



Policy on the Management of Sexual Harassment in the Public Service

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1. Policy Aim

- 1.1. This policy aims to promote a workplace that is free of sexual harassment¹, sexual favours, intimidation and victimisation, where the employer and employees respect one another's integrity, dignity, privacy and the right to equality in the workplace. This policy must be read together with the procedure that promotes compliance with the terms of this policy.

2. Legislative Framework

- 2.1. Constitution of the Republic of South Africa, Act No 108 of 1996
- 2.2. Public Service Act, No. 103 of 1994, as amended
- 2.3. White Paper on the Transformation of the Public Service, 1995
- 2.4. Labour Relations Act No 66, of 1995
- 2.5. Employment Equity Act No. 55 of 1998
- 2.6. White Paper on Affirmative Action in the Public Service, 1998
- 2.7. Code of Good Practice on the Handling of Sexual Harassment Cases, Notice 1367 of 1998
- 2.8. Promotion of Equality and Prevention of Unfair Discrimination Act No 4 of 2000
- 2.9. National Policy Framework for Women's Empowerment and Gender Equality, 2000
- 2.10. Criminal Sexual Offences and Related Matters Amendment Act No 32, 2007
- 2.11. Gender Equality Strategic Framework for the Public Service, 2008
- 2.12. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1995
- 2.13. Beijing Platform for Action, 1995
- 2.14. The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 2003
- 2.15. Protection from Harassment Act No 17, 2011.
- 2.16. Public Service Coordinating Bargaining Council (PSCBC) Res 7 of 2000 as amended by Res 5 of 2001

¹ (1) Any unwelcome sexual attention from a person who knows or ought to reasonably to know that such attention is unwelcome. (2) Any unwelcome explicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or related person (3) Implied or expressed promise of reward for complying with sexually oriented requests (4) Implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request

- 2.17. Compensation for Occupational Injuries and Diseases Act (No. 130 of 1993)
- 2.18. Policy & Procedure on Incapacity Leave and Ill Health Retirement (PILIR), 2009
- 2.19. Disciplinary Code and Procedure for the Public Service (PSCBC Resolution 1 of 2003)

3. Policy Scope

- 3.1. This policy applies to all employees of the Northern Cape Department of Transport, Safety and Liaison.
- 3.2. All service providers who have entered into Service Level Agreements (which will include the terms of this policy) with the department shall be deemed to have consented to be subjected to this policy and therefore uphold and respect this policy and other related policies.
- 3.3. The above (paragraph 3.2) clause shall become applicable upon the condition that services providers are appraised with the terms and implications of this policy. The burden is on the Department.

4. Policy Statement

- 4.1. It is the policy of the Northern Cape Department of Transport, Safety and Liaison;
 - 4.1.1. That it shall neither permit nor condone sexual harassment;
 - 4.1.2. That it shall provide a safe, healthy and amicable working environment and shall take steps to maintain this, either by meeting legal obligation or in terms of what amounts to fair practice;
 - 4.1.3. That all employee and other persons who have dealings with the department will be treated with respect and dignity;
 - 4.1.4. That it acknowledges that sexual harassment is a form of sex discrimination² that violates the rights of individuals and undermines the integrity of the employment relationship;
 - 4.1.5. That allegations³ and complaints⁴ of sexual harassment shall be responded to promptly and dealt with seriously, expeditiously, fairly, sensitively and confidentially;

² Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women and men, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field

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- 4.1.6. That complainants⁵ shall be protected against victimisation and/or retaliation;
- 4.1.7. That false allegations of sexual harassment shall not be tolerated and whoever acts in bad faith will face disciplinary action;
- 4.1.8. That all employees of the Department must note that violation of this policy will lead to serious disciplinary action up to and including dismissal;
- 4.1.9. That the following are deemed forms of sexual harassment:
- 4.1.9.1. Physical⁶ conduct of a sexual nature⁷
 - 4.1.9.2. Verbal forms of sexual harassment⁸
 - 4.1.9.3. Non-verbal⁹ forms of sexual harassment¹⁰
 - 4.1.9.4. Sexual favouritism¹¹
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³ A statement by a complainant that he or she believes an act of sexual harassment has occurred and is handled through the informal resolution process

⁴ A statement by a complainant that he or she believes an act of sexual harassment has occurred and is handled through the informal resolution process

⁵ Any person who alleges that he or she is being subjected to harassment; an employee, applicant for employment or intern who believes that he or she has been the victim of unlawful discrimination or sexual harassment and submits a complaint

⁶ Sexual innuendoes; cornering, impeding or blocking movement, or any physical interference with normal work or movement; touching that is inappropriate in the workplace such as patting, pinching, stroking, or brushing up against the body, mauling, attempted or actual kissing or fondling; assault, coerced sexual intercourse, attempted rape or rape

⁷ 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

⁸ 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 toward them; unwelcome and inappropriate enquiries about a person's sex life and unwelcome whistling directed at a person or group of persons

⁹ Sexual gestures, e.g., licking lips or teeth, holding or eating food provocatively, and lewd gestures such as hand or sign language to denote sexual activity; sexual looks such as leering and ogling; derogatory gestures or facial expressions of a sexual nature; following a person

¹⁰ Include unwelcome gesture, indecent exposure and the unwelcome display of sexually explicit pictures and objects

¹¹ Exists 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 promotions, merit rating, salary increases or other forms of recognition

4.1.9.5. Quid pro quo harassment¹²

5. Roles and Responsibilities

5.1. The Head of Department:

- 5.1.1. Must communicate this policy to all employees, through regular awareness raising, training and education programmes;
- 5.1.2. Must appoint a Gender Focal Point Official and announce this to the department through all communication channels;
- 5.1.3. Must ensure training of managers, specific staff that are nominated and those appointed to handle sexual harassment cases;
- 5.1.4. Must submit a report on sexual harassment cases dealt with, to the DPSA¹³ on a half yearly basis, using the required template;
- 5.1.5. Must encourage all staff to report violations of the policy;
- 5.1.6. Must allocate resources (both human and financial) to ensure that awareness raising and training programmes for employees on sexual harassment are implemented;
- 5.1.7. Must ensure that disciplinary measures applied are in accordance with the Disciplinary Code and Procedures¹⁴ in the Public Service;
- 5.1.8. Must treat all complaints as confidential;
- 5.1.9. Must continuously monitor compliance with and implementation of the policy;
- 5.1.10. Must encourage all Trade Unions within the employ of the department to include sexual harassment in their education and training programmes of members and shop stewards;
- 5.1.11. **Is liable for:**
 - 5.1.11.1. The actions of an employee if the Head of Department fails to take corrective measures after an incident of sexual harassment has been reported or came to the employer's attention;

¹² 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

¹³ Department of Public Service and Administration

¹⁴ PSCBC Resolution 1 of 2003

5.1.11.2. Medical expenses, assessment and treatment of an employee who has experienced sexual harassment as it is categorised as an occupational injury¹⁵;

5.1.12. Is obliged to:

5.1.12.1. Take 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, e.g. a post-traumatic stress disorder;

5.1.12.2. Report any case of sexual harassment to the Compensation Commissioner within seven (7) days of receipt of the complaint or becoming aware of the incident¹⁶;

5.1.12.3. 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;

5.1.12.4. To ensure that in the event that the 30 days expire before the investigation is concluded, the Head of Department shall consult the complainant with a written request for an extension of up to a maximum of 14 days to conclude the case. In this instance consent should not be unreasonably withheld and must be in writing;

5.1.12.5. Implement recommendations within five (5) working days after conclusion of investigation of complaints.

5.2. Labour Relations Officer:

5.2.1. Explain the disciplinary procedure and time frames to complainants and respondents¹⁷ in both formal and informal procedures;

5.2.2. Advise the complainant on the appropriate course of action and support available;

5.2.3. Advise the complainant on the two procedures available to follow, namely the informal and formal route;

5.2.4. Provide guidance (if necessary) on how to complete the appropriate grievance form;

¹⁵ Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993

¹⁶ Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993, Section 38

¹⁷ An individual or entity that answers in a complaint alleging unlawful discrimination or harassment or the person(s) accused of alleged unlawful discrimination or harassment

- 5.2.5. Issue a written notice of the complaint to the respondent and explain the protective measures available to the complainant;
- 5.2.6. Provide the respondent with a copy of this policy and any relevant document on disciplinary rules and procedures of the Public Service and the department;
- 5.2.7. Investigate the complaint and bring to the attention of the Head of Department;
- 5.2.8. Avoid unreasonable delays during the investigation and conclusion of any sexual harassment complaint;
- 5.2.9. Provide a neutral, confidential and supportive environment for employees who report to have been sexually harassed;
- 5.2.10. Protect the complainant from victimization as a result of reporting the matter;
- 5.2.11. Monitor and submit quarterly reports on all cases reported, resolved and pending to the Head of Department. Such reports should use non-identifying statistical information to maintain confidentiality;
- 5.2.12. Advocate for research and other resources on sexual harassment to improve expertise on this issue;
- 5.2.13. Ensure communication of the Policy to all newly appointed employees during the Public Service Induction Process;
- 5.2.14. Ensure that all employees receive training and awareness on sexual harassment.

