



Province of the
EASTERN CAPE

SOCIAL DEVELOPMENT
& SPECIAL PROGRAMMES

PROHIBITION OF SEXUAL HARASSMENT IN THE WORKPLACE POLICY

Policy Registration No: 2012-313

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DEFINITIONS AND TERMS

TERM	MEANING
Act	Means all pieces of legislations that govern employee relations and are applicable in terms of this policy
Blatant	Done openly and without shame or very obvious
Consistency	Means an equitable treatment
Defamation	Would mean an insult to somebody or character assassination
Disciplinary action	Means an action on the part of the authority/management aimed at stopping employee behaviour that threatens to disrupt the functioning of the system
Disciplinary code	Is a set of rules of conduct that the Department employees must obey and abide by them if it is to function successfully
Discrimination	May mean no more than 'to differentiate' or 'treat differently'
Executive Authority	Means the Member of the Executive Council responsible for Social Development portfolio
Fairness	Means that where an action is conforming with universally accepted standards and if consistency is exhibited
Fraternisation	To have friendly social relations
Frivolous	Having no useful or serious purpose
Gratuitous	Unnecessary done or said without good reason or cause
Grievance	Means a dissatisfaction regarding an official act or omission by the employer which adversely affects an employee in the employment relationship excluding an alleged unfair dismissal
Head of Department	Means the incumbent of a post for the Head: Social Development and includes any employee acting in such post
Harassment	Is defined as a form of unfair discrimination and is an incident that is unwelcome, unwanted and has a destructive effect
Hierarchical	System of authority or status
Innuendos	An indirect reference to somebody usually suggesting something rude
Innocuous	Not intended to offend or having no harmful effects
Intimidation	Is defined as any person who without lawful reason and with intent to compel or induce a particular person to do or to abstain from doing any act or to assume or to abandon a particular standpoint (such as assaults, injures or causes damage to that person or any other person or in any manner threatens to kill, assault, injure or cause damage to that person or any other person)
Legitimate	In accordance with the law or rules
Malice	The desire to harm somebody or hatred for somebody
Overt	Done or shown openly or publicly
Perpetrator	Somebody who does something considered wrong
Political Office Bearer	Means any political deployee in the Department such as the Member of the Executive Council
Pornography	Means any image, however created, or any description of a person, real or simulated of an explicit or sexual nature that is intended to stimulate erotic feelings, including any such image or description of such person engaged in acts that constitute a sexual offence
Quid pro quo	Something for something
Rape	Means unlawful and intentional act of sexual penetration without the consent of victim
Representative	Means a fellow employee, a representative or official of a recognised trade union
Reprisal	Act of showing aggression or violence towards somebody
Retaliation	To harm, injure somebody because he/she has caused harm/upset
Sanction	Is the punishment determined as an outcome of a disciplinary matter being heard
Sexual Act	Means an act of sexual penetration or an act of sexual violation
Sexual Assault	Means unlawful and intentional sexual violation of someone without his/her consent
Sexual Attention	Becomes sexual harassment if, the behaviour is persisted in, although a single incident of harassment can constitute sexual harassment and the recipient has made it clear that the

Sexual Harassment	behaviour is considered offensive and/or the perpetrator should have shown that the behaviour is regarded as unacceptable It is defined as any unwanted physical, verbal or visual sexual advances, requests for sexual favours, and other sexually oriented conduct, which is offensive or objectionable to the recipient, including but not limited to epithets, derogatory or suggestive comments, slurs or gestures and offensive posters, cartoon, pictures or drawings, and distinguishes it from behaviour that is welcome and mutual
Sexual Misconduct	Defined as non – consensual physical contact of sexual nature
Stalking	To move through a place in an unpleasant or threatening way
Subtle	Difficult to detect or describe
Vexatious	Annoying or worrying
Victimisation	Refers to a situation where an employer institutes a disciplinary action against an employee for exercising any of copious rights conferred by the Labour Relations Act, 1995 as amended, or for seeking to enforce or reporting infringements of such rights by the employer

