



# HARASSMENT

## Harassment in the workplace

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# 1. Introduction

Momentum Metropolitan Holdings Limited (MMH) is committed to providing a safe environment for all its employees free from discrimination on any grounds and from harassment in the workplace and in any activity linked to or arising out of work. MMH commits further to create and maintain a climate where all employees, job applicants and other persons who have dealings with the business are treated with dignity and respect. The Company holds a zero-tolerance approach and insists on a workplace that is free of harassment, where all persons respect one another's integrity, dignity, privacy, the right to equality and treats all incidents seriously and promptly investigates all allegations of harassment.

# 2. Definitions

Term	Description
<b>The Code</b>	<i>The Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace (the Code) effective 18 March 2022 repealed the Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Employment Equity Act</i>
<b>Company</b>	<i>Momentum Metropolitan Holdings Limited</i>
<b>Complainant</b>	<i>Refers to a person who has lodged a complaint of harassment</i>
<b>Employee</b>	<i>Refers to any person, who is employed by the Company and who receives, or is entitled to receive, any remuneration; and who in any manner assists in conducting the business of the Company.</i>
<b>Harasser</b>	<i>A person who causes repeated emotional pain, distress, or annoyance to another</i>
<b>Human Capital</b>	<i>The department responsible for the management and development of employees in an organisation.</i>
<b>Harassment</b>	<i>A behavior generally understood to be, unwanted conduct which impairs dignity, and which creates a hostile or intimidating work environment for one or more employees, or has the effect of, inducing submission by actual or threatened adverse consequences, and is related to or more grounds in respect of which discrimination is prohibited in terms of section 6(1) or the Employment Equity Act 55 of 1998 (EEA)</i>
<b>Workplace</b>	<i>A place where people work, such as an office</i>

### 3. Purpose

The purpose of this policy is to prevent and eliminate all forms of harassment in the workplace and in any activity linked to or arising out of work. The policy further seeks to identify the steps that employers must take to identify and eliminate harassment as well as the appropriate procedures should this occur.

### 4. Applicable legislation

The Company Policy on Harassment takes cognisance of and is guided by the provisions of the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, as provided in the Employment Equity Act 55 of 1998 (EEA). The following legislation, as amended, must also be considered in the interpretation and application of the policy:

- *Basic Conditions of Employment Act No 75 of 1997. (BCEA)*
- *Constitution of the Republic of South Africa Act No 108 of 1996. (CONSTITUTION)*
- *Employment Equity Act 55 of 1998 (EEA)*
- *Labour Relations Act No 66 of 1995. (LRA)*
- *Occupational Health and Safety Act No. 85 of 1993 (OHSA)*
- *Promotion of Equality and Prevention of Unfair Discrimination Act No 4 of 2000(PEPUDA)*
- *Protected Disclosures Act No. 26 of 2000 (PDA)*
- *Protection from Harassment Act No.17 of 2011 (PFH)*

The Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace was made effective 18 March 2022 and repealed the Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the EEA. The Code creates a greater obligation on employers to counteract the devastating effects of violence and harassment in the workplace and does so by regulating substantive and procedural aspects of harassment. The amendments as introduced by the Code have accordingly been incorporated into this Policy.





## 5. Guiding principles

The Company aims to create and maintain a framework for the interpretation and implementation of the Code regarding the prevention and implementation of violence and harassment in the workplace, guidelines for employers, employees, and other parties on this issue. Implementing the following guidelines can assist in achieving these ends:

- *The workplace should be free of violence and harassment*
- *Employers are responsible for providing information, instructions, and training to ensure a safe working environment.*
- *A workplace culture should be created so that complainants affected by violence and harassment may bring a complaint without fear of reprisal and with the assurance that their complaints will not be trivialized or ignored.*
- *All employees have a role to play in contributing towards creating and maintaining a working environment in which harassment is unacceptable.*
- *Employees should ensure that their standards of conduct do not cause offence and they should discourage unacceptable behavior on the part of others.*
- *Employees should attempt to ensure that persons such as customers, suppliers, job applicants, contractors and others, who have dealings with the company, are not subjected to any form of harassment.*
- *In the event whereby instances of harassment is brought to their attention of the employer; the employer is required to take appropriate action in accordance with this Policy.*

