




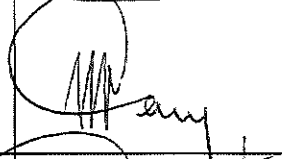
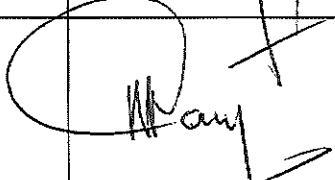

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PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE PREMIER
POLICY AND PROCEDURE ON MANAGING
SEXUAL HARASSMENT

Document Approval Page

SEXUAL HARASSMENT POLICY

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Policy and Procedure on Managing Sexual Harassment

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1. DEFINITIONS

- OTP:** Office of the Premier
- Client:** any individual or organization who is receiving service or having a business relationship with OTP
- Employee:** means any person, excluding an independent contractor, who works for the OTP or is employed under the Public Service Act, whether full time or part-time and who receives, or is entitled to receive, any remuneration;
- Job applicants:** any person/individual who has applied for a job position in the OTP, or who is attending an interview with the prospect of becoming an employee within the OTP;
- Perpetrator:** any individual or group of persons who is/are being accused to have committed the act of sexual harassment against another person (victim);
- Sexual advances:** Insinuating sexual behavior or actions that constitute sexual harassment.
- Sexual harassment:** The behavior is persistent, although a single incident of harassment can also constitute sexual harassment; and/or
- The recipient has made it clear that the behavior is considered offensive; and/or
 - The perpetrator should have known that the behavior is regarded as unacceptable;
- Victim:** any person who alleges to have been sexually harassed by the alleged perpetrator,
- Workplace:** in all other instances means the place or places where the employees of OTP work or a place where the employee is deployed to work by the OTP. This includes Social functions or gatherings, or events.

2. INTRODUCTION

The Office of the Premier recognize that sexual harassment is a violation of the fundamental human rights of men and women and is a violation of the right to equality, human dignity, privacy, and security of person and fair labour practices. The OTP therefore commits itself to bring the advocate of "no tolerance" and to timeous handling of cases of alleged sexual harassment and to ensure that fair procedures and appropriate action is taken to minimize and deal with matter of sexual harassment as soon as instances of alleged sexual harassment are brought to its attention.

3. PURPOSE

The purpose of this policy is to provide a framework within which to raise awareness and sensitize employees about what constitute sexual harassment and to provide procedures to manage those who violate the provision of this policy.

4. LEGAL FRAMEWORK

The legislative and policy framework which informs the formulation of this policy includes amongst other;

4.1 Constitution of the Republic of South Africa Act, 1996

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- 4.2 Public Service Act, 1994 (Proclamation 103 of 1994)
- 4.3 Code of Good Practice on the handling of Sexual Harassment cases
- 4.4 Basic Conditions of Employment Act, 1997 (Act 75 of 1997)
- 4.5 Occupational Health and Safety Act, 1993 (Act 85 of 1993)
- 4.6 Employment Equity Act, 1998 (Act 55 of 1998)
- 4.7 Labour Relations Act, 1996 (Act 66 of 1996)
- 4.8 Promotion of equity and prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)

5. OBJECTIVES

The objectives of this policy are to-

- 5.1 Promote the right to dignity, Privacy and equality in the workplace;
- 5.2 Ensures that all visitors of the OTP are treated with respect, dignity, privacy and equality;
- 5.3 Ensures that Sexual Harassment in the workplace is not permitted or condoned.
- 5.4 Adopt a zero tolerance approach towards sexual harassment in the workplace.
- 5.5 Provide persons who have been subjected to sexual harassment in the workplace with a right of recourse.

6. SCOPE OF APPLICATION

This policy applies to all employees of the OTP including:

- 6.1 Job applicants to the OTP and
- 6.2 All people employed by the OTP, clients, and who interact with employees by any medium of communication.

This policy is also applicable within the OTP premises; during work performed outside the OTP premises; during social events and other official functions and official travel where the conduct or comments of individuals may have an effect on the workplace or workplace relations.

7. POLICY PRONOUNCEMENTS

7.1 BEHAVIOUR CONSTITUTING SEXUAL HARASSMENT

The behavior may be a once off communication or a series of verbal and non-verbal communication such as touching, cell-phone text messages, emails, telephone calls.

Sexual harassment includes, but not limited to the following types of behavior:-

7.1.1 Verbal Behaviour of a Sexual Nature

The following shall be interpreted as Verbal behavior of a sexual nature.

- a) Unwelcome innuendoes, suggestions and hints.
- b) Sexual advances.
- c) Comments with sexual overtones.
- d) Sex related jokes or insults.
- e) Graphic comments about person's body made in their presence or directed towards them.
- f) Inappropriate enquiries about a person's sex life.
- g) Whistling directed at a person or group of persons.
- h) Jokes that cause awkwardness or embarrassment.

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- i) Comments about a person's sexual habits.
- j) Verbal threats or abuse.
- k) Telephone calls with sexual overtones.

