

# Harassment Policy Statement



## Purpose

To support employees to understand legislation regarding harassment in the workplace

## Read along with this content

[Protection from Harassment Act 17 of 2011](#)

[Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, 2022](#)

[Disciplinary Code](#)

[G1 Grievance submission form](#)

## Version

V10

## Effective Date

05/12/2022

## Document Adherence

All employees

## Committee to Approve

POLCO

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## 1. Glossary of terms

1.1 In this policy, the following words and expressions shall mean:

Term	Definition
<b>Bullying</b>	Involves, but is not limited to, the abuse of coercive power by an individual or group of individuals and may involve aggressive verbal, physical and/or social behaviour where an individual or group of individuals repeatedly causes another individual physical, social and/or psychological injury or discomfort
<b>Code</b>	The Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, 2022, as amended
<b>Disciplinary Code</b>	The disciplinary code of conduct which incorporates Capitec's disciplinary procedures, a copy of which may be found on the company intranet or is available from HR: Employee Relations
<b>EEA</b>	The Employment Equity Act 55 of 1998, as amended
<b>Sexual Harassment</b>	Unwanted conduct (both verbal and non-verbal, whether direct or indirect and intentional or unintentional) of a sexual nature which impairs a person's dignity and may involve the use of formal power such as title, position, rank or supervisory control, or material leverage to intimidate, threaten, harass or harm an employee to dominate or control the complainant. It can include harassment between an employer/manager and the employee. It can equally occur between employees who are employed on a similar level as the complainant or by a junior employee in relation to a senior employee

Term	Definition
<b>Intimidation</b>	Intentional behaviour that could cause a person of ordinary sensibilities to fear injury or harm, whether physical or otherwise, and "Intimidated" shall bear a corresponding meaning
<b>Mobbing</b>	Harassment that involves the abuse of coercive power by a group of people targeted at one or more individuals
<b>Racial, ethnic or social origin harassment</b>	A form of unfair discrimination prohibited by section 6(1) of the EEA which is related to a person's membership or presumed membership to a group identified by one or more of the listed grounds of unfair discrimination such as race, ethnic or social origin, or a characteristic associated with the said group and can be perpetrated in either a direct, implicit, indirect, or covert manner
<b>Factors to be considered in handling harassment complaints</b>	The following factors may be relevant: the seniority of the alleged perpetrator; the seniority of the complainant; whether the perpetrator has a history of harassment; the risk to other employees and others having dealings with Capitec; the level of remorse of the perpetrator; the intention / behaviour of the perpetrator; and the risk to Capitec
<b>Policy</b>	Refers to this policy, namely the Capitec Harassment Policy

## 2. Purpose and objectives

- 2.1 Capitec is committed to ensuring that its employees and everyone who has dealings with Capitec are protected against all forms of violence and harassment.
- 2.2 Accordingly, Capitec has adopted a zero-tolerance approach to all forms of harassment and will neither permit, tolerate nor condone any conduct of that nature.
- 2.3 The purpose of this policy is to fulfil Capitec's duty to create and maintain a safe working environment that is free from harassment and in which there is respect for one another's integrity, dignity, privacy and right to equality for everyone who has dealings with the business, as far as is reasonably practicable.

## 3. Scope of application

- 3.1 This policy shall apply to all employees (including permanent, temporary and contract employees), volunteers, as well as job applicants who seek employment with Capitec.
- 3.2 Although this policy is intended to guide Capitec and its employees, the alleged perpetrators and complainants of harassment may include Line managers / managers, supervisors, owners, employers, employees, persons in training, volunteers, job applicants, clients, suppliers, contractors, and other non-employees having dealings with Capitec.
- 3.3 This policy shall apply in all instances where an employee is performing their duties or in circumstances related to their work, during or after working hours.

