

SEXUAL HARASSMENT POLICY

Policy Number:	Approved Date:
Effective Date:	Review Date:

Why Have a Policy?

The Municipality is committed towards creating a working environment where the dignity and respect of employees, non-employees and Municipal Councilors is upheld. We are concerned about the occurrence of Sexual Harassment and are committed to prevent this kind of behavior and disapprove of any form of Sexual Harassment. The Municipality will deal with all allegations of Sexual Harassment in a serious, expeditious, sensitive and confidential manner; and will strive to protect the parties involved in alleged Sexual Harassment against victimization.

THE POLICY

1. PREAMBLE

The Municipality is committed to ensuring that employees are not subjected to any form of sexual harassment. Persistent, unsolicited and unwanted sexual advances or suggestions made by one employee to another, regardless of gender and/or sexual orientation will not be tolerated. Violations of this policy will lead to disciplinary action, which will include dismissal, and/or criminal charges. All managers at the Municipality have a responsibility for addressing all reports of harassment. In dealing with cases of sexual harassment, the Municipality shall be guided by the Code of Good Practice as contained in Schedule 8 of the Labour Relations Act, 1995 and the NEDLAC Code of Good Practice on the Handling of Sexual Harassment Cases.

2. DEFINITIONS

Sexual harassment is defined as unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and with mutual consent.

All terminology not defined under clause 2 of this policy shall bear the same meaning as in the applicable legislation.

Sexual attention becomes sexual harassment if:

- The behaviour is persistent, although a single incident of harassment can also constitute sexual harassment depending on the gravity of the incident.
- The recipient has made it clear that the behaviour is considered offensive and the perpetrator had continued with such behaviour.

The perpetrator should have known that the behaviour is unacceptable.

Sexual harassment may include:

- Unwelcome remarks, jokes, innuendoes or taunts about a persons body, clothing or sex;
- Insulting gestures and practical jokes of a sexual nature which causes awkwardness or embarrassment;
- Displaying pornographic, pin-up pictures, graffiti or other offensive material;
- Leering (suggestive staring);
- Demands for sexual favours.

Sexual harassment has nothing to do with affection, flirtation, romance or relationships, when both parties consent freely thereto. Sexual harassment is about coercion of power.

Employment threats or benefits may be expressed or implied and they are usually conditional upon the receiver of the threat or benefits submitting to the advance. The threat may relate to a loss of employment unless advances are submitted to.

The Employer will make every reasonable effort to ensure that no employee is subjected to sexual harassment. In the event that sexual harassment is alleged, the disciplinary procedure must be applied.

The following is examples of the various forms of sexual harassment but the list is not exhaustive:

- Physical conduct of a sexual nature includes all unwanted physical contact, ranging from touching to sexual assault and includes a strip search by or in the presence of another person.
- Verbal forms of sexual harassment include unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtures, sex-related jokes or insults or unwelcome graphic comments about a person's body made in their presence or directed toward them, unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling directed at a person or group of persons.
- Non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects.
- Quid pro quo harassment occurs where management or co-employee, undertakes or attempts to influence the process of employment, promotion, training, discipline, dismissal, salary increment or other benefits of an employee or job applicant, in exchange for sexual favours.

3. LEGAL FRAMEWORK

- Employment Equity Act 1998 Chapter 2 clause 6 (1) and (3).
- The Constitution of the Republic of South Africa 1996 Chapter 2 clause 9, 10, 12 24(a).
- Labour Relations Act 66 of 1995 Chapter VIII (Code of Good Practice Promulgated by Notice 1367 in Government Gazette of 17 July 1998) Section 16 of Labour Relations Act Chapter 3 Section 16.
- Item 12, schedule 2 of the Local Government, Municipal Systems Act (No 32 of 2000), as amended – Code of Conduct for Municipal Staff Members.

4. SCOPE AND APPLICATION

All employees, job applicants and any other persons who have dealings with the Municipality have the right to be treated with respect and dignity.

