



LIMPOPO

PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

**PROTECTED DISCLOSURE POLICY
FOR OFFICE OF THE PREMIER.**

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1. DEFINITIONS

In this policy, unless the context indicates otherwise—

"Accounting Authority" means the person referred to in section 49 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"Accounting Officer" means the person referred to in section 36 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"designated officer" means an officer in the Integrity Management Unit designated by the Accounting Authority or Accounting Officer of that public entity or department respectively;

"disclosure" means any disclosure of information regarding any conduct of an employer or an employee of that employer, made by any employee who has a reason to believe that information concerned shows or tends to show one or more of the following:

- (a) that a criminal offence has been committed, is being committed or is likely to be committed;
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) that the health or safety of an individual has been, is being or is likely to be endangered;
- (e) that the environment has been, is being or is likely to be damaged,
- (f) unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No.4 of 2000); or
- (g) that any matter referred to in paragraphs (a) to (g) has been, is being or is likely to be deliberately concealed,

"employee" means—

- (a) a person who works for the State and who receives, or is entitled to receive remuneration; or
- (b) any other person who in any manner assists in carrying on or conducting the business of the employer;

"employer" means —

- (a) the Limpopo Provincial Administration; or
- (b) a Public Entity listed in Schedule 3C and 3D of the Public Finance Management Act, 1999 (Act No.1 of 1999);

"Executing Authority" means in relation to —

- (a) a provincial department, the member of the Executive Council responsible for such portfolio; and
- (b) the Office of the Premier, means the Premier;

"improper conduct" means that —

- (a) a criminal offence has been committed, is being committed or is likely to be committed;
- (b) a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- (c) a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) the health or safety of an individual has been, is being or is likely to occur;
- (e) the environment has been, is being or is likely to be damaged;
- (f) unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No.4 of 2000); or
- (g) any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed;

irrespective of whether or not —

- (i) the improper conduct occurs or occurred in the Republic of South Africa or elsewhere;
or
- (ii) the law applying to the improper conduct is that of the Republic of South Africa or of another country;

"Integrity Management Unit" means a unit established within the Office of the Premier responsible for the detection of fraud and corruption and the implementation of anti-corruption strategies contained in relevant and applicable legislation, policies and guidelines; and

"occupational detriment" in relation to the working environment of an employee, means being —

- (a) subjected to any disciplinary action;
- (b) dismissed, suspended, demoted, harassed or intimidated;
- (c) transferred against his or her will;
- (d) refused transfer or promotion;
- (e) subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
- (f) refused a reference, or being provided with an adverse reference, from his or her employer;
- (g) denied appointment to any employment, profession or office;
- (h) threatened with any actions referred to paragraph (a) to (g) above; or
- (i) otherwise adversely affected in respect of his or her employment profession or office, including employment opportunities and work security.

2. BACKGROUND

The Protected Disclosures Act, 2000 (Act No.26 of 2000) provides protection for **employees** for **disclosures** made in good faith without malice and in terms of this policy. This Act provides that **employees** will be protected when disclosing any **improper conduct** of the **employer** or other employees without the fear of suffering an **occupational detriment**.

3. LEGAL AND POLICY FRAMEWORK

The legal and policy framework for formulating and implementing this policy is the –

- (a) Protected Disclosures Act, 2000 (Act No.26 of 2000);
- (b) Practical Guidelines for Employees issued in terms of section 10 of the Protected Disclosures Act, 2000 (Act No.26 of 2000);
- (c) Whistle-blowing Guide for Public Sector Managers provided by the Department of Public Service Administration¹;
- (d) Public Service Act, 1994 (Proclamation No. 103 of 1994) and Regulations made in terms thereof;
- (e) Rules for dealing with grievances in the Public Service as published in Government Gazette No.25209 of 25 July 2003;
- (f) Disciplinary Code and Procedures for the Public Service as contained in the Public Service Bargaining Council Resolution 2 of 1999;
- (g) Public Finance Management Act, 1999 (Act No.1 of 1999) and Treasury Regulations issued in terms thereof; and
- (h) Prevention and Combating of Corrupt Activities Act, 2004 (Act No.12 of 2004).

