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SEXUAL HARASSMENT TOOLKIT
For South African Employers
Prepared by RK Corporate Consulting
(RKCC)
July 2025

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Chief Operations Officer: Wilhelm Kuhn



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GUIDANCE NOTE FOR HR AND MANAGEMENT: HANDLING SEXUAL HARASSMENT COMPLAINTS

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Introduction

Sexual harassment remains one of the most pervasive and underreported forms of workplace misconduct in South Africa. It undermines employee wellbeing, damages organisational trust, and exposes businesses to significant legal and reputational risks.

A well-drafted sexual harassment policy is not just a compliance formality, it is a proactive commitment to fostering a **safe, dignified, and respectful work environment**. When clearly communicated and properly enforced, such a policy gives employees confidence in their rights, processes to report violations, and assurance that inappropriate behaviour will not be tolerated.

This toolkit is designed to help South African employers:

Understand their **legal obligations** under the [Employment Equity Act \(EEA\)](#), the [Labour Relations Act \(LRA\)](#), and the [2022 Code of Good Practice on the Prevention and Elimination of Harassment \(2022 Code of Good Practice\)](#) in the Workplace.

Implement a **clear, compliant policy** with a structured complaints procedure.

Create an organisational culture that actively **prevents harassment** through training, leadership accountability, and confidential reporting.

We recommend using this toolkit alongside your existing HR and compliance structures. When combined with regular awareness training and leadership support, this policy becomes more than a document, it becomes a powerful tool for trust, dignity, and legal protection.

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Sexual Harassment Policy Template

SEXUAL HARASSMENT POLICY

(To be customised for your organisation)

1. Policy Statement

[Company Name] is committed to providing a work environment where all employees are treated with dignity and respect. We maintain a zero-tolerance approach to all forms of harassment, including **sexual harassment**, whether verbal, physical, visual, or psychological.

This policy outlines the company's **commitment to preventing sexual harassment**, supporting those affected, and taking swift, appropriate action against offenders.

2. Scope

This policy applies to:

- All employees, interns, contractors, and consultants
- All work-related interactions, including remote communication and off-site events
- Any person interacting with the organisation in a professional capacity

3. Definition of Sexual Harassment

Sexual harassment refers to **unwanted conduct of a sexual nature** that violates a person's dignity or creates an intimidating, hostile, or offensive work environment.

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Examples include (but are not limited to):

- Unwelcome physical contact or sexual advances
- Sexual jokes, innuendos, or suggestive comments
- Inappropriate emails, messages, or images
- Quid pro quo harassment (e.g. "Sleep with me and I'll promote you")
- Repeated sexual attention after the recipient has expressed disinterest

Legal Reference: 2022 Code of Good Practice; Employment Equity Act 55 of 1998

4. Responsibilities

an All employees have a duty to:

- **Refrain from any form of sexual harassment**
- **Report incidents** experienced or witnessed
- Cooperate in investigations and disciplinary procedures

Management must:

- Lead by example and uphold a harassment-free culture
- Ensure all staff are aware of the policy and complaint channels
- Take immediate action when allegation is made

5. Complaint Procedure

Victims of sexual harassment may pursue the following steps:

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a) Informal Process:

If safe and appropriate, the employee may request the harasser to stop the behaviour directly or through a manager.

b) Formal Complaint:

A written complaint should be submitted to HR or a designated officer. An impartial investigation will be initiated, and all matters will be handled **confidentially and sensitively**.

c) Disciplinary Action:

If the complaint is upheld, the company will take appropriate disciplinary measures, including warnings, suspension, or dismissal, based on the severity of the conduct.

6. Protection Against Victimisation

No employee will be penalised or victimised for:

- Lodging a genuine complaint
- Assisting in an investigation
- Refusing sexual advances

Retaliation will be treated as a **separate disciplinary offence**.

Implementation Guidelines

IMPLEMENTING YOUR SEXUAL HARASSMENT POLICY EFFECTIVELY

Creating a written policy is only the first step. For your organisation to foster a workplace free of harassment, it's essential to embed this policy into your **day-to-day operations, training, and**

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culture. The following guidelines help ensure that the policy is not only understood — but actively upheld.

1. Communicate the Policy to All Staff

- ☐ Circulate the policy to all employees via email and printed handbooks
- ☐ Publish the policy on internal platforms or notice boards
- ☐ Require all new employees to acknowledge it during induction

Tip: Reaffirm the policy during team meetings or newsletters to ensure ongoing visibility.

