



SECTION27

SEXUAL HARASSMENT POLICY

November 2018

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GENERAL

1 Introduction

- 1.1 Sexual harassment is, as articulated by the Labour Appeal Court, *“the most heinous misconduct that plagues a workplace”*. Not only is such conduct demeaning, but it *“undermines the dignity, integrity and self-worth”* of the person harassed.ⁱ
- 1.2 Sexual harassment in the workplace will not be permitted or condoned by SECTION27. SECTION27 is committed to creating and maintaining a work environment in which the dignity of employees is respected. Further, in light of SECTION27’s activism and collaboration with communities, funders, partners, members of coalitions, and other stakeholders in conducting its work, SECTION27 is committed to ensuring that its employees, wherever they may perform their work, conduct themselves in a manner which promotes and respects the dignity of all persons with whom they come into contact.
- 1.3 This Policy recognises that sexual harassment in the working environment is a form of unfair discrimination in terms of the Employment Equity Act 55 of 1998 (**“the EEA”**) on the basis of sex and/or gender and/or sexual orientation which infringes the rights of the complainant and constitutes a barrier to equity in the workplace. This Policy is drafted with due regard for, and guidance from, the provisions of the Code of Good Practice on the Handling of Sexual Harassment Cases, Notice 1367 of 1998 (**“the 1998 Code”**) and the Amended Code of Good Practice on The Handling of Sexual Harassment Cases in the Workplace, Notice 1357 of 2005 (**“the 2005 Code”**).
- 1.4 Complainants in sexual harassment matters have the right to follow the procedures set out in this Policy. This Policy aims to ensure that allegations of sexual harassment are dealt with decisively by SECTION27, and in a manner which affirms the dignity of the complainant, the principles of natural justice, and the privacy of all parties involved. SECTION27 shall take appropriate action in accordance with this Policy, when instances of sexual harassment to which the Policy applies are brought to its attention.

2 Definitions

- 2.1 An ‘alleged perpetrator’ is a person who has been accused of sexual harassment by a complainant in terms of the procedures provided for in this Policy. This Policy only applies to alleged perpetrators who fall under the categories listed in paragraph 4.1 of this Policy and its subparagraphs.
- 2.2 A ‘complainant’ is a person who makes a complaint of sexual harassment against an alleged perpetrator in terms of this Policy.
- 2.3 A ‘designated person’ is a person who has been selected by SECTION27 as responsible for receiving complaints of sexual harassment.
- 2.4 A ‘learner’ is a person who is enrolled in primary or secondary education at an institution at which SECTION27 is conducting work, contemplating conducting work, or has conducted work.

- 2.5 'Sexual harassment' is unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual. Sexual attention constitutes sexual harassment if:
- 2.5.1 the behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; and/or
 - 2.5.2 the recipient has made it clear that the behaviour is considered offensive; and/or
 - 2.5.3 the perpetrator should have known that the behaviour is regarded as unacceptable.
- 2.6 A 'perpetrator' is a person has been found guilty of sexual harassment in terms of the procedures set out in this Policy.
- 2.7 A 'victim' is a person who has been subjected to sexual harassment by a perpetrator.

3 Understanding of sexual harassment

- 3.1 Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated. It includes situations where a person is asked to engage in sexual activity as a condition of that person's employment, as well as situations which create an environment which is hostile, intimidating or humiliating for the recipient. Sexual harassment can involve one or more incidents and actions constituting harassment may be physical, verbal and non-verbal. Examples of conduct or behaviour which constitute sexual harassment include, but are not limited to:
- 3.1.1 Physical conduct

Unwanted physical contact ranging from touching to sexual assault or rape, and includes but is not limited to patting or pinching, fondling and strip searches.
 - 3.1.2 Verbal conduct

Unwelcome advances, propositions or pressure for sexual activity or offensive flirtations; innuendo, lewd comments, sex related comments, stories or jokes; abusive language which denigrates or ridicules; condescending or paternalistic remarks; insults which are gender or race-related or which relate to disability or sexual orientation (including racist or sexist name-calling); offensive comments about dress, appearance, age, physique, and private life; repeated and unwanted social invitations for dates or physical intimacy; and sending sexually explicit messages by electronic means *inter alia* by text message, email, or through social media.
 - 3.1.3 Non-verbal conduct

