

PREVENTING AND MANAGING HARASSMENT IN THE WORKPLACE: A GUIDE FOR EMPLOYERS & MANAGERS

*Based on the 2022 Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace

1. Introduction

Under Section 6(3) of the Employment Equity Act 55 of 1998 (EEA), harassment of an employee is a form of unfair discrimination and is prohibited.

Employers have a legal duty (Section 60 EEA) to take proactive and remedial steps to prevent and eliminate harassment in the workplace. Failure to act can result in the employer being held vicariously liable for the perpetrator's conduct.

Creating a safe, respectful, and inclusive workplace is therefore not only a moral obligation - it's a legal requirement.

2. What Counts as Harassment?

Harassment includes unwanted conduct that:

- Impairs dignity or creates a hostile or intimidating work environment;
- Induces submission through actual or threatened consequences;
- Is based on a prohibited ground such as sex, gender, race, disability, sexual orientation, religion, or any arbitrary ground.

Sexual harassment includes unwanted sexual advances, requests for sexual favours, innuendos, physical contact, or sexually explicit communication.

Other forms include bullying, racial harassment, psychological or emotional abuse, and online (cyber) harassment.

Even a single serious incident can amount to harassment.

3. Employer Responsibilities (from Code of Good Practice)

A. Prevention and Education

- Establish a zero-tolerance stance on all forms of harassment.
- Conduct awareness and training at all levels - managers, employees, interns, and contractors.
- Ensure employees know how to identify, report, and address harassment.

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B. Develop and Communicate Policies

- You must have a written Harassment Policy that:
- Prohibits harassment and outlines examples;
- Explains reporting options (formal and informal);
- Ensures confidentiality and protection against retaliation;
- Describes grievance / disciplinary steps and sanctions; and
- Provides access to counselling and support.
- Your Grievance and Disciplinary procedures must align with this Code to handle complaints fairly and promptly.

C. Procedures When a Complaint Is Made

- *Receive & Record:* Any allegation must be immediately brought to the employer's attention.
- *Investigate Promptly:* Consult relevant parties and assess risk.
- *Protect the Complainant:* Take interim steps (e.g., separation of parties, internal transfers, counselling, safety measures).
- *Follow Due Process:* Apply either informal resolution or a formal investigation and a hearing (grievance or disciplinary) depending on the case at hand.
- *Ensure Confidentiality:* Information must only be shared with those directly involved.
- *Remedial Action:* Apply proportionate disciplinary measures and take steps to prevent recurrence.

D. Support and Whistleblowing Safeguards

- Designate a confidential advisor or counsellor (not in direct line management).
- Provide access to trauma counselling or medical assistance if required.
- Implement and publicise anonymous or whistle-blowing channels (consistent with the Protected Disclosures Act 26 of 2000) to allow employees to safely report harassment without fear of retaliation.

5. Consequences of Non-Compliance

If an employer fails to take reasonable steps once aware of harassment, they may be held liable for damages or face CCMA or Labour Court proceedings for unfair discrimination or constructive dismissal.

Employers should be prepared to:

- Defend their preventive actions;
- Show that appropriate policies, training, and procedures exist; and
- Prove that complaints were taken seriously and handled correctly.

6. "Are You Ready?" Checklist

(Self-Assessment for Employers & Managers)

Area	Yes	No
1. We have a Harassment Policy that complies with the 2022 Code.		
2. Our Grievance Procedure provides a clear process for employees to report harassment.		
3. Our Disciplinary Policy includes harassment as a dismissable offence.		
4. We have trained all staff (including managers) on harassment awareness and reporting.		
5. A confidential reporting structure or anonymous whistle-blowing line is in place.		
6. There is a designated HR or counsellor contact for confidential support.		
7. We ensure complainants are protected from retaliation or victimisation.		
8. We keep records of all complaints, investigations and outcomes.		
9. We review and update our policies at least annually.		
10. We've conducted a harassment risk assessment in our workplace.		

If you answered "Yes" to 8 or more - your organisation is likely compliant.

If you answered "No" to 3 or more - your workplace may be at legal risk and needs urgent review.

7. Fairbridges Support

Fairbridges assists employers with:

- Drafting or updating Harassment, Grievance, and Disciplinary Policies;
- Conducting independent workplace investigations;
- Facilitating online or onsite manager and employee training; and
- Performing compliance and culture audits in line with the Code of Good Practice.

Contact Us

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