

Sexual Harassment and Sexual Assault Policy

CONTENT WARNING: Please note that the content of this policy deals with sexual violence and abuse.

Policy Statement

1. Equal Education (EE) aims to be a safe and welcoming space for all who work in it. Affirmed by the values listed in Section 6 of our Constitution, our culture is based on mutual respect, collaboration, equality, and justice.¹
2. EE recognises that sexual harassment is a pervasive problem within the workplace. EE also notes that sometimes people experience conduct that is sexual assault. Any form of harassment (including, but not limited to, sexual harassment) and/or sexual assault is unacceptable and therefore EE adopts a zero tolerance approach to dealing with harassment.
3. Sexual harassment and sexual assault are extreme violations of EE's values as they are abusive, offensive, degrading, threatening and coercive, oppressive, violent, and an abuse of power.
4. EE's harassment, sexual harassment, and sexual assault policy aims to protect staff in our organisation from unwanted behaviour and give them guidelines to report incidents. In fulfilment of EE's duty to create a safe and welcoming work environment, EE will rigorously investigate all allegations of sexual harassment and sexual assault, even when an initial complainant is not yet identified.
5. All complaints of harassment, sexual harassment and/or sexual assault will be taken seriously and treated with respect and in confidence. No one will be victimised for making a complaint.
6. The policy covers conduct that takes place within EE premises or outside, including at youth groups, seminars, social events - including private social events at which staff are present, work trips, training sessions or conferences.
7. This policy should be read, where necessary, with EE's Safeguarding Policy. Furthermore and noting the ever evolving manner and environment that EE staff work

¹ Constitution of Equal Education, 2018. Link: equaleducation.org.za/wp-content/uploads/2019/05/EE-Constitution-2018-Congress-amendments.pdf

and communicate, behaviour of a sexual nature, not yet expressly covered by this policy, should be assessed according to the spirit and intent of this policy. It should be further expected that this policy will need to evolve over time and be updated as EE's understanding of sexual harassment and sexual assault changes. EE's management and Human Resources Subcommittee must be proactive in ensuring this happens.

Definitions

8. **Allegation** - an assertion of facts that one intends to prove through an investigation, hearing or trial.
9. **Anonymity** - when one is anonymous, not identified by name; or of unknown name.
10. **Confidentiality** - keeping known information private and/or secret
11. **Bystander** - a person who is present at an event or incident but does not take part. A person who witnesses sexual harassment and/or sexual assault.
12. **Consent** - When someone unambiguously and voluntarily agrees to do something without coercion, and fully understanding the consequences of their decision.
 - 12.1 In any instance of sexual activity, it is the responsibility of both parties to ascertain whether the other person consents freely and without coercion.
 - 12.2 Consent to one type or instance of sexual activity does not imply consent to other types or instances of sexual activity;
 - 12.3 Silence does not imply consent;
 - 12.4 Relenting and submitting do not equate to consent;
 - 12.5 A previous or present consensual sexual or other relationship between the parties does not imply future consent;
 - 12.6 Consent is not implicit in a person's manner of dress;
 - 12.7 Accepting a social invitation is not consent nor does it imply consent;
 - 12.8 Consent will not be effective when it is obtained from a person whose capacity to consent is diminished because they are asleep, unconscious or in an altered

state of consciousness resulting from the use of alcohol, medicines or drugs to the extent that it adversely affects their judgement;

13. **Complaint** - a specific formally or informally reported grievance of anyone who has been negatively affected by the actions of an individual or group, whose actions constitute sexual harassment or sexual assault as defined in this policy.
14. **Complainant** - the person making a complaint. Unless otherwise specified in the policy, complainant refers to a direct complainant.
15. **Perpetrator** - refers to a person who after an investigation and hearing has been found to have committed harassment in terms of this policy.
16. **Retaliation** - refers to staff member attempting to punish or enact a consequence on another staff member who in faith reported sexual harassment or sexual assault.
17. **Sexual violation** - any form of non-consensual, physical sexual advance
18. **Unwelcome** - conduct for which no consent is present.
19. **Victimisation** - refers to a perpetrator of sexual harassment or sexual assault attempting to harm/punish/enact consequences on a person who rejected their unwanted advances/conduct.

