

HARASSMENT



HARASSMENT AT THE WORKPLACE

Each individual should be treated with dignity and respect at work. Harassment of any kind is in no one's interest and should not be tolerated at the workplace. This document has been compiled to offer guidelines to employers and employees to help avoid harassment.

WHAT IS HARASSMENT?

Harassment is an act or omission (or more than one act or omission) directed towards an individual at the workplace that is unwelcome, unwanted and has a destructive effect. Examples of harassment are—

- bullying;
- spreading malicious rumours, or insulting someone, particularly on gender, race or disability grounds;
- ridiculing or degrading someone – picking on them or setting them up to fail;
- exclusion or victimisation;
- unfair treatment, for example based on race, gender sexual orientation, pregnancy, age, disability, religion, HIV status, etc.;
- overbearing supervision or other misuses of power or position;
- unwelcome sexual advances – touching, standing too close and displaying of offensive material;
- making threats/comments about job security without foundation;
- deliberately undermining a competent worker by overloading and constant criticism; and
- preventing individuals progressing by intentionally blocking promotion or training opportunities.

DUTIES OF EMPLOYERS

Employers have a duty to protect their workers from harassment and to inform and educate them about this issue. Employers are encouraged to develop a code of conduct on harassment. This

can be done in consultation with employees and employee representatives.

Harassment is one of the issues that are protected by the law, it is recognised as form of unfair discrimination if it can be linked to a listed or arbitrary ground of discrimination.

WHY DO EMPLOYEES NEED TO TAKE ACTION ON HARASSMENT?

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

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

WHAT YOU CAN DO WHEN YOU ARE BEING HARASSED?

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

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

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

- If you are a member of a union or employees' association, contact your shop steward or representative.
- If you are not a union member, contact the company's Human Resources Manager or someone else in a position of authority, like your Supervisor or Senior Manager.

- If you work in a very small business and the above options are not open to you, contact the CCMA for assistance regarding your rights in terms of the labour laws.

Once the case has been reported, the company management (or union) must investigate the case. Usually, there will be a disciplinary inquiry to establish the facts, hear both sides of the story and decide on the appropriate disciplinary measures for the harasser.

The matter can be referred to the CCMA for conciliation and, if unresolved, through conciliation, the matter can be referred to arbitration if the employee earns less than the amount set by the Minister of Labour in Chapter Two of the Basic Condition of Employment Act (BCEA).

In sexual harassment matters, the employee has the choice between arbitration at the CCMA and adjudication at the Labour Court, regardless of how much he or she earns.

If the employee earns above the amount referred to in the BCEA, the matter maybe adjudicated by the Labour Court. Only if both parties agree in writing where the employee earns above the BCEA amount may the matter be arbitrated by the Labour Court.

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

RELEVANT LEGISLATION:

- Employment Equity Act 55 of 1998, as amended.
- Basic Conditions of Employment Act 75 of 1997, as amended.
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, as amended.