



Making an Impact

Handout 16

Dealing with Harassment Complains

PROCEDURE FOR DEALING WITH HARASSMENT COMPLAINTS

Employers should develop clear procedures to deal with sexual harassment. These procedures should ensure the resolution of problems in a sensitive, efficient and effective way.

(1) Advice and Assistance

Sexual harassment is a sensitive issue and a victim may feel unable to approach the perpetrator, lodge a formal grievance or turn to colleagues for support. As far as is practicable employers should designate a person outside of line management whom victims may approach for confidential advice. Such a person:

- (a) Could include persons employed by the company to perform inter alia such a function, a trade union representative or co-employee, or outside professionals.
- (b) Should have the appropriate skills and experience or be properly trained and given adequate resources.
- (c) Could be required to have counselling and relevant labour relations skills and be able to provide support and advice on a confidential basis.

(2) Options to resolve a problem

- (a) Employees should be advised that there are two options to resolve a problem relating to sexual harassment. Either an attempt can be made to resolve the problem in an informal way or a formal procedure can be embarked upon.
- (b) The employee should be under no duress to accept one or the other option.

(3) Informal procedure

(a) It may be sufficient for the employee concerned to have an opportunity where she/he can explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable, and that it interferes with their work. (b) If the informal approach has not provided a satisfactory outcome, if the case is severe or if the conduct continues, it may be more appropriate to embark upon a formal procedure. Severe cases may include: sexual assault, rape, a strip search and quid pro quo harassment.

(4) Formal procedure

Where a formal procedure has been chosen by the aggrieved, a formal procedure for resolving the grievance should be available and should:

- (a) Specify to whom the employee should lodge the grievance.

- (b) Make reference to timeframes which allow the grievance to be dealt with expeditiously.
- (c) Provide that if the case is not resolved satisfactorily, the issue can be dealt with in terms of the dispute procedures contained in item 7(7) of this code.

(5) Investigation and disciplinary action

- (a) Care should be taken during any investigation of a grievance of sexual harassment that the aggrieved person is not disadvantaged, and that the position of other parties is not prejudiced if the grievance is found to be unwarranted.
- (b) The Code of Good Practice regulating dismissal contained in Schedule 8 of this Act, reinforces the provisions of Chapter VIII of this Act and provides that an employee may be dismissed for serious misconduct or repeated offences. Serious incidents of sexual harassment or continued harassment after warnings are dismissable offences.
- (c) In cases of persistent harassment or single incidents of serious misconduct, employers ought to follow the procedures set out in the Code of Practice contained in Schedule 8 of this Act.
- (d) The range of disciplinary sanctions to which employees will be liable should be clearly stated, and it should also be made clear that it will be a disciplinary offence to victimise or retaliate against an employee who in good faith lodges a grievance of sexual harassment.

(6) Criminal and civil charges

A victim of sexual assault has the right to press separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by this code.

(7) Dispute resolution

Should a complaint of alleged sexual harassment not be satisfactorily resolved by the internal procedures set out above, either party may within 30 days of the dispute having arisen, refer the matter to the CCMA for conciliation in accordance with the provisions of section 135 of this Act. Should the dispute remain unresolved, either party may refer the dispute to the Labour Court within 30 days of receipt of the certificate issued by the commissioner in terms of section 135(5).