

SECTION HR 30

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POLICY

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SEXUAL HARASSMENT POLICY

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SEXUAL HARASSMENT POLICY

1. Introduction

Sexual harassment is unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual.

In the majority of cases, it is men who harass women. However, this is not always the case and a definition of sexual harassment also includes the case of a woman sexually harassing a man. Likewise, sexual harassment also includes cases where a person harasses someone of their own gender.

In this chapter we will cover advise to Human Resources Officers in sensitivity handling complaints of sexual harassment as well as providing a draft Sexual Harassment Policy which Municipalities may use as a basis for drafting their own policies.

2. Sensitivity handling Sexual Harassment Complaints

Human Resources Officers must treat any complaints of a sexual nature extremely sensitively and bear the following in mind:

- It can be difficult or distressing to make a complain of sexual harassment
- The victim may feel that they will not be taken seriously or will be blamed or that people will not understand
- There are usually no other witnesses to incidents of sexual harassment
- There is often a time lapse between any incident and a complaint

None of these is a good reason for not investigating the matter thoroughly. So:

- Be sensitive and understanding
- Be discreet. Do not mention the matter to anyone who does not need to know about it
- Do not interpret a delay in reporting an incident as showing that the complaint is false
- Do not assume that a lack of witnesses means that you cannot take effective action
- Take any complaint seriously, and deal with it promptly

As soon as a complaint is raised or reported, arrange a meeting with the victim and advise her/him as follows:

- He/she has the right to be interviewed by a person of the same gender
- He/she is welcome to bring along a trade union representative or colleague for support

The purpose of the meeting with the victim would be to discuss:

- What happened from the victim's point of view
- If the victim has taken any action so far
- What response the victim is seeking from management
- Is the victim prepared to be identified
- Is the victim prepared to be a witness in a formal disciplinary hearing
- The options for further action

3. How to Question Victim's of Sexual Harassment

A Human Resources Officer dealing with a case of sexual harassment should frame his/her questions very carefully to the victim. Open questions should be used to encourage the victim to discuss the incident. For example, the questions can be framed as follows:

- Can you tell me what happened?
- When did this take place?
- How did you react?
- How did it make you feel?
- Has this person behaved like this before? Or Since?
- What happened on those occasions?
- Was anybody else involved?
- Have you spoken to anyone else about this? Who and when?

At all costs, the Human Resources Officer must avoid sexist assumptions or questions which imply that the victim is lying, over-reacting or is to blame, e.g.:

- Did you do anything to lead the perpetrator on?
- Are you sure you're not mistaken?
- What were you wearing?
- Don't you think that you're over-reacting?
- Do you think the perpetrator was only joking?

Bear in mind at all times that the victim is likely to be extremely anxious about the incident and be sympathetic.

4. Conclusion

A draft policy which can be used by Municipalities as a basis for preparing its own Sexual Harassment Policy is attached as Annexure A.

The effects of sexual harassment are that it lowers the employee's work performance, causes anxiety, tension, depression, absenteeism and can drive employees to leave their jobs, thereby increasing staff turnover. Sexual harassment cannot be tolerated in the workplace and it is essential that employers to not treat such cases leniently in order that sexual harassment can be stamped out.

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SEXUAL HARASSMENT POLICY

ANNEXURE A

DRAFT SEXUAL HARASSMENT POLICY

The following draft policy can be used by Municipalities as a basis for preparing their own Sexual Harassment Policy:

1. Purpose of the Policy

The object of this policy is to eliminate sexual harassment in the workplace. This policy provides appropriate procedures to deal with the problem and prevent its recurrence.

This policy encourages and promotes the development and implementation of policies and procedures that will lead to the creation of workplaces that are free of sexual harassment where employers and their employees respect one another's integrity, privacy and right to equity in the workplace.

2. Application of the Policy

Although this policy is intended to guide Council and employees, the perpetrators and victims of sexual harassment may include:

- Councillors
- Managers
- Supervisors
- Employees
- Job Applicants
- Clients
- Suppliers
- Contractors
- Others having dealings with Council

None of the points mentioned above grants Council the authority to take disciplinary action in respect of non-employees.

A non-employee who is a victim of sexual harassment may lodge a grievance with the Council where the harassment has taken place in the workplace or in the course of the harasser's employment.

3. Definition of Sexual Harassment

Sexual harassment is unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual.

Sexual attention becomes sexual harassment if:

- The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; and/or
- The recipient has made it clear that the behaviour is considered offensive; and/or
- The perpetrator should have known that the behaviour is regarded as unacceptable.

4. Forms of Sexual Harassment

Sexual harassment may include unwelcome physical, verbal or non-verbal conduct, but is not limited to the following examples:

- Physical conduct of a sexual nature includes all unwanted physical contact, ranging from touching to sexual assault and rape, and includes a strip search by or in the presence of the opposite sex.
- Verbal forms of sexual harassment include unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments about a person's body made in their presence or to them, unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling at a person or a group of persons.
- Non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects.
- Quid pro quo harassment occurs where a councillor, supervisor, member of management or co-employee undertakes or attempts to influence or influences the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of an employee or job applicant in exchange for sexual favours.