2. Provide Harassment Awareness Training

- ☐ Train all employees — including senior leadership — on what constitutes harassment
- ☐ Include training on **bystander intervention**, reporting procedures, and victim support
- ☐ Conduct refresher training annually or after any workplace incident

Legal Basis: In terms of the 2022 Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, employers must actively educate employees and create awareness of what is unacceptable behaviour.

3. Designate a Trusted Reporting Officer

- ☐ Appoint a trained individual (HR or external service provider) to handle complaints
- ☐ Ensure confidentiality and sensitivity in all reporting channels
- ☐ Offer victims the option of reporting anonymously or through a third party

Example: In a small business, a neutral third-party consultant can serve as a reporting contact where no HR department exists.

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4. Record and Track Complaints

- ☐ Maintain a secure, confidential register of all complaints, actions taken, and outcomes
 - ☐ Regularly audit complaint records to detect recurring patterns or cultural issues
 - ☐ Review policy effectiveness through employee feedback or anonymous surveys
-

5. Review and Update the Policy

- ☐ Update the policy in response to legislative changes or case law developments
 - ☐ Include new definitions or protections as interpreted by courts (e.g. cyber harassment)
 - ☐ Reconfirm legal compliance annually in HR or governance audits
-

Why a Sexual Harassment Policy Matters

Sexual harassment in the workplace is not just a moral issue, it is a legal and organisational risk that can seriously undermine trust, productivity, and wellbeing. **A clear, well-communicated policy** is the foundation of prevention and accountability.

Legal Responsibility

In South Africa, **employers have a legal duty** to provide a workplace free from harassment. Failing to take reasonable steps to prevent or address it may result in:

- **Vicarious liability** for the actions of employees
- **CCMA disputes, Labour Court litigation**, or civil damages
- **Reputational harm** and loss of stakeholder confidence

A formal policy demonstrates that your business takes this duty seriously — and creates a framework for handling incidents consistently and fairly.

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Protection for Employees and Employers

A strong sexual harassment policy:

- **Informs employees** of their rights and responsibilities
- **Establishes clear reporting pathways**
- **Protects victims** and whistleblowers from retaliation
- **Protects the employer** by showing proactive compliance with the 2022 Code of Good Practice

When enforced properly, it helps create a safer and more respectful environment for all.

Workplace Culture and Morale

Unchecked harassment damages morale, increases absenteeism, and contributes to staff turnover.

On the other hand, a **transparent, enforceable policy**:

- Builds a culture of **dignity and inclusion**
- Signals to staff that leadership is committed to fairness
- Encourages early reporting and swift resolution of misconduct
- A policy that lives in practice, not just on paper, transforms your workplace from reactive to resilient

How to Use This Template Effectively

This page will serve as a practical **implementation guide**, helping business owners, HR professionals, and managers use the policy as more than a document, as a living tool for workplace transformation.

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How to Use This Policy Template

The RKCC Sexual Harassment Policy Template is designed to help your organisation:

Comply with legal obligations under the Employment Equity Act, Labour Relations Act, and the 2022 Code of Good Practice.

Provide employees with clear guidance on rights, responsibilities, and complaint processes.

Demonstrate good faith and proactive leadership in preventing misconduct.

To use this policy effectively:

Customise it for your company

Insert your company's name, contact details, and internal HR structures where indicated. Make sure the tone and reporting channels reflect your actual workplace setup.

Communicate it widely

Ensure every employee receives and acknowledges the policy — whether during onboarding or via refresher sessions. Visibility matters.

Train your team

Supplement the policy with regular **harassment awareness training**. Staff should understand what harassment is, how to report it, and that retaliation will not be tolerated.

Establish a confidential reporting system

Set up secure and sensitive procedures that allow victims and witnesses to report harassment without fear.

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Review it annually

Labour laws evolve. Update the policy regularly to stay aligned with the latest Code of Good Practice and case law developments.

Document every step

Keep a clear record of all complaints, investigations, and resolutions, this helps protect both victims and your business in legal proceedings.



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Building Awareness: Workplace Training and Culture Tips

Creating a workplace free from harassment starts with more than just a policy, it requires **active training, ongoing education**, and a culture of **respect, inclusion, and accountability**.

Why Training Matters

- Training is not a box-ticking exercise. It:
- Helps employees **recognise unacceptable behaviour** early.
- Encourages **bystander intervention**.
- Reinforces a **zero-tolerance culture**.
- Demonstrates the employer's **legal commitment** to prevention under the 2022 Code of Good Practice.

