

HARASSMENT IN THE WORKPLACE POLICY

2025/2026 FY



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1. POLICY BACKGROUND

- a) The South African Constitution protects the right to dignity, equality, and fair labour practices in terms of the Bill of Rights.
- b) The Code of Good Practice on Prevention and Elimination of Harassment in the workplace is intended to address the prevention, elimination, and management of all forms of harassment that infuse the workplace.
- c) It is guided by the ILO Convention 190 and its Recommendation concerning the elimination of violence and Harassment in the world of work, 2019: The Discrimination (Employment and Occupation) Convention 111 of 1958 (Convention 111); and the ILO Convention 151 relating to Occupational Health and Safety.

2. POLICY PURPOSE

- a) To educate employees of what constitutes harassment in the workplace, as well as to promote respect and knowledge about the rights of employees, particularly their rights to safety, personal security, bodily integrity and equal treatment.
- b) To create circumstances where employees may enjoy the right to work, educate and impart knowledge in an environment free from sexual harassment.
- c) To provide a reference for procedures to be followed when dealing with such cases and when attempting to prevent their recurrence.

3. DEFINITIONS

- a) CODE means: Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, 2022
- b) EEA means: Employment Equity Act, 55 of 1998
- c) ILO means: International Labour Organisation
- d) LGBTQIA means+: Lesbian, Gay, Bisexual, Trans, Queer, Intersex, Asexual, +
- e) LRA means: Labour Relations Act, 66 of 1995
- f) OHSA means: Occupational Health and Safety Act, 85 of 1993
- g) PEPUDA means: Promotion of Equity and Prevention of Unfair Discrimination Act, 4 of 2000.

4. APPLICATION AND SCOPE

This policy applies to all Mbashe LM employees, including Fixed Term contract, Interns and Councillors.

5. LEGISLATIVE FRAMEWORK

- a) Constitutional Act of 1996
- b) Basic Conditions of Employment Act
- c) Labour Relations Act

- d) Main Collective Agreement of the SALGBC
- e) Disciplinary Procedure and Code of the SALGBC

6. Policy Procedure

HARASSMENT

6.1 Harassment is generally understood to be;

- (a) Unwanted conduct, which impairs dignity.
- (b) 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 (1) of the EEA.
- (c) Harassment includes violence, physical, psychological, emotional , sexual , gender-based and racial abuse.
- (d) It includes the use of physical force or power, whether threatened or actual, against a group or community.
- (e) Harassment against all employees in the workplace is an abuse of power.

UNWANTED CONDUCT

- a) The criterion that harassment involves unwanted conduct distinguished acts of harassment from acceptable conduct in the workplace.
- b) Two primary issues arise in evaluating whether the harasser/perpetrator knew or should have known that the conduct was unwanted.
- c) The issue arises as to whether the complaint communicated to the harasser/perpetrator that the conduct was unwelcomed. Secondly, this may have occurred verbally or non-verbally and may have been communicated directly or indirectly to the harasser/perpetrator.
- d) If there is no such communication. It will still be necessary to examine whether the conduct was of such a nature that the harasser/perpetrator knew or should have known that conduct of the type engaged in, is generally considered to be unacceptable.
- e) While violent conduct may amount to harassment, should be assessed on an objective basis from the perspective of the employee who alleged harassment.
- f) The primary focus of the inquiry is to whether there has been harassment, is on the impact of the conduct on the employee.
- g) However, there may be circumstances in which the perceptions of the person harassed are not consistent with the views of a reasonable person in the situation of the complainant. In such circumstances, a person that the complainant's perceptions are not consistent with societal values reflective of our constitutional ethos.

REPEATED OR SERIOUS CONDUCT

- a) Harassment may occur as a result of a pattern of persistent conduct or a single instant or event. In the case of a single instance.
- b) Harassment will be present if the conduct is of a serious nature. Whether a single instance of conduct will be sufficiently serious to constitute harassment, it must be determined in light of the event that is the subject of the complaints.
- c) Harassment, in particular bullying, may be an escalating conduct in the course of employment in which the complainant end up in an inferior position and become the target of systemic negative social acts.
- d) It is not necessary to establish the intention or state of mind of the harassment/perpetrator in order to prove harassment for the purpose of the EEA.
- e) The fact that the conduct was calculated or intended to offend the complainant may be an aggravating factor relevant to determining a remedy for the complainant.
- f) The intention of a harassment/perpetrator may also be relevant to disciplinary proceedings.
- g) The following factors may be relevant to the issue of whether harassment has occurred:

the context of the harassment;

the circumstances of the complainant and the impact that the conduct has had on an employee; and the respective positions of the harasser/perpetrator and complainant.