The display of pornographic or sexually suggestive pictures including male and female pin-ups, offensive objects or written materials, the making of abusive, sexually-suggestive or offensive gestures including leering and whistling, the display or creation or transmission of sexually or racially offensive written or visual material, including PC pornography, graffiti, the organising of kiss-o-grams or strip-o-grams, open or covert hostility to employees on the grounds of their race or gender or sexual orientation or

other unacceptable non-verbal conduct which denigrates a person for whatever reason.

3.1.4 *Quid pro quo* harassment

The undertaking, threat, or attempt by a person to influence another person's employment circumstances (for example engagement, promotion, training, discipline, dismissal, salary increments, career progress, or other benefits whether at SECTION27 or externally) by coercing or attempting to coerce the person to surrender to sexual advances.

3.1.5 Sexual favouritism

This exists where a person who is in a position of authority rewards only those who respond to their sexual advances, whilst other deserving persons who do not submit themselves to any sexual advances are denied promotions, merits rating, salary incentives, or opportunities as the case may be.

3.1.6 Victimisation

This occurs where a person is victimised or intimidated for failing to submit to sexual advances.

3.2 The instances listed in paragraphs 3.1 and its subparagraphs are instructive but not exhaustive. It is important to note that sexual harassment can include any conduct of a sexual nature which is unwanted and unwelcome by the recipient.

3.3 Anyone can be a victim of sexual harassment, regardless of their sex and of the sex of the harasser. SECTION27 recognises that sexual harassment may also occur between people of the same sex. What matters is that the conduct is unwanted and unwelcome by the recipient.

3.4 SECTION27 recognises that sexual harassment is a manifestation of power relationships and often occurs within unequal relationships in the workplace, for example between manager or supervisor and employee. SECTION27 further recognises that the unique and important work conducted by the organisation lends itself to the development of additional power dynamics beyond those present in an ordinary workplace, including power dynamics between activists and members of coalitions as well as academics, researchers, learners, students, community members and other parties that may have the ability to impact on career or financial opportunities.

4 **Ambit of this policy**

4.1 This Policy applies to alleged perpetrators who are:

4.1.1 employed by SECTION27 in any capacity;

4.1.2 board members of SECTION27;

4.1.3 individual contractors of SECTION27; or

4.1.4 employees or contractors of service providers to SECTION27.

- 4.2 This Policy does not apply where an alleged perpetrator does not fall into any of the categories listed in paragraph 4.1 . In such circumstances, SECTION27 neither has authority nor bears any obligation to take action in respect of the alleged perpetrator.
- 4.3 A non-employee who is a victim of sexual harassment by an alleged perpetrator may avail themselves of the procedures set out in this Policy where the harassment has taken place in the SECTION27 workplace or in the course of the alleged perpetrator's employment by, or work for, SECTION27.

5 Guiding principles – standards expected

- 5.1 SECTION27 is committed to fostering a working environment in which the dignity of all persons is respected. SECTION27 is committed to creating a climate in which complainants of sexual harassment will not feel that their complaints are ignored or trivialised, or where they fear reprisals.
- 5.2 All board members and employees have a role to play in contributing towards creating and maintaining a working environment in which sexual harassment is unacceptable. They should ensure that their standards of conduct do not cause offence and should discourage unacceptable behaviour on the part of others.
- 5.3 All board members and employees should attempt to ensure that persons such as job applicants, suppliers, contractors, community members, funders, members of coalitions and other stakeholders who have dealings with the work of SECTION27 are not subjected to sexual harassment by SECTION27 or its employees.
- 5.4 Victimisation or retaliation against a complainant who in good faith lodges a complaint of sexual harassment is a disciplinary offence.