5. OBJECTIVES OF POLICY

Policy objectives are to endure:

- Sexual harassment will not be permitted or condoned and will be regarded as a form of serious misconduct. Action will be taken in terms of the disciplinary code of the Municipality.
- Employees or any other person who have been subjected to sexual harassment have the right to lodge a grievance or lay a formal complaint with the Municipality.
- The Municipality is committed to investigate all complaints and grievances brought to its attention.
- The Municipality undertakes to inform all employees of this policy and the need to refrain from any form of sexual harassment.
- It should be noted that this policy also protects prospective employees as well as clients of the Municipality.
- Management is required to implement this policy and take disciplinary action against employees who do not comply with this policy. Serious incidents of sexual harassment or continued harassment are dismissable offences.
- Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially.
- It is a disciplinary offence to victimize or retaliate against an employee who in good faith lodges a complaint of sexual harassment.
- False or vindictive accusations shall be viewed in a very serious light.
- Anonymous complaints will be disregarded.

6. POLICY CONTENT

The Employer wishes to create and maintain a working environment which is free of sexual harassment, where all employees respect one another's integrity and dignity, privacy and their right to equity in the workplace. The Employer views sexual harassment of a fellow employee or of a non-employee as serious misconduct. The Employer undertakes to take strict action in sexual harassment cases but cannot be held criminally or civilly liable for the actions of its employees where the Employer has acted appropriately.

In addition, victims of sexual harassment must not be made to feel that their grievances are ignored or trivialized, or fear reprisals. Implementation of the following guidelines can assist in achieving these

ends:

- All employees must refrain from committing acts of sexual harassment.
- All employees have a role to play in contributing towards a working environment in which sexual harassment is unacceptable. They should therefore ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others.
- Management will attempt to ensure that persons such as the public, suppliers, job applicants and others who have dealings with the organization, are not subjected to sexual harassment, which occur within the workplace.
- A victim of sexual assault/harassment has the right to institute separate criminal and/or civil proceedings against an alleged perpetrator, and the legal rights of the victim are in no way limited by this policy.

6.1 Commitment by Management

- Management undertakes to deal with any allegations of sexual harassment speedily and without favour.
- Management further undertakes to deal with allegations of sexual harassment in a confidential manner.
- Any person bringing allegations of sexual harassment to the attention of management will be protected against victimisation.
- Whilst management will act against anyone who commits acts of sexual harassment it will also protect employees against false accusations.
- Subject to an investigation, management may suspend an employee on full pay but this is to be regarded as a precautionary measure only and does not in any way imply that the employee is guilty of any wrongdoing.
- Sexual Harassment is a serious form of misconduct and if found guilty employees may be dismissed, even for a first offence.

6.2 Specific Considerations

6.2.1 Confidentiality

The Employer will endeavour to proceed with its investigation with caution and such protocol as to ensure that a case exists before proceeding. Because of the sensitivity and the nature of the issue employee confidentiality and protection must be ensured.

6.2.2 Identity

The Employer will endeavour as far as possible to withhold the identity of the complainant until such time as the investigation has been completed

and it has been decided to pursue the enquiry route.

6.2.3 Protection

The Employer will investigate every complaint, whether reported or not, as the Employer could be found liable where steps have not been taken to resolve a case of sexual harassment. Sexually harassed employees should be given adequate sick leave and/or assistance for counseling where appropriate.

6.3 PROCEDURES

Employers should develop clear procedures to deal with sexual harassment. These procedures should ensure the resolution of problems in a sensitive, efficient and effective way.

6.3.1 Advice and Assistance

Sexual harassment is a sensitive issue and a victim may feel unable to approach the perpetrator, lodge a formal grievance or turn to colleagues for support. As far as is practical employers should designate a person outside of line management whom victims may approach for confidential advice. Such a person:

- Could include persons employed by the Municipality to perform inter alia such a function, a trade union representative or co-employee, by outside professionals.
- Should have the appropriate skills and experience or be properly trained and given adequate resources.
- Could be required to have counselling and relevant labour relations skills and be able to provide and advise on a confidential basis.

6.3.2 Options to resolve a problem

- Employees should be advised that there are, depending on the seriousness, 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.
- The employee should be under no duress to accept one or the other option.