7.1.2 Gestures and other Non-Verbal Behaviour

The following shall be interpreted as Gestures and Non Verbal behavior:

- a) Unwelcome gestures such as winking eyes suggestively.
- b) The unwelcome display of sexually explicit/undesirable pictures and objects
- c) Persistent and unwelcome flirting.
- d) Demands for sexual attention or for spending time together.
- e) Persistent and unwelcoming visiting, telephoning, stalking, cell-phone text messages that invade personal privacy.

7.1.3 Visual Sexual Harassment.

- a) A public display of pornographic or other offensive, derogatory and/or sexually explicit pictures, photographs, cartoons, drawings, symbols and other materials.
- b) Showing of pornographic or sexually explicit movies or slides.
- c) Indecent exposure of private parts in view of others.
- d) Displaying/sourcing offensive material/jokes on the employer's electronic and/or e-mailing such material to other employees.

7.1.4 Physical Behaviour

- a) Unwelcomed physical contact, ranging from touching to sexual assault and rape, and includes a strip search by or in the presence of the opposite sex.
- b) Attempt or actual kissing or fondling.

7.1.5 Psychological Sexual Behaviour

- a) Repeated unwanted social invitations for dinner, drinks or dates.
- b) Sexual favours (see 7.7 below)
- c) Requiring/requesting a subordinate to wear sexy, revealing, or suggestive clothes.

7.1.6 Quid Pro Quo Harassment (a favour or a favour)

This refers to an instance wherein a member of management or co-employee undertakes or attempts to influence the process of employment, training, discipline, dismissal, salary increment or other benefit of an employee or job applicant, in exchange for sexual favours.

7.1.7 Sexual Favoritism

This refers to instances where a person who is in a position of authority rewards only those who respond to his/her sexual advances, whilst other deserving employees who do not submit themselves to any sexual advances are denied merit rating, salary increases and other employment benefits.

7.2 Behaviour Which Does not Constitute Sexual Harassment

The following would not normally constitute sexual harassment:-

7.1 Occasional Compliments.

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7.2 Flirtatious banter when it is mutually acceptable.

7.3 Forms of greetings that are deemed acceptable according to the OTP culture and behavior.

7.4 Occasional jokes or other behaviors whereby the intent is not meant to be offensive, except where the perpetrator should have known that the behavior is regarded as unacceptable.

7.3 ROLES AND RESPONSIBILITY

7.3.1 The Head of Department shall ensure that the department has an approved workplace policy on managing sexual harassment and that there is appropriate communication, sensitization and awareness raising of its implementation to show unwavering commitment.

7.3.2 The head of Department shall direct the security section and ensure that visitors are not purposefully mistreated. The management will sensitize the reception staff to the contents of this policy and their role in directing visitors who may be affected by adverse treatment by an OTP employee to the relevant Director.

7.3.4 Managers and Supervisors shall ensure that they do not subject their subordinates to any form of sexual harassment and that they respond appropriately to suspected, alleged and reported cases of harassment in their sections.

7.3.5 Managers and supervisors shall ensure that all allegations of sexual harassment are treated with respect and dignity, and handled in a sensitive manner.

7.3.6 The Labour Relations Unit shall ensure that allegations of sexual harassment are dealt with timeously and confidential manner.

7.3.7 The internal Employee Health and Wellness unit shall ensure that this policy is widely communicated to all internal stakeholders as outlined in the communication plan. The unit shall ensure that support is offered to the alleged victim, and then to the alleged perpetrator if the alleged if the allegations are proved to be false.

7.3.8 Employees shall ensure that they are aware of the problem of sexual harassment and take responsible actions to ensure that they do not practice, engage in or promote such behavior.

7.4 PROCEDURE ON MANAGING SEXUAL HARASSMENT CASES

7.4.1 REPORTING ALLEGATIONS

7.4.1.1 Sexual harassment allegations need not follow the normal grievance procedure and will remain as confidential as possible. Any employee who believes that he or she has been or is subjected to sexual harassment shall report the alleged conduct immediately. All information disclosed pursuant will be held in strictest confidence, and shall only be disclosed on a need-to-know basis in order to investigate and resolve the matter.

7.4.1.2 If it is alleged that the immediate supervisor or line manager is involved, the complainant may contact and report the matter to either the Director: People Management and Development; a union shop steward or Employee Wellness Practitioner to investigate the allegation.

7.4.1.3 The investigation will be done in consultation with Labour Relations unit or by a management assigned investigator.

7.4.1.4 The investigator would ensure the complainant that the allegation details and the complainant's identity will remain as confidential as possible.

7.4.1.5 The investigator and the complainant should try to agree whether the complainant wishes the matter to resolved informally or prefers formal disciplinary action to be taken. Pressure should not however be put on the complainant to either drop/withdraw or proceed with the complaint.

7.4.2 THE INFORMAL PROCEDURE

7.4.1 If the complainant prefers informal action, the assigned investigator will call the alleged accused to a private meeting, advice them of the details of the complaint lodged. The investigator will assure the alleged accused that their identity will remain as confidential as possible until the matter is resolved.