## 4. Harassment

- 4.1 Harassment is a form of unfair discrimination and is defined in the Code as unwanted conduct, which impairs dignity; which creates a hostile or intimidating working environment for one or more employees; or is calculated to or has the effect of inducing submission by actual or threatened adverse consequences; and is related to one or more grounds of discrimination prohibited in terms of section 6 (1) of the EEA.
- 4.2 Harassment includes, but is not limited to, any of the following acts, against another individual, group of individuals or community: violence, physical abuse, psychological abuse, emotional abuse, sexual abuse, gender-based violence, racial abuse and/or all forms of power, whether threatened or actual.
- 4.3 Previous consensual participation in certain conduct does not necessarily mean that the conduct in question continues to be welcome. However, the complainant should indicate to the alleged perpetrator that the conduct is no longer welcome.
- 4.4 If there is no such communication to the alleged perpetrator that the conduct is unwelcome or unwanted, Capitec must assess whether the alleged perpetrator knew or should have known that conduct of the type engaged in is generally considered unacceptable.
- 4.5 Harassment may relate to a single instance or ongoing and/ or repetitive conduct and

may take the form of violent or non-violent conduct.

- 4.6 When determining whether harassment has occurred, Capitec shall have regard to the following factors:
  - 4.6.1 The context of the harassment.
  - 4.6.2 The circumstances of the complainant and the impact that the conduct has on the complainant.
  - 4.6.3 The respective positions of the alleged preparator and the complainant.
- 4.7 Although harassment is commonly perpetrated by those in positions of power, it can also be perpetrated by those occupying a position that is on the same level as the complainant or a level below, or anyone listed in section 3.2 above.
- 4.8 A non-exhaustive summary of the various forms and examples of harassment is listed in Addendum A to this policy.

## 5. Sexual harassment

- 5.1 Sexual harassment, by same or different genders or sexes, is a form of harassment and constitutes a form of unfair discrimination on the basis of sex, gender, and/or sexual orientation.
- 5.2 Sexual attention becomes sexual harassment if:
  - 5.3 The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment.
    - 5.3.1 The recipient has made it clear that the behaviour is considered offensive.
    - 5.3.2 The perpetrator knew or should have known that the behaviour is regarded as unacceptable.
    - 5.3.3 The following factors will be considered in the event Capitec receives a complaint of sexual harassment:
      - 5.3.4 Whether the conduct was unwanted and of a sexual nature, whether direct or indirect.
      - 5.3.5 That the alleged perpetrator knew or ought to have known that the conduct was not welcomed.
      - 5.3.6 That the conduct is offensive to the complainant.
      - 5.3.7 That the conduct makes the complainant feel uncomfortable or causes harm or inspire the reasonable belief that the complainant may be harmed.
      - 5.3.8 That the conduct may interfere with the work of the complainant although it need not necessarily do so.
      - 5.3.9 That the conduct violates the rights of an employee or complainant and constitutes a barrier to equity in the workplace.
      - 5.3.10 The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual.

- 5.4 The test for sexual harassment is as follows:
  - 5.4.1 Whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation.
  - 5.4.2 Whether the sexual conduct was unwanted or unacceptable.
  - 5.4.3 The nature and extent of the sexual conduct.
  - 5.4.4 The impact of the sexual conduct on the employee.

## **6. Consensual relationships**

- 6.1 The mutual attraction between two persons is not regarded as sexual harassment unless such a relationship leads to sexual favouritism.
- 6.2 Line managers should not interact/fraternise inappropriately or engage in intimate or undeclared romantic relationships with junior employees that directly report to them as this will be viewed as unbecoming conduct.
- 6.3 Should a Line manager and any employee in their direct or indirect line of reporting be involved in a romantic or sexual relationship, there is an obligation on the Line manager to report this to the next level manager. Two employees involved in a romantic or sexual relationship may not be in the same direct line of reporting. One of the two individuals will be transferred to another branch or department by the relevant Line manager.
- 6.4 Where a romantic or sexual relationship between peers affects or potentially may affect the working environment in any way, one of the two employees may be transferred to another branch or department.

