



MKHAMBATHINI
Municipality
For the community

MKHAMBATHINI LOCAL MUNICIPALITY
SEXUAL HARASSMENT POLICY

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SEXUAL HARASSMENT POLICY

1. OBJECTIVE

The objective of this policy is to give practical guidance to employees on the protection of the dignity of women and men at work. The aim of the policy is to ensure that sexual harassment does not occur, to ensure that adequate procedures are readily available to deal with the problem and prevent its recurrence. The policy thus seeks to encourage the development and implementation of practices that establish working environments free of sexual harassment in which women and men respect each other's human dignity.

2. POLICY

Whereas:

- Every employee is entitled to fair labour practices;
- Employees have a right to their dignity;
- Employees have a right to equality; and
- The Municipality seeks to provide a working environment free from any form of harassment which constitutes unacceptable behavior, and which is offensive,

This policy outlines guidelines aimed at combating sexual harassment.

It is the duty and responsibility of all employees to comply with the policy and to ensure that their colleagues are treated with respect and dignity. Allegations of sexual harassment will be dealt with seriously, expeditiously and confidentially and employees who bring in a complaint of sexual harassment will be protected against victimization or retaliation.

The Municipality regards harassment as offensive, degrading and potentially threatening and it will not be tolerated. Individuals at any level, found to have engaged in conduct constituting harassment will be disciplined. The Municipality cheers reporting of all incidents of harassment, regardless of who the offender may be. All employees have the right to pursue a complaint without fear of reprisal or retaliation. This policy forms part of the Municipality's broader policy promotes equal opportunities.

3. DEFINITIONS

- 3.1. “Alleged perpetrator” means a person alleged to have committed an act of sexual harassment;
- 3.2. “SALGBC” means the South African Local Government Bargaining Council;
- 3.3. “Complainant” means a person who lodges a complaint under this policy, or a person against whom an act or acts of sexual harassment as defined in the policy has or have allegedly been perpetrated;
- 3.4. “Confidentiality” means ensuring that information is accessible only to those authorised to have access to it;
- 3.5. “Employee disciplinary procedure” means the disciplinary procedure that applies to a category of staff;
- 3.6. “Employee” means a person appointed by the Municipality or a person who has agreed to be bound by the rules and policies of the Employer relating to staff;
- 3.7. “Manager” means any Employee of the Municipality with managerial or supervisory responsibilities;
- 3.8. “Serious misconduct” means conduct as defined in the Municipality’s Disciplinary Code and Procedure.
- 3.9. “Sexual assault” means an incident that involves sexual contact that is forced on an Employee.
- 3.10. “Sexual harassment” is unwelcome conduct of a sexual nature that violates the rights of a person. In determining whether conduct constitutes sexual harassment the following factors are to be taken into account:
 - 3.10.1 Whether the harassment is on the grounds of sex and/or gender (regardless of the sexual orientation of either the Complainant or the alleged perpetrator);
 - 3.10.2 The impact of the sexual conduct on the Complainant.
 - 3.10.3 Whether the sexual conduct was unwelcome.
 - 3.10.4 The nature and extent of the sexual conduct.
- 3.11. “Unwelcome sexual conduct” includes behavior that is perceived by the Complainant as demeaning, compromising, embarrassing, threatening and/or offensive:

- 3.11.1. The assessment of what is unwelcome should be informed by context, including language.
 - 3.11. 2. Previous consensual participation in sexual conduct does not mean that the conduct continues to be welcome.
 - 3.11.3. When a victim has difficulty indicating to the alleged perpetrator that the conduct is unwanted; the victim may seek the assistance and intervention of another person in order to make it clear that the conduct is unwelcome.
 - 3.11.4. Some forms of sexual harassment are such that the alleged perpetrator should have known that the behavior would be unwelcome.
- 3.12. Unwelcome sexual conduct includes physical, verbal and non-verbal conduct. Such conduct may be direct or indirect and may include technological devices, images and weapons. A single incident of unwelcome sexual conduct can constitute sexual harassment.
- 3.13. Unwelcome physical conduct ranges from touching to sexual assault and rape.
3. 14. Unwelcome verbal conduct includes innuendos, suggestions or hints of a sexual nature, sexual advances, sexual threats, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body, inappropriate enquiries about a person's sex life, whistling of a sexual nature and the sending by electronic means or otherwise of sexually explicit text.
3. 15 Unwelcome non-verbal conduct includes gestures, indecent exposure and the display or sending by electronic or other means sexually explicit pictures or objects.
- 3.16. Sexual harassment may take the form of special victimization, *quid pro quo* harassment and the creation of a hostile environment.
- 3.16.1. Special victimization occurs when a person is victimized or intimidated for failing to submit to sexual advances.
 - 3.16.2. *Quid pro quo* harassment occurs when an alleged perpetrator influences or attempts to influence a person's employment circumstances by coercing or attempting to coerce that person to engage in sexual activities.
 - 3.16.3. Creation of a hostile environment occurs where the purpose or effect is to interfere with another's performance at work.

