

“A New Code for an Old Act “

A Sexual Harassment Investigator’s views on the draft Code of Good Practice on the Prevention and Elimination of Violence and Harassment in the World of Work, issued for Public Comment dated 20th August 2020 by the Department of Employment and Labour (‘the draft code’)

ENOUGH IS ENOUGH - a quote that has become synonymous with the Gender Based Violence (“GBV”) movements littered across South Africa and in the world of work, the current code of managing sexual harassment in the workplace serves to leave this quote as just a sentiment. This is where the draft code aims to improve on its predecessors’ shortcomings in strict compliance with the standards of the ILO as signed off to be implemented by the 25th of June 2021 (as per the C190 – Violence and Harassment Convention, 2019).

Who is the ILO (International Labour Organization?)

South Africa withdrew from the ILO in 1964 of its own accord as a result of political pressure relating to a refusal of renouncing its then apartheid policy. South Africa was re-admitted as a member of the ILO on 26 May 1994.

Being the only tripartite U.N. agency since 1919, the ILO brings together governments, employers and workers of 187 member States to set labour standards, develop policies and devise programmes promoting decent working environments for all women and men. Hence, countries that are member states of the ILO (South Africa included) are to be held responsible by the ILO to enforce the reviewed draft code by the prescribed date. The current GBV issues being faced in South Africa’s workplace has put great pressure on the Department of Employment and Labour to release a (“draft code”) that aims to employ strict consideration to the core principles and articles recently put forward by that of the ILO.

South Africa has aligned the draft code with ILO C190, C111 and C151 which clearly outlines the definitions, scope, core principles, protection, and prevention as well as the enforcement, remedies, guidance, training and awareness-raising, methods of application. In addition to the aforementioned support to be afforded to public employee’s organizations, procedures for determining terms and conditions of employment, settlement of disputes, civil as well as political rights, discrimination and final provisions are to be provided for as well.

This code could not have been drafted at a more significant or needed time in South Africa given the dire circumstances we as South African’s find ourselves in, in the fight against gender-based violence, the levels of which are ranked as one of the highest worldwide.

The (‘Draft Code’)

The new code is vital in addressing issues that were somewhat overlooked by the previous legislative framework, being the Amended Code of Good Practice of Handling Sexual Harassment Cases in the Workplace (No.27865 Government Gazette, 4 August 2005). The draft code now holds employers accountable for discrimination, prejudice, ongoing training and counselling.

Should the code be enacted as legislation, employers will be held accountable for the proper implementation of this code; a large responsibility but one of extreme importance. On the same note, employees will have the responsibility of effectively reporting any form of GBV witnessed or endured .

The (‘draft code’) now gives clear definitions to matters once vague, including:-

- Bullying
- Cyber Bullying
- Discrimination
- Domestic Violence and Harassment
- Intimidation
- Mobbing
- Online Violence
- Psychosocial Risks

- Psychosocial Violence and Harassment
- Sexual Gender-Based Violence and Harassment
- Sexual Harassment
- Victimisation
- Violence and Harassment
- Violence and Harassment related to Gender-Based Violence and Harassment
- Violence and Harassment related to Parental Responsibility
- Violence and Harassment related to Race or Ethnic or Social
- Violent Crime or Crime of Violence and Harassment

Companies will now be put in the position in which “in-house” responses used in dealing with matters of the above mentioned nature will no longer be sustainable considering the vast amount of accountability the company will have to hold from aspects pertaining from Human Resources to Occupational Health and Safety “In the World of Work” . The (‘draft code’) aims to prevent companies from falling into the trap of having matters swept under the rug and ignored; only to resurface at later stage causing vast amounts of brand damage to the business and untold emotional impact on the parties involved.

This (‘draft code’) embraces our evolving society, and in that same regard it is necessary that our technological advances can work in conjunction with (‘the draft’) and specialists in this field to ensure that this is a long-term sustainable solution.

This (‘draft code’) is symbolic of the development of the mentality of the “World of Work” and the Department of Employment and Labour’s recognition of a global plight personally affecting our South African workplace.

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