

The new code of good practice aimed at eliminating harassment in South African workplaces

- It is no Laughing Matter -

By Lezanne Taylor – JR Attorneys Inc

Introduction

The Department of Employment and Labour has gazetted its code of good practice aimed at eliminating harassment in South African workplaces ("the Code"). Although South Africa has long standing legislation aimed at equity through the Employment Equity Act, the new code of practice is aimed at **"the completely eliminate of all forms of harassment"** in the workplace. Noteworthy that minor transgressions such as unsolicited sarcasm and eye-rolling, will now be punishable under new workplace harassment laws.

Herewith we introduce a basic interpretation of the code of good practice on prevention and elimination of harassment in the workplace:

Effective date

The Code became effective on 18 March 2022 and the Minister, through gazetting this code, has simultaneously also repealed the *"Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace"*.

The purpose and application of the code

The Code *inter alia* provides guidance on how (a) the employers and employees should deal with the prevention and elimination of all forms of harassment; and (b) on creating, and implementation of human resources policies, procedures and practices related to harassment.

The code is widely applicable to all employees, employers and even applicants for employment and finds application in **all** situations in which the employee is working, inclusive of any situation **related to** their work. As with all labour law situations, both substantive and procedural aspects are important considerations in dealing with these type of matters.

Defining Harassment in terms of the code

The perusal of the code, clearly gives guidance in respect of what is understood by harassment, by inclusively dealing with:

- unwanted conduct, which impairs dignity,
- conduct which creates a hostile or intimidating work environment for one or more employees or is calculated to, or has the effect of, inducing submission by actual or threatened adverse consequences, and
- is related to one or more grounds in respect of which discrimination is prohibited in terms of section 6(1) of the "Employment Equity Act 55 of 1998 ("EEA").

Section 5.2 of the Code continues to identify behaviours that are consistent with unwanted conduct and potential sexual harassment. Several questionable actions, which have previously been identified as grey areas, are now implicitly outlawed in black and white. For example, non-physical and non-verbal attention/actions or conduct can also now be fitted into the definition of harassment under the Code, whether made in a joke, through an inappropriate noise, or comment, the list seems to be extensive.

Prescribed procedure and/or steps guided by the legislature

The Code identifies the steps that employers must take in the elimination of harassment, not only by virtue of placing an obligation on the employer to act, but further extending beyond this obligation an obligation to develop; implement and maintain, internally within the employer policies, procedures and practices aligned with the Code. It is aimed at creating an employment environment free of harassment. Procedurally, it is however clear that employers in terms of the EEA, are not held hostage to "take proactive and remedial steps to prevent all forms of harassment in the workplace". The risk however, attributed to the employer, in failing to do so, can hold the employer liable vicariously, for any harassment perpetrated, in terms of section 60 of the EEA.

It is important to note that the employer thus will have to **commit to the adoption of appropriate policies**, communicate such policies to employees and third parties with whom it deals, and maintain the policies in respect of the workplace. The procedures dictated by the Legislature seems to put forward development of policies, or amending existing policies to include the reporting process; how such complaints will be dealt with both formally and informally, as well as bearing in mind confidentiality and how and when this is to be maintained.

The issue of harassment and training employees appropriately should be included in orientation and be maintained through training programmes. This should be done in a manner that is accessible.

Conclusion

This refreshed workplace laws are certainly an eye-opener, a must to take seriously and to communicate internally, within an organisation. The code provides clear and extensive advice to both employers and employees about what constitutes unfair behaviour between colleagues, superiors, and subordinates, which behaviour should at all costs be avoided and sanctioned by the employer, should it take place.

Through policies and the enforcement thereof, the Employer must not only punish this behaviour, but also act proactively to prevent it from happening.

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