

Harassment in the temporary workplace: How TES providers can help

By [Lucinda Alfonica](#)

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Harassment in the workplace is not limited to unwanted sexual attention. It also occurs when an individual is belittled, shown hostility, or is subjected to unwelcome conduct from a co-worker or supervisor. Intended to make the victim feel uncomfortable, harassment in the workplace does not only affect permanently employed individuals, but also those temporarily employed, or on a fixed duration project. Although many victims of workplace harassment think they would recognise such misconduct and report it to those in charge, harassment often leaves people in an uncomfortable and confusing predicament. In fact, many victims fail to report it out of fear of retribution or losing their job, while others are unsure of what conduct constitutes harassment.



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Making use of a temporary employment services (TES) provider is a smart idea for companies, not only to secure labour for projects and contracts, but because a TES partner is better equipped to handle the entire HR process where harassment is involved. Given that the implications for an organisation are far-reaching, it is essential that harassment is dealt with swiftly, sensitively and in accordance with workplace equality legislation.

What does harassment look like?

Effective from 18 March 2022 and published in line with the Employment Equity Act (EEA), the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace has repealed the Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace. Previously, only sexual harassment in the workplace was recognised by legislation, whereas now, the definition of harassment has been codified as unwanted or unwelcome conduct that impairs an individual's dignity, creating a hostile work environment.



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Relates to a listed ground of unfair discrimination

Furthermore, the Code also recognises that harassment is conduct that relates to one or more of the listed grounds of discrimination, prohibited by section 6(1) of the EEA, including race, religion, sexual orientation, gender and so forth. Harassment can take many forms, including violence, physical abuse, psychological abuse, emotional abuse, sexual abuse, gender-based abuse and racial abuse. It includes the use of physical force or power, whether threatened or actual, against another person or against a group or community. The Code specifically brings in bullying and name calling, leaving no uncertainty or room for perpetrators to claim that they were only acting in jest, and didn't mean any harm.

Additionally, the intersection of factors such as race, religion, gender, or disability increases the risk of harassment in the workplace and employers are under an obligation to take proactive and remedial steps to prevent all forms of harassment in their workplace. In terms of the Code, this includes assessing the risk of harassment to employees, implementing an appropriate policy addressing harassment, conducting training to educate employees about the various forms of harassment and implementing ongoing awareness programmes.

Proactive obligation with serious implications

Section 60 of the EEA places a positive obligation on employers to take complaints of harassment seriously and deal with them as quickly and reasonably as possible. In ignoring, overlooking, or downplaying a complaint, an employer can be held vicariously liable by the CCMA for unfair discrimination and failing to provide a safe workplace. In terms of the Employment Equity Act, companies need to be issued an employment equity compliance certificate, particularly to apply for tenders and to do business with the state. This certificate is only valid for one year, and where an employer fails to act on a case of harassment and the CCMA rules against the employer for unfair discrimination, the employer will not qualify for that certificate where there has been an unfair discrimination ruling against them in the past 12 months. In addition to the employer being held vicariously liable for the employee's harassment, failure to obtain the employment equity compliance certificate will drastically affect the organisation's business opportunities with the state, and other private entities that have their own employment equity requirements.



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Addressing the risk of workplace harassment

For this reason, it makes sense for businesses to partner with TES providers to meet their resource requirements. Not only will the TES provider deal with all the on-boarding and legal requirements associated with labour, but also the industrial relations and human relations aspects of the employment relationship. Where a worker feels that they have been subjected to workplace harassment, they can approach the TES provider to act as an intermediary. The TES provider will reassure the complainant about the confidentiality of the matter, and that they will not face job losses or adverse consequences in lodging a complaint of harassment.

TES providers have trained experts that can deal with sensitive matters such as harassment complaints, and in consultation with the complainant, will determine whether the complaint is to be dealt with formally or informally. The TES provider is empowered to follow a formal process, despite a complainant requesting an informal process, depending on the gravity of the allegation, bearing in mind the obligation to provide a safe workplace for all employees. Where individuals are uncomfortable with lodging the complaint personally, it is possible for them to approach a trusted colleague or union representative to lodge the complaint on their behalf.

With proper education and awareness of what constitutes harassment, it becomes easier for individuals to know what their rights are within the workplace. Everyone is entitled to a working environment in which they are safe from physical harm, and their dignity is not impaired, and employers have a positive obligation to ensure that they deliver accordingly. This is much easier for businesses to achieve and maintain, with the right TES provider at their side.

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