

LAWLERT!

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The Protection from Harassment Act 17 of 2011

This very important piece of legislation was published on 05 December 2011. Draft Regulations were recently published for public comment. Once finalised, The Act will come into effect.

Why The Protection From Harassment Act?

Although certain stalking behaviour may be criminal offences, stalking in general is not a crime in South Africa. The Protection from Harassment Act 17 of 2011 (The Act) changes this state of affairs in a way.

Whereas the Domestic Violence Act No. 116 of 1998 was established to protect individuals against abuse by persons that stand in domestic relationship to one another, "The Act" is distinguished as it provides protection even though the perpetrator is a complete stranger to the complainant.

In line with our constitutional era, "The Act" seeks to increase the protection of the individual's rights to dignity, privacy, freedom of movement and freedom of association.¹ It does so by protecting individuals against all forms of violence in that it provides "victims of harassment" with relief that prohibits such behaviour.

What Protection Does "The Act" Offer?

A court, on application, may prohibit someone from engaging in harassment. Harassment² includes:

1. causing harm or causing the complainant to believe that he/she (or another) will be harmed;
2. following, watching, pursuing or confronting the complainant;
3. loitering outside or near a building/place where the complainant simply happens to be, work, lives, do business and/or study;
4. engaging in communication (verbal, electronic or other forms) aimed at the complainant;
5. sending and/or delivering letters, telegrams, packages, facsimiles or electronic mail;
6. leaving letters, telegrams, packages, facsimiles or electronic mail where it will be given or brought to the attention of the complainant, or, where he/she will find it.
7. behavior that amounts to *sexual harassment*³

How Does The Protection Work?

In addition to ordering that a person must refrain from harassment, the court may also order that a person may not enlist another to do such things. The police could also be ordered to seize any weapons and to accompany a complainant to collect personal property.

It is a criminal offence to disobey an order made, condition set or prohibition determined in terms of a court order under "The Act".

¹ Preamble to Act 17 of 2011.

² Section 1 Act 17 of 2011

³ According to section 1 of Act 71 of 2011 sexual harassment means unwanted and explicit/ implied:

- sexual attention,
- behaviour/suggestions/messages/remarks that is of a sexual nature,
- promise rewards for complying with sexually oriented requests,
- reprisal or a threat thereof for refusal to comply with sexual orientated request .

