



**the dpsa**

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Department:  
Public Service and Administration  
**REPUBLIC OF SOUTH AFRICA**

# **POLICY AND PROCEDURE ON MANAGING SEXUAL HARASSMENT**

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Approved by: Director-General  
Effective Date:

*1 June 2010*

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- DPSA:** Department of Public Service and Administration
- Client:** any individual or organization who is receiving a service or having a business relationship with the DPSA;.
- Employee:** means any person, excluding an independent contractor, who works for the DPSA 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 DPSA, or who is attending an interview with the prospect of becoming an employee within the DPSA;
- 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 behaviour or actions that constitute sexual harassment.
- Sexual harassment: -** The behaviour is persistent, although a single incident of harassment can also 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;
- 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 DPSA work or a place where the employee is deployed to work by the DPSA. This includes social functions or gatherings, or events.

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## 1. POLICY STATEMENT

The DPSA recognizes 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 DPSA therefore commits itself to being 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 minimise and deal with matters of sexual harassment as soon as instances of alleged sexual harassment are brought to its attention.

## 2. PURPOSE

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

## 3. LEGAL FRAMEWORK

The legislative and policy framework which informs the formulation and implementation of this policy includes amongst others:

- 3.1 Constitution of the Republic of South Africa Act, 1996
- 3.2 Public Service Act, 1994 (Proclamation 103 of 1994)
- 3.3 Code of Good Practice on the Handling of Sexual Harassment cases
- 3.4 Basic Conditions of Employment Act, 1997 (Act 75 of 1997)
- 3.5 Occupational Health and Safety Act, 1993 (Act 85 of 1993)
- 3.6 Employment Equity Act, 1998 (Act 55 of 1998)
- 3.7 Labour Relations Act, 1996 (Act 66 of 1995)
- 3.8 Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)

## 4. OBJECTIVES

**The objective of this policy is to-**

- 4.1 Promote the right to dignity, privacy and equality in the workplace;
- 4.2 Ensure that all visitors of the DPSA are treated with respect, dignity, privacy and equity.;
- 4.3 Ensure that sexual harassment in the workplace is not permitted or condoned;
- 4.4 Adopt a zero tolerance approach towards sexual harassment in the workplace.
- 4.5 Provide persons who have been subjected to sexual harassment in the workplace with a right of recourse.

## 5. PRINCIPLES

**This policy is based on the following principles-**

- 5.1 Human dignity
- 5.2 Individual responsibility
- 5.3 Confidentiality
- 5.4 Ethical behavior
- 5.5 Equality and non-discrimination



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## 6. SCOPE OF APPLICATION

- 6.1 This policy applies to all employees of the DPSA including:
- 6.1.1 Job applicants to the DPSA and
  - 6.1.3 All people employed by the DPSA clients, and who interact with employees by any medium of communication
- 6.2 This policy is applicable within the DPSA premises; during work performed outside the DPSA 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. BEHAVIOUR CONSTITUTING SEXUAL HARASSMENT

The behaviour 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 is not limited to the following types of behaviour:-

### 7.1 Verbal Behaviour Of A Sexual Nature


- 7.1.1 Unwelcome innuendoes, suggestions and hints.
- 7.1.2 Sexual advances.
- 7.1.3 Comments with sexual overtones.
- 7.1.4 Sex related jokes or insults.
- 7.1.5 Graphic comments about a person's body made in their presence or directed toward them.
- 7.1.6 Inappropriate enquiries about a person's sex life.
- 7.1.7 Whistling directed at a person or group of persons.
- 7.1.8 Jokes that cause awkwardness or embarrassment.
- 7.1.9 Comments about a person's sexual habits.
- 7.1.10 Verbal threats or abuse.
- 7.1.11 Telephone calls with sexual overtones.

### 7.2 Gestures And Other Non-Verbal Behaviour

- 7.2.1 Unwelcome gestures such as winking eyes suggestively.
- 7.2.2 The unwelcome display of sexually explicit/undesirable pictures and objects.
- 7.2.3 Persistent and unwelcome flirting.
- 7.2.4 Demands for sexual attention or for spending time together.
- 7.2.5 Persistent and unwelcoming visiting, telephoning, stalking, cell-phone text messages that invade personal privacy.

### 7.3 Visual Sexual Harassment

- 7.3.1 A public display of pornographic or other offensive, derogatory and/or sexually explicit pictures, photographs, cartoons, drawings, symbols and other material.
- 7.3.2 Showing of pornographic or sexually explicit movies or slides.
- 7.3.3 Indecent exposure of private parts in view of others.
- 7.3.4 Displaying/sourcing offensive material/jokes on the employer's electronic equipment eg cellular phones; facebook, email, social networks, memory sticks and/or e-mailing such material to other employees.

  
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#### 7.4 Physical Behaviour

- 7.4.1 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.
- 7.4.2 Attempted or actual kissing or fondling.

