

TOOLKIT:

**CODE OF GOOD PRACTICE: HANDLING SEXUAL
HARASSMENT
IN THE FILM AND TELEVISION INDUSTRY**

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STATEMENT IN RELATION TO THE CODE OF GOOD PRACTICE

SWIFT has developed this Code of Good Practice: Handling Sexual Harassment in the Film and Television Industry ("the Code"), which is based on the Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace in the Employment Equity Act.

The Code explains what sexual harassment is and outlines the role and responsibility of the production company and employers in the audiovisual industry to provide a safe, respectful and inclusive workplace, and what should happen in the event of a complaint.

The Code provides protection against sexual harassment for all workers, independent contractors, clients and service providers, suppliers and therefore covers freelancers as well as employees – as long as the Code is adopted and included with all contracts.

SWIFT invites all production companies and employers to formally adopt the Code and include with every contract signed.

SWIFT further strongly urges all broadcasters and funders require every company they commission or fund, has a sexual harassment code.

Why sign a Code of Good Practice?

Because presently, if you are a producer, freelancer or employee on a production, it is your best protection in the event of any sexual harassment.

By signing the Code both the employer and everyone in the production workspace acknowledges that each understands what sexual harassment is, and what the process will be if there is a complaint.

Some employers may already have a policy on sexual harassment, and if it is a comprehensive and sensible policy, there is no need for them to adopt this Code as well. Where employers do not have a policy in relation to sexual harassment, they are welcome to adopt the Code as is, or adapt it for their specific workplace.

Where employers have several policies that employees and independent contractors are subject to when they accept employment or a contract at that workplace, e.g. internet use policy, vehicle and transport policy, communications policy, etc., employees/contractees do not have to sign each policy separately, but there is usually a clause in their contract that states, "The employee/contractee accepts to be subject to all the policies of the company and the employee/contractee acknowledges that he/she is familiar with all such policies."

If, however, the employer wants to highlight the sexual harassment policy each employer and employee/contractee can at the commencement of their contract, or when the employer adopts a sexual harassment policy, both sign the Code or a similar document.

SWIFT intends to ensure that the Code is generally distributed and made available, to empower employees, freelancers, and suppliers to ask of their employers whether the company has such a Code; and if not, encourage the Company to adopt one.

**CODE OF GOOD PRACTICE:
HANDLING SEXUAL HARASSMENT IN THE FILM AND TELEVISION INDUSTRY
(Version 6, December 2023)**

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 persons respect one another’s integrity and dignity, privacy, and right to equality.

All production companies and employers in the Film and Television Industry are encouraged to adopt the Code and enforce it through inclusion thereof in all contracts with employees, independent contractors, clients, suppliers, contractors and other third parties who they do business with.

1. APPLICATION OF THE CODE

- 1.1. The South African film, television and audio-visual industry (“**the industry**”) use both employment contracts and independent service provider contracts to resource the industry. The employment relationships are governed by the suite of labour legislation in South Africa, and specifically the *Labour Relations Act 65 of 1995* and the *Employment Equity Act 55 of 1998*. However, where persons are independently contracted, no such protections exist, other than the *Promotion of Equality and Prevention of Unfair Discrimination Act*. This Code provides a consistent approach for all persons who work in the industry, no matter whether they are contracted through an employment contract or an independent contract.
- 1.2. Therefore, the Code is applicable to all forms of employment and contractual relationships where included in the relevant contract, including:
 - 1.2.1. Employers, owners and managers;
 - 1.2.2. production companies;
 - 1.2.3. full-time, part time, permanent and temporary employment relationships;
 - 1.2.4. persons in training including interns, apprentices, those on learnerships and job applicants,
 - 1.2.5. volunteers,
 - 1.2.6. independent contractors; and
 - 1.2.7. clients, suppliers, contractors and other third parties who have dealings with the business (“non-employees”).
- 1.3. The list provided for in 1.2. is collectively referred herein as “Industry Parties”.
- 1.4. A person who is a recipient of alleged sexual harassment, may lodge a grievance with the employer or the production company of the alleged harasser or the person responsible for the appointment of the alleged harasser, where the alleged harassment has taken place in the workplace or on the set of a production, or in the course and scope of the alleged harasser’s employment or appointment.

- 1.5. A production company and an employer may provide a contact safety officer to assist with sexual harassment complaints, alternatively provide other means to address such complaints.
- 1.6. This Code does not confer any authority or obligation on employers to take any disciplinary action against persons who are not their employees.

