

PROVINCE OF THE EASTERN CAPE



Department of Rural Development and Agrarian Reform

Policy on prevention and management of sexual harassment in the workplace

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ABBREVIATIONS

CCMA	Commission for Conciliation, Mediation and Arbitration
DDG	Deputy Director General
DPSA	Department of Public Service and Administration
DRDAR	Department of Rural Development and Agrarian Reform
HOD	Head of Department
HR	Human Resources
REP	Representative
SMS	Senior Management Service

DEFINITIONS OF TERMS

Allegation - a statement by a complainant that he or she believes an act of harassment has occurred. An allegation is handled through the informal resolution process

Behaviour - includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining or threatening

Complaint - a formal notification, either orally or in writing, of the belief that harassment has occurred. A complaint is handled through either the informal or formal process for resolving claims of harassment

Complainant - An employee, applicant for employment, or intern who believes that he or she has been the victim of unlawful discrimination or harassment, and submits a complaint

Discrimination - relates to any of the prohibited grounds contained in the Constitution of the Republic of South Africa. Prohibited conduct may be verbal, non-verbal, physical, deliberate or unintended, unsolicited or unwelcome, as determined by a reasonable person. It may be one incident or a series of incidents depending on the context

Gender Harassment - refers to behaviours that convey sexist and degrading attitudes toward women or men. Crude sexual remarks, stereotypic comments about women/men's competence or abilities, or obscene gestures are examples.

Nonverbal harassment - 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 with suggestive overtones; looking up and down a person's body; derogatory gestures or facial expressions of a sexual nature; following a person.

Physical harassment - 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

Respondent - 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.

Sexual coercion (quid pro-quo) - includes sexual bribery (offering a reward or threatening punishment as a means of obtaining sexual favours) and sexual assault.

Sexual favours - persistent pressure for dates, unwanted sexual advances that condition an employment benefit upon an exchange of sexual favours.

Sexual Harassment - for the purposes of the Public Service, sexual harassment refers to any unwanted, unsolicited, pervasive and persistent sexual attention that interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Unwanted sexual attention - includes offensive touching, stroking, or fondling; asking personal questions of a sexual nature; or repeated requests for dates or sex.

Verbal harassment - sexually suggestive comments, e.g., about a person's clothing, body, and/or sexual activities; sexually provocative compliments about a person's clothes or the way their clothes fit; comments of a sexual nature about weight, body shape, size, or figure; comments or questions about the sensuality of a person, or his/her spouse or significant other; repeated unsolicited propositions for dates and/or sexual intercourse; pseudo-medical advice.

Victimisation - occurs where an employee is subjected to a detriment, such as being denied a training opportunity or a promotion because he/she made or supported a complaint or raised a grievance.

Visual harassment - showing and distributing derogatory or pornographic posters, cartoons, drawings, books or magazines.

1. POLICY STATEMENT

Sexual harassment is a form of sex discrimination that violates the rights of individuals which are protected by the constitution and must not be tolerated. The Department must respond promptly to all complaints of sexual harassment. All employees of the Department must be aware that violation of this policy will lead to serious disciplinary action up to and including dismissal.

False allegations of sexual harassment shall not be tolerated and whoever acts in bad faith must face disciplinary action.

This policy statement promotes the prevention of discrimination and harassment and focuses on the prompt resolution of complaints.

2. INTRODUCTION

Sexual harassment is one of the most frequently-discussed topics in employee relations today. There is good reason for that, no other kind of claim has quite the scare and shock value that a sexual harassment claim carries. That is because most people associate sexual harassment with sexual overtures, unwelcome touching, or outright assaults on an employee. Such actions are usually accompanied by promises of favourable treatment at work or by threats of unfavourable treatment. This creates a hostile work environment and as its effects can unreasonably interfere with a person's work performance or create an intimidating, hostile, or offensive working environment.