## 6. Policy statements

- *All employees, job applicants, contractors and other persons, who have dealings with the Company, have the right to be treated with dignity.*
- *Harassment which includes unwanted conduct must be communicated verbally or non-verbally, and may be communicated directly or indirectly, by the complainant to the harasser.*
- *Where unwanted conduct had not been communicated and is found to be of such a nature that the harasser knew or should have known its unacceptable, this will be considered as harassment.*
- *Harassment on the grounds of sex and/or gender and/or sexual orientation is prohibited.*
- *While violence may amount to harassment, it may occur as a result of non-violent conduct, accordingly an act or threat of violence is not looked at in isolation with instances of harassment.*
- *Whether or not conduct constitutes harassment, it should be assessed from the perspective of the complainant with the primary focus on the impact of the harassment. It may be that the perceptions of the complainant are found to be inconsistent, and where applicable the complainant could be held responsible for such inconsistencies.*
- *Sexual harassment in the workplace will not be permitted or condoned under any circumstances.*
- *Same-sex harassment can amount to discrimination based on sex, gender and sexual orientation.*
- *Complainants have the right to raise a grievance, to follow the procedures in the policy and ensure that appropriate action is taken by the employer.*
- *It will constitute a disciplinary offence to victimise or retaliate against a Complainant who in good faith lodges a grievance of sexual harassment and/or follows the procedures in the policy.*
- *Alleged perpetrators of harassment should only be disciplined after the allegations have been investigated and the evidence supports the allegations of harassment.*
- *Human Capital holds a positive duty to implement the policy and take disciplinary action against employees who do not comply with the policy:*

- (a) Allegations of harassment will be dealt with seriously, expeditiously, sensitively, and confidentially.
- (b) Employees will be protected against victimisation, retaliation for lodging grievances and from false accusations.
- (c) Handling of harassment cases will be underpinned by consistent, fair and non-discriminatory practices and procedures.



## 7. Substantive issues

### 7.1. Identifying Harassment

- a) Harassment is defined as “unwanted conduct, which impairs dignity, which creates a hostile or intimidating working 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 EEA.
- b) Harassment includes violence, physical abuse, psychological abuse, emotional abuse, sexual abuse, gender-based abuse and racial abuse. It includes the use of physical force or power, whether threatened or actual against another person or against a group or community.
- c) Harassment against all employees constitutes an abuse of power, and particularly may affect employees in vulnerable employment. These employees may not have access to the legislation and or labour rights.
- d) Whether or not conduct constitutes harassment should be assessed on an objective basis from the perspective of the employee who alleges harassment.
- e) Harassment may occur as a result of a pattern of persistent conduct or a single instance.
- f) It is not necessary to establish the intention or state of mind of the perpetrator or harasser in order to prove harassment for the purposes of the EEA.
- g) A hostile working environment will be present where conduct related to a prohibited ground impacts 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 persons in authority such as managers and supervisors or the conduct of other employees.
- h) A hostile environment may also exist where an employer should anticipate that employees will be subject to abusive conduct related to a prohibited ground by members of the public, customers or clients and fails to take reasonable steps to protect employees.

## 7.2. Forms of Harassment

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

1. Physical harassment includes physical attacks, simulated or threatened violence, or gestures.
2. Verbal bullying may include threats, shaming, hostile teasing, insults, constant negative judgement and criticism or racist, sexist, or LGBTQIA+ phobic language.
3. Psychological harassment in the workplace may be associated with emotional abuse and involves behavior that has serious negative psychological consequences for the complainant(s) such as is often the case with verbal abuse, bullying and mobbing.
4. A wide range of conduct in the workplace may constitute harassment. Examples of harassment include but are not limited to:
  - *slandering or maligning an employee or spreading rumors maliciously.*
  - *conduct that humiliates, insults, or demeans an employee.*
  - *withholding work-related information or supplying incorrect information.*
  - *sabotaging or impeding the performance of work.*
  - *demotion without justification.*
5. Bullying: Where harassment involves the abuse of coercive power by an individual or group of individuals in the workplace. Workplace bullying may involve aggressive behavior, in which someone repeatedly causes another person injury or discomfort.
6. Passive-aggressive or covert harassment may include negative gossip, negative joking at someone's expense, sarcasm, condescending eye contact, facial expression, or gestures, mimicking to ridicule, deliberately causing embarrassment and insecurity, invisible treatment, marginalization, social exclusion, deliberately sabotaging someone's dignity, well-being, happiness, success, and career performance.
7. Mobbing is a form of harassment by a group of people targeted at one or more individuals.
8. Online harassment is harassment that is committed, assisted, or aggravated in part or fully, by the use of information and communications technology, such as mobile phones, the internet, social media platforms or email. Bullying when conducted online is referred to as cyber-bullying.
9. Racial, ethnic or social harassment
  - Racial harassment is a form of unfair discrimination prohibited by section 6(1) of the EEA which is related to a person's membership or presumed membership of a group identified by one or more of the listed prohibited grounds or a characteristic associated with such group. Racist language including derogatory language is contrary to the founding principles of the Constitution, in particular the values of non-racialism dignity and equality.
  - Racial harassment is unwanted conduct which can be persistent or a single incident that is harmful demeaning, humiliating or creates a hostile or intimidating environment.
  - Racial harassment occurs where a person is subject to physical, verbal, or non-verbal conduct or other conduct based on race which undermines their dignity or which creates an intimidating, hostile or humiliating working environment for the recipient.
  - Racial harassment may include:
    1. *Abusive language and racist jokes, cartoons or memes, including communications that amount to hate speech.*
    2. *Racially offensive written or visual material, including on-line harassment.*
    3. *Racist name calling or negative stereotyping impacting on a person's dignity.*
    4. *Offensive behavior in the form of open hostility to persons of a specific racial or ethnic group.*
    5. *Subtle or blatant exclusion from workplace interaction and activities and other forms of marginalization.*
    6. *Threatening behavior, which intimidates a person or creates a hostile work environment.*