Core Training Topics

We recommend that your training programme include the following:

- **Definition of harassment** (including sexual, verbal, physical, non-verbal, and online)
- **Examples and role-play scenarios**
- **Reporting procedures** and rights of complainants
- **Consequences for perpetrators**
- **Bystander responsibilities**
- **Protections against retaliation**

Training Formats

Choose a method (or mix) that suits your organisation:

- **Onboarding sessions** for all new hires
 - **Annual refresher workshops**
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- **Online learning modules** with quizzes
 - **Manager-specific training** to equip leadership with the tools to respond appropriately

Practical Example

A small financial services firm in Johannesburg introduced 30-minute monthly awareness sessions, combining video examples, anonymous Q&A, and reminders of reporting channels. Within a year, their internal culture audit showed improved trust, increased reporting of minor incidents, and faster resolution of interpersonal issues.

Legal Framework

Employment Equity Act 55 of 1998

2022 Code of Good Practice: Requires employers to take *proactive* steps to eliminate harassment, including training and workplace culture reform.

Why It Matters

Without training, policies remain unread, misunderstood, or ignored. Training empowers teams to identify and address problems before they escalate — protecting your people and your business. It builds **credibility**, strengthens your internal culture, and helps ensure **you can prove compliance** if ever challenged legally.

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Confidential Reporting Systems: Creating Safe Spaces to Speak Up

A clear and trusted reporting system is essential for addressing sexual harassment effectively.

Employees need to feel confident that complaints will be taken seriously, handled confidentially, and acted upon promptly, without fear of retaliation.

Key Elements of an Effective Reporting System

- **Multiple reporting channels:** Provide options such as direct managers, HR personnel, anonymous hotlines, or online portals.
- **Confidentiality:** Assure complainants that their privacy will be protected to the greatest extent possible.
- **Clear procedures:** Outline step-by-step what happens after a complaint is lodged.
- **Timely responses:** Ensure investigations start promptly and keep complainants informed.
- **Non-retaliation policy:** Protect employees who report harassment or participate in investigations.
- **Support services:** Offer access to counselling or employee assistance programmes.

Practical Example

A mid-sized tech company implemented an anonymous digital reporting tool combined with a trained HR ombudsperson. Within six months, reports increased, not because harassment rose, but because employees trusted the system and felt safe speaking up.

Why It Matters

Without a reliable reporting system, harassment often goes unreported and unresolved, allowing toxic behaviour to fester. This damages morale, increases turnover, and exposes the business to legal and reputational risks.

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Implementing a robust reporting system demonstrates your organisation's **commitment to a safe workplace**, encourages transparency, and ensures **swift action to protect all employee**.

Investigation Procedures and Best Practices

Conducting a fair and thorough investigation is critical to resolving sexual harassment complaints effectively and maintaining trust in your workplace.

Key Steps in an Investigation

- **Prompt initiation:** Start the investigation as soon as possible after a complaint is received.
 - **Assign an impartial investigator:** Use a trained, neutral party such as an internal HR professional or external consultant.
 - **Gather evidence:** Interview the complainant, the accused, and any witnesses. Collect relevant documents, messages, or CCTV footage if applicable.
 - **Maintain confidentiality:** Limit information access to those involved directly.
 - **Document everything:** Keep detailed notes and records throughout the process.
 - **Provide support:** Offer emotional and practical support to both complainant and respondent during the process.
 - **Decision and follow-up:** Assess findings objectively, apply disciplinary measures if warranted, and communicate outcomes appropriately.
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Practical Example

An employer appointed an external investigator to handle a complex harassment claim involving senior staff. The impartial investigation ensured credibility, helped manage workplace tensions, and resulted in clear recommendations adopted by the company.

Why It Matters

A poorly handled investigation can exacerbate workplace conflict, lead to unfair outcomes, or open the company to legal challenges. Fair investigations protect the rights of all parties and reinforce organisational integrity.

Complaint Reporting Mechanisms

Creating clear and accessible ways for employees to report sexual harassment is vital to an effective prevention strategy.

Best Practices for Reporting Systems

- **Multiple channels:** Offer various options such as in-person, email, anonymous hotline, or online forms.
 - **Confidentiality assurance:** Make it clear reports will be handled sensitively and discreetly.
 - **No retaliation policy:** Protect complainants from any form of victimisation or adverse treatment.
 - **Clear guidance:** Explain the steps after a report is made, so employees know what to expect.
 - **Training for managers:** Ensure supervisors understand how to respond properly to reports.
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Practical Example

A company implemented an anonymous digital reporting tool alongside traditional HR contacts. This increased reporting rates, enabling early intervention and demonstrating management's commitment to a safe workplace.