LEGISLATIVE FRAMEWORK

- i. Basic Conditions of Employment Act, Act 75 of 1997 as amended and its Code of Good Practices(BCEA) – ss 22; 23
- ii. Compensation of Injuries and Diseases Act, Act 130 of 1993 as amended (COIDA)
- iii. Constitution of the Republic, Act 108 of 1996 as amended – ss 9; 10; 14 and 23
- iv. Criminal Law (*Sexual Offences and Related Matters*), Act 32 of 2007 as amended
- v. Determination of Leave of Absence as determined by the Ministry of Department of Public Administration from time – to – time
- vi. Employment Equity Act, Act 55 of 1998 as amended (EEA) – ss 5; 6
- vii. Labour Relations Act, Act 66 of 1995 as amended and its Code of Good Practices (LRA) - s 188; *Schedule 8; Code of Good Practice on the Handling of Sexual Harassment Cases*
- viii. Occupational Health and Safety Act, Act 85 of 1993 as amended (OHSA) – ss 8; 14
- ix. Public Service Act, Act 30 of 2007 as amended (PSA) – ss 16; 17
- x. Public Service Regulations, 2001 as amended –*Chapter 1: Parts vii, viii, x; Chapter 2; Chapter 4: Parts ii, iii, v, vii and viii*
- xi. Resolution 1 of 2003 (*Disciplinary Code and Procedures in the Public Service*) as amended
- xii. Resolution 14 of 2002 (*Grievance Procedures in the Public Service*) as amended
- xiii. Senior Management Services Handbook – *Chapters 6; 7; 10*
- xiv. Other Department Policies related to the topic

1. PREAMBLE

- 1.1 The Department values its people and their diversity.
- 1.2 As such, the Department is committed to providing a work that is free of any form of unfair discrimination or harassment.
- 1.3 All employees have the right to work in a pleasant and productive work environment where the individual rights and dignity of each employee is respected. This includes the right to work in an environment that is free from conduct of a harassing or abusive nature.
- 1.4 The Department takes a strong view on the promotion of human dignity among its employees.
- 1.5 Sexual harassment is a form of misconduct that can be very serious. Sexual harassment can cause embarrassment, humiliation, anxiety and depression to the individual who is subjected to such conduct.
- 1.6 In order to maintain an atmosphere of mutual respect, conduct characterised as sexual harassment will not be condoned or tolerated nor will the complainant be subjected to any form of victimisation or intimidation.
- 1.7 Because matters associated with sexual harassment are sensitive, the policy and procedure described below will be adhered to before the provisions of the Disciplinary Code and Procedures are invoked.

2. POLICY STATEMENT

- 2.1 This sexual harassment policy encourages the reporting of all incidents of sexual harassment experienced by any individual as a result of his/her work with the Department.
- 2.2 In return, the Department is committed to promoting equality in the workplace by taking all reasonable measures to prevent such incidents and to deal promptly and fairly with any reports of sexual harassment in a confidential and discreet manner.
- 2.3 Where allegations of sexual harassment are substantiated, the offender will be sanctioned in strict accordance with this policy, regardless of her/his status at the Department.

3. PURPOSE

It is the intention of this policy to –

- 3.1 Require all employees, *inter alia* political office bearer and its core staff, customers/client, job applicants and service providers to make sure that their behaviour towards others is respectful and courteous at all times.

4. OBJECTIVES

The objectives of this policy are to ensure the following:

- 4.1 That all employees have the right to work in an environment free from sexual harassment, and to be treated with dignity.
- 4.2 That management of the Department takes all reasonable steps to ensure that employees are not subjected to sexual harassment within the working environment.
- 4.3 That no form of sexual harassment is tolerated or condoned.
- 4.4 That no victimisation of complainants, witnesses or accused persons occurs.
- 4.5 That all reports of harassment are treated professionally and sympathetically, and are investigated thoroughly and confidentially.
- 4.6 That appropriate disciplinary action is taken against anyone found to be guilty of sexual harassment.
- 4.7 That false or vindictive accusation is viewed in a very serious light.

5. SCOPE OF APPLICABILITY

- 5.1 This policy is applicable to all Department employees *inter alia* the political office bearer and its core staff, customers, job applicants and service providers.
- 5.2 The prohibition against sexual harassment includes conduct at the office and elsewhere. Sexual harassment through indirect methods of communication such as telephone calls or in writing is also covered by this policy.
- 5.3 This policy prohibits any work – related act of sexual harassment by any employee of the Department including those in the office of the political office bearer, customers, job applicants and service providers.

