

# SEXUAL HARASSMENT

## Preamble

The Department of Public Works is committed to maintaining a positive working environment which does not discriminate on the basis of race, gender, sex, marital status, ethnic or social origins, sexual orientation, age, disability, religion, culture, language and birth, among others. In pursuit of this goal, the Department will not tolerate acts of sexual harassment or related retaliation against or by any employee. It is also a violation of this Policy for anyone acting knowingly and recklessly either to make a false complaint of sexual harassment or to provide false information regarding a complaint.

It is intended that individuals who violate this Policy be disciplined or subjected to corrective action, up to and including termination of service.

## 1. PURPOSE

- 1.1 To provide a general definition of sexual harassment
- 1.2 To prohibit sexual harassment and related retaliation
- 1.3 To set guidelines and provisions for dealing with sexual harassment in the workplace
- 1.4 To set out procedures to be followed if an employee/or client believes a violation of the Policy has occurred.

## 2. DEFINITION

- 2.1 **Sexual Harassment** – refers to unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature, between same or opposite sex, when:
  - a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment
  - b) Submission to or rejection of such conduct by an individual is used as the basis for evaluation in the making of decisions affecting an individual; or
  - c) Such conduct has the purpose of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

In order for a person's behaviour to be classified as sexual harassment, the following elements, as contained in the code of good practice, must be present:

- The behaviour is unwanted by the recipient/victim

- The behaviour is of a sexual nature or is suggestive of sexual overtones
- The behaviour is persistent
- The recipient/victim has made it clear that the perpetrator's behaviour is considered offensive and/or unwanted
- The behaviour may be expressed in verbal, physical and/or non-verbal ways.

2.2 **Hostile environment** – refers to unwelcome sexual conduct that is sufficiently severe that it alters the conditions of employment and creates an environment that a reasonable person would find intimidating, hostile or offensive. The determination of whether an environment is “hostile” must be based on all of the circumstances. These could include the frequency of the conduct, its severity and whether it is threatening or humiliating. Examples which may be Policy violations include the following:

- A supervisor implicitly or explicitly suggesting that a higher grade/salary might be given to an employee if the employee submits to sexual advances
- A supervisor threatening termination if a subordinate refuses the supervisor's sexual advances
- Sending explicit messages to other employees, either voicemail or email

2.3 **EAP Practitioner** – An employee designated to deal with sexual harassment.

2.4 **Retaliatory acts** – it is a violation of this Policy to engage in retaliatory acts against any employee/client who reports an incident of alleged sexual harassment, or any employee/client who testifies, assists or participates in a proceeding, investigation or hearing relating to such allegation of sexual harassment.

Employees who believe they have been retaliated against because of testifying, assisting or participating in a proceeding, investigation or hearing relating to an allegation of sexual harassment, should meet and seek advice of the designated EAP Practitioner, whose responsibilities include handling retaliation.

### 3. PRINCIPLES

3.1 All employees should be informed of this policy through e-mail, workshops, induction, and intranet as well as hard copies.

3.2 Any employee who violates this policy shall be disciplined or subjected to action, up to and including termination of service.

3.3 This policy shall be interpreted in a manner that is consistent with The Constitution, 1996<sup>1</sup> and other related legislation<sup>2</sup>.

<sup>1</sup> Act 108 of 1996, sections 9(1), 9(3), 10 & 12

<sup>2</sup> Public Service Act, 1994, Code of Conduct C.3.6

- 3.4 Sexual harassment is an unacceptable form of behaviour that violates the rights of the individual and interferes with work performance.
- 3.5 This policy applies where sexual harassment has occurred whether within the work environment or in any other activity associated with work.
- 3.6 Employees of the Department are expected to respect the sensitivities of others, especially where there may be a difference in the interpretation of acceptable behaviour as a result of differences in ethnic backgrounds, religious and cultural values.
- 3.7 Every complaint of sexual harassment will be acted upon immediately and with dedicated purpose.
- 3.8 No victimisation, retaliation or prejudice will result from the use of the policy.

#### **4. LEGISLATION AND REGULATION**

- The Constitution, Act 108 of 1996
- Public Service Act, 1994 – Code of Conduct
- Labour Relations Act, 1995 – Code of Good Practice
- Promotion of Equality and Prevention of Unfair Discrimination Act, 2000
- Public Service Regulations, 2001, as amended

#### **5. SCOPE OF APPLICATION**

This policy is applicable to all employees within the employment of the Department of Public Works including individuals engaged to provide a service to the Department.

#### **6. FORMS OF SEXUAL HARASSMENT**

Conduct constituting sexual harassment may range from physical, verbal and non-verbal forms of conduct. Sexual harassment includes:

##### **6.1 Quid pro Quo (“*something for something*” or “*this for that*”) Harassment**

This is an abuse of authority by a person with authority or influence such as the employer, supervisor or any member of management who has the power to employ or dismiss or change the working conditions of an employee. This can be done by suggestions of sex in return for a job, salary increases, application or threatened application of unfair disciplinary measures.

## 6.2 Physical forms

Conduct of a sexual nature that includes all unwanted physical contact, ranging from touching to sexual assault or rape and includes but not limited to fondling breasts, grabbing or rubbing against someone, pinching of buttocks, sexual patting, touching, exposing oneself, attempted rape or strip search by or in the presence of the opposite sex. This form also relates to: people of the same sex, and to where unconventional sexual orientations are maintained, and also to females harassing males.

## 6.3 Verbal forms

Unwelcome innuendos, suggestions and hints, sexual advances, comments with sexual overtones, sex related jokes, insults, or unwelcome graphic comments about a person's body made in their presence or directed towards them, unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling directed at an individual or group of individuals.

## 6.4 Non-verbal forms

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

## 6.5 Other examples are:

- Sexual jokes, lewd suggestions, whistling, foul language, leering, and obscene gestures.
- Comments on a person's anatomy.
- Persistent demands for a date.
- Questions about personal/sex life.
- Explicit sexual propositions in return for "rewards".
- Unwanted physical contact of any sort including touching, brushing, pinching, kissing.
- Display of pornographic and sexually suggestive pictures and/or sexual objects.
- Offensive communication - written, telephonic or electronic
- Indecent exposure
- Sexual assault and rape\* (**\*Sexual assault and rape are criminal offences and the person assaulted will be advised to report the offence to the police.**)
  - Sexual bribery – this occurs when:
    - Submission to such conduct is made a term or condition of an individual's employment.

- Submission to, or rejection of such conduct by an individual is used as the basis for employment decisions affecting such an individual.

***Sexual harassment does not refer to behaviour that is mutually acceptable to the parties involved. Friendships, whether sexual or otherwise, are a private concern.***

## **6.6 Secondary Harassment**

This occurs when a victim reports a case of sexual harassment and other employees then start harassing him/her because of the grievance filed.

## **6.7 Sexual Favouritism**

This 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 or salary increase.

# **7. POLICY PROVISIONS**

## **7.1 Obligation to Report**

7.1.1 Any employee, who feels that he/she has been sexually harassed or knows of a possible act of sexual harassment, is encouraged to immediately report the matter to his/her manager or supervisor. In the event of the perpetrator being the employee's manager or supervisor, the matter should be referred to the perpetrator's manager or supervisor or to an appropriately trained practitioner of the Department's Employee Assistance Programme.

7.1.2 All reports of sexual harassment shall be treated with confidentiality and the identity of the complainant, witnesses (if any) and the alleged perpetrator shall as far as possible be protected against unnecessary disclosure.

7.1.3 The complainant and the witness shall not be victimised for laying the complaint or giving evidence as witness. Anyone breaching this provision may formally be charged with misconduct.

## **7.2 Investigation Process**

Reports or complaints under this Policy shall be addressed and resolved as promptly as practicable after the complaint or report is made. Upon receipt and within a period of 4 weeks of a written complaint of sexual harassment, the complainant's manager/supervisor, or an appropriately trained practitioner of EAP, shall be appointed to investigate the complaint. The investigation shall be conducted in the following manner:

- a) Interviewing the victim/complainant
- b) Interviewing the alleged perpetrator

- c) Interviewing possible witnesses and
- d) Obtain all possible records and documentation

### **7.3 Procedure after investigation**

A complaint may be addressed in terms of an informal and/or a formal procedure.

#### **7.3.1 Informal procedure**

This procedure shall be followed:

- If the complainant prefers the matter to be resolved or addressed by referral only to his/her manager/supervisor; or
- If the complainant prefers to address the problem by means of discussion/consultation with an appropriately trained member of EAP; or
- If during the investigation it becomes apparent, subject to the nature and extent of the specific act of sexual harassment, that the perpetrator's action is a behaviour problem.

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.

#### **7.3.2 Formal Procedure**

This procedure shall be followed:

- If the nature and the extent of the alleged sexual harassment warrants formal disciplinary action; or
- If the complainant requests the formal procedure as opposed to the informal procedure.
- Only the disciplinary procedure shall be used to address such a complaint because of the sensitivity and seriousness of sexual harassment.

### **7.4 Mediation**

Mediation is a process where the aim is to enable the complainant and respondent to discuss fully all issues relating to the complaint and, if possible, the resolution thereof.

Mediation allows respondents who are genuinely unaware that their actions have given offence, the chance to understand the nature and the impact of their behaviour and the opportunity to change.

***A FALSE ACCUSATION CONSTITUTES MISCONDUCT, WHICH MAY RESULT IN DISCIPLINARY ACTION.***

## **8. PREVENTION OF SEXUAL HARASSMENT**

The prevention of sexual harassment will involve raising awareness among employees of the Department of Public Works of their rights and obligations in terms of this policy. This will entail:

- Encouraging victims to speak out against sexual harassment
- Making information on sexual harassment accessible
- Identifying, recognising and providing support for disabled people who are frequently subject to abuse
- Funding and implementation of educational programmes aimed at increasing the knowledge and understanding of the causes and consequences of sexual harassment.
- Provision of training for practitioners who will be responsible for the implementation of the policy
- Enforcing policy implementation
- Promoting non-stereotype images – especially of women
- Adopting appropriate measures, particularly in the field of education, to change social and cultural patterns of conduct of men and women, and to eliminate prejudices, customary practices, and all other practices based on the idea of inferiority or superiority of the sexes or on people's sexual orientation.
- Raising awareness of sexual harassment by managers/supervisors

## **9. ROLES AND RESPONSIBILITIES**

### **9.1 *All employees***

- All employees should familiarise themselves with the policy
- All employees of the Department are responsible for ensuring that the work environment is free of sexual harassment. This includes behaving in a manner consistent with the principles of this policy, and, for example, discouraging the display of printed material and posters that could reasonably give offence in the work environment
- Any person approached by someone wishing to discuss a specific instance of possible sexual harassment should refer that person to an EAP Practitioner. Confidentiality must be maintained.
- All employees must refrain from victimising any person associated with a complaint.

### **9.2 *Managers and supervisors***

Managers and supervisors are expected to familiarise themselves with the policy and are required to:

- Ensure that staff under their supervision are familiar with the policy and, as far as practicable, ensure that the principles of this policy are adhered to.
- Inform staff with due emphasis and seriousness that sexual harassment will not be tolerated in the workplace.
- Ensure that their behaviour provides a model of conduct in line with the principles of this policy.

If a supervisor is approached, she or he must hear the complaint and encourage the complainant to send a written complaint or report to the EAP Practitioner or Labour Relations Officer, and the complaint must not be ignored.

- Provide a supportive environment for the activities of the EAP Practitioners to release them from normal duties on time to enable them to fulfil their role, to attend training programmes and any other activities associated with their role.
- Act responsibly to complaints of victimisation and take action where necessary.

In instances where a manager or supervisor observes, or is informed of, behaviour that could constitute sexual harassment, the manager should advise the person(s) involved that the behaviour could give offence and that it should cease immediately.

### 9.3 ***Line functions***

The Line managers are responsible for:

- Performing an educative role in the elimination of sexual harassment and for taking action to implement this policy
- Taking all reasonable steps to facilitate the conciliation and resolution of sexual harassment complaints
- Assisting in the investigating of formal complaints of sexual harassment.
- Liaising and co-ordinating with EAP Practitioners
- Arranging and delivering awareness-raising programmes for employees in conjunction with managers and supervisors
- Liaising with senior management to ensure that anyone engaged in providing a service for the Department is aware of the contents of this policy
- Maintaining records on sexual harassment complaints in the Department and informing managers and supervisors of the incidences of sexual harassment occurring in their area of responsibility
- Monitoring and evaluating the implementation of this policy

## **10. EMPLOYEE ASSISTANCE PROGRAMME (EAP) PRACTITIONERS**

10.1 The purpose of conciliation is to resolve the complaint, not to seek retribution, and in particular, to ensure that the behaviour does not recur and that there are no reprisals for having made the complaint.

10.2 In attempting conciliation, the EAP Practitioners may act as a go-between, or as a neutral intermediary, in the presence of both the complainant and the respondent until an agreed resolution is reached.



10.3 Throughout the process of conciliation, neutrality and respect for both parties must be demonstrated.

10.4 The Department will maintain a number of specially trained EAP Practitioners who will assist in the informal and formal resolutions of sexual harassment complaints.

10.5 The principal **functions of EAP Practitioners** will be to:

- Facilitate communication between the complainant and the respondent
- Attempt to achieve a workable resolution that is mutually agreed by the parties involved
- Conduct the investigation and conciliation processes in accordance with this policy
- Provide information on alternative options if the complaint remains unresolved
- Provide/recommend counselling where necessary

## **11. EXTERNAL RECOURSES/PROCEDURES THAT SHOULD BE FOLLOWED IF THE OUTCOME OF INTERNAL PROCEDURES ARE NOT SATISFACTORY**

The alleged victim has the right to undertake one of these three options if he/she is not satisfied with the departmental disciplinary procedures:

### **11.1 GPSSBC**

The complainant can be registered with the GPSSBC, which will follow the process of arbitration, whereby an arbitrator will be appointed from the CCMA to deal with the matter.

If arbitration results do not satisfy the complaint, conciliation will be pursued, by the GPSSBC.

It should be noted that if the outcome of the case does not satisfy the complainant, he/she could take the matter to the Labour Court.

### **11.2 CIVIL LITIGATION**

The complainant might take the matter through the Civil Judiciary process whereby a person can allege that his/her personal rights have been infringed, and the department has done nothing to intervene.

### **11.3 CRIMINAL JUSTICE**

If the complainant has suffered either rape or any form of penetration he/she has the right to personally lay a criminal charge against the alleged harasser.

**12. DISCIPLINARY PROCEEDINGS – RESOLUTION 1.**

Refer to Resolution 1 of 2003.

**13. POLICY REVIEW/PROVISIONS**

14.1. No deviation from the policy will be allowed unless specifically agreed to, in writing, by the Chief Director: HR and Legal Services

**14. POLICY APPROVAL**

**This done and signed as follows:**

Signed by.....on the.....day of.....month 2005 on behalf of the Department of Public Works

Signed by .....on the.....day of.....month 2005 on behalf of NEHAWU

Signed by.....on the.....day of.....month 2005 on behalf of PSA

Signed by.....on the .....day of.....month 2005 on behalf of NUPSAW

Signed by.....on the-----day of.....month 2005 on behalf of PAWUSA

## **ANNEXURE A**

### **CONFIDENTIALITY CONSIDERATIONS**

1. Sexual harassment complaints are confidential. The information about the complaint is provided only to those individuals within the Department who need to know in order to investigate and/or resolve the complaint.
2. The Department has a duty to respond to allegations of sexual harassment and therefore, complainants cannot be guaranteed absolute confidentiality. However, complainants can be assured that confidentiality will be maintained to the extent possible consistent with the Department's need to respond appropriately to the situation.
3. Parties to a complaint are also expected to maintain confidentiality. Parties should not discuss the matter in the environment where the alleged behaviour occurred (i.e. the workplace).
4. In recognising the Constitutional right of privacy the disclosure of information gathered in the process of a sexual harassment complaint requires a balancing of privacy interests of the complainant and the accused, as well as the Department's responsibilities to other employees. The Department can assure individuals that it will keep the information, including the complainant's identity, confidential to the extent required by law.

5. An employee can receive completely confidential assistance through the Employee Assistance Programme office (012) 337 2568/2531.