Why It Matters

Without accessible, trusted reporting channels, victims may stay silent, allowing harassment to continue unchecked. Robust systems encourage openness and early resolution, reducing risk and building a respectful culture.

Investigation Procedures

A thorough, impartial investigation is crucial once a complaint is received. This protects all parties and ensures fair outcomes.

Key Steps in Investigations

- **Assign a trained investigator:** Preferably someone neutral, with no conflict of interest.
- **Gather evidence:** Interview the complainant, respondent, and any witnesses.
- **Document everything:** Keep detailed, confidential records of all steps taken.
- **Follow timelines:** Complete investigations promptly to maintain trust.
- **Maintain confidentiality:** Share information strictly on a need-to-know basis.

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Practical Example

When an employee reported harassment, the HR manager appointed an external investigator to ensure impartiality. The investigation confirmed misconduct, leading to appropriate disciplinary action and reinforced workplace trust.

Why It Matters

Fair and transparent investigations help prevent legal challenges and workplace tension. They demonstrate the organisation's commitment to justice and employee wellbeing.

Confidential Reporting and Victim Support

Confidentiality is not just a legal expectation, it is the cornerstone of a trustworthy reporting system. Victims of sexual harassment must feel safe to come forward without fear of retaliation or exposure.

Establishing a Confidential Reporting System

Employers should create multiple safe channels for employees to report harassment, such as:

- **Dedicated HR representatives** trained in handling sensitive complaints
- **Anonymous reporting tools**, where feasible
- **Clear escalation protocols** for unresolved or serious complaints
- Ensure all staff know how and where to report incidents. Include this in your onboarding and training materials.

Best Practices for Handling Reports

- **Treat every report seriously**, regardless of rank or timing
 - **Protect the complainant's identity** to the extent legally and practically possible
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- **Avoid retaliation**, direct or indirect, including changes to work duties or schedules without consent
 - **Offer trauma-informed support**, including access to counselling or referrals where needed
 - **Communicate investigation steps and outcomes** while maintaining confidentiality

Legal Framework

2022 Code of Good Practice on the Prevention and Elimination of Harassment

Employers are required to have procedures in place that allow for **confidential lodging of complaints** and outline the rights of complainants.

Employment Equity Act 55 of 1998

Employers must take reasonable steps to eliminate unfair discrimination, including harassment. Failure to provide safe reporting structures can amount to indirect discrimination.

Protection from Harassment Act 17 of 2011

Supports the right of individuals to seek protection orders and outlines the process for approaching the courts, but internal systems should be the first port of call.

Case Example

A junior employee at a Johannesburg-based firm used an anonymous email address to report repeated inappropriate comments from a team leader. Because the company had no clear protocol, the report was mishandled, and the employee later resigned. The company was reported to the CCMA, resulting in reputational harm and a settlement. This illustrates the critical need for structured and trusted reporting mechanisms.

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Why It Matters

A confidential reporting system:

- ✓ Encourages victims and witnesses to speak up
- ✓ Prevents recurrence through early intervention
- ✓ Signals that the employer takes misconduct seriously
- ✓ Builds employee confidence in the organisation's values and systems



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Disciplinary Action and Corrective Measures

Once an investigation confirms sexual harassment, decisive and fair action is essential to uphold a safe and lawful workplace.

Disciplinary Action

Apply sanctions appropriate to the severity of the misconduct, ranging from written warnings to dismissal.

Follow due process as outlined in the *Labour Relations Act 66 of 1995*, Schedule 8: Code of Good Practice: Dismissal.

Ensure consistent enforcement to avoid perceptions of bias or favouritism.

Communicate outcomes sensitively to protect the dignity of all involved.

Corrective Measures

Address systemic issues such as gaps in policies, management oversight, or culture.

Offer support to the affected employee(s), including counselling or time off where needed.

Reinforce training and policy awareness post-incident to prevent future cases.

Practical Example

A manager found guilty of verbal sexual harassment was issued a final written warning after due disciplinary process. The company also revised its harassment reporting procedures and scheduled additional employee training sessions.

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Why It Matters

Failing to act can reinforce a culture of silence and mistrust. Correct disciplinary processes protect your business from legal claims, build staff morale, and reaffirm your commitment to workplace safety.

Confidential Reporting & Support Systems

A safe, trusted reporting mechanism is critical to encouraging early disclosure and effective resolution of harassment in the workplace.

Why Confidential Reporting Matters

Victims of harassment often fear retaliation, disbelief, or reputational harm. Confidentiality builds trust in the process and empowers employees to speak up without fear.