### 7.3. Sexual harassment

**Sexual harassment is defined as being unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace. In identifying sexual harassment, the following factors must be considered:**

- a. *Whether the harassment is on prohibited grounds of sex and/or gender and / or sexual orientation,*
- b. *Whether the sexual conduct was unwelcome,*
- c. *The nature and extent of the sexual conduct,*
- d. *The impact of the sexual conduct on the employee,*
- e. *Whether the harassment was explicitly or implicitly a term or condition of the Complainant's employment,*
- f. *Whether the submission to or rejection of such conduct by a Complainant is used as the basis for employment decisions affecting such Complainant,*
- g. *Whether the harassment has the purpose or effect of unreasonably interfering with an individual's performance or adversely affecting the climate in the workplace,*
- . *"Consensual participation in sexual conduct" does not necessarily mean that the conduct continues to be welcome.*

### 7.4. Forms of Sexual Harassment

**Sexual harassment is not only limited to physical, verbal or non-verbal conduct. Verbal conduct by sending sexually explicit text (by e-mail, for example) and non-verbal conduct may include sending sexually explicit pictures electronically. Sexual harassment may also include victimisation, quid pro quo harassment, sexual advances and the following:**

- (a) This definition is not exhaustive and serves as a guideline. The subjective experience of the personal reaction to the said harassment will determine as to whether the definition should be interpreted in a broader context.
- (b) Sexual Harassment may consist of some or all of the following:
  - *Verbal abuse.*
  - *Innuendo including remarks or insinuations about a person's sex or private life.*
  - *Physical contact ranging from touching to sexual assault, rape and strip search by or in the presence of the opposite sex.*
  - *Obscene gestures, indecent exposure.*
  - *Staring, leering, whistling.*
  - *Display of sexually offensive or explicit material including posters and magazines, pictures or objects.*
  - *Direct sexual proposition.*
  - *Continued pressure for dates and sexual favors.*
  - *Letters or calls of a sexual nature.*
  - *Digital harassment, i.e., verbal conduct including sending sexually explicit text (by e-mail, for example) and non-verbal conduct including sending sexually explicit pictures electronically.*
  - *Victimisation, quid pro quo harassment and sexual advances.*
  - *Any of the above as a form of coercion or blackmail for advancement, or lack of advancement or dismissal if the recipient refuses.*

## 8. Procedure for lodging complaints of harassment

*According to the EEA, employers ought to “take proactive and remedial steps to prevent all forms of harassment in the workplace.” The procedural steps highlighted include the adoption of, of the harassment policies by the employer, communication of such policies to all employees and the adoption of clear procedures to deal with harassment in the workplace.*

These procedures would include how harassment is to be reported, what the employer’s obligations are on becoming aware of allegations of harassment, the advice and assistance to be provided to complainants and the ‘formal’ and ‘informal’ procedures in place to deal with the harassment etc. The importance of the development of clear procedures is clear from the Code’s provision that when an employee has reported an alleged incident of harassment or laid a complaint, the employer is obliged to investigate the allegation of harassment, which has been brought to its attention and advise the complainant of the informal or formal procedures available.

