

PRE-ARB

BASED ON THE CODE OF GOOD PRACTICE ON THE HANDLING OF SEXUAL HARASSMENT (SH) CASES

v5

Is there a SH policy? Is a copy provided? 1.3 Was it communicated effectively to EEs 7.2	1
Does the SH policy provide for a procedure? 7.4.3 If so, follow policy, If not, see below	2
Is the alleged perpetrator (AP) the owner, employer, manager, supervisor, colleague, job applicant, client, supplier, contractor, or a person who has dealings with the ER? 2.1	3
Is the alleged victim a non-EE and has she lodged a grievance with the ER? Did the SH take place in the workplace or in the course of AP's employment? 2.3	4
TEST FOR SEXUAL HARASSMENT (SH)	
Was the alleged SH unwelcome? 4.2 Did she complain? Did she convey to the EE that his conduct was unwanted or unwelcome?	5
<ul style="list-style-type: none"> Was the unwelcome expressed in verbal, non-verbal conduct, walking away or in not responding to action of AP, or in some other way? 5.2.1 	6
<ul style="list-style-type: none"> Did the parties previously have consensual relationship? 5.2.2 	7
<ul style="list-style-type: none"> If alleged victim had difficulty in conveying the unwelcome to AP, did she seek the assistance and intervention of colleague, superior, counsellor, HR, family member or friend? 5.2.3 	8
Was the alleged SH on the prohibited grounds of sex / gender / sexual orientation? 4.1& 5.1	9
What was the nature and extent of the SH? 4.3	10
<ul style="list-style-type: none"> The alleged conduct must be of a sexual nature and can include physical, verbal or non-verbal conduct. Was the SH physical including touching, rape, strip search (by person of opposite sex)? 5.3.1.1 	11
<ul style="list-style-type: none"> If verbal, did the alleged conduct consist of innuendos, suggestions, hints, sexual advances, comments with sexual overtones, sex related jokes or insults, graphic comments about victim's body made in their presence, inappropriate comments about victim's sex life, whistling, or sending of mail with sexual content? 5.3.1.2 	12
<ul style="list-style-type: none"> If non-verbal, did the alleged conduct consist of unwelcome gestures, indecent exposure, or the display or sending of mail with sexually explicit pictures and objects? 5.3.1.3 	13
<ul style="list-style-type: none"> Did the alleged conduct consist of victimisation or intimidation for failing to submit to sexual advances? 5.3.2.1 	14
<ul style="list-style-type: none"> Did the alleged conduct consist of influencing or attempting to influence the victim's employment circumstances (eg engagement, promotion, training, discipline, dismissal, salary increment or other benefit) by coercing or attempting to coerce an employee to surrender to sexual advances? Did the conduct consist of being rewarded for sexual favours? 5.2.3.2 	15
<ul style="list-style-type: none"> Was the alleged conduct a single incident or a series of incidents? 5.3.3 	16
What was the impact of the alleged SH on the victim? 4.4	17
<ul style="list-style-type: none"> What were the circumstances of the alleged victim? 5.4.1 	18
<ul style="list-style-type: none"> What were the respective positions of the alleged victim and the alleged AP in the hierarchy? 5.4.2 	19
PROCEDURES	
Was the alleged SH reported? 8.1	20
<ul style="list-style-type: none"> Was the alleged SH reported immediately Section 60(1) EEA 8.1.1 	21
<ul style="list-style-type: none"> "Immediately" can mean as soon as is reasonably possible, without undue delay 8.1.2 	22
<ul style="list-style-type: none"> Was it brought to attention of ER by alleged victim, colleague, friend, HR acting obo victim? 8.1.3 	23
Obligations of ER	24
<ul style="list-style-type: none"> Were all relevant parties consulted? 8.2.1 	25
<ul style="list-style-type: none"> Were steps taken to address the complaint in accordance with policy or code? 8.2.2 	26
<ul style="list-style-type: none"> Were steps taken to eliminate SH? 8.2.3 	27
Steps taken by ER	28
<ul style="list-style-type: none"> Was the alleged victim informed of formal and informal procedures available to deal with the SH? 8.3.1 Were the procedures explained? 8.5.1.2 Was she advised that she may choose the procedure? 8.5.1.3 Did she choose a procedure? Was she re-assured that she will not face job loss or adverse consequences? 8.5.1.4 Was she advised that the matter will be dealt with confidentially? 8.5.1.5 	29
<ul style="list-style-type: none"> If practicable, was the alleged victim offered advice, assistance and counselling? 8.3.2 Was the victim advised that she could approach a designated person for advice or counselling? 8.4.2 	30
Informal procedure	31
<ul style="list-style-type: none"> Was it explained to the alleged AP that the conduct is not welcome, that it offends the alleged victim or makes her feel uncomfortable? 8.6.1.1 Or the above could be done without revealing the identity of the victim 8.6.1.2 	32
Formal procedures	33
<ul style="list-style-type: none"> Even if formal procedure not followed by alleged victim, the ER must take steps to ensure that the alleged AP stops his conduct, investigate the risk of harm to others, and discipline him 8.7.2 	34
<ul style="list-style-type: none"> The procedure must outline with whom the complaint should be lodged 8.7.3.1, the desired outcome 8.7.3.2, time frames 8.7.3.2, that if alleged victim or alleged AP not satisfied she/he may refer dispute to CCMA 8.7.3.4, and that it is an offence to victimize or retaliate against someone who has lodged a complaint in good faith 8.7.3.5 	35
Disciplinary sanctions (Follow the policy. If not, see below)	36
<ul style="list-style-type: none"> Warnings may be given for minor instances of SH 8.8.1 	37
<ul style="list-style-type: none"> Dismissal may ensue for repeat SH after warning given, or for serious SH 8.8.2 	38
<ul style="list-style-type: none"> Transfer to another site 8.8.3 	39