- 5.4 Any person, including someone who is not an employee of the Department, who has been sexually harassed by an employee in the course of her/his employment with the Department may initiate a complaint under this policy.

6. GUIDING PRINCIPLES AND VALUES IN RESPECT OF SEXUAL HARASSMENT

Underlying this policy are the following guiding principles and values –

- 6.1 It is the duty of the Department to create and maintain a working environment in which the dignity of the employee is respected.
- 6.2 A climate in the Department shall also be created and maintained in which victims of sexual harassment will not feel that their grievances are ignored or trivialised, or fear reprisals.
- 6.3 In order to achieve the objects stated herewith above, the following apply:
- 6.3.1 Political office bearer and its core staff, management and employees are required to refrain from committing acts of sexual harassment.
- 6.3.2 Political office bearer and its core staff, management and employees have a role to play in contributing towards creating and maintaining a working environment in which sexual harassment is prohibited. They should ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others.
- 6.3.3 Political office bearer and its core staff, management and employees shall attempt to ensure that persons such as customers, service providers, job applicants and others who have dealings with the Department are not subject to sexual harassment by the Department's management or the employee.
- 6.3.4 Political office bearer and its core staff, management and employees are required to take appropriate action in accordance with this policy when instances of sexual harassment that occur within and outside the Department are brought to their attention.
- 6.3.5 Anyone who is engaging in any improper behaviour or sexual harassment on the Department premises or anywhere else while on Department business will be subject to disciplinary action up to and including dismissal.

7. POLICY PROVISIONS

7.1 Forms of Sexual Harassment

- 7.1.1 **Physical Forms** – touching; unwanted and deliberate physical contact; sexual assault; rape; strip search in the presence of the opposite sex, etc.
- 7.1.2 **Verbal Forms** – unwelcome verbal comments of sexual nature; subtle or explicit demands for, or offers of sexual favours; unwelcome innuendos, suggestions and hints; comments with sexual overtones; sex related jokes or insults or unwelcome graphic comments about a person's body made in his/her presence or directed to him/her.
- 7.1.3 **Non –Verbal Forms** – gratuitous display of sexually explicit written or audio visual materials; transmission or display of offensive e – mail, screen – savers or pornographic computer or cellphone images; offensive gestures or actions of a sexual nature including indecent exposure or “flashing”; persistent unwanted attention: following or stalking behaviour, etc.
- 7.1.4 **Sexual favouritism** – exists where a person who is in a position of authority favours those who respond to her/his sexual advances whilst other deserving employees, customers, job applicants and service providers who do not respond to sexual advances are disadvantaged or denied opportunities, for example, in relation to promotion, nominations for merit awards, training opportunities, grading and service provisioning.
- 7.1.5 **Some forms of sexual conduct**, which are considered innocuous by some people, may be considered offensive by others. In addition, different social or cultural backgrounds may lead persons to perceive the same conduct differently. All employees, customers, job applicants and service providers are expected to respect the sensitivities of others especially where there may be variations in the interpretation of acceptable behaviour and accordingly cultural differences must not be used as an excuse or justification for sexual harassment.

7.1.6 **Quid pro quo harassment** – occurs where an employer, supervisor, member of management or co – employee, or customer or service provider or job applicant undertakes or attempts to influence the process of employment, promotion, training, discipline, dismissal, salary increment or other benefit of an employee or job applicant or students on internship programme or contract worker and service provisioning to a customer or service provider, in exchange for sexual favours.

7.1.7 **Accordingly, the Department has concerns where sexual harassment:**

- a) Implicitly or explicitly imposes a condition on staff recruitment, selection, appraisal or career progress and provisioning of service to the customer or by the service provider;
- b) Interferes with work performance;
- c) Creates an intimidating or offensive working environment, service provisioning and undermines social functioning.

7.1.8 **Fraternisation or consensual social relationships** are not examples of sexual harassment.

7.2 The Nature of Sexual Harassment

7.2.1 Sexual harassment or abuse may take many forms, e.g. subtle and indirect, or blatant and overt.

7.2.2 Sexual harassment may be of a serious nature and may consist of any or all of the following:

- a) It may be conduct towards an individual of the opposite sex or same sex;
- b) It may occur between peers or between individuals in a hierarchical relationship;
- c) It may be aimed at coercing an individual to participate in an unwanted sexual relationship;
- d) It may consist of repeated actions or may even arise from a single incident of sufficiently insulting; and
- e) It may include insults or sexual advances historically acceptable in certain cultures.

7.2.3 In every case of sexual harassment, the victim will indicate clearly and immediately that he/she does not approve of what is being said, done or suggested.

7.2.4 The severity of the harassment is determined largely by the psychological effect it has on the victim, not by the intention of the person who performed the harassment. The severity will depend on the circumstances and nature of the offence. However, even a single serious act of sexual harassment could warrant disciplinary action including up to a dismissal of the perpetrator.

7.2.5 The specific action in any particular case depends on the nature and gravity of the conduct reported.

7.2.6 All employees involved in the informal or formal resolution of complaints of sexual harassment will ensure that they have no conflict of interest or biasness in relation to any party to the complaint and that there is no perception by the parties that they have a conflict of interest or bias.

7.2.7 Members of staff who have concerns about perceptions of possible conflict of interest or partiality should recuse themselves from the process.

7.2.8 Complaints of victimisation will be treated seriously. Victimisation of complainants is unlawful. Complaints of victimisation related to a sexual harassment complaint will be dealt with in the same manner as complaints of sexual harassment and may result in disciplinary action including up to a dismissal.

7.2.9 If the complainant is found to be vexatious and frivolous, action against him/her may be taken under the Department's "Disciplinary Code and Procedures". A person who falsely accuses another may be required to publicly clear the name of the person against whom the false complaint was laid.

7.2.10 The Department shall give due consideration to the granting of additional sick leave in cases of serious sexual harassment effects where the victim employee on medical advice, required further counselling and professional advice.

8. PROCEDURES FOR DEALING WITH SEXUAL HARASSMENT CASES

8.1 Reporting Sexual Harassment

- 8.1.1 Any employee who feels that he/she has been harassed brings the complaint to the attention of Employee Relations Unit.
- 8.1.2 Employee Relations Unit will deal promptly with complaints of sexual harassment that they receive. Where sexual harassment is reported, the Department will act to stop the harassment, prevent its recurrence and take appropriate action against the perpetrator.
- 8.1.3 The confidentiality and privacy of any individual who reports or is an alleged/accused of sexual harassment will be respected.
- 8.1.4 The Department will make available professional advice and counselling for victims.
- 8.1.5 Employee Relations Unit will deal most severely with any victimisation resulting from the lodging of a complaint, regardless of whether sexual harassment is subsequently proven.
- 8.1.6 Employee Relations Unit will also take disciplinary steps against anyone who makes a false accusation.
- 8.1.7 No pressure of whatever nature shall be placed on the employee to select any one procedure instead of another.

8.2 Informal Procedures

- 8.2.1 The informal procedure involves discussion and/or conciliation after the matter has been brought to the attention of Employee Relations Unit, with the assistance of Integrated Employee Wellness Unit.
- 8.2.2 If the complaint cannot be resolved to the complainant's satisfaction and it is found through discussion that the incident warrants more serious action, formal disciplinary procedures will be instituted or invoked against the alleged offender.
- 8.2.3 Where the complainant does not wish to pursue the matter but requests counselling services only, it must be noted that the Department may institute disciplinary action though as it has an obligation to stop sexual harassment at the workplace and Employee Relations Unit, shall nevertheless complete the statistical data.
- 8.2.4 If possible, a recipient or a witness to an incidence of harassment should approach the perpetrator and ask her/him to stop.
- 8.2.5 If the case is severe or if the conduct continues, it may be more appropriate to embark on a formal procedure and severe cases may include: sexual assault, rape, a strip search and quid pro quo harassment, etc.

8.3 Formal Procedures

- 8.3.1 If the victim has selected to follow a formal procedure or a formal procedure follows because of the failure of an informal procedure or the seriousness of the case, the victim may lodge a formal grievance in terms of the grievance procedures.
- 8.3.2 Formal complaints will be addressed by Employee Relations Unit using the following procedure to resolve the problem – The Employee Relations representative interviews the complainant to determine:
 - a) *The identity of the alleged perpetrator;*
 - b) *When and where the incident (s) occurred;*
 - c) *The circumstances, behaviour, conversations resulting in the complaint; and*
 - d) *The identity of any witnesses.*
- 8.3.3 A written, signed sworn statement is made by the complainant and referred to the appropriate line manager for attention. The alleged transgressor may be suspended with immediate effect pending the disciplinary action.
- 8.3.4 The complainant is advised of how the complaint will be handled.
- 8.3.5 Considerable care shall be taken during the course of the grievance process of a sexual harassment case that the aggrieved person is not disadvantaged, and that the position of other parties is not prejudiced if the grievance is found to be unwarranted.
- 8.3.6 All complaints will be investigated and written records kept of all interviews and investigations.

