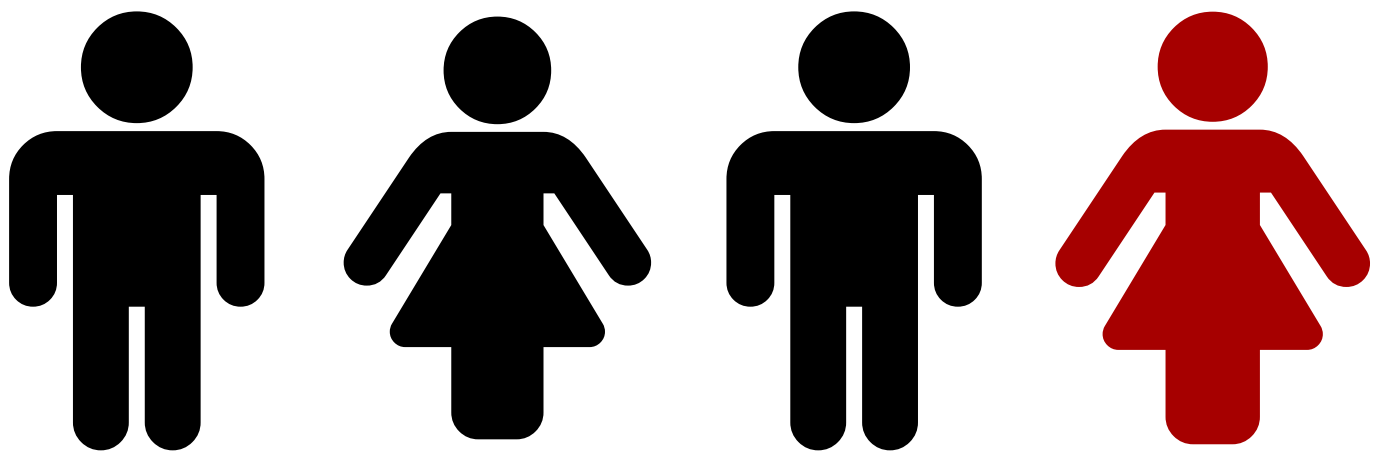




know your rights



**A SIMPLIFIED GUIDE TO SEXUAL
HARASSMENT IN THE WORKPLACE**



WOMEN'S LEGAL CENTRE

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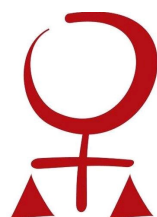
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PART ONE

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 on sexual harassment in the workplace. It explains what “sexual harassment” is, what legal rights you have, and how to protect yourself if you are experiencing sexual harassment in the workplace. If you are looking for information about your rights against sexual harassment outside of the workplace, please refer to our booklet titled “A Simplified Guide to the Protection from Harassment Act.”

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 laws protect me from sexual harassment at work?

Employers are meant to create and maintain a working environment where employees feel safe and where the equality and dignity of employees is respected.

Your rights against sexual harassment in the workplace are set out in the Labour Relations Act, the Employment Equity Act and in a set of guidelines issued by the Department of Labour called the Code of Good Practice on the Handling of Sexual Harassment Cases (the Code).

Both the Labour Relations Act and the Employment Equity Act prohibit sexual harassment in the workplace and set out the steps that an employee can take to deal with sexual harassment. The Code sets out the definition of sexual harassment and describes the procedures that employers can adopt to deal with sexual harassment in the workplace. The Code is a guide for employers on how to deal with sexual harassment in the workplace. It is not a binding law but employers are encouraged to develop and implement policies on sexual harassment based on the Code.

What is sexual harassment?

Sexual harassment is **unwelcome conduct** of a **sexual nature** that violates the rights of an employee.



What is “unwelcome conduct”? Unwelcome conduct is any behaviour that you do not agree to and makes you feel uncomfortable.



The unwelcome sexual behaviour does not have to happen repeatedly before it can be considered to be sexual harassment.

1. What type of behaviour can be considered sexual harassment?

The behaviour must be of a sexual nature and can be physical, verbal or non-verbal.



Physical behaviour of a sexual nature: This includes all physical contact between you and the other person that is sexual in nature. For example, the person touches you inappropriately.



Verbal behaviour of a sexual nature: This includes suggestions, hints, comments, jokes, whistling, phone calls or remarks that are sexual in nature. It also includes emails or messages with content of a sexual nature. For example, the person may make sexually-suggestive comments or make inappropriate comments about your body.



Non-verbal behaviour of a sexual nature: This includes gestures, indecent exposure of the body or sexually explicit pictures. For example, someone shows you their private parts or sends you a picture with sexually graphic content.

