



health

Department of Health
NORTHERN CAPE

WHISTLE BLOWING POLICY

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1. INTRODUCTION

- 1.1 The Department of Health, Northern Cape recognises the fact that:
 - 1.1.1 Criminal and other irregular conduct within the Department is detrimental to good, effective, accountable and transparent governance within Health and can endanger the economic stability of Health and have the potential to cause social damage;
 - 1.1.2 There is a need for procedures in terms of which employees may, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct affecting Health;
 - 1.1.3 Every employer and employee has a responsibility to disclose criminal and any other irregular conduct in the workplace; and
 - 1.1.4 Every employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from any reprisals as a result of such disclosure.

2. BACKGROUND

The Protected Disclosure Act 26 of 2000, which became effective in February 2001, provides and ensures protection to employees for disclosures made without malice and in good faith, in specifically defined circumstances.

3. REGULATORY FRAMEWORK

This Policy derives its mandate from the following legislation or prescripts:-

- 3.1 Protected Disclosures Act 26 of 2000
- 3.2 Promotion of Access to Information Act 2 of 2000
- 3.3 A guide for Public Sector Accountability Implementation the Protected Disclosure Act
- 3.4 Prevention and Combating of Corrupt Activities Act 12 of 2004
- 3.5 Public Finance Management Act 1 of 1999
- 3.6 Treasury Regulations
- 3.7 Labour Relations Act 66 of 1995
- 3.8 Public Service Act 103 of 1994
- 3.9 Public Service Bargaining Council Resolution 14 of 2002
- 3.10 Public Service Bargaining Council Resolution 1 of 2003

4. DEFINITIONS

In this Policy, unless the context otherwise indicates, the following terms shall bear the meaning assigned as reflected by the Protected Disclosures Act:

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- 4.1 **Disclosure** is defined as the disclosure of information regarding the conduct of the employer or employees that relates to:
- 4.1.1 a criminal offence;
 - 4.1.2 failure to comply with any legal obligation;
 - 4.1.3 a miscarriage of justice;
 - 4.1.4 the health and safety of an individual being endangered;
 - 4.1.5 damage to the environment;
 - 4.1.6 unfair discrimination; or
 - 4.1.7 the concealment of any of the abovementioned activities.
- 4.2 **Occupational detriment** (in relation to the working environment of an employee) includes the following:
- 4.2.1 disciplinary action;
 - 4.2.2 dismissal, suspension, demotion, harassment or intimidation;
 - 4.2.3 transfer against the employee's will;
 - 4.2.4 refusal of transferring or promoting the employee;
 - 4.2.5 a term of condition of employment or retirement that disadvantages the employee;
 - 4.2.6 refusal of a reference from the employer;
 - 4.2.7 denial of appointment to any employment, profession or office;
 - 4.2.8 a threat regarding any of abovementioned actions;
 - 4.2.9 adversely being affected in respect of employment opportunities and work security.
- 4.3 **Whistle-blowing** generally refers to the process of disclosing information or raising a concern about a wrong doing, some kind of malpractice or mistreatment which members of staff may have come across during the course of their work and which they feel would put the interests of the Department at risk. The concern must be a genuine concern about a crime, criminal offence, miscarriage of justice, dangers to health and safety and of the environment, and the cover up of any of these.
- 4.4 **Whistle-blower** is any employee or member of staff who has a reasonable belief that there is corruption or misconduct relating to any of the matters specified above and may raise a concern under the procedures as described. For the purposes of this policy, an employee or member of staff is a person who is:
- 4.4.1 employed on a permanent basis
 - 4.4.2 on a fixed term or temporary contract of employment
 - 4.4.3 on secondment to the Department

5. OBJECTIVES OF THE POLICY

- 5.1 The Protected Disclosures Act came into effect on 16 February 2001. In order to remain in compliance with the Act, Department of Health will:
- 5.1.1 Strive to create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure; and
 - 5.1.2 Promote the eradication of criminal and other irregular conduct within Health.
- 5.2 The Policy is intended to encourage and enable staff to raise concerns within Health rather than overlooking a problem or blowing the whistle to inappropriate channels.
- 5.3 Furthermore the policy aims to:
- 5.3.1 provide avenues for staff to raise concerns and receive feedback on any action taken;
 - 5.3.2 inform staff on how to take the matter further if they are dissatisfied with the response; and
 - 5.3.3 reassure staff that they will be protected from reprisals or victimisation for whistle blowing in good faith.

6. SCOPE OF THE POLICY

- 6.1 There are existing grievance procedures in place to enable employees of Health to raise grievances relating to their employment. This Policy is intended to cover concerns that fall outside the scope of grievance procedures. These concerns indicated in the Act, are the following:
- 6.1.1 that a criminal offence has been committed, is being committed or is likely to be committed;
 - 6.1.2 that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
 - 6.1.3 that a miscarriage of justice has occurred, is occurring or is likely to occur;
 - 6.1.4 that the health or safety of an individual has been, is being or is likely to be endangered;
 - 6.1.5 that the environment has been, is being or is likely to be damaged;
 - 6.1.6 unfair discrimination as contemplated in the Promotion of Equality and Prevention of unfair Discrimination Act, Act 4 of 2000; or
 - 6.1.7 that any matter referred to in 6.1.1 to 6.1.6 had been, is being or is likely to be deliberately concealed.