## **7. Racial, ethnic or social origin harassment**

- 7.1 Racial, ethnic, or social origin harassment occurs when a person is subjected to physical, verbal, or non-verbal conduct based on race which violates their dignity and equality or which creates an intimidating, hostile, or humiliating working environment for the recipient of the conduct.
- 7.2 Racial, ethnic, or social origin harassment may be a single incident or persistent conduct.
- 7.3 Racial, ethnic, or social origin harassment will be assessed objectively with reference to the reaction of the normal reasonable person in keeping with the values of our constitutional democracy namely - non-racialism, dignity, and equality.
- 7.4 Capitec shall consider the following factors when determining whether racial, ethnic, or social origin harassment has occurred:
  - 7.4.1 Whether the language or conduct complained of is abusive, demeaning, or derogatory.
  - 7.4.2 Whether the language or conduct is directed at a particular individual or group of individuals.

- 7.4.3 The extent and degree of abuse or impairment to a person's dignity.
- 7.4.4 The impact of the conduct on the complainant, the employees of Capitec and on the good name and reputation of Capitec given its adoption of a zero-tolerance approach to harassment and intimidation.
- 7.5 The test for racial ethnic or social origin harassment is whether, on a balance of probabilities, the conduct complained of was related to race, ethnic or social origin, or a characteristic associated or assumed to be associated with such a group.
- 7.6 Explicit racial conduct is assumed to be unwanted conduct.
- 7.7 An important factor when determining racial, ethnic, and social origin harassment is how the alleged perpetrator treats other members not of the complainant's, racial, social, or ethnic group.
- 7.8 A non-exhaustive list of examples of racial, ethnic, or social origin harassment is in Addendum A to this policy.

## 8. Reporting and investigation of complaints/ grievances

- 8.1 All employees and volunteers of Capitec, as well as job applicants who seek employment with Capitec, irrespective of seniority and position, have a role to play in ensuring that the workplace is free from all forms of harassment.
- 8.2 If an employee, or any third-party rendering services to Capitec or receiving services from Capitec, experiences, or witnesses or becomes aware of any form of harassment, the employee or third-party must report the said conduct immediately, or as soon as reasonably possible, to a Line manager or to HR, as the case may be. Reporting of harassment may also be done via the Tip-Offs Anonymous channel on 0800 00 48 36 or via email at **capitecbank@tip-offs.com**.
- 8.3 Where instances of harassment are reported to Line managers or any other employee anonymously and/or confidentially, Line managers or employees have an obligation to report the allegations of harassment to the relevant Anti-harassment Officer immediately or as soon as reasonably possible. Line managers or employees who fail to report instances or complaints of sexual harassment, may face disciplinary action.
- 8.4 Capitec will assess the conduct complained of on an objective basis from the perspective of the employee/ complainant who alleges the harassment. The primary focus of the enquiry will be the impact of the conduct with reference to whether a reasonable person in the position of the complainant would perceive the conduct in question to constitute harassment.
- 8.5 When raising a complaint of harassment, the complainant should raise the complaint in writing and set out their desired outcome and whether they would prefer the matter to be dealt with formally.



## 9. Procedure

- 9.1 The procedures set out in this section will be used to deal with substantiated complaints of harassment following the investigation by the investigator appointed by Capitec.
- 9.2 An employee may request to follow an informal procedure, or a formal procedure as set out in section 9.8 and 9.9 below where the harassment is allegedly perpetrated by an employee. Employees who request to follow a formal procedure need not follow an informal procedure first.
- 9.3 In instances where the harassment is not perpetuated by employees, Capitec shall investigate the complaint as far as reasonably possible and where substantiated, follow the appropriate and available procedure.
- 9.4 The employee shall be required to inform Capitec of their chosen procedure in writing. An employee will be under no duress to accept one or the other options available.
- 9.5 Notwithstanding an employee's request to follow an informal procedure, Capitec has the discretion to proceed with a formal procedure where the nature and severity of the harassment require it to do so, having regard to the risk that the harassment could pose to other employees and Capitec.



