

PROVINCE OF THE EASTERN CAPE

DEPARTMENT OF SOCIAL DEVELOPMENT



SEXUAL HARASSMENT

POLICY

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1. INTRODUCTION

Everyone has inherent dignity and has the right to have his/her dignity respected and protected. The Department of Social Development is committed in providing a work environment which is free of harassment, to promote and advance sound and productive working relations and mutual respect among employees.

2. PURPOSE

Sexual harassment is one of the most sensitive, controversial issues and it is a complex challenge facing any organisation. Productivity, focus and effectiveness may suffer as the victim of harassment attempts to cope with the situation.

Dealing with sexual harassment requires focusing on the entire range of harassment behaviours as well as gray areas of relationships. Adopting a narrower view can be critical because sexual harassment does not only differ from person to person but also culturally. The guidelines will be reviewed regularly to address the responsive needs.

The desired outcomes for this policy is to make everyone better understanding the seriousness of all acts, as well as how some minor actions may lead to some serious ones. The cornerstone is that victims must speak out whether sexual harassment is intentional or unintentional stopped.

3. OBJECTIVE

The objectives for developing this document are:

- To eliminate acts of sexual harassment in the Department and provide appropriate procedures to deal with the problem and prevent its recurrence.
- To encourage and promote the creation of workplaces free of sexual harassment, in which employers and employees respect one another's dignity and integrity, their privacy and right to equality in and outside the department.
- To deal with it in a sensitive, prompt, unbiased and confidential manner.
- To ensure that neither the aggrieved nor the alleged harasser are victimized in any way by either management or workers.
- To prevent employees, including applicants, casual and part-time employees to request or compelling managers to engage in sexual activity in return for employment, job retention, salary increase, promotion or service benefits.
- To guarantee job security and job related benefits of the grievant, and
- To ensure that all employees in the department are conversant about sexual harassment and its consequences.

4. REGULATORY FRAMEWORK

The policy guidelines demonstrate compliance with the:

- Constitution of the Republic of South Africa, Act 108 of 1996
- Public Service Act, 1994 as amended
- Employment Equity Act 55, of 1998 Chapter 2
- Chapter 2 of the Bill of Rights
- Public Service Law Amendment Act 86, of 1998
- National Economic Development and Labour Council notice 1367 of 1998
- Provincial Policy on Sexual Harassment
- Code of Good Practice on the Handling of Sexual harassment

5. SCOPE OF APPLICABILITY

This policy is intended to guide employer and employees, perpetrators and/or victims of sexual harassment which include:

- Managers
- Supervisors
- Co-employees
- Job applicants
- Clients
- Suppliers
- Contractors
- Other Customers/ Service providers having dealings with the department

Wherein sexual harassment has taken place in the workplace or in the course of the harasser's employment, a non-employee being a victim of sexual harassment may lodge a grievance with the employer of the harasser.

6. DEFINITION OF SEXUAL HARASSMENT

Sexual Harassment is defined as an unwanted or unwelcome sexual tendencies, and request for sexual favours that have a negative effect on the recipient. It can range from inappropriate gestures, innuendos, advances, suggestions or hints to touching, comments, statements and/or remarks without consent and at worst, rape. Sexual harassment creates an intimidating, hostile or offensive environment.

Sexual attention becomes sexual harassment if:

- (a) The behaviour is persisted, although a single incident of harassment can constitute sexual harassment, and/or
- (b) The recipient has made it clear that the behaviour is considered offensive, and/or
- (c) The perpetrator should have known from the onset that the behaviour is offensive, and/or.

7. FORMS OF SEXUAL HARASSMENT

Sexual harassment can take various forms that range from subtle attention to the worst forms of violence such as rape. Examples of forms it can be outlined as follows:

NON- VERBAL FORMS

These forms include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures, objects, leering and winking.

VERBAL FORMS

These forms of sexual harassment include unwelcome innuendos, suggestions and hints, sexual advances, comments with sexual overtones, sexual related jokes or insults or unwelcome graphics comments about a person's body made in their presence or directed towards them, unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling directed at an individual or group of persons.

PHYSICAL FORMS

Physical conduct of a sexual nature includes all unwanted physical contacts, ranging from touching to sexual assault and rape, and includes fondling breasts, pinching of buttocks, sexual patting, strip search by or in the presence of the opposite sex.

QUID PRO QUO

This form of harassment is an abuse of authority by a male or a female Employer, supervisor and any member of management who has the power to employ / dismiss /change the working conditions of an employee. This can be done by suggestion of sex in return for a job, salary increase, application of unfair disciplinary measures. This form amounts to sexual favouritism, which is totally unacceptable.

8. GUIDING PRINCIPLES

Employers should create and maintain a working environment in which the dignity of an

employee is respected. A climate in the workplace should also be created and maintained, and in which victims of sexual harassment will not feel that their grievances are ignored or belittled, or fear reprisals. Implementing the following guidelines can assist in achieving these:

- Managers and employees have to refrain from committing acts of sexual harassment.

All managers and employees have to contribute towards creating and maintaining a working environment in which sexual harassment is unacceptable. They should ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on part of others.

Management should ensure that person's such as customers, suppliers, job applicants and others.

Management is required to take appropriate actions in accordance with this policy, when instances of sexual harassment that occurred at the workplace are brought to their attention.

9. DISCIPLINARY PROCEDURES FOR DEALING WITH SEXUAL HARASSMENT CASES

Although sexual harassment in its forms is not a criminal offence in South Africa, current legislation provides for dealing with such matters in terms of the Public Service Act, 1994.

Employers should develop clear procedures to deal with sexual harassment. These procedures should ensure the resolution of problems in a sensitive, effective and efficient way.

9.1. ADVICE AND ASSISTANCE

Sexual harassment is a sensitive issue and a victim may feel unable to approach the perpetrator, lodge a formal grievance or turn to colleagues for support. As far as is practicable employers should designate a person outside of line of management who the victims may approach for confidential advice. Such a person could be:

Employee Assistance Programme Officer (EAP), Special Programmes Unit (SPU), Co-employee, Union Representative, or an outside Professional.

Person with appropriate skills and experience and properly trained to deal with the matter. Required to have counselling and relevant labour relations skills and be able to provide support and advice on a confidential basis.

9.2. OPTION TO RESOLVE THE PROBLEM

- (a) Employees should be advised that there are two options to resolve the problem relating to sexual harassment.
- (b) The employee should be under no duress to accept one or the other option.

9.2.1. INFORMAL PROCEDURE

- (a) The informal procedure shall be used for subtle forms of sexual harassment, the procedure shall not be used for serious cases that involve sexual assault, rape, strip search by or in the presence of the opposite sex, quid pro quo or persistent forms of sexual harassment, unless the grievant chooses to follow an informal procedure.
- (b) Where possible, the grievant may wish to resolve the complaint without reference to formal procedures by approaching the alleged harasser, by writing a letter to the alleged harasser and/or by asking a member of management or other representative, such as a shop steward, to mediate.
- (c) Should the informal mediation as prescribed above be successful in resolving the matter, no disciplinary action shall be taken against the alleged harasser. The grievant and the alleged harasser shall be referred to the trauma crisis centres for counselling should they wish so.

9.2.2. FORMAL PROCEDURES

When informal procedure is not applicable as contemplated in 8.2.1, the Department shall adopt the formal procedure. Only the disciplinary procedure as laid down on the Disciplinary code and procedure will be followed in addressing such a complaint because of the sensitivity and seriousness of the sexual harassment.

10. LEAVE.

In case where the grievant or the harasser has suffered emotional or physical stress, the Department shall, on the request, grant the individual sick leave for trauma therapy.

Depending upon the environmental and the extent of the relations between the grievant and the sexual harassment claim and during investigation, may be granted special leave on submission of a medical certificate.

11. CONFIDENTIALITY

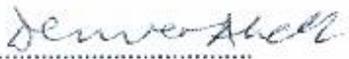
- (l) The Department has a duty to ensure that grievances about sexual harassment are investigated and handled in a manner that ensures that the identities of the person involved are kept confidential, although it may be difficult to guarantee that given the legal duties involved and frequent conflict of rights and obligations. Management, employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary enquiry. Only appropriate members of management as well as the aggrieved person, representative, alleged perpetrator, witnesses and interpreter if required, must be present in the disciplinary hearing.

- (ii) Employers are required to disclose to the party or to their representatives, such information as may be reasonably necessary to enable the parties to prepare for proceedings of the enquiry.

12. EMPLOYEES' RESPONSIBILITY

- All employees have a role to ensure that a climate is created in which sexual harassment is unacceptable.
- All employees shall have to develop and adhere to an agreed upon dress code for the department if it appears to be a contributing factor as per the Department's Rules.
- All employees shall ensure that their standards of conduct are not offensive and that they discourage unacceptable behaviour on the part of others.

RECOMMENDATION OF THE POLICY


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HEAD OF DEPARTMENT
MR DENVER A. WEBB

30/3/2008
DATE


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MEC SOCIAL DEVELOPMENT
MR S. KWELITA

✓ APPROVAL OF THE POLICY

30/03/08
DATE