2. DEFINITION OF SEXUAL HARASSMENT

2.1. Sexual harassment is a form of harassment. It is unwanted conduct of a sexual nature which impairs and violates the dignity and rights of an individual by creating impediments to true equity in the working environment. Such an impediment is seen in the creation of a hostile working environment or intimidating environment for one or more persons, which has the potential or impact of inducing submission by actual or perceived threat of adverse consequences. The unwanted nature of sexual harassment distinguishes it from behavior that is welcome and mutual.

2.2. Sexual harassment is made up of the following components:

2.2.1. The **conduct is unwanted and unwelcome** which is characterized by: -

2.2.1.1. The complainant communicated the unwelcome and unwanted nature of the conduct verbally or non-verbally, directly, or indirectly. Displays of discomfort may be evidenced in the complainant walking away or not responding (non-verbal and indirect cues) or expressly indicating the behaviour is considered offensive (verbal and direct).

2.2.1.2. Where there has been no such communication that occurred from the complainant, it still becomes necessary to evaluate whether the perpetrator knew or ought to have known that the conduct engaged in and complained of is unacceptable.

2.2.2. **Conduct is sexual in nature** whether it be physical or non-physical, verbal, or non-verbal, directly, or indirectly expressed.

2.2.3. **Conduct may constitute a single incident, persistent occurrences** or a pattern of persistent occurrences.

2.2.4. The **conduct was previously welcome but becomes unwelcome** at any stage. Where a complainant has difficulty showing or indicating the conduct is unwelcome, the complainant may seek assistance from another person to communicate the conduct is unwelcome and unwanted.

2.2.5. The **impact of the unwelcome and unwanted conduct** is such that it **impairs dignity** considering the circumstances of the complainant and the respective position of the complainant in relation to the alleged perpetrator.

3. FORMS OF SEXUAL HARASSMENT

- 3.1. Sexual harassment may include unwelcome physical, verbal, or non-verbal conduct, including, but 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 the same or opposite sex 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, the unwelcome display of sexually explicit pictures and objects, following or watching.
 - 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/appointment, promotion, training, discipline, dismissal, salary increment or other benefit of an employee or non-employee, in exchange for sexual favours.
 - 3.1.5. 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; and
 - 3.1.6. Victimization occurs where an employee or non-employee is victimized or intimidated for failing to submit to the sexual advances, attention, or proposals of the harasser. It also includes implied or expressed threats of reprisal to comply with sexually oriented requests, advances, or attention or for complaining about gender insensitive conduct.

4. GUIDING PRINCIPLES

- 4.1. It is required of employers, owners, production companies to take reasonably practicable proactive steps and remedial steps to prevent forms of sexual harassment that persons are exposed to while performing their duties.
- 4.2. All Industry Parties 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.

4.3. All Industry Parties must:

- 4.3.1. not commit any act of sexual harassment.
- 4.3.2. contribute 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.
- 4.3.3. ensure all parties interacting on sets or within production companies are aware of the Code, and that they are not exposed to or committing sexual harassment whilst performing their duties.
- 4.3.4. ensure policies and procedures adopted provide a clear statement on the position regarding the prevention, elimination, and management of sexual harassment.
- 4.3.5. take proactive steps such as awareness training initiatives to educate all levels about sexual harassment to reinforce and maintain safe working environments.
- 4.3.6. prevent sexual harassment.
- 4.3.7. take appropriate action in accordance with the Code, when instances of sexual harassment complaints are brought to their attention.

4.4. Disciplinary steps will be taken against any person involved in the production who breaches the guidelines of the Code or commits an act of sexual harassment.

5. IMPLEMENTATION

5.1. As a first step in addressing sexual harassment, a production company must ensure:

- 5.1.1. All parties involved in a production must be treated with dignity.
- 5.1.2. Sexual harassment is not permitted or condoned.
- 5.1.3. Persons who have allegedly been subjected to sexual harassment in the workplace have a right to raise a grievance and have appropriate action taken in terms of the Code. Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially by an appropriately qualified person
- 5.1.4. All Industry Parties are protected against victimisation, retaliation for lodging grievances and from false accusations.

- 5.1.5. There is a positive duty to implement the Code and take action against an Industry Party who does not comply with the Code.
- 5.2. This Code should be communicated to all Industry Parties including:
 - 5.2.1. Volunteers, interns, new employees and contractors at an induction, briefing and/or incorporated as an annexure to their contract; and
 - 5.2.2. contractors, service providers, suppliers and other third parties who are involved with the production and a copy hereof should be annexed to their contract, binding the third party to this Code.
 - 5.2.3. During awareness training initiatives organized.