Harassment

20. "Harassment" is conduct perpetrated by an individual against another of any nature that is unwanted or is not consented to.² The non-consensual/unwanted nature of harassment distinguishes it from behaviour that is welcome and mutual. Behaviour becomes harassment if:

² Repetitive requests for compliance with work tasks will not be considered as harassment, unless they are found to be unreasonable. This can be established by assessing whether a reasonable person would also request compliance with work tasks in a similar manner. Factors to consider are the KPAs/job requirements of the individuals in question, frequency of requests, the time given to respond to the requests, and the quality of responses to the requests. If the requests for work compliance are found to be unreasonable, the conduct may then be considered as potential harassment. This offense though will be considered outside of this policy.

- 20.1 it is persistent, although a single act of harassment may constitute an offence warranting disciplinary action;³ and/or
- 20.2 the recipient has made it clear that the behaviour is considered offensive and/or unacceptable;⁴ and/or
- 20.3 the perpetrator should have known that the behaviour is regarded as offensive and/or unacceptable.
- 20.3.1 **The management of Equal Education will be held to the highest standard in this regard.** They have a special duty to ensure their behaviour is beyond reproach and should take regular, active steps to be informed about what constitutes acceptable and unacceptable conduct in a progressive workplace. This duty increases for middle and senior management.

Sexual Harassment and Sexual Assault

21. A specific form of harassment is sexual harassment which may fall under the categories of unwelcome physical, verbal, psychological, quid pro quo, victimising or non-verbal conduct. Some examples of sexual harassment are listed in the table below (although this list is by no means exhaustive).
22. For the purposes of this policy, Sexual Assault can be the non-consensual and intentional sexual penetration of another person⁵ and/or the non-consensual and intentional sexual violation of another person.⁶⁷
23. The category under which alleged conduct is classified as per 20 and 27 has no bearing on whether sexual harassment has occurred. Conduct that is classified under a different category cannot be seen as less likely to meet the definition of sexual harassment.

³ Conduct will also be found to meet the standard of "persistent" if conduct covered in 20 is directed at multiple individuals; each experiencing the conduct only once.

⁴ EE recognises that sexual harassment may occur in unequal relationships (i.e. between a member of leadership/management and an employee) and that it may not be possible for the complainant to inform the alleged harasser that their conduct is unwanted. Thus 20.3 must be noted.

⁵ This is the legal definition of Rape in South Africa.

⁶ This is the legal definition of Sexual Assault in South Africa.

⁷ This covers all conduct listed from Section 3 to 7 of the Criminal Law (Sexual Offences And Related Matters) Amendment Act 32 Of 2007. The definition of sexual violation is similarly covered in the act. Please note that kissing a person without consent is a form of sexual assault.

24. Nor shall the severity of the conduct be relevant to the question of whether sexual harassment or sexual assault has taken place. The severity of the conduct is only an aggravating or mitigating circumstance in determining the appropriate sanction.
25. Anyone can be a victim of sexual harassment and/or sexual assault, regardless of their gender identity and of the gender identity of the perpetrator.
26. The fact that a person may have previously consented to romantic or sexual conduct with the perpetrator does not mean that further conduct will be automatically considered welcome/consensual.
27. The following table contains examples of behaviour that could be defined as sexual harassment. This list is not exhaustive and where behaviour or a version of a behaviour is not expressly covered below, the behaviour will be assessed by applying 20 - 26 above.

Form	Examples
Physical	<p>Unwanted physical contact (this includes touching, rubbing up against a person, slapping, squeezing and/or hugging)⁸</p> <p>A strip search.</p> <p>For conduct that amounts to sexual assault or rape see 22 above.</p>
Verbal	<p>Unwelcome innuendos, suggestions and hints.</p> <p>Sexual advances.</p> <p>Unwelcome comments with sexual overtones.</p> <p>Unwelcome sex-related jokes or insults.</p> <p>Unwelcome graphic comments about a person's body made in their presence or directed towards a person.</p> <p>Unwelcome and inappropriate enquiries about a person's sex life.</p> <p>Unwelcome whistling directed at a person or group of persons.⁹</p>

⁸ Conduct of this nature could also be considered under sexual assault should it meet the definition detailed at 22 above.