In assessing whether Capitec will exercise its discretion to follow a formal procedure, Capitec must consider, amongst others, the following factors: the severity of the harassment, the history of the perpetrator of the alleged harassment, the seniority of the perpetrator in Capitec, the risk of harm to other employees; and the risk to Capitec

- 9.6 When Capitec elects to follow a formal procedure, notwithstanding an employee's/complainant's request for the informal procedure, Capitec shall advise the employee/complainant and/or their representative(s) accordingly.
- 9.7 The relevant Capitec Anti-harassment Officer must meet with the complainant within 5 working days following a complaint to advise them of the various recourses available and discuss the way forward including:
- 9.7.1 Providing the complainant with a copy of this policy, the Grievance Procedure, and the Disciplinary Code.
- 9.7.2 Advise the complainant of their right to obtain legal representation at their own cost and of the availability of counselling.
- 9.7.3 Advise the complainant that there are formal and informal procedures.
- 9.7.4 Explain the formal and informal procedures to the complainant.
- 9.7.5 Advise the complainant that they may indicate to Capitec which procedure they would like to follow (formal/informal).
- 9.7.6 Reassure the complainant that they will not face any adverse consequences in requesting to follow either the formal or informal procedure.
- 9.7.7 Advise the complainant that they are not bound by the outcome of the informal procedure and will have the right to follow the formal grievance procedures within 5 working days of the conclusion of that process.

- 9.7.8 Reassure the complainant that the matter will be dealt with confidentially as per section 12.
- 9.7.9 Provide the complainant with information about counselling available as well as information related to how to access independent counselling services.
- 9.7.10 In appropriate circumstances, advise the complainant of their right to refer the matter to the South African Police Services (SAPS) and obtain further legal advice outside of Capitec.
- 9.7.11 Advise the complainant that Capitec may be duty bound to follow the formal procedure even though the complainant does not wish to do so.

## **9.8 Informal procedure**

- 9.8.1 It may be sufficient for the employee/complainant concerned to have an opportunity where they can explain to the alleged perpetrator of harassment that the behaviour in question is not welcome that it offends them or makes them feel uncomfortable, and that it interferes with their work, business, or social interactions. The employee/complainant may choose to do this in one of the following ways, namely:
  - 9.8.1.1 By approaching the alleged perpetrator on their own.
  - 9.8.1.2 By requesting the relevant Capitec Anti-harassment Officer to accompany them when approaching the alleged perpetrator.
  - 9.8.1.3 By requesting the relevant Capitec Anti-harassment Officer to approach the alleged perpetrator on an anonymous basis.
  - 9.8.1.4 HR must record the date, time and place of all incidents of alleged harassment, record detailed notes and maintain records of all informal steps taken and the outcome thereof in writing.

## **9.9 Formal Procedure**

- 9.9.1 If the informal approach has not provided a satisfactory outcome for the employee/complainant, and/or if the conduct continues, and/or Capitec is of the view that a formal procedure is warranted and is more appropriate, Capitec shall proceed with formal disciplinary action in terms of its Disciplinary Code.
- 9.9.2 The formal disciplinary process must be preceded by an investigation which must be finalised within a reasonable time from the submission of the appropriate complaint forms alternatively the grievance form.
- 9.9.3 All persons involved in the investigation process must ensure that the confidentiality of the complainant is maintained as per section 12 and that the position of other parties is not prejudiced if the complaint is found to be unjustified.
- 9.9.4 The formal disciplinary process should be completed within a reasonable period after the finalisation of the investigation. Capitec will decide on the appropriate disciplinary process to follow having taken into regard to the sensitivity of the matter from the perspective of the complainant.

## **9.10 Dispute Resolution**

- 9.10.1 Any party to a dispute concerning sexual harassment may refer the dispute in writing to the CCMA within 6 months after the act or omission that allegedly constitutes unfair discrimination (other than an unfair dismissal dispute which must be referred sooner).
- 9.10.2 Should the dispute remain unresolved after conciliation, either party may refer the dispute to arbitration or the Labour Court or the CCMA for arbitration (as applicable) as provided for in section 10 of the EEA.

## **9.11 Procedure for Non-employees**

- 9.11.1 Capitec must ensure that all job applicants and job seekers and all other third parties having dealings with Capitec are not subjected to harassment of any nature by its employees.
- 9.11.2 Where a person who is not an employee, including job seekers and job applicants, makes an allegation of harassment against an employee or independent contractor providing services to Capitec, the procedures detailed in 9.8 and 9.9 above will apply, as the case may be.
- 9.11.3 Capitec, in its sole discretion, will determine the appropriate action to be taken against non-employees who perpetuate harassment within its workplace and/or against its employees.
- 9.11.4 Capitec reserves the right to refuse access to its premises by any person who is not an employee against whom a complaint of harassment has been substantiated. HR, at the request of the aggrieved employee, shall write to the alleged perpetrator setting out the employee's legal rights in respect of the unacceptable conduct and must take steps to instruct the perpetrator not to repeat the conduct and thereby aggravate the current situation.