6. SUPPORT AND ASSISTANCE

- 6.1. Sexual harassment is a sensitive issue, and a recipient of such conduct may feel unable to approach the perpetrator, lodge a formal grievance or turn to colleagues for support.
- 6.2. As far as is practicable the production company should designate a person who alleged victims, concerned persons and/or persons who need information may approach for confidential advice. Such a person:
 - 6.2.1. May include persons employed by the company to perform such a function, a co- employee, independent contractor or outside professional.
 - 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. A production company and/or an employer must address any reports of sexual harassment with confidentiality and sensitivity ensuring that all relevant parties are consulted, all necessary and reasonable steps required to address the complaint are taken in accordance with this Code and that necessary and reasonable steps are taken to eliminate the sexual harassment.
- 6.4. A production company and/or an employer are 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. When an allegation of sexual harassment is brought to the attention of the employer / production company, consultation with all relevant parties should take place. Steps should be taken to address the allegations in terms of the Code and to eliminate the conduct complained of, where there is veracity for such complaint.
- 7.2. 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.
- 7.3. Persistent harassment, serious incidents of sexual harassment, continued harassment after warnings, or single incidents of serious misconduct, may result in the dismissal of an employee or the cancellation of a contract.
- 7.4. It is an offence in terms of this Code to victimise or retaliate against a complainant who in good faith lodges a grievance of sexual harassment.
- 7.5. It is an offence in terms of this Code to report a complaint of sexual harassment which the complainant knows is not true.
- 7.6. Failure to address or eliminate sexual harassment within a reasonable time once an allegation is reported, may render an employer/production company liable in terms of section 60 of the Labour Relations Act for the conduct of the perpetrator where such perpetrator is an employee of the production company.

8. PROCEDURE FOR REPORTING AND INVESTIGATING SEXUAL HARASSMENT AND DISCIPLINARY ACTION

- 8.1. Allegations of sexual harassment must be dealt with seriously, expeditiously, sensitively and confidentially by the production company.
- 8.2. An allegation of sexual harassment must be reported to the production company shall as soon as reasonably possible after the incident.
- 8.3. All Industry Parties must be protected against victimization, retaliation for lodging grievances and from false accusations.
- 8.4. An Industry Party who either experiences or witnesses an act of sexual harassment or a breach of this Code, are accordingly required to immediately approach the appointed safety contact officer assigned to the production to report and discuss any incidents.
- 8.5. Once an incident has been reported to the production company or employer, there are two courses in which the incident can be dealt with, either through an informal procedure or through a formal procedure. The person reporting the incident is under no obligation to follow either one of these options, however should be advised of the

different procedures applicable to addressing an allegation of sexual harassment, namely, formal versus informal procedures.

9. Informal Procedure

- 9.1.1. The person concerned may decide that it is sufficient to, with the assistance of the safety officer, 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.
- 9.1.2. The person concerned may choose to remain anonymous and have the safety contact officer explain that the conduct complained of is unwanted.
- 9.1.3. If the informal approach has not provided a satisfactory outcome, or 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.

10. Formal Procedure

- 10.1.1. Where formal procedure has been elected by the complainant, the formal procedure for resolving the grievance will include the following:
 - 10.1.1.1. Immediately report the incident to an appointed safety officer (“SCO”) on set or a relevant authorized person;
 - 10.1.1.2. Should medical attention be required, request the safety officer or relevant authorized person to accompany the complainant/victim to the nearest medical facility;
 - 10.1.1.3. Should a person be a complainant, such person has a right to press separate criminal and/or civil charges against an alleged perpetrator. The complainant may approach the safety contact officer or the head-of-department to accompany them to the police station in order to lay a charge;
 - 10.1.1.4. Within 2 (two) days of the non-resolution of the dispute following an informal approach, the complainant/SCO shall notify the relevant department head of the production that a formal approach has been requested providing the full details of the incident and all parties involved, except where a complainant has chosen to remain anonymous.
 - 10.1.1.5. Once a written complaint of sexual harassment has been received by the production company, a formal investigation by way of an

independent investigation, enquiry or arbitration, must be conducted by the production company.

