



HARASSMENT POLICY

INTRODUCTION

Code of Good Practice: Prevention and Elimination of Harassment in the Workplace

The South African Constitution protects the right to dignity, equality, and fair labour practices in terms of the Bill of Rights. South Africa is committed to the elimination, prevention, and the management of all forms of harassment, including gender-based harassment in the workplace with the aim to create safe workplaces that are free of harassment.

South Africa regards all forms of harassment as a form of unfair discrimination and constitutes a barrier to equity and equality in the workplace. All forms of harassment such as sexual harassment; gender-based violence and harassment; bullying; and harassment based on race, ethnicity, social origin, religion, disability, sexual orientation, or gender identity, must be eliminated. It is acknowledged that harassment may include physical abuse, psychological abuse, emotional abuse, and sexual abuse.

Harassment also includes the use of physical force or power, threatened or actual, against another person or against a group or community, which either results in, or has a high likelihood in social injustice, economic harm, injury, death, physical and psychological harm, mal-development, or deprivation

All forms of harassment against women, men and LGBTQIA+ and vulnerable persons in the workplace is an abuse of power. Harassment particularly affects workers in the most vulnerable work situations, who have poor access to labour rights such as freedom of association, collective bargaining, decent work, non-discriminatory practices, and access to justice,

PRINCIPLE

The organisation is committed to providing a healthy and safe environment in which individuals can exercise their full potential without fear of harassment or abuse. All individuals including persons who have dealings with the company, such as consultants, sub-contractors, third-party organisations, and volunteers amongst others, must be treated with dignity, and everyone's integrity and privacy is to be respected.

The organisation's commitment extends to ensuring that all partner organisation are aware of their responsibility to take all reasonable steps to prevent people from harm and to respond appropriately when harassment is reported to them.



1. Purpose of the Policy

- 1.1. The purpose of this policy is to prevent harassment and to clearly set out the procedures to be followed when harassment is witnessed or occurs. Individuals, interns, consultants, partner organisations, volunteers, who have been subjected to harassment have a right to lodge a grievance, and to expect that the organisation will take appropriate and decisive action.
- 1.2. The organisation is committed to creating a safe environment for staff members, interns, consultants, partner organisations, and volunteers.
- 1.3. The organisation commits itself to addressing as a matter of urgency all cases of reported harassment and to ensure that fair procedures are followed throughout the process within clear pre-determined time frames of no longer than 30 days.
- 1.4. To create a safe, zero-tolerance work environment free of all forms of harassment.
- 1.5. To establish a common understanding of what constitutes harassment.
- 1.6. To ensure that all staff, interns, consultants, partners, volunteers receive appropriate information about harassment and other forms of sexual violence and the procedures to be followed if harassment, sexual assault, or rape occurs.
- 1.7. To ensure that any staff, interns, consultants, partners, volunteers who experiences harassment or any other form of sexual violence is referred to appropriate support or where applicable, provided with appropriate support, such as referral to counselling and legal advice.
- 1.8. To establish clear lines of accountability for the implementation and management of this policy.
- 1.9. Harassment in the workplace will not be permitted or condoned; and
- 1.10. Complainants in harassment matters have the right to follow the procedures in the policy and appropriate action shall be taken by the organisation.

2. Application

- 2.1. This policy applies to:
 - 2.1.1. All individuals have a role to play in contributing towards creating and maintaining a working environment in which harassment is unacceptable. They should therefore ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others.



- 2.1.2. Harassment in the workplace will not be permitted or condoned and is considered as a disciplinary transgression in terms of the organisation's disciplinary rules.
- 2.1.3. Where harassment is reported to a manager or supervisor, that individual is expected to follow the prescribed procedure in this policy for dealing with such cases. Failure by a manager or supervisor to take appropriate action after harassment is reported to them will itself be deemed to be a major transgression, which could result in dismissal.
- 2.1.4. The organisation undertakes to protect individuals from reported harassment by individuals within the organisation or external to the organisation such as consultants, or other partner organisations. Individuals in turn are expected to desist from harassing the personnel of consultants, or any other third party.
- 2.1.5. The organisation gives the assurance that no individual shall be victimised as a result of reporting a case of harassment in good faith.
- 2.1.6. Retaliation or victimisation of any complainant who has reported harassment, abuse or bullying in good faith by any other individual such as employee, supervisor, manager, or director shall be deemed to be a major transgression in terms of the organisation's disciplinary procedure.
- 2.1.7. The organisation however, recognises that to be accused of and investigated for an allegation of harassment will cause trauma to the individual concerned and their family. It is therefore necessary to protect individuals from unfounded or malicious allegations of harassment.