Conduct that can constitute sexual harassment include but are not limited to: -

- Verbal conduct - unwelcome remarks, innuendoes or offensive comments about a person's body, clothing or sex, practical jokes of a sexual nature which cause awkwardness or embarrassments, propositioning or pressure for sexual activity, embarrassing questions.
- Physical conduct - unwanted or unnecessary physical conduct and contact, physical assault, caressing sexual conduct, physical bullying, threatening, unnecessary physical contact, such as touching, petting or pinching.
- Non-verbal conduct - display of pornographic or sexually suggestive pictures, whistling, leering (suggestive staring), sexually suggestive gestures, graffiti of a sexual nature, publication of gender offensive material, insulting gestures of a gender derogatory nature, displaying pinup pictures or other material of a gender derogatory nature, refusing or showing a reluctance to talk to, or work with, an employee solely because of his or her nature.

4. BASIC PRINCIPLES

4.1. 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

4.2. 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:

4.2.1. All employees must refrain from committing acts of sexual harassment.

4.2.2. 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.

- 4.2.3. 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 occurs 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.

5. PROCEDURES

5.1. The municipality has instituted a set of procedures, which aim to ensure that:

5.2. complaints of sexual harassment are considered seriously and sympathetically and are dealt with promptly and confidentially: and the rights of both the Complainant and the alleged harasser are respected.

5.3. Where possible and appropriate, complaints should be resolved at a local level with a minimum of formal processes.

5.2. A person who believes he or she has experienced sexual harassment should attempt to resolve the matter by stating an objection directly to the alleged harasser. If the person feels unable to do this, or if this approach does not result in the cessation of the behaviour, the person may choose to activate the Municipality's internal procedure.

In addition to seeking advice, there are two possible steps in the internal procedures:

- Informal procedure; and
- Formal complaint

5.6. The Complainant may withdraw the complaint at any stage. Despite this, the Municipality should still assess the risk to other persons in the workplace and determine whether formal steps ought to be taken.

6. RESPONSE TO A COMPLAINT

6.1 Complaints of sexual harassment must be brought to the attention of the Municipal Manager or his/her nominee as soon as is reasonably possible in the event if it's an employee who is referring the complaint. If the complaint is against the Municipal Manager or Senior Managers, to be referred to the Executive Mayor. In the event if it is a Councillor it must

- be brought under the attention of the Executive Mayor. If the complaint is against the Executive Mayor, to be referred to the Speaker.
- 6.2. Sexual harassment must be brought to the attention of the Manager by the Complainant or any other person aware of the sexual harassment. However, if the incident is of a serious nature, the Complainant is encouraged to inform the Manager in person.
 - 6.3. Any complaint of sexual harassment will be recorded in writing by the Manager and will be referred to the Human Resource Manager and Municipal Manager. The Municipal Manager and Human Resource Manager or nominee will manage the complaint.
 - 6.4. The steps to be taken by the Human Resource Manager and Municipal Manager on receipt of a Complainant should include, but are not limited to, the following:
 - 6.4.1. Advise the Complainant that there are formal and informal procedures which can be followed.
 - 6.4.2. Explain the formal and informal procedures to the Complainant.
 - 6.4.3. Advise the Complainant that he/she may choose which procedure should be followed by the Municipality.
 - 6.4.4. Advise the Complainant that the co-employee assisting him or her may not be called as a witness during any formal procedure.
 - 6.4.5. Reassure the Complainant that he/she will not face any adverse consequences in choosing to follow either the formal or informal procedure.
 - 6.4.6. Advise the Complainant that he/she is not bound by the outcome of the informal procedure and will have the right to appeal directly to the Municipal Manager or his/her nominee within five (5) days of the conclusion of that process.
 - 6.4.7. Advise the Complainant that the matter will be dealt with confidentially.
 - 6.4.8. If applicable, advise the Complainant that no negative inference on his/her credibility will follow as a result of late reporting.
 - 6.4.9. If necessary, provide the Complainant with information about counselling available as well as information on how to access independent counselling services.
 - 6.4.10. In appropriate circumstances, advise the Complainant of his/her right to refer the matter to the SAPS and obtain further legal advice outside of the Municipality.

- 6.5. The Complainant may withdraw the complaint at any stage. Despite this, the Municipality should still assess the risk to other persons in the workplace and determine whether formal steps ought to be taken.