2. The sexual behaviour must be unwelcome

Behaviour is unwelcome when you do not agree to it and makes you feel uncomfortable. It can sometimes be difficult to show that behaviour is not welcome because the behaviour may be coming from your boss or a senior employee or because of the awkwardness of experiencing such behaviour in the workplace. As a result, the law allows you to indicate that the sexual behaviour is unwelcome in different ways, for example, by:



Verbally indicating that you do not want to engage in the behaviour, for example, by saying “no”.



Showing through your body language or in any other way that you do not want to engage in the behaviour, for example, by walking away or by pushing the person away.



Just because you were previously willing to engage in behaviour of a sexual nature with someone does not mean that such behaviour is always welcome. For example, if you were willing to kiss a fellow employee before, this does not stop you from indicating that such behaviour is unwelcome if he wants to kiss you again.

3. The intention of the person who harassed you does not matter

The intention of the person who harassed you does not matter. Even if the person says that he was just joking or that he did not think that what he did was sexual harassment, as long as you feel that the behaviour was inappropriate, offensive, intimidating or humiliating and impacted on your sense of dignity as a human being, it will be sexual harassment.



Even if other women in the workplace do not think that the unwelcome sexual behaviour was sexual harassment, as long as you feel that your dignity was impaired, the behaviour will be considered to be sexual harassment.

4. Sexual harassment is unfair discrimination



What is “unfair discrimination”? Unfair discrimination means to treat someone unfairly or badly because of some characteristic of the person like the person’s sex or gender.

Sexual harassment can unfairly discriminate against a woman on the basis of her:



Sex – This means that the employee is being treated differently and badly in comparison to men because she is a woman.



Gender - This means that the employee is being treated differently and badly because the employee identifies herself as a woman regardless of whether other people consider her to be a woman.



Sexual orientation – This means that the employee is being treated differently and badly because of who she is attracted to, for example, because she is lesbian.

Is it still sexual harassment if I agreed to something because I felt that I had no choice?

You have experienced sexual harassment even if you agreed to engage in behaviour of a sexual nature, if you did so under the following circumstances:



Where you agreed to engage in the sexual behaviour because you were intimidated and afraid of what would happen to you if you did not agree. For example, the person threatens to hurt or harm you or your children if you do not engage in the sexual behaviour.



Where the harasser influences or threatens to influence your employment circumstances if you do not agree. For example, the person threatens to dismiss you or discipline you if you do not agree to engage in the sexual behaviour. Alternatively, the person may suggest that he will promote you or increase your salary if you engage in the sexual behaviour. This type of behaviour is known as **quid pro quo** harassment.



Where a person in authority in the workplace rewards only those who respond to his sexual advances. This is referred to as sexual favouritism.

PART THREE

REPORTING SEXUAL HARASSMENT

When should I report sexual harassment to my employer?

You should try to report the sexual harassment as soon as reasonably possible so that steps can be taken to protect you from further harassment.

If you have delayed in reporting the sexual harassment because you were not ready to do so or because you were afraid of what would happen to you once you reported it, this will not prevent you from taking action against the harasser.



You cannot be dismissed or punished in any way for reporting sexual harassment to your employer if you did so in good faith meaning that you honestly believed that you experienced sexual harassment.

How do I report sexual harassment to my employer?

You can bring the sexual harassment to the attention of your employer directly or through someone that you trust like a friend, colleague, a trade union representative or human resources official.

If you choose to advise your employer of the sexual harassment through someone else, you can ask the person to keep the information confidential and not to tell anyone other than your employer.

If your workplace has a sexual harassment policy, check the policy to see what options are available for how to report sexual harassment. If you are not comfortable with reporting the sexual harassment in the way provided for in the policy, you can choose to bring it to your employer's attention in any way that you choose.



Remember that if you do not disclose the name of the harasser, your employer will not be able to take any action against him.

What can I expect from my employer when I report sexual harassment?

Once the employer has been made aware of sexual harassment, the employer should consult with you and take all the necessary steps to address the complaint of sexual harassment. It is against the law for your employer to do nothing after you report that you have experienced sexual harassment.



You can ask your employer if you can be provided with confidential advice or counselling to help you to deal with the effects of the sexual harassment.

What can I expect from my employer when I report sexual harassment? (Cont.)

Your employer should inform you of the following:



Your right to deal with the complaint of sexual harassment through an informal process or through a formal process. Your employer should also explain the available procedures to you especially if your employer has a policy for dealing with sexual harassment matters.



Your right to have the matter investigated and handled in such a manner that the identities of any people involved, including yourself, are kept confidential except from those people who are dealing with the investigation.

