not provided for in the Moroccan Labour Code or the Moroccan Criminal Code, but in order to avoid any liability, in the case of anonymous reports the employer should investigate the claim to confirm if it is serious.



Morocco

Rif Mountains | Morocco



Morocco



Rabat | Morocco

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Disciplining an alleged perpetrator, regardless of whether a formal process is pursued by the victim, will be at the discretion of the employer.

In this regard, Article 24 of the Moroccan Labour Code provides that the employer is required to take all necessary measures to preserve the safety, health and dignity of employees in the performance of the tasks they perform under its direction, and to ensure the maintenance of good conduct, good morals and good character in the company. The employer is required to take the required disciplinary measures against an alleged perpetrator to avoid liability in terms of Article 41 of Moroccan Labour Code.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

We assume that remote working can impact employers' ability to mitigate the risk of workplace harassment, but the risk of harassment remains whether work is done remotely or face to face. Having said that, we have no studies on the subject to provide the exact consequences of remote working in terms of mitigating the risk of workplace harassment remotely.

14. What can an employer do to combat workplace harassment in the remote working environment?

Currently, the business requirements, as well as the facilities brought by technological advancement, promote the decentralization of the workplace and several companies have converted to remote work. In order to ensure the same working conditions both at the premises of the company and remotely, we believe that it would be advisable for all employers to adopt an internal regulation or

policy, duly communicated to every employee, that outlines the conduct that needs to be abstained from and the appropriate sanctions that apply, if any.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

Moroccan law requires employers with more than 10 employees to set up internal regulations that must be approved by the government authority in charge of labour. In this regard, Article 138 of the Moroccan Labour Code states that:

"Any employer usually employing at least 10 employees is required, within two years of the opening of the enterprise or establishment, to draw up, after having communicated it to the employees' delegates and to the trade union representatives in the enterprise, if any, internal regulations and to submit them to the governmental authority in charge of labour for approval. Any amendment to the internal regulations is subject to the consultation and approval formalities provided for in the preceding paragraph."

Thus, the internal regulations are subject to the employer's discretion, taking into account the nature of the activity, and may include a harassment policy that must contain strict guidelines, including, among others, that:



Working on the company's premises or remotely will have no impact, and that the employer will not allow any behaviour or abuse, beyond what is prohibited on the company's premises (i.e. moral/sexual harassment, acts of violence, discrimination, etc.)



Working remotely, regardless of the place, will be considered exactly as working at the employer's premises.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

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 communication to employees regarding the prohibition of all forms of harassment and include signage and posters in their workplaces regarding the nature and reporting of harassment. Employers must also make it clear to all contractors, suppliers and any external personnel with whom the business interacts, that harassment will not be tolerated at its workplace.



Morocco

Famous Blue City | Chefchaouen | Morocco

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

According to Article 25 of the Moroccan Labour Code, an employer can be:

"punished by a fine of MAD 2,000 to 5,000, [for] failure to communicate to employees during their hiring of the provisions provided for in Article 24 above as well as the modifications made to them. The fine incurred for violation of the provisions of Article 24 is doubled, in the event of a repeat offence, if a similar act has been committed during the course of the year following that in which a final judgment was pronounced."

In terms of Article 24 of the Moroccan Labour Code, an employer is required to take all necessary measures to preserve the safety, health and dignity of employees in the performance of the tasks they perform under its direction and to ensure the maintenance of the rules of good conduct, good morals and good character in the company.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

If an employee who is a victim of workplace harassment is not satisfied with the steps taken by the employer, they are entitled to file legal action with the competent court in order to obtain the applicable damages either against the employer and/or the alleged perpetrator. The employer could be considered liable for the harassment as set out in Article 40 of the Moroccan Labour Code.

19. Does laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment? How so?

Yes. Data privacy laws can impact an employer's ability to investigate and prosecute harassment. Employers are required to comply with data privacy laws when collecting, storing, using, and disclosing employee information, including harassment complaints.

Under data protection laws in Morocco, employers are required to protect employees' personal data and use it only for the specific purposes for which it was collected. This may limit an employer's ability to investigate allegations of harassment and prosecute complaints. In this regard, Article 5 of Law No. 09-08 on the protection of individuals regarding the processing of personal data states that:

"Any person directly approached, for the purpose of collecting their personal data, must be informed beforehand in an express, precise, and unequivocal manner by the data controller or its representative, unless they have already been informed, of the following:

- a) the identity of the data controller and, where applicable, of his representative;*
- b) the purposes of the processing for which the data are intended; and*
- c) any additional information ..."*

For example, if an employer collects information about a harassment complaint, it must ensure that the information is kept secure and disclosed only to those involved in the investigation, or who need to know the information to make decisions related to the investigation.

In addition, employers must respect the privacy rights of employees and avoid collecting excessive or unnecessary data that could be considered an invasion of privacy. Overall, data privacy laws are intended to protect employees' personal data and ensure that it is not used for inappropriate or illegal purposes.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

Ensuring compliance with data protection and the right to privacy while effectively investigating claims of harassment is crucial for maintaining a respectful and legally ground workplace. The employer, as a data controller, must collect the personal data in compliance with the provisions of the law no.

09-08 on the protection of individuals regarding the processing of personal data, to do so, we assume that every employer brought to this situation, shall, regarding the personal data, obtain consent from individuals involved in the investigation (unless the consent to process the personal data is previously obtained), collect only the necessary information for the investigation and avoid collecting excessive or irrelevant data that is unrelated to the claim.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

The Moroccan Labour Code did not expressly provide for such possibility for the employer to request job applicants to disclose any history of harassment or violence. However, it should be noted that, although the Moroccan Labor Code does not explicitly state whether employers should ask for a history of violence or harassment, it is important to note that, in certain situations, employers may be inclined to require such information from job applicants through an anthropometric form or

a criminal record. Such requirements are often justified by the nature of the position to be filled, particularly when the safety of employees or third parties is involved. In such cases, these requirements are generally aimed at ensuring the safety and well-being of all members of the company, while respecting data protection laws and individual rights to privacy. A history of harassment cannot in any case be a permissible ground to refuse employment. In this regard, under the terms of the Moroccan Labor Code, any discrimination against employees on the basis of race, colour, sex, disability, marital status, religion, political opinion, union affiliation, national origin or social origin is prohibited, having the effect of violating or impairing the principle of equal opportunity or equal treatment in employment or occupation, including, but not limited to, hiring, conduct and distribution of work, vocational training, wages, promotion, granting of benefits, disciplinary action, and termination of employment. Here also, we assume that it is necessary to recall that, some information, as harassment precedents, might be informally required by the employers under the cover of ensuring the safety and well-being of all members of the company.



Mozambique



Interesting Facts about Mozambique



Official language
Portuguese



Capital
Maputo



Currency
Mozambique
Metical (MZM)



Main exports
Aluminum, electric
energy, tobacco, natural
gas, sugar and prawns



Retirement age
Age 60 (men)
or age 55 (women)



**Minimum
working age**
15 years old



**Percentage of female
participation in
the workforce**
52% of women
are employed



Public transport
Free for students,
people with
disabilities and
senior citizens



Unemployment rate
Expected to reach
26,80% by the end
of 2023



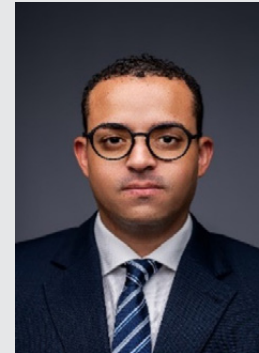
Population
32,08 million
in 2021



**Average age of
the population**
17 years



Independence
25 June 1975
(from Portugal)



Álvaro Duarte
Partner

Avillez, Bacar, Duarte & Centeio Sociedade de Advogados, Lda (ABCC)

ABCC is a Mozambican law firm, well placed in the Mozambican Market.

ABCC was established in April 2009 as a result of the union of a team of lawyers highly reputed, with more than 20 years of experience in strategic areas of advocacy, providing efficient legal and dynamic, customer-oriented solutions. ABCC combines the expertise with a business perspective and a dynamic and constructive approach that adds value to the business of its customers.

Contact: aduarte@abcc.co.mz

List of relevant legislation

(including regulations, codes of good practice, etc.)

- Constitution of the Republic of Mozambique (articles 35 and 85)
- Law No. 23/2007 of 1 August (articles 5, 6, 54, 65, 66 and 67) (Mozambican Labour Law)
- Law No. 47344 (article 80) (Civil Code)
- Law no. 24/2019 of 24 December (article 205) (Mozambican Penal Code)



1. What is the definition of workplace harassment in Mozambique? What requirements must be fulfilled in order for conduct to constitute harassment?

Mozambican Labour Law does not define harassment in the workplace, it only establishes that harassment, including sexual harassment that occurs at the workplace or that interferes with job stability or with the career progression of the offended employee is a disciplinary infraction. Further, pursuant to the Mozambican Penal Code, sexual harassment is defined as the act of coercing someone with the objective of obtaining sexual advantage or favour by using the authority that comes from being in a position of power (e.g. a hierarchical superior).

2. What are the different forms of workplace harassment recognised in Mozambique?

Form	Examples
Harassment in general	Any behavior that interferes with job stability and career progression.
Sexual Harassment	Unwelcome jokes or comments, caresses or requests for sexual favours, intimidation or threats, reprisals or refusal of promotion, dismissal or other injustices resulting from a refusal of sexual favours.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

The following persons are protected against workplace harassment:



Employees



Employer



Interns

The Mozambican Labour Law is only applicable to employers and its employees, non-employees are not covered within the ambit of the Mozambican Labour Law. Although not considered a disciplinary infraction, harassment against non-employees is governed by the Mozambican Penal code as harassment is also a crime.

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

No. As per the Mozambican Labour Law, harassment that interferes with the job stability or career progression of the victim, regardless of where or when it took place, is a disciplinary infraction subject to disciplinary action.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

As the law in Mozambique is silent in this regard, it is understood that a single instance is sufficient to constitute harassment.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

Employees, third parties and all persons having dealings with an employer who witness harassment may report harassment. The reporting of harassment is not limited to the victims of harassment.

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

Harassment must be reported within six months after its occurrence, as the disciplinary infraction lapses six months from its occurrence. In addition, once the harassment is reported, a disciplinary process must be initiated with 30 days from the date of the report.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

The law does not provide specific rights regarding harassment, the following general rights apply:

Victims	Alleged Perpetrators
The right to a safe and respectful working environment.	The right to a safe and respectful working environment.
The right to be treated with respect, and to have the acts that violate their honor, good name, dignity or image, punished.	The right to be heard and to be given an opportunity to respond to the claim of harassment.
The right to privacy and the right to have their personal information processed and stored in compliance with legislation.	The right to privacy and the right to have their personal information processed and stored in compliance with legislation.

9. What are an employer's obligations once harassment is reported?

An employer has no obligations *per se*, however, according to the law, harassment is a disciplinary infraction and it is the employer's duty to provide a safe work environment for its employees. That being said, it is expected that an employer should initiate a disciplinary process followed by the application of a disciplinary sanction (if the claim is proved). It should be noted that if the employer feels that there is insufficient information or evidence to initiate a disciplinary process, a prior investigation may be carried out, provided that it does not last more than 90 days from the date the employer received the claim.

10. What is the process(es) that an employer must follow once harassment is reported?

The law does not provide a specific process for harassment claims. Considering that as per the law harassment is a disciplinary infraction, the disciplinary process to follow is the same one that is applicable for other disciplinary infractions. The disciplinary process consists of:

- **Claim:** within 30 days after an employer becomes aware of the harassment, the employer must notify the perpetrator of the allegations together with a notice, a copy of which must also be sent to the trade union.
- **Defense:** within 15 days after receipt of the accusation notice, the perpetrator may respond to the same. At the end of this deadline, a copy of the response must be submitted to the trade union for the issuance of an opinion within five days.
- **Decision:** within 30 days after the deadline for the issuance of the opinion by the trade union, the employer must decide on the disciplinary sanction to be applied to the perpetrator.

It should be noted that if the employer feels that there is insufficient information or evidence to initiate a disciplinary process, a prior investigation may be carried out, provided that it does not last more than 90 days from the date the employer received the claim.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

Not necessarily. However, if a claim is made and the employer takes no action, the victim may terminate their employment. It should be noted that because harassment is a disciplinary infraction according to the law, the termination would be with just cause and the employee would be entitled to compensation corresponding to 20 days' minimum wages applicable for the sector of activity.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Yes, because pursuant to the Mozambican Labour Law, harassment is a disciplinary infraction. On the other hand, the start of a disciplinary process followed by the application of a disciplinary sanction aims to dissuade the commitment of similar infractions. It is important that employers create a work environment with zero tolerance for harassment of any type.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

Yes. Technology has not only enabled remote work but has also introduced new forms of harassment, including cyber-bullying and online harassment.

Remote working breaks down some of the barriers that exist in the physical workspace, characterised by the absence of witnesses or authorities and the feeling of impunity.



Mozambique

Quirimbas Archipilago | Mozambique



Mozambique

River Delta | Mozambique



14. What can an employer do to combat workplace harassment in the remote working environment?

To combat harassment during remote working, an employer can:



Develop clear policies on what is appropriate or not appropriate in the work environment – including where employees work remotely.



Conduct training programmes about harassment.



Open a reporting channel through which claims of harassment can be made.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

There is no legal requirement for employers to have harassment policies. However, considering that the law is not clear on what conduct constitutes harassment, it is advisable that an employer has a detailed policy on harassment.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

An employer may provide training/lectures on harassment, types of harassment, signs that may constitute harassment and how to act towards a harasser and ways of reporting it. It is important that all employees are aware of what they can and cannot do in the workplace and the consequences if they commit harassment. The employer can also open a channel for reporting harassment so that other people who

have gone through the same situation and have not had the courage to report it, can speak out. Further, during the disciplinary process, in order to provide a safe environment to the victim, as well as comfort, the employer can always suspend the perpetrator, provided that it does so upon notification in the accusation notice to the perpetrator.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

The law has nothing to say about the liability of the employer in case of failure to take reasonable measures to prevent harassment in the workplace.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

If a victim of workplace harassment is unsatisfied with the employer's actions, they can always terminate the employment contract as the Mozambican Labour Law considers sexual harassment just cause.