Key Elements of an Effective Reporting System

Multiple Reporting Channels

Offer various options for reporting, including HR, a designated harassment officer, anonymous digital tools, or external service providers.

Confidentiality Assurances

Clearly communicate that reports will be treated with discretion, shared only with those involved in investigation and resolution.

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Non-Retaliation Policy

Include a firm statement that retaliation against those who report harassment will result in disciplinary action.

Procedural Transparency

Let employees know how reports are handled, what timelines apply, and who to contact with questions.

Support for Affected Parties

Counselling & Mental Health Support

Offer access to Employee Assistance Programmes (EAPs), trauma counselling, or external referrals.

Ongoing Communication

Keep complainants informed during the process, and follow up after resolution to ensure workplace reintegration and well-being.

Practical Example

After implementing a confidential online reporting portal and promoting it during onboarding and training, a medium-sized logistics company saw an increase in early harassment disclosures — allowing for swift, less escalated interventions and improved staff confidence.

Why It Matters

Confidential, accessible systems reduce barriers to reporting and demonstrate a company's commitment to dignity, safety, and procedural fairness. Without them, misconduct goes unchecked and liability risks increase.

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Creating a Respectful Workplace Culture

A respectful culture is the most effective defence against workplace harassment. Prevention begins not in policy documents, but in daily behaviour, leadership example, and shared values.

What a Respectful Culture Looks Like

Leaders Model Respectful Conduct

Directors, managers, and supervisors set the tone. Their language, body language, and responsiveness to concerns are closely watched.

Zero Tolerance Is Lived, Not Just Stated

Policies are enforced consistently, even when senior staff are involved. No one is exempt from consequences.

Respect Is Baked Into Systems

Recruitment, performance reviews, and workplace celebrations all reflect dignity, fairness, and inclusion.

Bystanders Are Empowered

Employees are trained to recognise harassment and encouraged to intervene or report — not to remain silent.

The Role of Leadership

Strong leadership fosters accountability. Managers must be trained to:

- Intervene early in inappropriate situations
- Handle complaints sensitively

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- Promote open communication without fear of retaliation

Practical Example

A small tech startup revised its induction process to include respect and harassment awareness training from Day 1. Over 12 months, internal reports of harassment dropped significantly, and survey feedback showed a 40% increase in employees feeling "safe and respected at work".

Relevant Frameworks

Employment Equity Act 55 of 1998: Promotes equity and dignity in the workplace.

2022 Code of Good Practice: Emphasises the proactive responsibility of employers to build a harassment-free environment.

King IV Report on Corporate Governance: Encourages ethical and responsible leadership.

Why It Matters

A respectful culture:

- ✓ Prevents misconduct before it begins
- ✓ Builds employee trust and engagement
- ✓ Enhances reputation and retention
- ✓ Demonstrates legal compliance and ethical leadership

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Handling Investigations and Disciplinary Action

Once a complaint is received, **your response must be timely, fair, and consistent**. Mishandling investigations or disciplinary action can expose the business to **CCMA referrals, Labour Court disputes, or reputational harm**.

1. Immediate Steps After a Complaint

When an allegation is raised:

- **Acknowledge the complaint** and thank the employee for coming forward.
- **Ensure confidentiality** — limit disclosure to only those directly involved in the process.
- **Separate the parties**, if necessary, to prevent further discomfort or retaliation.
- **Document everything** — including conversations, timelines, and evidence gathered.

2. Appoint an Impartial Investigator

If the company has no HR department, a trained manager or an external consultant should be appointed to:

- Conduct interviews
- Review written evidence (e.g., emails, messages)
- Prepare a neutral report outlining findings
- Avoid having someone close to either party lead the investigation, as this could create a **conflict of interest**.

3. Due Process in Disciplinary Hearings

If the investigation supports disciplinary action:

- Follow the Code of Good Practice: Dismissal (Schedule 8, Labour Relations Act)
 - Ensure the accused receives:
-

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-
- Written notice of the hearing
 - A fair opportunity to respond and present evidence
 - The right to **representation** (e.g., shop steward or colleague) Depending on the severity of the misconduct, the employer may issue:
 - A **written warning**
 - A **final written warning**
 - **Dismissal**, if the harassment was serious and dismissal is appropriate

Warning: Dismissals without a fair process — even if the complaint is valid — are likely to be overturned at the CCMA.

4. Post-Investigation Support

- After resolution:
- Offer counselling or debriefing to affected staff
- Monitor the workplace climate for retaliation or ongoing discomfort
- Review whether policy updates or further training are required

Legal Framework

Labour Relations Act 66 of 1995, Schedule 8

Stresses the importance of procedural and substantive fairness during all disciplinary processes.