¹ www.dpsa.gov.za

4. POLICY OBJECTIVE

- 4.1 This policy aims to encourage **employees** to disclose information concerning **improper conduct** of the **employer** or other employees and to ensure that disclosing employees are treated fairly and are protected from **occupational detriment** when they disclose the information in a manner consistent with this policy.
- 4.2 This policy provides for procedures in terms of which an employee can disclose information regarding **improper conduct**.

5. SCOPE OF APPLICATION

This policy applies to the Limpopo Provincial Administration and Public Entities in the province regarding **disclosures** by **employees** of **improper conduct** of the **employer** or other employees.

6. PROCEDURE FOR A PROTECTED DISCLOSURE

6.1 Disclosure to **employer**

- 6.1.1 An **employee** who has a concern regarding **improper conduct** of the **employer** or other employee must –
- (a) contact the **designated officer** within his or her department or public entity; and
 - (b) make the **disclosure** of **improper conduct** in writing in the format of **Form A**.
- 6.1.2 The **designated officer** –
- (a) must assess the disclosure in order to establish if the **disclosure** is one of **improper conduct**;
 - (b) may, when necessary, do a preliminary investigation of the **improper conduct**;
 - (c) must refer the **disclosure** –
 - (i) in a case of criminal activity, to the relevant law enforcement agency;

- (ii) in a case of misconduct, to the relevant labour relations officer in the department or public entity; or
- (iii) to any other appropriate body;

for further investigation and action.

6.2 Disclosure to Executing Authority

6.2.1 An **employee** may make a **disclosure** to the **Executing Authority** only where, the employee's **employer** is —

- (a) appointed by the **Executing Authority** in terms of legislation implemented by the **Executing Authority's** department;
- (b) a body whose members are appointed by the **Executing Authority** in terms of legislation; or
- (c) an organ of state within the area of responsibility of the relevant **Executing Authority**.

6.2.2 Only **disclosures** which are made —

- (a) in good faith; and
 - (b) in terms of the procedure in this policy
- are **protected disclosures**.

6.2.3 An **employee** referred to in 6.2.1 who has a concern regarding **improper conduct** must contact the **designated officer** in the relevant department or public entity.

6.2.4 The **designated officer** must —

- (a) determine if the **employee** is an **employee** referred to in 6.2.1; and
- (b) contact the office of the **Executing Authority** and follow the set protocol in order to facilitate a meeting between the **Executing Authority** and the **employee**.

6.3 Urgent Matters

In urgent matters, where the **designated officer** reasonably believes that it is likely that evidence relating to the **improper conduct** will be concealed or destroyed, the **designated officer** may deviate from the procedure in this policy and take appropriate steps to bring the disclosure to the attention of the **employer** or **Executing Authority**.

6.4 External Protected Disclosure

6.4.1 An employee may also choose to make a protected disclosure to —

- (a) his or her personal legal adviser;
- (b) the Public Protector; or
- (c) the Auditor General.

6.4.2 The **designated officer** must where the employee so requests, assist the employee refer a **disclosure** to the Public Protector or Auditor General.

7. REMEDIES

7.1 An **employee** may not be subjected to any **occupational detriment** by his or her **employer** on account of having made a **protected disclosure**.

7.2 An **employee** who is subjected or may be subjected to any **occupational detriment** because of a **protected disclosure** made by him or her may —

- (a) approach any court having jurisdiction, including the Labour Court; or
- (b) pursue any other process allowed or prescribed by law.

7.3 When an employee is —

- (a) subjected to any **occupational detriment**, on account of making a **protected disclosure**, it is regarded as an unfair labour practice and the matter may in

terms of the procedure of the Labour Relations Act, 1995 (Act No. 66 of 1995) be referred for conciliation or to the Labour Court for a hearing.