19. Do laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment? How so?

Mozambique does not have specific legislation on data privacy, with only a few articles in scattered legislation dealing with the subject, determining some rules on how personal data should be shared, and under what circumstances such data should be shared. If an employer needs to share employees' personal data to investigate a complaint of harassment, the employer must limit itself to sharing data that is strictly necessary and if disclosure of certain information would violate the employees' right to privacy, the consent of the employees must be sought.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

Employers must ensure that the rights to privacy and non-disclosure of personal information to unauthorised persons are protected.

An employer must also ensure that any confidential, sensitive, private or personal information is kept secure, if there is a need to share information obtained on a confidential basis and the disclosure of which would violate the employee's privacy, the employer must obtain the employee's consent. Information necessary for the investigation of the harassment should be shared with others only to the extent necessary to investigate the report of the harassment.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

Pursuant to the Mozambican Labour Law, an employer cannot request employees or job applicants to provide information regarding their private lives, except if the requested information is crucial to the activities to be performed or if its disclosure is required by law or practice in the sector of activity in question. It should be noted that the request for information by the employee must be made in writing and duly justified.



Namibia

Interesting Facts about Namibia



Official language

Oshiwambo and English



Capital

Windhoek



Currency

Namibian Dollar



Main exports

Copper, diamonds, gemstones, granite, lead products, marble, uranium and zinc



Retirement age

60 years



Minimum working age

No child under age 14 is allowed to be employed in any way



Percentage of female participation in the workforce

55,6% in 2022



Average age of the population

21,4 years



Unemployment rate

20,85% in 2022



Population

2,53 million in 2021



Public transport

City buses are not available, but getting around town is easy with minibus taxis



Independence

21 March 1990



Mark Kutzner
Managing Partner

Engling, Stritter and Partners

Engling, Stritter and Partners (ESP) has deep rooted experience in the form of sector specialists who can be assigned to any legal matter and we come armed with the insights and capability to provide you with innovative solutions for your most complex legal issues.

ESP is a leading Namibian corporate and commercial law firm serving government, multinationals, financial institutions and entrepreneurs.

With a formidable track record in corporate, commercial law, banking and finance, conveyancing, commercial litigation and dispute resolution, we are distinguished by the people, clients and work that we attract and retain.

Our powerful team consists of independent-minded individuals who share a common service ethos. Our success is built on a solid foundation of insightful and innovative deal structuring and legal advice.

Contact: mkutzner@englinglaw.com.na

List of relevant legislation

(including regulations, codes of good practice, etc.)

- Constitution of the Republic of Namibia (“Namibian Constitution”)
- Labour Act 11 of 2007 (“Namibian Labour Act”);
- Rules Relating to the Conduct of Conciliation and Arbitration before the Labor Commissioner
- Elimination of Violence and Harassment in the World of Work Convention 190 (“International Convention”)
- Common law
- Case law



1. What is the definition of workplace harassment in Namibia? What requirements must be fulfilled in order for conduct to constitute harassment?

The Namibian Constitution in Article 21(1)(j) states that *"All persons shall have the right to practice any profession, or carry on any occupation, trade or business"*. This Article denotes the first Constitutional right given to the employee against unfair labor practices such as unfair dismissal, freedom from harassment or any other situation in the workplace which will hinder the employee's enjoyment of said rights.

The Namibian Constitution also includes the right to dignity in Article 8 and the right to equality and freedom from discrimination in Article 10. The right to dignity is a residual human right and its effect is that where violence and harassment is perpetrated against a person in the workplace, it ultimately injures

their dignity. Furthermore, Article 5 of the Constitution states that *"the fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Namibia, and shall be enforceable by the Courts in the manner hereinafter prescribed."*

The Namibian Labor Act is only express with regard to sexual harassment and does not have a specific definition on *"harassment"* generally. According to the Namibian Labour Act, sexual harassment (a form of harassment) is defined as any unwarranted conduct of a sexual nature towards an employee which constitutes a barrier to equality in employment, where the victim has made it known to the perpetrator that he or she finds the conduct offensive, or the perpetrator should have reasonably realized that the conduct is regarded as unacceptable, taking into account the respective

positions of the parties in the place of employment, the nature of their employment relationships and the nature of the place of employment.

To that end, it can be perceived at this stage that Namibia lacks legislation that defines workplace harassment, we rely on the Constitution as well as other laws such as the Namibia Labour Act and international law, among others, to aid with workplace harassment issues.

According to the International Convention, the term *"violence and harassment"* in the world of work refers to a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.

The Namibian definition of violence and harassment excludes stress-causing behavior or conditions such as overwork, long hours, and other forms of extreme exploitation, unless people were shouted at, physically attacked, bullied, or threatened to be fired if they refused unreasonable demands in the world of work. The world of work is used as a broader term than workplace, as the violence and harassment addressed refers to any incidences occurring in the course of, linked with or arising out of work. It includes: the workplace, including public and private spaces places where the worker is paid, takes breaks, or uses sanitary, washing and/or changing facilities work-related trips, travel, training, events or social activities work-related communications, including those enabled by information and communication technologies employer-provided accommodation commuting to and from work.

2. What are the different forms of workplace harassment recognized in Namibia?

Form	Examples
Verbal Abuse	Harassing, labelling, scolding, excessive yelling towards an individual.
Sexual Harassment	Making offensive and inappropriate sexual comments and remarks towards another individual, inappropriate touching. Can take a physical and verbal form.
Cyber Bullying	Making hateful comments on social media platforms/electronic devices. Sending emails with hateful/inappropriate jokes or graphics in relation to someone's age, gender, religion, disability, sexual orientation or culture.
Psychological Abuse	Emotional bullying, intentionally saying or doing something to someone which may cause an emotional distress/ trauma.
Discriminatory Harassment	Harassment due to age, religion, gender and or disability.

The Namibian Labour Act, section 5 (2), only refers to discrimination and sexual harassment and states that a person must not discriminate in any employment decision, directly or indirectly, or adopt any requirement or engage in any practice that has the effect of discriminating against any individual on one or more of the following grounds: race, color, or ethnic origin, sex, marital status or family responsibilities, religion, creed, or political opinion, social or economic status, degree of physical or mental disability, or degree of physical or mental disability.

The Namibian Labour Act further states a person must not, in any employment decision or in the course of an employee's employment, directly or indirectly sexually harass an employee. Where sexual harassment is perpetrated by an employer against an employee, and that employee resigns as a result of the sexual harassment, that resignation constitutes a constructive dismissal.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

The Namibia Labour Act defines an employee as an individual, other than an independent contractor, who - (a) works for another person and who receives, or is entitled to receive, remuneration for that work; or (b) in any manner assists in carrying on or conducting the business of an employer and this is whom the Namibia Labour Act protects.

If non-employees experience a form of harassment in the workplace, Namibian law provides them other avenues in which they can seek justice. The Namibian Constitution protects all Namibians and whatever form of harassment will inevitably bridge a constitutional right and will therefore be punishable whether it be against employees or against non-employees. It should be emphasized at this stage that there is a need for law reform, to enable a thorough interpretation of laws that will cater for safe working conditions for all employees in the world work.

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

Yes, the harassment must take place during working hours and/or during work related activities which may not always necessarily be on the work premises. According to the International Convention, harassment does not need to be in the workplace to constitute harassment, it can be outside the workplace at a work function or work-related event, however it ought to be within working hours.

The International Convention applies to violence and harassment in the world of work occurring in the course of, linked with or arising out of work:



in the workplace, including public and private spaces where they are a place of work;



in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities;



through work-related communications, including those enabled by information and communication technologies;



during work-related trips, travel, training, events or social activities;



in employer-provided accommodation; and



when commuting to and from work.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

A single incident can constitute harassment. Harassment is harassment and that is why it is pivotal that victims speak out as soon as they can in order for the harassment to be addressed. There is therefore a need to ensure that employers

and employees are sensitized to issues of harassment and violence in the workplace. Employers need to ensure that they create a safe space in which victims and witnesses are able to come forward without fear of judgement.



Hot air balloons | Dead Vlei | Sossusvlei
Namib Desert | Namibia

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

All employees (all positions), contractors temporarily working at the company, and internship holders. In essence, everyone who can be categorized as an employee according to the Namibia Labour Act.

The International Convention protects workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer. The International Convention applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas.

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

Harassment ought to be reported as soon as the incident has taken place. This is to combat issues that may arise between the incident and the date the incident took place. The sooner the incident is reported the sooner the issue can be dealt with.

8. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

Victims	Alleged Perpetrators
Right to be heard	Right to be heard
Right to their privacy (confidentiality)	Fair hearing
Impartial tribunal	Right to representation
Right to have their complaint dealt with in reasonable time	Afforded enough time to prepare

9. What are an employer's obligations once harassment is reported?

An employer has the following obligations:



To act objectively during the investigation and/or disciplinary process and to act fairly towards the employees.



To be sensitive.



To address the issue immediately and make sure the process of investigation is as swift as possible.

10. What is the process(es) that an employer must follow once harassment is reported?

There is no procedure that an employer must follow by law, however most companies have a disciplinary code which they follow in cases of any form of harassment or other misconduct. Although harassment generally is not specifically addressed in Namibian law, the normal route for an employer to take is disciplinary action, keeping in mind the sensitivity of the matter.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

Yes. According to the Namibian Labour Act as well as common law, an employer has an obligation/duty towards his employees and is mandated to ensure of their safety in the workplace. It is therefore paramount that he/she investigates any such claim as he can be held liable for a failure to provide a safe working environment.



Luderitz | Southwest Namibia

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

The employer is bound by the laws of his practice or company; if the company policy depicts that he/she should discipline misconduct then he/she should follow such procedure despite the victim not wanting to pursue a case.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

To an extent, remote working has impacted an employer's ability to mitigate the risk of workplace harassment. However, we should remain mindful that harassment takes different forms as the world is evolving and there is now a term called cyber bullying. However, remote working has helped create a better and healthier environment for the victims which remain affected by being in constant proximity with the perpetrator at the workplace. In this regard, remote working has helped victims efficiently do their work without having to come into contact with the perpetrator.

14. What can an employer do to combat workplace harassment in the remote working environment?

An employer may do the following:



Educate all members of staff about harassment.



Address the issues head on.



Train employees to be able to identify workplace harassment.



Establish workplace rules related to harassment.



Enforce strict sanctions for non-compliance.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

Employers are not required to have a harassment policy. However, an employer has the following obligations in terms of the Namibia Labor Act (a) provide a working environment that - (i) is safe; (ii) is without risk to the health of employees; and (iii) has adequate facilities and arrangements for the welfare of employees.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

An employer may implement the following measures:

- instruct that there be no communication or contact between the alleged victim and perpetrator;
- advise the alleged perpetrator to stay home until the investigation is complete;

- implement sanctions for non-compliance with workplace harassment rules;
- provide support services in the form of a psychologist to talk to employees (victims and perpetrators);
- ensure easy access to appropriate and effective remedies and safe, fair and effective reporting;
- implement dispute resolution mechanisms and procedures in cases of violence and harassment in the world of work, both within the workplace as well as information regarding external forums to seek relief;
- ensure protection against victimization of or retaliation against complainants, victims, witnesses and whistle-blowers;
- protect the privacy and confidentiality of those individuals involved in harassment complaints, to the extent possible and as appropriate, and ensure that requirements for privacy and confidentiality are not misused;
- ensure that workers have the right to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to life, health or safety due to violence and harassment, without suffering retaliation or other undue consequences, and the duty to inform management.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

An employer can expect to face legal implications which may arise from an order of the Namibian labor court and/or the civil court. This may come as a result of an employee reporting them to the Namibian Labor Commissioner's office as harassment can constitute an unfair labor practice.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

The enforcement regimes in Namibia pertaining to harassment in the workplace could have three avenues for enforcement, being the Namibia Labour Court, the civil and/or criminal regime. When taking the labour route, the Namibian Labour Act states that any party to a dispute who alleges that any fundamental right or protection under chapter 5 has been infringed or is threatened may approach the labour court for enforcement or protection of that right or freedom or seek appropriate relief.

The Namibian Labour Commissioner's office, amongst other duties, deals with workplace disputes and is also an avenue for victims to report issues of workplace harassment. The Namibia Labour Commissioner's office conducts conciliation and arbitration in a fair and just way as guided by the Rules Relating to the Conduct of Conciliation and Arbitration before the Namibia Labour Commissioner.

The Criminal route involves opening a case with Namibian police for *crimen injuria*, indecent assault and or sexual harassment itself. In 2021, the Namibian Newspaper reported of a sexual harassment case with similar charges, it has however not yet been resolved.

The Civil route involves a delictual claim but only if the employee has suffered some sort of loss that can be quantified (e.g., therapy costs). Such cost can thus be claimed under patrimonial damages. A claim can be brought for breach of fiduciary duty and vicarious liability (e.g., an institutional defendant who is held responsible for the misconduct of its employee).

19. Do laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment? How so?

To a lesser extent, this is due to the fact that an employer cannot access the employee's personal phone or laptop. The employer, on the other hand, has the authority to inspect the work equipment that employees use, but to a greater extent it does not. This is because companies have access to all of their employees' data,

and all employees are encouraged to convey any revisions to ensure the information is kept up to date.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

An employer must ensure that the following are protected:

- the privacy and confidentiality of the parties;
- set boundaries to not make the investigation public knowledge; and
- inform the parties that investigation is taking place.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

No, it is not legally permissible. However, there is need for law reform in this regard, as such information will be useful to ensure the safety of all employees.





Nigeria

Interesting Facts about Nigeria



Official language
English



Capital
Abuja



Currency
Nigerian Naira



Main exports
Mineral fuels
including oil



Retirement age
60



Minimum working age
14 years



Percentage of female participation in the workforce
52,09% in 2022



Average age of the population
17,2



Unemployment rate
40,6% in 2023



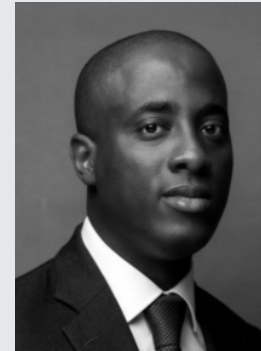
Population
213,4 million
in 2021



Economy
Nigeria's export market is massive, which is why it is the largest economy on the continent



Independence
1 October 1960



Kunle Obebe
Partner

Bloomfield Law Practice

Bloomfield Law Practice was established in Lagos, Nigeria as a specialist commercial and dispute resolution law firm to offer comprehensive and exceptional legal solutions for those who expect more. We are practical, commercial and goal-driven in our approach and have earned ourselves a reputation for achieving exceptional results.

Kunle is recognized as one of the foremost Nigerian lawyers in immigration, employment and labour matters and is frequently sought after as Nigerian counsel for large international companies. He is also well regarded in connection with dispute resolution particularly in relation to employment and labour related dispute settlement. He is said to be the "the first port of call" and has a "long standing reputation" in the market (Who's Who Legal – Nigeria 2022).

Kunle advises multi-national corporations, Fortune 500 companies, high net-worth individuals and Nigerian companies on issues relating to regulatory compliance with particular reference to expatriate and Nigerian employee work authorization in and out of Nigeria and corporate and commercial law.

Kunle is the Managing Partner and Chair of the Firm's Immigration and Employment Law Practice Groups. He is also the Co-Chair of the Firm's Dispute Resolution Practice Group.

Contact: kunleobebe@bloomfield-law.com

List of relevant legislation

(including regulations, codes of good practice, etc.)

- The Constitution of the Federal Republic of Nigeria of 1999 (Nigerian Constitution)
- Nigeria Labour Act of 2004 (Nigerian Labour Act)
- CEDAW
- ILO Convention, 190
- ILO Discrimination (Employment and Occupation) Convention of 1958 (No 111)
- Nigerian Criminal Code Act of 1990
- Employee Compensation Act of 2010
- National Industrial Court of Nigeria (Civil Procedure) Rules of 2017 (Rules)
- Nigeria Data Protection Regulation of 2019
- Various state criminal/penal laws



1. What is the definition of workplace harassment in Nigeria? What requirements must be fulfilled in order for conduct to constitute harassment?

The Nigerian Labour Act (the primary Nigerian legislation on labour matters) has no clear definition for harassment in the workplace. Notwithstanding this, Nigeria has ratified the International Labour Organisation (ILO) Convention, 190 which defines workplace harassment as *“a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”*.

The Criminal Law of Lagos State defines workplace *“sexual harassment”* as unwelcome sexual advances, requests for sexual favours, and other visual, verbal

or physical conduct of sexual nature which when submitted to or rejected, implicitly or explicitly affects a person’s employment opportunity, unreasonable interferes with the person’s work, suggests that submission to or rejection of the conduct will be a factor in employment decisions or creates an intimidating, hostile or offensive learning or working environment. In practice, workplace harassment is also defined in workplace policies and handbooks.

To establish a legally viable claim for a hostile work environment, also referred to as harassment, the victim must establish that:

- the behaviour was severe or pervasive;
- the behaviour detrimentally affected the victim; and
- the behaviour would detrimentally affect a reasonable person in like circumstances.

2. What are the different forms of workplace harassment recognised in Nigeria?

Form	Examples
Physical conduct of a sexual nature.	Unwanted physical contact, ranging from touching to sexual assault and rape, strip search by or in the presence of the opposite sex, gestures that constitutes the alleged sexual harassment.
A verbal form of sexual harassment.	Unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults, unwelcome graphic comments about a person’s body, unwelcome or inappropriate enquiries about a person’s sex life, unwelcome whistling at a person or group of people, and any document, material or exhibit in further support of the claim.
A non-verbal form of sexual harassment.	Unwelcome gestures, indecent exposure, and unwelcome displays of sexually explicit pictures and objects.
<i>Quid pro quo</i> harassment.	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.
Verbal harassment.	Speaking derogatorily to their employees.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

In conformity with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and ILO conventions which have been ratified, Nigerian law protects workers and other people in the workplace, including:



Employees.



People working regardless of their contractual status.



People in training, including interns and apprentices.



People whose employment has been terminated.



Volunteers.



Jobseekers and job applicants.



People exercising their right to free speech.

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

There is no specific provision in Nigerian law which specifies where harassment must occur for an employer to take disciplinary action. In practice, employers must implement workplace harassment policies that incorporate the ILO standard.

By virtue of the ILO Convention, 190, harassment does not have to occur on the employer's premises or during working hours for the employer to take disciplinary action, according to ILO standards. It could happen at work, at places where the worker is paid, during a rest break or meal, or while using sanitary,

washing, and changing facilities; during work-related trips, travel, training, events, or social activities; in employer-provided housing; or while commuting to and from work.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

A single act or continuous conduct may constitute harassment.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

There are no express provisions on the complaint procedure for harassment in the workplace under Nigerian law. In practice, this is indicated in the employer's anti-harassment policies.

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

Harassment constitutes a human right infringement, an action for the enforcement of fundamental rights and freedoms can be commenced at any time; and it cannot be statute-barred either under the Rules or any other limitation statute, law or enactment whatsoever.

While it is advised that workplace harassment be reported without delay to ensure effectiveness of the investigation, there is no time limit for reporting cases of workplace harassment and employers are expected to adopt and implement policies that respect the rights of their employees and which are in line with the law.

Employers cannot adopt policies that would permit them to refrain from investigating and taking disciplinary action because of a delay in reporting as the law recognises no time limit for bringing claims involving a violation of a person's right.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
To be informed of public and private programmes available for counselling, treatment, and other support services.	Right to a fair hearing, a thorough investigation must be conducted.
To receive reasonable protection from an alleged perpetrator.	Right to freedom from discrimination.
To know the status of the investigation, to the extent that it is appropriate and does not interfere with the investigation.	Right to privacy.
To have personal property being held for evidentiary purposes maintained in good condition and returned as soon as it is no longer needed for evidentiary purposes.	
Right to privacy.	

9. What are an employer's obligations once harassment is reported?

By virtue of the employer-employee relationship, the employer owes the employee a duty of care and is required to take positive steps toward addressing employee complaints of workplace harassment, beginning with an investigation. Inaction may be interpreted as tolerance and ratification of the acts and may subject the employer to liability.

The employer is required to provide a safe working environment for employees by establishing policies that dictate its mechanism for escalating cases of workplace harassment and is required to follow such policies in the event of any reported cases of harassment, beginning with an investigation. This position is emphasised in the well-known Nigerian case of *Ejiele Maduka v Microsoft [2014] NLLR (Pt 125) 67 NIC*.



Nigeria



The Ada palm plantation
Imo State | Nigeria

10. What is the process(es) that an employer must follow once harassment is reported?

There are no express provisions on the complaint procedure for harassment in the workplace under Nigerian law. In practice, the processes for handling reported cases of harassment are outlined in the employer's anti-harassment policies.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

There are no express provisions requiring the employer to investigate an anonymous sexual harassment report under Nigerian law. In practice, the employer's anti-harassment policies dictate whether such obligations exist.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

The employer's anti-harassment policies, and any other form of contract binding on the employer and employee, would dictate the employer's rights, duties and obligations in the event that the victim does not wish to pursue a formal process.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

The employer's ability to mitigate the risk of workplace harassment has not been impacted by remote working. There are numerous measures an employer can take to reduce the risk of workplace harassment which do not require employees to work from a specific office location.

14. What can an employer do to combat workplace harassment in the remote working environment?

An employer may take the following steps to combat workplace harassment in instances of remote working:



Implement airtight anti-harassment policies and review them on a regular basis.



Conduct regular harassment awareness trainings in line with the company's policies.



Respond quickly and efficiently to any report of harassment. There should be no delay between receiving the complaint, conducting the investigation, preparing a report and taking action.



Be vocal about its non-tolerance for such acts.



Encourage reporting of harassment by providing easily accessible, safe, fair and effective internal reporting and complaints mechanisms.



Installing surveillance cameras in the public spaces of the workplace (if any).

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

Yes. Employers are legally required to adopt workplace harassment policies. While there are no express provisions stating what must be included in a harassment policy, judicial precedent indicates that employers must draft policies that adhere to the provisions of ratified international conventions on the subject of workplace harassment as they can be enforced against them in the event of a liability claim.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

The following are some of the measures an employer may implement to mitigate the risk of harassment in the workplace:

- Conduct regular harassment risk assessments.
- Set up a harassment committee.
- Keep the information gathered during investigations confidential and ensure the privacy of parties involved.
- Keep records of incident reports, investigations and actions taken so that trends can be established and reviewed as part of the ongoing risk management.
- Regularly review risk prevention and control measures to assess their effectiveness, and to determine if they need to be improved or replaced with new risk control measures.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

An employer may face the following liability:

- vicarious liability imposed because of the actions of its employee-agents; and/or
- direct liability for its own acts or omissions in failing to prevent or mitigate the harassing or discriminatory acts.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

Where the victim is dissatisfied with the employer's actions in relation to workplace harassment, the victim must first exhaust all other available recourse (if any) options mentioned in the company's policy or other document governing the employee-employer relationship.

Following that, he or she may contact a civil organisation such as the National Human Rights Commission or the Nigeria Police Force to file a formal case in the National Industrial Court. Essentially, recourse to judicial procedures is possible where an employee is unsatisfied with the conduct of the employer and has exhausted all internal remedies.

19. Do laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment?

Laws pertaining to data privacy may impact the employer's ability to investigate and prosecute claims of harassment. Employers are obligated to adhere to data privacy laws and obligations when conducting investigations and prosecuting claims of harassment. However, the privacy requirements must not be used to avoid conducting proper investigations; such investigations must simply be conducted in accordance with data privacy standards.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

Employers may implement the following measures:

- Adopt and update internal privacy policies in accordance with data privacy laws on a regular basis, and strictly adhere to such policies during investigations.
- Determine whether such an investigation is necessary.
- Inform the person's being investigated or whose data will be processed as part of the investigation.
- Ensure that the data is obtained solely for the purpose of the investigation, and processing of such data is commensurate with the purpose for which it was obtained, and only that purpose.



Nigeria

- Ensure that the data subjects (employees or any other persons from whom data is required for the investigation) have consented to it, such consent is usually granted in advance by virtue of the employment contract, and such consent cannot be unreasonably withdrawn in the event of a necessary investigation.
- Make reasonable efforts to protect data from unauthorised access, copying, use or disclosure.
- Must not transfer the data to any person other than those to whom the employee(s) have consented unless strongly required by public interest or other legal exceptions.
- Secure the data collected against all foreseeable hazards and breaches such as theft, cyberattack, viral attack, dissemination, manipulations of any kind, damage by rain, fire or exposure to other natural elements.
- Not store the data obtained for longer than necessary for the purposes for which they were initially collected.
- Document how the employer is complying with the principles of law in carrying out such investigations.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

The employer may request certain information from an applicant during the recruitment process. However, this is subject to the provisions of section 37 of the Nigerian Constitution, which guarantees a right to privacy for citizens, their correspondence, telephone conversations and telegraphic communication.

The employer also has the right to hire as it pleases under Nigeria Labour Law. This right is also subject to the provision of the Nigerian Constitution, which guarantees citizens' freedom from discrimination.

However, there is no Nigerian law that prohibits discrimination based on a criminal record or such workplace history where such information does not fall under any form of discrimination recognised under the Nigerian Constitution. The employer has a duty to protect its employees and, as such, may refuse an applicant on such grounds if it deems fit.



Zuma Rock | Niger State | Nigeria



Rwanda

Interesting Facts about Rwanda



Official languages

Kinyarwanda, English and French



Capital

Kigali



Currency

Rwandan Franc



Main exports

Coffee and Tea



Retirement age

Early retirement is at 60 years, and late retirement is at 65 years



Minimum working age

16 years



Percentage of female participation in the workforce

50,83% in 2022



Average age of the population

19,4 years



Unemployment rate

13,01% in 2022



Community work day

Every last Saturday of every month from 8am to 11am people nationwide participate in community projects



Car-free day

To promote healthy living and sustainability, Rwanda implements a car-free day each month



Plastic

There has been a ban on plastic bags in the country from 2008



Liedekerke Rwanda

From its offices in Kinshasa, Liedekerke DRC, opened in 2015 followed by the creation of Liedekerke Great Lakes in Kigali in 2019, Liedekerke offers its clients unparalleled experience and support in Central Africa, allowing them not only to seize opportunities but also to navigate and overcome the challenges of the African market.



Aimery De Schoutheete
Partner

Both offices anchor our presence in the Sub-Saharan region and reflect our commitment to the DRC, Rwanda and Burundi. Liedekerke is very much committed to the region's future.

Our understanding of the local legal systems and cultures enables us to cultivate relationships with skilled law firms in jurisdictions across Africa where we do not have offices, and to select the right local counsel for every assignment.

Contact: s.badibanga@liedekerke.com



Serge Badibanga
Deputy General Manager

List of relevant legislation

(including regulations, codes of good practice, etc.)

- Law No 66/2018 of 30 August 2018 regulating labour in Rwanda (Rwandan Labour Code)
- Ministerial Order No 02/MIFOTRA/22 of 30 August 2022 on occupational safety, employees' and employers' organisations, child employment, employment of a foreigner, the child and circumstantial leave (Rwandan Ministerial Order on Occupational Safety)
- Ministerial Order No 002/19.20 of 17 March 2020 establishing the list of gross misconduct (Rwandan Ministerial Order on Gross Misconduct)
- (Collectively referred to as Rwandan Employment Laws)
- Law No 058/2021 of 13 October 2021 relating to the protection of personal data and privacy (Rwandan Data Protection Law)



1. What is the definition of workplace harassment in Rwanda? What requirements must be fulfilled in order for conduct to constitute harassment?

There is currently no definition of workplace harassment under Rwandan laws and regulations. The only available case law does not provide for such either. Furthermore, Article 8 of the Labour Code and Article 2, °8 of the Rwandan Ministerial Order on Gross Misconduct include sexual harassment at the workplace, but does not define it.

2. What are the different forms of workplace harassment recognised in Rwanda?

There is no definition or defined examples of workplace harassment in the Rwandan Employment Laws or in case law in Rwanda.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

The Rwandan Labour Code and the Rwandan Ministerial Order on Occupational Safety apply to the following categories of workers:



Employees in an employment contract in the private sector or public service.



Apprentices and interns.

The Rwandan Labour Code also applies to self-employed people and informal sector employees with regards to occupational health and safety.

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

The Rwandan Labour Code merely states that "*sexual harassment in any form against a supervisee is prohibited*". Although not specified, the broad wording of the provision "*in any form*" can, in our view, be interpreted as prohibiting any form of sexual harassment, whether during or outside working hours, as long as it is directed at an employee.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

The Rwandan Employment Laws are silent on these matters; it is therefore unclear whether the conduct needs to be continuous and ongoing or whether a single instance is sufficient. However, and given the broad wording of the provision prohibiting sexual harassment at the workplace in the Rwandan Labour Code, we are of the opinion that a single incident can constitute sexual harassment, as long as it is directed at an employee.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

The Rwandan Employment Laws are silent on these matters. There is unfortunately also no available case law on these matters in Rwanda. However, it can be reasonably inferred that anyone, including a person other than the victim, may report workplace harassment.