Code of Good Practice on Harassment (2022)

Reinforces the employer's duty to investigate and act against harassment using a fair process.

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Case Study

At a Gauteng logistics firm, an employee reported repeated sexual comments by a shift supervisor. The company conducted an investigation, held a hearing, and issued a final written warning. The employee later resigned, claiming constructive dismissal.

However, the CCMA upheld the employer's process, finding:

- The investigation was timely and impartial
- The penalty was appropriate given the context and the supervisor's record
- The employee's resignation was not caused by company negligence
- This highlights how a solid process can protect employers **even in emotionally charged cases.**

Why It Matters

- ✓ Prevents secondary harm to victims and whistleblowers
- ✓ Reduces legal risk and cost from unfair dismissal claims
- ✓ Reinforces a culture of justice and accountability
- ✓ Demonstrates that the company takes misconduct seriously

Disciplinary Action and Consequences

Addressing sexual harassment through a fair and consistent disciplinary process is essential to maintaining a safe workplace and upholding trust in the reporting system.

When Disciplinary Action Is Required

Disciplinary action should follow when:

- An investigation confirms that harassment occurred
 - Informal resolution has failed or is inappropriate due to the seriousness of the offence
-

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-
- There is repeated misconduct or retaliation after a complaint

Types of Disciplinary Action

Depending on the severity and circumstances, disciplinary action may include:

- **Verbal or written warnings**
- **Suspension (with or without pay)**
- **Demotion or reassignment**
- **Final written warnings**
- **Dismissal for serious misconduct**

Legal Framework

Labour Relations Act 66 of 1995, Schedule 8: Code of Good Practice – Dismissal

Harassment is recognised as a valid ground for dismissal if the offence is serious or repeated.

Employers must still follow **fair procedure**, even where the misconduct is clear.

Employment Equity Act 55 of 1998

Employers who fail to take reasonable steps to address harassment may be found liable for discrimination.

2022 Code of Good Practice on the Prevention and Elimination of Harassment

Recommends that disciplinary procedures be clearly outlined in company policies, including timelines, escalation routes, and the right to appeal.

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Case Example

In ***SABC v Grobler (2005)***, the dismissal of a senior staff member was upheld after multiple employees came forward with credible evidence of repeated sexual harassment. The employer's thorough investigation and adherence to fair procedure ensured that the dismissal stood under legal scrutiny.

Best Practices for Employers

- Have a clear, written disciplinary process in your policies
- Ensure all managers are trained in procedural fairness
- Keep detailed records of investigations and outcomes
- Respect confidentiality and avoid victim-blaming
- Offer support to victims throughout the process

Why It Matters

Firm and fair disciplinary action:

- ✓ Sends a clear message that harassment will not be tolerated
- ✓ Deters future misconduct
- ✓ Protects the dignity of all employees
- ✓ Builds trust in internal systems and leadership

Legal Consequences of Non-Compliance

Failing to address sexual harassment in the workplace does more than damage staff morale — it can result in **serious legal, financial, and reputational repercussions**. Employers have a duty to act decisively and lawfully once they become aware of any incident.

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1. Civil Liability

Victims of workplace sexual harassment may sue the employer for:

Damages such as emotional distress, loss of income, or medical expenses

Constructive dismissal, if they resign due to unresolved harassment

Case Example

In *Media 24 Ltd v Grobler*, the employer was held liable for **R1 million** in damages when it failed to take reasonable steps to prevent a manager from harassing an employee.

2. Criminal Liability

Certain forms of harassment — especially involving unwanted physical contact, exposure, or threats, may also lead to **criminal charges**, such as:

- **Sexual assault**
- **Crimen injuria** (impairing someone's dignity)
- **Intimidation**

Employers who deliberately ignore or suppress such complaints may themselves face **charges of negligence or complicity**.

Example: Under the **Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007**, unwelcome touching or coercion into sexual activity can result in **criminal prosecution** of the harasser, and employers may be subpoenaed if they fail to take action.

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3. Labour Law Sanctions

Unfairly dismissing an employee for reporting sexual harassment, or failing to follow fair procedure, can lead to:

- **Unfair dismissal claims at the CCMA**
- **Compensation or reinstatement orders**
- **Referrals to the Labour Court**

Case Example

In *Grobler v Naspers Bpk*, the court found that the **failure to act on internal complaints** made the employer liable under vicarious liability principles.