7. CULTURE OF OPENNESS

- 7.1 The Department of Health commits itself to encourage and ensure a culture that promotes openness within its ranks. This will be done by:
- 7.1.1 involving employees, listening to their concerns and encouraging the appropriate use of this policy on whistle-blowing promoted by Senior Management.
 - 7.1.2 issuing the policy to all existing employees and new employees
 - 7.1.3 educating, informing, and explaining to employees what constitutes fraud, corruption and malpractice and its effect on service delivery.
 - 7.1.4 promoting professional ethics, code of good conduct, and establishing a common understanding of what is acceptable and what is unacceptable behaviour.

8. ASSURANCES TO EMPLOYEES

8.1 Employee Safety

- 8.1.1 The Department of Health is committed to this policy. The Department will ensure that an employee who makes a disclosure in the above mentioned circumstances will not be penalized or suffer any occupational detriment for doing so.
- 8.1.2 If a concern is raised in good faith as provided in this policy, an employee will not be at risk of losing his/her job or suffering any form of retribution as a result. This assurance is not extended to employees who maliciously raise matters they know to be untrue.

8.2 Employee Confidence

- 8.2.1 The Department will not tolerate the harassment or victimization of any one raising a genuine concern. However, an employee may nonetheless wish to raise a concern in confidence under this policy.
- 8.2.2 If the employee wishes that his/her identity must not be divulged, it will not be disclosed without consent. The management will however expect the same confidentiality regarding the matter from employees.
- 8.2.3 If the situation arises where the matter could not be resolved without revealing an employee's identity (where evidence will be needed in court), it will be discussed with the employee on how and whether it can be proceeded with. Accordingly, while anonymous reports will be considered, this policy is not appropriate for concerns raised anonymously.

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9. HOW THE MATTER WILL BE HANDLED

- 9.1 A written allegation should set out the background and history of the concern (giving names, dates and places where possible) and the reason why the employee is particularly concerned about the situation. It is preferable for that employee to record this in writing him-/herself. However, where the person to whom the concerns are voiced writes these down, a copy will be sent to the employee's address or via his/her representative to give him/her an opportunity to agree to this as a correct record. Although it is not expected of the whistle-blower to prove the truth of the allegation, he/she will need to demonstrate to the person contacted that there are sufficient grounds for concern.
- 9.2 This may be done verbally or in writing. It must be stated whether he/she wishes to raise the matter in confidence so that they can make appropriate arrangements.
- 9.3 Once a concern is raised, it will be assessed to decide what action should be taken. This may involve an internal inquiry or a more formal investigation. The issue raised will be acknowledged within 7 working days.
- 9.4 If it is requested, an indication of how the matter will be dealt with and a likely time scale could be provided. If the decision is made not to investigate the matter, reasons will be given.
- 9.5 If the concern falls more properly within the Grievance Procedure, the employee will be advised accordingly.
- 9.6 Whistle-blowers will be given as much feedback as possible, full information may not always be given on the precise action taken where this could infringe a duty or confidence owed to someone else.

10. HARASSMENT OR VICTIMISATION

- 10.1 The Department of Health acknowledges the fact that the decision to report a concern can be a difficult one to make, not least because of fear of reprisal from those responsible for the irregularity. The Department will not tolerate harassment or victimisation and will take action to protect employees when they raise a concern in good faith. This does not mean that if an employee is already the subject of disciplinary or other action, that action will be halted as a result of their whistle-blowing.

11. HOW TO RAISE CONCERNS

- 11.1 Members of staff or employees should feel free to contact and raise their concerns with any of the following:

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- 11.1.1 A legal practitioner or a person whose occupation involves the giving of legal advice, as contemplated in section 5 (a) of the Protected Disclosures Act.
- 11.1.2 The Head of Department
- 11.1.3 The Director: Security and Risk Management
- 11.1.4 The MEC for Health
- 11.1.5 The Public Protector
- 11.1.6 The National Anti-Corruption hotline @ 0800 701 701.

12. DISSATISFACTION WITH RESPONSE

If an employee is at any stage unhappy with the response, he/she can go to other levels and institutions mentioned in this policy. Whilst it cannot be guaranteed that the response will in all instances be the way that the employee might wish, the Department is committed to handle the matter fairly and properly. By using this policy, employees will help to achieve this.

13. CREATING AWARENESS

- 13.1 In order for the Policy to be sustainable, it must be supported by structured education, communication and awareness programmes.
- 13.2 It is the responsibility of Head of Department and Managers to ensure that all employees, are made aware of, and receive appropriate training and education with regard to the Whistle-blowing Policy.

14. ADMINISTRATION

The custodian of the Policy is the Director: Security and Risk Management who shall be responsible for the administration, revision and interpretation of the Policy. The Department shall maintain a record of all concerns raised as well as of the outcome of all actions taken. This shall be done in such a manner as not to compromise confidentiality.

15. POLICY REVIEW

The policy shall be reviewed at least annually for its effectiveness and to factor changes in legal frameworks and relevant legislation, organizational development, as well as ensuring compliance with the practices and procedures within the Department of Health.

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