⁹ Inappropriate and offensive comments made about another person that are sexual in nature will only be considered under this policy should the individual about whom the comments are made hear about the comments and complain. Inappropriate and offensive comments made to a third party without the knowledge of the individual about whom the comments are made are completely unacceptable and will be dealt with under EE's disciplinary code should a grievance about such comments be filed. See for example:

Non-verbal	Unwelcome gestures of an explicit or sexually suggestive nature. Indecent exposure. Unwelcome display of sexually explicit pictures, videos, audio clips, and objects, including pornography downloaded off the Internet.
Psychological Sexual Harassment	Repeated unwanted social invitations for dinner, drinks, outings, movies or other activities; ¹⁰ Offering or expecting sexual favours, implicitly or explicitly; and Requiring/requesting either explicitly or implicitly that a subordinate wear revealing and/or suggestive clothing.
Victimisation	Where a person denies or threatens to deny an employee an employment benefit OR to give the employee less favourable working conditions because they refuse to submit to sexual or romantic advances. In other words, when an employee is victimised, intimidated or punished because they do not submit to such advances. Examples of victimisation or retaliation include, but are not limited to, intimidation, threats, obstruction or contribution to the obstruction of the investigation, and/or related processes and outcomes.
Quid pro quo	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, working conditions, or other benefits of an employee or job applicant, in exchange for sexual favours.

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1. *Behaviour which propagates intolerance, for example: racism, sexism, homophobia, xenophobia and related offences* - first offense: dismissal.
 2. *Insulting or rude or insolent behaviour / language in respect of a co-employee or Manager* - first offense: final written warning; second offense: dismissal.
 3. *Grossly Insulting or grossly rude or abusive behaviour / language in respect of a co-employee or Manager* - first offense: dismissal.

¹⁰ A single request that causes excess discomfort or is perceived to be overtly pressurising either in the nature of the request or due to the relative positionality of the staff members involved, may meet the standard of psychological sexual harassment.

Note On Determining If Conduct is Sexual Harassment and/or Sexual Assault

28. Conduct as described in the table above and that which meets the requirements for harassment set out in 20-27 will be considered sexual harassment and/or sexual assault. The table of offenses has been developed from the *Code of Good Practice on Sexual Harassment*. **Any internal or external inquiry into whether conduct meets the standard of sexual harassment must be guided by 20-27.**

A Complainant-Centred Approach

29. EE believes complainants when they come forward to detail experiences of sexual harassment and sexual assault. Further, EE adopts the values of a complainant-centred approach in dealing with sexual harassment and sexual assault. This includes, but is not limited to:
- 29.1 Allowing a complainant to have a staff advocate of their choosing with them at all stages of the complainant, investigation, and/or informal or formal process to act as an emotional support to them and help them understand their options and navigate whichever process they select to follow.¹¹
- 29.2 Listening to the complainant detailing alleged sexual harassment and/or sexual assault and understanding the objectives of their report; being guided substantially by this.
- 29.3 Explaining from the onset to a complainant detailing alleged sexual harassment and/or sexual assault, all steps of the processes that could be followed from investigation, to selection of a formal/informal process, through to both the potential of CCMA and Court challenges, and explaining where their identity may be required to be revealed as per South African law. This allows for informed decision-making by the complainant.

¹¹ It is possible that all staff will be trained as Staff Advocates. If this does not take place it is also acceptable for a staff member to prefer the emotional support of a staff member who is not a trained Staff Advocate and to have that individual support them.

- 29.4 Guaranteeing that the complainant is not punished - by the accused staff member / perpetrator or by individuals associated with the accused staff member / perpetrator - for reporting sexual harassment and/or assault.
- 29.5 Investigating the complaint, and amassing any available evidence thoroughly before informing the alleged perpetrator of the complaint. Appointing an external investigator as per 29.12 below if required.
- 29.6 Once an initial investigation conducted by an individual appointed as per 34 below has established a basis for the perpetrator to be held accountable for their conduct, being guided by the complainant on whether to follow a formal or informal process (both detailed below), while noting that the severity of conduct may see a request that the complainant consider a formal process.
- 29.7 Maintaining the anonymity of the complainant, prior to their decision to pursue the matter through either the formal or informal approach, only revealing their identity to specified individuals with their consent.
- 29.8 Ensuring the complainant fully understands how confidentiality will work when selecting a formal or informal approach. Explaining that after 27.6 above, and in the case of the selection of an informal approach, that their identity may become known to the perpetrator. Explaining further that after 27.6 above, and in the case of the selection of a formal approach, their identity will become known to the perpetrator. EE will explain in substance when the selection of a process requires the perpetrator to be aware of the complainant's identity; allowing the complainant to change their mind should they not wish to proceed. Once proceedings begin, EE will ensure that all parties treat the proceedings with agreed upon confidentiality.
- 29.9 Consulting with the complainant and determining what information regarding the incident can be shared with staff, media, partner organisations, and donors before any information is shared.¹²
- 29.10 Providing regular updates to the complainant as the process unfolds.
- 29.11 Providing (paid) counselling to the complainant.