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

The Rwandan Employment Laws are silent on these matters. There is unfortunately also no available case law on these matters in Rwanda. However, in practice, employers follow their human resources policies, which often contain commonly accepted good practice in this matter.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
<p>In line with Article 8 of the Rwandan Labour Code, the right not to be dismissed for reporting harassment.</p>	<p>In terms of Article 20 of the Rwandan Labour Code, if, after administrative investigation, the alleged perpetrator's innocence is proven, the employer must reinstate the employee and pay them all their salary retained for them.</p>
<p>In line with Article 8 of the Rwandan Labour Code, the right not to be forced to resign or to be treated in a manner that forces the employee to resign owing to them reporting harassment. The resignation of an employee due to sexual harassment is considered an unfair dismissal provided that there is tangible evidence that the employee resigned for that reason.</p>	

9. What are an employer's obligations once harassment is reported?

An employer cannot dismiss a victim who reports sexual harassment committed by their supervisor. With regard to an employer's obligation to ensure welfare in the workplace, it has an obligation to take adequate action to put an end to the harassment. There is unfortunately no available case law on specific employer's obligations once harassment is reported.

10. What is the process(es) that an employer must follow once harassment is reported?

The Rwandan Employment Laws are silent on this matter and there is no available case law. However, in practice, employers follow their human resources policies, which often contain commonly accepted good practice in this matter.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

The Rwandan Employment Laws do not provide for such an obligation. There is unfortunately also no available case law on this matter in Rwanda. However, it can reasonably be inferred that an employer is subject to such an obligation. In practice, employers follow their human resources policies, which usually contain commonly accepted good practice in relation to matters of this nature.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?





The Rwanda Employment Laws are silent on this matter. There is unfortunately no available case law on this matter in Rwanda. However, in practice, employers follow their human resources policies, which often contain commonly accepted good practice in relation to matters of this nature.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

There is no available record in Rwanda on this matter. However, it can be reasonably assumed that remote working has impacted employers' ability to mitigate such risks. Indeed, remote working implies an almost constant online presence of employees who can be exposed to online harassment. Such harassment can be more difficult to witness and therefore prevent. Nevertheless, employers have options to mitigate such risks.

14. What can an employer do to combat workplace harassment in the remote working environment?

An employer may do the following to combat and prevent workplace harassment in the remote working environment:

-  Provide management staff training on online harassment.
-  Ask managers to establish regular communication with their team members to find out how they are feeling.
-  Establish a system of psychological support for employees who request it.
-  Ensure an easy and effective communication system with HR to report any harassment behaviour.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

In terms of Article 100 of the Rwandan Labour Code, companies with at least five employees are required to adopt work rules after consultation with the employees' representatives. The main content of those rules relates to working conditions, discipline and provisions concerning health and the security at the workplace. Rules of procedure can be used as a human resources policy, which can contain provisions on harassment policy, but this not a legal requirement *per se*.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

Measures an employer can implement in order to mitigate the risk of harassment in the workplace are:

- Create and enforce an anti-harassment policy.

- Review policies and procedures on a yearly basis to ensure their compliance with any legislative updates.
- Ensure easy access to communication channels:
 - all policies and procedures must be easily accessible to all employees (posted on the company's intranet, posted in common areas of the workplace, included in the work rules/code of conduct, etc.); and
 - employees must be able to easily report harassment claims, such as via e-mail, online messaging platforms or employee apps.
- Train all levels of employees to specifically address the issue of harassment in the workplace. Companies must hold separate training sessions for each employee group and provide appropriate information for their position in the company.

Measures an employer can implement while a claim of harassment is being investigated:

- Build support systems: companies must make sure that the policies are put into practice and that employees receive proper support, such as psychological support and management availability.
- Make work arrangements, such as relocating the alleged victims (even temporarily) or reducing working hours.
- Process complaints fairly and ensure that harassment complaints will be fully investigated and in a timely manner and that there will be no retaliation measures against employees who complain.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

Where an employer fails to take reasonable steps to prevent the harassment, the employer can be considered to not be performing their obligation to ensure employees' welfare at the workplace. However, the Rwandan Employment Laws do not provide for specific liability in such cases.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

The Rwandan Employment Laws do not provide for a particular recourse in cases of harassment, and these cases therefore fall under the general employment matter dispute resolution regime which is the following: (i) the victim first refers the matter to the employees' representative to attempt

to amicably settle the dispute; (ii) where the employee representative fails to settle the matter, the victim can refer to the matter to the labour inspector; and (iii) where unresolved, the matter may be referred to a competent court.

19. Does laws pertaining to data privacy impact an employers ability to investigate and prosecute claims of harassment? How so?

Under the Rwandan Data Protection Law, lawful processing of personal data includes the execution of a data controller's legal obligation, which, in the case of an employer, can include their obligation to ensure an employee's welfare at the workplace, as the personal data process would be for the purposes of putting an end to harassment. The Rwandan Data Protection Law also provides that personal data must not be kept longer than necessary for the purposes for which it is processed. Therefore, once the employer's obligation is fulfilled in that regard, i.e. investigation and prosecution of the claim of

harassment has ended, the process of personal data obtained during the that time period must cease if there are no other lawful reasons for processing of the personal data. However, the alleged perpetrator's right to erasure after the end of an investigation and prosecution can be restricted based on the necessary process for statistical purposes in case of repeated acts, for instance. Furthermore, the alleged perpetrator's right to access or to restrict the processing of their personal data can also be restricted to protect the victim's right to welfare at the workplace.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

An employer should ensure that it only processes the necessary personal data required for the investigation and prosecution of the claim of harassment and only for the time period required.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

The Rwandan Labour Code provides for equal opportunity at the workplace and prohibits employers' discrimination against employees based on ethnic origin, race, sex, religion, or any other form of discrimination. However, the list of discriminatory criteria does not include criminal record history which can fall under the general category of form of discrimination. Unfortunately, the Rwandan Employment Laws are silent on this matter and there is no available case law in that regard. Employers are therefore advised to be careful about background checks and to respect the privacy of workers in the hiring process.



Senegal

Interesting Facts about Senegal



Official languages
French and Wolof



Capital
Dakar



Currency
West African
CFA franc



Main exports
fish, gold, phosphates,
horticulture products,
cement, peanuts, and
nut oil



Retirement age
60 years



Minimum working age
Full-time employment
is 15. Hazardous
work is 18 years



Percentage of female participation in the workforce
38,56%



Average age of the population
18 years



Unemployment rate
21,5 % in 2023



Population
16,88 million
in 2021



Public transport
Bus and
minibus services



Independence
20 August, 1960

JOHN W FFOOKS
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**Sitraka
Rakotoarisoa**
Partner

John W Ffooks & Co

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We have senior colleagues in every jurisdiction, making us better able to respond to clients' needs at every level, from on-the-ground operational matters to head office issues.

Contact: sitraka@jwflegal.com

List of relevant legislation

(including regulations, codes of good practice, etc.)

- Law No. 97-17 dated 1 December 1997 on the labour code (Senegalese Labour Code)
- Law No. 65-60 dated 21 July 1965 on the criminal code as amended (Senegalese Criminal Code)
- Law No. 65-61 dated 21 July 1965 on the criminal procedure code as amended (Senegalese Code of Criminal Procedure)
- Law No. 2008-12 dated 25 January 2008 on the protection of personal data (Senegalese Personal Data Law)



1. What is the definition of workplace harassment in Senegal? What requirements must be fulfilled in order for conduct to constitute harassment?

The Senegalese Labour Code does not provide any definition of workplace harassment. However, the Senegalese Criminal Code defines sexual harassment as: *“The fact of harassing one another by using orders, gestures, threats, words, writings or constraints with the aim of obtaining favours of a sexual nature, by a person abusing the authority conferred by his or her functions will be punished by imprisonment of six months to three years and a fine of FCFA 50,000 to 500,000.”* From this definition, we understand that sexual harassment constitutes an offence that can be perpetuated in any place, including workplaces.

The letter of law is not expressive regarding the requirements to be fulfilled for conduct to constitute harassment in general. With regards to sexual harassment, the abuse of authority to obtain sexual favours is enough to constitute the offence of sexual harassment. In all cases, the investigating judge is responsible for considering whether the accusations against the alleged perpetrator (i.e. a person accused of harassment) constitute an offence of sexual harassment. It is therefore up to the victim or/and whistle-blower to provide sufficient evidence to assess whether the alleged facts constitute an offence of sexual harassment or not.

2. What are the different forms of workplace harassment recognised in Senegal?

Form	Examples
Sexual harassment	Physical, gestural, verbal harassment can all constitute sexual harassment.
Physical harassment	Inappropriate touching of a sexual nature without the consent of the employee.
Verbal harassment	Unwelcome comments about a person’s appearance, private life or body, and insults and humiliation based on a person’s gender.
Gestural harassment	Sexually suggestive gestures, such as winking, gestures with the hands, fingers, legs or arms, etc.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

There is no specific workplace harassment legislation in Senegal. As mentioned above, sexual harassment constitutes an offence that can be perpetuated in any place. It can happen either at work, at home or in a public place, etc. Therefore, the following people are protected by the applicable provisions regarding sexual harassment in Senegal:



Employees



Non-employees

4. Must the harassment take place on the employers’ premises or during working hours for the employer to take disciplinary action?

Workplace sexual harassment may take place outside of the employer’s premises or in any place where work-related activities are carried out.

From a Senegalese law perspective, there is no disciplinary action to be taken with regards to sexual harassment. Instead, criminal procedures can be initiated by the alleged victim of sexual harassment.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

Under local Senegalese law, a single incident can constitute sexual harassment.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

The Senegalese Labour Code does not include any provisions regarding reports of workplace harassment. Regarding sexual harassment more generally, the reporting of such harassment is not limited to victims. In any cases, judicial police officers are in charge of receiving any complaints and denunciations of sexual harassment offences.

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

The Senegalese Labour Code and the Senegalese Criminal Code are silent on this point. It seems that there is no specific timeframe in which harassment must be reported. This means that it can be reported to the employer immediately after the occurrence of the harassment, or later. In criminal matters, both the public action for the enforcement of penalties and the civil action for compensation for the damage caused by the offence of sexual harassment can be exercised by the victim.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
<p>The Senegalese Labour Code does not provide for this point. However, we are of the view that victims should be entitled to the following:</p> <ul style="list-style-type: none"> • The right to be informed of any existing harassment policy and procedures of the employer. • The right to be assisted by a lawyer or legal representative. • The right to bring the case before the relevant court. 	<p>The Senegalese Labour Code does not provide for this point. However, we are of the view that the alleged perpetrator should be entitled to the following:</p> <ul style="list-style-type: none"> • The right to be informed of any existing harassment policy and procedure, including possible disciplinary sanctions. • The right to be assist by a lawyer or legal representative.

9. What are an employer’s obligations once harassment is reported?

The Senegalese Labour Code does not provide for an employer’s obligations once harassment is reported. With this said, we understand that employers should report and denounce to a judicial police officer any facts of sexual harassment at work when aware of it.

10. What is the process(es) that an employer must follow once harassment is reported?

The Senegalese Labour Code does not provide any process to be followed once harassment is reported to the employer. With regards to sexual harassment, the Senegalese Code of Criminal Procedure only provides that any facts of sexual harassment may be reported and denounced to judicial police officers. We therefore believe that the employer should report and denounce any facts of sexual harassment once they have been made aware of it. Before denouncing the harassment, the employer may also proceed with an internal investigation and sanction the alleged perpetrator.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

The Senegalese Labour Code does not provide an obligation for the employer to investigate a claim of harassment that is made anonymously.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

The Senegalese Labour Code is silent on the requirement for the employer to discipline an alleged perpetrator of harassment. However, we are of the view that an employer may pursue a formal process against an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

As the Senegalese Labour Code does not contain provisions that intend to prevent any form of harassment, remote working does not mitigate workplace harassment in Senegal. This said, we understand that sexual harassment can happen either at work, at home or in any other place and through technology, employees may still face harassment. In fact,

there may be harassment even if the conduct is made via email, short message or a call, for example. The test is whether the conduct has an impact on the working environment of the employee or their career.

14. What can an employer do to combat workplace harassment in the remote working environment?

Senegal does not have specific legal provisions pertaining to workplace harassment. One practical measure that could be taken by the employer is to implement a policy against any forms of harassment in the workplace. This policy would apply to either in-person or remote working.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

No. Employers do not have obligations to publish a harassment policy. However, nothing under local law prohibits employers from implementing such a policy to avoid/mitigate workplace harassment.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

The Senegalese Labour Code does not specifically provide for measures that can be implemented in order to mitigate the risk of harassment. However, if harassment is considered, by the employer, as gross misconduct, an employer may immediately implement a disciplinary sanction against an employee who has been proven to be at fault or accused of harassment.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

Senegalese law does not contain any provisions pertaining specifically to the prevention of workplace harassment. That said, we do not foresee any liability that employers would face in the event that they failed to take reasonable steps to prevent harassment in the workplace

in terms of the Senegalese Labour Code. However, with regards to sexual harassment, the Senegalese Code of Criminal Procedure provides that any person (including the employer) who publicly denounces the offence of sexual harassment or publicly claims to know the perpetrators shall provide responses to the investigating judge's interrogations in this regard. Failing this, the person may be subject to imprisonment of up to one year and payment of fine of up to FCFA 180,000. This sanction may be applicable to the employer.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

The Senegalese Labour Code and regulations are silent when it comes to workplace harassment. In all cases, workplace harassment constitutes a harm and may affect the working conditions of the victim. It is therefore possible for the victim to bring the case before a relevant court.

19. Does laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment? How so?

The Senegalese Personal Data Law does not impact the employer's ability to investigate and prosecute claims of harassment. However, personal data is confidential and protected under Senegalese law. In this regard, during the investigation of a harassment complaint, the employer must respect the personal data of the parties. All information discovered should be kept confidential to protect the privacy of the individuals concerned. However, the ability to keep information confidential may be limited in case there is judicial procedure or criminal investigation opened in respect of harassment.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

Where required, the employer shall:



Keep confidential discovered information.



Obtain/request employees' consent to disclose personal information.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

Senegalese laws do not permit or prohibit employers from requiring job applicants to disclose any history of harassment or violence. Likewise, history of harassment does not constitute a valid reason for refusing to hire an individual in Senegal.