6 Romantic relationships in the workplace

- 6.1 SECTION27 recognises the right to privacy that employees enjoy concerning their relationships and does not, as a general rule, prohibit romantic relationships except those between:
- 6.1.1 an employee and a learner; or
- 6.1.2 a board member and learner,
- irrespective of the learner's age. Such relationships are strictly prohibited by SECTION27 and shall constitute serious misconduct which may justify dismissal or removal from the board of SECTION27, for any employee or board member who engages, or attempts to engage, in such a relationship.
- 6.2 Certain romantic relationships which are not prohibited by SECTION27 nevertheless raise issues of equity, fairness, favouritism, the abuse of power and therefore raise potential legal liability concerns for SECTION27.
- 6.3 Accordingly, employees who embark upon a romantic relationship which fits under one of the categories listed below ("*the romantic relationship*") are required to sign a statement confirming that they have chosen to do so voluntarily and that the relationship is consensual ("*the statement*"):

- 6.3.1 a relationship between a board member and an employee of SECTION27;
- 6.3.2 a relationship between employees where one of the employees exercises some degree of power, oversight, or authority over the other whether or not such power, oversight, or authority is reflected in SECTION27's staffing structure;
- 6.3.3 a relationship between an employee or board member and:
 - 6.3.3.1. a member of a community where SECTION27 is conducting work;
 - 6.3.3.2. a volunteer, intern, or tertiary education student who performs work directly for SECTION27;
 - 6.3.3.3. an employee, volunteer, tertiary education student or member at a partner organisation or coalition if SECTION27 is working with that partner organisation or coalition at the time;
 - 6.3.3.4. an individual contractor or employee of a service provider who occupies a position or performs a function at SECTION27 which is equivalent to a subordinate position; or
 - 6.3.3.5. a client who has mandated SECTION27 to act as their legal representative.
- 6.4 Where only one of the parties to *the romantic relationship* is an employee or board member, only the employee or board member shall be required to sign *the statement*. Where both parties to *the romantic relationship* are employees and/or board members, both shall be required to sign *the statement*.
- 6.5 *The statement* shall be signed and submitted to a designated person immediately following commencement of *the romantic relationship*.
- 6.6 Confidentiality:
 - 6.6.1 *The statement* shall be kept confidential and shall not be disclosed by the relevant designated person except to the other designated persons and the board of SECTION27, or to SECTION27's legal practitioners for the purposes of obtaining legal advice at any stage.
 - 6.6.2 The right to confidentiality in respect of *the statement* is held by both parties to the relationship, whether the statement has been signed by both parties or only one, and either party shall individually have the power to waive confidentiality in respect of *the statement* at any stage.
- 6.7 Failure by any employee or board member of SECTION27 to sign and submit *the statement* to a designated person as contemplated in this policy, constitutes serious misconduct, for which SECTION27 shall be entitled to take action in accordance with its ordinary disciplinary procedures.

7 Protective measures to protect a complainant

- 7.1 Various protective measures may be applied by SECTION27 when a complaint is made including, but not limited to:

- 7.1.1 no-contact orders, where appropriate;
 - 7.1.2 special leave for the complainant, on the request of the complainant; or, alternatively
 - 7.1.3 the suspension of the alleged perpetrator pending the finalisation of the investigation and hearing – subject to the ordinary procedural requirements for implementing a suspension.
- 7.2 SECTION27 shall give due consideration to the granting of additional paid sick leave in cases of serious sexual harassment, where the employee, on medical advice, requires trauma counselling.

8 Implementation of this Policy

- 8.1 SECTION27 shall ensure that this Policy is widely disseminated.
- 8.1.1 This Policy shall be included in SECTION27's human resources manual, and downloadable from the resources section of the SECTION27 website.ⁱⁱ
 - 8.1.2 All new employees shall be trained on the content of this Policy as part of their induction into SECTION27 and, every year, SECTION27 shall require all employees to attend a refresher training course on the content of this Policy. Employees shall be required to sign a register on receipt of this Policy and after any additional training.
 - 8.1.3 All contracts between SECTION27 and individual contractors as well as service providers shall incorporate reference to this Policy and confirm:
 - 8.1.3.1. the other party's obligation to comply with this Policy; and
 - 8.1.3.2. the applicable sanctions which may result from a guilty finding against an alleged perpetrator who is an individual contractor or an employee or contractor to a service provider.

