



LIMPOPO

PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF
ECONOMIC DEVELOPMENT, ENVIRONMENT & TOURISM

SEXUAL HARASSMENT POLICY

2019

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1. ACRONYMS

HOD : Head of Department

HR : Human Resource

LEDET: Limpopo Department of Economic Development, Environment and Tourism

MEC : Member of the Executive Council

SLA : Service level agreement

2. DEFINITIONS

2.1 'Department' means the Department of Economic Development, Environment and Tourism in the Limpopo Province;

2.2 'disability' refers to those with long-term physical, mental, Intel, or sensory impairments which may hinder them from fully and effectively participating in activities on an equal basis with others;

2.3 'employee' means all male and female persons who are appointed in terms of the Public Service Act, 1994 as amended within the Department of Economic Development, Environment and Tourism;

2.4 'employer' for the purpose of this policy means the Head of Department;

2.5 'Quid pro quo' is an intentional act of harassment which is an abuse of authority by supervisor or any member of management and or employees who have the power to employ, dismiss or change the working conditions of such an employee; and

2.6 'sexual harassment' as defined in the protection from Harassment Act (No 17 of 2011) means any of the following:

- Unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome;

- Unwelcome explicit or implicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or related person;
- Implied or expressed promise of reward for complying with a sexually oriented request; and
- Implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request.

3. INTRODUCTION

LEDET recognizes that sexual harassment is a human right violation. Everyone has inherent dignity and has the right to have his or her dignity respected and protected. This policy prohibits sexual harassment against any employee including persons with disabilities, job applicants and other persons that have dealings with the Department regardless of their rank, sex or race; and this policy sets out guidelines to be followed when any member of the Department believes that a violation of this policy has occurred. Violations will also include knowingly making false sexual harassment allegations.

4. PURPOSE AND OBJECTIVES

The purpose and objectives of this policy are the following:

- 4.1 To promote a workplace that is free of sexual harassment, sexual favours, intimidation and victimisation, where the employer, male and female employees including persons with disabilities respect one another's integrity, dignity, privacy and the right to equality in the workplace.
- 4.2 To provide a systematic and consistent approach to managing sexual harassment and steps to be taken when sexual harassment occurs within the Department.
- 4.3 To provide guidelines on the effective management of sexual harassment complaints within the Department.

4.4 To create a working environment in which the employer and employees respect one another's integrity, dignity, privacy and rights to equality in the workplace.

4.5 To ensure that all employees and clients of the Department are treated with respect and dignity.

4.6 To create an enabling and barrier free workplace that is non-sexist and non-discriminatory.

5. AUTHORITY OF THE POLICY

This policy is issued under the authority of the MEC as the Executive Authority and the Head of Department as the Accounting Officer for LEDET.

6. LEGAL FRAMEWORK

6.1 The Constitution of the Republic of South Africa, 1996 as amended

6.2 Public Service Act, No 103 of 1994, as amended

6.3 White Paper on the Transformation of the Public Service, 1995

6.4 White paper on the rights of persons with disabilities, 2016

6.5 Labour Relations Act No 66, of 1995 as amended

6.5 Employment Equity Act No. 55 of 1998

6.6 White Paper on Affirmative Action in the Public Service, 1998

6.7 Code of Good Practice on the Handling of Sexual Harassment Cases, Notice 1367 of 1998

6.8 Promotion of Equality and Prevention of Unfair Discrimination Act No 4 of 2000

6.9 National Policy Framework for Women's Empowerment and Gender Equality, 2000

6.10 Criminal Sexual Offences and Related Matters Amendment Act No 32, 2007

6.11 Gender Equality Strategic Framework for the Public Service, 2008

6.12 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1995

6.13 Beijing Platform for Action, 1995

6.14 The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 2003

6.15 Protection from Harassment Act No 17, 2011.

6.16 Public Service Coordinating Bargaining Council (PSCBC) Resolutions 7 of 2000 as amended by Res 5 of 20016

6.17 Compensation for Occupational injuries and Diseases Act No. 130 of 1993

6.18 Policy on Incapacity Leave and Ill Health Retirement (PILIR), 2009

6.19 Disciplinary Code and Procedure for the Public Service (PSCBC Resolution 1 of 2003)

7. SCOPE OF APPLICATION

This policy is applicable to all employees of the Limpopo Department of Economic Development, Environment and Tourism employed in terms of the Public Service Act including those on Internship, Learnership and Contract workers. While the Department has no jurisdiction over third parties who are not employees of the Department, the Department encourages all people who work in or have dealings with the Department to uphold and respect this policy and Service Level Agreement (SLA) entered into with service providers should include the terms of this policy, thus making all service providers who sign SLAs to be deemed to have consented to be subject to this policy.