Senegal



Pink Lake Retba or Lac Rose | Senegal



South Africa

List of relevant legislation

(including regulations, codes of good practice, etc.)

- Constitution of the Republic of South Africa Act 108 of 1996
- Employment Equity Act 55 of 1998 (EEA)
- Code of Good Practice on the Prevention and Elimination of Violence and Harassment in the Workplace (SA Harassment Code)
- Protection from Harassment Act 17 of 2011



Interesting Facts about South Africa



Top industries

Mining, transport, energy, manufacturing, tourism and agriculture



Capitals

Pretoria, Cape Town and Bloemfontein



Currency

South African Rand



Main exports

Platinum, gold, iron ore, diamonds and coal briquettes



Retirement age

60 years



Minimum working age

15 years



Percentage of female participation in the workforce

50,61%



Average age of the population

27,6 years



Unemployment rate

32,9%



Mining

Approximately 20% of the world's gold is mined in South Africa



Population

59,9 million in 2021



Production

Largest producer of macadamia nuts in the world



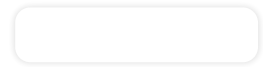
1. What is the definition of workplace harassment in South Africa? What requirements must be fulfilled in order for conduct to constitute harassment?

The SA Harassment Code defines harassment as follows:

- 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 EEA – which includes both listed grounds and on an arbitrary ground.



Chapman's Peak | Cape Town



2. What are the different forms of workplace harassment recognised in South Africa?

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

Form	Examples
Physical harassment	<ul style="list-style-type: none"> Physical attacks and violence. Simulated or threatened physical violence. Gestures – raising a fist, throwing objects, etc.
Verbal bullying	<ul style="list-style-type: none"> Threats. Shaming. Hostile teasing. Insults. Constant negative judgement (dependent on context). Constant criticism (dependent on context). Racist, sexist or LGBTQIA+ phobic language.
Psychological abuse	<ul style="list-style-type: none"> Emotional abuse. Behaviour having a harmful effect on mental health and well-being.
Covert harassment	<ul style="list-style-type: none"> Negative gossiping or joking at someone's expense. Sarcasm. Condescending eye contact, facial expressions or gestures. Mimicking to ridicule. Deliberately causing embarrassment and/or insecurity. Invisible treatment and marginalisation. Social exclusion and professional isolation. Deliberately sabotaging someone's happiness, dignity, well-being, success or career performance.
Mobbing	<ul style="list-style-type: none"> Harassment by a group of persons targeted at one or more individuals.
Online harassment	<ul style="list-style-type: none"> Harassment committed, assisted, or aggravated in part or fully by the use of communications technology.
Bullying	<ul style="list-style-type: none"> 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 cyberbullying. Bullying may involve aggressive behaviour in which someone repeatedly causes another person injury or harm.
Intimidation	<ul style="list-style-type: none"> Intentional behaviour that would cause a person of ordinary sensibilities to fear injury or harm.
Other conduct that may constitute harassment.	<ul style="list-style-type: none"> Slandering or maligning an employee or spreading rumours. Conduct which humiliates, insults or demeans an employee. Withholding work related information or supplying incorrect information. Sabotaging or impeding the performance of work. Demotion without justification. Ostracising, boycotting, or excluding the employee from work or work-related activities.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

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

- Employees
- Employers
- Job applicants and seekers
- Volunteers (including interns)

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



4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

No. The protection of employees against harassment applies in any situation in which the 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, trainings, 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.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

No. Where the conduct is of a serious nature, a single instance is sufficient to constitute harassment. The SA Harassment 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/victim.



South Africa



Stellenbosch | South Africa

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

Employees, third parties and all persons having dealings with an employer who witness harassment. The reporting of harassment is not limited to the victim of harassment.

7. When must harassment be reported? Does a delay in reporting harassment affect whether disciplinary action may be taken?

The EEA and the SA Harassment Code require that harassment be reported immediately. The SA Harassment 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*”.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Some of the rights of victims and alleged perpetrators of workplace harassment are as follows:

Victims	Alleged Perpetrators
The right to a safe working environment.	The right to a safe working environment.
The right to have their claim of harassment dealt with in an expeditious and confidential manner.	The right to privacy and the right to have their personal information processed and stored in compliance with legislation.
The right to protection from further harassment while a claim of harassment is being investigated.	The right to be heard and to be given an opportunity to make representations in response to the claim of harassment.
The right to not be victimised or prejudiced in any way for laying a claim of harassment.	
The right to privacy and the right to have their personal information processed and stored in compliance with legislation.	

9. What are an employer’s obligations once harassment is reported?

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

Investigate the complaint » Consult all relevant parties » Take the necessary steps to deal with the complaint » Take steps to eliminate the harassment

10. What is the process(es) that an employer must follow once harassment is reported?

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

The employer should 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.



South Africa



Durban city | Kwazulu-Natal | South Africa

Offer advice, assistance and counselling where reasonably practicable to the complainant in accordance with the SA Harassment Code. Inform the complainant that the complaint will be dealt with confidentially should they so choose.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

Yes. The employer has an obligation to investigate the complaint and to take the necessary steps in terms of the SA Harassment Code, where it is found that the harassment does indeed exist, whether reported anonymously or otherwise.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Yes. The employer should still assess the risk to other people 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 persons in the workplace, the employer may follow a formal procedure, irrespective of the wishes of the complainant, and advise the complainant accordingly. Similarly, a complainant/victim may elect to follow a formal procedure without dealing with the matter informally first.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

Yes. Technology has not only enabled remote work but has also introduced new forms of harassment, including cyberbullying and online harassment, which are being perpetuated in places other than at an employer's premises, even though it remains within the jurisdiction of the employer.

14. What can an employer do to combat workplace harassment in the remote working environment?



Clearly communicate the harassment policy.



Training and awareness creation.



Make clear the sanctions for transgression.



Educate persons on what constitutes online harassment.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

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

In terms of the SA Harassment 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.
- 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.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

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 all forms of harassment and include signage and posters in their respective 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.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

In terms of section 60 of the EEA, where an employee contravenes the provisions of the EEA and an employer fails to take reasonable steps to eliminate the conduct, the employer will be held vicariously liable for the conduct. This includes a failure to take steps to eliminate harassment in the workplace. In addition, in terms of section 59 of the EEA, any person who discloses confidential information acquired in the performance of their functions in terms of the EEA, may be convicted of an offence and may be fined for an amount not exceeding ZAR 10,000.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

The EEA obliges employers to eliminate unfair discrimination. If an employee is not satisfied with the steps taken by the employer, then they may refer a harassment dispute to the Commission for Conciliation, Mediation and Arbitration (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 set out in the Basic Conditions of Employment Act 75 of 1997.

19. Do laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment?

In addition to the common law right to privacy, the introduction of the Protection of Personal Information Act 4 of 2013 has introduced an obligation for employers to process, store and even destroy personal information in accordance with its provisions.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

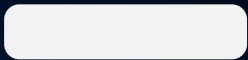
Employers must ensure that the rights of all parties to privacy and to not to have their personal information disclosed to unauthorised persons is protected. An employer must also ensure that any confidential, sensitive,

private or personal information is kept in a secure manner and that unauthorised persons will not be in a position to access the information. Lastly, information related to a complaint of harassment and prosecution of the complaint of harassment must only be shared with such persons as is necessary to investigate and prosecute the matter.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

It is permissible for an employer to require employees to disclose a history of workplace harassment and/or violence. Whether an employer is permitted to refuse a job applicant employment owing to their history of violence and/or harassment in the workplace has not been settled in South African 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 persons 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.



Tanzania

Interesting Facts about Tanzania



Official languages
Swahili and English



Capital
Dodoma



Currency
Tanzanian Shilling



Main exports
Tobacco, coffee, cotton, cashewnuts, tea and cloves



Retirement age
60 years



Minimum working age
14 years old



Percentage of female participation in the workforce
49,08 % in 2022



Public transport
Buses are the most popular and cheapest means of getting around in Tanzania



Unemployment rate
2,76% in 2022



Population
63,59 million in 2021



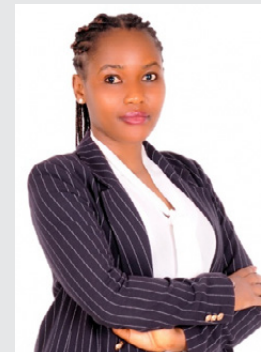
Average age of the population
17 years



Economy
The economy of Tanzania is a lower-middle income economy that is overwhelmingly dependent on agriculture



Josephine Mbuya
Partner



Georgina Basil
Senior Associate

Abenry and Company Limited

Abenry Advocates is one of the leading law firms in Tanzania. The Firm comprises of 3 Partners and 6 Associates. Our strong network together with the background experience of our lawyers allows Abenry Advocates to offer the best legal services in the country in all aspects of law. Abenry Advocates operates in Mainland Tanzania as well as in Zanzibar.

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Contact: josephine.mbuya@abenry.co.tz

List of relevant legislation

(including regulations, codes of good practice, etc.)

- The Constitution of the United Republic of Tanzania of 1977 (Tanzanian Constitution)
- The Employment and Labour Relation Act, CAP. 366 (Tanzanian ELRA)
- The Employment and Labour Relations: Code of Good Practice: Rules, GN No. 42 Of 2007 (Tanzanian Code of Good Practice)
- The Labour Institution Act, CAP 300
- Person with Disability Act No. 9 OF 2010
- Labour Institution (Mediation and Arbitration) Rules GN. No. 64 OF 2007
- Labour Institution (Ethics and Code of Conduct for Mediation and Arbitration) Rules GN. No. 66 of 2007
- Labour Institution (Mediation and Arbitration Guidelines) Rules GN. No. 67 OF 2007
- The Cyber Crimes Act of 2015 (Tanzanian Cybercrime Act)



1. What is the definition of workplace harassment in Tanzania? What requirements must be fulfilled in order for conduct to constitute harassment?

The term “*workplace harassment*” is not defined in Tanzanian law. However, harassment of an employee constitutes a form of unfair discrimination, and the same can either be of a sexual nature or otherwise.

The requirements that must be fulfilled in order for conduct to constitute harassment/discrimination are the following:

- A failure to take affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the work place.
- Not to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.
- A failure to employ citizens in accordance with the National Employment Promotion Services Act 9 of 1999.

- The employer fails to take positive steps to guarantee equal remuneration for work of equal value between men and women.
- In the case of termination of employment, the reasons for termination are related to pregnancy, disability and the reasons that constitute discrimination under the Tanzanian ELRA.
- Discrimination against an employee in any employment policy or practice. An employment policy or practice includes any policy or practice relating to recruitment procedures, advertising and selection criteria, appointment and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignment, the working environment and facilities, training and development, performance evaluation systems, promotion, transfer, demotion, termination of employment and disciplinary measures.

2. What is the definition of workplace harassment in Tanzania? What requirements must be fulfilled in order for conduct to constitute harassment?

Form	Examples
Sexual harassment	Sexual innuendos and gestures, inappropriate touching of body parts, sexual assault, rape and pressure for sexual activity or sexual favours with a fellow employee.
Discriminatory harassment	Gender based discrimination, racial discrimination, disability based discrimination, age discrimination, colour discrimination, disease-based discrimination, nationality and race discrimination.
Physical harassment	Intimidation and physical attacks, assaults, threatened assaults.
Racial harassment	Offensive jokes.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

The labour legislation pertaining to harassment/discrimination applies to employees only. For the purpose of discrimination, an employee is defined to include an applicant for employment. Non-employees are protected under the Tanzanian Cybercrime Act, which prohibits/restricts a person from using a computer system to produce racist or xenophobic material for the purpose of distribution, offer or make available racist or xenophobic material, or distribute xenophobic material. Further, a person shall not insult another person through a computer system on the basis of race, colour, descent, nationality, ethnic origin or religion. Racist and xenophobic material means “*any material which advocates, promotes or incites hatred, discrimination or violence against any person or group of persons based on race, colour, descent, nationality or ethnic origin or religion*”.

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

No. An employer may take disciplinary action for harassment or discrimination that took place outside the workplace, however, the person who committed such act must be an employee or employer who works in the same office. Further, their actions must have been done to an employee.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

No. The conduct does not need be continuous to constitute harassment, even a single incident may constitute harassment.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

Anyone can report workplace harassment, it can either be the employer, employee, victim or a third party who is aware of such harassment or discrimination.

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

Tanzanian labour laws require that a dispute related to harassment/ discrimination be referred to the Tanzania Commission for Mediation and Arbitration within 60 days from the date when the dispute arose. A delay in reporting harassment does not affect any procedures because a party in delay can apply for an extension of time "application for condonation" by completing and delivering the prescribed condonation form when delivering the documents or application to the Tanzania Commission for Mediation and

Arbitration. The application for condonation shall set out the grounds for seeking condonation and shall include referring party's submissions on the following:

- the degree of lateness;
- the reason for the lateness;
- its prospects of succeeding with the dispute and obtaining the relieve sought against the other party; and
- any other relevant factors.

In respect of disciplinary action, the delay in reporting harassment does not affect disciplinary action. The disciplinary action may be taken once a harassment claim has been filed or reported.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
Right to equal opportunity in the workplace.	Right to equal opportunity in the workplace.
Right to equality in employment policy or practice.	Right to be heard/a fair hearing.
Right to be heard/a fair hearing.	Right to be aware of the workplace plan.
Right to be aware of the workplace plan.	Right to equality in the employment policy of practice.
Right to fair reasoning in case of termination of the employment.	

9. What are an employer's obligations once harassment is reported?

When a victim reports harassment committed by a fellow employee, the employer has an obligation to firstly, investigate the matter and take all reasonable steps for disciplinary procedures. In the event that the harassment is abusive behaviour, i.e. assault, threatened assault or other unacceptable conduct toward other employee(s), customers, clients, or members of the public, the employer may terminate the contract of employment.

Further, where the victim reports harassment by the employer to the Tanzania Commission for Mediation and Arbitration, the employer has a duty to prove that:

- the discrimination did not take place as alleged; or
- the discriminatory act or omission is not based on any prohibited grounds.

10. What is the process(es) that an employer must follow once harassment is reported?

Once harassment is reported, an employer is required to investigate the matter and issue an explanation letter to the alleged perpetrator to provide representations on the allegations. The employer may also initiate a disciplinary hearing to determine the allegations. Tanzanian labour laws provide offences in terms of which a warning may be given. As far as the harassment is concerned, these include, unacceptable behaviour towards customers, clients, fellow employees or members of the public. However, if an employee's conduct is of an abusive nature, i.e. assaults, threatened assaults or other unacceptable conduct towards another employee, customer, client or member of the public, this may constitute serious misconduct and lead to the termination of an employee's employment. As such, the employer is required to conduct a disciplinary process in this instance.



