



LAERSKOOL KRUGERPARK SE BELEID OOR RASSISME, DISKRIMINASIE

EN SEKSUELE TEISTERING

1. Introduction

- The objective of this code is to eliminate sexual harassment in the workplace.
- This code provides appropriate procedures to deal with the problem and prevent its recurrence.
- This code encourages and promotes the development and implementation of policies and procedures that will lead to the creation of workplaces that are free of sexual harassment where employers and employees respect one another's integrity and dignity, their privacy, and their right to equity in the workplace.

2. Application of the code

- Although this code is intended to guide employers and employees, the perpetrators and victims of sexual harassment may include:
 - Owners, Employers, Managers, Supervisors, Employees, Job applicants, Clients, Suppliers, Contractors, Others having dealings with a business.
 - Nothing in above confers the authority on employers to take disciplinary action in respect of non-employees.
 - A non-employee who is a victim of sexual harassment may lodge a grievance with the employer of the harasser where the harassment has taken place in the workplace or in course of the harasser's employment.

3. Definition of sexual harassment

- Sexual harassment is unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual.
- Sexual attention becomes sexual harassment if:
 - The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment: and/or
 - The recipient has made it clear that the behaviour is considered offensive: and/or
 - The perpetrator should have known that the behaviour is regarded as unacceptable.

4. Forms of sexual harassment

- Sexual harassment may include unwelcome physical, verbal or non-verbal conduct, but is not limited to the examples listed as follows:



- Physical conduct of a sexual nature includes all unwanted physical contact, ranging from touching to sexual assault and rape, and includes a strip search by or in the presents of the opposite sex.
- Verbal forms of sexual harassment include unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments about a person's body made in their presence or directed toward them, unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling directed at a person or group of persons.
- Non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects.
- Quid pro quo harassment occurs where an owner, employer, supervisor, member of management or co-employee, undertakes or attempts to influence the process of
- Sexual favouritism exists here a person who is in a position of authority rewards only those who respond to his/her actual advances, whilst other deserving employees who do not submit themselves to any sexual advances are denied promotions, merit rating or salary increases.

5. Guiding principles

- Employers should create and maintain a working environment in which the dignity of employees is respected. A climate in the workplace should also be created and maintained in which victims of sexual harassment will not feel that their grievances are ignored or trivialised, or fear reprisals. Implementing the following guidelines can assist in achieving these ends:
 - Employers/management and employees are required to refrain from committing acts of sexual harassment.
 - All employers/management and employees have a role to play in contributing towards creating and maintaining a working environment in which sexual harassment is unacceptable. They should ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others.
 - Employers/management should attempt to ensure that persons such as customers, suppliers, job applicants and others who have dealings with the business, are not subjected to sexual harassment by the employer of its employees.
 - Employers/management are required to take appropriate action in accordance with this code, when instances of sexual harassment which occur within the workplace are brought to their attention.
- This code recognises the primacy of collective agreements regulating the handling of sexual harassment cases, and is not intended as a substitute for disciplinary codes and



procedures containing such measures, where these are the subject of collective agreements, or the outcome of joint decision making by an employer and a workplace forum.

6. Policy statements

- As a first step in expressing concern and commitment to dealing with the problem of sexual harassment, employers should issue a policy statement which should provide that:
 - All employees, job applicants and other persons who have dealings with the business, have the right to be treated with dignity.
 - Sexual harassment in the workplace will not be permitted or condoned.
 - Persons who have been subjected to sexual harassment in the workplace have a right to raise a grievance about it should it occur and appropriate action will be taken by the employer.
- Management should be placed under a positive duty to implement the policy and take disciplinary action against employees who do not comply with the policy.
- A policy on sexual harassment should also explain the procedure which should be followed by employees who are victims of sexual harassment. The policy should also state:
 - Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially.
 - Employees will be protected against victimisation, retaliation for lodging grievances and from false accusations.
- Policy statements on sexual harassment should be communicated effectively to all employees.

7. Procedures

Employers should develop clear procedures to deal with sexual harassment. These procedures should ensure the resolution of problems in a sensitive, efficient and effective way.

- Advice and Assistance

Sexual harassment is a sensitive issue and a victim may feel unable to approach, lodge a formal grievance or turn to colleagues for support. As far as is practicable employers should designate a person outside of line management whom victims may approach for confidential advice. Such a person:

 - Could include persons employed by the company to perform inter alia such a function, a trade union representative or co-employee, or outside professionals.
 - Should have the appropriate skills and experience or be properly trained and give adequate resources.
 - Could be required to have counseling and relevant labour relations skills and be able to provide support and advice on a confidential basis.



- Options to resolve a problem
 - 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
 - It may be sufficient for the employee concerned to have an opportunity where she/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 the 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

Where a formal procedure has been chosen by the aggrieved, 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 underneath of this code.
- 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.
 - 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 after warnings are dismissable 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.
 - The range of disciplinary sanctions to which employees will be liable should be clearly stated, and it should also be made clear that it will be a disciplinary offence to victimise or retaliate an employee who in good faith lodges a grievance of sexual harassment.