Section 9(3) of the Constitution does express prohibition on unfair discrimination and in section 10 it recognises that "every person shall have the right to respect for and protection of his or her dignity. This by implication means every person has a "right to equality", "the right to dignity", "the right to privacy" and "the right to fair labour practices". This means that the Constitution imposes on the government an obligation to prevent sexual harassment beyond its clear duty not to harass its own employee; there is therefore a constitutional violation when a government employee is harassed.

The Labour Relations Act is the main Act that deals with sexual harassment in the workplace. It has a Code of Good Practice on sexual harassment that sets out the best ways to deal with complaints about sexual harassment. Sexual harassment is an unfair labour practice and if it happens to you, you can ask your employer (department) to deal with it.

The Department through this policy creates a workplace that is free from any form of discrimination including sexual harassment and makes resource provision to implement it.

3. PURPOSE

The purpose of this policy is to provide a systematic and consistent approach to handle and manage sexual harassment in the workplace.

4. OBJECTIVES

4.1. The intention of the policy is to:

- 4.1.1. create an enabling and barrier free workplace that prevents the occurrence of sexual harassment.
- 4.1.2. inform and educate employees on behaviour that is unacceptable and unprofessional in the workplace;
- 4.1.3. secure the dignity and rights of all employees;
- 4.1.4. ensure impartiality, fairness and due process in handling sexual harassment cases;
- 4.1.5. prevent victimisation of complainants and witnesses from any retaliation from any source by means of redress.

5. REGULATORY FRAMEWORK

This policy forms part of the overall management of employee relations for Government and should also be used in conjunction with other regulatory frameworks.

- 5.1. Public Service Act (PSA), 1994, as amended
- 5.2. White Paper on the Transformation of the Public Service, 1995
- 5.3. Labour Relations Act 66, of 1995
- 5.4. The Constitution of the Republic of South Africa, 1996

- 5.5. The Employment Equity Act No. 55 of 1998
- 5.6. White Paper on Affirmative Action in the Public Service, 1998
- 5.7. The Code of Good Practice on the Handling of Sexual Harassment Cases, 1998
- 5.8. The Promotion of Equality and Prevention of Unfair Discrimination Act No 4 of 2000
- 5.9. The National Policy Framework for Women's Empowerment and Gender Equality, 2000
- 5.10. Criminal Sexual Offences and Related Matters Amendment Act, 2007
- 5.11. The Gender Equality Strategic Framework for the Public Service, 2008

6. PRINCIPLES, VALUES & PHILOSOPHY

- 6.1. Employees have a right to work in a workplace that is free from sexual harassment, as well as rights to complain.
- 6.2. Fairness - all complaints that are reported should be treated fairly and impartially.
- 6.3. Confidentiality - All participants in the process (including the complainant and respondent, witnesses, advisors, mediators, members of hearing panels) are expected to respect the confidentiality of the proceedings and circumstances giving rise to the dispute. Until resolution has been achieved, participants are expected to discuss the matter only with those persons who have a genuine need to know.
- 6.4. Redress - victims of sexual harassment should get closure

7. SCOPE OF APPLICATION

- 7.1. The policy applies to all employees of the Department of Rural Development and Agrarian Reform including Interns, job applicants, clients, suppliers, contractors, and any person who has dealings with government.

8. TYPES OF SEXUAL HARASSMENT

- 8.1. This policy identifies three common forms of sexual harassment
 - (a) Gender harassment
 - (b) unwanted sexual attention

(c) sexual coercion.

8.2. OTHER FORMS OF SEXUAL HARASSMENT

- 8.2.1. Uninvited touching, kissing and embracing;
- 8.2.2. Smutty jokes or comments;
- 8.2.3. Making promises or threats in return for sexual favours;
- 8.2.4. Displays of sexually graphic material including posters, pinups, cartoons, graffiti or messages left on notice boards, desks or common areas;
- 8.2.5. Repeated invitations to go out after prior refusal;
- 8.2.6. "Flashing" or sexual gestures;
- 8.2.7. Sex-based insults, taunts, teasing or name-calling;
- 8.2.8. Unwelcome staring or leering at a person or at parts of their body;
- 8.2.9. Unwelcome physical contact such as massaging a person without invitation or deliberately brushing up against them;
- 8.2.10. Touching or fiddling with a person's clothing including lifting up skirts or shirts, flicking bra straps, or putting hands in a person's pocket;
- 8.2.11. Requests for sex;
- 8.2.12. Sexually explicit conversation;
- 8.2.13. Persistent questions or insinuations about a person's private life;
- 8.2.14. Offensive phone calls or letters;
- 8.2.15. stalking; and
- 8.2.16. Offensive e-mail messages or computer screen savers

