

Harassment and GBV

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Presented by



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DIFFERENCE BETWEEN GBV AND SEXUAL HARASSMENT



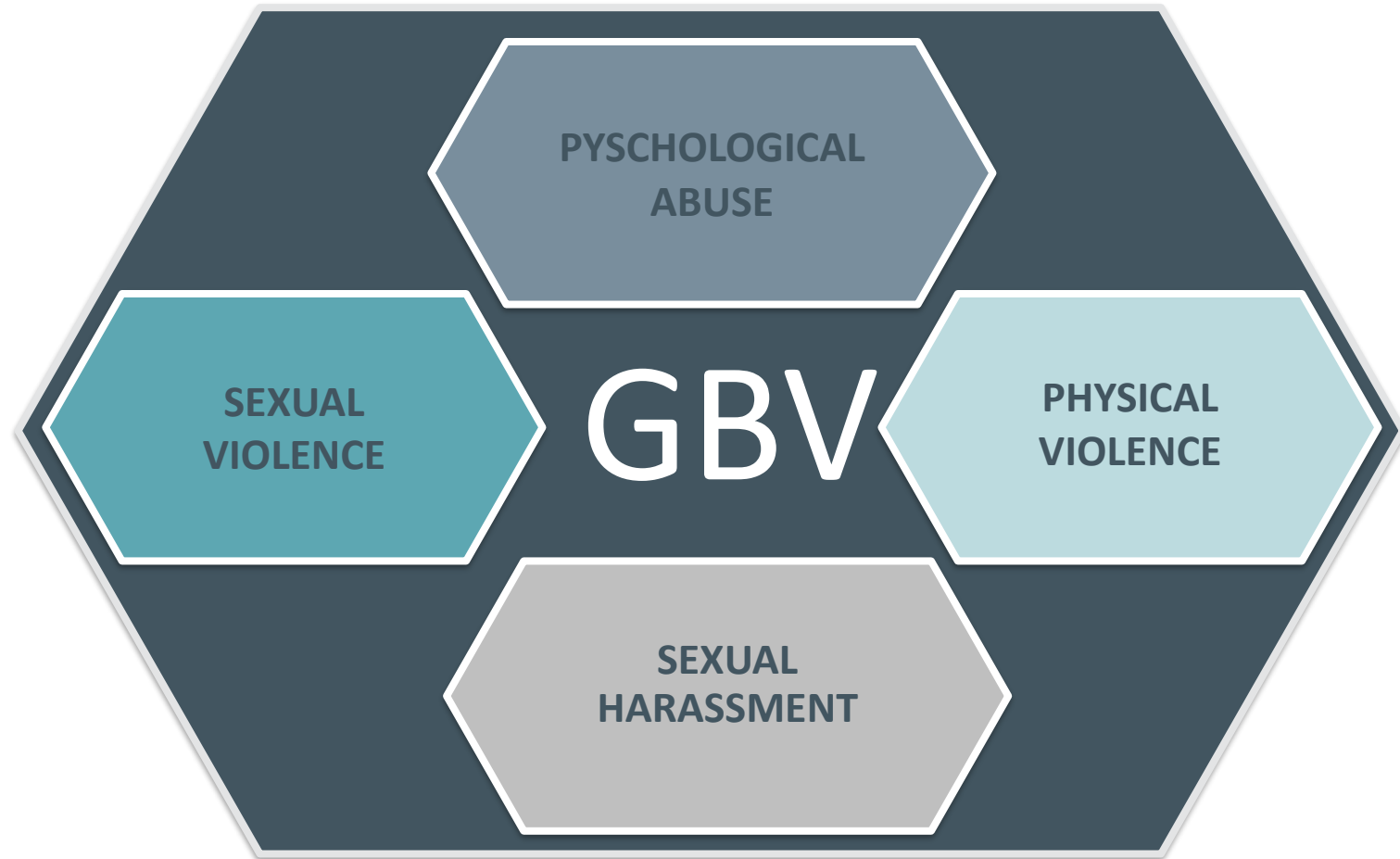
GBV is the umbrella term for any harmful act of violence and discrimination towards a person based on their gender

Sexual harassment is a form of GBV and includes acts involving unwanted sexual conduct. It can be physical, verbal or non-verbal