COMPLAINTS PROCEDURE

9 Introduction to complaints procedure

- 9.1 SECTION27 understands that victims of sexual harassment react to incidents of sexual harassment in differing ways and that this may mean that complainants seek for incidents to be addressed in different ways. Whereas some complainants may be satisfied with an informal resolution and the cessation of the behaviour, others may seek resolution through more formal measures. In addition, informal resolution mechanisms may be inappropriate where the allegation is serious or where the alleged perpetrator is in a position of authority over the complainant. The complaints procedures set out in this Policy aim to address these different needs and measures of resolving conflict.
- 9.2 Where a complainant, who is an employee of SECTION27, reaches the view that their complaint has not been satisfactorily resolved by the application of the complaints procedure, they may refer a dispute to the Commission for Conciliation Mediation and Arbitration (“the CCMA”).
- 9.3 An alleged perpetrator employed by SECTION27 may refer a dispute arising from disciplinary action taken by SECTION27 following the application of the complaints procedure to the CCMA.

10 Reporting sexual harassment

- 10.1 Section 60(1) of the EEA provides that conduct in contravention of the EEA must immediately be brought to the attention of the employer.
- 10.2 Sexual harassment may be brought to SECTION27’s attention by the complainant or any other person aware of the sexual harassment, for example a friend, colleague or human resources official acting on the request of the complainant, where the complainant has indicated that they wish SECTION27 to be made aware of the conduct. However, where the sexual harassment is of a particularly serious nature, the complainant should be encouraged to inform SECTION27 directly.
- 10.3 SECTION27 shall support a complainant to report any incident of sexual harassment such as rape to the relevant authorities, including to the South African Police Service.

11 Obligations of SECTION27

- 11.1 When an alleged incident of sexual harassment has been brought to the attention of SECTION27 whether by a complainant to a designated person as provided for in this Policy, or in any other manner, SECTION27 should:
- 11.1.1 consult all relevant parties;
 - 11.1.2 take the necessary steps to address the complaint in accordance with this Policy; and
 - 11.1.3 take the necessary steps to eliminate the sexual harassment.

12 Designated persons

- 12.1 There shall at all times be a minimum of three designated persons.

- 12.2 Designated persons shall be selected by the board of SECTION27 on a yearly basis prior to the staff training conducted in terms of paragraph 8.1.2 of this Policy.
- 12.3 In selecting the designated persons, the board shall take care to ensure that the designated persons represent a diversity of genders and have the appropriate skills and experience, including counselling and labour relation skills, in order to fulfil their function. In addition:
- 12.3.1 the designated persons shall at all times include at least one employee and one board member of SECTION27; and
 - 12.3.2 the designated persons may include a professional engaged by SECTION27 from outside the organisation to perform such function.
- 12.4 The identities and contact information for designated persons shall be:
- 12.4.1 displayed prominently in the SECTION27's office;
 - 12.4.2 disseminated to staff by email whenever there is a change to the identities or contact information for a designated person; and
 - 12.4.3 published on the resources section of the SECTION27 website.ⁱⁱⁱ
- 12.5 SECTION27 shall ensure that the designated persons are properly trained and are given adequate resources to perform their function. The training shall be external to SECTION27.

13 The role of designated persons

- 13.1 On receipt of a complaint of sexual harassment, the designated person shall, as soon as possible but not later than five (5) working days after receiving the complaint, meet with the complainant and:
- 13.1.1 record the dates, times and facts of alleged sexual harassment;
 - 13.1.2 advise the complainant that there are formal and informal procedures which could be followed to deal with the complaint;
 - 13.1.3 explain the formal and informal procedures to the complainant;
 - 13.1.4 advise the complainant that they may choose which procedure SECTION27 shall follow except that in certain limited circumstances as set out in paragraph 15.1.4 SECTION27 may choose to follow a formal procedure even if the complainant does not wish to do so;
 - 13.1.5 reassure the complainant that they shall not face job loss or any adverse consequences if they choose to follow either the formal or informal procedure;
 - 13.1.6 ascertain the complainant's decision on which procedure they would like to follow and discuss and agree on the next steps for dealing with the complaint on the understanding that choosing to resolve the matter informally does not preclude the complainant from pursuing a formal complaint if the informal procedure fails, or the alleged perpetrator persists in conduct which constitutes sexual harassment;

- 13.1.7 ascertain the outcome that the complainant desires from the complaints procedure;
- 13.1.8 where relevant, ascertain the complainant's view on the appropriateness of any of the protective measures set out in paragraph 7 of this Policy;
- 13.1.9 advise the complainant that, where possible, the matter can be dealt with confidentially - without the identity of the complainant being divulged to the alleged perpetrator - if the complainant so elects; and
- 13.1.10 keep a confidential record of all their discussions with the complainant.

14 Informal complaints procedure

- 14.1 In certain circumstances, it may be sufficient for it to be explained to the alleged perpetrator that the behaviour in question is not welcome in the workplace, that it offends the complainant or makes them uncomfortable, or that it interferes with the complainant's work. The informal complaints procedure aims to put an end to the behaviour complained of, and to restore the working relationship between the complainant and alleged perpetrator. This may be achieved in different ways.
- 14.2 Accordingly, it is open to a complainant of sexual harassment to elect to follow one of the following informal procedures:
 - 14.2.1 Informal approach of alleged perpetrator without revealing the identity of the complainant:
 - 14.2.1.1. An appropriate person (agreed to by the complainant) approaches the alleged perpetrator, without revealing the identity of the complainant, and explains to the alleged perpetrator that certain forms of conduct constitute sexual harassment, are offensive and unwelcome, make persons feel uncomfortable and interfere with their work.
 - 14.2.2 Discussion between the parties facilitated by the designated person and possible internal mediation process:
 - 14.2.2.1. The designated person shall:
 - 14.2.2.1.1. give an opportunity to the alleged harasser to respond to the complaint;
 - 14.2.2.1.2. ensure that the alleged harasser understands the complaints mechanism;
 - 14.2.2.1.3. facilitate discussion between both parties to achieve an informal resolution which is acceptable to the complainant, or refer the matter to an agreed mediator within the organisation to resolve the matter;
 - 14.2.2.1.4. ensure that a confidential record is kept of what happens; and

- 14.2.2.1.5. follow up with the complainant after the finalisation of the internal mediation process to ensure that the behaviour has not persisted.

14.2.3 External mediation:

14.2.3.1. Subject to the parties' agreement to an external mediation process, and the approval of the board of SECTION27, the designated person shall make arrangements for an external mediator to be appointed to resolve the complaint;

14.2.3.2. the external mediator shall conduct the mediation process;

14.2.3.3. if the mediation results in a mutually acceptable agreement, copies of the agreement shall be forwarded by the mediator to the designated person and SECTION27's Head of Human Resources & Administration for review and monitoring.

14.2.4 The complainant, designated person, SECTION27, or the alleged perpetrator may propose other informal means of addressing the complaint. Such alternative means must be agreed to by the complainant before being embarked upon, and any resulting resolution of the complaint must be agreed to by both the complainant and the alleged perpetrator.

14.3 If any of the informal procedures are attempted and fail, and the parties are unwilling to attempt further informal means of resolving the complaint, the formal complaint procedure may be used to resolve the complaint if the complainant either requests, or gives their consent, to the formal process being followed.

14.4 The informal procedure should be commenced within five (5) working days of the complainant informing the designated person of their election and should be completed within a reasonable period.

15 Formal complaints procedure

15.1 The formal procedure must be followed in circumstances where:

15.1.1 the complainant elects to make a formal complaint

In this instance, the designated person should refer the complaint for investigation in terms of paragraph 15.2 within five (5) working days of receiving the complainant's election;

15.1.2 the informal procedure(s) followed fail (see paragraph 14.3 above)

In this instance, the designated person should refer the complaint for investigation in terms of paragraph 15.2 within five (5) days of being notified that the informal procedure has failed;

15.1.3 the alleged perpetrator persists in conduct which constitutes sexual harassment

In this instance, the designated person should:

15.1.3.1. meet with the complainant as provided for in paragraph 13.1 again; and

15.1.3.2. refer the complaint for investigation in terms of paragraph 15.2 within five (5) days of meeting with the complainant.

15.1.4 despite the wishes of the complainant to follow an informal procedure, in the assessment of the designated person confirmed by the board, there exists a significant risk of harm to other persons in the workplace. In assessing such risk, the designated person and board shall take into account all relevant factors including the severity of the sexual harassment and whether the alleged perpetrator has a history of sexual harassment, and shall inform the complainant of the decision to follow the formal procedure and the reasons therefor:

In this instance,

15.1.4.1. the designated person should make a written submission to the board regarding the risk of harm within five (5) working days of receiving the complainant's election to proceed with the informal procedure;

15.1.4.2. the board should either confirm or reject the designated person's written submissions within five (5) of receiving the written submission; and

15.1.4.3. if confirmed, the designated person should immediately inform the complainant and should refer the complaint for investigation in terms of paragraph 15.2 within five (5) days of receiving the board's confirmation; or

15.1.4.4. if rejected, the designated person shall proceed with the complainant's election to follow the informal procedure.

15.2 The designated person who initially received the complaint shall refer the complaint to SECTION27's Head of Human Resources & Administration to initiate a formal investigation. SECTION27's Head of Human Resources & Administration shall, depending on the seriousness of the complaint and the identity of the alleged perpetrator, appoint an internal or external investigator to carry out the investigation.

15.3 The investigator shall:

15.3.1 interview the victim and the alleged perpetrator separately;

15.3.2 interview other relevant third parties separately;

15.3.3 decide whether there exists *prima facie* evidence that the incident(s) of sexual harassment took place;

15.3.4 keep a record of all actions taken;

15.3.5 ensure that all records concerning the matter are kept confidential;

15.3.6 as soon as possible, but not later than fifteen (15) working days after their appointment, produce a report detailing the investigations, findings and any recommendations to SECTION27's Head of Human Resources & Administration.

15.4 Within five (5) days of receiving the investigator's report, SECTION27's Head of Human Resources & Administration shall:

15.4.1 in the event of a *prima facie* finding by the investigator that the sexual harassment did not take place, within three (3) working days of receiving the investigation report, communicate the findings of the report to both the complainant and the alleged perpetrator and provide both parties with a copy of the investigation report;

15.4.2 in the event of a *prima facie* finding by the investigator that minor sexual harassment took place, within five (5) working days of receiving the investigation report:

15.4.2.1. communicate the findings of the report to both the complainant and the alleged perpetrator;

15.4.2.2. provide both parties with a copy of the investigation report; and

15.4.2.3. implement the recommendations of the investigation report.

15.4.3 in the event of a *prima facie* finding by the investigator that serious sexual harassment took place, within five (5) working days of receiving the investigation report forward the report to the board for consideration.

16 Panel to adjudicate matters of serious misconduct

16.1 Within ten (10) working days of receiving an investigation report with the *prima facie* finding that serious sexual harassment was committed by the alleged perpetrator, the board shall:

16.1.1 appoint a disciplinary hearing panel ("*the Panel*") to adjudicate on the matter;

16.1.2 provide the complainant and the alleged perpetrator with a copy of the investigation report and advise them that *the Panel* shall be appointed to reach a finding on the commission of any serious sexual harassment by the alleged perpetrator and, if so, the appropriate disciplinary sanction.

16.2 Each constitution of *the Panel* shall comprise a minimum of three (3) persons who:

16.2.1 are unrelated persons external to SECTION27;

16.2.2 represent a diversity of sex and race, and

16.2.3 collectively possess the following expertise:

16.2.3.1. knowledge of sexual harassment and gender-based violence;

16.2.3.2. knowledge of the law; and, if necessary,

16.2.3.3. knowledge of employment relations.

16.3 *The Panel* shall be responsible for hearing formal disciplinary processes in terms of this Policy and shall adjudicate the matter based on evidence presented by:

16.3.1 the investigator;

- 16.3.2 the complainant;
- 16.3.3 witnesses to the incidents of sexual harassment (if any);
- 16.3.4 any other relevant persons mentioned in the investigation report; and
- 16.3.5 the alleged perpetrator.

16.4 *The Panel* shall determine the appropriate procedures applicable to the disciplinary processes, however, *the Panel* is required to ensure that any procedures it adopts embodies the principles of natural justice.

16.5 *The Panel* shall consider the factors to establish sexual harassment and apply the test for sexual harassment to reach a finding in respect of the alleged sexual harassment and the appropriate sanction to be implemented by SECTION27 within three (3) days of receiving the Panel's findings.

17 Test for sexual harassment

17.1 Sexual harassment is unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace, taking into account all of the following factors:

- 17.1.1 whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;
- 17.1.2 whether the sexual conduct was unwelcome;
- 17.1.3 the nature and extent of the sexual conduct; and
- 17.1.4 the impact of the sexual conduct.

18 Factors to establish sexual harassment

18.1 Harassment on a prohibited ground

- 18.1.1 The grounds of discrimination to establish sexual harassment are sex, gender and sexual orientation.
- 18.1.2 Same-sex harassment can amount to discrimination on the basis of sex, gender and sexual orientation.

18.2 Unwelcome conduct

- 18.2.1 There are different ways in which a victim may indicate that sexual conduct is unwelcome, including non-verbal conduct such as walking away or not responding to the perpetrator.
- 18.2.2 Previous consensual participation in sexual conduct does not necessarily mean that the conduct continues to be welcome.
- 18.2.3 Where a complainant has difficulty indicating to the perpetrator that the conduct is unwelcome, such complainant may seek the assistance and intervention of another

person such as a co-worker, superior, counsellor, human resources, family member or friend.

18.3 Nature and extent of the conduct

- 18.3.1 The unwelcome conduct must be of a sexual nature, and includes physical, verbal or non-verbal conduct.
- 18.3.2 The conduct may include, but is not limited to, the conduct listed in paragraph 3.1 of this Policy and its subparagraphs.
- 18.3.3 A single incident of unwelcome sexual conduct may constitute sexual harassment.

18.4 Impact of conduct

- 18.4.1 The conduct should constitute an impairment of the victim's dignity, taking into account:
 - 18.4.1.1. the circumstances of the victim; and
 - 18.4.1.2. the respective positions of the victim and the perpetrator in the workplace, where the victim is an employee, or the working environment, where the victim is not an employee.

19 **Sanctions and disciplinary measures**

- 19.1 Anyone who has been found guilty of sexual harassment under this Policy is liable to any of the following sanctions, where appropriate and applicable:
 - 19.1.1 verbal or written warning;
 - 19.1.2 adverse performance evaluation;
 - 19.1.3 demotion;
 - 19.1.4 suspension;
 - 19.1.5 dismissal;
 - 19.1.6 in the event that the perpetrator is an individual contractor, cancellation of their contract with SECTION27;
 - 19.1.7 in the event that the perpetrator is an employee or contractor of a service provider to SECTION27, the prohibition of the perpetrator from performing any further work for SECTION27; and/or
 - 19.1.8 any other sanction which is specifically requested by the victim, and or is considered appropriate by *the Panel* in the case of serious sexual harassment, or the investigator in the case of minor sexual harassment.

19.2 The nature of the sanctions will depend on the gravity and extent of the harassment. Suitable deterrent sanctions will be applied to ensure that incidents of sexual harassment are not treated as trivial.

APPROVED BY:

Umunyana Rugege



DEPUTY DIRECTOR

13 November 2018

ⁱ *Motsamai v Everite Building Products (Pty) Ltd* [2011] 2 BLLR 144 (Lac) at para 20.

ⁱⁱ section27.org.za

ⁱⁱⁱ section27.org.za