## **10. Disciplinary sanctions**

- 10.1 Employees who are found guilty of harassment shall be disciplined in accordance with the Disciplinary Code.
- 10.2 The sanction imposed on the perpetrator of confirmed harassment will depend on the nature and severity of the harassment, considering the applicable and relevant factors.
- 10.3 All employees are to act in good faith and in the best interests of Capitec in the interpretation and application of this policy. Any form of abuse of the conditions addressed in this policy, self-enrichment, or prejudice towards Capitec, will be regarded as serious misconduct and shall be dealt with in accordance with the Disciplinary Code.
- 10.4 Disciplinary steps will be taken against any employee who victimises or retaliates against an employee/ complainant who, in good faith, lodges a complaint of harassment or any employee who is in breach of this policy.
- 10.5 In addition, failure to disclose a prior record or history of harassment to a member of HR constitutes a form of misconduct and employees who fail to do so will be disciplined in accordance with the Disciplinary Code.

## 11. Criminal charges and / or civil claims

A complainant of harassment has the right to press separate criminal charges and/or institute civil claims against the alleged perpetrator if they so wish. A complainant must be advised that they have a right to seek a protection order under the Protection from Harassment Act 17 of 2011, as amended. The legal rights of the complainant are in no way limited by this policy.

## 12. Confidentiality

- 12.1 Capitec must ensure that all complaints pertaining to harassment are investigated and handled in a manner that protects the identities and confidentiality of the persons involved.
- 12.2 Where the complaint of harassment results in disciplinary action being taken against an employee, then management of Capitec, other employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary process.
- 12.3 Communication about the complaint will be limited to persons to whom disclosure is necessary, consistent with their official position and responsibilities, and the need to prepare for any proceedings.
- 12.4 Neither the complainant nor the perpetrator's name may be publicised or disclosed prior to and during the investigation or during and after a formal disciplinary process, save to the extent required to perform the investigation or disciplinary process.
- 12.5 Notwithstanding section 12.4 above, where an employee is dismissed for harassment, Capitec reserves the right to disclose the nature of the reason for dismissal when approached by the employee's new or potential employer.
- 12.6 Only information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this policy should be disclosed to relevant parties or to their representatives.

## 13. Training and awareness

- 13.1 This policy will be made available to all employees via the company intranet and HR will take steps to communicate the contents of this policy to all employees, contractors, clients and persons having dealings with Capitec.
- 13.2 All employees are required to complete the online Harassment Training module on Capitec's learning management system by no later than a date prescribed by Capitec.

## 14. Support measures

- 14.1 Where appropriate, Capitec may implement the following support measures for employees who are found to be complainants of harassment:
  - 14.1.1 Crisis/ trauma counselling.
  - 14.1.2 Emergency medical services, para-legal advice, and other relevant services.
  - 14.1.3 In instances of serious harassment and where an employee has exhausted their sick leave, Capitec must provide the employee with additional days paid sick leave in order for the employee to recover from the incident (s) of harassment.
  - 14.1.4 If an employee who has suffered harassment is ill for a period longer than 2 weeks, an employee may be entitled to claim an illness benefit in terms of section 20 of the unemployment insurance act 63 of 2001, as amended.

## 15. Review of this policy

- 15.1 Capitec reserves the right to amend, delete or replace any of the rules, policies or procedures contained herein, in its sole discretion.
- 15.2 If Capitec elects to deviate from any specific rule, policy or procedure, such deviation shall bind Capitec in respect of that instance only and shall not create a right or expectation that Capitec shall in future also be obliged to repeat such deviation.