Not all acts of GBV are sexual harassment





Legal framework

Constitution

Section 9 of the Constitution of the Republic of South Africa, 1996

Employment Equity Act

Section 6 of the Employment Equity Act, 55 of 1998

Code of Good Practice

Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace

ILO Convention C190

C190 - Violence and Harassment Convention, 2019 (No. 190)

PEPUDA

Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000



Legislative framework

1

Overarching obligations towards health and safety in the mining industry
MHSA

2

Employers must ensure that mines are operated in a way that employees can perform their work without endangering the health and safety of themselves or any other person

3

“health” defined with reference to occupational health and diseases. This is generally informed by diseases covered by ODIMWA and COIDA, which in turn rely on a link between the work and the hazard. However, increasing move towards accepting endemic nature of GBVH in SA mines and that this is a foreseeable harm in the workplace. Increasing acknowledgment of impact of this conduct on mental health of employees.

4

“Safety” defined as safety at mines. This is broad. Similar considerations relating to connection to undertakings of employer but the foreseeability of the harm increases the duty of care on the employer.



Legislative framework



1

Overarching obligations towards health and safety in the mining industry
Code of practice on Management of GBVF, Safety and Security Challenges in the SA Mining industry

2

Acknowledges that GBVF is a profound and widespread problem in SA.

3

MHSC research and study in 2013 found that violence and sexual harassment is a recurrent problem for and a threat to the health, safety and security of female worker in the SA mining industry. Policies and procedures for management of violence and sexual harassment were either non-existent or obsolete and ineffective. Physical violence and sexual harassment at work, particularly at a mine, should be recognised as a serious prevalent problem requiring specific regulatory interventions.

4

Warrants implementation of robust, multi-faceted preventative measures at primary, secondary and tertiary levels of intervention.

5

Prevention strategies should include a combination of workplace policies and procedures based on a sound legislative, regulatory and enforcement framework.



Legislative framework

1

Overarching obligations towards health and safety in the mining industry

2

International labour organisation conventions

- **ILO Convention No. 190 - Violence and Harassment Convention (2019)**
 - Adopted in June 2019, ILO Convention No. 190 (C190) is the first international treaty to recognize the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment
 - With 50 ratifications in six years, Convention 190 on eliminating violence and harassment in the world of work is the fastest ratified ILO convention of the past decade. The Convention focuses specifically on preventing violence and harassment in the world of work and was the first international law of its kind
 - Ratified by SA on 29 November 2021 and in force from 29 November 2022.



Legislative framework



1

ESG considerations

3

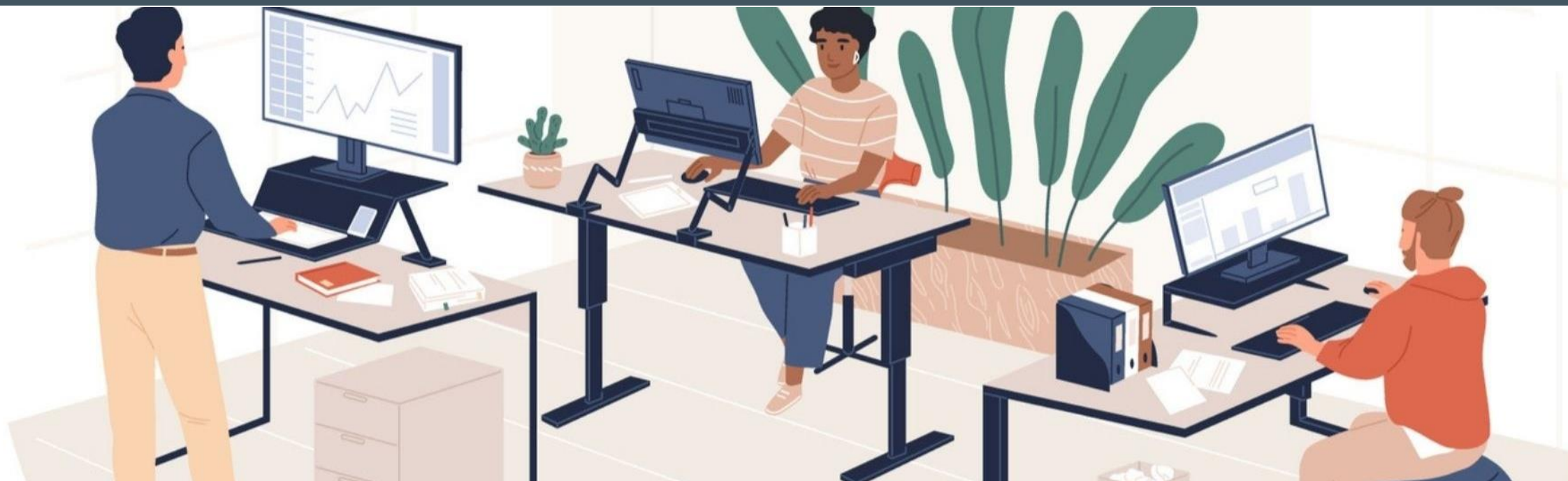
Initiative for Responsible Mining Assurance Standard for Responsible Mining