Harassment must be brought to the attention of Human Capital “immediately” (defined as being as soon as is reasonably possible in the circumstances) by the complainant or any other person, including friends or colleagues acting on the request of the complainant. Once an allegation of harassment is brought to the attention of the Human Capital team, the questionnaire marked as (ANNEXURE A) will be used to ensure that the process was documented and recorded. This procedure is to ensure that employees refrain from committing harassment.

Both the employer and employees have a role to play in contributing towards creating and maintaining a working environment within which harassment is unacceptable. The employer undertakes to ensure that employees will not be subjected to harassment by third parties such as clients, customers, suppliers or others who have dealings with the employer. The content of this policy should be communicated effectively with employees.

***The procedure shall be divided into two options including:***

### ***8.1. The informal procedure:***

- The informal procedures shall be used for subtle forms of harassment.*
- The informal procedure shall not be used for cases that involve harassment, sexual assault, rape, quid pro quo or persistent forms of harassment, unless the complainant chooses to follow an informal procedure.*
- The informal procedure shall be reported to the Group Employee Relations and Labour Law department for guidance, coupled with the parties being afforded an opportunity to resolve the matter informally by way of discussion.*
- This meeting should be attended by a member of senior management/member of the Group Employee Relations and Labour Law department.*
- This discussion may be sufficient for the employee concerned to have an opportunity where she/he can explain to the person engaging in the unwanted conduct that the behavior in question is not welcome, that it offends them or makes them uncomfortable, and that it interferes with their work. In the event where informal approach had not provided satisfactory outcome and if the case is severe or if the conduct continues, it may be more appropriate to embark upon a formal procedure.*
- The Human Capital resource will keep no formal record of proceedings on the files of the parties concerned. Minutes of the proceedings will however be kept, which could be used at a later stage should the harassment continue.*

## **8.2. The formal procedure:**

- (a) Where a formal procedure has been chosen by the aggrieved, a formal procedure for resolving the concern is available and should:
- *Specify to whom the employee should lodge the grievance.*
  - *Make reference to timeframes which allow the grievance to be dealt with expeditiously.*
  - *Provide that if the case is not resolved satisfactorily, the issue can be dealt with in terms of the dispute procedures contained in item 9 of this Code.*
- (b) The company's disciplinary procedure shall be used to address the complaint because of the sensitivity and seriousness of sexual harassment.
- (c) During any investigation of harassment, care should be taken that the aggrieved person is not disadvantaged.
- (d) Sanctions must be proportionate to the seriousness of the harassment - warnings may be issued for minor instances, while dismissal will be appropriate for serious instances of harassment or if the warnings have no effect and the perpetrator persists.
- (e) Where required a disciplinary enquiry shall, in so far as it is practicable, be held within five (5) working days of the outcome of the investigation having been provided to the complainant and the alleged harasser.
- (f) The outcome of the disciplinary hearing shall be communicated to the affected parties within two (2) working days unless otherwise agreed to by the parties.
- (g) Where the alleged harasser is found not guilty, no disciplinary action shall be taken against an employee who has filed a complaint in good faith. If the complaint is found to be capricious, malicious and without foundation, the Company may, in appropriate circumstances act against the complainant, which may include disciplinary action.
- (h) A complainant, more so for sexual harassment cases, may require advice including counseling sessions. As far as practicable, management should appoint a professional engaged person outside of line management to perform such activity.

## **9. Dispute resolution**

Should a complaint of harassment not be sufficiently investigated or where the complainant or perpetrator is not satisfied with the outcome of the disciplinary hearing. A complaint of harassment may be referred to the CCMA for conciliation within six months after the act or omission that allegedly constitutes unfair discrimination (harassment). An applicant may apply for condonation where the dispute is referred after six months. All disputes relating to alleged unfair discrimination, including sexual harassment, are conciliated by the CCMA. Where the matter remains unresolved at conciliation, the applicant has a choice between referring the matter to the CCMA for arbitration or to the Labour Court for adjudication. An applicant has ninety (90) days in which to refer the matter for arbitration or to the Labour Court. All claims under the Promotion of Equality and Prevention of Unfair Discrimination Act may be referred to the equality court.

### **9.1. CCMA (COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION)**

- (a) Referral of a dispute to the CCMA, subject to the normal rules for referral.

