



CODE OF GOOD PRACTICE:

HANDLING SEXUAL HARASSMENT IN THE FILM AND TELEVISION INDUSTRY

PREAMBLE

This Code of Good Practice: Handling Sexual Harassment in the Film and Television Industry (“The Code”) promotes workplaces that are free of sexual harassment, where employers and employees respect one another’s integrity and dignity, their privacy, and their right to equality.

It is encouraged that all employers in the Film and Television Industry adopt the Code and enforce it.

1. APPLICATION OF THE CODE

- 1.1. Employment relationships in the South African film, television and audio-visual industry (“**the industry**”) include both full-time employment relationships (employer - employee) and independent contractor relationships (employer - independent contractor). Although the Labour Relations Act and Employment Equity Act only apply to full-time employment relationships, the victims and perpetrators of sexual harassment are not limited to employers and employees as defined in these laws.
- 1.2. The Code is applicable to all forms of employment relationships, including full-time, part time, permanent and temporary employment relationships, and extends to interns and job applicants.
- 1.3. The Code is also applicable to clients, suppliers, contractors and other third parties who have dealings with the business (“non-employees”).
- 1.4. A non-employee who is a victim of sexual harassment, with or without the assistance or support of their employer, may lodge a grievance with the employer of the harasser.
- 1.5. This Code does not confer any authority or obligation on employers to take any disciplinary action against perpetrators who are not their employees.

2. DEFINITION OF SEXUAL HARASSMENT

- 2.1. Sexual harassment is unwanted conduct of a sexual nature violating the dignity and rights of an individual and creating impediments to true equity in the working environment.



2.2. Sexual harassment in the working environment is a form of unfair discrimination that is prohibited on the grounds of sex and/or gender and/or sexual orientation.

2.3. Sexual attention becomes sexual harassment when:

2.3.1. The conduct is unwelcome whether it constitutes a single incident or persistent occurrences;

2.3.2. The recipient indicates their discomfort through verbal or non-verbal cues such as walking away or not responding; and/or

2.3.3. The conduct was previously welcome but becomes unwelcome at any stage.

3. FORMS OF SEXUAL HARASSMENT

3.1. Sexual harassment may include unwelcome physical, verbal or non-verbal conduct, and is not limited to the following:

3.1.1. Physical conduct of a sexual nature e.g. all unwanted physical contact, ranging from touching to sexual assault and rape, and includes a strip search by or in the presence of the opposite sex.

3.1.2. Verbal forms of sexual harassment e.g. unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments about a person's body made in their presence or directed toward them, unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling directed at a person or group of persons.

3.1.3. Non-verbal forms of sexual harassment e.g. unwelcome gestures, indecent exposure including by electronic means, and the unwelcome display of sexually explicit pictures and objects.

3.1.4. Quid pro quo harassment occurs where an owner, employer, supervisor, member of management or co-employee, undertakes or attempts to influence the process of employment, promotion, training, discipline, dismissal, salary increment or other benefit of an employee or non-employee, in exchange for sexual favours. This includes sexual favouritism where a person who is in a position of authority rewards only those who respond to his/her sexual advances, whilst others who are deserving who do not submit themselves to any sexual advances are denied bonuses, promotions, merit ratings, salary increases and/or other forms of monetary or other reward for work performance.



- 3.1.5. Victimization occurs where an employee or non-employee is victimized or intimidated for failing to submit to the sexual advances of the harasser.

4. GUIDING PRINCIPLES

- 4.1. Employers must create and maintain a working environment where the dignity of all is respected as well as a climate that promotes reporting of incidents of sexual harassment free from victimisation, trivialisation, ignoring of grievances or fear of reprisals. Implementing the following guidelines can assist in achieving these ends:
 - 4.1.1. Employers, management, employees and non-employees are required to refrain from committing acts of sexual harassment.
 - 4.1.2. All employers/management, employees and non-employees have a role to play in contributing towards creating and maintaining a working environment free of sexual harassment. All should ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others.
 - 4.1.3. Employers/management should attempt to ensure that persons such as customers, suppliers, job applicants and others who have dealings with the business, are not subjected to sexual harassment by the employer or its employees.
 - 4.1.4. Employers/management are required to take appropriate action in accordance with the Code, when instances of sexual harassment which occur within the workplace are brought to their attention.

5. IMPLEMENTATION PACT

- 5.1. As a first step in expressing concern and commitment to dealing with the problem of sexual harassment, employers must ensure:
 - 5.1.1. All employees and non-employees are treated with dignity.
 - 5.1.2. Sexual harassment is not permitted or condoned.
 - 5.1.3. Persons who have been subjected to sexual harassment in the workplace have a right to raise a grievance and have appropriate action taken by the employer in terms of the Code. Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially.
 - 5.1.4. Employees will be protected against victimisation, retaliation for lodging grievances and from false accusations.



5.1.5. Management should be placed under a positive duty to implement the Code and take disciplinary action against employees who do not comply with the Code.

5.2. This Code should be communicated to:

5.2.1. all employees;

5.2.2. new employees and contractors at an induction, briefing and/or incorporated as an annexure to their contract; and

5.2.3. contractors, service providers, suppliers and other third parties whom employees may engage with and annexed to the contract binding the third party to this Code.