- Workplace Violence Prevention
- Grievance Mechanisms
- Security Arrangements

2

- **UN Sustainable Development Goals**

- **SDG 5: Gender Equality:** SDG 5 calls for an end to all forms of discrimination and violence against women and girls, and for their full and effective participation and equal opportunities for leadership in political, economic, and public life. For mining companies specifically, companies must address vulnerability and gender-based violence in the community or workplace and take steps to recruit and retain female employees and make the workplace a safe place for women
- **SDG 16: Peace, Justice, and Strong Institutions:** SDG 16 advocates for a reduction of violence in all forms, including human trafficking and violence against children and promotes inclusive institutions



CASE STUDIES

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“IN DETENTION”

by Chris Van Wyk

He fell from the ninth floor
He hanged himself
He slipped on a piece of soap while washing
He hanged himself
He slipped on a piece of soap while washing
He fell from the ninth floor
He hanged himself while washing
He slipped from the ninth floor
He hung from the ninth floor
He slipped on the ninth floor while washing
He fell from a piece of soap while slipping
He hung from the ninth floor
He washed from the ninth floor while slipping
He hung from a piece of soap while washing.

Case Study

Mtsewu and Anglo American Platinum (Dishaba Mine) (2025) 46 ILJ 441 (CCMA)

KEY QUESTION

Can an employer discipline an employee for acts of GBV that occur outside of the workplace and whilst there are still pending criminal proceedings?

Yes

- Victim of GBV and the perpetrator were in a romantic relationship, and worked together. Perpetrator assaulted victim until her death whilst at the victim's home.
- CCMA found that employers have a legitimate interest in such matters, especially where both the perpetrator and victim are employees – despite the incident occurring outside of work hours
- Being criminally charged does NOT preclude the employee from also facing disciplinary action
- Dismissal was an appropriate sanction.

Note: Perpetrator is currently on trial for the murder of the victim.

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Case Study

Moatshe v Legend Golf and Safari Resort Operations (Pty) Ltd [2014] 12 BLLR 1213 (LC)

KEY QUESTION

Does rape that occurs during working hours constitute sexual harassment?

Yes

- The employee was raped and assaulted by her line manager during working hours, at the workplace.
- The Labour Court found that the conduct constituted sexual harassment of the worst kind, which was prohibited.
- Perpetrator was ultimately charged and convicted of murder and attempted murder.

Case Study

McGregor v Public Health and Social Development Sectoral Bargaining Council and others [2021] 9 BLLR 861 (CC)

Sexual harassment intersects with gender and power – remarks by the Constitutional Court

- Sexual harassment strips away at the core of a person's dignity and is the antithesis of substantive equality in the workplace.
- Sexual harassment promotes a culture of GBV that dictates the lived experiences of women and men within public and private spaces and across personal and professional latitudes.
- Sexual harassment is concerned with the exercise of power and in the main reflects the power relations that exist both in society generally and specifically within a particular workplace“.
- Sexual harassment occurs at the intersection of gender and power, producing a potent stench of subordination, disempowerment and inequality that seeps through the fabric of our society that it stains its core.