6.3.3 Informal Procedure

- It may be sufficient for the employee concerned to have an opportunity where she/he can explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable, and that it interferes with their work.

- If the informal approach has not provided a satisfactory outcome, if the case is severe or if the conduct continues, it may be more appropriate to embark upon a formal procedure. Severe cases may include: sexual assault, rape, a strip search and quid pro quo harassment.

6.3.4 Formal Procedure

Where a formal procedure has been chosen by the aggrieved, a formal procedure for resolving the grievance is available and attached hereto:

- Specify to whom the employee should lodge the grievance.
- Make reference to timeframes which allow the grievance to be dealt with expeditiously.
- Provide that if the case is not resolved satisfactorily, the issue must be dealt with in terms of the disciplinary procedures.

6.3.5 Investigation and Disciplinary Action

- Care should be taken 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.
- The Code of Good Practice regulating dismissal contained in Schedule 8 of the LRA, reinforces the provisions of Chapter VIII of this Act and provides that an employee may be dismissed for serious misconduct or repeated offences. Serious incidents of sexual harassment or continued harassment after warnings are dismissible offences.
- The range of disciplinary sanctions to which employees will be liable should be clearly stated, and it should also be made clear that it will be a disciplinary offence to victimise or retaliate against an employee who in good faith lodges a grievance of sexual harassment.

6.3.6 Criminal and Civil Charges

A victim of sexual assault has the right to press separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by this code.

6.3.7 Confidentiality

- 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.

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

6.3.8 Formal Procedure (Grievance procedure in terms of the Main Collective Agreement)

Employee lodge completed Annexure A form to Manager or next reporting level



Address grievance within **10** working days



No resolution, refer to Municipal Manager



Address grievance within 6 working days



No resolution, refer grievance to the Council/Bargaining Council

7. IMPLEMENTATION AND MONITORING

The policy shall be implemented after consultation with the labour unions and the approval of the Municipal Manager and municipal Council.

8. COMMUNICATION

This policy, and related information, will be communicated to all Municipal employees and Councillors using the full range of communication methods available to the municipality.

9. POLICY REVIEW

This policy will be reviewed annually and revised as necessary.

10. BUDGET AND RESOURCES

The financial and resource implication/s related to the implementation of this policy should be qualified and quantified.

11. ROLES AND RESPONSIBILITIES

The Municipal Manager or his/her delegate assignee accepts overall responsibility for the implementation and monitoring of the policy.

12. RECORD KEEPING

All documentation and correspondence emanating from or related to this policy will be kept on either personal and/or record files as dictated by the nature of issue.

13. PENALTIES

Non-compliance to any of the stipulations contained in this policy will be regarded as misconduct, which will be dealt with in terms of the Disciplinary Code. Sexual Harassment is a serious form of misconduct and if found guilty employees may be dismissed, even for a first offence.

14. DISPUTE RESOLUTION

Should a complaint 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 Bargaining Council for conciliation in accordance with the provisions of section 135 of the LRA. 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 in terms of section 135[5].

15. AUTHORITY

Formulated by:

Date:

Consulted: LLF:

Date: 13/08/2008

MM Approval:

Date:

Council Approval:

Date:

COMPLAINT FORM FOR SEXUAL HARASSMENT

1. To: _____(Manager) Date: _____

2. Complaint: _____

3. Department: _____

4. Branch: _____

5. Description of complaint:

6. What is the desired outcome:

EMPLOYEE

MANAGER

OUTCOME OF REPORT FOR SEXUAL HARASSMENT CLAIMS

1. To: _____(Employee) Date:_____

2. From: _____
(Responsible Manager)

3. An investigation was done with regards to your complaint, the outcome of which is:

4. I am recommending/not recommending for further action to be taken against the accused.

5. The form that this action would take is: Informal/Formal (disciplinary action). (If applicable).

Please be advised that if you are happy with the outcome as contained herein, you can discuss the basis for your unhappiness with the writer and your rights herein is fully protected.

EMPLOYEE

MANAGER