8. POLICY PRONOUNCEMENTS

Sexual harassment can take various forms, ranging from slight attention to the worst forms of violence such as rape, but is not limited to other forms of sexual harassment.

9. FORMS OF SEXUAL HARASSMENT

9.1 Physical contact of a sexual nature, which 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.

9.2 Verbal forms of sexual harassment include unwelcome intimations, 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 directed towards them; unwelcome and inappropriate enquiries about a person's sex life and unwelcome whistling directed at a person or group of persons.

9.3 Non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects.

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

9.5 Quid pro quo sexual harassment occurs where an owner, employer, supervisor, member of management or co-employee undertakes or attempts to influence the process of employment, promotion, training, discipline, dismissal, salary increment or other benefit of an employee or job applicant, in exchange for sexual favours.

10. TYPES OF UNWELCOMED CONDUCT THAT MAY BE CONSTRUED AS SEXUAL HARASSMENT

10.1 Sexual advances.

10.2 Requests for sexual favours in return for employment and or employment benefits.

10.3 Verbal abuse or non-verbal conduct with sexual overtones.

10.4 Intimations, including remarks or insinuations about a person's sex life or private life which has sexual overtones.

10.5 Suggestive remarks about a person's appearance, body or clothing.

10.6 Physical contact and/ or conduct.

10.7 Obscene gestures, indecent exposure.

10.8 Staring, leering, and whistling of a sexual nature.

10.9 Display of, or sending by electronic means or any other means which include but not limited to short message service, multimedia message service or otherwise sexually offensive or explicit material, including posters, magazines, pictures or objects.

10.10 Direct sexual proposition.

10.11 Victimization with sexual undertones or in connection therewith.

10.12 Persistent request for dates and sexual favours.

- 10.13 Any communication of a sexual nature.
- 10.14 Any of the above as a form of coercion or blackmail for employment and or advancement, or lack of same or dismissal or any other occupational detriments if recipient refuses.
- 10.15 Any other unwelcome form of physical or verbal behaviour that has sexual overtones.
- 10.16 Persistent dress codes of an offensive nature, which contravenes the code of conduct for the public service.
- 10.17 Sex related jokes and or insults.

11. EMPLOYER LIABILITY FOR SEXUAL HARASSMENT CASES

Section 60 of the Employment Equity Act (NO. 55 of 1998) deals with the liability of the employer. The Head of Department will be liable for:

- 11.1 the sexual harassment actions of the departmental employee, if the HOD fails to take corrective measures after an incident of sexual harassment has been reported or came to the employer's attention.
- 11.2 the medical expenses, assessment and treatment of an employee who has experienced sexual harassment as it is categorised as an occupational injury by the Compensation for Occupational Injuries & Diseases Act (No. 130 of 1993).
- 11.3 taking reasonable steps to assist a complainant of sexual harassment to claim compensation accordingly if the incident has resulted in the employee developing a medical condition such as post-traumatic stress disorder.
- 11.4 treating all complaints and reported cases as confidential.

12. TIME FRAMES

Prompt reporting of sexual harassment is in the best interest of all parties and enables the HOD to address and correct unacceptable behavior and provide support to the complainant. Complainants of sexual harassment are therefore encouraged to report

the case within twenty-four hours. In the event that 30 days expire before the investigation of the sexual harassment case is concluded, the HOD shall consult the complainant with a written request for an extension of up to a maximum of 14 days to conclude the case. Consent should not be unreasonably withheld and should be in writing.

13. ROLES AND RESPONSIBILITIES

13.1 Head of Department

The HOD is responsible for the following:

- 13.1.1 Appoint a Sexual Harassment Advisor from the Labour Relations Unit to deal with sexual harassment complaints in the Department.
- 13.1.2 Report sexual harassment to the Compensation Commissioner within seven days of receipt of the complaint or becoming aware of the incident (Compensation for occupational Injuries & Diseases Act no 130 of 1993, section 38).
- 13.1.3 To ensure that a reported sexual harassment complaint is investigated and resolved within 30 working days, i.e. from reporting to conclusion of investigation and feedback.
- 13.1.4 Allocate resources (human and financial) to ensure that awareness raising and training programs for employees on sexual harassment are implemented.
- 13.1.5 Ensure that disciplinary measures applied are in accordance with the Disciplinary Code and Procedures (PSCBC Resolution 1 of 2003) in the Public Service.
- 13.1.6 Ensure implementation of recommendations within five (5) working days after conclusion of investigations of sexual harassment complaints.