- 8.3.7 Parties to the issue will have the option to have a trade union representative, an office bearer or the union official of a recognised trade union of her/his choice or the colleague or friend present at all interviews.
- 8.3.8 If it is appropriate that one of the parties be transferred, the complainant will not be transferred unless he/she specifically requests such action.

8.4. Appropriate Actions

- 8.4.1 Sexual harassment does not refer to behaviour or compliments that are acceptable to the recipient, nor to the mutual attraction between people, which must be treated as a private concern.
- 8.4.2 In the case of disciplinary action in response to sexual harassment misconduct, the procedures set out in the disciplinary code and procedures shall be followed.
- 8.4.3 Such information that is deemed reasonably necessary to enable the parties to prepare for the disciplinary hearing must be disclosed to either party or to their representatives.
- 8.4.4 The harassed employee has the right to institute separate criminal and/or civil charges against the alleged perpetrator. In this context, the legal rights of the victim remain intact and are not limited in anyway by this policy.
- 8.4.5 Disciplinary action may be taken even if the sexual harassment occurred outside the normal working hours of the employees.
- 8.4.6 The Department reserves the right to institute civil and/or criminal action against any person including but not limited to customers or service providers should such person harass an employee of the Department.

9. CONFIDENTIALITY

- 9.1 At all stages the utmost care will be taken to ensure confidentiality.
- 9.2 Complainants and respondents will be advised at all stages of the internal procedure to maintain confidentiality and to discuss the complaint only with those who have an official responsibility for dealing with it.
- 9.3 Allegations of sexual harassment are potentially defamatory because they impact on the reputation of the alleged harasser. However, allegations made in good faith and through appropriate channels pursuant to this policy and procedures are likely to be defamatory. In particular:
 - 9.3.1 It is not defamation for a person who thinks that they have been sexually harassed to write and deliver a letter to the alleged harasser or speak privately to the alleged harasser about the alleged harassment;
 - 9.3.2 Statements made in the context of receiving counselling or legal advice are likely to receive the protection of 'legal privilege' and hence fall outside the scope of defamation;
 - 9.3.3 Allegations that are untrue, motivated by ill – will or malice, or inappropriately conveyed to people who have no legitimate interest in knowing them are likely to breach defamation laws;
 - 9.3.4 Untrue or malicious counter allegations against the complainant are also likely to be construed as defamation if they are conveyed to persons who have no legitimate interest in the matter.
- 9.4 All those who have a genuine and official role in dealing with and resolving the matter will be required to preserve anonymity wherever possible and, as far as possible, to seek advice from others without divulging the identity of the respondent or complainant.
- 9.5 Information may also be disclosed where there is an imminent physical threat of danger to a person.
- 9.6 Records of proceedings of formal cases will be kept in sealed, confidential files and then disposed of in accordance with the approved disposal schedules utilised by the Department.

10. RESPONSIBILITIES

10.1 Responsibilities of the Employer

- 10.1.1 The employer will publicise this policy to all employees and advise them of the relief available through the Department's sexual harassment internal policy.

- 10.1.2 Employee Relations Unit will receive complaints, inform complainants of the various forms for complaints, communicate with alleged offenders, provide information about counselling and support services, record the complaint, mediate a mutually agreeable solution, if possible, and report the outcome as well as serving as a liaison to management.
- 10.1.3 The employer will also select an investigator, who will investigate the complaint in the event a mutual solution is not reached and take disciplinary action.
- 10.1.4 The Department will provide a complaints procedure that will be confidential and discreet to the greatest extent possible, and will maintain a record of all reports of sexual harassment, the procedure taken to deal with each incident, and the sanction imposed.
- 10.1.5 The employer will impose an appropriate sanction for every substantiated charge or allegation of sexual harassment regardless of the status of the offender at the Department.
- 10.1.6 Recognising the inherent problems in sanctioning a customer and/or service provider, the employer will develop appropriate sanctions for harassment by customers and/or service providers and will then apply those sanctions consistently.
- 10.1.7 Retaliation against victims of harassment or investigators will not be permitted under any circumstances.
- 10.1.8 Complainants will be promptly notified of the resolution of the complaint.
- 10.1.9 Every manager has a responsibility to maintain the workplace free of any form of sexual harassment.