- Criminal and civil charges

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.

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 of the Labour Court within 30 days of receipt of the certificate issued by the commissioner in terms of section 135(5).

8. Confidentiality

- Employers and employees must ensure that grievances about sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.
- In cases of sexual harassment, management, employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary enquiry. Only appropriate members of management as well as the aggrieved person, representative, alleged perpetrator, witnesses and interpreter if required, must be present in the disciplinary act.
- Employers are required to disclose to either party or to their representatives, such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this code.
- The relevant provisions of section 16 of this Act will apply to the disclosure of information in terms of this code.

9. Additional sick leave

Where an employee's existing sick leave entitlement has been exhausted, the employer should give due consideration to the granting of additional sick leave in cases of serious sexual harassment where the employee on medical advice requires trauma counselling.

10. Information and education

- The Department of Labour should ensure that copies of this code are accessible and available.
- Employers and employer organisations should include the issue of sexual harassment in their orientation, education and training programmes of employees.
- Trade unions should include the issue of sexual harassment in their education and training programmes of shop stewards and employees.
- CCMA commissioners should receive specialised training to deal with sexual harassment.



The booklet correctly points out that sexual harassment is something that happens to both boys and girls, and that those responsible can be fellow students or teachers.

Two extremely disturbing aspects of sexual harassment in South African schools are that there are some schools where it is so prevalent that it is almost institutionalised, and that the major perpetrators are mostly male teachers.

A report on "Sexual Abuse in Schools", published on the South African Government Information Centre website, says the following on the nature and extent of sexual abuse in schools:

"We accept that schools have a responsibility to protect learners, and are culpable when they don't. There are, however, many reasons for the failure of schools to exercise their responsibility in this regard:

1. There is gross under-reporting of incidents of sexual abuse for a range of reasons:
2. Many of our schools have poor and ineffective management systems and lack basic rules and regulations that are understood and adhered to by all, and which are applied consistently. This invariably makes it impossible to apply sanctions even where these are called for;
3. There is a tendency by many schools to either fail to acknowledge or play down incidents of sexual abuse for fear of tarnishing the "reputation" of the school;
4. There is confusion amongst some in our school communities about what is socially acceptable, unacceptable and criminal both in relation to abuse and to sexual harassment.
 - For decades society has condoned and in some cases even encouraged relationships between teachers and school children. Cases of these "inappropriate" relations between learners and teachers are therefore fairly common and are never reported as abuse, unless something goes wrong with the relationship.
 - There is no common understanding of what constitutes sexual harassment.
5. Some schools seem unsure of appropriate steps to take in the event of sexual abuse incidents."

Robert Schoop, in his book *Sexual Exploitation in Schools*, identifies two modalities of exploitation: "intimate" - which involves leading the student to believe the teacher has a genuine desire for a mutually committed intimate relationship, and "coercive" - where the educator pretends to be sincerely interested in the student.

He also identifies two variants of each of these kinds of exploitation, each of which provides an insight into the manner in which exploitation occurs and into the nature of the relationship. The characteristics of each of these kinds of exploitation are given below:

- Intimate - true love: the teacher is in love with the student; the teacher has a sexual relationship with just one student; the relationship is exposed or discovered by others; the relationship often continues after discovery.



- Intimate - manipulative: the teacher uses the relationship for his/her own sexual gratification; the teacher has multiple sequential relationships; the relationship is exposed by the student or others; the relationship ends with discovery.
- Coercive - subtle coercion: the teacher manipulates the student not to tell anyone; the teacher rewards the student with a benefit of privilege.
- Coercion - overt coercion: the teacher warns the student not to tell anyone; the teacher threatens to withhold something the student wants; the teacher threatens harm to him/herself, the student or others if the student tells anyone; the teacher uses physical force to keep the student from telling anyone; the teacher retaliates against the student if the student reports the exploitation.

It is important to appreciate that all four cases are considered to be sexual harassment. This is because the teacher is expected to have a special relationship of trust with his or her students. They are expected to act in loco parentis, that is, to act in place of the parent. Becoming sexually involved with a student is therefore the equivalent of a parent becoming sexually involved with his or her child. The school, and therefore the principal (unless he is the perpetrator), has a legal obligation in terms of section 15 of the Child Care Amendments Act, No. 96 of 1996, to report child abuse or suspicions of child abuse. Normally the matter would be reported to the school social worker at the local area office of the provincial education department and to the South African Police Service. If there is not a social worker attached to the local area office of the education department, the matter should be reported to the Department of Welfare.

SIGNED AT **MOKOPANE** ON THE **30st** DAY OF **SEPTEMBER 2018**

Beheerliggend voorsitter

Hoof: Laerskool Krugerpark