

Unpacking the new Code of Good Practice on workplace harassment

Issued by [eStudy](#)

20 Mar 2023

To be fair, the code isn't that new - it came into effect in March 2022. But due to its far-reaching consequences, many HR departments and managers are still struggling to come to terms with the impact of the code and what it requires of them.



Workplace harassment in South Africa is governed by several Acts, among them the Employment Equity Act. To help practitioners understand and implement the requirement of this Act, the government publishes a number of Codes of Good Practice.

Although these codes are not binding laws, it's important to take them into account since inspectors and judges use them as a guideline when determining whether an organisation is compliant.

The 2022 Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace replaces the original 2005 Code of Good Practice on the Handling of Sexual Harassment Cases in Workplaces. In the name itself lies a clue to one of the most significant changes in the new Code – a far broader definition of harassment that extends far beyond sexual harassment.

Let's explore this new definition, as well as other key changes and employers' new obligations.

A new understanding of harassment in the workplace

Impact 1: A far broader range of actions constitute harassment

The code has an exceptionally broad definition of harassment. It includes what one would expect – physical harassment (both actual and threatened), verbal bullying and psychological abuse – but additional and perhaps more surprising examples of harassment have also been included.

Sarcasm	Slander and spreading rumours	Constant criticism
Condescending eye contact, facial expressions or gestures	Racist, sexist or LGBTQIA+ phobic language	Gossiping or joking at someone's expense
Conduct that humiliates, insults or demeans	Social exclusion or marginalisation	Sabotaging or impeding work performance
Abuse or selective use of disciplinary proceedings	Pressuring an employee to not exercise their legal rights	Pressuring an employee to resign
Surveillance of an employee without their knowledge and with harmful intent	Intolerance of a psychological, medical, disability or personal circumstance	Withholding work-related information or supplying incorrect information

Impact 2: Harassment can be a once-off or repeated event

The code explains that harassment can occur as a result of a pattern of consistent conduct, or a single event. In other words, where the conduct is of a serious nature, a single instance is sufficient to constitute harassment.

Impact 3: Harassment can occur to anyone who has dealings with the business

The code recognises that managers, supervisors and employees are not the only possible perpetrators and victims of harassment. Victims and perpetrators could include a number of additional role players, all of whom are covered under the Code.

Job seekers and job applicants	Interns, apprentices and people on learnerships	Volunteers
Suppliers and contractors	Clients and customers	All others who have dealings with the business

Impact 4: Harassment can occur in any work-related environment

Employees must be protected in any situation that is related to their work, including the following:

Public and private spaces in the workplace	Home office (in the case of remote working)	Places where employees rest, eat or receive medical treatment
When commuting to and from work in transport provided or controlled by the employer	Work-related trips, training, events and social activities	Employer-provided accommodation

Employers' new obligations under the code

Employers have a legal obligation to take proactive and remedial steps to prevent all forms of harassment in the work environment. To meet these requirements (and ensure your adherence to the Code) we recommend the following steps:

Step 1: Get the HR department up to speed

Reading this article is just the starting point – your HR department will need to get to grips with the full content of the 30-page code and all its various requirements. This is likely to require an in-depth training course or even a facilitated session by an expert.

Step 2: Conduct a risk assessment

The code requires that organisations assess the risk of harassment that employees are exposed to while performing their duties. This should include identifying historical and current risks, and compiling a risk register with appropriate mitigating measures.

Step 3: Compile or update your harassment policy

If your previous harassment policy extended beyond sexual harassment, you're already one step ahead. If not, you'll probably need to start from scratch.

The code requires your harassment policy to contain some very specific statements, and it's best practice to include the following as well:

- A clear statement of your position regarding harassment, and especially that you have a zero-tolerance approach towards harassment
- Your commitment to creating and maintaining a work environment in which the dignity of employees and others who have dealings with the business is respected
- A description of the reporting procedure, and confirmation that those who raise complaints will not be victimised
- A description of the action that will be taken in the case of harassment, up to and including the disciplinary process (the Code has some specific requirements in this regard)

- A description of the counselling, treatment, care and support programmes for perpetrators and victims of harassment

Step 4: Drive awareness

Everyone who has dealings with your business should understand your position regarding harassment.

- You must ensure that employees are educated about their rights and responsibilities in terms of the code
- Employees and others (such as suppliers and contractors) must be taken through your harassment policy
- The harassment policy will need to be loaded onto all relevant company platforms
- You'll need to create ongoing awareness of what constitutes harassment and the duty to report it

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