3. Gender Equality

- 3.1. The impact and dynamics of gender issues and gender inequalities are critical to an understanding of HIV and AIDS and the organisation's approach. In our work with partners and other stakeholders, as well as in-house through our policies and procedures and daily working arrangements, we are committed to promoting greater awareness about gender, reduction of gender inequality and achieving appropriate gender balance in roles and responsibilities. Steps taken by the organisation to tackle gender inequalities and issues include:
 - 3.1.1. Positively encouraging appropriate gender balance in all recruitment processes.
 - 3.1.2. Taking steps to help staff better understand the breadth and impact of gender issues, gender identity and sexual orientation; and
 - 3.1.3. Showing a high level of understanding and flexibility in relation to social care roles, and their impact on individual staff members and teams within the organisation.



4. What is harassment

4.1. Harassment is understood to be unwanted conduct which impairs dignity, which creates a hostile or intimidating work environment for one or more individuals or is calculated to, or has the effect of, inducing submission by actual or threatened adverse consequences, is related to one or more discriminatory grounds listed in section 6(1) of the South African Employment Equity Act.

4.2. Unwanted conduct

4.2.1. Unwanted conduct refers to whether the harasser/ perpetrator knew or should have known that the conduct was unwanted.

4.2.2. Did the complainant communicate to the harasser/perpetrator that the conduct was unwelcome? This may occur verbally or non-verbally and may be communicated directly or indirectly to the harasser / perpetrator.

4.2.3. If there is no such communication, it is still necessary to determine whether the conduct was of such a nature that the harasser/perpetrator knew or should have known that the conduct he/she was engaged in, is considered unacceptable.

4.2.4. Violent conduct may amount to harassment, harassment may occur because of non-violent conduct. An act or threat of violence is not an essential element of harassment.

4.2.5. All conduct should be objectively assessed from the perspective of the complainant who alleges harassment. The primary focus is to determine whether there has been harassment and the impact of the conduct on the complainant.

4.2.6. There may be situations where the perception of the complainant is not consistent with the views of what is expected of a "reasonable person" in the situation.

4.3. Repeated or serious conduct

4.3.1. Harassment may occur because of a pattern of persistent conduct or a single instance or event.

4.3.2. Harassment bullying may be an escalating process whereby the complainant ends up in an inferior position and becomes the target of negative social acts.

4.3.3. The following factors may be relevant to the issue of whether harassment occurred:

4.3.3.1. The context of the harassment

4.3.3.2. The circumstances of the complainant and the impact of the conduct has had on them.

4.3.3.3. The respective positions of the harasser/perpetrator and complainant.



4.4. Hostile work environment

- 4.4.1. A hostile work environment is based on conduct related to a prohibited ground impacts on the dignity of one or more individuals.
- 4.4.2. Hostile environments can impact negatively on the employee's ability to work and on their personal well-being.
- 4.4.3. A hostile environment exists when an employer anticipates that individuals will be subject to abusive conduct related to a prohibited ground by members of the public, customers or clients and fails to take reasonable steps to protect the individuals from such conduct.

4.5. Types of harassment

- 4.5.1. Harassment may be the result of physical, verbal, or psychological conduct.
- 4.5.2. Physical harassment includes physical attacks, simulated or threatened violence, or gesture (such as raising a fist as if to strike a person).
- 4.5.3. Verbal bullying may include threats, shaming, hostile teasing, constant negative judgement, and criticism, or racist, sexist or LGBTQIA+ phobic language.
- 4.5.4. Psychological harassment in the workplace may be associated with emotional abuse and involves behaviour that has serious negative psychological consequences for the complainant.
- 4.5.5. A wide range of workplace conduct may constitute harassment, such as:
 - 4.5.5.1. Slandering or maligning and employee or spreading malicious rumours.
 - 4.5.5.2. Conduct which humiliates, insults, or demeans an employee.
 - 4.5.5.3. Withholding work related information or supplying incorrect information.
 - 4.5.5.4. Sabotaging or impeding the performance of work.
 - 4.5.5.5. Intolerance of medical, psychological, disability or personal circumstances.
 - 4.5.5.6. Surveillance of the employee without their knowledge and with harmful intent.
 - 4.5.5.7. Abuse or selective use of disciplinary proceedings.
 - 4.5.5.8. Pressurising an employee to engage in illegal activities.
 - 4.5.5.9. Pressurising an employee to resign.
- 4.5.6. Bullying is referred to when harassment involves abuse of coercive power by an individual or group of individuals in the workplace. This is intentional behaviour.
- 4.5.7. Workplace bullying involves aggressive behaviour in which someone repeatedly causes another person injury or discomfort.