### **9.2. CRIMINAL AND CIVIL CHARGES**

- (a) A victim of sexual assault retains the right to pursue Criminal and or Civil charges against the perpetrator and is in no way limited by this policy.

### **9.3. CCMA AND LABOUR COURT**

- (a) Failing conciliation, the matter may be referred to the Labour Court for adjudication.

### **9.4. CONFIDENTIALITY**

- (a) Managers and employees must ensure that grievances about harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.

**9.5. ADDITIONAL SICK LEAVE**

(a) Where an employee’s existing sick leave entitlement has been exhausted, the management should give due consideration to the granting of additional sick leave in cases of serious harassment where the employee on medical advice requires trauma counselling.

**9.6 OTHER CONSIDERATIONS**

If the harassed employee works in the same workplace or department as the alleged perpetrator, the employer must make effort to arrange minimal or if necessary, no contact between the said employee and the alleged perpetrator.

## Annexure A

Strictly confidential (to be kept in a confidential file) RE: Harassment Complaint

**1. Administrative Details: (To be completed and signed by the EMPLOYEE)**

I \_\_\_\_\_ (“Employee”) hereby submit a harassment complaint in terms of the Company’s Harassment Policy.

**2. SUMMARY OF HARASSMENT COMPLAINT:**

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**3. DETAILS OF PREVIOUS EFFORTS TO RESOLVE THIS HARASSMENT COMPLAINT:**

3.1) Who did you first talk to about your complaint?

NAME	POSITION	DEPARTMENT

3.2) Date of meeting: \_\_\_\_\_

**4. CONSULTATION:**

4.1) I confirm that I have been consulted regarding the above-mentioned complaint and that the Company Harassment Policy has been discussed with me in detail. Given the advice received and being in a position to now understand my rights as described in the Harassment Policy. I confirm my decision with regards to the complaint as follows (tick whichever is applicable):

<input type="checkbox"/>	Informal internal mediation (Refer to 6 and 7 below)
<input type="checkbox"/>	Informal external mediation (Refer to 6 and 7 below)
<input type="checkbox"/>	Formal investigation (Refer to 8 below)

**5. ADVICE, ASSISTANCE AND COUNSELLING:**

5.1) I confirm that I have been advised to approach the following individuals if, I require further advice, assistance and/or counselling:

5.1.1) Advice (Divisional Executive HC) and (Group Employee Relations and Labour Law Department)

5.1.2) Assistance - \_\_\_\_\_

5.1.3) Counselling - \_\_\_\_\_

**6. INFORMAL INTERNAL / EXTERNAL MEDIATION:**

6.1) I have been advised of my rights with regards to the confidentiality of the informal mediation and my decision in this regard is (tick whichever is applicable):

<input type="checkbox"/>	Disclosed Informal Mediation (which means that the person engaged in the unwanted conduct will be informed that a harassment complaint was received and that my identity can be disclosed)
<input type="checkbox"/>	Anonymous Informal Mediation (which means that the person engaged in the unwanted conduct will be informed that a harassment complaint was received but my name will not be disclosed)

**7. SETTLEMENT OF COMPLAINT – (INFORMALLY RESOLVED):**

7.1) I confirm that my harassment complaint will be fully and finally settled if the informal mediation process results in the following (for example: a clear message that the conduct is unwanted, an undertaking by the person engaged in the unwanted conduct that he/she will respect my personal space. An apology etc.):

7.1.1) \_\_\_\_\_

7.1.2) \_\_\_\_\_

7.1.3) \_\_\_\_\_



**NOTE ON INFORMAL MEDIATION:**

- In the event that a complainant chooses not to follow a formal procedure, the employer will still assess the risk to other persons in the workplace where formal steps have not been taken. In assessing such risk, the employer will consider all relevant factors, including the severity of the harassment.
- The employer thus reserves the right to, if it appears that there is a significant risk of harm to other persons in the workplace, to follow a formal procedure irrespective of the wishes of the complainant (as contained in this document). The complainant will be advised accordingly.

**8. FORMAL INVESTIGATION:**

8.1) I confirm that I have requested the implementation of a formal investigation and a formal process to deal with the harassment complaint, and I consequently attach hereto a copy of my detailed statement, marked as annexure "1" hereto.

**SIGNATURE OF EMPLOYEE** \_\_\_\_\_

**DATE** \_\_\_\_\_

**SIGNATURE OF HC REPRESENTATIVE** \_\_\_\_\_

**DATE** \_\_\_\_\_