

know your rights



A SIMPLIFIED GUIDE TO THE PROTECTION FROM HARASSMENT ACT



WOMEN'S LEGAL CENTRE

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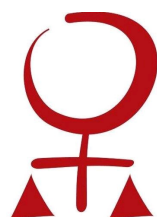
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The Women's Legal Centre

About the Women's Legal Centre: The Women's Legal Centre is a non-profit, independently funded law centre, started by a group of women lawyers. It is an independent law centre that seeks to achieve equality for women in South Africa.

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PART ONE

HOW TO USE THIS BOOKLET

What is this booklet for?

This booklet is part of a series of booklets designed by the Women’s Legal Centre to help women and girls to understand the laws which can help them to protect their rights.

This booklet focuses on the laws regarding harassment. It explains the meaning of “harassment” and the legal rights that you have to protect yourself if you are experiencing harassment.

What can I learn from this booklet?

You can use this booklet to:



Understand the meaning of “harassment”.



Learn about your legal rights that can protect you from harassment.



Understand the legal processes that you need to follow to protect your rights.



Help others learn about their rights if they are experiencing harassment.

Why is it important to know my rights?

If you know your rights, then you can:



Know when the way others treat you is against the law.



Know how the law can help you if your rights are violated.



Know where to enforce your rights and get legal help.



Create community awareness and educate your family, friends and community members about their rights.

Use these pictures as your guides through this book:



Definition: You will see this picture near legal terms and words that may be difficult to understand.



Comment: You will see this picture next to information that is important or may seem hard to understand.

PART TWO

INTRODUCTION

What is the Protection from Harassment Act?

The Protection from Harassment Act is a law that provides victims of harassment with a way to protect their rights against harassment. It introduces procedures that help the courts and the police to protect the rights of victims of harassment.

What is harassment?

You are experiencing harassment if someone is causing you harm or threatening to cause you harm by unreasonably:



Following you



Watching you



Approaching you in a threatening way



Hanging around your home, work, school or places that you happen to be



Communicating with you verbally, electronically or in any other way



Sending you letters, telegrams, packages, faxes, emails or any other objects



There are different types of harm. Harm can be mental, psychological, physical or economic. This means that you can experience harm if, for example, someone is physically abusive towards you or if they are threatening to hurt you or not giving you money that belongs to you or even if the person says things to you that make you feel worthless.



What is an “electronic communication”? Electronic communications include, phone calls, cellular phone text messages, faxes, emails, social media or cellular phone messaging services like whatsapp and BBM.

Harassment can also be sexual in nature. This is referred to as “sexual harassment”. Sexual harassment is a type of harassment. You are experiencing sexual harassment if:



You receive unwelcome sexual attention from a person. For example, someone touches you without your permission in an inappropriate sexual way that makes you feel uncomfortable.



You receive unwelcome behaviour, suggestions, messages or remarks of a sexual nature that you find offensive, intimidating or humiliating.



You receive a promise of reward for a sexual request. For example, someone promises to buy your groceries for you if you have sexual intercourse with him.



You receive a threat for not complying with a sexual request. For example, someone threatens to hurt your family if you do not have sexual intercourse with him.

What is a protection order?

A protection order is a court order that sets out the things that the person who is harassing you may or may not do to stop that person from harassing you.

Who can apply for a protection order?

You can apply for a protection order in terms of the Protection from Harassment Act if you are experiencing harassment.

You can also apply for a protection order on behalf of someone else who is the victim of harassment. If you are applying for a protection order on behalf of someone else, you must have the person's written permission. You will not need the person's written permission if the person that you are applying for is a child or if you can show that the person is not able to provide written permission.



What is "written permission"? Written permission means getting someone to agree to something in writing. For example, if you are applying for a protection order on behalf of your friend, your friend will have to write a letter saying that she has given you permission to apply for the protection order for her and she will need to sign the letter.

You can apply for a protection order even if you do not know the person who is harassing you. For example, if you are receiving harassing emails but you don't know who is sending them or if you are being harassed by someone who is following you around but you don't know the identity of the person, you can still apply for a protection order against that person.



Children under the age of 18 years old can apply for protection orders by themselves.

Where can you apply for a protection order?

You can apply for a protection order at your nearest Magistrates' Court, or the Magistrates' Court that is closest to where the person who is harassing you lives or works.

When you arrive at the court, tell the clerk that you are experiencing harassment and that you want to apply for a protection order in terms of the Protection from Harassment Act.

When can you apply for a protection order?

You can apply for a protection order at the court during ordinary court hours, which are usually from 09:00AM – 15:30PM.

You can also apply for a protection order outside of ordinary court hours, or on weekends and public holidays, if you can show that your application is urgent and that you will suffer harm or that you may suffer harm if your application is not dealt with immediately. For example, if you are being harassed by someone and you are afraid that the person is going to hurt you if you do not obtain a protection order against the person as soon as possible, you can apply to court for a protection order outside of court hours.