Tanzania



Mount Kilimanjaro | Tanzania



Tanzania

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10. What is the process(es) that an employer must follow once harassment is reported?

...continued

The next step after an investigation is for the employer to initiate a disciplinary procedure/hearing. Before the hearing, the employer is required to notify, in writing, the alleged perpetrator about the allegations and the time and date of the hearing to give them a reasonable opportunity to prepare for the hearing. During the disciplinary hearing an alleged perpetrator should be allowed to have a representative, who may be a fellow employee or trade union representative, to assist them during the hearing. The management representative is then required to present the case in support of the allegations against the employee and the employee should be given the opportunity to respond to the allegations. During the hearing, both parties should have an opportunity to call witnesses and question any witness called by the other party. After hearing the evidence, the chairperson should make a decision based on a balance of probabilities as to whether the employee is guilty of the allegations or not.

10. What is the process(es) that an employer must follow once harassment is reported?

...continued

The chairperson is required to give an employee an opportunity to present factors in mitigation of his/her actions, which include:



The seriousness of the offence and likelihood of repetition.



The employee's circumstances i.e. length of services or any disciplinary records.



The nature of employee's job and circumstance of infringement itself.

The chairperson will then be required to inform the employee of the outcome/findings of the hearing not later than five working days after the hearing, giving brief reasons for the decision that was arrived at. A hearing form shall be filled in and signed by the chairperson and the employee and a copy of it given to the employee.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

Yes. An employer has an obligation to investigate a claim of harassment made anonymously because it is primarily the employer's responsibility to ensure that there is equal opportunity in the workplace.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Yes. An employer may discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process. The fact that harassment was committed by an employee warrants the employer pursuing a disciplinary process. It is primarily the employer's responsibility to ensure that there is equal opportunity in the workplace.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

No. The remote working environment does not impact an employers' ability to mitigate the risk of workplace harassment because every employer is required to develop a policy, practice or plan which is published at the workplace to prevent discrimination and promote equal opportunity employment. Employees are required to comply with these and failure to do so can lead to a disciplinary hearing or, based on the seriousness of the misconduct, can lead to termination of employment. As such, the risk of workplace harassment may be mitigated.

14. What can an employer do to combat workplace harassment in the remote working environment?

An employer can combat workplace harassment through the implementation of policies that are directed at combatting harassment. The establishment of a committee that promotes the application of anti-harassment policies against employment discrimination in the workplace is another way an employer may combat harassment.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

Yes. An employer is legally required to have a harassment plan and policy or practice that is published at the workplace to prevent discrimination and promote equal opportunity in employment. The plan must address each of the employment policies and practices and contain a plan to eliminate any discrimination with regards to recruitment procedures, appointments and the appointment process, job classification and

grading, remuneration, employment benefits and terms and conditions of employment, work environment and facilities, job assignment, training and development, performance evaluation systems and promotion, termination of employment, and disciplinary measures.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

The following are measures that an employer can implement to mitigate the risk of harassment in the workplace:



Adopt, communicate, implement, monitor and periodically review policies to eliminate discrimination.



Periodically examine policies.



Ensure assessments in performance reviews do not discriminate indirectly or directly against any employee.



Ensure that those responsible for conducting performance reviews do not discriminate.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

The possible liability an employer may face for a failure to take reasonable steps to prevent harassment in the workplace is a suit for damages and compensation from the acts of harassment that it failed to prevent in the workplace. An employer also faces the financial implications of the reputational liability that is associated with a failure to take steps to reasonably prevent harassment in the workplace.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

If a victim is unsatisfied with the actions of an employer, the victim may file a complaint to the Tanzania Commission for Mediation and Arbitration. The victim can also file a complaint at their nearby police station to pursue criminal case against the wrongdoer.

19. Do laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment? How so?

Yes. Data privacy does impact an employer's ability to investigate and prosecute claims of harassment because the investigation to be conducted will involve the alleged perpetrator's privacy, which an employer is precluded from invading. Notably, the chances of getting a well detailed report are narrow due to restrictions from data privacy laws.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

In the course of the investigation, the employer should not disclose any information regarding the claims of harassment to a third party unless the employer is required to disclose such information for other criminal investigations by a relevant authority, such as the Ministry of Home Affairs or the Tanzania Police Force.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

An employer is legally allowed to request job applicants to disclose any history of harassment or violence. A history of harassment at the workplace is a permissible ground to refuse employment.



Uganda

Interesting Facts about Uganda



Official languages
Swahili and English



Capital
Kampala



Currency
Ugandan Shilling



Main exports
Agricultural products, coffee, tea, cotton, copper, oil and fish



Retirement age
60 years



Minimum working age
14 years old



Percentage of female participation in the workforce
67,6%



Public transport
Small mini busses, which are called "taxis"



Unemployment rate
4,28% in 2022



Population
45,85 million in 2021



Average age of the population
15,7 years



Economy
The economy of Uganda has a great potential and appears poised for rapid growth and development



Ernest Sembatya Kaggwa
Partner

MMAKS Advocates

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List of relevant legislation

(including regulations, codes of good practice, etc.)

- The Employment Act, 2006 (Ugandan Employment Act)
- The Employment (Sexual Harassment) Regulations, 2012 (Ugandan Sexual Harassment Regulations)



1. What is the definition of workplace harassment in Uganda? What requirements must be fulfilled in order for conduct to constitute harassment?

Any physical or verbal abuse, behaviour or conduct that unreasonably interferes with work or creates an intimidating, hostile, or offensive work environment.

2. What are the different forms of workplace harassment recognised in Uganda?

Form	Examples
Use of language	Degrading public tirades by a supervisor or colleague, deliberate insults related to one's personal or professional competence, and threatening or insulting comments.
Physical	Unwanted or unwelcome touching, patting, pinching or other unsolicited physical contact.
Use of visual material	Display of sexually suggestive pictures, objects or written materials or sexually suggestive gestures.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

Workplace harassment legislation in Uganda only protects employees and does not extend to non-employees.

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

The workplace harassment legislation in Uganda is silent on whether the harassment must take place on an employers' premises or during working hours for the employer to take disciplinary action. However, in Ugandan labour practice, harassment is punishable notwithstanding when and where it has taken place.



Uganda



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5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

A single incident can constitute harassment.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

There is no restriction on who can report workplace harassment. It could be the victim, colleague, whistle-blower, etc.

7. When must harassment be reported? Does a delay in reporting harassment affect whether disciplinary action may be taken?

Workplace harassment legislation in Uganda does not prescribe a time limit within which to file a complaint of harassment. A delay in reporting harassment does not affect whether disciplinary action may be taken or not.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
Protection from retaliation for consulting on or reporting a complaint, testifying as a witness, co-operating in investigations, and discussing the complaint with labour union representatives.	The right to a fair hearing.
Protection from discrimination including termination, denial of promotion, demotion, transfer to a lesser position, involuntary placement on leave, hostile or abusive treatment, decreasing remuneration or benefits, coercion, threats, and intimidation.	
The right to privacy.	

9. What are an employer's obligations once harassment is reported?

An employer is required to do the following:

- receive and register complaints of harassment;
- initiate internal investigations;
- keep a record of the nature of harassment, proceedings, documents, information, and action taken;
- respond to complaints in a timely manner; and
- prepare and provide reports of complaints to the labour commissioner or labour officer.

10. What is the process(es) that an employer must follow once harassment is reported?

An employer must follow the processes set out below:

- register the details of the complaint;
- interview the complainant and respondent to ascertain the facts of the matter;
- consider any investigation report about the complaint;
- consult the union official where a union exists in the establishment;
- make a decision; and
- inform the complainant and alleged harasser of the decision in writing.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

There is no legal mandate obligating an employer to investigate a claim of harassment made anonymously.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Yes. An employer has the discretion to discipline an employee notwithstanding that the victim does not wish to follow a formal process. The disciplinary action should, however, be preceded by a fair hearing.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

To an extent, yes, remote working has impacted employers' ability to mitigate workplace harassment. Remote working has increased the scope and volume of online and other remote forms of interaction (telephone, email, instant messaging, virtual calls, and so on) that are less observable/monitored by the employer and which therefore carry a heightened risk of harassment being perpetuated virtually.

14. What can an employer do to combat workplace harassment in the remote working environment?



Implement a harassment policy that addresses and prohibits online harassment and other forms of harassment outside the physical workplace.



Organise regular seminars to sensitise their employees about harassment outside the physical workplace.



Encourage employees to retain proof of and report all incidents of harassment, including those that occur outside the physical workplace.



Encourage employees to use employer-provided platforms for official communication as opposed to other private or less formal platforms.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

An employer with more than 25 employees is obligated to have a written policy against harassment containing the following provisions:

- a notice to employees that harassment at the workplace is unlawful;
- a statement that it is unlawful to retaliate against an employee for filing a complaint of harassment or for co-operating in an investigation of a sexual complaint;
- a description and examples of harassment;
- a statement of the consequences for employees who are found to have committed harassment;
- a description of the process for filing harassment complaints and the addresses and telephone number of the person to whom complaints should be made; and
- education and training programmes on harassment for all employees on a regular basis.

The policy must be expressed in a manner and language that employees may reasonably be expected to understand.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

While a claim of harassment is being investigated, the employer may:



Suspend the employee under investigation in order to pave the way for the investigation and to avoid any interference on the part of the alleged perpetrator in the investigation.



Prohibit the employee being investigated from contacting the complainant/victim in any way.



Conduct the investigation and hearing within a reasonable time as unnecessary delays are typically distressing for the parties involved and raise the risk of improper interference.

In order to further mitigate the risk of harassment in the workplace, the employer should:

- organise regular seminars on how to identify, report, prevent and address harassment in the workplace;
- create an environment that enables victims to come forward and report harassment with confidence that their complaint will be properly investigated and addressed;
- institute modes of punishment that are proportionate to the gravity of the conduct of the offending employee, as opposed to punishments that are unlikely to deter future misconduct and which are more likely to be perceived as a slap on the wrist; and
- ensure that, in general, the employer respects gender equality in its hiring and promotion practices and other activities in general.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

Under the Ugandan Employment Act, an employer is liable to pay UGX 480,000, which is approximately USD 130, for noncompliance with any provision of the Ugandan Employment Act, including not taking reasonable steps to prevent harassment in the workplace. The Ugandan Sexual Harassment Regulations create, as an offense, any contravention of the provisions of the regulations and prescribe a fine not exceeding UGX 120,000, which is approximately USD 32, or imprisonment not exceeding three months, or both.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

A dissatisfied employee has a right to present their complaint to a labour officer and if the labour officer is unable to effectively address the complaint, the employee can refer it to the Ugandan Industrial Court.

19. Does laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment? How so?

An employer cannot compel employees to disclose their private data and communications that are not issued using the employer's communication platforms or equipment. This may therefore reduce the scope of evidence that an employer is able to obtain and use.

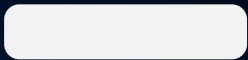
20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

- Ensuring the security of collected data through appropriate technical (e.g. cyber security) and organisational measures (limited access clearance) to prevent unlawful access or damage to data.

- Proper identification of persons applying to access data to ensure that only data subjects and other persons who are lawfully permitted access may view and obtain private information.
- Strict redaction/omission of protected information within documents that are otherwise capable of use in the proceedings following investigation.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

It is legally permissible for an employer to request that job applicants disclose any history of harassment or violence and to refuse someone employment based on a history of harassment.



Zambia

Interesting Facts about Zambia



Official language
English



Capital
Lusaka



Currency
Zambian Kwacha



Main exports
Copper, sugar, tobacco, gemstones, cotton and electricity



Retirement age
65 years



Minimum working age
16 years old



Percentage of female participation in the workforce
54.06%



Public transport
Trains, cars and minibus taxis



Unemployment rate
6,13% in 2021



Population
19,47 million in 2021



Average age of the population
16,8 years



Independence
The territory of Zambia was known as Northern Rhodesia from 1911 to 1964. It was renamed Zambia in October 1964 on its independence from British rule



Jacqueline Cornhill Jhala
Partner

Corpus Legal Practitioners

Corpus is a full services corporate and commercial law firm based in Lusaka, Zambia, which strives to offer exceptional legal services to the highest international standards. We offer world class services to local, regional and international clients, providing a crucial legal link to Zambia's growing market in-country and the region.

We act for corporations, NGOs, financial institutions and state-owned enterprises among others, facilitating our clients' objectives with efficiency while minimizing legal and regulatory risks. Corpus' core competences lie in the expertise offered through our four operating practices, namely Corporate Advisory, Banking and Finance, Dispute Resolution and Public Policy, and Energy, Resources and Infrastructure.

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List of relevant legislation

(including regulations, codes of good practice, etc.)

- Anti-Gender Based Violence Act No. 1 of 2011 (Anti-GBV Act)
- Gender Equity and Equality Act No. 22 of 2015 (GEE Act)
- Penal Code Act, Chapter 87 of the laws of Zambia (Zambian Penal Code)
- The Employment Code Act No. 3 of 2019 (ECA)
- The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia (ILRA)
- Data Protection Act No. 3 of 2021 (DPA)



1. What is the definition of workplace harassment in Zambia? What requirements must be fulfilled in order for conduct to constitute harassment?

We are not aware of any Zambian law that expressly defines the term “workplace harassment”. However, there are various pieces of legislation that make reference to “harassment” in general and “sexual harassment” specifically. The GEE Act provides for, among other things, the prohibition of harassment, victimisation and harmful social, cultural and religious practices. The GEE Act outlines the type of conduct which would constitute harassment.

“Harassment” is generally defined in the GEE Act as engaging in conduct that induces in a person the fear of imminent harm or feelings of annoyance and aggravation, and includes:

- sexual harassment;
- psychosocial harassment;
- making persistent, unwelcome, non-consensual communication or contact with a person, including:
 - following, pursuing or accosting the person;

- watching, loitering outside or near a building where the person resides, works, carries on business, studies or happens to be;
- repeatedly making phone calls or using a third party to make phone calls to the person, whether or not conversation ensues;
- repeatedly sending, delivering or causing the delivery of unsolicited, offensive or abusive letters, telegrams, packages, facsimiles, electronic mail, objects or messages to the person; or
- engaging in other menacing, annoying or aggravating behaviour.

