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1. Introduction

(1) Sexual Harassment in the workplace has serious legal implications on the employee and the employer. The employer may be held -

(a) vicariously liable for the sexual harassment perpetrated by one of its employees; or

(b) statutorily liable if an employee engaged in a conduct that if engaged in by the employer would constitute a contravention of the policy.

(2) The Department of Roads and Transport does not condone harassment of any kind as harassment is inconsistent with the objectives of this policy and contrary to the laws of this country that promote equal rights regardless of age, sex, pregnancy, marital status, ethnic or social origin, colour, disability, sexual orientation, conscience, belief, race, religion, culture, language and birth of the people of South Africa.

(3) In pursuit of these goals this policy prohibits sexual harassment against any employee, job applicant and other persons that have dealings with the Department regardless of their rank, sex or race; and

(4) This policy sets out procedures to be followed when any member of the Department believes that a violation of this policy has occurred. Violations will also include knowingly making a false complaint of sexual harassment or providing false information regarding a complaint.

2. Scope of application

(1) This policy shall apply to the employer as the Department of Roads and Transport and its employees who-

(a) are employed by the Department of Roads and Transport under the Public Service Act 1994(Act No. 103 of 1994), as amended;
(b) fall within the registered scope of the Co-ordinating Chamber of the PSCBC in the Province.

3. Objective

(1) This policy is intended to guide the employer and employees, the perpetrators and victims of sexual harassment in the department and it includes:

(a) the employer;
(b) managers;
(c) supervisors;
(d) employees;
(e) job applicants;
(f) clients;
(g) suppliers;
(h) contractors; and
(i) others having dealings with a business of the Department.

(2) Nothing in the above confers the authority on employees 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 employer of the perpetrator where the harassment has taken place in the workplace or in the course of the perpetrator’s employment.

(3) maintain a safe and co-operative working environment in which there exists mutual respect and dignity for all employees by preventing, managing and eliminating sexual harassment;

(4) ensure a safe and sexual harassment-free working environment for all the employees of the Department;

(5) provide appropriate procedures to deal with sexual harassment and prevent its recurrence; and

(6) implement the provision of the Constitution of South Africa, the common law duties of an employee and the employer, the Code of Conduct for the Public Service, Employment Equity, 1998 (Act No 55 of 1998) and the Labour Relations Act, 1995 (Act No 66 of 1995) (as amended) and
(7) to protect all employees in the Department from sexual harassment of any kind while the employer also provides a safe working environment for maximum productivity.

3. Definitions

In this policy unless the context indicates otherwise,

i) **Department** means Department of Roads and Transport in Limpopo;

ii) **Sexual harassment** means an unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace, taking into account all of the following factors:

(a) whether the harassment is on the prohibited grounds of sex, gender or sexual orientation;

(b) whether the sexual conduct was unwelcome;

(c) the nature and extend of the sexual conduct; and

(d) the impact of the sexual conduct on the employee.

"this Act" means the Employment Equity Act, 1998(Act No. 55 of 1998); and

"this Policy" means the Departmental Sexual Harassment policy;

5. Legislative framework

(1) Basic Conditions of Employment Act, 1997(Act No. 75 of 1997)(as amended);


(3) Employment Equity Act, 1998(Act No.55 of 1998);

(4) Labour Relations Act, 1995 (Act No 66 of 1995)( as amended);

6. Behaviour that constitutes sexual harassment

Sexual attention becomes sexual harassment if-

(a) the behaviour is persistent, although a single incident of harassment can constitute sexual harassment;
(b) the recipient has made it clear that the behaviour is considered offensive; and
(c) the alleged perpetrator should have known the behaviour is regarded as unacceptable.

7. Forms of sexual harassment

(1) Sexual harassment may include unwelcome physical, verbal or non-verbal conduct, but is not limited to the examples listed as follows:

(a) 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;
(b) 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 directed towards them, unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling directed at a person or group of persons;
(c) non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure (flashing) and the unwelcome display of sexual explicit pictures and objects; and
(d) quid pro quo (this for that) harassment occurs where a 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 of sexual favors.

(2) Sexual favoritism exists where a person who is in a position of authority rewards only those who respond to the person's sexual advances, whilst the person denies other deserving employees who do not submit themselves to any sexual advances.

(3) previous consent to a sexual relationship does not mean that current sexual behaviour that constitutes sexual harassment is acceptable.

