

## **Harassment**

### **Employment Equity Act (Act 55 of 1998) hereafter referred to as EEA:**

In terms Section 6(3) of the EEA the harassment of an employee is a form of unfair discrimination. Furthermore Section 10(6) of the EEA provides remedies for victims of inter alia sexual harassment in the workplace.

Employers have a duty to create and maintain a safe working environment for employees. They may not facilitate harassment (including sexual harassment), or allow it to take place at work. If an employer fails to take appropriate action against an employee who harasses another employee, that employer may be liable for the harassment in terms of the EEA.

Employers and employees must take note of the provisions of the EEA given the far-reaching implications in the workplace. In terms of the new Protection from Harassment Act 17 of 2011 (hereafter referred to as PHA) it is also possible for an employee to obtain, in addition to the provisions of the EEA, a protection order against an abusive employer, colleague or any other harasser.

The PHA applies to everyone who commits acts of harassment. It protects victims of 'stalkers' and harassers, including, but not limited to harassment in the workplace. A harasser may be arrested without further proceedings if he/she fails to adhere to the provisions and requirements of the protection order and may be sentenced for up to five years. Complainants must note that making false statements to a Magistrates' Court may result on conviction to a fine or imprisonment of up to five years.

### **Consequences for employers and relevant case law:**

Employers must introduce harassment policies and awareness campaigns in the workplace and deal with complaints in a swift but fair manner. The sexual harassment policy must note and be guided by the '*Amended Code of Good Practice: Sexual Harassment cases in the workplace*' (General Notice 1357 in Government Gazette 27865 of 4 August 2005)

In *Grobler v Naspers Bpk and another [2004] All SA 160 (CC)*, a manager was found guilty of sexually harassing an employee. The court held that the employer is vicariously liable for the manager's conduct because it failed to take appropriate action to prevent the harassment and was therefore liable for the resultant damages. The PHA enhances the *Grobler* decision and may justify other instances where employers are liable for harassment through vicarious liability. Employers are advised to consider this legislation when applying their harassment policies and hearing employees' disputes.

### **Implication for Schools:**

A principal has an obligation as employer representative to ensure the enforcement of the above legislation. All allegations of harassment, including verbal harassment that comes to the principal's attention must be treated with seriousness and urgency and reported to the employer.

Principals must inform the School Governing Body about these policies and legislation in terms of section 16A(2)(f) of the South African Schools Act (Act no. 84 of 1996 as amended).