6. ADVICE AND ASSISTANCE

6.1. Sexual harassment is a sensitive issue and a victim may feel unable to approach the perpetrator, lodge a formal grievance or turn to colleagues for support.

6.2. As far as is practicable employers should designate a person outside of line management whom victims may approach for confidential advice. Such a person:

6.2.1. May include persons employed by the company to perform such a function, co-employee, or outside professionals.

6.2.2. Should have the appropriate skills and experience or be properly trained and be given adequate resources.

6.2.3. Could be required to have counselling and/or relevant labour relations skills and be able to provide support and advice on a confidential basis.

6.3. An employer is obligated to address any reports of sexual harassment with confidentiality and sensitivity ensuring that all relevant parties are consulted, all necessary steps required to address the complaint are taken in accordance with this Code and that necessary steps are taken to eliminate the sexual harassment.

6.4. An employer is required to advise a complainant of the different procedures that may be followed in resolving the complaint as well as the workplace procedures invoked to resolve such complaints and to offer counselling or advice to the victim of the sexual harassment.



7. INVESTIGATION AND DISCIPLINARY ACTION

- 7.1. Care should be taken during any investigation of a grievance of sexual harassment that the aggrieved person is not disadvantaged, and that the position of other parties is not prejudiced if the grievance is found to be unwarranted.
- 7.2. Persistent harassment, serious incidents of sexual harassment, continued harassment after warnings, or single incidents of serious misconduct, are dismissible offences.
- 7.3. The range of disciplinary sanctions which may be imposed should be clearly stated, and it should also be made clear that it will be a disciplinary offence to victimise or retaliate against an employee who in good faith lodges a grievance of sexual harassment.

8. RESOLVING A COMPLAINT OF SEXUAL HARASSMENT

- 8.1. Considering section 60 of the Employment Equity Act, any conduct relating to sexual harassment shall as soon as reasonably possible, be brought to the employer's attention.
- 8.2. Employees should be advised that there are two options to reporting and resolving a problem relating to sexual harassment. Either an attempt can be made to resolve the problem through an informal procedure or through a formal procedure. The employee should be under no duress to accept one or the other option.

Informal Procedure

- 8.2.1. The employee or non-employee concerned has an opportunity to explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable, and that it interferes with their work.
- 8.2.2. The employee or non-employee may choose to remain anonymous and have an appropriate person explain that the conduct complained of is unwanted.
- 8.2.3. If the informal approach has not provided a satisfactory outcome, if the case is severe or if the conduct continues, it may be more appropriate to embark upon a formal procedure. Severe cases may include but are not limited to sexual assault, a strip search and quid pro quo harassment.

Formal Procedure

- 8.2.4. Where a formal procedure has been chosen by the aggrieved person, a formal procedure for resolving the grievance should be available and should:



- 8.2.4.1. Specify to whom the grievance should be lodged;
 - 8.2.4.2. Refer to timeframes which allow the grievance to be dealt with expeditiously;
 - 8.2.4.3. Advise the complainant that an employee may refer a dispute to the CCMA should they be dissatisfied with the outcome of the internal procedures, and in the case of a non-employee, may pursue a civil or criminal suit.
- 8.2.5. The possible sanctions to be imposed should an alleged perpetrator be found guilty of sexual harassment may include:
- 8.2.5.1. Warnings for minor instances of sexual harassment;
 - 8.2.5.2. Dismissal for continued minor instances after warnings given as well as for serious instances of sexual harassment;
 - 8.2.5.3. Transfer of the perpetrator to another position in the workplace where appropriate.
- 8.2.6. Should the aggrieved person not elect the formal procedure, an employer is still required to assess the potential risk posed to others in the working environment. Factors to be considered include the severity of the conduct and whether there is a history of sexual harassment by the perpetrator.
- 8.2.7. A victim of sexual assault has the right to press separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by the Code.

9. CONFIDENTIALITY

- 9.1. Employers and employees must ensure that grievances about sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.
- 9.2. In cases of sexual harassment, management, employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary enquiry. Only appropriate members of management as well as the aggrieved person, representative, alleged perpetrator, witnesses and interpreter if required, must be present in the disciplinary enquiry.



9.3. Employers are required to disclose to either party or to their representatives, such information as may be reasonably necessary for dealing with the matter it concerns and in accordance with the law.

10. ADDITIONAL SICK LEAVE

10.1. Where an employee's existing sick leave entitlement has been exhausted, the employer should give due consideration to the granting of additional sick leave in cases of serious sexual harassment where the employee on medical advice requires trauma counselling.

11. INFORMATION AND TRAINING

11.1. It is incumbent upon all employers to ensure that all their employees, suppliers, service providers and contractors are aware of this Code and the appropriate behaviours required within the working environment. Consideration must be given to incorporating it as part of all contractual arrangements with third parties.

11.2. Further training and/or information sessions should be conducted by the employer to ensure all staff are well versed with this Code and the relevant protections and sanctions imposed for sexual harassment.

By signing below, I accept that I have read and understood the Code and that I agree to adhere thereto. I understand that by signing it, I pledge not to perpetrate any form of discrimination, including but not limited to sexual harassment or harassment. I also pledge to report if I do witness any of the above mentioned happening whilst on the production.

Signed at _____ on _____ 20 ____

Company Representative Signature
Name:

Individual Signature:
Name: