

TEACHINGS ON HARASSMENT

Protection from Harassment Act, No 17 of 2011:

Harassment covers a wide range of behaviors of an offensive nature, intentional behavior intended to disturb, upset, threaten, or disturb.

Types of Harassment

Sexual harassment

Sexual harassment refers to persistent and unwanted sexual advances, typically in the workplace, where the consequences of refusing are potentially very disadvantageous to the victim.

Workplace harassment

Workplace harassment is the odious dealing through pitiless, malevolent, hurtful, or embarrassing attempts to undermine an individual worker or groups of workers.

Psychological harassment

This is humiliating, intimidating or abusive behavior which is often difficult to detect leaving no evidence other than victim reports or complaints. This characteristically lowers a person's self-esteem or causes them torment. This can take the form of verbal comments, aggressive actions, or repeated gestures.

Racial harassment

The targeting of an individual because of their race or ethnicity. The harassment may include words, deeds, and actions that are specifically designed to make the target feel degraded due to their race or ethnicity.

Religious harassment

Verbal, psychological, or physical harassment is used against targets because they choose to practice a specific religion.

PURPOSE OF ACT:

- (a) Afford victims of harassment an effective remedy against such behaviours; and
- (b) Introduce measures that seek to enable the relevant organs of state to give full effect to the provisions of this Act,

DEFINITION OF HARASSMENT I.T.O ACT

"Harassment" means directly or indirectly engaging in conduct that the respondent knows or ought to know-

- (a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably-
 - (i) Following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies, or happens to be;
 - (ii) engaging in verbal, electronic, or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or

- (iii) sending, delivering, or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail, or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person; or

(b) Amounts to sexual harassment of the complainant or a related person.

"Sexual harassment" means any-

- (a) Unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome.
- (b) unwelcome explicit or implicit behaviours, suggestions, messages, or remarks of a sexual nature that have the effect of offending, intimidating, or humiliating the complainant or a related person in circumstances, which a reasonable person having regard to all the circumstances would have anticipated that the complainant or related person would be offended, humiliated or intimidated;
- (c) Implied or expressed promise of reward for complying with a sexually oriented request; or
- (d) Implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request;

FAQ

WHAT ARE MY RIGHTS WHEN I AM BEING HARASSED?

Any victim who is a complainant/applicant (that is the person who is being harassed) may on any day and at any time, in the prescribed manner apply for a protection order against harassment at the Magistrate's Court in whose area —

- (a) The complainant permanently or temporarily resides, carries on business, or is employed;
- (b) The respondent (that is the person who commits an act of harassment) permanently or temporarily resides, carries on business, or is employed; or
- (c) The act of harassment occurred.

A person commits an act of harassment (respondent) if he or she directly or indirectly engages in conduct that he or she knows or ought to know —

- (a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by **unreasonably** following, watching, or pursuing the complainant or a related person, or engaging in verbal, electronic, or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues or sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person; or

- (b) Amounts to sexual harassment of the complainant or a related person.

Harm is defined to mean any mental, psychological, physical, or economic harm.

An application for a protection order against harassment may be made by another person on behalf of the complainant if the person who intends to apply for the protection order has a material interest in the well-being of the complainant or related person. However, such an application must be brought with the written consent of the complainant, except in circumstances where the complainant is a person who, in the opinion of the court, is unable to do so.

Any child, or person on behalf of a child, may apply to the court for a protection order.

The victim complainant/applicant of harassment have the right lay a criminal charge against the person who committed the act of harassment if the conduct of the respondent constitutes a criminal offense that will be investigated by the police.

The application for a protection order Form 2 must be completed and signed by the victim and commissioned by a commissioner of oaths. Make use of the (J88) and attach it to the application as supporting evidence.

WHAT ARE THE STEPS AND HOW LONG WILL IT TAKE TO OBTAIN THE ORDER?

STEP 1

The clerk of the court hand in the application for a protection order (Form 2) with a case number and supporting affidavit(s) to the Magistrate/Court.

In your application, you may request the magistrate/court to prohibit the respondent from

- committing any act of harassment;
- getting the help of another to commit any act of harassment;
- entering your workplace, home, or the shared residence or any part thereof;
- preventing the respondent from entering or remaining in the residence or any part thereof;
- Committing any other activities determined by the court.

You may request the magistrate/court not to disclose your physical address to the respondent. The court may also, in order to protect you and to provide for your safety, health, and well-being –

The court will consider the application of the complainant or person referred to in section 2(3)(a) of the Protection from Harassment Act, 2011, and may if the evidence substantiates the fact that —

- (a) The respondent is engaging or has engaged in harassment;
- (b) harm is being or may be suffered by the complainant or a related person as a result of that conduct if a protection order is not issued immediately; and
- (c) The protection to be accorded by the interim protection order is likely not to be achieved if prior notice of the application is given to the respondent, issuing an interim protection order against the respondent.

The Magistrate will consider your application. The Magistrate has three options;

- o Granting the interim ex parte protection order (Form 4) and the clerk of the court is ordered to serve the respondent with the (Form 4) the application/supporting affidavit(s) calling on the respondent to appear;
- o Not Granted the interim order;
- o An interim order referred to in Sec 3(4) is not issued and the clerk of the court is ordered to serve the respondent with a (Form 5) application/supporting affidavit(s) calling on the respondent to appear Notice to show cause why a protection order should not be issued;

Not granting the order means that there is no eminent harm in the application or that there is no case made out.

In not granting the order but instructing the clerk of the court to issue a (Form 5) a Notice to Show Cause is ordered to serve the respondent with (Form 5) by a South African Police Service member calling on the respondent to appear and explain why a protection order should not be issued. This means a case was made out but an explanation is needed from the (Respondent).

Granting the interim ex parte protection order (Form 3) the magistrate will seal it with his/her official magistrate stamp, with a return date, which is immediately valid. The magistrate simultaneously will issue a warrant of arrest (Form 20) for the respondent.

STEP 2:

The clerk of the court will provide the applicant/victim with the original copy of the order and a blank return of service which have to be taken by the applicant to the South African Police Service.

The temporary/interim order will **ONLY** come into effect after it has been delivered to the respondent by the South African Police Service member or the Sheriff. The South African Police Service member will complete the return of service as proof of service on the respondent and hand it back to the applicant.

This means that the respondent may be arrested if he or she fails to comply with any provision of the temporary/interim protection order and after you have given the police the warrant (Form 20) and an affidavit explaining that the respondent has breached the order **AFTER** the (Form 3) was served on the respondent.

Go back to the clerk of the court and hand in the completed return of service so that they can file this on the case file.

STEP 3:

On the return date where the applicant **MUST** appear in court. Failure to appear means this order will be canceled.

Or

When the respondent is present to oppose means the magistrate **MUST** hear the case and make a decision. The purpose of the return date on the temporary/interim order is to give the respondent a chance to oppose the application if the victim of domestic violence (applicant) might have made a false protection order.

Or

On the return date when the respondent fails to appear this interim order can be made a final order (default order) means either the respondent admits committing an act of harassment

Both the applicant and respondent have a right to a legal representative. Both the applicant and respondent can ;

- (a) conducts his own defense;
- (b) Appoint his own legal representative;
- (c) Apply for legal aid

The magistrate/court will give the following explanations to the parties who are not legally represented.

1. In terms of section 17 of the Harassment Act, No. 17 of 2011, the provisions of appeal and review contemplated in the Magistrate's Court Act, 1994 (Act 32 of 1994) apply to any proceedings in terms of this Act.
2. The protection order is enforceable in the entire Republic of South Africa.

3. The protection order remains effective for a period of 5(five) years in terms of section 9(8) until it is set aside and the execution thereof is not automatically suspended with the filing of an appeal.
4. Any contravention of a prohibition, condition, obligation, or order contained in the protection order will result in the warrant of arrest for the respondent being executed and the prosecution of the respondent. Upon conviction of a contravention of any prohibition, condition, obligation, or order contained in the protection order, the respondent will be liable to a fine or imprisonment for a maximum period of five years or both such fine and such imprisonment.

The interim protection order is made final and (Form 19) signed by the magistrate who simultaneously also signs a warrant for arrest (Form 20).

WARNING:

It is a criminal offense to make a false statement in an affidavit —

- (a) for the application for a protection order; or
- (b) to the effect that the respondent has contravened a protection order.

The court may make an order as to costs against a party if it is satisfied that the party in question has acted frivolously, vexatiously, or unreasonably.

CAN THE RESPONDENT OPPOSE THE APPLICATION FOR HARASSMENT?

Yes, if the respondent wishes to approach the court for an earlier date, because of the effect and consequences of the protection order. The condition is that the respondent must give written notice to the applicant and the court.

Find a Magistrates' Courts: http://www.justice.gov.za/contact/lowercourts_full.html

Magisterial District Maps [Justice/Resources/Magisterial Districts Maps](#)

To find attorneys in your area:

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The following forms are only obtainable from the Magistrates Court:

FORM DOWNLOAD FOR APPLICANTS AND RESPONDENTS: Click on the Hyperlink to download the form:

- **J88** - Report on a Medico-Legal Examination by a healthcare practitioner
- **J037 - Form 1:** Information notice to complainant or a person who applies for a protection order on behalf of the complainant (Regulation 2)
[Afrikaans](#) - [isiNdebele](#) - [isiXhosa](#) - [isiZulu](#) - [siSwati](#) - [Sepedi](#) - [Setswana](#) - [Shangaan](#) - [Tshivenda](#)

- [J059](#) - **Form 2**: Application for a protection order (Regulation 3)
- [J074](#) - **Form 5**: Direction to an electronic communications service provider to furnish information to court (Regulation 7)
- [J075](#) - **Form 6**: Affidavit by electronic communications service provider to furnish information to court (Regulation 8(3))
- [J077](#) - **Form 7**: Application by electronic communications service provider for extension of period within which information must be provided to court or cancellation of direction (Regulation 9)
- [J080](#) - **Form 8**: Request for additional evidence by way of affidavit from electronic communications service provider (Regulation 10(1))
- [J081](#) - **Form 9**: Affidavit by electronic communications service provider to furnish additional evidence to court (Regulation 10(4))
- [J100](#) - **Form 12**: Affidavit by member of South African Police Service to furnish information to court (Regulation 14)
- [J103](#) - **Form 13**: Application by station commander for extension of period within which information must be provided to court or cancellation of direction (Regulation 15)
- [J120](#) - **Form 15**: Affidavit by station commander to furnish additional information to court (Regulation 16(4))
- [J122](#) - **Form 17**: Affidavit by member of South African Police Service to furnish information to court (Regulation 18)
- [J134](#) - **Form 18**: Subpoena (Regulation 19)
- [J154](#) - **Form 21**: Affidavit for purposes of further warrant of arrest (Regulation 23)
- [J169](#) - **Form 22**: Affidavit regarding contravention of protection order (Regulation 24)
- [J186](#) - **Form 23**: Written notice to appear before court (Regulation 25)
- [J240](#) - **Form 24**: Application for variation or setting aside of protection order (Regulation 26)
- [J309](#) - **Form 25**: Notice of variation or setting aside of protection order (Regulation 27)
- [J311](#) - [Form 26](#): Statement to be completed by person who serves, files or forwards document by facsimile (Regulation 29)

Useful contact numbers

If something unpleasant has happened to you and you need some help or you want to find someone to talk to your parent or parents first.

Also, try talking to your teacher or a close adult family member. If none of these people can help try to contact the telephone numbers given below:

Childline: 080 005 5555

Child Welfare South Africa: 011 492 2884

Family Violence Child Abuse Sexual Offence: 012 393 2363

Women Abuse: 0800 150 150

AIDS Helpline: 0800 012 322 or 011 725 6710

South African Police Service emergency number: 10111

Crime Stop: 086 001 0111

Human Rights Commission: 011 484 8300

Street Law (National Office): 031 260 1291

Provincial Departments of Social Development:

Gauteng 011 355 7843/7823

KwaZulu Natal 033 264 2068

Northern Cape 053 874 9100

Western Cape 021 483 4153

North West 018 388 2021

Limpopo 015 293 6000/6331

Mpumalanga 013 766 3156/3120

Free State 051 409 0590

Eastern Cape 040 609 5303/4/5 or 608 5810