8. Roles and responsibilities

All employees-

(a) are required to refrain from committing acts of sexual harassment;
(b) have a role to play in contributing towards creating and making an environment in which sexual harassment is prevented, managed and eliminated;
(c) must ensure that sexual harassment is prevented. Preventing sexual harassment begins with employee's education and training.
(d) all employees from an employee regardless of the levels they are holding must be able to identify sexual harassment and know how to take proactive action against it;
(e) must ensure that the employees' standards of conduct do not cause offence and the employees must discourage unacceptable behavior on the part of others;
(f) has a responsibility to ensure that persons such as clients, suppliers, job applicants and others, who have dealings with the Department at whatever level, are not subjected to sexual harassment; and
(g) must be able to resist against or stop sexual harassment if it could be prevented.

(2) Management is required to take appropriate action in accordance
with this policy, when instances of sexual harassment that may occur in the workplace are brought to Management's attention.

(3) Appropriate action includes addressing the instances of sexual harassment reported to them or that they became aware of by investigating all relevant parties.

9. Advice and Assistance

(1) Sexual harassment is a sensitive issue and the aggrieved may feel unable to approach the perpetrator, lodge a formal grievance or turn to colleagues for support. As far as is practicable a Department must designate a person outside of line management whom the aggrieved may approach for confidential advice. The person:

(a) may include persons employed by the Department to perform that particular function, a Trade Union representative or co-employee, or outside professionals;

(b) must have the appropriate skills, experience and be properly trained;

(c) may have counselling, relevant labour relations skills, be able to provide support and advise on a confidential basis.

(2) A Department must provide the person referred to in clause (1) with all the necessary resources.

10. Options to resolve a problem

(1) There are two options to resolve 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.
i. The employee should be under no duress to accept one or the other option.

(a) Informal procedure.

(i) It may be sufficient for the employee concerned to have an opportunity where the employee can explain to the perpetrator that the behavior in question is not welcome, it offends them, makes them uncomfortable and that it interferes with their work; and

(ii) if the informal approach has not provided a satisfactory outcome, if the case is severe or if the conduct continues, the aggrieved may embark upon a formal procedure. Severe cases may include: sexual assault, rape, strip search and quid pro quo harassment

(b) Formal procedure

If the aggrieved chooses to follow a formal procedure for resolving the grievance, the formal procedure must:

(i) specify to whom the aggrieved lodges the grievance;

(ii) make reference to timeframes, that allow the grievance to be dealt with expeditiously;

(iii) provide that if the case is not resolved satisfactorily, the issue can be dealt with in terms of this policy.
11. Investigations and disciplinary action

(1) A Department must –

(a) exercise care during any investigation of a grievance of sexual harassment 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;
(b) clearly state the range of disciplinary sanctions to which employees will be liable;
(c) also be made clear that it will be a disciplinary offence to victimize or retaliate against an employee who in good faith lodges a grievance of sexual harassment.

12. Confidentiality

(1) Employers 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.

(2) In cases of sexual harassment, management, employees and parties concerned must endeavor to ensure confidentiality in the disciplinary enquiry. Only appropriate members of management as well as the aggrieved person, representative, alleged perpetrator, witness and interpreter if required, must be present in the disciplinary enquiry.

(3) A Department is required to disclose to either party or to their representatives, such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this policy.
13. Sanctions

(1) When imposing a sanction on a sexual harassment matter, a department must ensure that the sanction is proportional to the severity of the offence.

(2) The following sanctions may serve as a guide:

(a) Written warning for minor instances;

(b) Transfer of the perpetrator out of the reach of the aggrieved for continued minor instances; and

(c) Dismissal for serious or continued instances.

13. External Procedures

(1) Should a complain 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 relevant sectorial Council of the PSCBC for conciliation.

(2) 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.

15. Granting of special leave for counseling

Where an employee needs to undergo counseling due to trauma arising from sexual harassment, a Department may grant the employee special leave to the maximum of five working days with full pay annually to undergo trauma counseling sessions.

16. Date of implementation

The date of implementation is the date of signing.
17. Dispute resolution
(1) In the event of any dispute as to the interpretation of this policy either party may utilize the dispute resolution procedures of the Public Service Coordinating Bargaining Council; and
(2) This policy shall come into effect on the date of its signing.

18. Monitoring
The EWP and Transformation Directorates will monitor the implementation of this policy.

19. POLICY REVIEW
The policy will be reviewed annually and where need arises.

☑ RECOMMENDED / NOT RECOMMENDED

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__________________________ 19/02/2010
HEAD OF DEPARTMENT DATE

APPROVED / NOT APPROVED

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__________________________ 09/03/2010
MEMBER OF EXECUTIVE COUNCIL DATE
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