Sexual favouritism exists where a person who is in a position of authority rewards only those who respond to his or her sexual advances, while other deserving employees who do not submit to sexual advances are denied promotions, merit rating or salary increases.

5. Guiding Principles

Managers should create and maintain a working environment in which the dignity of employees is respected. A climate in the workplace should also be created and maintained in which victims of sexual harassment will not feel that their grievances are ignored or trivialised, or fear reprisals. The following guidelines are to be complied with:

- Councillors / management and employees are required to refrain from committing acts of sexual harassment
- All councillors / management and employees have a role to play in creating and maintaining a working environment in which sexual harassment is unacceptable. They should ensure that their conduct does not cause offence and they should discourage unacceptable behaviour on the part of others
- Councillors and management should attempt to ensure that persons such as customers, suppliers, job applicants and others who have dealing with the Municipality are not subjected to sexual harassment by the Council or its employees
- Managers are required to take appropriate action in accordance with this policy when instances of sexual harassment which occur within the workplace are brought to their attention

Management has the positive duty to implement the policy and take disciplinary action against employees who do not comply with the policy.

The Council emphasises that:

- Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially
- Employees will be protected against victimisation, retaliation for lodging grievances and from false accusations

This policy statement on sexual harassment will be communicated to all employees and unions.

6. Procedures

6.1 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. Victims may approach the Human Resources Manager, the trade union representative or co-employee for confidential advice.

These persons should have the appropriate skills and experience or be properly trained and give adequate resources. They should also be required to have counselling and relevant labour relations skills and be able to provide support and advice on a confidential basis.

6.2 Options in Resolving a Problem

Employees are advised that there are two options in resolving a problem relating to sexual harassment. Either an attempt can be made to resolve the problem in an informal way or a formal procedure can be embarked upon.

The employee should be under no duress to accept one or the other option.

6.3 Informal Procedure

It may be sufficient for the employee concerned to have an opportunity to explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable and that it interferes with their work.

If the informal approach does not resolve the matter satisfactorily, if the case is severe, or if the conduct continues, it may be more appropriate to embark upon a formal procedure. Severe cases may include sexual assault, rape, a strip search and quid pro quo harassment.

6.4 Formal Procedure

Where a formal procedure has been chosen by the aggrieved, the following procedure is to be followed:

- The employee should lodge a grievance with the Human Resources Manager within 10 days of occurrence of the event
- The grievance must be dealt with, as expeditiously as possible, within the framework of the applicable grievance / disciplinary policy
- Should the case not be resolved satisfactorily, the parties may refer this matter to the CCMA

6.5 Investigation and Disciplinary Action

Care should be taken during any investigation of the sexual harassment grievance that the aggrieved person is not disadvantaged, and that the position of other parties is not prejudiced if the grievance is found to be groundless.

The Code of Good Practice regulating dismissal contained in schedule 8 of the Labour Relations Act, 1995 (Act 66 of 1995) ('the Act'), reinforces the provisions of chapter 8 of the Act and provides that an employee may be dismissed for serious misconduct or repeated offences. Serious incidents of sexual harassment or continued harassment after warnings are dismissible offences.

In cases of persistent harassment or single incidents of serious misconduct, Personnel Managers must follow the procedures set out in the Code of Good Practice contained in Schedule 8 to the Act.

It is also made clear that it will be a disciplinary offence to victimise or retaliate against an employee who in good faith lodges a grievance of sexual harassment.

6.6 Criminal and Civil Charges

A victim of sexual assault has the right to press separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by this Code.

6.7 Dispute Resolution

Should a complaint of alleged sexual harassment not be satisfactorily resolved by the internal procedures set out above, either party may within 30 days of the dispute having arisen, refer the matter to the CCMA for conciliation in accordance with the provisions of Section 135 of the Act. Should the dispute remain unresolved, either party may refer the dispute to the Labour Court within 30 days of receipt of the certificate issued by the Commissioner in terms of Section 135 (5).

7. Confidentiality

Managers, trade unions and employees must ensure that grievances about sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.

In cases of sexual harassment, management, unions, employees and the parties concerned must endeavour to ensure confidentiality at the disciplinary inquiry. Only appropriate members of management, and the aggrieved person, his/her representative, the alleged perpetrator, witnesses, and industrial relations representative and an interpreter, if required, may be present at the disciplinary inquiry.

Managers are required to disclose to either party or to their representatives such information as may reasonably be necessary to enable the parties to prepare for any proceedings in terms of this code.

The relevant provisions of Section 16 of the Act will apply to the disclosure of information in terms of this code.

8. Additional Sick Leave

Where an employee's existing sick leave entitlement has been exhausted, the employer may give due consideration to the granting of additional sick leave in cases of serious sexual harassment where the employee, on medical advice, requires trauma counselling.

9. Information and Education

The Municipality will ensure that copies of this code are accessible and available.

Employers and employer organisation should include the issue of sexual harassment in their orientation, education and training programmes for employees.

Trade Unions should include the issue of sexual harassment in their education and training programmes for shop stewards and employees.

Staff should receive specialised training to deal with sexual harassment cases.