13.2 Role of Sexual Harassment Advisor

The Sexual Harassment Advisor serves as the first line of contact to complainants of alleged sexual harassment. Her or his roles are as follows:

- 13.2.1 To explain the disciplinary procedure and time frames to complainants and respondents in both formal and informal procedures.
- 13.2.2 To advise the complainant on the appropriate course of action and support available.
- 13.2.3 To advise the complainant on the two procedures available to follow, namely the informal and formal.
- 13.2.4 To provide guidance (if necessary) on how to complete the appropriate grievance form.
- 13.2.5 To issue a written notice of the complaint to the respondent and explain the protective measures available to the complainant.
- 13.2.6 To provide the respondent with a copy of this policy and any relevant documents on disciplinary rules and procedures of the Public Service and the Department.
- 13.2.7 To investigate the complaint and bring to the attention of the Head of Department.
- 13.2.8 To maintain confidential statistic and narrative reports on all sexual harassment cases reported and handled.
- 13.2.10 To provide a neutral, confidential and supportive environment for employees who report to have been sexually harassed and protect them from victimization.

13.3 Managers or Supervisors

Managers or supervisors have the following responsibilities:

- 13.3.1 Refrain from sexual harassment in the workplace.
- 13.3.2 Take all reasonable steps to create and maintain an environment that is free from sexual harassment.
- 13.3.3 Know and understand this policy, and assume responsibility for its implementation.
- 13.3.4 Communicate the policy to all employees, including newly appointed employees.
- 13.3.5 Respond appropriately to a complaint of sexual harassment from employees.
- 13.3.6 Take appropriate action when instances of sexual harassment occur and act in accordance with the reporting and disciplinary procedures of this policy.
- 13.3.7 Prevent retaliation against any employee making a sexual harassment complaint.
- 13.3.8 Treat all complaints seriously, impartially and with confidentiality.

13.4 Employee Health and Wellness Unit

The Employee Health and Wellness Unit has the following responsibilities:

- 13.4.1 Provide relevant counselling and support when required.
- 13.4.2 Support and advise employees who may report incidents of sexual harassment to them.
- 13.4.3 Maintain confidentiality for all sexual harassment matters reported to them.

13.5 Role of Employees

Employees of the Department have the following responsibilities:

13.5.1 All employees should refrain from sexual harassment of others in the workplace.

13.5.2 If sexually harassed, the employee should inform the harasser and tell him or her that their attention is unwanted and the behaviour is offensive. If able to, also do so in writing and keep a record of this correspondence.

13.5.3 If the behaviour persists, the harassment should be reported immediately.

13.5.4 Treat fellow employees with respect and dignity.

13.5.5 Know and understand this policy.

14. EDUCATION AND TRAINING

14.1 Special Programmes unit shall conduct continuous education and training to ensure that employees know and understand this policy and are able to prevent and report sexual harassment when it occurs.

14.2 Special programmes officials and Sexual Harassment Advisor should undergo regular training to increase their knowledge on sexual harassment and to enhance their skills in investigation, communication, conflict resolution, mediation and legal developments related to sexual harassment.

15. COMMUNICATION

The names and contact details of the Sexual Harassment Advisor shall be widely Publicised in the Department through the Communications Unit.

16. THE HEAD OF DEPARTMENT AS A PERPETRATOR

Where the Head of Department is the perpetrator, the Executive Authority becomes the authority that appoints the Sexual Harassment Advisor and makes decisions on the case. Once the Sexual Harassment Advisor has been appointed, all terms and procedures set out in this policy for subsequent action shall apply without exception.

17. CRIMINAL CHARGES AND/OR CIVIL CLAIMS

A complainant of sexual harassment has the right to press separate criminal charges and/or civil claims against the respondent if they so wish. The legal rights of the complainant are in no way limited by this policy.

18. LEAVE OF ABSENCE

The Department may give due consideration to the granting of special leave in cases of sexual harassment where the complainant, upon medical advice from a registered medical practitioner, requires leave for medical or related reasons.

19. MONITORING AND EVALUATION

19.1 The Director: Transformation is responsible for policy monitoring and implementation.

19.2 The Director of Transformation shall report all cases of sexual harassment directly to DPSC on the prescribed template, on or before 30 April annually.

20. DEFAULT

An employee who fails to comply with the Provisions of this policy will be dealt with in terms of the Public Service Disciplinary Code and Procedures for the Public Service.

21. INCEPTION DATE

The inception date of this policy is 30 days after approval by the Head of Department.

22. REVIEW

This policy will be reviewed every thirty-six (36) months.

23. TERMINATION

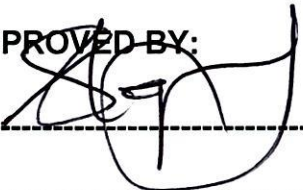
This policy shall remain in force until and unless it has been withdrawn and/or amended.

24. ENQUIRIES

Enquiries regarding this policy should be directed to the Director: Transformation.

25. APPROVAL

APPROVED BY:



HEAD OF DEPARTMENT: LEDET

03/10/19

DATE