The GEE Act further defines “sexual harassment” to include conduct or contact of a sexual nature, such as:

- having physical contact, making advances, comments or innuendos without consent;
- being offensive, humiliating or intimidating a person in a suggestive manner; or
- threatening or imposing a condition on a person for doing or undertaking anything or creating a hostile environment for an employee.

The Anti-GBV Act also includes a definition of “harassment”, which is equally adopted by the ECA. Similar to the definition provided in the GEE Act, it is defined in the Anti-GBV Act to mean engaging in a pattern of conduct that induces in a person the fear of imminent harm or feelings of annoyance and aggravation, including:

- sexual contact without the consent of the person with whom the contact is made and making unwanted sexual advances;
- following, pursuing or accosting a person or making persistent, unwelcome communication with a person and includes:
 - watching, loitering outside or near a building where the harassed person resides, works, carries on business, studies or happens to be;
 - repeatedly making phone calls or using a third party to make phone calls to the harassed person, whether or not conversation ensues;
 - repeatedly sending, delivering or causing the delivery of offensive or abusive letters, telegrams, packages, facsimiles, electronic mail or other offensive objects or messages to the harassed person; or

- engaging in any other menacing behaviour.

The Zambian Penal Code also addresses the concept of sexual harassment. It provides that any person who practices sexual harassment in a workplace, institution of learning or elsewhere on a child commits a felony. Sexual harassment is defined in the Zambian Penal Code to mean:

- a seductive sexual advance being an unsolicited sexual comment, physical contact or other gesture of a sexual nature which one finds objectionable or offensive or which causes discomfort in one’s studies or job and interferes with academic performance or work performance or a conducive working or study environment;
- sexual bribery in the form of soliciting or attempting to solicit sexual activity by promise of reward;
- sexual threat or coercion, which includes procuring or attempting to procure sexual activity by threat of violence or victimisation; or
- sexual imposition using forceful behaviour or assault in an attempt to gain physical sexual contact.

2. What are the different forms of workplace harassment recognised in Zambia?

Form	Examples
Sexual harassment.	<p>Conduct or contact of a sexual nature, such as:</p> <ul style="list-style-type: none"> • having physical contact, making unwelcome advances, comments or innuendos without consent; • being offensive, humiliating or intimidating to a person in a suggestive manner; • threatening or imposing a condition on a person for doing or undertaking anything or creating a hostile environment for an employee; • sexual contact without the consent of the person with whom the contact is made and making unwanted sexual advances; • requests for sexual favours or sexual bribery in the form of soliciting or attempting to solicit sexual activity by promise of reward; • sexual threat or coercion which includes procuring or attempting to procure sexual activity by threat of violence or victimisation; • sexual imposition using forceful behaviour or assault in an attempt to gain physical sexual contact; or other verbal or physical harassment of a sexual nature.
Making persistent, unwelcome, non-consensual communication or contact with a person.	<p>Such as:</p> <ul style="list-style-type: none"> • following, pursuing or accosting a person or making persistent, unwelcome communication with a person; • watching, loitering outside or near a building where the harassed person resides, works, carries on business, studies or happens to be; • repeatedly making phone calls or using a third party to make phone calls to the harassed person, whether or not conversation ensues; • repeatedly sending, delivering or causing the delivery of offensive or abusive letters, telegrams, packages, facsimiles, electronic mail or other offensive objects or messages to the harassed person; or engaging in any other menacing behaviour.
Discrimination.	<p>This includes:</p> <ul style="list-style-type: none"> • repeated insults, name-calling, taunting, etc. directed at a person because of their race, colour, sex or gender, sexual orientation, etc.; and • unwelcome conduct that is based on race, colour, religion, sex, national origin, age, disability or genetic information.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

Harassment laws in Zambia are of general application and apply to all persons, whether in the workplace or otherwise. This notwithstanding, “workplace harassment” seems to suggest that this is harassment which is confined to the workplace. In this respect, any policies promulgated by an employer with respect to harassment in the workplace and any provisions in legislation which specifically make reference to harassment targeting employees would be binding on the employer and employees. An example of such legislation would be the provisions in the ECA which prohibit discrimination by an employer in an undertaking.

Where an employee of a company is the perpetrator and the victim is a non-employee, the respective policies relating to harassment in the workplace may be extended to protect the non-employee by requiring the employer to take action against its employee. The foregoing would, however, depend on the content of the policy and to whom it extends.



Zambia

4. Must the harassment take place on the employers' premises or during working hours for the employer to take disciplinary action?

Zambian legislation is silent on where or when the act of harassment must take place for it to constitute "workplace harassment". The law is equally silent on whether an employer has the jurisdiction to take disciplinary action against an employee for acts of harassment which take place outside the employer's premises and outside working hours, whether against a fellow employee or a person who is not an employee.

However, the common law position is that harassment which affects employees need not be confined to the workplace. This is because not all interaction between employees happens within the confines of the office environment. Harassment by co-workers can occur off the employer's premises, such as at a work function or in an employee's home. In light of this, provided that the perpetrator is an employee, that employee would be bound by the company's policies and thus subject to the company's disciplinary process.

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

The conduct need not be continuous or ongoing to amount to harassment. A single incident can constitute harassment. For example, when it comes to sexual harassment, a single incident of sexual contact made without the consent of the recipient can amount to sexual harassment.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

Companies often have in place formal policies or grievance procedures that people engaged by the company should follow in order to report workplace harassment. These policies need not confine the obligation of reporting such incidences to victims of the harassment only. The policy may equally place an obligation to report these incidents on fellow employees merely witness workplace harassment taking place.

Victoria Falls at Zambia side
Livingstone | Zambia

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

As the law does not expressly regulate this, it would be regulated as per applicable company policy. It is important to note that pursuant to the ECA, every employer is required to have a harassment policy in place.

Also worth noting is the general principle requiring disciplinary inquiries to be held within a reasonable time from the date on which the alleged misconduct occurred or from the date on which the employer first became aware of it. The idea of the principle of "justice delayed is justice denied" is that an unreasonable delay may cause serious prejudice for the employee concerned. This principle has been echoed in many cases, including *George Lipepo and Others v The People Appeal 389 of 2013*, where it was stated that an accused person has the right to a fair trial, which includes the right to trial without undue delay. In determining what amounts to "unreasonable delay", it was held in *R v Dennis Michael Nona [2012] ACTSC 41 (23 March 2012)* that one ought to consider the reasons for avoiding undue

delay, namely, to prevent oppressive pre-trial incarceration, to minimise the anxiety and concern of the accused, and to limit the impairment of, or prejudice to, the defence.

An employer will always be required to observe the rules of natural justice to ensure that an employee who is set to be disciplined is not prejudiced in any way. This means that where an employee has committed an offence, the employer must ensure that it institutes the disciplinary procedure accordingly and within a reasonable time to avoid the employee being prejudiced in any way.

Despite this, it is worth noting that there may be limitations applicable on reporting certain acts of harassment to law enforcement authorities. Under section 41 of the GEE Act, a person who alleges that any person, public body or private body has contravened the GEE Act (including committing an act of sexual harassment) may lodge a complaint, as may be prescribed, with the Director of the Zambia Gender Equity and Equality Commission in the prescribed manner and form. However, the complaint or allegation must be made within a period of two years from the date on which the facts giving rise to the complaint or allegation became known to the person making the complaint or allegation.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
The right to raise a grievance with the employer.	The right to be heard.
The right to protection by the employer against the perpetrator.	The right to protection by the employer from false allegations.
The right to lodge a grievance with the Zambia Gender Equity and Equality Commission or the employer of the perpetrator where the conduct giving rise to the complaint has taken place at the workplace or in the course of being employed.	The right to presumption of innocence.
The right to confidentiality of proceedings.	The right to confidentiality of proceedings.
The right to treatment with dignity.	The right to treatment with dignity.
The right to confidential advice and counselling.	The right to confidential advice and counselling.
The right to initiate legal action without exhausting internal procedures.	

9. What are an employer's obligations once harassment is reported?

Generally, the employer's obligation would be to address each harassment report that is made and to take the necessary steps to put an end to the harassment, which would include:

- Where a company policy dealing with harassment is in place, the employer must implement the appropriate procedures to discipline the perpetrator.
- The employer must also take the necessary measures to protect people against victimisation, retaliation or false accusations for lodging grievances.

- The employer must ensure that it conducts the necessary investigations into the alleged offence expeditiously, sensitively and confidentially, so as to protect the parties involved.
- In accordance with Zambian employment and labour laws, the employer must ensure that every accused person is afforded an opportunity to be heard on all allegations levelled against them.

10. What is the process(es) that an employer must follow once harassment is reported?

There is no legally mandated procedure under Zambian law for an employer to follow where an incident of harassment has been reported. Nonetheless, harassment would still amount to misconduct by an employee (gross or otherwise, depending on the type of harassment), requiring the employer to carry out the necessary investigations into the incident and to carry out the appropriate disciplinary proceedings and take remedial action, if necessary.

In view of this, the employer would be required to institute its disciplinary process. As the disciplinary process would be hinged on the accused's conduct, the ECA requires the employer to afford the employee an opportunity to be heard on any charges laid against him/her.

Because the law does not prescribe the procedure which employers should adopt to ensure that employees are heard, the courts are willing to accept any procedure that reasonably demonstrates that an employee was given an opportunity to defend the case against them and that the employee was afforded a fair opportunity to be heard. Courts will look to see whether the employer has followed the rules and procedures in its disciplinary policies in order to determine whether the employee was disciplined accordingly and, if the contract is subsequently terminated, that the termination was lawful. The procedure as set out in the disciplinary policy would have to be followed to the extent that the policy does not violate the rules of natural justice, which basically require that the employee be given an opportunity to exculpate themselves before an impartial tribunal prior to action being taken by the employer.

Generally, the disciplinary procedure would be as follows:

- the employee should firstly be charged with the specific wrongdoing(s);
- the charges laid against the employee must be clearly communicated to the employee before the hearing and the notice should set out the nature of the allegations against the employee and the basis for those allegations;
- the employee must be given an opportunity to respond to the charges within reasonable time;
- the employee should be afforded a fair hearing; and
- the employee should, preferably, be afforded an opportunity to appeal the decision passed.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

Yes. An employer would have a legal obligation to investigate every complaint of harassment in the workplace, whether the complaint was made formally, informally or even anonymously. This obligation

arises from an employer's common law duty to provide a safe working environment for all employees. As soon as an employer becomes aware of an allegation of harassment, a duty to investigate would be triggered.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Yes. An employer has the authority to discipline an alleged perpetrator, particularly where the conduct of that employee has resulted in a breach of the employer's internal policies. This would be irrespective of whether the victim wanted to pursue a formal process or not.

It is important to also note that some types of harassment, particularly sexual harassment, are felonies (i.e. criminal offences). Meaning that, even where a victim opts not to pursue a formal process, the perpetrator would still be tried by the courts.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

It is our view that remote working may have impacted an employers' ability to mitigate the risk of workplace harassment because an employer would be better placed to ensure a safe working environment for its employees within the confines of the undertaking. Where employees are required to physically report to the employer's premises to carry out their duties, an employer would have better oversight of the employees' conduct and be able to manage their interactions by putting in the appropriate measures and boundaries.

Harassment is not merely physical but can come in different forms, such as verbal or psychological/ psychosocial. Therefore, where employees are based in different locations, it becomes challenging for an employer to monitor or manage the conduct of its employees outside of the workplace.

14. What can an employer do to combat workplace harassment in the remote working environment?

An employer is still bound by its obligations to an employee even in a remote working setting. Meaning that the employer still has a duty to ensure a safe working environment for its employees.

An employer can therefore consider enhancing its harassment policies to adequately cover remote working. Such measures can include providing a more confidential reporting system through which victims can safely report incidences of workplace harassment. Communication over the company's networks should also be closely monitored and employees can be encouraged to protect themselves and to report any incidences of harassment to the employer or even the police.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

Yes. Section 95(1) of the ECA mandates an employer to ensure that it has a harassment policy. While this is a legal requirement, the ECA does not provide further guidance with respect to the contents of the harassment policy.

This notwithstanding, section 40(1) of the GEE Act provides that the Zambia Ministry of Gender and Child Development (now the Gender Division under the Office of the President) shall develop and implement appropriate policies and procedures to eliminate sexual harassment. While the provision seems to be restricted to sexual harassment, certain provisions could

still be adopted by an employer when drafting its harassment policy, including:



A grievance procedure which a person who has been subjected to harassment can follow to report the incident.



A formal process to be followed by the employer to discipline the perpetrator.



Provisions outlining the rights of the victims and protections to be afforded by the employer.



Contact details for persons to whom a victim of harassment can obtain confidential advice and counselling.



Zambia



Lusaka | Zambia

In all dealings with harassment in the workplace, the employer must ensure that all people are treated with dignity and that all allegations of harassment are dealt with expeditiously, sensitively and confidentially. Victims or other people who make reports must also be protected against victimisation, retaliation or false accusations for lodging grievances.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

While a claim of harassment is being investigated, an employer could consider placing the alleged offender on suspension in order to remove them from the workplace. This would protect the victim from any intimidation they may feel from the perpetrator for having reported the incident, as well as protecting the alleged perpetrator from any acts of discrimination or harassment from fellow employees. The employer can also provide counselling for any employees who may be affected by the incident.

To mitigate the risk of further harassment taking place in the workplace, an employer can sensitise its employees on ways of identifying acts of harassment and mechanisms that can be adopted to report them by holding workshops or trainings. It is imperative that the company's harassment policy is brought to the attention of all employees, as required under the ECA. Management should also be given an active role in the workplace to monitor the behaviours of employees and to resolve/eliminate any forms of harassment amongst employees.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

Under the ECA, an employer is required to have a harassment policy in place and has the legal obligation to bring the policy to the attention of each employee. Where an employer fails to maintain a harassment policy,

the employer would be liable to an administrative penalty imposed by the Zambia Labour Commissioner. This would include any of the following:



A caution not to repeat the conduct which led to the noncompliance with a provision of the ECA.



A reprimand.



A directive to take remedial action or to make specific arrangements to redress identified non-compliance.



The restriction or suspension of certain specified business activities.



Publication of a public notice of any prohibition or requirement imposed by the Zambia Labour Commissioner and of any rescission or variation thereof, and the notice may, if the Zambia Labour Commissioner considers it necessary, include a statement of the reason for the prohibition, requirement, variation or rescission.



A financial penalty not exceeding ZMW 60,000 (approximately USD 3,082.20).

