

The following information is largely based on the International Labour Organisation (ILO) Convention 190: The Elimination of Violence and Harassment in the World of Work (21 June 2019) [[click here](#)] and the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace (2022).

See Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace

Gender discrimination

- The term “gender” refers to self-identification and a person’s gender role, irrespective of the sex of the person and manifests in the person’s behaviour and appearance. It therefore focuses on cultural, and social and personal characteristics, rather than the biological distinction between male and female.
- Gender-based violence refers to a type of discrimination where a person or group of a certain gender is unfairly treated in a different manner, simply because of the person’s gender. This is often the result of people’s ill-advised, pre-conceived ideas, ignorance, and stereotyping.
- It includes all forms of violence and harassment, for example: sexual harassment, gender-based violence, bullying, intimidation, threats, actual physical and psychological abuse, emotional abuse, and sexual abuse. These acts often cause injury, death, physical or psychological harm, poor development, or deprivation. Such acts of violence and harassment often very badly affect people or have a deep-seated impact, causing de-motivation, humiliation and loss of dignity, fear and/or anxiety and depression. It could also result in the loss of benefits, opportunities, or advantages in the workplace or elsewhere.
- It further also includes intimate partner (husband / wife/ girlfriend / boyfriend / partner) violence, family violence or domestic abuse which can happen face-to-face or via social media (internet platforms) for example on Face Book, Twitter, WhatsApp. It can happen to anyone in the world of work and is an abuse of power.

The workplace

- The meaning of a “workplace” has become very broad and is no longer the traditional workplace as it was understood. It now refers to the almost any place where people work or conduct work-related activities. It may be a physical workplace (in the formal or informal economy), but could also include a virtual workplace, like electronic communications (for example, email or chat platforms), virtual meetings, social media, or any other on-line platforms, or at any other place, work-related event, or environment where colleagues may interact or where a person could have a virtual or physical presence.
- The workplace may also include employer provided transport, employer-linked events like conferences, social events where colleagues are partying, celebrating or entertaining clients or customers, meetings, business trips, or training and team-building sessions or anywhere where colleagues are required to interact or likely to meet.

Workplace harassment

- Harassment is defined as inappropriate and unwanted behaviour or mistreatment, aimed at gaining power and dominance over another, that violates the rights of a person, constitutes a barrier to equity in the workplace and/or creates a hostile working environment.
- A harasser generally has actual or perceived power over a victim and this power could arise from one or more sources such as the position that a harasser holds in an organisation, from personal or professional information that a harasser has about a victim, physical, psychological, or emotional power that a harasser has over a victim.
- Gender-based violence in the workplace could take the form of sexual harassment (based on grounds of sex, sexual orientation, or gender), bullying, threatening, spreading malicious rumours, ridiculing someone, exclusion, undermining a person, unjustified negative criticism and blocking a person from advancement in the organization, amongst various others humiliating forms of harassment.
- It may occur at any level amongst or between managers, supervisors, owners, directors, workers. Often it may happen between a manager and a worker or to a person with less power and say in the workplace or even between colleagues on the same level or position. GBV can also happen in the workplace of clients or in work involving dealings with the public, including during travel during business hours to and from work, in far off places with few people present or when work takes place during unusual hours, for example during a night shift, weekends or holidays.
- It may take the form of any unwanted sexual act, conduct, comment, advance, attention, proposal, coercion, threat, physical force, touching, embracing or even rape or sexual assault. It could be direct and visible, or it may be subtle and indirect. Either way it may be experienced as being offensive, unwelcome, intimidating and humiliating to the other person. It is often behind closed doors or in an environment where others cannot see or perceive what is going on.
- If it is not accepted by the targeted employee, it could result in that employee being victimised. Examples may include withholding of benefits (increases, bonuses, good performance scores or incentives), privileges (time-off), opportunities (promotion), or other negative and occupational detriments or consequences aimed at punishing the person (being unfairly disciplined or even dismissed).
- *Quid pro Quo* harassment is where a person coerces (threatens) someone else to give in to sexual advances by threatening or promising influence in return for that person's employment opportunities, training, discipline, advancement, salary increases etc.
- *Sexual favouritism* is where a person in authority (owner, manager, supervisor, director) only advances or 'looks after' the interests of those who say 'yes' to that person's sexual advances.

