



The new Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace - Part B:

FORMS OF HARASSMENT (Continued..)

(In terms of the Employment Equity Act 55 of 1998 as amended)

Greetings to all GEO members.

The following is Part B of the Newsletters dealing with the prevention and elimination of harassment in the workplace.

SEXUAL HARASSMENT

The Employment Equity Act defines sexual harassment as the unwanted conduct of a sexual nature which makes a person feel offended, humiliated or intimidated. This is not limited to sexual harassment of the opposite gender and includes homosexual and bisexual harassment.

Sexual harassment of an employee is a form of unfair discrimination and is prohibited on the grounds of sex, gender, or sexual orientation. Same-sex harassment can amount to discrimination on the basis of sex, gender, sexual orientation and gender-based harassment.

The Code of Good Practice deals with the principle of “Unwanted Conduct” and states that an employee may indicate that sexual conduct is unwanted by walking away or doing so non-verbally. The employee does not have to explicitly state that the sexual conduct is unwanted.

It further adds that previous consensual sexual conduct does not necessarily mean that it continues to be acceptable. This is particularly important in workplace relationships. A relationship may initially be consensual but later no longer be desirable to one of the participants. The jilted party may be of the view that since he was permitted to act sexually in the past, he has a right to continue to do so.

Sexual harassment may also be prevalent if the conduct is such that the harasser/perpetrator ought to have known it could be regarded as unwanted sexual conduct. It is, therefore, expected that employees should know the difference between acceptable and unacceptable behaviour towards others. An employee cannot, for example, use the excuse: “I didn’t know that hugging all my female colleagues was offensive”.

Nature and extent of the conduct

The Code expands upon the definition by stating that the unwanted conduct must be of a sexual nature and includes physical, verbal, or non-verbal conduct, whether expressed directly or indirectly. This may include a repeated or single incident of:

- Physical conduct of a sexual nature, touching, kissing, sexual assault and rape;
- Strip searching by a person of the opposite sex or in the presence of a person of the opposite sex, or without the appropriate privacy;
- Following, pursuing, watching or accosting an employee;
- Explicit or implicit sexual attention, advances, proposals, suggestions, and messages.
- Implied or express threats of reprisal or actual reprisal to comply with sexually-orientated requests, advances, attention or proposals.
- Verbal conduct – Innuendos, suggestions, hints, sexual advances, sexual comments, sex-related jokes or insults, graphic comments about someone's body, inappropriate enquiries about someone's sex life, whistling of a sexual nature, unwelcome sexual gestures, indecent exposure, sending electronically or by other means sexually explicit text or images;
- Victimization for failing to submit to sexual advances;
- Quid pro quo harassment i.e., sexual favours in exchange for employment or employment-related advances, benefits, training, promotion, favouritism; increments, discipline;

Impact of the conduct

Ultimately, the conduct should constitute an impairment of the employee's dignity, taking into account the circumstances of the employee and the respective positions of the employee and the perpetrator at the workplace.

RACIAL, ETHNIC OR SOCIAL ORIGIN HARASSMENT

The Code states racial harassment is a prohibited form of unfair discrimination contrary to the founding principles of the Constitution and in particular the values of non-racialism, dignity, and equality.

It is described as unwanted racially-based conduct that is harmful, demeaning, humiliating or creates a hostile or intimidating environment that can be persistent or as a result of a single incident.

It can be direct, indirect, verbal or non-verbal behaviour and may include remarks, abusive language, racist name-calling, stereotyping, offensive behaviour, gestures, racist cartoons, memes or innuendos.

The Code provides examples of racially-based conduct:

- Abusive language, racist jokes, cartoons, memes and hate speech;
- Racially offensive written or visual material including online harassment;
- Racist name-calling or negative stereotyping impacting on a person's dignity;
- Offensive behaviour in the form of open hostility to persons of a specific racial or ethnic group;
- Subtle or blatant exclusion from workplace interaction, and activities (marginalization);
- Threatening behaviour which intimidates a person or creates a hostile work environment.

Racial harassment occurs when a person is subject to verbal or non-verbal racist conduct which undermines their dignity or creates a hostile, intimidating, or humiliating working environment.

END OF PART B

You can access the entire New Code by selecting the link below:

[Code of good Practice on the Prevention and Elimination of Harassment in the Workplace](#)

You can access an example of a Workplace Harassment Policy by selecting the link below:

[Workplace Harassment Policy](#)

Kind Regards

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