In some instances, an employer may even be held vicariously liable in tort/delict for a breach of the duty of care owed to its employees. Vicarious liability is the principle that holds an employer or company responsible for actions committed by its employees towards others during the course of duty. Under common law, an employer has a duty to ensure that the work environment is safe

for all employees. In the event that an employee is harassed and the employer fails to take any remedial action, despite being aware of the occurrence of such harassment, a possible suit may be brought against such employer for failing to provide the relevant protection.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

The general position, from a common law perspective, would be for a victim to adopt any other remedy available to them in law, which would include instituting court proceedings against the perpetrator.

This notwithstanding, the GEE Act does provide avenues for recourse with respect to victims of sexual harassment in particular. Among the remedies afforded to a victim of sexual harassment under the GEE Act, where the conduct giving rise to the complaint has taken place at the workplace or in the course of being employed, is the entitlement to lodge

a grievance with the Zambia Gender Equity and Equality Commission. The GEE Act also prohibits acts of sexual harassment, and any person who alleges that any person, public body or private body has contravened this provision may lodge a complaint with the Director of the Zambia Gender Equity and Equality Commission in the prescribed manner and form.

It is important to note that a person who has been subjected to sexual harassment need not have exhausted internal sexual harassment procedures before prosecution of the offence is commenced or civil proceedings are instituted. A complaint can therefore be escalated to the Zambia Gender Equity and Equality Commission for civil or criminal prosecution, as the case may be, where a victim is unsatisfied with the actions of an employer with respect to the grievance. However, the GEE Act provides that a complaint or allegation cannot be lodged after a period of two years from the date on which the facts giving rise to the complaint or allegation became known to the person making the complaint or allegation.

19. Do laws pertaining to data privacy impact an employer's ability to investigate and prosecute claims of harassment? How so?

The Zambia DPA may possibly impact an employer's ability to investigate and prosecute claims of harassment, though confidentiality issues as far they pertain to the use of an employer's systems (such as IT systems) can be waived by an employee. The fundamental element which underpins the lawful processing of personal data (i.e. data which relates to an individual who can be directly or indirectly identified from that data and includes a name, an identification number, location data, an online identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person) is the requirement to obtain the consent of the person to whom the data relates. Data protection in Zambia is mainly regulated by the Zambia DPA. Unless provided otherwise under the act, the Zambia DPA provides that a data controller (i.e. a person who, either alone or jointly with other persons, controls and is responsible for

keeping and using personal data on a computer, or in structured manual files, and requests, collects, collates, processes or stores personal data from or in respect of a data subject) may only process personal data where the data subject (i.e. an individual from, or in respect of whom, personal information is processed) has given consent for the processing of their personal data.

However, there may be instances where the data controller may be permitted to process personal data without the consent of the data subject, such as where the processing is necessary for compliance with a legal obligation which the data controller is subject to or in order to protect the vital interests of the data subject or of another natural person. Similarly, Article 17(1) of the Constitution of Zambia (Amendment) Act, 2016 (Constitution) provides for the right to privacy. Except with their own consent, no person shall be subjected to the search of their person or property or the entry by others on their premises. However, the provision further provides that one can derogate from the right to privacy if derogating is reasonably required for the purpose of protecting the rights of freedoms of other persons.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

When conducting an investigation which would require an employer to collect personal data of the parties associated with the allegation, the employer would be required to obtain the consent of the person to whom the personal data relates. Consent to access an employee's personal data in an employment relationship is usually obtained at the point of an employee executing the contract of employment, i.e. it would be a term in the contract that the employee consents to the employer using her/his personal data. In addition, an employer should observe the principles and rules relating to the

processing of personal data. This would include ensuring that all personal data is:

- processed lawfully, fairly, and transparently;
- collected for explicit, specified, and legitimate purposes and not further processed in a manner incompatible with those purposes;
- adequate, relevant, and limited to what is necessary in relation to the purposes for which it is processed;
- accurate and, where necessary, kept up to date, with every reasonable step taken to ensure that any inaccurate personal data is erased or rectified without delay;
- stored in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data is processed;
- processed in accordance with the rights of a data subject; and
- processed in a manner that ensures appropriate security of the personal data.

Note that the processing of personal data in the interests of the prevention, detection, investigation and prosecution of an offence or any other contravention of law would only be exempt from the above if the processing is authorised by a written law and is necessary for, and proportionate to, such interests being achieved.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

We are not aware of any law which prevents an employer from requesting a job applicant to disclose any history of harassment or violence. Noting that an employer has a duty to provide a safe work environment for its employees, it is our view that a history of harassment may be a permissible ground to refuse employment. However, it would still be advisable for an employer be cautious in how it manages the recruitment process.



Zambia



**Kariba Dam
Zambezi river basin between
Zambia and Zimbabwe**



Zimbabwe

Interesting Facts about Zimbabwe



Official languages
Shona and Ndebele



Capital
Harare



Currency
Zimbabwean dollar



Main exports
Tobacco and nickel



Retirement age
65 years



Minimum working age
16 years old



Percentage of female participation in the workforce
61,21%



Public transport
Cars, taxi cabs and minibus taxis



Unemployment rate
5,17% in 2022



Population
15,99 million in 2021



Average age of the population
18,4 years



Independence
The United Kingdom granted Zimbabwe independence on April 18, 1980



Patrick Jonhera
Partner

AB & David

AB & David is the Zimbabwean member firm of 'AB& David Africa', a business & Projects Law firm operating out of seven African countries and a network of firms.

The firm has established itself in Zimbabwe is one of the go to specialist firms, focusing on business and projects. The firm's labour and employment team boasts of a young and dynamic team of professionals servicing the business needs of private and public sector companies, international organisations and financial institutions.

The focus of the firm is to ensure that businesses succeed by minimizing the risk of doing business in the country.

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List of relevant legislation

(including regulations, codes of good practice, etc.)

- Labour Act Chapter [28:01] (Zimbabwean Labour Act)
- Public Service Act [Chapter 16:04] (Zimbabwean PSA)
- Criminal Law (Codification and Reform) Act [Chapter 09:23] (Zimbabwean Criminal Law Act)
- National Employment Code 15 of 2006, (Zimbabwean National Employment Code)
- The Constitution of Zimbabwe (2013) (Zimbabwean Constitution)



1. What is the definition of workplace harassment in Zimbabwe? What requirements must be fulfilled in order for conduct to constitute harassment?

All the different forms of workplace harassment in Zimbabwe are classified under the general umbrella term of “*unfair labour practices*”. The requirements to be fulfilled for conduct to constitute harassment vary according to the particular unfair labour practice in question. The requirements for conduct to fulfil discriminatory workplace harassment and violation of rights to privacy will differ, for example, discriminatory workplace harassment would require the perpetrator to treat the victim unfairly based on an aspect of their identity, e.g. ethnicity, gender etc. Whereas violation of rights to privacy would require one to publish sensitive information gained in the workplace, to unauthorised third parties.

2. What are the different forms of workplace harassment recognised in Zimbabwe?

Form	Examples
Discriminatory harassment	Degrading public tirades by a supervisor or colleague, deliberate insults related to one’s personal or professional competence, and threatening or insulting comments.
Sexual harassment	Unwanted or unwelcome touching, patting, pinching or other unsolicited physical contact.
<i>Quid pro quo</i> harassment	Display of sexually suggestive pictures, objects or written materials or sexually suggestive gestures.
Violation of privacy	Disclosing an employee’s medical condition/publishing sensitive information gained in the workplace to third parties.
Physical harassment	Beating up an employee for misconduct.
Hindering employee democratic action	Preventing the formation of a workers’ committee meant to air worker grievances.
Forced labour	Forcing an employee to do work outside the scope of their employment on threat of non-payment of their salary.

3. To whom does workplace harassment legislation apply? Are non-employees protected?

No. Non-employees are not covered by workplace harassment legislation in Zimbabwe. It applies solely to the employee/employer or co-worker relationship.

4. Must the harassment take place on the employers’ premises or during working hours for the employer to take disciplinary action?

The harassment need not take place on the employer’s premises or during work hours for disciplinary action to be taken. For example, disclosing an employee’s private medical records could take place anywhere after hours and still be considered workplace harassment.



Zimbabwe

Victoria Falls | Zimbabwe

5. Does the conduct need to be continuous or ongoing to constitute harassment? Can a single incident constitute harassment?

Yes. A single incident can constitute harassment since the relevant legislation makes no specific requirement for the conduct to be continuous for it to be considered actionable workplace harassment.

6. Who may report workplace harassment? Is the reporting of harassment limited to victims of harassment?

Workplace harassment may be reported by either the victim of the harassment or a trade union or workers' committee representing the victim.

7. When must harassment be reported? Does a delay in reporting harassment effect whether disciplinary action may be taken?

According to section 94 of the Zimbabwean Labour Act, a matter of workplace harassment must be heard within two years of its commission. Complaints arising from any labour related matters prescribe after two years.

8. What are the rights of victims and alleged perpetrators of workplace harassment?

Victims	Alleged Perpetrators
Right to make the report of harassment to the relevant authority.	Right to be heard by the appropriate person/committee/other authority.
Right to be kept abreast of progress of proceedings.	Right to be fully informed of their alleged misdeeds.
Right to approach a workers' committee (or other such body representing workers), to air grievances on their behalf.	Right to legal representation whenever the matter is set to be heard.
Right to receive a written record or summary of the proceedings or decision made regarding the complaint of harassment.	Right to receive a written record or summary of proceedings or decision made regarding the allegations levelled against them.

9. What are an employer's obligations once harassment is reported?

An employer must refer the matter to a labour officer or a designated agent in Zimbabwe for a hearing, or in the presence of an employment code of conduct, follow the procedures outlined in the code. Failure to do so would constitute an unfair labour practice as provided in section 8(a) of the Zimbabwean Labour Act. For example, section 6(1) of the Zimbabwean National Employment Code states that an employer can suspend an employee with/without benefits pending disciplinary proceedings, provided that the employer has good cause to believe that misconduct has been committed.

10. What is the process(es) that an employer must follow once harassment is reported?

In the presence of an employment code of conduct, an employer must follow the processes for its particular industry, as outlined in section 101 of the Zimbabwean Labour Act. In its absence, the matter would be referred to a labour officer for conciliation in terms of section 93 of the Zimbabwean Labour Act, and should such conciliation fail, the conciliator is empowered to make a ruling which may be referred to the Labour Court for confirmation.

11. Does an employer have an obligation to investigate a claim of harassment made anonymously?

An employer's obligations in a case of workplace harassment only extends to co-operating and negotiating in good faith with workers' committees and trade unions as well as not actively participating in the obstruction of the employee's efforts in proving their case. Apart from this, there are no other positive obligations on the employer.

12. May an employer discipline an alleged perpetrator notwithstanding the victim not wanting to pursue a formal process?

Yes. An employer is able to proceed with disciplinary action in accordance with its internal policies and procedures, notwithstanding the victim not intending to pursue formal processes. The internal process is separate from and not dependant on any actions taken by the victim.

13. Has remote working impacted the ability of employers to mitigate the risk of workplace harassment, if so, how?

No. Remote working may have impacted employers' ability to detect instances of harassment, however, in practice, the whole framework on the prevention of worker harassment is dependant on reports either from victims or worker organisations. Remote working has not taken away victims' rights to access their employer or report victimisation.

An employer can still use the same 'everyday', remote methods of communication in mitigating the risk of any disputes that should arise or any harassment in the workplace. Internal remedies, investigations and disciplinary actions would still be able to be used and would therefore act as a deterrent to any would-be perpetrators of such harassment.

14. What can an employer do to combat workplace harassment in the remote working environment?



An employer can still follow internal remedies on workplace harassment using online methods.



As a preventative measure, employers can also host online educational seminars on workplace harassment.

15. Is an employer legally required to have a harassment policy? What provisions must be contained in a harassment policy?

No. There is no legislation to this effect. However, all employers are required to act in compliance with the conditions set forth in protecting the rights of employees in Part II of the Zimbabwean Labour Act (sections 4 to 7). In the presence of an employment code of conduct, the employer is expected to act in compliance with the code as well.

16. What other measures can an employer implement in order to mitigate the risk of harassment in the workplace or while a claim of harassment is being investigated?

An employer can host educational seminars, or team-building exercises to mitigate the risk of workplace harassment. During investigation of such claim(s), the alleged perpetrator

may be suspended indefinitely with or without pay to ensure a healthier working environment. However, the disciplinary proceedings must be completed within 14 days, which means that the suspension cannot be more than 14 days.

17. What liability, if any, does an employer face in the event that they fail to take reasonable steps to prevent harassment in the workplace?

According to section 8 of the Zimbabwean Labour Act, acts of omission related to workplace harassment issues are a breach of an employer's duties and essentially make the employer liable for damages, among other remedies offered under section 5(4) of the Zimbabwean Labour Act.

18. What recourse is available to a victim of workplace harassment where they are unsatisfied with the actions of the employer?

The victim in such a case may take the matter up on appeal to the Labour Court in terms of section 89(1)(a) of the Zimbabwean Labour Act. In cases where the employer has not done anything, the employee may take the matter up with a labour officer or a designated agent.

19. Does laws pertaining to data privacy impact an employers ability to investigate and prosecute claims of harassment? How so?

The general requirement, set out in section 57 of the Zimbabwean Constitution, is that every person has a right to privacy with regards to personal property. This is further expounded upon in section 11 of the Zimbabwean DPA, which emphasises the need for consent when accessing and giving away sensitive information, as defined by the act. Sensitive

information refers to information relating to religious beliefs, marital status or political affiliations. Regarding property belonging to the company, however, the employer does have access to such information, including communications done within that context. The general rule is that employee data should be used only within the context of employment related issues.

20. What measures must an employer implement to ensure that they are compliant with data protection or the right to privacy while effectively investigating claims of harassment?

An employer must not be invasive with regards to private property, paying obeisance to the constitutional provision outlined above and seeking consent before accessing or distributing 'sensitive' information.

21. Is it legally permissible for an employer to request job applicants to disclose any history of harassment or violence? Is a history of harassment a permissible ground to refuse employment?

There is no law that compels an employer to conduct investigations related to a job applicant's history of harassment. However, where an employer conducts independent investigations and uncovers such history, it is entitled to reject an application on this score. Further, an employer is entitled to refuse employment on grounds of a history of harassment. Employers are also allowed to conduct pre-employment checks on a prospective employee, usually with the employee's consent, including requesting information of any history of harassment directly from the job applicant.



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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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