What are the responsibilities of an employer?

- Harassment is defined as a form of unfair discrimination in terms of Section 6 (3) of the Employment Equity Act No 55 of 1998, as amended (EEA). The Employment Equity Act places a duty on employers to take steps to eliminate (and prevent) any form of unfair discrimination at the workplace Contraventions

of the Employment Equity Act must immediately be reported to the employer. Immediately, in the context of a claim of harassment, shall mean *as soon as is reasonably possible*, considering this being a sensitive issue and allegations being made against a person who is perceived to be or actually is in a position of authority and the complaint being made in the context of a fear of reprisals.

- Once the employer has been made aware of such an allegation, an investigation into the allegations must be conducted with due regard to the sensitivity and confidentiality of the situation and the parties involved. Once the facts have been established, the employer must address the situation in line with an employer's disciplinary code and the procedure and guidelines contained in the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace 2022.
- The EEA requires an employer, who hears of an allegation that one of its employees has done something that is against or contravenes that law (e.g., sexual harassment or any form of harassment), to consult all relevant parties and to take the necessary steps to eliminate the alleged conduct. If the employer fails to do so, and it is later proved that the employee did 'break' or contravene the EEA law, the CCMA or court may hold the employer liable for this in terms of Section 60 of the EEA (vicarious liability).
- To avoid this liability and to protect its employees, the employer must do all that is reasonably practicable to ensure that its employees do not act in contravention of the EEA. This means that, if a case is reported to an employer, that employer is expected to investigate and to take reasonable / fair /appropriate action against the employee who is accused of contravening the EEA and to create a safe environment for people of all genders.
- To encourage reporting of these incidents, it is advisable for the employer to create awareness about the EEA and the Code of Good Practice on The Prevention and Elimination of Harassment in the Workplace 2022, to identify and train responsible individuals to deal with the investigation and hearing of these matters in a skilful and sensitive manner.
- Please note that if the GBV / harassment is committed by someone who is not an employee, the employer is not liable in so far as liability is set out in the EEA.

What are the rights of an employee?

An employee has the right to:

- A safe workplace, free of harassment and unfair discrimination.
- Enjoy free and equal access to opportunities, benefits, and privileges in the workplace.
- Report to management any incident of unfair discrimination, violence, or harassment without the fear of recrimination or adverse consequence.
- Thorough investigation of a complaint.
- Appropriate and reasonable action to be taken within reasonable time against any perpetrator.

- An employee may also lodge a claim of alleged unfair discrimination with the CCMA in the event that the employee believes that his or rights in terms of the EEA have been violated.

Domestic gender-based violence

- Gender- based violence includes intimate/domestic partner abuse, which can take the form of physical abuse, emotional or psychological abuse or cyber bullying or abuse, like revenge porn. Domestic violence does not fall within the jurisdiction of the employment relationship and an employer will not have any right to interfere or intervene in such matters.
- The victims of domestic violence are encouraged to report such abuse to the authorities and obtain assistance and support to remove themselves and other vulnerable dependants from the situation.
- It is acknowledged that being exposed to this type of domestic situation will have a negative impact on an employee at work and may result in absenteeism and impact on productivity. It is advisable to bring the domestic situation to the attention of a trusted manager or HR professional at work to ensure an emphatic understanding of the circumstances. The company may also be in a position to refer the affected person to organizations providing counselling or through an Employee Assistance Programme and in this way, provide, assistance to victims of domestic abuse and prosecution of the abuser.

Organisations that can provide help

- If no investigation is conducted or the outcome of the workplace-related, gender-based violence investigation is not satisfactory, you may report the incident to the CCMA in terms of the provisions of the EEA, within six months from the date of the incident.
- Contact the CCMA at 0861 16 16 16 or download the APP #CCMAConnect to refer a dispute.
- Incidents of domestic gender-based violence must be reported to the relevant authority, e.g., the SA Police Service, the Equality Court, and the Human Rights Commission.
- The Department of Justice provides details of organisations that may assist victims of GBV. These include:
 - The GBV Command Centre: 0800 428 428
 - The STOP Gender Violence Helpline: 0800 150 150
 - The TEARS Foundation: free sms helpline *134*7355#
 - People Opposed to Women Abuse (POWA): 011-642 4345
 - SAPS Emergency number: 10111