



CODE OF GOOD PRACTICE: HANDLING SEXUAL HARASSMENT IN THE FILM AND TELEVISION INDUSTRY (Version 5, April 2021)

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 and 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* and the *Employment Equity Act*. However, where persons are 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;
 - 1.2.2. production companies;
 - 1.2.3. full-time, part time, permanent and temporary employment relationships;
 - 1.2.4. interns and job applicants,
 - 1.2.5. independent contractors; and
 - 1.2.6. clients, suppliers, contractors and other third parties who deal 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 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.

2.2. Sexual attention becomes sexual harassment when:

2.2.1. The conduct is unwelcome, whether it constitutes a single incident or persistent occurrences;

2.2.2. The recipient indicates their discomfort through verbal or non-verbal cues such as walking away or not responding;

2.2.3. The recipient has made it clear that the behaviour is considered offensive; and/or

2.2.4. The conduct was previously welcome but becomes unwelcome at any stage.

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 or 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, and the unwelcome display of sexually explicit pictures and objects.
- 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, 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 of the harasser.

4. GUIDING PRINCIPLES

- 4.1. 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.
- 4.2. All Industry Parties must:
 - 4.2.1. not commit any act of sexual harassment.
 - 4.2.2. 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.
 - 4.2.3. prevent sexual harassment.
 - 4.2.4. take appropriate action in accordance with the Code, when instances of sexual harassment complaints are brought to their attention.
- 4.3. 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. 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.

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 whom 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 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 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. 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.

7.2. 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.

7.3. 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.

7.4. It is an offence in terms of this Code to report a complaint of sexual harassment which the complainant knows is not true.

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 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.

Informal Procedure

- 8.5.1. 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.
- 8.5.2. The person concerned may choose to remain anonymous and have the safety officer explain that the conduct complained of is unwanted.
- 8.5.3. 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.

Formal Procedure

- 8.5.4. Where formal procedure has been elected by the complainant, the formal procedure for resolving the grievance will include the following:
- 8.5.4.1. Immediately report the incident to an appointed safety officer (“SCO”) on set or a relevant authorized person;
 - 8.5.4.2. Should medical attention be required, request the safety officer or relevant authorized person to accompany you to the nearest medical facility;
 - 8.5.4.3. 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;
 - 8.5.4.4. 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.
 - 8.5.4.5. 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.

- 8.5.4.6. 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.
- 8.5.5. 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 (“**the 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.
- 8.5.6. 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.
- 8.5.7. 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:

- 8.5.8. The possible sanctions to be imposed should an alleged perpetrator be found guilty of sexual harassment by the production company, may include:
 - 8.5.8.1. 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;
 - 8.5.8.2. Warnings for minor instances of sexual harassment;
 - 8.5.8.3. Dismissal for continued minor instances after warnings given, as well as for serious instances of sexual harassment;
 - 8.5.8.4. Transfer of the perpetrator to another position in the production where appropriate; or
 - 8.5.8.5. 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.

- 8.5.9. 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.
- 8.5.10. Should the aggrieved person not elect the formal procedure, an employer is still required to assess the potential risk posed 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.
- 8.5.11. 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 are in no way limited by the Code.

9. CONFIDENTIALITY

- 9.1. 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.
- 9.2. 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.
- 9.3. 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.
- 9.4. Where applicable, the relevant provisions of Section 16 of the Act will apply to the disclosure of information in terms of this Code.

10. ADDITIONAL SICK LEAVE

- 10.1. 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.

11. INFORMATION AND TRAINING

- 11.1. 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.

11.2. 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:

