



social development

Department:
Social Development
PROVINCE OF KWAZULU-NATAL

POLICY ON SEXUAL HARASSMENT

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1. INTRODUCTION

The Department is committed to providing a work environment that is free from Sexual Harassment for all its employees and other people who have dealings with the department, as they have the right to be treated with dignity;

The Policy on Sexual Harassment defines a punishable Sexual Harassment conduct and lays down a procedure and mechanism for dealing with and handling Sexual Harassment complaints. The policy also emphasises the use of Employee Wellness Programme (EWP), which is designed to, amongst other things, to offer counselling, support and assist victims of Sexual Harassment;

The Policy is intended to guide the employer and employees, perpetrators and victims of Sexual Harassment which may include managers, supervisors, employees, clients, suppliers, contractors and other persons who deal with the Department; and

The Policy on Sexual Harassment must always be read in conjunction with the Code of Good Practice on the handling of sexual harassment cases.

2. PURPOSE

The purpose of this Policy is to:

- 2.1 familiarise all Employees of the Department with, prohibited, unlawful and degrading sexual conducts within the workplace and to educate and orientate them on all unwelcome behaviour/conduct; and
- 2.2 provide for mechanisms, measures and procedures for the reporting, handling and resolving complaints and grievances of Sexual Harassment.

3. OBJECTIVE

The objective of this Policy is to ensure that the workplace is free from Sexual Harassment.

4. SCOPE OF APPLICABILITY

This Policy is applicable to all employees of the Department of Social Development, job applicants and service providers.

5. LEGISLATIVE FRAMEWORK

- 5.1 The Republic of South Africa Constitution Act, 1996 (Act No.108 of 1996);
- 5.2 Public Service Act, 1994 (Proclamation No.103 of 1994), as

- amended;
- 5.3 Public Service Regulations, 2001, as amended;
 - 5.4 Labour Relations Act, 1995 (Act No.66 of 1995), as amended;
 - 5.5 Public Service Coordinating Bargaining Council, 1999 (Resolution No.2 of 1999);
 - 5.6 White Paper on Human Resource Management in the Public Service;
 - 5.7 The Code of Conduct for the Public Service;
 - 5.8 Employment Equity Act, 1998 (Act No.55 of 1998), as amended; and
 - 5.9 Criminal law (sexual offences and related matters) Amendment Act, 2007 (Act No. 32 of 2007).
 - 5.10 Code of good practice on handling of Sexual Harassment cases.

6. DEFINITIONS, ABBREVIATIONS AND ACRONYMS

For the purpose of this Policy:

- 6.1 **“Employer”** means the KwaZulu-Natal Department of Social Development;
- 6.2 **“Employee”** means any person, excluding an independent contractor, who works for another person or for the state and who receives or is entitled to receive any remuneration; and any person who in any manner assists in carrying or conducting the business of an employer, and “employed” and “employment” have a corresponding meaning to that of “employee” and includes prospective employee (job applicant); and
- 6.3 **“PSCBC”** means Public Service Coordinating Bargaining Council.

7. SEXUAL HARASSMENT IN CONTEXT

- 7.1 In the workplace, Sexual Harassment can be broadly defined as any unwanted and unwelcome comments or behaviour, with sexual overtone that have a negative effect on the dignity of other person(s) in the workplace;
- 7.2 The definition encompasses unwelcome physical, verbal or non-verbal conduct that is, any conduct that denigrates or violates, or is intimidatory or physically abusive of an employee because of his or her gender. This definition also makes clear that the essential characteristic of Sexual Harassment need not be limited to behaviour between males and females. It can take place between people of the same sex and need not always be instigated by a male employee;

- 7.3 Sexual Harassment may take a variety of forms, many of which are not readily detectable to a party not directly involved. It also involves a victim whose experience and interpretation of the conduct in question, is an essential factor in the defining of the conduct as sexual harassment. It is for these reasons that sexual harassment can be a difficult form of misconduct to deal with in a manner that is clearly perceived as consistent and proper. In a Department where staff have a variety of cultural backgrounds, there may exist different interpretations as to whether a particular conduct, under particular circumstances, constitutes sexual harassment. Points to consider are:
- 7.3.1 How does the person subjected to the conduct, interpret the conduct, i.e. is it unwanted and unwelcome as described in the definition;
- 7.3.2 Where it is known to the person contemplating certain conduct, that this conduct may be interpreted by those of a different cultural background as sexual harassment, he/she must refrain from that conduct where members of that cultural group would be involved, and may not as a justification for the conduct refer to it normally being acceptable in his/her culture; and
- 7.3.3 Even where it was not known that the conduct that was being experienced is Sexual Harassment, the behaviour can nevertheless; constitute sexual harassment that would lead to formal disciplinary process.

8. ACTIONS THAT CONSTITUTE SEXUAL HARASSMENT

- 8.1 Actions that constitute Sexual Harassment may include, but not limited to:
- 8.1.1 remarks with sexual overtone;
- 8.1.2 Insinuation about a person's sexual activities, sexual orientation and or personal life;
- 8.1.3 Suggestive comments about a person's appearance or body that are not acceptable to him/her;
- 8.1.4 Unwanted physical contact, ranging from less violent (e.g. patting) to violent sexual assault such as rape;
- 8.1.5 Unwelcome gesture;
- 8.1.6 Indecent exposure;
- 8.1.7 Looking at someone in an unwelcome way, watching someone secretly;
- 8.1.8 Direct or subtle sexual proposals;

- 8.1.9 Persistent pressure for social contact e.g. dates,
- 8.1.10 Communication of a sexual nature such as telephone calls, e-mails, letters, multi media message services (mms) and short message services (sms);
- 8.1.11 Subjecting subordinates to sexual harassment in an explicit or implicit way as a condition of employment, for example, subjecting persons to such behaviour in order that the subordinate may procure employment, increases and promotions; and
- 8.1.12 The hostile environment situation: Interfering with an employee's work performance or creating an intimidating or unpleasant work environment, through sexual harassment, constitutes a hostile environment situation.

9. SEXUAL BEHAVIOUR NOT CONSTITUTING SEXUAL HARASSMENT

- 9.1 Sexual Harassment is not present where mutual attraction and consent is involved in the behaviour of the parties concerned, and the matter is therefore regarded as a private one.
- 9.2 Behaviour or compliments that are acceptable to the recipient.
- 9.3 Overt or insinuate sexual behaviour in the workplace, does not constitute Sexual Harassment but may be unacceptable to others and constitute misconduct in certain circumstances e.g. the displaying of pictures of the naked person at an office or workstation.

10. PROCEDURE TO DEAL WITH SEXUAL HARASSMENT IN ACCORDANCE WITH THE CODE OF GOOD PRACTICE

Victims of Sexual Harassment in the workplace have the right to complain to the employer and can expect appropriate actions to address the matter.

The following options are open to the complainant:

10.1 Advice and Assistance

Because of the sensitive nature of sexual harassment, victims of sexual harassment may feel unable to turn to colleagues for support or to lodge a formal complaint. In an event the victim requires advice, assistance, guidance and support, he or she must refer the matter to the Employee Wellness Programme.

10.2 Informal Procedure

Victims of Sexual Harassment are not obliged to deal formally with Sexual Harassment, where they believe that they may themselves resolve the matter informally and to their satisfaction, by clearly advising the person involved in the unwanted activities that they are unwanted

and cause the victim offence, discomfort, or interfere with their work. If the victim lacks the confidence to do so on his/her behalf he or she may request any person that he/she thinks may assist in this matter. Persons requested to assist in this manner must do so responsibly and treat the matter with confidentiality. Where this approach is not preferred, or is unsuccessful, victims should proceed to lodge an official complaint in accordance with the procedure outlined in clauses 10.3 below.

10.3 Formal Procedure

The formal procedure is in accordance with the laid down grievance procedure. Complaints of Sexual Harassment must be reported in writing to the complainant's supervisor/manager. Where the supervisor is the alleged harasser, the complaint must be reported to the next level supervisor.

10.3.1 All reports of sexual harassment must be treated seriously, sympathetically and confidentially as possible. Anonymous complaints will be disregarded;

10.3.2 Where it is established that a complainant has a case, the alleged harasser and offender must be dealt with in terms of the Department's disciplinary procedures, depending on the nature and circumstances of the conduct;

10.3.3 The following factors are regarded as guidelines in the determination of an appropriate disciplinary action where an offender is found guilty:

10.3.3.1 the nature/severity of the sexual harassment;

10.3.3.2 Its effect on the complainant;

10.3.3.3 repetition and persistence of sexual harassment despite the complainant having advised that the behaviour is unwanted/unwelcome;

10.3.3.4 degree of humiliation of the complainant and violation of his/her dignity;

10.3.3.5 The effect of the misconduct on other employees; and

10.3.3.6 The disturbance of sound relationships in the workplace.

10.3.4 In cases of less severe Sexual Harassment, a reprimand or warning may be appropriate, but where the offender is guilty of the misconduct on more than one occasion, or guilty of the misconduct of more than one action an appropriate disciplinary action including dismissal may be taken.

10.4 Criminal and Civil Charges

The provision of this Policy and the utilisation of its procedures do not limit the right of victims of sexual assault in lodging separate criminal and/ or civil charges against an alleged perpetrator.

11. RESPONSIBILITY

- 11.1 As Sexual Harassment is regarded as a serious offence, managers and supervisors must ensure the following:
 - 11.1.1 That a work environment free of any act of Sexual Harassment is created;
 - 11.1.2 That all complaints of Sexual Harassment are investigated immediately;
 - 11.1.3 That complainants and witnesses are not victimised in any manner; and
 - 11.1.4 That the complainant receives appropriate support and assistance.
- 11.2 As with other forms of misconduct, all employees have the responsibility to ensure that they do not make themselves guilty of sexual harassment, or allow such conduct. When inappropriate behaviour is reported or noted, it must be investigated appropriately and immediate corrective steps must be taken;
- 11.3 A false complaint made intentionally and maliciously, will constitute a form of misconduct rendering the complainant liable for disciplinary action. This provision is not intended to discourage complaints where an individual sincerely believes that Sexual Harassment has occurred;
- 11.4 All employees have a responsibility to exercise diligence when reporting cases of Sexual Harassment as any false allegations will be considered in a very serious light; and
- 11.5 The Departmental disciplinary process must be invoked where a formal complaint has been submitted and evidence indicates that a person may be guilty of Sexual Harassment irrespective of rank, gender, race and office.

12. MONITORING, EVALUATION AND REVIEW

- 12.1 The Human Resource Management Component is responsible for communicating the provisions of this Policy to all employees; and

12.2 The Policy will be monitored, evaluated and reviewed after three years or as and when the need arises.

13. POLICY VERSION

This is the 2nd version of the Policy and is available in the English version.

14. EFFECTIVE DATE

This Policy is effective from the date of approval by the Head of Department.

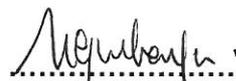
15. TITLE OF THE POLICY

This policy shall be called the Policy on Sexual Harassment.

16. POLICY APPROVAL

This Policy supersedes all other policies already in existence. This Policy is approved with effect from the

09th day of April in the year 2014.



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**ACTING HEAD OF DEPARTMENT
DEPARTMENT OF SOCIAL DEVELOPMENT**



social development

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PROVINCE OF KWAZULU-NATAL

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TO : Mr. M.T Mazibuko.
The Senior Manager: HRA
Department: Social Development, KZN.

DATE : Friday, 13 December 2013

CERTIFICATE OF LEGAL COMPLIANCE: POLICY ON SEXUAL HARASSMENT.

We attach hereto a copy of the Policy on Sexual Harassment.

We confirm that the attached policy has been legally edited and is in accordance with the applicable laws.

We trust the above is in order.

Mr. Z.B. Simelane
(Acting) Deputy Manager: Legal Compliance.

Date: 2013/12/13