CRIMINAL LAW

Harassment

What is harassment and how would you go about getting a protection order in South Africa? This QuickLaw guide offers information on the harassment act.

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For all your harassment related questions and answers, simply follow our guide below:

1. What is harassment?
2. What can a person do if s/he is being harassed?
3. How can a person apply for a protection order?
4. What happens if a person does not know who is harassing him/her?
5. What will happen after an application for a protection order has been filed at court?
6. May a person be dismissed for harassing someone at work?
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1. What is harassment?

- When a person's behaviour is so extreme, abusive or rude that it causes harm to another person or makes another person believe that s/he will suffer harm. This may include mental, psychological, physical or financial harm.
- Harassment happens when a person does something that may make another person feel uncomfortable, threatened or unsafe, for example, if a person does the following without consent:
    - follows, communicates with, watches, or bothers another person; or
    - sends letters, gifts, faxes, or e-mails to such a person.

2. What can a person do if s/he is being harassed?

- If a person (“complainant”) believes that s/he is being harassed by someone (“respondent”), s/he may apply for a protection order in the Magistrate’s Court (“court”).
- If the complainant is a child, s/he can apply for a protection order on his/her own and does not have to be assisted by a parent or a guardian.
- It is also possible for a person to make an application for a protection order on behalf of the complainant. This means that, any person who has an interest in the wellbeing and safety of the complainant can make an application. If the complainant is older than 18 years of age, the written consent of the complainant is required to make an application on his/her behalf.
- It is not a requirement for the complainant to be in some sort of a relationship with the respondent. This means that the respondent can be any person, for example, a stranger to, a friend or neighbour of, or someone working with the complainant.

3. How can a person apply for a protection order?

- A complainant can apply with the clerk of the court in the area where the complainant or respondent lives, works, or where the harassment took place.
- The clerk will help the complainant to complete the application for a protection order, together with a written affidavit, which will be given to the court for consideration.
- A complainant can also lay a criminal charge against the respondent at the Police Station in the event of an assault, trespassing, and so on.

4. What happens if a person does not know who is harassing him/her?

- The police may carry out an investigation to find the name, address or any other information of the unknown respondent. For example, if the complainant suspects that the respondent is working with him/her, the police may request the complainant’s employer to provide them with access to the information of the respondent.
- Any person who does not provide the police with the requested information, is guilty of a criminal offence and will be liable to a fine or imprisonment of up to six months.

5. What will happen after an application for a protection order has been filed at court?

- If there is enough evidence to prove harassment, an interim protection order will be issued, together with a suspended warrant of arrest.
- The interim protection order must be delivered to the respondent. It will tell the respondent when s/he must appear at court to defend him/herself (“return date”).

- If the respondent **does not appear** at court on the return date, the court may issue a final protection order.
- If the respondent **appears** at court on the return date, s/he must provide the court with good reasons why a final protection order must not be issued.
- A final protection order will only be issued if there is enough evidence to prove harassment.
- The final protection order will contain certain conditions to ensure the safety of the complainant. If the respondent does not follow these conditions, s/he will be guilty of an offence and will be liable for a fine or imprisonment of up to five years.
- The suspended warrant of arrest remains valid until the protection order expires (after five years or a time period decided by the court), or is cancelled.

6. May a person be dismissed for harassing someone at work?

- Harassment includes sexual harassment in the workplace.
- Unwelcome sexual gestures may constitute sexual harassment and the complainant must bring these gestures to the attention of his/her employer immediately.
- If the employer fails to take immediate and appropriate steps to prevent the sexual harassment, the employer may be held liable for damages, and its failure to assist the complainant may lead to a claim for constructive dismissal.
- Sexual harassment is also a form of misconduct, this means that the employer must take disciplinary steps against the respondent, which may result in his/her dismissal.

7. Glossary of terms

CHILD: a person under the age of 18 years.

CONSTRUCTIVE DISMISSAL: when an employee resigns because their employer's behaviour became so intolerable at work that s/he had no choice but to resign.

FINAL PROTECTION ORDER: is a court order confirming an interim protection order, preventing the respondent from harassing the complainant. It will be issued if the court is satisfied that the harassment exists.

INTERIM PROTECTION ORDER: is a court order confirming temporary protection, prohibiting the respondent from harassing the complainant. It is generally issued on the first day when the complainant applies for a protection order.

SEXUAL HARASSMENT: unwelcome sexual attention, behaviour, suggestions, messages, or remarks of a sexual nature that offends, intimidates or humiliates the complainant; a promise or reward for sexual deeds;

or a sexual threat.

SUSPENDED WARRANT OF ARREST: a document issued by the court, authorising the police to arrest the respondent. The actual arrest is delayed until the respondent fails to comply with a condition ordered by the court.

Gender-based Violence (GBV) Helpful Contacts

Gender-based violence (GBV) does not discriminate. Any person of any race, age, sexual orientation, religion or gender can be a victim or perpetrator of GBV.

People may be victims of abuse if: They seem fearful of their partner; spend less time with family and friends; often criticised or belittled by their partner; partner is jealous, possessive and/or aggressive; have become unusually quiet or withdrawn and have physical injuries such as bruises or broken bones.

SAPS Emergency Services	10111
AIDS Helpline	0800 012 322
ChildLine South Africa	Report child abuse to toll-free line 0800 055 555
Commission for Gender Equality	Report gender discrimination and abuse 0800 007 709
Stop Women Abuse Helpline	Domestic violence 0800 150 150
FAMSA National Office	011 975 7106/7
Gender Based Violence (GBV) Command Centre	Contact the 24-hour toll-free number 0800 428 428 to report abuse Please call me *120* 7867# SMS “Help” to 31531 for persons with disability
National Child Welfare Society	074 080 8315
Lifeline National Couselling Line	0861 322 322
POWA Helpline	People Opposing Women Abuse 083 765 1235
Report Neglect or Abuse of a Child	0861 4 CHILD (24453)

South African Human Rights Commission	Call 011 877 3600 to lodge a complaint about human rights violations
Sonke Gender Justice	Sexual Harassment Whistleblower Hotline: 0800 333 059 SMS 33490
South African Police Service	Report all cases of rape, sexual assault or any form of violence to a local police station or call the toll-free Crime Stop number 086 00 10111
Botswana Gender Based Violence Prevention & Support Center, Gaborone	+267 390 7659
Botswana Women Against Rape	Botswana Women Against Rape
Namibia Gender Based Violence Tollfree Helpline	106

8. How can LegalWise assist you?

If you are a LegalWise Member and require more information or advice please contact your nearest LegalWise Branch, call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or to join visit our join now page.

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