5.3. Gender Focal Point Official:

- 5.3.1. Promote a safe work environment that is free of sexual harassment;
- 5.3.2. Advocate for protection of the rights of sexual harassment complainants;
- 5.3.3. Create an atmosphere that promotes equality and gender justice;
- 5.3.4. Ensure that programmes for gender sensitisation and sexual harassment are implemented;
- 5.3.5. Support the Labour Relations Officer where necessary with investigation of complaints;
- 5.3.6. Design/develop mechanisms for registering complaints that are safe and accessible to all employees;
- 5.3.7. Develop programmes that educate all employees about sexual harassment and its consequences in the workplace;

- 5.3.8. Actively promote the provisions of the policy through the development and distribution of multimedia education materials;
- 5.3.9. Maintain confidential statistics and narrative reports on all sexual harassment cases reported and handled;
- 5.3.10. Monitor and submit quarterly reports on all cases reported, resolved and pending to the Head of Department. Such reports should use non-identifying statistical information to maintain confidentiality;
- 5.3.11. Contribute to the development, coordination, implementation of educational programs and awareness raising activities for prevention and management of sexual harassment in the department.

5.4. Managers/Supervisors:

- 5.4.1. Refrain from sexual harassment in the workplace;
- 5.4.2. Take all reasonable steps to create and maintain an environment that is free from sexual harassment;
- 5.4.3. Know and understand this policy, and assume responsibility for its implementation;
- 5.4.4. Communicate the policy to all employees, including newly appointed employees;
- 5.4.5. Undergo training on the sexual harassment policy and related topics;
- 5.4.6. Respond appropriately to a complaint of sexual harassment from employees;
- 5.4.7. Take appropriate action when instances of sexual harassment occur and act in accordance with the reporting and disciplinary procedures of this policy;
- 5.4.8. Prevent retaliation against any employee making a sexual harassment complaint;
- 5.4.9. Treat all complaints seriously, impartially and with confidentiality.

5.5. Employee Health and Wellness Unit:

- 5.5.1. Provide relevant counselling and support when required;
- 5.5.2. Encourage employees who may report incidents of sexual harassment to them, to report such complaints to the Head of Department immediately either verbally or in writing;
- 5.5.3. Maintain confidentiality for all sexual harassment matters reported to them.

5.6. Employees:

- 5.6.1. Should refrain from sexual harassment of others in the workplace;
- 5.6.2. If you are sexually harassed, say NO to the harasser and tell him/her that their attention is unwanted and the behaviour ¹⁸ is offensive. If able to, also do so in writing and keep a record of this correspondence.
- 5.6.3. If the behaviour persists, report the harassment immediately;
- 5.6.4. Treat fellow employees with respect and dignity;
- 5.6.5. Know and understand this policy.

6. Review and Distribution

- 6.1. The Director for Corporate Services is the responsible manager for this Policy and for ensuring it is reviewed and updated.
- 6.2. This policy will be reviewed no sooner than 18 months but not later than 3 years after the last publication date. If necessary, an updated version will be issued, if not a formal cover letter will be issued to supplement the cover of this Policy (identifying a revised publication date).
- 6.3. The Director for Strategic Management, Organisational Development and Institutional Performance will distribute updated versions to:
 - Member of the Executive Council for Transport, Safety and Liaison
 - Head of Department of Transport, Safety and Liaison
 - All Chief Directors and Directors (who will in turn distribute to their staff as appropriate)

7. Acknowledgements and Sources

- 7.1. This policy draws upon the National Policy and Procedures on the Management of Sexual Harassment in the Public Service.

¹⁸ Includes actions of individuals or a group, and may involve using a system of work as a means of victimizing, humiliating, undermining or threatening