¹² This pertains to incidents, which in rare situations may require public communication.

- 29.12 Adapting disciplinary / restorative processes, as necessary, to be primarily responsive to the specific needs of the complainant but which still remain procedurally fair to all parties. This could include in-camera testimony for example.
- 29.13 If necessary - for example, if the accused person is a senior leader of EE - appointing either an external investigator and/or inquiry panel to investigate and/or adjudicate on the veracity of the complaint. Any appointed external party must be sufficiently apprised of EE's Sexual Harassment policy, South African law, sensitive to the dynamics and conditions under which sexual harassment and sexual assault occurs, and forms which it takes.

Processes followed on report of sexual harassment and/or sexual assault

30. As per 29 above, it is reiterated that, EE's approach to dealing with sexual harassment and/or sexual assault is premised on the belief in, and the protection of, the individual who has reported sexual harassment and/or sexual assault. In short, EE follows a complainant-centred approach in handling cases of sexual harassment and/or sexual assault.
31. A person who experiences or witnesses sexual harassment and/or sexual assault at EE, can report this conduct to the complainant's or accused person's manager or any manager, the HR Officer, the Deputy General Secretary, the National Council Chairperson, or the organisation's anonymous external third party whistleblowing service. If a manager is the accused person, the employee may lay a complaint with the General Secretary or the Chairperson.
32. When a designated person - as described in 31 above - receives a complaint of sexual harassment and/or sexual assault, they will, in line with the values stated in 29, and in conjunction with EE Senior Management and/or Leadership appoint an appropriately skilled staff member/manager/member of leadership/external investigator to document and preliminarily investigate the complaint. The appointed person will:¹³
- 32.1 ascertain the preliminary views of the complainant as to the outcome they want, understanding that this may change;

¹³ These items may be determined in multiple, initial engagements, over a period of time.

- 32.2 ensure that the complainant understands EE's procedures for dealing with the complaint;
 - 32.3 record the dates, times and facts of the incident(s). This includes speaking to any corroborating witnesses and conducting a preliminary investigation of the complaint;
 - 32.4 establish whether the complainant wishes to maintain anonymity and if so to what extent, while explaining under what circumstances their identity may need to be known to the perpetrator or other parties;
 - 32.5 discuss and agree on the next steps: following either informal or formal complaint, on the understanding that choosing to resolve the matter informally does not preclude the complainant from pursuing a formal complaint if they are not satisfied with the outcome;
 - 32.6 keep a confidential record of all discussions;
 - 32.7 while explaining all choices, respecting the choice of the complainant;
 - 32.8 if relevant ensure that the complainant knows that they can lodge a criminal complaint with the support of EE.
 - 32.9 Regardless of next steps, ensure a file of all correspondence, documents, discussions, decisions made and any other relevant documentation is maintained, thereafter being filed with the Human Resources Department.
 - 32.10 A designated person may not discourage the laying of a complaint or later encourage the dropping of a complaint.
33. All allegations of sexual harassment and/or sexual assault must be investigated with reasonable and appropriate haste with no undue delays. This is for the benefit of both the complainant and the accused person.
34. During the course of the investigation and inquiry process EE may, after consultation with the complainant and with their consent:
- 34.1 change their place of work within the organisation;

- 34.2 change their reporting lines within the organisation.
35. And in respect of the accused person:
- 35.1 After giving the accused person the right to explain why they shouldn't be suspended, place them on suspension with pay, pending the outcome of a disciplinary hearing; providing them with a written explanation as to why they are being suspended.
36. EE notes that there may be occasions where a complainant may be unwilling to lay a formal charge nor participate in an informal or formal process. In such circumstances, EE will investigate the matter fully as per 34 above and will investigate the viability of pursuing either an informal or formal approach of dealing with the complaint - proceeding thereafter if viable - in order to ensure a workplace free from sexual harassment and the protection of its staff members.