9. IMPLEMENTATION PROCEDURES

- 9.1. All departmental employees who violate this policy will be subjected to internal disciplinary processes.
- 9.2. A non-employee who have dealings with the department and is a victim of sexual harassment may lodge a grievance with the supervisor of the harasser where the harassment has taken place.
- 9.3. While the Department has no jurisdiction over third parties who are not employees of the Public Service, it encourages that all people who work in its workplace/s should uphold and respect this policy and other related policies.

9.4. Where third parties are not subject to the rules and procedures of staff, or the provisions of the Code of Conduct, the Labour Relations Unit will keep record of reported complaints and violations of this and related policies. This information should be reported to the Supply Chain Management Unit of the Department so that it can be taken into account when considering whether to continue to utilize their services or not.

9.5. ADVICE AND ASSISTANCE:

9.5.1. Sexual harassment is a sensitive issue and a victim may feel unable to approach the perpetrator, lodge a formal grievance or turn to colleagues for support. As far as is practicable employers should designate a person outside of line management whom victims may approach for confidential advice. Such a person may include:

9.5.1.1. Person employed by the Department to perform inter alia such a function, a trade union representative or co-employee, or outside professional.

9.5.1.2. Person properly trained with skills and experience.

9.5.1.3. Person with counselling and relevant labour relations skills must provide support and advice on a confidential basis.

9.6. OPTIONS TO RESOLVE THE PROBLEM

Employees should be advised that there are two options to resolve a problem relating to sexual harassment. Either an attempt can be made to resolve the problem in an informal way or a formal procedure can be embarked upon. The employee should be under no duress to accept one or the other option.

9.7. INFORMAL PROCEDURE:

It may be sufficient for the employee concerned to have an opportunity where she/he can explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable, and that it interferes with their work. If the informal approach has not provided a satisfactory outcome, if the case is severe or if the conduct continues, it may be more appropriate to embark upon a formal procedure. Severe cases may include: sexual assault, rape, a strip search and quid pro quo.

9.8. FORMAL PROCEDURE:

Where a formal procedure has been chosen by the aggrieved, a formal procedure for resolving the grievance should be available and must:

- a) Specify to whom the employee should lodge the grievance.
- b) Make reference to timeframes which allow the grievance to be dealt with expeditiously.
- c) Where a case is not resolved satisfactorily, the issue can be dealt with in terms of the dispute procedures contained in item 9.7 of this policy.

9.9. INVESTIGATION AND DISCIPLINARY ACTION

9.9.1. Care should be taken during any investigation of a grievance of sexual harassment that the aggrieved person is not disadvantaged, and that the position of other parties is not prejudiced if the grievance is found to be unwarranted

9.9.2. The Code of Good Practice regulating dismissal contained in Schedule 8 of Labour Relations Act of 1995 reinforces the provisions of Chapter VIII of the Act and provides that an employee may be dismissed for serious misconduct or repeated offences. Serious incidents of sexual harassment or continued harassment after warnings are dismissible offences

9.9.3. In cases of persistent harassment or single incidents of serious misconduct, employers ought to follow the procedures set out in the Code of Practice contained in Schedule 8 of the Labour Relations Act.

9.9.4. The range of disciplinary sanctions to which employees will be liable should be clearly stated, and it should also be made clear that it must be a disciplinary offence to victimise or retaliate against an employee who in good faith lodges a grievance of sexual harassment.

9.10. CRIMINAL AND CIVIL CHARGES:

A victim of sexual assault has the right to press separate criminal and/or civil charges against an alleged perpetrator and the legal rights of the victim are in no way limited by the code.

