



Sexual Harassment Policy Framework

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Employers are legally required to have a Sexual Harassment Policy in place in order to help define and manage this challenging and growing problem in the workplace. Some employers will choose to frame a broader policy on Harassment and Bullying while others will opt rather for one that focuses specifically on the issue of sexual harassment. In view of likely changes to the Code of Good Practice later in 2020, it is recommended that a wider definition of harassment, to include bullying and sexual harassment, is adopted.

It is not sufficient to cater for sexual harassment as one example of misconduct in a Disciplinary Procedure, a specific and separate Policy is required. However, alignment of the two is important.

So there are a number of decisions that face the Human Resources Practitioner who is tasked with putting together policies that affect employees. As organisations differ widely in terms of size, culture, resources and so on, each one will have to put together a policy that best suits their own circumstances and which highlights their unique challenges as an employer. When it comes to policy formulation, there is no “one size fits all” approach and we have decided, within the parameters of the Tool Kit for HR Practitioners, to offer a general approach, together with some suggested Policies found on the Internet that can be adapted across a wide range of organisations.

The following outline of what goes into a Sexual Harassment Policy comes from the International Labour Organisation, of which South Africa is a member and to whom South Africa looks for guidance in employment law matters. This policy document¹ was drawn up for use in Asian countries but is extremely useful for general use as it not only has suggested content, but also Explanatory Notes. The six content areas in their policy are as follows:

1. Policy Statement

This explains in broad terms what the policy is about and sets out the intention of the organisation in adopting the policy.

2. Definition of Sexual Harassment

In all policies the definition of Sexual Harassment is broad and covers physical, verbal and non-verbal elements. This is in line with the reality of experiences across the globe and

¹ https://www.ilo.org/suva/publications/WCMS_407364/lang--en/index.htm

makes the point that sexual harassment includes any conduct of a sexual nature that is unwanted and unwelcome by the recipient (who may be a female or a male).

This section of the policy also highlights that it applies not only to employees, but also to clients, customers and suppliers. In addition, it will clarify that such behaviour may occur not only at the workplace – it may occur outside the premises and outside of working hours.

3. Complaints Procedure

The complaints procedure for sexual harassment incidents often parallels other company procedures but may have extra considerations given the sensitive nature of the complaint(s) as well as the potential disruptive nature of behaviour that be defined as harassment. These extra considerations include:

- Specially trained person(s) to deal with the complaints and related issues, such as counselling – termed “Designated Person(s)”.
- Confidentiality – for the sake of all parties implicated.
- The need for both Formal and Informal complaints procedures and resolution mechanisms.
- Options for reporting.

4. Sanctions and Disciplinary Measures

The policy will outline different sanctions, depending on the circumstances of each case reported and the gravity of the behaviour.

5. Implementation

This section covers how the organisation will make employees aware of the Sexual Harassment Policy and highlights the responsibility of managers and supervisors to ensure that their employees know about the policy and the organisation’s standpoint on this form of misconduct.

6. Monitoring and Evaluation

This refers to the collection of data and statistics to evaluate the effectiveness of the policy which may be in the form of questionnaires and feedback from victims and people involved in the complaints procedure.

Searching on the Internet under “Sexual Harassment Policies” throws up many helpful sites. In the next section on Resources, we give some examples.

The formulation of a Sexual Harassment Policy is important for all the logical reasons that HR Policies are put together – a guideline of “good practice” principles and actions for all managers and employees. However, the reality of the tricky and sensitive nature of many cases often throws up challenges that cannot be anticipated even within organisations that may have comprehensive and well thought through policies. Dealing with sexual harassment allegations is often a series of very

difficult and courageous conversations as HR practitioners and others involved try to find a fair way to navigate the challenge of different and competing versions. That is why it is recommended that people within an organisation receive training on dealing with sexual harassment, or have access to experienced resources such as their Employee Assistance Programme providers.

A particular challenge for HR practitioners is to ensure the genuine buy-in of the executive and senior managers. They will be consulted in drafting the Policy and will be involved in signing off the Policy as for all organisation policies. However, this does not necessarily mean that they understand and support the application of the Policy to each and every employee of the organisation. That this may indeed not be the case is evidenced by many examples from practice where a senior member of the management team is implicated and then tacitly supported by his/her senior colleagues. This is but one of the many conundrums thrown up in cases of sexual harassment and presents a huge challenge to HR practitioners.

However, having a sound base in a well drafted and appropriate Policy is the foundation of managing sexual harassment in the workplace.

RESOURCES

1. The Code of Good Practice section 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 that:

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.

2. Sample policy template: <http://womeninnews.org/resource/41>. This is an international source and needs to be adapted to South African law in accordance with the guidance in this document and in the Code of Good Practice. It is in Word format so it can be edited.
3. An actual published policy: <http://section27.org.za/wp-content/uploads/2018/12/Sexual-Harassment-Policy-FINAL-Nov-2018.pdf>

4. The full ILO example policy as referenced earlier in this document:
https://www.ilo.org/suva/publications/WCMS_407364/lang--en/index.htm