10.2 Responsibilities of the Employee

- 10.2.1 The Department encourages all employees to report any sexual harassment of which they are aware to Employee Relations Unit.
- 10.2.2 The Department reiterates its commitment to deal with such information confidentially to the greatest extent possible.
- 10.2.3 Every employee of the Department is responsible for keeping his/her own behaviour free from sexual harassment. When possible, an employee who experiences sexual harassment has a responsibility to bring behaviour of a sexual harassing nature to the attention of the offender.
- 10.2.4 On occasion, sexual harassment can be dealt with directly and informally by confronting the harasser with a clear message that the attention or action is unwanted.
- 10.2.5 However, the Department recognises that there may be power imbalances and other factors that make a confrontation awkward or impossible.
- 10.2.6 Although informal resolution is encouraged where possible, confrontation is not a pre-requisite to making a sexual harassment complaint under this policy.
- 10.2.7 Everyone in this Department has the responsibility to prevent bullying and sexual harassment and to report any instances that they are party or witness to.

11. INFORMATION, EDUCATION AND TRAINING

- 11.1 Information sessions will be arranged for all Department employees aimed at increasing their awareness of issues involved in sexual harassment, enhancing their skills in communication and informing them of such legal issues as defamation.
- 11.2 Information on the Department's policy and procedures concerning sexual harassment will be distributed to:
 - a) New staff at induction and orientation;
 - b) All Heads of Division for circulation annually;
 - c) Human Resources Divisions for inclusion in their websites and other publications; and
 - d) Relevant Department web pages.

12. MONITORING

- 12.1 Every month Employee Relations Unit will report on data relating to all harassment enquiries and complaints received.
- 12.2 Employee Relations Unit should ensure that confidential records of informal enquiries and complaints do not contain names or details that will identify the complainant or the respondent.

- 12.3 Employee Relations Unit should ensure that confidential records of all formal complaints contain accurate information about substantiated case, the investigation process, the people involved including witnesses, the way the case was handled and the outcome.
- 12.4 At the conclusion of the process, Employee Relations Unit will ensure a secure storage of the documentation.
- 12.5 Employee Relations shall devise a complaints data for records and statistical purposes.

13. GUIDELINES

- 13.1 This policy will be enhanced by way of a set of guidelines to give practical effect to the various aspects of the policy.

14. THE DESIGNATED STRUCTURE WHICH HAS THE AUTHORITY TO APPROVE, ADJUST AND REVIEW THE POLICY

- 14.1 The Executive Authority shall be the structure responsible for approval of this policy.
- 14.2 The approval will be based on the recommendation by the Head of Department.
- 14.3 The structure responsible for the review of this policy shall be the Department's Policy Forum which shall recommend to the Executive Authority for approval.

15. ADMINISTRATION OF THIS POLICY

- 15.1 The administration of this policy shall be vested on the Head of Department who shall ensure that every employee adhere to the provisions of this policy.

16. EFFECTIVE DATE OF THE POLICY

- 16.1 This policy shall be effective from the date of approval by the Executive Authority.

17. REVIEW OF THE POLICY

- 17.1 This policy and procedures shall be subject to review by the Department Policy Review Forum.
- 17.2 The first review is currently underway and subsequent reviews at three (3) – year intervals thereafter and/or where it is deemed necessary to make necessary changes based on the changes effected by the legislations.

18. POLICY RECOMMENDATIONS AND APPROVAL

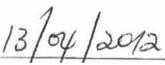
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Recommended/ ~~Not Recommended~~



**Head of Department: Dept. of Social
Development & Special Programmes**

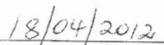


Date

Approved/ ~~Not Approved~~



**MEC: Dept. of Social Development &
Special Programmes**



Date

Harassment Investigation Guide

Getting the employee to describe the claim:

- Listen to the charge. Don't make comments like, "You're overreacting."
- Acknowledge that bringing a harassment complaint is a difficult thing to do.
- Maintain a professional attitude.
- Gather the facts; don't be judgmental.
- Ask who, what, when, where, why, and how. Find out if the employee is afraid of retaliation. How does the employee want the problem resolved?