- 4.5.8. Harassment may be vertical or horizontal. Vertical involves the use of power and is between an employee and a manager. Horizontal harassment refers to harassment between individuals in the same position or on the same level.
- 4.5.9. Passive-aggressive or covert harassment may include negative gossip, negative joking at someone's expense, sarcasm, condescending eye contact, facial expression or gestures, deliberately causing embarrassment and insecurity, marginalisation, social exclusion, well-being, happiness, success and career performance.
- 4.5.10. Online harassment is harassment which committed, assisted or is aggravated using information and communications technology.

4.6. Sexual harassment

- 4.6.1. Harassment on one or a series of incidents involving unwelcome sexual advances, unwelcome requests for sexual favours, or unwelcome physical conduct of a sexual nature:
 - 4.6.1.1. When submission to such conduct is made implicitly or explicitly a condition of employment.
 - 4.6.1.2. When submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, allocation of work, matters of promotion, salary increases, job security, and benefit affecting the employee).
 - 4.6.1.3. When such conduct has the purpose or effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.
 - 4.6.1.4. When such conduct might reasonably be expected to cause insecurity, discomfort, offence or humiliation to the recipients (s) of the conduct.
 - 4.6.1.5. When submission to such conduct is made implicitly or explicitly a condition for the provision of professional services.
- 4.6.2. Sexual harassment is unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace, considering all the following factors:
 - 4.6.2.1. whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation.
 - 4.6.2.2. whether the sexual conduct was unwelcomed.
 - 4.6.2.3. the nature and extent of the sexual conduct; and
 - 4.6.2.4. the impact of the sexual conduct on the employee.



4.7. Factors to establish Sexual harassment

4.7.1. Harassment on a prohibited ground

- 4.7.1.1. The grounds of discrimination to establish sexual harassment are sex, gender, and sexual orientation.
- 4.7.1.2. Same-sex harassment can amount to discrimination based on sex, gender, and sexual orientation.

4.7.2. Unwelcome conduct

- 4.7.2.1. There are different ways in which an employee may indicate that sexual conduct is unwelcome, including non-verbal conduct such as walking away or not responding to the perpetrator.
- 4.7.2.2. Previous consensual participation in sexual conduct does not necessarily mean that the conduct continues to be welcome.
- 4.7.2.3. Where a complainant has difficulty indicating to the perpetrator that the conduct is unwelcome, such complainant may seek the assistance and intervention of another person such as a colleague, a more senior member of staff, a human resource official, a family member, a friend, or the organisation's designated consultant/counsellor.

4.7.3. Nature and extent of the conduct

- 4.7.3.1. The unwelcome conduct must be of a sexual nature, and includes physical, verbal, or non-verbal conduct.
- 4.7.3.2. Physical conduct of a sexual nature includes all unwelcome physical contact, ranging from touching to sexual assault and rape.
- 4.7.3.3. Verbal conduct includes unwelcome innuendos, suggestions, hints, sexual advances, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body made in their presence or to or about them, inappropriate enquiries about a person's sex life, whistling of a sexual nature and the sending by electronic means or otherwise of sexually explicit text or images.
- 4.7.3.4. Non-verbal conduct includes unwelcome gestures, indecent exposure and the display or sending by electronic means or otherwise of sexually explicit pictures or objects.



- 4.7.3.5. Sexual harassment may include, but is not limited to, victimisation, *quid pro quo* harassment and sexual favouritism. Sexual favouritism means that another employee has received preferential treatment with regard to promotion, work hours, assignments, or other significant employment benefits or opportunities because of a sexual relationship with an individual representative of the employer who was in a position to grant those preferences.
- 4.7.3.6. Victimisation occurs where an employee is victimised or intimidated for failing to submit to sexual advances.
- 4.7.3.7. *Quid pro quo* harassment occurs where a person such as a director, manager or supervisor or co-employee, influences or attempts to influence an employee's employment circumstances (for example engagement, promotion, training, discipline, dismissal, salary increments or other benefits) by coercing or attempting to coerce an employee to surrender to sexual advances.
- 4.7.3.8. This could include sexual favouritism, which occurs where a person in authority in the workplace rewards only those who respond to their sexual advances whilst other deserving individuals are denied promotions, training, merit increases, salary advances or other opportunities.
- 4.7.3.9. A single incident of unwelcome sexual conduct may constitute sexual harassment.