HOSTILE WORK ENVIRONMENT

- a) A hostile work environment will be present where conduct related to a prohibited ground impact on the dignity of one or more employees. This will be present if the conduct has a negative impact on the employee's ability to work and/or on their personal well-being. This may be the result of conduct of persons in authority such as managers and supervisors or the conduct of other employees.
- b) A hostile environment may also be present where an employer should anticipate that employees will be subject to a prohibited ground by members of the public, customers or clients and fails to take reasonable steps to protect employees from such conduct.
- c) Harassment is considered to be direct where it is aimed at the complainant for example, violent conduct or abusive language which is directed at the complainant. Harassment may occur indirectly where the conduct, even though not directed at the complainant, has the effect of undermining dignity or threatening safety.

TYPES OF HARASSMENT

- a) Harassment may be the result of physical, verbal or psychological conduct.

- b) Physical harassment includes physical attack, simulated or threatened violence, or gestures (such as raising a fist as if to strike a person or throwing objects near a person.
- c) Verbal bullying may include threats, shaming hostile teasing, insult, constant negative judgment, and criticism or racist, sexist or LGBTIA+ phobic language.
- d) Psychological harassment in the workplace may be associated with emotional abuse and involves behaviour that has serious negative psychological consequences for the complainants such as is often the case with verbal abuse, bullying and mobbing.
- e) A wide range of conduct in the workplace may constitute harassment.

Example of harassment includes, but are not limited to:

- a) Slandering or maligning an employee or spreading rumours maliciously;
- b) Conduct which humiliates, insults or demeans the employee.
- c) Withholding work-related information or supplying incorrect information;
- d) Sabotaging or impeding the performance of work;
- e) Ostracising, boycotting , or excluding the employee from work or work-related activities
- f) Persecution such as threats, and the inspiration of fear and degradation
- g) Intolerance of psychological, medical, disability or personal circumstances;
- h) Surveillance of an employee without their knowledge and with harmful intent; Use disciplinary or administrative sanctions without objectives cause, explanation, or efforts to problem solving;
- i) Demotion without justification;
- j) Bullying – where harassment involves the abuse of coercive power by an individual or group of individual in the workplace. Intimidation -this is intentional behaviour that would cause a person of ordinary sensibilities to fear injury or harm. Workplace bullying may involve aggressive behaviour in which someone repeatedly cause another person injury or discomfort.
- k) Harassment may be referred to as being 'vertical' or 'horizontal'. Vertical harassment (also known as 'tangible' or material ') involves the use of formal power (i.e. title, position, or supervisory control) involves the use of formal power (i.e. financial informational, resource or legal) to intimidate, threaten, harass, or harm an employee or to dominate and control the complainant.
- l) Vertical harassment refers to harassment between the employer/manager and employee. Horizontal harassment refers to harassment between employees in the same position or on the same level.
- m) Passive -aggressive or covert harassment may include negative gossip. Negative joking at someone's expense, sarcasm, considering eye contact, facial expression, or gestures, mimicking to ridicule, deliberately causing embarrassment and insecurity, invisible treatment , marginalization, social exclusion, professional isolation, and deliberately sabotaging someone's dignity, well-being, happiness, success and career performance.
- n) Mobbing is a form of harassment by a group of people targeted at one or more individuals.



- o) Online harassment is harassment which is committed, assisted, or aggravated, or aggravated in part or fully, by the use of information and communications technology such as mobile phones, smart phones, the internet, social media platform or email. Bullying when conducted online is referred to as cyber-bullying.

SEXUAL HARASSMENT

- a) Sexual harassment of an employee is a form of unfair discrimination and is prohibited on the grounds of sex, gender, or sexual orientation.
- b) Some sex harassment can amount to discrimination on the basis of sex, gender, sexual orientation and gender-based harassment.

