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The Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace



Introduction

In June 2019, the International Labour Organisation (ILO) adopted the Violence and Harassment Convention. The Convention recognises the right of everyone to a world of work free from violence and harassment. The Convention applies to the public and private sector, as well as the formal and informal economy. It also adopted Recommendation 206 on Violence and Harassment, which along with the Convention, calls for among others that Member States “should address violence and harassment in the world of work in labour and employment, occupational safety and health, equality and non-discrimination law, and in criminal law, where appropriate.

On 29 November 2021, government submitted its documents to the ILO as part of the ratification process and indications from the ILO website are that the Convention will come into force for South Africa on 29 November 2022.ⁱⁱ

In South Africa, harassment in the workplace was primarily dealt with in terms of the Code of Good Practice and Handling of Sexual Harassment, which dealt only with sexual harassment. Other forms of harassment were previously only handled on the basis of discrimination as provided for in the Employment Equity Act. In line with the prescripts of the ILO Convention, the Minister of Employment and Labour released the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace on 18 March 2022.

This Code replaces the Code of Good Practice and Handling of Sexual Harassment and expands the types of violence and harassment that employees may experience in the workplace, as well as providing guidelines for employer responses to violence and harassment.

This brief provides an overview of the new [Code](#).

“All women and men have the right to live and work free from violence and harassment. However, while this is generally accepted, violence and harassment remains pervasive throughout the world of work. It affects all jobs, sectors and occupations. It has serious consequences for workers, their families and communities, as well as for enterprises’ reputations and productivity.”

United Nations Women &
the International Labour
Organisation

Extent and impact of workplace violence and harassment

The ILO highlights that no country, work setting or occupation can realistically claim to be free from any form of workplace violence and harassment – it is a global phenomenon which transcends the boundaries of individual countries, industry sectors and occupational groups.ⁱⁱⁱ

The true extent of the problem is not known. This is as a result of scarce data on the topic as well as high levels of under-reporting.

In the case of South Africa, the ILO highlights a 2012 study by Cunniff and Mostert^{iv}, which surveyed more than 13 000 respondents. The sample for this study consisted of employees who worked in six sectors in South Africa: financial, mining, government, manufacturing, academic and call centres, from across all 9 provinces. The survey found that approximately 31% of the sample had experienced some form of workplace harassment or bullying. The study also found that victims tended to wait prolonged periods before reporting, resulting in the scope of the problem being under-reported and ineffectively managed.

Workplace violence and harassment has implications for the employee/victim, the employer/organisation and society as a whole:

- *Individuals who are bullied or experience harassment in the workplace experience increased levels of stress and anxiety, high blood pressure, insomnia, Post Traumatic Stress Disorder and suicidal thoughts.^v*
- *Violence and harassment in the workplace affects not only the individual, but also the organisation as a whole. Organisations with a pervasive bullying culture see higher turnover rates, lower productivity, increased healthcare costs, higher levels of absenteeism, lower levels of morale, a lack of trust in management and higher litigation costs.^{vi}*
- *Violence and harassment at the workplace may also have consequences for society as a whole, in terms of costs related to social and health services and welfare. These costs include those related to medical consultations, treatment and/or rehabilitation, as well as expenditure for social welfare/benefits due to premature retirement - and the more intangible costs related to loss of productive workers at a premature stage.^{vii}*

90% of workplace harassment is never officially reported.

Source: Workplace Conflict: Facts and Figures, Mediate.com

South Africa

A study in 2012 found that 31.1%^{iv} of 13,911 people surveyed had experienced bullying in the workplace.



Targets don't report due to: the status of the perpetrator, fear of repercussions and the incident being endemic to the workplace.

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

Objectives of the code:

- To eliminate all forms of harassment in the workplace in any activity linked to, or arising out of work.
- **WORKPLACE** includes: public and private spaces where people perform their work, bathrooms and rest/meal spaces, medical facilities, work-related travel, training/events/social activities, employer-provided accommodation and transport

Who does the Code apply to? **EVERYONE** in the workplace

Owners	Employers	Managers	Supervisors	Employees	Trainees, interns, apprentices, etc.
Job seekers/ applicants	Volunteers	Clients & Customers	Suppliers	Contractors	Anyone having dealings with a business

How does the Code define harassment?

- Unwanted conduct which impairs dignity.
- Conduct which creates a hostile or intimidating work environment for one or more employees (through inducing submission by actual or threatened adverse consequences).
- Conduct which is related to one or more grounds in respect of which discrimination is prohibited in terms of the Employment Equality Act (incl. race, gender, sex, pregnancy, marital status, sexual orientation, etc.).
- Harassment includes violence, physical abuse, psychological abuse, emotional abuse, sexual abuse, gender-based abuse and racial abuse.
- Harassment may be **direct** (e.g. verbal remarks, physical force, sexual advances) or **indirect** (e.g. gossiping/spreading rumours, deliberately causing embarrassment, sabotaging career performance).
- Harassment may be vertical or horizontal:

Horizontal violence

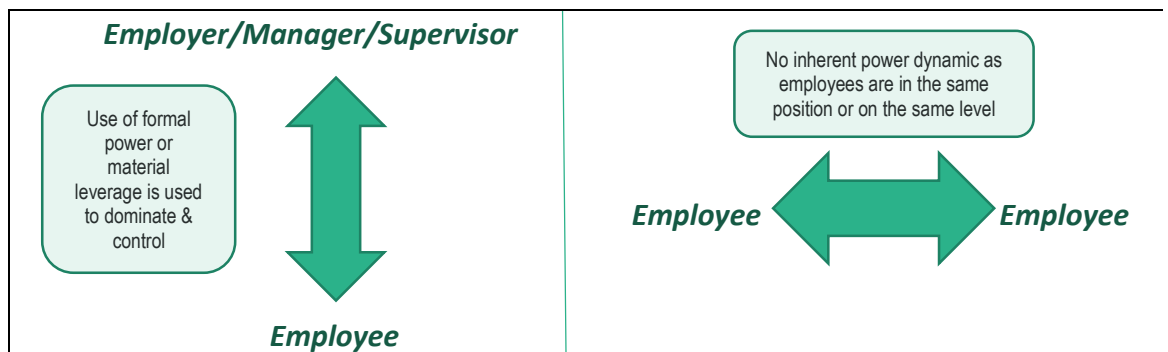
Violence and harassment perpetrated between co-workers

Vertical violence

Violence and harassment perpetrated between supervisors and subordinates



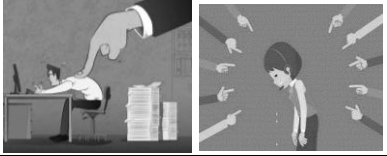



Third party violence

Violence and harassment perpetrated by clients/ customers/patients



Forms of Harassment

The Code identifies that harassment may be the result of physical, verbal or psychological conduct.

		
Physical	Verbal	Psychological
		
Examples		
Physical attacks, simulated or threatened violence or gestures (raising a fist, throwing objects)	Threats, shaming, hostile teasing, insults, constant negative judgement & criticism, racist, sexist or LGBTQIA+ phobic language	Emotional abuse resulting in negative psychological consequences , e.g. verbal abuse, bullying, mobbing, intimidation, sabotaging dignity, well-being, happiness, success & career performance

While the Code identifies numerous forms of harassment, it makes specific mention of the following:

SEXUAL HARASSMENT

- A form of unfair discrimination, prohibited on the grounds of sex, gender or sexual orientation
- Is harassment of a sexual nature and includes physical, verbal and non-verbal conduct and may be expressed directly or indirectly.
- Can take the form of victimisation, quid pro quo harassment and/or sexual favouritism
- Violates the rights of an employee and constitutes a barrier to equality in the workplace.

RACIAL, ETHNIC OR SOCIAL ORIGIN HARASSMENT

- A form of unfair discrimination which is prohibited and relating to a person's membership of a specific racial or ethnic group.
- Includes direct or indirect behavior which involves actions such as racist verbal and non-verbal conduct, remarks, abusive language, racist name calling, offensive behaviour, gestures, and racist visual materials or innuendos.
- Occurs where a person is subject to physical, verbal, non-verbal and other conduct based on race which undermines their dignity or which creates an intimidating, hostile or humiliating work environment.

Four factors are to be taken into account to establish whether there has been harassment: namely, whether the harassment is on the prohibited grounds of sex, gender, and/or sexual orientation; whether the sexual conduct was unwanted or unacceptable; the nature and extent of the sexual conduct, and the impact of the sexual conduct.^{viii}




The Parliament of RSA does have a policy on sexual harassment, however it is unclear to what extent other forms of harassment is addressed. The Human Resources Policy & General Conditions of Employment makes reference to ethical conduct, general workplace rules and employee wellness among others.

It would be important to create awareness about the new Code as this has the potential to address risk factors which may lead to hostile working environments, low morale, poor mental health and high staff turnover.



The ratification of C190 provides a valuable tool to address risk factors and prevent GBV and harassment. The development of workplace policies will empower and protect workers by removing barriers to the implementation of existing laws.ⁱ

Key points from the Code

- Harassment against all employees in the workplace is an abuse of power.
- The intersection of factors such as race, religion, gender or disability increases the risk of harassment.
- Employers have an obligation to take proactive and remedial steps to prevent all forms of harassment in the workplace.
- Employers should have an attitude of zero-tolerance towards harassment and create & maintain a working environment in which the dignity of employees are respected.
- Employers should adopt a harassment policy, guided by the provisions of the Code – the contents of which must be communicated effectively to all employees.
- Employers and applicable employer organisations, as well as trade unions, should include the issue of sexual harassment in their orientation, education and training programmes in an accessible format.
- Harassment policies should include 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 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 another employee.
- Policies must include procedures to be followed in instances of harassment complaints – employees must be informed of formal and informal procedures that are available to deal with harassment and reassure the employee/complainant that there will not be adverse consequences of any kind regardless of the procedure they choose to follow.
- Counselling, treatment, care and support programs for employees must be outlined in the policy.
- In instances of serious harassment where an employee/complainant, on medical advice, requires trauma counselling, the employer should give due consideration to granting additional sick leave if the employee's existing sick leave has been exhausted.
- Grievances and complaints about harassment must be handled and investigated in a manner that ensures confidentiality.

ⁱ <https://www.industrialunion.org/south-africa-submits-documents-to-ratify-ilo-convention-190>

ⁱⁱ https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102888, Ratifications for South Africa

ⁱⁱⁱ International Labour Organisation, 2020, Safe and healthy environments free from violence and harassment

^{iv} Cunniff, L., & Mostert, K, 2012, Prevalence of workplace bullying of South African employees, SA Journal of Human Resource Management, 10 (1), Art. #450

^v <https://www.cupahr.org/blog/bullying-effect-costs-consequences-organization/>

^{vi} Ibid. at iv

^{vii} International Labour Organisation, 2020, Safe and healthy environments free from violence and harassment, page 25

^{viii} <https://altadvisory.africa/2022/03/22/south-africa-government-publishes-new-code-on-workplace-harassment/>