4. Regulatory Action

The **Commission for Employment Equity (CEE)** and **Department of Employment and Labour** may:
Investigate non-compliance with harassment policies under the **Employment Equity Act**
Recommend prosecution for ongoing failure to comply with workplace equity standards

Why It Matters

- ✓ Protects employees from harm and empowers a culture of respect
 - ✓ Shields your company from legal claims and public backlash
 - ✓ Demonstrates leadership accountability under South African law
 - ✓ Builds trust with clients, employees, and investors
 - ✓ Compliance now avoids costlier litigation or regulatory sanctions later
-

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Promoting a Respectful Workplace Culture

Creating a harassment-free workplace is not just about reacting to complaint, it is about **proactive leadership**. A strong organisational culture is the first line of defence against misconduct and helps ensure that all employees feel safe, valued, and respected.

Leadership Sets the Tone

Managers and directors must lead by example. Culture flows from the top, and when leadership demonstrates zero tolerance for harassment, the rest of the organisation is more likely to follow suit.

Example: A director consistently interrupts and dismisses female team members during meetings. When leadership remains silent, this behaviour becomes normalised, eroding trust and productivity.

Best Practice: Introduce regular leadership workshops and KPIs focused on inclusive management behaviour.

Open Communication Channels

Employees should feel empowered to speak up without fear of victimisation or retaliation.

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- ✓ Implement anonymous reporting tools
- ✓ Encourage regular staff surveys on workplace wellbeing
- ✓ Ensure HR teams are trained to handle sensitive disclosures with care

Example: A junior employee reports harassment through an anonymous hotline. Because the employer had built a reputation for protecting whistleblowers, the complaint is addressed swiftly and discreetly.

Inclusivity and Training

Fostering inclusion is key to preventing both overt and subtle forms of harassment.

- ✓ Regularly train staff on:
 - What constitutes harassment
 - How to intervene as a bystander
 - Respectful communication across diverse teams
- ✓ Include modules on **LGBTQ+ sensitivity, gender equity, and power dynamics**

Recognise and Reward Positive Behaviour

Encourage cultural change by highlighting and rewarding respectful behaviour and inclusive leadership.

Example: An employee who intervenes to stop inappropriate jokes is publicly thanked and recognised at a team event — reinforcing the values the company stands for.

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Why It Matters

- ✓ Preventing harassment protects people, and your business
- ✓ Positive culture reduces staff turnover and improves performance
- ✓ Investors, clients, and regulators are increasingly watching workplace conduct
- ✓ A safe, respectful environment attracts top talent and boosts employee morale

Developing a Comprehensive Response Plan

Having a clear, well-structured response plan is critical when a harassment complaint arises. It ensures all cases are treated fairly, sensitively, and in line with legal requirements — reducing risk and building trust.

1. Immediate Acknowledgement

Acknowledge all reports promptly, even if informal. This shows that your organisation takes concerns seriously.

Example: An employee reports a manager's inappropriate comments. HR acknowledges receipt within 24 hours and outlines the next steps. The employee feels supported and less fearful of retaliation.

2. Determine the Nature of the Complaint

- ✓ Assess whether the complaint falls under informal resolution or requires a formal investigation.

Informal: Suitable where the conduct is mild and the employee wants to resolve it discreetly (e.g. with a facilitated discussion or apology).

Formal: Needed where the conduct is severe, repeated, or denied by the alleged perpetrator.

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3. Conducting a Fair Investigation

- ✓ Investigate promptly, impartially, and confidentially.
- ✓ Appoint a neutral party to gather facts from all involved.
- ✓ Keep records of interviews, evidence, and steps taken.

Case Law:

In *Ekurhuleni Metropolitan Municipality v SALGBC & Others [2014]*, the Labour Court stressed the need for **procedural fairness** in harassment-related dismissals.

4. Interim Protection Measures

Ensure the complainant feels safe while the process unfolds.

Examples:

- Reassigning shifts or reporting lines
- Offering time off or remote work options
- Providing access to counselling services

5. Outcome and Disciplinary Action

- ✓ Take **decisive action** if harassment is confirmed — from warnings to dismissal, depending on severity.
- ✓ Where allegations are unfounded, support both parties and work to repair professional relationships.

Why It Matters

- ✓ Mishandled complaints damage trust and morale
 - ✓ A fair and consistent process reduces reputational and legal risk
-

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- ✓ Proper response demonstrates commitment to employee wellbeing
- ✓ It can be the difference between a resolved conflict and costly litigation

Sexual Harassment Complaint Form

Employee Details

Name: _____

Position: _____

Department: _____

Contact Number: _____

Email Address: _____

Date of Incident(s): _____

Location of Incident(s): _____

1. Describe the incident(s) in detail (include dates, times, and what happened):

2. Were there any witnesses? If yes, please provide names:

3. Did you report this incident to anyone else (e.g., supervisor, HR)? If yes, please specify:

4. How has this incident affected you (e.g., emotionally, physically, work performance):

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5. What outcome or resolution would you like to see?