- 10.1.1.6. The outcome of the investigation, enquiry, or arbitration must be communicated to the complainant and alleged perpetrator within 14 (fourteen) days of the referral of the complaint.
 - 10.1.1.7. Should the aggrieved person not elect the formal procedure, an employer as defined in the Labour Relations Act and/or production may elect to follow a formal procedure following an assessment of risk posed to the workplace and 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. If after the investigation there is found to be serious risk of harm of others in the workplace, a formal procedure can be pursued irrespective of the complainant's election not to undertake this procedure.
- 10.1.2. Should a complaint of sexual harassment not be satisfactorily resolved by the internal procedures set out above, a complainant who is an employee, may refer a dispute within 30 (thirty) days of receipt of the outcome of the investigation, to the CCMA for conciliation in accordance with the provisions of Section 135 of the Labour Relations Act. Should the dispute remain unresolved, either party may refer the dispute to the Labour Court within 30 (thirty) days of receipt of the certificate issued by the commissioner in terms of Section 135(5) of the Act where the party is an employee.
 - 10.1.3. Where the complainant is not an employee, the production company or the complainant may approach the safety contact officer for assistance with referring the matter for appropriate intervention and referral to a private dispute resolution agency. The safety contact officer will notify the production company of the request should it be received directly from the complainant before or shortly after referral of a dispute to a private dispute resolution agency. Nothing precludes the complainant from approaching a Civil or Criminal Court to pursue action in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("PEPUDA") or in terms of the Protection from Harassment Act 17 of 2011.
 - 10.1.4. The alleged perpetrator named in the complaint shall be notified of the referral of the complaint to a private dispute resolution agency by the production company and may approach the safety contact officer with any questions regarding the process that will unfold.

Disciplinary Action:

- 10.1.5. The possible sanctions to be imposed should an alleged perpetrator be found guilty of sexual harassment by the production company, may include:

- 10.1.5.1. Suspension of the contracts of any parties involved in the production, pending an investigation into any allegation of sexual harassment against that party or an employee of that party;
 - 10.1.5.2. Warnings for minor instances of sexual harassment;
 - 10.1.5.3. Dismissal / cancellation of a contract for continued minor instances after warnings given, as well as for serious instances of sexual harassment;
 - 10.1.5.4. Transfer of the perpetrator to another position in the production where appropriate; or
 - 10.1.5.5. Termination of the contract of an independent contractor where the outcome of the investigation of the production company has concluded that the independent contractor, or an employee of the independent contractor, has committed an act of sexual harassment.
- 10.1.6. In the case of a person simply visiting the set, an investigation must be launched and, in this regard, all rights of the production company are reserved. The complainant may approach the safety contact officer on set with any questions on the options available to filing a complaint against the individual.
- 10.1.7. None of the above will in any way prohibit or prevent the complainant from enforcing their rights to lay separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the complainant, alleged perpetrator and/or production company are in no way limited by the Code.

11. CONFIDENTIALITY

- 11.1. Industry Parties 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.
- 11.2. The disciplinary enquiry, where applicable, will also be conducted confidentially. Only appropriate and relevant representatives of the production company as well as the aggrieved person, their representative, alleged perpetrator, witnesses and an interpreter if required, must be present in the disciplinary enquiry.
- 11.3. The production company is required to disclose to either party or to their representatives, such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this Code or the law.

12. ADDITIONAL SICK LEAVE

12.1. 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.

13. INFORMATION AND TRAINING

13.1. It is incumbent upon the production company to ensure that Industry Parties 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.

13.2. Further training and/or information sessions should be conducted by the production company 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:

APPENDIX

FLOW CHART 1: PREVENTION AND RISK MITIGATION:

Productions may find value in the implementation of the Code as it assists in ensuring the environments worked in promote the following practices and principles: –

- sexual harassment will not be condoned nor tolerated,
- everyone is treated with dignity,
- anyone subjected to sexual harassment has the right to complain and expect the complaint to be handled fairly, quickly and confidentially
- ensure no victimisation nor retaliation for reporting an incident of sexual harassment

The below steps may assist in creating an environment of awareness wherein sexual harassment is understood and the consequences of the actions are presented to all in the workplace and/or set. This allows for an awareness of sexual harassment to mitigate incidents from occurring.

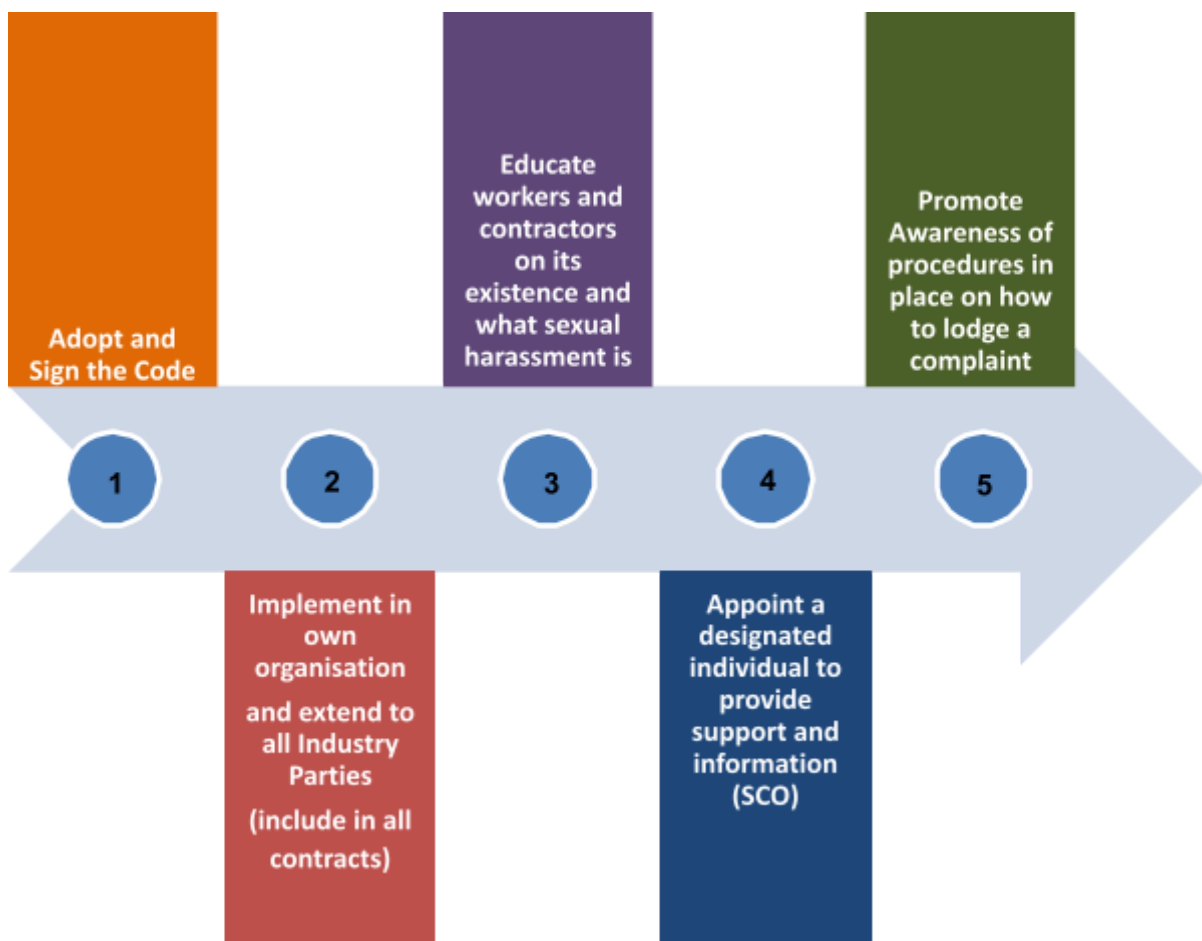


Figure 1: Diagram on steps for Prevention and Mitigation of Sexual Harassment

FLOW CHART 2: HANDLING A COMPLAINT OF SEXUAL HARASSMENT

Where a complaint of sexual harassment is brought forward to the production company, producer or employer, there is a duty to handle the complaint in a manner that is fair, timeous, and confidential.

A formal process flow for managing complaints of sexual harassment may assist in creating certainty for all parties involved. The complainant is aware of the channels available to receiving the complaint and the alleged perpetrator and witnesses are aware of the possible processes that may unfold.

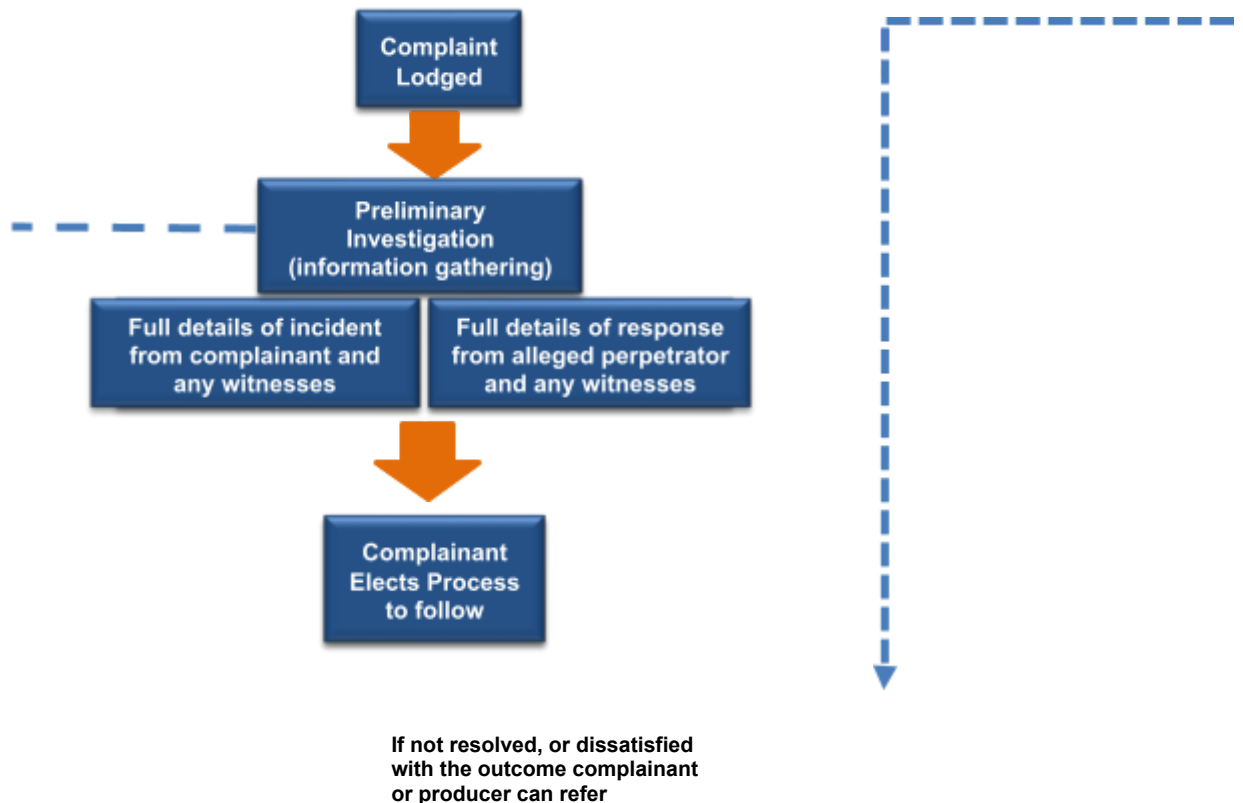




Figure 2: Flow chart of Handling Sexual Harassment Complaints

DEFINITIONS:

Allegation: an assertion of facts that one intends to prove through an investigation procedure, hearing or trial.

Alleged perpetrator: a person alleged to have committed an act of sexual harassment.

Complaint: the specific grievance of anyone who has been negatively affected by the actions of an individual, group or organisation.

Complainant: the person making the allegation of conduct that violates the provisions of the workplace policy on sexual harassment, including the alleged victim of the sexual harassment or abuse, or another person who became aware of the wrongdoing.

Confidentiality: the ethical principle that restricts access to and dissemination of information in a case of sexual harassment or abuse for instance. This requires that the information will only be available to a limited number of authorised people for the purposes of conducting the investigation.

Consent: occurs when someone unambiguously and voluntarily agrees to do something without coercion and fully understands the consequences of this decision.

Coercion: The use of force or threats to make someone do something they are unwilling to do.

Employee: as defined in the Labour Relations Act, is any person excluding independent contractors, who works for another person and who receives, or is entitled to receive any remuneration; or any person who in any manner assists in carrying on or conducting the business of an employer.

Employer: is a person or organization that employs one or more people to carry out services in exchange for wages or salary in accordance with its business requirements and needs.

Liability: legal responsibility for one's act or failure to act which can be found in civil law.

Quid pro quo: giving something in return for something. In sexual harassment, it is agreeing to a sexual advance in exchange for a benefit.

Rape: non-consensual penetration, however slight, of the vagina, anus or mouth by another's body part or object.

Sexual abuse: actual or threatened sexual violence, including but not limited to rape, sexual assault and sexual harassment.

Sexual assault: when person A sexually violates person B without person B's consent.

Sexual favoritism: 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, and 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.

Sexual Harassment: 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. The unwanted nature of sexual harassment distinguishes it from behavior that is welcome and mutual.

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