PART THREE

STEP-BY-STEP GUIDE TO APPLYING FOR A PROTECTION ORDER

Step 1: The application form

The clerk at the Magistrates' Court will ask you to fill out an application form.

Pay close attention to the form and make sure you answer all the questions. If there is anything that you don't understand, you must ask the clerk. The clerk must explain your rights and the application process in a way that you understand.

The application form will require the following information:

Personal details



You will need to provide your personal details including your name, ID number, home address, work address and your contact numbers.



If you are making the application on behalf of another person, you must have the written permission of that person. You will not need the person's written permission if the person that you are applying for is a child or if you can show that the person is not able to provide written permission.

Details of the person who is harassing you



You will need to provide the personal details of the person who is harassing you. Try to provide as such information as possible in order to help the court and the police to identify the person.

What if you don't know the identity of the person who is harassing you?

Remember, you can apply for a protection order even if you do not know the person who is harassing you.

If you are being harassed through electronic communications and you do not know the identity of the person who is harassing you, you will need to provide the following information:



The name of the service provider of the service over which the electronic communication was sent.



The identity number that is linked with the service to which the communication was sent.



The identity number that is linked with the service from which the communication was received.



The date, time and duration of the communication.

For example, if you are being harassed through electronic communications, you will need to provide the following information:

Type of electronic communication	Name of the service provider	Identity number that is linked with the service to which the communication was sent	Identity number that is linked with the service from which the communication was received	Date, time and duration of the communication
Phone calls	Landline or cellular network provider (for example Telkom or Vodacom)	Your landline or cellular phone number	Harasser's phone number	For example: Phone call on 12 December 2014 at 12h00 which lasted for 12 minutes
Cellular phone text messages (for example SMS)	Cellular network provider (for example Vodacom)	Your cellular phone number	Harasser's phone number	For example: Message received on 12 December 2014 at 12h00
Cellular phone messaging services (for example whatsapp or BBM)	Cellular network provider (for example Vodacom or MTN)	Your cellular phone number	Harasser's phone number	For example: Message received on 12 December 2014 at 12h00
Faxes	Landline network provider (for example Telkom)	Your fax number	Harasser's fax number	For example: Message received on 12 December 2014 at 12h00
Emails	Internet service provider (for example MWEB)	Your email address and your computer's Internet Protocol (IP) address	Harasser's email address and/or IP address if it accompanies the electronic communication	For example: Message received on 12 December 2014 at 12h00
Social media (for example Facebook or Twitter)	Internet service provider (for example MWEB)	Your username on the social media website and your computer's Internet Protocol (IP) address	Harasser's username on the social media website and the web address which contains the harassing content	For example: Message received on 12 December 2014 at 12h00



Even if you do not have all of the above information regarding the relevant electronic communication, you can still make an application for a protection order. Try to provide as much information as possible in order to help the court to identify the person who is sending the harassing communication

If you are being physically harassed by someone and you do not know the identity of the person who is harassing you, you will need to provide the following information:



Description of person who is harassing you.



Location where you think the person can probably be found.



Any other information that may help the police to trace the person who is harassing you.

You will also need to explain whether you made a written statement at a police station that which stated that you intended to apply for a protection order against harassment in respect of the person. If you did this, you need to provide details of when you did this and at which police station.

Details of the incidents of harassment



You will need to provide an explanation of the kind of harassment you have experienced. Make sure that you provide details regarding when the harassment started and give specific examples of what the person who is harassing you has said or done.



If you have photographs, doctors' letters, medical reports, affidavits by witnesses or any other evidence of the harassment, take the information with you when you apply for the protection order.



What is an affidavit? An affidavit is a sworn statement or declaration in writing. You can get a witness to complete an affidavit at your local police station.

Urgency

In order for the court to provide you with immediate protection, you will need to provide all the reasons why your application may be urgent, and why you will suffer if you do not get a protection order urgently. Make sure that you provide as much information as possible to show why you need immediate protection from the person who is harassing you

Details of the kind of protection that you want the court to give you



You must explain what you want the person who is harassing you to do or to stop doing.

Once you have completed the application form, the clerk will ask you to swear or promise that all the information you have put in the form is correct and true. Lying on purpose in an application form is a serious offence and you can go to jail for it or you can be made to pay a big fine.

Step 2: Interim Protection Order

When your application form is completed, the clerk will take it to the magistrate while you wait. The magistrate will look at the facts of your case and will consider all your reasons for why your application is urgent, and how you will suffer if you do not get a protection from harassment urgently.

The magistrate may ask for more information in the form of affidavits, or may ask to speak to you or witnesses in order to decide whether or not to give you an interim protection order.

The magistrate will then make a decision about giving you temporary protection “in the meantime”. This temporary “in the meantime” protection is called an “interim protection order”.

The interim protection order sets out what the person who is harassing you may or may not do to stop the person from harassing you until the day that you and the person who harassed you can both come to court to talk about your application. It is not a final protection order.

What happens if the magistrate issues an interim protection order?

Every interim protection order has a date on it when you must come back to the court and appear before the magistrate. This is called a “return date”. This is the date when the magistrate will make the decision about whether to give you a final protection order. You must make sure that you go to court on that date.

If you miss the return date at date, the interim protection order “lapses” and becomes useless, and you are not protected any more.

What happens if the magistrate does not issue an interim protection order?

If the magistrate decides not to give you an interim protection order, this does not mean that the magistrate does not believe that you are being harassed. It just means that the magistrate does not think that you are in immediate danger as a result of the harassment. You will still be given a “return date” on which you must come back to the court to appear before the magistrate to show why you should be given a final protection order.

Step 3: Notice to the person who is harassing you

The person who is harassing you must have at least 10 days’ notice that they have to come to court on the return date. This notice period gives the person time to prepare for the hearing.

How does the person who is harassing you find out that you have applied for protection order?

If the magistrate issues an interim protection order, the following papers must be served on the person who is harassing you by the sheriff of the court or a member of the police:



To “serve” papers or documents means to deliver them by hand.



A copy of your application papers. This is the form that you would have filled out when you applied for the protection order.



A copy of the interim protection order. The interim protection order will be given to you by the magistrate or the clerk.



Copies of any evidence that the magistrate used to make the decision to issue a protection order. This would include, for example, any medical reports, photographs or affidavits that you gave the clerk or the magistrate when you applied for the protection order.



A notice calling the person who is harassing you to come to court on the return date. This is the notice that you received from the magistrate or the clerk which sets out the return date.

If the magistrate does not issue an interim protection order, the following papers must be served on the person who is harassing you by the sheriff of the court or a member of the police:



A copy of your application papers. This is the form that you would have filled out when you applied for the protection order.



Copies of any witness affidavits regarding the harassment that you gave to the clerk or the magistrate.



A notice calling the person who is harassing you to come to court on the return date. This is the notice that you received from the magistrate or the clerk which sets out the return date.

How are the documents served on the person who is harassing you?

The clerk of the court will explain to you how the documents are to be served on the person who is harassing you. You will have to take all the documents that have to be served to the office of the sheriff or the police yourself. You can ask the clerk where the sheriff's office is. You might be asked to pay a small service fee to the sheriff.

If you cannot afford the sheriff's service fee, you should inform the clerk of the court. The police may serve the documents free of charge, or the court could arrange for payment of the sheriff's fee.

Service of documents on the person who is harassing you is important because an interim protection order only has force and effect once it has been brought to the attention of the person who is harassing you.

Step 4: The return date

On the return date, you will have a chance to explain to the magistrate how you have been harassed and show why you should be given a final protection order. On that day you must bring all your evidence which shows that you have been harassed including any photographs, doctor's letters, medical reports and affidavits by witnesses. If possible, you must also take any witnesses to court with you.

The person who harassed you will also have a chance to tell their side of the story, and to give the magistrate any reasons why you should not be given a final protection order.

The court could allow the person to ask you questions. At court you can ask that the person who is harassing you should not be allowed to question you directly, unless they have a legal representative. The person must then direct his questions to the magistrate, who will then ask you the questions.

Both you and the person who harassed you are allowed to either choose to represent your cases on your own or you can bring lawyers on the return day, to help you argue your case.

This day in court is like a small trial and can be scary, especially if you've never been in a court before. But you must not allow this fear to stop you from getting your protection order. Tell the magistrate all the facts and use your rights.

The magistrate will consider all the documents and witness statements, and may ask you and the person who harassed you questions. These will help the magistrate to decide whether you should have a final protection order.

If the magistrate issues a protection order, it must be served on the person who is harassing you. The clerk of the court must also send a copy of the protection order to a police station of your choice. This should be a police station that is close to where you are experiencing the harassment.

A final protection order becomes binding immediately upon it being issued even though it may not have been served on the person who is harassing you.



This process happens in civil court, not criminal court.

What happens if the person who is harassing you does not come to court on the return date?

If the magistrate is of the view that there is enough evidence to show that the person is engaging in harassment, the magistrate will give you a final protection order. The magistrate will only do this if the magistrate is satisfied that the documents were served on the person who is harassing you.

If the magistrate is of the view that there is not enough evidence to show that the person is engaging in harassment, the magistrate will postpone the case. This means that a new notice will have to be served on the person who harassed you to say he must come to court on another date. You must also be in court on that date.

PART FOUR

THE PROTECTION ORDER

Remember, a protection order is a court order that sets out the things that the person who is harassing you may or may not do to stop that person from harassing you.

What can the court say in a protection order?

The court can make any order that is reasonably necessary to protect your safety or wellbeing or the safety or wellbeing of someone close to you in an interim or final protection order.

The court can order the person who is harassing you to stop:



Engaging in harassment. For example, the protection order can state that the person who is harassing you must stop being physically abusive towards you.



Getting the help of anyone else to engage in harassment. This means that the person who is harassing you cannot continue to harass you through another person. For example, if someone is harassing you by phoning you and being verbally abusive, he cannot get another person to start doing the same thing to you.



Committing any other act the magistrate orders that he is not supposed to commit.

The court can also instruct the police to do the following:



To take away any dangerous weapon, like a gun, from the person who is harassing you.



To go with you to the place of the person who is harassing you to collect any of your personal property that might be there.



To investigate your matter to determine whether criminal charges should be brought against the person who is harassing you.



A protection order is valid in the whole of South Africa no matter which court gives it to you.

How long does the protection order last?

The protection order will remain in force for a period of five years unless the court specifies that it applies for a longer time.

If the court is of the view that any part of the protection order deals with a matter that should be dealt with further in terms of any other law, the court will order that that part of the protection order will only remain in force for a limited period in order to give you an opportunity to do what needs to be done in terms of the other law.

What should you do if the person who is harassing you goes against the protection order?

If the person who is harassing you does anything that he is not supposed to do in terms of the protection order, then the person is breaking the law.

If this happens, you must contact the police station immediately. You must tell the police that you have a protection order against the person who is harassing you and that the person has gone against the terms of the protection order.

The police will ask you to complete an affidavit to explain the details of what happened. This will help the police to determine what action needs to be taken against the person.

What must the police do when you report an act of harassment?

Every protection order comes with a suspended warrant of arrest. If the person who is harassing you goes against the protection order, the police will use the warrant to arrest the person if they believe that:



The contravention of the protection order is serious;



your safety or wellbeing or the safety or wellbeing of someone close to you is at risk; and



not much time has passed between the contravention and when you report the contravention.

The police will also take into account the nature of the harassment that you experienced previously.

If the police decide that they should not arrest the person who is harassing you, they must give him a written notice to appear in court for contravening the protection order.



“Contravention” is the legal term used to describe the act of going against a protection order. For example, if you have a protection order against someone and that person does something that he is not supposed to do in terms of the protection order, then that person has “contravened” the protection order and there has been a “contravention” of the protection order.



When you make a complaint about harassment to the police, the police must record the harassment incident in the Protection from Harassment Register at the police station.

Important: The warrant of arrest that comes with a protection order can only be used by the police to arrest the person who is harassing you once. If your warrant of arrest has been used to arrest the person who is harassing you or if you have lost it or if it has been destroyed, you need to apply to the court for a new one.



When you report a contravention of the protection order to the police, the police must tell you if you can lay a criminal charge against the person who is harassing you and how to do so. For example, a charge of rape, sexual assault, assault with intent to do grievous bodily harm, or intimidation.

What should you do if you are not happy with the service you receive from the police?

If you are not happy with the service that you received from the police, you can complain to the Station Commander of the police station where you received bad service.

You can also complain to the Independent Police Investigative Directorate which has the power to investigate misconduct claims against the police. Contact details for the Independent Police Investigative Directorate appear at the end of this booklet.

What is the punishment for going against a protection order?

It is a criminal offence to contravene the terms of a protection order. A person accused of contravening a protection order has to appear in a criminal court before a magistrate. If the person is found guilty, he may be sent to jail for up to five years or ordered to pay a fine.

How do you cancel or change a protection order?

If you want to want to cancel a protection order or if you want to change the terms of a protection order, you will have to apply to court to do so. You must apply to the same court where you made the application for the protection order.

If you want to cancel a protection order, that is, if you no longer want to have a protection order, you will need to apply to court to “set aside” the protection order.

If you want to change the terms of a protection order, that is, if you want the court to change what the protection order says that person who is harassing can and cannot do, you will need to apply to court to “vary” the protection order.

The person who is harassing you can also apply to court to cancel or change a protection order but the court will not listen to the application unless you have been given a chance to respond to the application.

The court will only cancel or change the terms of a protection order if it is satisfied that circumstances have changed since the protection order was issued and there is a good reason for doing so.

USEFUL CONTACT NUMBERS

Women's Legal Centre Cape Town Office	021 424 5660
Women's Legal Centre Johannesburg Office	011 339 1099
Independent Police Investigative Directorate	012 399 0000
South African Police Services Flying Squad	10111
Stop Gender Violence Helpline	0800 150 150
Rape Crisis	021 447 9762
Child Line	0800 055 555
Lifeline	082 231 0805
South African Depression and Anxiety Group	011 234 4837
Family and Marriages Association of South Africa	011 975 7106/7