Informal / Formal Approaches

37. EE has two processes to deal with incidents of sexual harassment and/or sexual assault. These are the formal and the informal process. Broadly, the informal approach is premised on restorative justice principles, while the formal approach inevitably results in a disciplinary hearing.
38. A complainant may select between a formal and an informal process after EE's management team has determined that the allegations are proved true on a balance of probabilities; giving appropriate weight to the complainant's version.
39. After selecting an approach, the complainant's identity may become known to the accused person during the informal approach and will become known to the accused person in the formal approach. Prior to the identity of a complainant becoming known, EE commits to both describing the process in detail and explaining to the complainant their rights during proceedings; thus allowing them to make an informed decision as to whether to proceed.

Informal Approach

40. After laying a complaint of sexual harassment or sexual assault, and after an initial investigation, the complainant may elect to follow the informal process.

41. In such an event, Management must ensure that the allegations are proved true on a balance of probabilities while giving appropriate weight to the testimony of the complainant.
42. The complainant will have the ability to request a change from the informal approach to the formal approach up until the informal approach is concluded as per 44.6 below. Once the informal approach is concluded, a formal approach is no longer an option.
43. In rare situations, where conduct is severe or is perpetrated by a senior leader of EE or is a recurrence of previous sexual harassment and/or sexual assault by the same perpetrator, EE's management may actively request the complainant consider a formal approach despite the complainant's initial request for an informal process. In doing so, EE's management must be mindful that this will likely involve the complainant being required to give formal evidence in a hearing. Any such conversation must take place sensitively, with the complainant being given thorough information - which enables them to understand their rights - with no undue or excessive pressure placed on the complainant to act in any particular manner.
44. The following process is recommended to be undertaken in an informal process:¹⁴
 - 44.1 A first report as per 32 must be provided to the complainant confirming the findings of the initial investigation, explaining the options of the formal and informal process, and their rights throughout either process.¹⁵ The accused staff member must also be provided with this report.
 - 44.2 An initial, mediated engagement should be held between complainant and accused staff member. If necessary, an external mediator will be sought. In this meeting, the complainant must be allowed to inform the accused staff member of how their conduct made them feel and what their hopes for the informal process are. The accused staff member will be allowed to address the complainant who will have the protection of the meeting mediator.¹⁶

¹⁴ This is a guideline and can be adapted to meet the needs of the complainant and/or accused staff member. The spirit of this recommended process should, however, be reflected in any process ultimately used and 44.6 must form part of **every** informal process (noting the footnote attached to this clause).

¹⁵ See 29.

¹⁶ Any external mediator must be provided with a copy of this policy before undertaking mediation. Their mediation must be in line with the values of this policy.

- 44.3 Counselling to assist the accused staff member in rectifying their behaviour should be provided at the organisation's expense. The organisation is also responsible for ensuring the accused staff member attends counselling. Counselling must also be provided to the complainant throughout the process if required.
- 44.4 Weekly check-in meetings should be held between the accused staff member and their direct manager to assess how counselling and/or any other agreed upon corrective action is progressing.
- 44.5 A final mediated conversation between accused staff member and complainant must be held where the accused staff member is able to explain what they have learnt, any reflections they have on their initial conduct, reiterate/make an apology for their conduct.
- 44.6 After the final engagement, if the complainant is satisfied with the outcome of the process, a final written warning will be issued to the accused staff member and a final report documenting the entire process given to both accused staff member and complainant.¹⁷ If the complainant is expressly satisfied with the process and final report, the matter will be considered formally concluded. This will be noted by EE's Human Resource Department. At this point, a formal approach to dealing with the conduct will no longer be an option.

Formal Approach

45. Where a complaint has been lodged, EE will appoint an appropriately experienced manager to investigate the allegations. It may also consider the appointment of an external investigator, sufficiently appraised of EE's Harassment, Sexual Harassment and Sexual Assault Policy and South African law, who is sensitive to the (power)

¹⁷ A final written warning being issued may - depending on the circumstances - require the accused staff member to know the identity of the complainant. A complainant though may request an accused person go through the corrective process envisioned in the informal approach without receiving a final written warning. Regardless of this request, the report compiled at the end of the informal approach will be placed in the accused staff member's employee file. With sexual harassment and sexual assault being a first offense dismissal offense, a reoffending staff member, who has already gone through an informal approach but not received a final written warning due to complainant request, could be held appropriately accountable regardless of a final written warning being on their record or not.

dynamics and conditions under which sexual harassment and/or sexual assault occurs, and the various forms which it can take.

46. The complaint will be dealt with in terms of EE's disciplinary procedure. Where, after receiving the initial complaint and investigating, a decision is made to convene a disciplinary inquiry against the alleged perpetrator, EE's disciplinary procedure, as laid out in its Policies and Procedures must be followed.
47. Any disciplinary process must be mindful of the difficulties of a complainant providing testimony against a perpetrator. Thus, the option of in-camera testimony must be explained to the complainant and provided if necessary. Counselling must be provided to the complainant throughout the process if required.

The Chairperson

48. The individual appointed to chair the inquiry must be sufficiently appraised of EE's Harassment, Sexual Harassment and Sexual Assault Policy, South African law, and be sensitive to the dynamics and conditions under which sexual harassment and/or sexual assault occurs, and forms which it can take.
49. The Chair of the inquiry will be external and independent. This includes being free of any personal or professional connection to the alleged perpetrator.

The Chairperson's Duties

50. Treat all parties with sensitivity and respect, being mindful of the challenging nature of an inquiry into sexual harassment and/or sexual assault.
51. If the charge pertains to sexual harassment, the category under which the conduct falls - as per 27 - has no impact on whether sexual harassment took place or not. Verbal conduct, for example, should not be seen as less likely to be sexual harassment.

The Prosecutor

52. EE will appoint an appropriately skilled staff member/manager/member of leadership to prosecute the matter. The prosecutor must:
 - 52.1 Submit a copy of this policy into evidence.

- 52.2 Take the Chairperson of the hearing through 50 - 51, including the EE definitions for sexual harassment and sexual assault at 20 - 28.
- 52.3 Remind the Chairperson that, as per this policy, the sanction for the first offense of sexual harassment and/or sexual assault is determined by the process listed at 53 below.
- 52.4 If leading the complainant in evidence, making sure they are provided with the opportunity to state what their desired outcome is.

Sentencing

53. If the accused person is found guilty by the Chairperson, the Chairperson may not use the mere form which the conduct took as described in the table at 27 as either aggravating or mitigating circumstances in sentencing, once sexual harassment has found to have taken place. In other words, a Chairperson may not find that a lesser sanction is appropriate merely because the conduct was one form of sexual harassment and/or sexual assault and not another.¹⁸ Rather, in determining the appropriate sanction, the Chairperson is required to:¹⁹
- 53.1 take into account the recommended sanctions at 83 - 84 below,
- 53.2 interrogate the severity, nature and extent of the conduct,
- 53.3 the effect the conduct had on the complainant,
- 53.4 the complainant's desired outcome as expressed in their testimony,
- 53.5 the power held by the perpetrator,
- 53.6 the obligation and/or ability of the perpetrator to understand the wrongfulness of their conduct,
- 53.7 the values of EE as stated in 1 above,

¹⁸ This is to guard against a finding the verbal sexual harassment is less severe than physical sexual harassment and thus warranting of a lesser sanction *just* because it is categorised as verbal. The psychological impact of verbal sexual harassment may in fact be the same as physical sexual harassment in certain situations.

¹⁹ This list is not exhaustive. There may be other factors a chairperson may consider that fall within the spirit and intent of this section.

- 53.8 the nature of the relationship of trust the perpetrator had with both the complainant and EE, and
- 53.9 the ability of the perpetrator to return to EE and function in the workplace.

Resignation

54. Should a staff member accused of sexual harassment and/or sexual assault resign in order to avoid either a formal or informal approach to addressing their conduct; EE will hold the individual to their notice period in order to appropriately address their conduct.
55. Should a complaint be laid against a staff member who has resigned and already left EE, EE will, as per 32 above and within the constraints of the accused former staff member's departure, inform the complainant of their rights, the support available to them, and their options. Further, EE will investigate and document the complaint.
56. The resignation of an accused staff member will have no bearing on the psycho-social support resources a complainant has access to.

Staff Advocates

57. Staff Advocates are trained staff members - appointed if necessary on an annual basis - who provide support and guidance to a complainant. This includes:
- 57.1 Helping a complainant understand their options in laying a complaint and selecting between an informal or formal process. However, a Staff Advocate may not discourage the making of a sexual harassment or a sexual assault complaint/charge. Neither may they encourage dropping a complaint. Staff Advocates must also be cautious that they neither expressly or tacitly pressure a complainant to follow either a formal or an informal approach and must focus instead on what each approach entails while allowing the complainant to make their decision independently.
- 57.2 Explaining to a complainant the counselling services that they can access and working with the Human Resources Department to access these services for a complainant.
- 57.3 Being present with the complainant at different stages of the complainant, investigation, and informal or formal process to act as an emotional support.

58. Making use of a Staff Advocate is completely optional to a complainant.
59. There must be at least two Staff Advocates in the Eastern Cape, Western Cape, and Gauteng Offices. In larger offices, there should be more Staff Advocates to allow a complainant to find a Staff Advocate suitable to them. All staff can also be trained as Staff Advocates. The number of Staff Advocates in each office and how they are appointed will be determined from time to time by the Operations Manager and Human Resources Manager with input from EE's staff. Appointment could happen through election, nomination or by requesting volunteers in an office go through training.
60. The names and contact details of Staff Advocates must be made easily accessible on EE's internal website and in each EE office.
61. Staff Advocates are bound to the confidentiality provisions at 62 - 66 below.

Bystanders

62. EE staff and members are encouraged to not be passive bystanders to potential or actual sexual harassment and sexual assault. EE staff and members are encouraged to:
 - 62.1 Engage a staff member who may be at risk of offending under this policy before the offense takes place to explain the potential risks of their behaviour, allowing them to self-correct.
 - 62.2 Where an offense under this policy is taking place, speaking up and supporting the staff member experiencing the problematic conduct; not being passive in that moment. This can stop the conduct or prevent the conduct in question worsening.
 - 62.3 Providing care and emotional support to a colleague who is in the immediate aftermath of experiencing an offense described in this policy.
 - 62.4 Laying a complaint regarding conduct where appropriate.

Confidentiality

63. In cases of sexual harassment and/or sexual assault, management, employees and all parties concerned must ensure confidentiality throughout the investigation process, during the disciplinary inquiry, and in the aftermath of the matter being resolved.
64. In the initial investigation, the identity of the complainant must be kept strictly confidential by the person within EE's leadership to whom the initial complaint was made, with their identity only being shared within EE with their express consent.
65. If the complainant chooses to pursue the matter through the informal / formal method, only appropriate members of management, the complainant, the accused person, representatives of either party (including Staff Advocates or a staff member supporting a complainant), mediators, counsellors, witnesses and an interpreter, if necessary, will be involved in the process. All are obliged to maintain confidentiality throughout their participation in the processes.
66. Any deviations to this provision can only be undertaken with the consent of the complainant.
67. Failure to maintain confidentiality is considered misconduct; the severity of the breach of confidentiality being relevant to the determination of the appropriate sanction.

Accessibility

68. The process for reporting harassment, sexual harassment and/or sexual assault must be accessible in all offices; being made available in locations where it can be privately and confidentially accessed; ie in the office bathrooms, posted on EE's website etc.

Retaliation

69. It will be considered a serious disciplinary offence to retaliate against an employee or non-employee who has lodged a complaint of sexual harassment and/or sexual assault in good faith. It is also an offence to pressure a complainant to drop a complaint of sexual harassment and/or sexual assault.
70. EE encourages employees who have any knowledge of such conduct to inform an appropriately authorised person within the organisation.

Non-Employees^{20 21}

71. A non-employee who is a complainant of sexual harassment and/or sexual assault by an EE staff member may lodge a complaint with the management of EE, in instances where the conduct has taken place either in the workplace or during the course and scope of the alleged perpetrator's employment with EE. Should the conduct be experienced during the course and scope of the complainant's formal interactions with EE, counselling will be offered.
72. In cases where a non-employee is the alleged perpetrator of the offence of harassment, sexual harassment, and or sexual assault, an EE employee may lodge a grievance with the management of EE, who will in turn, pursue the matter with the alleged perpetrator or with his/her employer. Should the conduct be experienced during the course and scope of the complainant's work at EE, counselling will be provided.
- 72.1 Should the investigation reveal the non-employee to be guilty of the conduct, EE will take steps to remove the non-employee from the EE space. This includes: terminating service provider contracts, ensuring the individual cannot access the EE office or EE events and so on.

Criminal Charges / Protection Order

73. A complainant of sexual harassment and/or sexual assault has the right to press separate criminal and/or civil charges against an alleged perpetrator.
74. A complainant may also apply for a protection order against the perpetrator under the Protection From Harassment Act at the Magistrates Court.
75. The right of the complainant to pursue a matter of sexual harassment or sexual assault through legal channels outside of EE is in no way limited by this policy. EE will assist the complainant in understanding and navigating these processes where possible.

²⁰ An non-employee can include: member, facilitator, taxi-driver, caterer, member of a partner organisation, service provider, member of the public, invited guest and so on. This is not an exhaustive list.

²¹ This section should be read with the Safeguarding Policy

Training²²

76. All staff must receive training on this policy, including what constitutes sexual harassment and/or sexual assault, bystander interventions, and how to report sexual harassment and/or sexual assault. If necessary external training must be arranged.
77. Training should be continuous, be provided to new staff, and to existing staff if either the laws regarding sexual harassment and/or sexual assault change or the norms/practices in handling misconduct of this nature develops.
78. Annual training must be provided to newly appointed Staff Advocates. This training should be compiled and overseen or run by the Operations Manager and Human Resources Manager and:
 - 78.1 Familiarise Staff Advocates with this policy; including but not limited to, what sexual harassment and sexual assault is, how to lay a complainant, how investigations work, and what happens during an informal and formal process.
 - 78.2 Explain what counselling services are available to a complainant and how a complainant can access them.
 - 78.3 Enable Staff Advocates to provide basic emotional support to a complainant seeking their assistance.
79. Additional training to management, including in handling allegations of harassment, sexual harassment, and sexual assault must be provided if necessary.

Monitoring of Sexual Harassment and Sexual Assault at EE

80. EE recognises the importance of monitoring this policy and will ensure that it anonymously collects statistics and data as to how it is used and whether or not it is effective. Those responsible for dealing with sexual harassment and/or sexual assault cases will report on compliance with this policy, including the number of incidents, how they were dealt with, and any recommendations made. This will be done on a yearly basis by the Human Resources Officer and submitted to the Human Resources

²² Training will be overseen and/or run by the Operations Manager and/or Human Resources Manager.

Subcommittee. With this report, the organisation will evaluate the effectiveness of this policy and make any changes needed.

81. The organisation will - appropriately respecting confidentiality - retain all records of allegations and incidents in soft and/or hard copy; including the details of the allegation/incident, the identity of the complainant, (alleged) perpetrator, and how the allegation/incident was resolved.
82. This information is strictly confidential and only accessible by the Human Resource Officer and Senior Management Team. It is a serious offense to intentionally access this information without authorisation or to tamper with this information.
83. External requests for access to this information will be considered by EE's Senior Management Team who must factor in:
 - 83.1 The complainant's orientation to the specific request. Effort must be made to locate the complainant and solicit their opinion on sharing details of the incident with the requesting party. Consideration must be given to the complainant's right to privacy
 - 83.2 The organisation's obligation to reasonably respect the perpetrators' right to privacy.
 - 83.3 If an assessment of 83.1. and 83.2. above result in the organisation being unable to share specific information, management may consider the sharing of general information that does not and/or cannot identify either the complainant or the perpetrator.

Sanctions

84. The first offense for sexual assault is dismissal.
85. The first offense for sexual harassment is dismissal.
86. The first offense for retaliation is dismissal
87. The first offense for intentional breach of agreed upon confidentiality is dismissal.

88. The first offense for accidental breach of agreed upon confidentiality is a final written warning.
89. The first offense for intentionally accessing confidential information related to sexual harassment and or sexual assault without authorisation is dismissal.
90. The first offense for a manager or Staff Advocate encouraging a complainant drop a sexual harassment or sexual assault complaint/charge or discouraging the laying of a sexual harassment or sexual assault complaint is final written warning. Severe versions of this conduct could however lead to dismissal.
91. After a consideration of the factors detailed in 55 above, only compelling aggravating or mitigating circumstances can allow for a sentence that deviates from 84, 85, and 86.