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This guide outlines the Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace, as defined in Notice 1367 of 1998, in order to raise awareness of how to lodge a sexual harassment grievance with your employer, and the procedural guidelines that your employer should be following in dealing with such a grievance. For further information, please call PASSOP on 021 762 0322 or visit us at our head office, the address of which can be found above.

A non-employee who is a victim of sexual harassment may lodge a grievance with the employer of the perpetrator where the harassment has taken place in the workplace or in the course of the harasser's employment

Definitions of Sexual Harassment

- **Unwanted conduct of a sexual nature**

- Sexual attention becomes sexual harassment if:

- § The behaviour is persisted in (although a single incident can still constitute sexual harassment)
- § The recipient has made it clear that the behaviour is unwanted
- § The perpetrator should have known that the behaviour is regarded as unacceptable

- **Forms of sexual harassment**

- Sexual harassment may be unwelcome **physical, verbal or non-verbal conduct** e.g.:

- § **Physical:** all unwanted physical contact; from touching to sexual assault and rape, including a strip search by or in the presence of the opposite sex
- § **Verbal:** sexual hints, comments, innuendos and jokes, unwelcome and inappropriate enquiries into a person's sex life, comments about the physical appearance of a person, whistling
- § **Non-verbal:** unwelcome gestures, sexual/indecent exposure or the display of sexually explicit pictures or objects
- § **Quid-pro quo harassment:** an owner, employer, supervisor, manager or co-employee attempting to influence the process of employment, training, salary, discipline, dismissal or other benefits of an employee in exchange for sexual favours
 - **Sexual Favouritism:** a person in a position of authority rewarding only those who respond to his/her sexual advances over deserving employees who do not respond

Guiding Principles

Employers should create and maintain a working environment in which employee's dignity is respected and one which does not ignore or trivialise the victims of sexual harassment or those raising grievances in regards to it

- A. Employers, management and employees are required to refrain from committing acts of sexual harassment
- B. All must contribute to creating and maintaining a working environment in which sexual harassment is unacceptable, ensuring their own conduct doesn't cause offence, and discouraging any unacceptable behaviour of others
- C. Ensure all those that come into contact with the business (customers, clients etc) are not subjected to sexual harassment by employees or representatives
- D. Employers/management are required to take appropriate action in accordance with this code of good practice when instances of sexual harassment in the workplace are brought to their attention

Collective agreements on disciplinary proceedings regarding sexual harassment should be guided by the provisions of this code

Policy Statements

Employees should issue a policy statement regarding the problem of sexual harassment which should provide that:

- A. All those that have dealings with the business (employees, customers etc) have the right to be treated with dignity
- B. **Sexual harassment in the workplace will not be permitted or condoned**
- C. Subjects of sexual harassment in the workplace have a right to raise a grievance and have appropriate action taken by the employer

Management should be placed under positive duty to implement the policy and take disciplinary action against transgressors to the policy

The policy should explain the procedure to be followed by victims, stating that:

- Allegations of sexual harassment will be dealt with seriously, confidentially and sensitively
- Employees raising grievances will be protected against victimisation and retaliation

The policy statement should be communicated effectively to all employees

Procedures

Employers should develop clear procedures to deal with sexual harassment, ensuring sensitive, efficient and effective resolution

Advice and Assistance: due to the nature of sexual harassment, victims may feel unable to approach the perpetrator or to lodge a formal grievance – if it is practicable, a person outside of the management with the appropriate skills, resources, training and experience should be designated as somebody that victims may approach

Options to solve the problem: informally, or through initiating formal procedure – **the employee is under no duress to accept one option over the other**

- i. Informal resolution: approach or explain to the perpetrator that the conduct is unwanted, unwelcome or unacceptable
 - o If the behaviour does not desist after warnings, or if the case is severe (rape, sexual assault, a strip search or quid pro harassment) it may be more appropriate to initiate formal procedure
- ii. Formal Procedure
 - o Specify to whom the grievance should be lodged
 - o Refer to a timescale for the resolution of the problem, allowing for the grievance to be dealt with expeditiously and with due sensitivity and severity
 - o If the case is not resolved satisfactorily it can be referred to the CCMA within 30 days of the dispute; if the dispute remains unresolved it may be referred to the Labour Court within 30 days of the receipt of the certificate of the commissioner
(See [PASSOP's guide to taking a grievance to the CCMA and Labour Court](#))

Investigation and disciplinary action: Investigatory procedure must ensure that the aggrieved person is not disadvantaged, and that the position of the accused parties is not prejudiced if the grievance is found to be unwarranted

Disciplinary Sanctions: the range of disciplinary sanctions should be clearly stated, and it should be made clear that it will be a disciplinary offence to victimise or retaliate against an employee who lodges a grievance

Criminal Proceedings: a victim of sexual harassment has the right to press separate criminal and/or civil charges against an alleged perpetrator

Serious or continuous incidents of sexual harassments are dismissible offences

Confidentiality

Grievances regarding sexual harassment must be handled in a confidential manner in regards to both parties

- Only appropriate parties (appropriate management, the aggrieved and their representatives, the alleged perpetrator and their representatives, witnesses and an interpreter if necessary) may be present in disciplinary enquiries
- It must be ensured that either party (or their representative) receives necessary information to enable them to prepare for any proceedings outlined by this code

Additional Sick Leave

If a victim needs additional sick days, where existing leave has been exhausted, employers should consider granting them if, on medical advice, the employee requires trauma counselling

Education

Employers should include the issue of sexual harassment in their orientation, training and education programmes of employees