No latitude, extension of time or other indulgence which may be given or allowed by Capitec to any employee in respect of the performance of any obligation in this policy, and no delay in the enforcement of any right arising from these rules, policies or procedures, should be construed as implied consent or election by Capitec or operate as a waiver or affect any of its rights in terms of these rules, policies or procedure or prevent it from enforcing the provisions of this policy. Failure or delay on the part of Capitec in exercising any right or power under these rules, policies or procedures will not constitute a waiver

## 16. Addendum A: Forms of harrassment

Form	Examples
<b>Physical harassment</b>	Physical attacks and violence
	Simulations of an attack or violence
	Threats
	Gestures - raising a fist, throwing objects
<b>Verbal bullying</b>	Threat
	Shaming
	Hostile teasing
	Insults
	Constant negative judgment
	Constant adverse criticism
	Racist, sexist or LGBTQIA+ phobic language
<b>Psychological abuse</b>	Emotional abuse
	Behaviour having serious negative consequences for the complainant
<b>Covert harassment</b>	Negative gossiping or joking at a person's expense
	Sarcasm
	Condescending eye contact, eye rolling, facial expressions, or gestures
	Mimicking or ridicule
	Deliberately causing embarrassment or insecurity
	Adverse treatment / marginalisation

Form	Examples
	Social exclusion and professional isolation
	Deliberately sabotaging a person's happiness, dignity, well-being, success, and career performance
<b>Mobbing</b>	Harassment by a group of persons targeted at one or more individuals
<b>Online harassment</b>	Harassment committed, assisted, or aggravated in part or fully using communications technology including social media platforms
<b>Bullying</b>	The abuse of coercive power by an individual or group of individuals in the workplace
	Bullying may involve aggressive behaviour in which someone repeatedly threatens to or actually causes another person injury or harm
	When bullying is conducted online on emails, instant messaging platforms, or on social media it is referred to as cyber-bullying
<b>Intimidation</b>	Intentional behaviour that would cause a person of ordinary sensibilities to fear injury or harm
<b>Other conduct that may constitute harassment</b>	Slandering or maligning an employee or spreading rumours about them
	Conduct which humiliates, insults, or demeans an employee
	Withholding work related information or supplying incorrect information
	Sabotaging or impeding the performance of work
	Demotion without justification
	Ostracising, boycotting or excluding the employee from work or work-related activities
<b>Racial, ethnic, or social origin harassment</b>	Racist language and racist jokes, cartoons or memes including communication that may amount to hate speech
	Racially offensive written or visual material, including online material

Form	Examples
	Offensive behaviour in the form of open hostility to persons of specific racial or ethnic groups
	Subtle or blatant forms of exclusion from workplace interaction and activities and other forms of marginalisation
	Threatening behaviour, which intimidates a person or creates a hostile working environment
<b>Sexual harassment</b>	
<b>Physical</b>	<ul style="list-style-type: none"> <li>• All unwanted physical contact, ranging from touching and kissing to sexual assault and rape as the extreme</li> <li>• Any physical conduct of a sexual nature</li> <li>• Following, watching, pursuing, or accosting of an employee</li> </ul>
<b>Verbal</b>	<ul style="list-style-type: none"> <li>• Unwelcome innuendoes, suggestions, and hints</li> <li>• Sexual advances and unwelcome attention</li> <li>• Comments, suggestions, and messages with sexual overtones</li> <li>• Sex-related jokes or insults</li> <li>• Implied or express threats of reprisal or actual reprisal to comply with sexually orientated requests, advances, attention or proposals</li> <li>• Unwelcome graphic comments about a person's body made in their presence or directed toward them</li> <li>• Unwelcome and inappropriate enquires about a person's sex life</li> <li>• Unwelcome whistling directed at a person or group of persons</li> </ul>
<b>Non-verbal</b>	<ul style="list-style-type: none"> <li>• Unwelcome gestures</li> <li>• Indecent exposure</li> <li>• Unwelcome display of sexually explicit pictures and objects, including pornography downloaded off the Internet. This is known as creating a hostile environment</li> </ul>
<b>Quid pro quo</b>	Occurs where an owner, employer, supervisor, member of management or co-employee, undertakes or attempts to influence or influences the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of an employee or job applicant, in exchange for sexual favours