7. INFORMAL PROCEDURES

- 7.1. An informal procedure is a process, managed by the Manager, in which relationships between the Complainant and alleged perpetrator(s) are explored with the consent of both, the aim of which is to reach resolution of a complaint in a manner that is satisfactory to all Complainant and alleged perpetrator(s).
- 7.2. The Complainant has the right to pursue formal proceedings after the conclusion of informal proceedings. The choice to pursue informal proceedings shall not in any way diminish the force of the original complaint.
- 7.3. The alleged perpetrator has the right to refuse participation in informal proceedings and may exercise this right during any stage of the informal process. No negative inference shall be drawn from refusal to consider, participate or withdraw from the informal process.
- 7.4. An informal procedure may be followed by a formal procedure if the Manager believes that there are compelling reasons for this as specified in paragraph 5.
- 7.5. In an informal procedure, only the following information is recorded:
 - 7.5.1 The fact that the informal procedure took place.
 - 7.5.2 The names of the participants.
 - 7.5.3 The date, time and location of the alleged incident.
 - 7.5.4 The outcome of the informal procedure.
- 7.6. Informal proceedings require the written consent of both the Complainant and the alleged perpetrator, and the availability and implications of informal proceedings shall be explained to the Complainant by the Manager before such proceedings.
 - 7.6.2. With the consent of the Complainant preparatory interviews with the alleged perpetrator may be held in the absence of the Complainant and with any other person(s) that may provide information to assist with the informal process.
 - 7.6.3. The structure, procedure and facilitation of any informal procedure will be agreed upon beforehand by the Manager, Complainant, alleged perpetrator, and their representatives.

7.7. The informal procedure may include:

7.7.1. An approach to the alleged perpetrator with or without revealing the identity of the Complainant (depending on the choice of the Complainant) with information that certain forms of conduct constitute sexual harassment.

6.7.2. A discussion where the objective is to give the alleged perpetrator an opportunity to apologies. The terms, conditions and acceptance of such an apology will be facilitated by the HR Manager.

6.8. Every endeavour must be made to conclude the informal procedure within ten (10) days of the incident being reported.

6.9. Strict confidentiality regarding the process, participants and report will be maintained throughout this process.

8. FORMAL PROCEDURES

8.1. A Complainant may choose to initiate formal proceedings, either with or without first following an informal procedure. The purpose of formal proceedings is to test the Complainant's allegations through the disciplinary process.

8.2. If the Complainant wishes to proceed with a formal procedure, he/she shall advise the HR Manager and his/her manager of this and prepare and sign a written statement providing full particulars of the alleged sexual harassment.

8.3. The municipality should appoint the qualified investigator formally to interview the complainant and alleged employee processes for the presentation of the Complainant's case within the Municipality's Disciplinary Procedures will be initiated through the Supervisor/Manager.

8.4. While the Municipality's Disciplinary Code specifies a range of disciplinary sanctions, sanctions ought to be proportionate to the seriousness of the sexual harassment in question and the following range of sanctions ought to be considered:

8.4.1. Warnings may be issued for instances of sexual harassment.

8.4.2. dismissal may ensure for continued instances of sexual harassment after warnings, as well as for serious instances of sexual harassment.

8.5. An alleged perpetrator of sexual harassment may refer a dispute arising from disciplinary action taken by the Municipality to the Bargaining Council.

9. CONFLICT OF INTEREST

- 9.1. All Employees involved in the informal or formal resolution of complaints of sexual harassment will ensure that they have no conflict of interest or bias in relation to any party to the complaint and that there is no perception by the parties that they have a conflict of interest or bias.
- 9.2. Employees who have concerns about perceptions of possible conflict of interest or partiality should exclude themselves from the process, refer on to another Manager if appropriate, or seek advice from the Employee Relations Practitioner.

10. VICTIMISATION

- 10.1. Complaints of victimization will be treated seriously. Victimization of Complainants is unlawful.
- 10.2. Victimization includes any unfavorable treatment of a person who has been involved with a sexual harassment complaint. Unfavorable treatment could include adverse changes in the working environment, denial of training or promotion, making negative, unfounded comments, lower assessment of work performance.
- 10.3. Complaints of victimization related to a sexual harassment complaint will be dealt with in the same manner as complaints of sexual harassment and may result in disciplinary action. Employees will be protected from intimidation, victimization or discrimination following the complaint or their assisting in an investigation of harassment. Any action constituting retaliation against an employee for lodging a complaint about harassment will constitute a disciplinary offence and will be treated accordingly.

11. CONFIDENTIALITY

The Employer will endeavor 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.

11.1 Identity

The Employer will endeavor 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.

11.2. 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.

12. SANCTIONS

The sanctions may also apply to an employee who have been found to have made false accusations during the disciplinary process.

Approved by Resolution Number LC9.6 on the 30th day of June 2021.