9.11. DISPUTE RESOLUTION:

Should a complaint of alleged sexual harassment not be satisfactorily resolved by the internal procedures set out above, either party may within 30 days of the dispute having arisen, refer the matter to the CCMA for conciliation in accordance with the provisions of section 135 of the Labour Relations Act. Should the dispute remain unresolved, either party may refer the dispute to the Labour Court within 30 days of receipt of the certificate issued by the Commissioner in terms of section 135(5).

9.12. ADDITIONAL SICK LEAVE

Where an employee's existing sick leave entitlement has been exhausted, the employer should give due consideration to the granting of additional sick leave in cases of sexual harassment where the employee on medical advice requires trauma counselling.

10. ROLES AND RESPONSIBILITIES

10.1. The Department must

- 10.1.1. Have a written approved sexual harassment policy.
- 10.1.2. Require staff to report violations of the policy.
- 10.1.3. Remain alert for violations which may go unreported but which the employer will still be responsible for
- 10.1.4. Develop awareness, training, and communication programs in support of this policy statement. Describe acceptable and unacceptable behaviour.
- 10.1.5. Develop a system that enables all employees to be aware of their responsibilities relevant to this policy.
- 10.1.6. Provide more than one avenue for employees to register complaints under the policy. An employee should never have to complain to the alleged harasser.
- 10.1.7. If a complaint is received, conduct an investigation according to the Disciplinary Code and Procedures for the Public Service. Limit the potential

for continuing harm by separating the victim from the alleged harasser. If necessary, suspend the alleged harasser with pay pending the outcome of the investigations according to Section 7.2 of the Disciplinary Code and Procedures for the Public Service.

- 10.1.8. Based upon the results of the investigation, take appropriate disciplinary action; and depending on the severity, action should include up to termination and referral of criminal conduct to law enforcement authorities according to Sections 7.3 (o) and 7.4 (a).
- 10.1.9. Meet with the employee to inform him or her that the investigation has been concluded and have either been unable to substantiate the claim or have taken disciplinary action.
- 10.1.10. Ensure that complaints are treated in confidence.
- 10.1.11. Ensure that resolutions are implemented within 5 working days (Section 7.3 (o) of the Disciplinary Code and Procedures for the Public Service.
- 10.1.12. Carefully monitor compliance with the policy.
- 10.1.13. Use the existing collective agreements giving bargaining unit members the right to file grievances on alleged breaches of the policy. Therefore, a person who has experienced sexual harassment in the workplace must be able to file a grievance under any existing collective agreements

10.2. **LINE MANAGERS AND SUPERVISORS MUST:**

- 10.2.1. Receive the complaint of harassment from the complainant
- 10.2.2. Interview the complainant & record details
- 10.2.3. Help prevent, correct and eliminate sexual harassment in the workplace.
- 10.2.4. Inform the accused of the complaint and the consequences that he or she might face if allegations are found to be true.
- 10.2.5. Urge the accused to stop bothering the victim permanently.
- 10.2.6. Encourage the victim to confront the accused, detail the offensive behaviours and demand that the harasser stop immediately.
- 10.2.7. Be supportive of any victim; some people believe that they somehow caused the harassment; reassure them that it is not their fault.
- 10.2.8. If the harassment continues, counsel the victim to report it to HR.

10.3. LABOUR RELATIONS OFFICE MUST:

- 10.3.1. Receive the complaint of harassment from the complainant
- 10.3.2. Interview the complainant & record details
- 10.3.3. Explain the disciplinary procedure to be undertaken to the victim & time-frames.
- 10.3.4. Guide complainant to lodge a grievance
- 10.3.5. Give the perpetrator a written notice of the complaint
- 10.3.6. Investigate complaint
- 10.3.7. Compile a report
- 10.3.8. Determine the most appropriate means for resolving the case and advice management
- 10.3.9. Initiate a disciplinary procedure that may lead to a disciplinary hearing

10.4. EMPLOYEE HEALTH & WELLNESS UNIT MUST:

- 10.4.1. Upon receiving the victim, conduct a psychological assessment
- 10.4.2. Provide counselling and support
- 10.4.3. Explain the procedure to lodge complaint
- 10.4.4. Urge the harassed to lodge a complaint if the harasser does not stop Harassment.
- 10.4.5. Referral for relevant Intervention.
- 10.4.6. Keep record of intervention provided.

