



EAPA-SA

Steps to Take When an Employee Reports Sexual Harassment

by [EAPA-SA](#) | Sep 13, 2019

Overview

In 2018 market research agency, Columinate, engaged 1000 urban South Africans to investigate the statistics behind sexual harassment in the workplace. According to the data recorded from participants in the study:

- 51% of workplaces do not have a clear sexual harassment policy in place.
- Only 37% of organisations have a clear process to report sexual harassment.
- 20% of businesses employ a reporting hotline, with another 20% offering training on eliminating sexual harassment in the office. ¹



Codes of Good Practice

- Until 19 December 2018, employers had to apply two ‘Codes of Good Practice’ for the Handling of Sexual Harassment Cases in the workplace. The first code was issued in 1998 (Government Notice R1367 of 17 July 1998). This code was amended on 4 August 2005, by the *Amendments to the Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace (General Notice 1357)*. The amended code introduced a new definition for what constitutes sexual harassment – it provided guidance on what factors to consider in determining whether an act of sexual harassment has occurred, and it placed a greater onus on employers to take positive steps to implement a sexual harassment policy.

gically, the amended code should have replaced the previous code; however, the first code was never repealed. This meant that both codes applied and employers had to consider the provisions of both codes when dealing with cases of sexual harassment. On 19 December 2018, the Minister of Labour issued a notice formally repealing and replacing the 1998 code with the amended code of 2005. This brings certainty to employers and CCMA commissioners about which code to apply.²

The code provides that sexual harassment may take the form of physical, verbal or nonverbal conduct. It may be subtle and underhand and frequently invisible to anyone other than the victim. Physical acts of harassment are more obvious than nonphysical forms and it could be deemed to be extremely serious, encompassing acts that include sexual assault or rape.³

Know the process

It is management’s responsibility to be au fait with organisational policies, protocols, and investigatory processes as well as what procedure to follow. If these procedures are undefined or unclear, immediate action should be taken to institute or make changes to clarify them. Bear in mind that it is important to build multiple report pathways into formal procedures and ensure that strict protocols are instituted.

Avoid not taking reports seriously

Learn to take stories about sexual harassment in your organisation seriously – and instil the same attitude in all management.

- Be cautious in making snap assessments that label certain stories or comments as “not a big deal.” All allegations of sexual harassment are worthy of being further investigated.
- Leaders must not allow their need of, or respect for, the valuable expertise of a longstanding employee to blind them to that employee’s problematic traits or abusive behaviour.
- Do not overlook behaviours that subvert team psychological safety or undermine strong organisational culture because you value someone’s professional achievements.

- Acknowledge the risk of speaking up. Be sure you convey that you understand how emotionally and professionally risky it is for someone to step forward and speak up about these matters.
- Practice empathic listening. Affirm the courage it takes to speak up, while avoiding taking sides.
- Avoid judgment. Remember that all parties in an incident deserve to be heard without a rush to judgment in any direction.
- Make it clear that an investigation will need to be conducted—one that is prompt, confidential, thorough, independent, and fair.

Investigation and disciplinary action

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.

- Proactively avoid retaliation situations. Put protocols and systems in place to prevent and detect retaliation. When employees fear retaliation, they are understandably far less likely to speak about it.
- Be sure to follow up. It is imperative that leaders follow up and stay engaged rather than just giving the impression of taking action.
- Managers should be rewarded for excellence in their effectiveness in dealing with sexual harassment behaviours and there should be concrete consequences for managers who drop the ball.

Resolution through informal or formal procedures

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. The employee should be under no duress to accept one or the other option.

Informal procedure

According to the South African Labour Guide, “It may be sufficient for the employee concerned to have an opportunity where she or 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. If this 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.”



Formal procedure

According to the South African Labour Guide, “Where a formal procedure has been chosen by the aggrieved, such a formal procedure for resolving the grievance should be available and should:

- Specify to whom the employee should lodge the grievance.
- Make reference to timeframes which allow the grievance to be dealt with expeditiously.
- 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.

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 dismissible offences. 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.

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).

Sources:

¹ <https://www.bizcommunity.com/Article/196/607/181307.html>

² <https://www.golegal.co.za/handling-sexual-harassment-code/>

³ <https://mg.co.za/article/2019-04-29-00-sexual-harassment-still-plagues-the-workplace>

⁴ <https://www.labourguide.co.za/general/600-code-of-good-practice-on-sexual-harassment113>