- (b) dismissed on account of making a **protected disclosure**, the dismissal is regarded as an automatically unfair dismissal in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995).
- 7.4 An **employee** who has made a **protected disclosure** and who reasonably believes that he or she may be adversely affected on account of making the **protected disclosure**, must at his or her request and if reasonably possible be transferred from the post or position occupied by him or her to another post or position in the same division or another division of his or her employer or where the **employee** is employed by an organ of state, to another organ of state.
- 7.5 The terms and conditions of employment of an **employee** transferred in terms of 7.4 must not be less favourable than the terms and conditions applicable to the **employee** immediately before his or her transfer.
- 7.6 A transfer of an **employee** in 7.4 must be done with the written consent of the **employee**.

8. INDEPENDENT ADVICE

- 8.1 When an **employee** is unsure of which procedure to use in paragraph 6 and he or she desires to obtain independent advice at any stage, the **employee** may contact —
- (a) his or her personal legal advisor;
 - (b) his or her labour organisation; or
 - (c) the Open Democracy Advice Centre (ODAC).
- 8.2 The Open Democracy Advice Centre has established the following toll free helpline:
0800 525 352.

- 8.3 The Public Service Commission has established a national 24hours hotline, which employees can use to make disclosures anonymously. The Hotline number is **0800 701 701**.

9. RESPONSIBILITIES OF THE DESIGNATED OFFICER

The *designated officer* must –

- (a) act as a neutral person on matters of *disclosure* and must assist *employees*;
- (b) provide advice to *employees* who are considering making a *disclosure*;
- (c) receive, record and review the *disclosures* of *improper conduct* from *employees*;
- (d) ensure that procedures are in place to manage instances of *improper conduct*;
- (e) make recommendations to the Accounting Authority or Accounting Officer on how to address or correct the *disclosure*;
- (f) monitor the type and disposition of *disclosures*; and
- (g) prepare an annual report for the Accounting Authority or Accounting Officer on all *disclosures* made in terms of this policy.

10. CERTIFICATION

When a department or public entity drafts its own Protected Disclosures policy, that policy must be referred to the Provincial Legal Services in the Office of the Premier for certification before that policy may be implemented by the department or public entity.

11. POLICY REVIEW

This policy will be reviewed as and when the need arises.

LIMPOPO PROTECTED DISCLOSURE POLICY FRAMEWORK

FORM A

INFORMATION OF EMPLOYEE	
FULL NAMES AND SURNAME	
IDENTITY NUMBER	
RESIDENTIAL ADDRESS	
POSTAL ADDRESS	
CONTACT NUMBERS OFFICE: HOME: CELL:	

I WOULD LIKE TO MAKE A PROTECTED DISCLOSURE TO:

THE EMPLOYER			
THE EXECUTING AUTHORITY			
THE PUBLIC PROTECTOR		I WOULD LIKE TO BE ASSISTED TO IN THIS REGARD	
THE ACCOUNTANT GENERAL		I WOULD LIKE TO BE ASSISTED TO IN THIS REGARD	
A LEGAL ADVISER			

Please make a mark in the relevant box

OFFICE USE:

DISCLOSURE MADE TO THE EMPLOYER:

THE EMPLOYEE COMPLIES WITH DEFINITION OF "EMPLOYEE"	
THE DISCLOSURE COMPLIES WITH THE DEFINITION OF "DISCLOSURE"	
THE DISCLOSURE CONTAINS INFORMATION OF "IMPROPER CONDUCT"	
IS A PRELIMINARY INVESTIGATION NECESSARY?	
TO WHICH BODY MUST THE MATTER BE REFERRED?	

OFFICE USE:

DISCLOSURE MADE TO THE EXECUTING AUTHORITY:

DOES THE EMPLOYEE COMPLY WITH REQUIREMENTS OF 6.2.1 OF POLICY?	
WAS A MEETING ARRANGED WITH THE EXECUTING AUTHORITY?	

OFFICE USE:

DISCLOSURE TO PUBLIC PROTECTOR OR ACCOUNTING OFFICER

DID THE EMPLOYEE REQUEST ANY ASSISTANCE TO REFER THE DISCLOSURE?	
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**APPROVAL FOR THE ADOPTION OF THE LIMPOPO PROTECTED DISCLOSURE
POLICY FRAMEWORK FOR IMPLEMENTATION IN THE OFFICE OF THE
PREMIER.**

APPROVED/NOT APPROVED

.....

PREMIER

DATE:.....