#### 7.5 Psychological Sexual Behaviour

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

#### 7.6 Quid Pro Quo Harassment (a favour for 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.

#### 7.7 Sexual Favouritism

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.

#### 7.8 Behaviour Which Does Not Constitute Sexual Harassment

The following would not normally constitute sexual harassment-

- 7.8.1 Occasional compliments.
- 7.8.2 Flirtatious banter when it is mutually acceptable.
- 7.8.3 Forms of greetings that are deemed acceptable according to the DPSA culture and behaviour.
- 7.8.2 Occasional jokes or other behaviours whereby the intent is not meant to be offensive, except where the perpetrator should have known that the behaviour is regarded as unacceptable.

### 8. ROLES AND RESPONSIBILITY

- 8.1 **The Head of the 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.

**The Head of the 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 a DPSA employee to the relevant Senior Manager.

- 8.2 **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.



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

Managers and supervisors shall ensure that allegations of sexual harassment are dealt with timeously and confidential manner.

- 8.3** The **Labour Relations unit** shall ensure that all formally reported allegations of sexual harassment are taken seriously and prompt actions are taken to investigate and handle the case expeditiously.
- 8.4** 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 allegations are proven to be false.
- 8.5** **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 behaviour.


## **9. PROCEDURES ON MANAGING SEXUAL HARASSMENT CASES**

### **9.1 REPORTING ALLEGATIONS**

- 9.1.1** 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.
- 9.1.2** 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.
- 9.1.3** This investigation will be done in consultation with the Labour Relations unit or by a management assigned investigator.
- 9.1.4** The investigator would assure the complainant that the allegation details and the complainant's identity will remain as confidential as possible.
- 9.1.5** The investigator and the complainant should try to agree whether the complainant wishes the matter to be 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.

### **9.2 THE INFORMAL PROCEDURE**

- 9.2.1** If the complainant prefers informal action, the assigned investigator will call the alleged accused to a private meeting, advise 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.
- 9.2.2** The investigator must give the alleged accused an opportunity to state their case; explain the outcome that the complainant requests (an informal settlement) and advise the alleged accused of the possible consequences if proved guilty of sexual harassment in a formal disciplinary hearing.

  
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- 9.2.3 The investigator shall again meet with the complainant, advise 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.
- 9.2.4 The investigator will assess what support and assistance the complainant may require after settlement.
- 9.2.5 The role of the investigator is that of a mediator. On being appraised of the allegations, the investigator may of his/her own accord initiate the formal procedures set out in **9.3 below**.

### **9.3 THE FORMAL PROCEDURE**


- 9.3.1 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.
- 9.3.2 If the complainant wishes, the formal disciplinary hearing shall take place in camera, only the persons directly involved, should attend.
- 9.3.3 The names of the parties shall remain as confidential as possible. The DPSA's formal disciplinary measures shall be applied.
- 9.3.4 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.
- 9.3.5 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.

### **9.4 PROCEDURE OF REPORTING SEXUAL HARASSMENT ALLEGATIONS OF NON EMPLOYEES**

- 9.4.1 A non-employee who is a victim of sexual harassment by a DPSA employee may lodge a complaint with the DPSA where the harassment has taken place in the workplace or in the course of the harasser's employment or alternatively the victim can lay a criminal charge against the perpetrator.
- 9.4.2 If the matter is reported to the DPSA, the employee shall still face the disciplinary action within the DPSA irrespective of criminal charges he/she faces.

### **10. TYPES OF CORRECTIVE ACTION**

- 10.1 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 procedures. Types of corrective actions may include, but not limited to, any of the following:
  - 10.1.1 A formal written apology
  - 10.1.2 Counseling
  - 10.1.3 Written warning placed in the employee's file
  - 10.1.4 Change of work assignment
  - 10.1.5 Suspension or discharge of an employee

  
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- 10.2 In addition to the sanctions and corrective measures that the DPSA 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.

## 11. CONFIDENTIALITY

- 11.1 The DPSA understands that it is often difficult for survivors of sexual harassment to come forward with a complaint and further realize 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.
- 11.2 The Labor 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.
- 11.3 In cases of sexual harassment, management, employees and the parties concerned must endeavor to ensure confidentiality as far as possible in the disciplinary inquiry. Only appropriate members of management as well as the complainant, representative, alleged perpetrator, witnesses and interpreter if required, must be present in the disciplinary inquiry.
- 11.4 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.

## 12. EMPLOYEE WELLNESS PROGRAMME

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.

## 13. COMMUNICATION PLAN

- 13.1 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 the internal News Bulletin.
- 13.2 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.
- 13.3 Managers and supervisors should attend training sessions on how to handle allegations of sexual harassment reported to them.

## 14. MONITORING, EVALUATION AND REPORTING

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



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**15. 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.

**16. EFFECTIVE DATE**

This policy takes effect on the date of approval.



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