10.5. THE EMPLOYEE MUST:

- 10.5.1. **SAY NO** to the harasser, tell him/her that their attentions are unwanted. Make it clear they find the behaviour offensive. If it persists, write a memo to the harasser asking them to stop; keep a copy.
- 10.5.2. **REPORT** the problem immediately to either Employee Health and Wellness Unit or Labour Relations, verbally and/or in writing, and also report directly to the supervisor, to the supervisor of the harasser, and to a union rep. If the Supervisor is the perpetrator, report him/her next level.
- 10.5.3. **TREAT** fellow employees with respect and dignity.
- 10.5.4. **REFRAIN** from discrimination and harassment as defined by the policy.
- 10.5.5. Ensure that complaints are treated in **CONFIDENCE**.

10.5.6. Take responsibility to **UNDERSTAND** the contents of Departmental sexual harassment policy.

10.5.7. Meet the **TIME FRAMES** specified in this policy for reporting.

11. RESOURCE IMPLICATIONS

The Department shall provide resources for the implementation of this policy.

12. MONITORING AND EVALUATION

12.1. The Head of Department and the Office of the Premier is responsible for monitoring the departmental and provincial implementation respectively;

12.2. The Department of Public Service and Administration (DPSA) must monitor the implementation through the Annual Monitoring and Evaluation Reports from the Departments. A reporting template is provided as Annexure A.

12.3. DPSA is responsible for coordinating the effective implementation of the Policy across the public service and reporting on its implementation success in the Annual Performance Report

13. POLICY IMPLEMENTATION AND REVIEW

13.1. The implementation date of the policy commences immediately after being approved by the HOD.

13.2. The policy shall be reviewed after 5 years or when a need arises.

APPROVED/NOT APPROVED:

Comments:.....
.....
.....
.....



MR. B DAYIMANI
ACTING HEAD OF DEPARTMENT
DRDAR

28/03/2024
DATE

14. ANNEXURE A:

TEMPLATE FOR REPORTING SEXUAL HARASSMENT CASES TO DRDAR

PART 1: ADMINISTRATIVE DETAILS OF DEPARTMENT

Name of the Department	
Please state name of the Province if it is a Provincial Department	
Name of Person who Completed the Report	
Position of the Person who Completed the Report	
Contact Details of the Person who Completed the Report	Tel: Email:
Signature of the HOD.....	
Date:	

PART 2: INSTITUTIONAL MECHANISMS

Is there a sexual harassment policy in the department?	Yes	No	Draft
When was it approved?			
Is the policy aligned to the Public Service Policy?	Yes	No	
If not aligned, when will the review be done?			
How was the policy communicated to employees?			
Has there been any sensitivity session conducted on the policy?	Yes	No	If yes, how many people were sensitized?
			F M AF C AS W
	Levels	1-8	9-12 13-16

PART 3: INFORMATION ON SEXUAL HARRASSMENT CASES IN THE DEPARTMENT

Number of employees in the department	Total			Male				Female						
	AF	C	AS	W	AF	C	AS	W						
Number of cases reported	April-June			July-September				October-December				January-March		
Disaggregation of complainants	Age			Gender		Disability		Race				Levels		
	20 - 35	36 - 49	50 +	F	M	Yes	No	AF	C	AS	W	1-8	9-12	13-16
Disaggregation of perpetrators	Age			Gender		Disability		Race				Levels		
	20 - 35	36 - 49	50 +	F	M	Yes	No	AF	C	AS	W	1-8	9-12	13-16
Number of cases resolved	Number of cases not yet resolved			What are the problems that hinder the conclusion of cases?				On average, how long does it take to resolve a case?				Sanctions that were taken		