

WATERBERG DISTRICT MUNICIPALITY

SEXUAL HARASSMENT

1. PREAMBLE

The employer has the obligation of ensuring that the dignity of every person is protected. It shall also prohibit sexual harassment in the workplace. Complaints about sexual harassment should be handled with the necessary seriousness, speed, sensitive and confidentiality they deserve.

2. OBJECTIVES

- 2.1.** To indicate all forms of sexual harassment in the Municipality and to provide appropriate procedures to deal with the problem and prevent its recurrence.
- 2.2.** To encourage and promote the development and implementation of policies and procedures that will lead to the creation of workplaces free of sexual harassment, in which employers and employees respect one another's integrity and dignity, their privacy, and their right to equality in the workplace.
- 2.3.** To deal with sexual harassment cases in a very sensitive, prompt, unbiased workplace.
- 2.4.** To ensure that neither the aggrieved nor the alleged harasser are victimized in any way by either management or workers.
- 2.5.** To prevent employees, including job applicants, temporary and part-time employees from requesting or compelling to engage in sexual activity in return for employment, job retention, salary increase, promotion, or service benefits.
- 2.6.** To guarantee job security and job related benefits of the aggrieved.
- 2.7.** To ensure that all employees in the municipality are conversant about sexual harassment and its related behavior.

3. SCOPE OF APPLICATION

This policy is applicable to all who are involved in the affairs of Waterberg District Municipality in which case perpetrators and/or victims of sexual harassment shall include, inter alia the following:-

- i. Managers
- ii. Supervisors
- iii. Co-employees
- iv. Sub ordinates
- v. Job applicants
- vi. Clients
- vii. Suppliers
- viii. Contractors and
- ix. Others having dealings with the Municipality

4. DEFINITIONS

- 4.1. Manager means Municipal Manager and Managers who report directly to the Municipal Manager.
- 4.2. Employee also includes the applicants for employments.
- 4.3. Sexual harassment is any speech and or conduct of sexually discriminatory nature which is neither welcomed nor encouraged, committed by another which is offensive to a reasonable person as to create an abusive working environment and impairs performance.

5. PRINCIPLES

- 5.1. Employers/management should refrain from committing acts of sexual harassment.
- 5.2. Management should take appropriate action whenever an act of sexual harassment is committed.
- 5.3. Managers should be trained on matters of sexual harassment.

6. LEGISLATIVE FRAMEWORK

- Employment Equity Act, 55 of 1998,
- Labour Relations Act, 66 of 1995,
- Prevention of Unfair Discrimination Act,
- Amended Code of Good Practice on the handling of Sexual Harassment cases in the Workplace, 27865 of 2005,
- RSA Constitution Act 108 of 1996.

7. PURPOSE

The municipality should develop and implement policy and procedure that will assist it in dealing with matters of sexual harassment. The disciplinary code should be aligned to the Collective Agreement on Disciplinary Code.

8. SEXUAL ATTENTION CAN BECOME SEXUAL HARASSMENT IF:

- 8.1 The behaviour is persistent, although in some cases a single incident of harassment can also constitute sexual harassment depending on the gravity of the incident.
- 8.2 The recipient has made it clear that the behaviour is considered offensive and the perpetrator had continued with such behaviour.
- 8.3 The perpetrator should have known that the behaviour is unacceptable.

9. FORMS OF SEXUAL HARASSMENT

Sexual harassment can take various forms that range from subtle attention to the worst forms of violence such as rape. Examples of forms it can take are outlined as follows:

9.1. Quid Pro Quo

This intentional act of harassment is an abuse of authority by an employer, supervisor or any member of management who has the power to employ or dismiss or change the working conditions of the employee. This can be done by suggestion of sex in return for a job, salary increases, application or threatened application of unfair disciplinary measures. This form also amounts to sexual favoritism, which is unacceptable.

9.2. Physical Forms

Physical conduct of a sexual harassment include unwanted physical contacts, ranging from touching to sexual assault or rape, and includes but not limited to fondling breasts, pinching of buttocks, sexual patting, strip search by or in the presence of the opposite sex. This form also relates to people of the same sex and also refers to where unconventional sexual orientations are maintained and also to females harassing males.

9.3. Verbal Forms

These forms of sexual harassment include unwelcome innuendoes, suggestions and hints, sexual advances, comments with overtones, sex related jokes or insults or unwelcome graphic comments about a person's body made in their presence or directed towards them, unwelcome whistling directed at an individual or group of individuals.

9.4. Non-verbal Forms

These forms include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects, leering and winking.

10. PROCEDURES REGARDING SEXUAL HARASSMENT CASES

The procedure is divided into two options including:

10.1. The informal procedure;

10.1.1. The informal procedure shall be used for suitable forms of sexual harassment. This procedure shall not be used for cases that involve sexual assault, rape, strip search by or in the presence of the opposite sex, quid pro quo or persistent forms of sexual harassment, unless the aggrieved chooses to follow an informal procedure.

- 10.1.2.** Where possible, the aggrieved may wish to resolve the complaint without reference to formal procedures by approaching the alleged harasser, by writing a letter to the alleged harasser and/or by asking a member of management or other representative, such as a shop steward, to mediate.
- 10.1.3.** Should the informal mediation, as described in resolving the matter, succeed, no disciplinary action shall be taken against the alleged harasser.
- 10.1.4.** The aggrieved and the alleged harasser shall be referred to relevant trauma crisis centers for counseling should they so wish. This will be the responsibility of the Municipality in the case of the aggrieved and only if the alleged harasser is found innocent shall the Council take responsibility.

10.2. The formal procedure.

Where informal procedure fails, the formal procedure in the form of grievance procedure and disciplinary procedure will take effect. Only the disciplinary code and procedures of the Conditions of Employment Agreement shall be used to address such a complaint of the sensitivity and seriousness of sexual harassment.

10.2.1. Suspension

In extreme forms of sexual harassment that involve sexual assault such as rape, strip search by or in the presence of the opposite sex, molestation or attempted rape, the alleged harasser may be suspended with emoluments pending to outcome of the disciplinary hearing.

10.2.2. Investigation

- a) Once allegations of sexual harassment are brought to the attention of the Directorate, an investigating officer shall be appointed by the Municipal Manager of his/her delegate within ten (10) working days to investigate such claim.
- b) The aggrieved shall be afforded the opportunity to choose from three names as to who the investigating officer will be.
- c) The aggrieved shall exercise his/her right to choose within ten (10) working days or receiving the notification and shall notify the Head of the Directorate of his/her choice in writing.
- d) An investigating officer shall:-
 - i. Be someone from outside the workplace and line management from which the grievance originated.
 - ii. Be required to have relevant labour relation skills.
 - iii. Have appropriate investigating skills and be given adequate resources.
 - iv. Ensure confidentiality so as not to disadvantage both parties.

- v. Make recommendations on the course of action to be taken based on the evidence gathered within ten (10) working days after his/her appointment.

10.2.3. Disciplinary Action

- a) All rights as outlined in Industrial Relations Policy and Procedure of the Conditions of Employment Agreement shall apply to both the aggrieved and the alleged harasser.
- b) The disciplinary hearing shall be held within ten (10) working days after the outcome of the investigation.
- c) The outcome of the disciplinary hearing shall be communicated to the affected parties within five (5) working days unless otherwise agreed to by the parties.
- d) Upon failure by the Council to hold a disciplinary inquiry, the aggrieved shall declare a dispute by applying for a Conciliation Board in the prescribed manner. If the Conciliation Board fails to settle the matter, the aggrieved shall reserve the right to seek the intervention of the Commission for Conciliation, Mediation and Arbitration (CCMA).
- e) Where the alleged harasser is found not guilty, no disciplinary action shall be taken by the Council against an employee who has filed a complaint in good faith. However, this Policy does not debar the alleged harasser from taking appropriate action on the grounds of defamation and the Council shall not be held responsible for any civil claims.

10.2.4. Disciplinary Measure

- a) Disciplinary measures shall include the following, but not limited to:-
 - i. Counseling and Education
 - ii. Verbal warning
 - iii. Written warning
 - iv. Final written warning suspension without pay, for no longer than 3 months
 - v. A combination of the above
 - vi. Dismissal
- b) For any sexual assault such as attempted rape, molestation, rape or strip search, summary dismissal shall be the appropriate sanction.
- c) The Council shall be guided by the Code of Good Practice as contained in Schedule 8 of the Labour Relation Act, 1995, whenever it has to consider the action to take the following to the sexual harassment claim.
- d) The aggrieved of sexual assault shall have the right to lodge separate criminal and/or civil claims against the alleged harasser, and the legal rights of the aggrieved shall in no way be limited by this code.