KEY TAKEAWAYS

1

Deal with GBV as a workplace issue
(even if it occurs outside of the workplace)

2

Take action against perpetrators
of GBV

3

Provide assistance to victims of GBV within their
workplaces

4

Ensure the safety of its workplace by dealing with GBV
as a form of misconduct





Practical considerations: MHSA aspects

Zero Tolerance Approach

- Adopt zero tolerance commitment to GBV and harassment
- Develop defined plans for elimination and prevention
- Report annually to MHSI on progress and implementation

Policy Development & Implementation

- Develop comprehensive GBVF policies addressing sexual harassment, gender discrimination, emotional abuse, bullying, and physical abuse
- Display sexual harassment policies on notice boards
- Include GBVF and sexual harassment as standing items in induction programmes
- Provide training to strengthen prevention programmes and gender mainstreaming for managers

Physical Safety Measures

- Provide properly illuminated, lockable ablution facilities
- Install gender-specific change rooms for women in mining (WIM) in all working areas
- Implement buddy system and mobile radio communication for enhanced security
- Install security cameras and monitoring systems



Practical considerations: MHSA aspects

Reporting & Response Systems

- Establish accessible, confidential on-site reporting systems with anonymity provisions
- Ensure immediate separation of victims from perpetrators
- Provide referrals to employee health and wellness programs
- Designate dedicated personnel for GBVF matters
- Establish gender monitoring and evaluation committees

Victim Support Systems

- Implement survivor-focused response and care programmes
- Provide employee assistance programmes and counselling
- Collaborate with criminal justice system for victim access
- Offer referrals to external support services and shelters
- Extend support to employees who leave due to GBVF encounters



Practical considerations: MHSA aspects

Incident Response Protocol

When GBV/harassment occurs, ensure:

- When GBV/harassment occurs, ensure:
- Immediate separation and safety measures
- Victim support and referrals
- Proper investigation with anonymity options
- External collaboration (SAPS, NPA, counselling)
- Address root causes in workplace
- Data recording and tracking
- Appropriate disciplinary action

Reporting harassment and GBV

- 1 Complaints should be reported to the relevant ER or HR Department where the EE is stationed
- 2 However, a complaint can be made to any ER/HR Manager, or Head of Department with whom the Victim feels comfortable
- 3 It is difficult to address anonymous complaints
- 4 Perpetrator may be suspended during investigation
- 5 If a victim is unable/uncomfortable lodging a complaint on their own, they may ask another person to lodge the complaint on their behalf
- 6 Any person who receives a report has an obligation to invoke a procedure
- 7 EEs who receive a report of harassment or GBV should escalate it to the relevant HR Manager ASAP & thereafter keep the disclosure confidential
- 8 Where an EE has been a victim of harassment or GBV by a non-EE, the EE must still report this to the Company
- 9 A non-EE may report a complaint to the relevant HR Manager, where the harassment or GBV took place in the workplace or in the course of the non-EE's association with the Company

Investigating reports of harassment and GBV



No undue delay between receiving a complaint & commencing an investigation



HR appoints investigator to conduct a fair & unbiased investigation



Investigation to be conducted in a confidential manner

Collects evidence by interviewing **witnesses**, reviewing **documents**, or conducting an **inspection** *in loco*

2

1

Interviews with the complainant first and then the alleged perpetrator. It is important that all the parties are consulted, and statements are taken

3

investigator will assess if there *is prima facie* evidence of harassment or GBV and prepare a **report**, **recommendation** or **outcome** for the employer

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Informal Procedures



Speak with perpetrator
(either on an anonymous
basis or otherwise)



Facilitated mediation



Training in respect of
appropriate behaviour



Apology



INFORMAL EXAMPLES

- A victim may choose to follow either the **informal** or **formal** procedure to deal with an allegation of harassment
- The victim must be satisfied that the complaint has been dealt with in a satisfactory manner
 - If not satisfied, may proceed with a formal approach

Formal procedures

FORMAL PROCEDURE



Must be followed where victim elects same or if the ER deems it appropriate



If victim does **not** elect, ER may proceed having regard to the **severity** of harassment or GBV and if the perpetrator has a **history** of harassment or GBV



If there is a significant **risk of harm** to other persons in the Workplace



Victim to lodge a formal complaint **in writing** with the HR Manager's assistance. The Victim should include the **desired outcome**.



Thank You - Q&A

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