Confidentiality and Privacy Notice:

All complaints are treated with the strictest confidentiality in compliance with South African privacy and employment laws. Information disclosed in this form will only be shared with individuals directly involved in the investigation and resolution process. Any breach of confidentiality may result in disciplinary action.

Retaliation or victimisation against anyone who files a complaint or participates in an investigation is strictly prohibited and will be dealt with severely.

Declaration:

I declare that the information provided above is true and accurate to the best of my knowledge.

Signature: _____

Date: _____

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For Employer Use Only

Received by: _____

Date received: _____

Investigation assigned to: _____

Summary of actions taken:

Outcome and resolution:

Follow-up date: _____

Guidance Note for HR and Management: Handling Sexual Harassment Complaints

Purpose:

This guidance note outlines the best practices for receiving, managing, and resolving sexual harassment complaints to ensure a safe, respectful, and legally compliant workplace.

1. Receiving the Complaint

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- **Acknowledge Receipt Promptly:**

When an employee submits a complaint form, confirm receipt promptly and assure them the matter will be handled confidentially and seriously.

- **Maintain Confidentiality:**

Share information strictly on a need-to-know basis with only those directly involved in the investigation or resolution. Avoid discussing the complaint with uninvolved staff.

- **Provide Support:**

Offer the complainant access to counselling, employee assistance programmes, or any support resources available within the organisation.

2. Investigating the Complaint

- **Assign a Competent Investigator:**

Choose an impartial, trained individual (internal or external) to investigate the complaint thoroughly and objectively.

- **Follow a Fair Process:**

Ensure that both the complainant and the alleged harasser are given opportunities to present their accounts. Keep detailed records of interviews and evidence.

- **Respect Privacy:**

Conduct interviews in private settings, maintaining discretion to protect all parties involved.

3. Managing Confidentiality

- **Limit Disclosure:**

Limit information sharing to essential personnel involved in resolving the complaint. Use secure methods to store and transmit complaint documents.

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- **Protect Against Retaliation:**

Monitor the workplace for any signs of victimisation or retaliation against the complainant or witnesses. Address such issues swiftly.

4. Resolution and Follow-up

- **Take Appropriate Action:**

Based on the investigation findings, apply disciplinary measures aligned with company policy and legal requirements, up to dismissal if warranted.

- **Communicate Outcome:**

Inform the complainant and the accused (within confidentiality limits) about the outcome and any actions taken.

- **Document Everything:**

Maintain comprehensive records of the complaint, investigation, actions, and outcomes securely for legal compliance.

- **Review Policies and Training:**

Use insights from complaints to improve policies, procedures, and training to prevent future harassment.

-

5. Legal Compliance and Best Practices

- **Adhere to South African Legislation:**

Ensure all actions comply with the Employment Equity Act 55 of 1998 (as amended), Labour Relations Act 66 of 1995, the 2022 Code of Good Practice on Harassment, and related laws.

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- **Regular Training:**

Conduct ongoing harassment awareness and prevention training for all employees and management.

Final Note:

Handling sexual harassment complaints with sensitivity, fairness, and confidentiality protects the rights and dignity of all employees, reduces legal risks, and fosters a healthy workplace culture.

Navigating Sexual Harassment with Confidence

Addressing sexual harassment in the workplace is not just a compliance exercise — it's a commitment to building a respectful, inclusive, and psychologically safe environment for everyone. A well-drafted policy, consistent training, and accessible reporting tools do more than protect your company legally, they create a culture where employees feel heard, valued, and safe.

Too often, employers wait until a complaint escalates into legal action before taking meaningful steps. But **prevention, education, and early intervention** are the cornerstones of effective workplace governance. By proactively implementing the tools in this toolkit, you not only reduce risk, you promote **trust and integrity** within your organisation.

Navigating sexual harassment with confidence requires more than good intentions. It requires structure, support, and systems. RKCC empowers you to take those steps clearly, lawfully, and confidently, because a **safe workplace is a successful workplace.**

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Whether you are reviewing your current policy, planning staff training, or addressing a specific incident, we are here to support you every step of the way.

Book your free 30-minute consultation today to ensure your workplace is compliant, confident, and harassment-free.

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