4.7.4. Impact of the conduct

- 4.7.4.1. The conduct could constitute an impairment of the employee's dignity, considering:
 - 4.7.4.1.1. the circumstances of the employee; and
 - 4.7.4.1.2. the respective positions of the employee and the perpetrator in the workplace.

4.8. Racial, ethnic or social origin harassment

- 4.8.1. Racial harassment in a form of unfair discrimination prohibited by section 6(1) of the Employment Equity Act (South Africa) which is related to a person's membership or presumed membership of a group identified by one or more of the listed prohibited grounds or a characteristic associated with such group.
- 4.8.2. Racist conduct including derogatory language is contrary to the founding principles of the South African Constitution.
- 4.8.3. Racial harassment is unwanted conduct which can be persistent or a single event that is harmful, demeaning, humiliating or creates a hostile or intimidating environment.



4.8.4. Racial harassment includes direct or indirect behaviour which involves issues such as racist verbal or non-verbal conduct, remarks, abusive language, racist cartoons, memes or innuendos.

4.8.5. Racial harassment occurs where a person is subject to physical, verbal or non-verbal conduct or other conduct based on race which undermines their dignity or creates a humiliating environment for the recipient.

4.9. The test for racial harassment

4.9.1. Racial harassment must be assessed objectively with reference to the reaction of a normal or reasonable person in keeping with the values underlying the constitutional order.

4.9.2. It is important to establish on the balance of probabilities that the conduct complained about was related to race, ethnic or social origin, or a characteristic associated or assumed to be associated with such group.

4.9.3. An important factor to establish is whether the perpetrator would have spoken the words or behaved in the manner complained of towards the complainant.

4.9.4. Explicit racial conduct is assumed to be unwanted conduct. Important consideration must be given to how the perpetrator treats other individuals not of the complaining racial group or ethnic orientation.

4.9.5. In determining whether language or conduct amounts to conduct:

4.9.5.1. Is the conduct persistent or harmful?

4.9.5.2. Demeaning, impairing dignity, humiliating, or creating a hostile or intimidating environment.

4.9.5.3. Was calculated to induce someone into submission by actual or threatened adverse consequences.

4.9.5.4. Whether the language and conduct is insulting, abusive and or derogatory.

4.10. Reporting of harassment

4.10.1. The receiver of the behaviour should indicate both verbally and non-verbally that the behaviour is considered offensive and is unwelcome, and specifically requesting the person responsible to stop the behaviour.

4.10.2. Any conduct which constitutes harassment, must **immediately** be brought to the attention of the organisation. This means as soon as is possible in the circumstances and without undue delay considering the nature of the harassment.



- 4.10.3. A harassment complaint may be brought to the attention of the Director, Senior Manager by the complainant or any other person aware of the harassment. For example, a friend, parent, or colleague may report the matter to any Senior Manager or Director of the organisation.
- 4.10.4. Upon receiving a complaint of harassment, the Manager / Director concerned must advise the complainant that they may choose for the matter to be managed formally or informally. The formal and informal procedures must be explained to the complainant. The complainant must also be advised that in certain circumstances the organisation may choose to follow a formal procedure, even if the complainant does not wish to do so.
- 4.10.5. The recipient of the complaint should advise and reassure the complainant that they shall not be victimised because of the procedure they choose to follow and that the matter will be treated with the strictest of confidence.

4.11. Informal Procedure

- 4.11.1. A complainant of harassment may choose to follow either of the following informal procedures:
 - 4.11.1.1. The complainant or another appropriate person explains to the perpetrator that the conduct in question is not welcome, that it offends the complainant, makes them feel uncomfortable and that it interferes with their work.
 - 4.11.1.2. An appropriate person approaches the perpetrator, without revealing the identity of the complainant, and explains to the perpetrator that certain forms of conduct constitute harassment, are offensive and unwelcome, make individuals feel uncomfortable, and interfere with their work.
 - 4.11.1.3. The complainant may also request management to decide for the perpetrator to be counselled regarding his/her offending behaviour. Unless good reasons prevent it, this must take place within five (5) days of the harassment being reported and the complainant must be informed of the outcome of the counselling.
 - 4.11.1.4. If a complainant chooses not to follow the formal procedure, management should nevertheless still assess the risk to other persons in the workplace. In assessing such risk management must consider all relevant factors, including the severity of the sexual harassment and whether the perpetrator has a history of harassment.
 - 4.11.1.5. If after proper investigation it appears as if there is risk of harm to other persons in the workplace, management might decide to follow the formal procedure, irrespective of the wishes of the complainant.