FACTORS TO ESTABLISH SEXUAL HARASSMENT

Unwanted conduct

- a) There are different ways in which an employee may indicate that sexual conduct is unwanted, including non-verbal conduct such as a walking away or not responding to the perpetrator.
- b) Previous consensual participation in sexual conduct does not necessarily mean that the conduct continues to be acceptable to the employee.
- c) Where a complainant has difficulty indicating to the perpetrator that the conduct is unwanted, such complainant may seek the assistance and intervention of another person such as a co-worker, superior, counsellor, human resource official, family member or friend.
- d) The fact that the complainant does not indicate that the conduct is unwanted does not entail that there has not been sexual harassment, if the conduct is such that the harasser/perpetrator ought to have known it could be regarded as unwanted.

Nature and extent of the conduct

- a) The unwanted conduct must be of a sexual nature and includes physical, verbal, or non-verbal conduct, whether expressed directly or indirectly. Conduct amounting to sexual harassment may include:
Physical conduct of a sexual nature, ranging from touching, kissing, to sexual assault and rape;
Strip searching, including by a person of the same sex in the presence of the opposite sex, or with appropriate privacy;
Sexual attention, advance or proposals: or other behaviour, whether explicit or implicit, including suggestion, messages, advances, attention or proposal of a sexual nature; Implied or express threats of reprisal or actual reprisal, attention or proposal.
- b) Verbal conduct such as innuendos. Suggestions, hints, sexual advances, comments with sexual overtones, sex-related jokes or insult, graphic comments about a person's body. Inappropriate enquiries about a person's

sex life, whistling of a sexual nature and the sending by electronic means or otherwise of sexually explicit text; or

- c) Non-verbal conduct such as unwelcome gesture and the display or sending by electronic means or otherwise of sexually explicit pictures or objects
- d) Sexual harassment may include, but is not limited to victimization, *quid pro quo* harassment, sexual favouritism and creating or permitting a hostile working environment (i.e. conduct that creates an intimidating, hostile or humiliating working environment for the recipient).
- e) Victimization occurs where an employee is victimized or intimidated for failing to submit to sexual advances, attention, or proposals or for complaining about gender-insensitive conduct.
- f) *Quid pro quo* harassment occurs where a person such as an owner, employer, member of management or co-employer, supervisor, member of management or co-employee, influence employee's employment circumstances (for example engagement, promotion, training, discipline, dismissal, salary increment or other benefits) by coercing or attempting to coerce an employee to surrender to sexual advance.
- g) Sexual favouritism is a form of *quid pro quo* harassment, which occurs where a person in authority in the workplace seeks to utilise this power to reward those who respond to his or her sexual advance.
- h) A single incident of unwelcome sexual conduct may constitute sexual harassment.

Impact of the conduct

The conduct should constitute an impairment of the employee's dignity, taking into account the circumstances of the employee, and the respective position of the employee and the perpetrator in the workplace.

Test for Sexual Harassment

- a) Sexual harassment is unwelcome conduct of sexual nature, whether direct or indirect. That the perpetrator knows or ought to know is not welcome. Sexual harassment may be offensive to the complainant may be harmed. Sexual harassment may interfere with the work of the complainant although it need not necessarily do so. Sexual harassment violates the right of an employee and constitute a barrier to equality in the work.

The test for establishment whether there has been sexual harassment takes into account the following factors:

- b) Whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;
- c) Whether the sexual conduct was unwanted or unacceptable.
- d) The nature and extent of the sexual conduct; and
- e) The impact of the sexual conduct on the employee.

Obligations of the employer

- a) When an allegation of harassment of an employee has been brought to the attention of the employer, the employer must:
- b) Consult all relevant parties.
- c) Take the necessary step to address the complaint in accordance with this Code and the employer's policy, where applicable, the SALGBC Collective Agreement and take the necessary steps to eliminate the harassment.
- d) Failure to take adequate steps to eliminate harassment once an allegation of harassment by an employee has been submitted within a reasonable time.
- e) Will remember the employer vicariously liable for the conduct of the employee in terms of section 60 of the EEA. This is the case even if the harassment consists of a single incident.

7. IMPLEMENTATION

The policy shall be effective from 01st July 2025

8. REVIEWAL

The policy shall be reviewed on annual basis.