You have the right to choose whether you want to follow an informal procedure or a formal procedure. Depending on the circumstances, you can choose to first follow the informal procedure and then follow the formal procedure. Alternatively, you can choose to proceed directly with a formal process.



If it appears to your employer that there is a risk of harm to others in the workplace, your employer may choose to follow a formal procedure to deal with the complaint of sexual harassment regardless of your preference.

PART FOUR

MAKING AN INFORMAL COMPLAINT

An informal procedure can be followed if you want your employer to bring the sexual harassment to the attention of the harasser but you do not want your employer to conduct an investigation or to take any formal action against the harasser. This can be done through, for example, a discussion between the employer and the harasser or providing the harasser with a circular or memo regarding the type of behaviour that he is engaging in which is not welcome.

Where the harasser is given the identity of the complainant

You can ask your employer to have someone of your choice explain to the harasser that his behaviour towards you is not welcome and that it makes you uncomfortable and interferes with your work. The harasser should be asked to stop engaging in such behaviour.

Where the harasser is not given the identity of the complainant

You can ask your employer to have someone of your choice explain to the harasser that certain types of behaviour make employees uncomfortable and constitute sexual harassment. With this procedure, the harasser is not given your identity but is generally made aware of the type of behaviour that is inappropriate.

PART FIVE

MAKING A FORMAL COMPLAINT




You can choose to follow a formal procedure regarding your complaint of sexual harassment either with or without first following an informal procedure.

If your employer has a sexual harassment policy or a policy for dealing with complaints or grievances in the workplace, that policy will set out the internal processes that need to be followed in order for the complaint of sexual harassment to be investigated and for action to be taken against the harasser. If your employer does not have a sexual harassment policy, you can discuss the manner in which the complaint will be dealt with.

The following steps should be agreed on for the formal procedure:

1. How to make a formal complaint

The complaint procedure will usually require you to provide the following information:

-  A description of the incident of sexual harassment
-  The name of the harasser
-  What action you want the employer to take against the harasser

2. Investigation

Once you have lodged the complaint or grievance, the matter will be investigated by your employer.

Interviews

The investigation will usually begin with the employer or human resource official interviewing you. You may be required to provide a written statement with details of the sexual harassment that you experienced.

The person that you have accused of engaging in sexual harassment may also be interviewed and required to provide a written statement.

Any witnesses who may have witnessed the sexual harassment may also be interviewed.

Evidence

Any relevant documents that can be used as evidence of the sexual harassment will be collected. These documents could include emails or any other written messages or pictures that were sent by the harasser to you which can be used as evidence of the sexual harassment that you experienced.



Employers must ensure that sexual harassment grievances or complaints are handled and investigated in a way that ensures that the identities of the people involved are kept confidential and not disclosed to other employees who are not part of the investigation

Hearing

Once the sexual harassment complaint has been investigated, there will be a hearing at which both you and the person who sexually harassed you will have an opportunity to explain what happened.

The hearing will be conducted by a chairperson who can be someone from the organisation like a manager or it can be someone from outside the workplace.



If the hearing is conducted by someone within the workplace, that person must be independent and should not have been part of the investigation.

The chairperson will consider the evidence and may ask questions to help him or her to decide what action should be taken.

After the hearing, the chairperson will make a recommendation regarding whether the person engaged in sexual harassment and if so, what action should be taken against him.

Punishment

If the person is found guilty of sexual harassment then the penalty can range from a written warning to a dismissal depending on the seriousness of the sexual harassment.

PART SIX

What else can I do?

What if I am not happy with the steps taken by my employer?

If you are not happy with the steps taken by your employer or if your employer failed to take any steps to deal with the complaint of sexual harassment, you can refer a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). Contact details for the CCMA appear at the end of this booklet.

Can I lay criminal charges against the person who sexually harassed me?

Yes, the most common criminal offence that women experience in respect of sexual harassment is sexual assault. Sexual assault includes any act which causes contact between the mouth, genital organs or anus of one person (or the breasts of a woman) and any part of the body of another person. For example, someone touches your breasts or kisses you without your consent. Sexual assault also includes anything that makes you believe that that such behaviour will be engaged in. You can lay a charge of sexual assault at your local police station.

Can I apply for a protection order against the harasser?

You can apply to court for a protection order against the person who sexually harassed you. 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. The procedure set out in the Protection from Harassment Act will need to be followed in order to obtain a protection order.

You can refer to our booklet titled “A Simplified Guide to the Protection from Harassment Act” for information about how to apply for a protection order.

USEFUL CONTACT NUMBERS

Women's Legal Centre Cape Town Office	021 424 5660
Women's Legal Centre Johannesburg Office	011 339 1099
South African Police Services Flying Squad	10111
CCMA	0861 16 16 16
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