11. DISPUTE RESOLUTION

- 11.1.** Where the victim or alleged perpetrator is not satisfied with the outcome of the disciplinary hearing, the victim or the alleged perpetrator shall be afforded the opportunity to appeal to the Municipal Manager.
- 11.2.** The appeal against the decision of the Presiding Officer shall be referred to within 5 working days of the receiving notice of the final outcome of the hearing.
- 11.3.** The appeal form should be completed.
- 11.4.** The appeal form should be forwarded via the aggrieved officer's manager to the appeals authority.
- 11.5.** The appeal authority may decide to:
 - Uphold the appeal;
 - Reduce the sanction; or
 - Confirm the outcome of the disciplinary proceeding

Note: The employee retains the right to utilize dispute settlement mechanism provided under the Labour Relations Act, 1995.

12. LEAVE

- 12.1.** If cases where the victim or the perpetrator has suffered emotional or physical stress, the Council shall, on request, grant the individual sick leave for trauma therapy.
- 12.2.** Depending upon the environment and the extent of the relations between the aggrieved and the alleged harasser, the former, after having formally lodged the sexual harassment claim and during investigation, may be granted special paid vacation leave pending the outcome of the investigation.
- 12.3.** The Employee Assistance Program (EAP) of the Human Resources Division shall keep a list of service organizations that deal with trauma cases for the victim and/or alleged perpetrator.

13. CONFIDENTIALITY

- 13.1.** Although it might be difficult to guarantee confidentiality in sexual harassment cases given the legal duties involved and frequent conflict of the rights and obligation, the Council has got the duty to be acquainted with the case.
- 13.2.** Both the Council and the employees must undertake reasonable steps to ensure that sexual harassment complaints are investigated and handled in a manner whereby the identities of the persons involved are kept confidential.

- 13.3.** Management, employees and the parties concerned shall endeavor to ensure confidentiality on the disciplinary enquiry. Only appropriate members of management as well as the aggrieved, alleged harasser, witnesses and interpreter when necessary shall be present in the disciplinary enquiry sessions.

14. EMPLOYEE'S RESPONSIBILITIES

- 14.1.** All employees have a role to ensure that a climate is created in which sexual harassment is unacceptable.
- 14.2.** All employees shall ensure that their standards of conduct do not cause offence and that they discourage unacceptable behavior on the part of others.

15. DEFINITION

- 15.1.** Sexual harassment in any speech and/or conduct of a sexually discriminatory nature, which was neither welcomed or encouraged, committed by a co-employee which would be so offensive to a reasonable person as to create an abusive working environment and/or impair his/her performance.
- 15.2.** Sexual attention becomes sexual harassment if:
- 15.2.1.** The behavior as persistent notwithstanding that this is a single incident of sexual harassment.
 - 15.2.2.** The recipient has complained that he/she considers this behavior is regarded as offensive and/or;
 - 15.2.3.** The perpetrator should reasonably have known that the behavior is regarded as unacceptable and/or;
 - 15.2.4.** The incident took place within the premises of the employer or in an area where official duties were to be formed.

16. IMPLEMENTATION OF THIS CODE

The Council shall ensure that education and awareness raising programs which encourage gender sensitive practices and behavior are put in place to educate management and employees about rights and appropriate procedures pertaining to cases of sexual harassment. Pamphlets and brochures shall be made available for the benefit of job applicants as well since they are also covered in the definition of an "employee" in terms of the Labour Relations Act, 1995.

17. DELEGATIONS

Supervisors are responsible to ensure that staff under their supervision adheres to the prescribed norms contained in this policy.

18. IMPLEMENTATION

In the event of non-compliance, officers will be subjected to disciplinary code and procedures as contained in the Disciplinary Code and Procedures.

19. PENALTIES

At first offence the offender may be dismissed.

Adopted by Council on the 17 June 2015

Resolution number A250/2015



MUNICIPAL MANAGER