7.4.2 The investigator must give the alleged accused an opportunity to state their case, explain the outcome that the complainant requests (an informal settlement) and advice the alleged accused of the possible consequences if proved guilty of sexual harassment in a formal disciplinary hearing.

7.4.3 The investigator shall again meet with the complainant, advice him/her of the alleged accused response and, if the complainant is satisfied, invite both parties to meet to consider resolving and settling the matter without the need for formal disciplinary action.

7.4.4 The investigator will assess what support and assistance the complainant may require after settlement.

7.4.5 The role of the investigator is that of a mediator. On being apprised of the allegations, the investigator may of his/her own accord initiate the formal procedures set out in 9.3 below.

7.5 THE FORMAL PROCEDURE (II)

7.5.1 If the matter is not settled, or if the complainant or accused wants formal disciplinary action, the investigator will investigate the allegation sensitively, interview witnesses, if any, and get written statements if possible. If the allegations are substantial and serious, and there are reasonable prospects of proving the allegations against the accused on a balance of probability, the normal Disciplinary Procedures in respect of a formal disciplinary hearing shall then be followed.

7.5.2 If the complainant wishes, the formal disciplinary hearing shall take place in camera, only the persons directly involved, should attend.

7.5.3 The names of the parties shall remain as confidential as possible. The OTP's formal disciplinary measures shall be applied.

7.5.4 It is a disciplinary offence to victimize or retaliate against an employee who in good faith lodges a grievance of sexual harassment, or to pressurize a complainant to drop or withdraw a complaint of sexual harassment.

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7.5.5 In turn it is a disciplinary offence to lay unfounded or unjustified complaints against a fellow employee with the intent to cause malicious harm to them or their reputation. The legal rights of the victim are reserved and are in no way limited.

7.6 PROCEDURE OF REPORTING SEXUAL HARASSMENT ALLEGATIONS OF NON-EMPLOYEES

7.6.1 A non-employee who is a victim of sexual harassment by OTP employee may lodge a complaint with the OTP where harassment has taken place in the workplace or in the course of the harasser's employment or alternatively the victim can lay charge against the perpetrator.

7.6.2 If the matter is reported to the OTP, the employee shall still face the disciplinary action within the OTP irrespective of criminal charges he/she faces:

7.7 TYPES OF CORRECTIVE ACTION

7.7.1 If after an investigation, it is determined that an allegation of harassment is valid, appropriate corrective action shall be taken with either the formal or informal procedure. Types of corrective actions may include, but not limited to, any of the following:

7.7.2 A formal written apology

7.7.3 Counselling

7.7.4 Written warning placed in the employee's file

7.7.5 Change of work assignment

7.7.6 Suspension or discharge of an employee

7.8 ADDITIONAL MEASURES

In addition to the sanctions and corrective measures that the OTP undertakes as part of complaint resolution, employees who engage in sexual harassment may be exposed to legal action depending on the nature and severity of the case.

7.9 CONFIDENTIALITY

7.9.1 The OTP understands that it is often difficult for survivors of sexual harassment to come forward with a complaint and further realise the serious need to keep the matter confidential. Therefore, in order to protect the interest of the complainant, the alleged perpetrator and other witnesses who may report such incidents, confidentiality shall be maintained throughout the investigation to an extent that it is practical and appropriate to do so.

7.9.2 The Labour Relations unit, supervisors and managers shall ensure that complaints about sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept as confidential as possible.

7.9.3 In cases of sexual harassment, management, employees and the parties concerned must endeavour to ensure confidentiality as far as possible in the disciplinary inquiry. Only

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appropriate members of management as well as the complainant, representative, alleged perpetrator, witnesses and interpreter if required, must be present in the disciplinary inquiry.

- 7.9.4 All records of complaints, including contents of interviews, meetings and results of investigations shall be kept confidential except where disclosure is required for disciplinary or other remedial purposes.

7.10 EMPLOYEE WELLNESS PROGRAMME

- 7.10.1 A complainant or an alleged perpetrator of sexual harassment (who has been found to be innocent or unjustly accused), may apply for assistance in terms of the Employee Wellness Programme for remedial assistance, including the provision of special leave or trauma Counseling where such proceedings have impacted on the employee's work performance or psychological well-being.

7.11 COMMUNICATION PLAN

- 7.11.1 The Internal Employee Health and Wellness unit shall be responsible for the communication of this policy. Once approved, the policy shall be widely communicated to all staff members and role-players through information sessions, the intranet and internal News Bulletin.
- 7.11.2 All new employees shall be introduced to the policy during the Internal Induction Programme. Employees should be encouraged to seek clarification on any aspect of the policy that is not clear.
- 7.11.3 Managers and supervisors should attend training sessions on how to handle allegations of sexual harassment reported to them.

8. MONITORING, EVALUATION AND REPORTING

The implementation and compliance in terms of this policy shall be monitored and reported on annually in a prescribed format.

9. POLICY REVIEW

The review of this policy shall be conducted biennially (once in a two year period) on the month it was approved on and also as informed by legislative or national policy requirements.

10. EFFECTIVE DATE

This policy takes effect on the date of approval.