4.12. Formal Procedure

- 4.12.1. A complainant may choose to follow the formal procedure, either with or without first following the informal procedure. In such event, the complainant shall be required to lodge a formal grievance.
- 4.12.2. Where a formal grievance has been lodged, the organisation will appoint an appropriately trained consultant to investigate the grievance and, if warranted, initiate a disciplinary enquiry against the alleged perpetrator.
- 4.12.3. Where, after investigation it is decided to convene a disciplinary enquiry, the organisation's disciplinary procedure must be followed:
 - 4.12.3.1. the accused must be given timeous notification of the enquiry (at least 48 hours' notice) outlining the charges against them and their rights.
 - 4.12.3.2. the enquiry must be chaired by a competent impartial person.
 - 4.12.3.3. only the initiator, the grievant, the accused, their representatives and witnesses, and an interpreter if required, shall be present during the disciplinary enquiry.
 - 4.12.3.4. the Chairperson must take due cognisance of the trauma which giving evidence may cause to the grievant and witnesses and must endeavour to ensure that the grievant is not disadvantaged.
 - 4.12.3.5. management must endeavour to maintain confidentiality during the enquiry and to keep the identities of persons involved confidential.
 - 4.12.3.6. in considering the sanction, the Chairperson must take extenuating, aggravating and mitigating factors into account.
- 4.12.4. Depending on the severity of the harassment and the circumstances of the case, the Chairperson may impose a sanction which may include a written or final warning, transfer of the perpetrator to another position or centre, suspension without pay as an alternative to dismissal, dismissal with notice or summary dismissal. This outcome shall be made known to the grievant within five (5) days of the conclusion of the disciplinary enquiry.
- 4.12.5. In certain cases, the Chairperson might recommend that the accused and/or the complainant be referred for professional rehabilitative counselling.

4.13. Dispute Procedures within South Africa

- 4.13.1. Should a complainant be dissatisfied with the outcome of the reported harassment grievance, the complainant shall be entitled, within thirty (30) days of the outcome being made known to them, to refer the matter to the Commission for Conciliation Mediation and Arbitration (CCMA) for conciliation in accordance with the provisions of the Labour Relations Act of 1995.

4.14. Advice and Assistance

- 4.14.1. Where the complainant is unable to approach the perpetrator, a colleague, any other manager and/or an outside professional may be informed.



- 4.14.2. A complainant may be required to attend counselling. It may also be advisable to move the perpetrator and/or complainant so that they work apart, to reduce tension and unpleasantness. Allegations will be investigated immediately, sensitively, and confidentially.
- 4.14.3. Additional sick leave will be considered where an employee's sick leave has been exhausted only in cases of serious harassment.

4.15. Physical and Mental Health

- 4.15.1. Management may seek appropriate professional advice and arrange for trauma counselling for the complainant; where this is required the initial trauma counselling should take place within a few days of the incident; follow-up counselling over a longer period may also be necessary.
- 4.15.2. Leave of absence may also be necessary, and Management will give permission for this, and if the complainant's sick leave entitlement is exhausted, additional sick leave may be granted.

4.16. Confidentiality, Record-Keeping

- 4.16.1. At all stages of the procedures, informal and formal, and from the first discussions when the potential allegations of harassment are discussed, all parties to the discussion are required to be aware of the sensitivity of the matters under discussions, the potential impact on individual lives and careers, and to exercise extreme caution in the disclosure of the information, and where possible to maintain the confidentiality of the receiver and complainant and the person responsible for the behaviour.
- 4.16.2. All internal and external communications relating to the incident of harassment should be treated as confidential.
- 4.16.3. Considerations of confidentiality do not preclude an employer from taking appropriate steps to protect the safety or dignity of individuals, either during the conduct of the investigation or subsequently.

4.17. Additional sick leave

- 4.17.1. Where an employee's existing sick leave entitlement has been exhausted, the employer should give due consideration to the granting of additional sick leave in cases of sexual harassment, where the employee, or medical advice, requires trauma counselling.
- 4.17.2. For employees based in South Africa, if harassment results in an employee being ill for longer than two weeks, the employee may be entitled to claim illness benefit in terms of the South African Unemployment Insurance Fund.



- 4.17.3. In appropriate circumstances, the employer should consider assisting with the cost of medical advice and trauma counselling and care, where such amounts are not covered by an applicable medical aid scheme.