Conducting an investigation of the claim—general rules to follow:

- Investigate immediately. Delaying or extending an investigation can make witness testimony increasingly unreliable.
- Remember that the manner in which the investigation is handled can itself furnish grounds for a hostile environment claim, so carefully document every step.
- Treat all claims seriously—even those that seem frivolous—until you have reason to do otherwise.
- Keep the investigation confidential. Emphasize to those involved that your discussions are not to be shared with uninterested parties. Warn of possible disciplinary action, if necessary.
- Limit the number of persons who have access to the information. Communicate strictly on a "need to know" basis.
- Ask questions so that information is not unnecessarily disclosed. For example, instead of asking, "Did you see Paul touch Joan?" ask "Have you seen anyone touch Joan at work in a way that made her uncomfortable?" Remember—the purpose of the investigation is to gather facts, not disseminate allegations.
- If there is more than one allegation, treat each separately.
- To avoid defamation liability, never broadcast the facts of a given situation or the results as an example to others or as a training tool.

Interviewing the complainant (Can be done when employee first reports charge):

- Get specific details.
- Find out whether there was a pattern of previous episodes or similar behavior toward another employee.
- Get the specific context in which the conduct occurred. Where? What time?
- Determine the effect of the conduct on the complainant. Was it economic, non-economic and/or psychological?
- Determine the time relationship between the occurrence of the conduct, its effect on the complainant, and the time when the complainant made the report.
- Prepare a detailed chronology.
- Analyze whether there might have been certain events that triggered the complaint, *i.e.*, promotion, pay or transfer denial.
- Determine whether there were any possible motives on the part of the complainant.
- Find out what the complainant wants.
- Explain to the complainant that the charges are serious, that you will conduct a thorough investigation before reaching any conclusion, and that he or she will not be retaliated against for making the complaint.
- Don't make any statements about the accused employee's character, job performance, or family life.

Interviewing the accused:

- Obtain a statement from the accused.
- Identify the relationship of the accused to the complainant.
- Was there any prior consensual relationship between the parties? How long have they known each other? Is there a history of group or individual socializing?
- If the individual was a supervisor, indicate the individual's job title, obtain a copy of the individual's job description, and determine the individual's specific duties at the time of the alleged harassment.
- Determine whether the accused directed, or had responsibility for the work of other employees or the complainant, had authority to recommend employment decisions affecting others or was responsible for the maintenance or administration of the records of others.
- You can expect the accused to deny the charges. Observe the reaction. Note whether there is surprise, anger, or disbelief. Describe the details of the allegation and note the areas of disagreement between the testimony of both parties. If the accused denies the allegations, probe further to determine with the accused the background, reasons, and motivation that could possibly trigger the complaint.

Interviewing witnesses:

- Obtain statements from any witnesses who support or deny any of the complainant's allegations. Be aware that witnesses are often reluctant to come forward out of fear of reprisal.
- Assure all witnesses that their cooperation is important, that their testimony is confidential and that they will not be retaliated against for testifying.

Resolving the complaint:

- Apologize for the incident occurring, *if that is appropriate*.
- When attempting to remedy the conduct, avoid requiring the claimant to work less desirable hours or in a less desirable location. If you offer to transfer the complainant, try to get the complainant's consent and make sure the transfer position is substantially similar to the complainant's prior position. This helps ensure that the complainant is not being illegally punished for reporting discrimination or harassment.
- Consider the severity, frequency and pervasiveness of the conduct when imposing discipline on the harasser. There are several disciplinary options available, including:
 - oral and written warning
 - reprimand
 - suspension
 - probation
 - transfer
 - demotion
 - discharge
- When imposing discipline on the accused, any forms of discipline short of discharge should be accompanied by a warning that similar misconduct in the future may result in immediate discharge. If no discipline is imposed, document the reasons why.
- Provide remedial counseling and training on sexual harassment, if appropriate. Also take the opportunity to re-communicate your policy.
- Carefully and fully document the investigation, the discipline imposed, and any remedial steps taken.
- Conduct follow-up interviews with the parties to inform them of the company's actions.