

ENDUMENI MUNICIPALITY

WORKPLACE SEXUAL HARASSMENT POLICY AND PROCEDURE

Preamble

The Endumeni Municipal Council is committed to the elimination of any form of harassment. This includes any acts or threats that interfere with the performance at work of any individual or group on account of race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language or birth.

1. Introduction

Policy and procedures for resolving complaints of sexual harassment have been adopted by the Endumeni Municipal Council to:

- ❑ Promote a safe and secure work environment in which the dignity of all persons is respected and which is free from sexual harassment;
- ❑ Provide an internal procedure for dealing with issues and complaints of sexual harassment which may arise;
- ❑ Meet the requirements the Employment Equity Act, Labour Relations Act and the 2005 Code of Good Practice on the Handling of Sexual Harassment Cases; and
- ❑ Comply with the Equal Opportunity and Employment Equity Policy and the Employment Equity plans of the employer.

2. Policy Statement

Sexual harassment in the working environment is a form of unfair discrimination and is prohibited on the grounds of sex and/or gender and/or sexual orientation.

The Endumeni Municipal Council is committed to maintaining an environment within the workplace that is free from sexual harassment. Although this policy applies to the working environment it is also intended to regulate the conduct of all owners, employers, managers, supervisors, employees in respect of third parties that may include job applicants, clients, suppliers, contractors and others having dealings with the employer's business.

Sexual harassment is unacceptable behaviour. It conflicts with the employer's Equal Opportunity and Employment Equity Policy and denies respect for the rights of employees to fair treatment.

Sexual harassment is a serious issue, which undermines morale and can adversely affect the ability of employees to achieve their full potential within the workplace.

The Endumeni Municipal Council is committed to taking action to deter sexual harassment, to increase awareness that such behaviour is unacceptable and to ensure that complaints are dealt with fairly and promptly.

3. **Definition**

Sexual harassment covers a range of behaviours, which constitute unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace, taking into account all of the following factors:

- 3.1 Whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;
- 3.2 Whether the sexual conduct was unwelcome;
- 3.3 The nature and extent of the sexual conduct; and
- 3.4 The impact of the sexual conduct on the employee.

Sexual attention becomes sexual harassment if:

- ❑ The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment;
- ❑ The recipient has made it clear that the behaviour is considered offensive; and
- ❑ The perpetrator should have known that the behaviour is regarded as unacceptable.

It is not the intention of the alleged harasser that is the issue, but rather the complainant's perception and experience of the alleged harasser's behaviour.

Examples of sexual harassment include, but are not limited to:

- ❑ Unwelcome verbal comments of a sexual nature;
- ❑ Unwanted and deliberate physical contact;
- ❑ Gratuitous display of sexually explicit written or audio-visual materials, transmission or display of offensive e-mail, screen savers or pornographic computer images;
- ❑ Offensive gestures or actions of a sexual nature including indecent exposure or "flashing";
- ❑ Persistent unwanted attention: following or stalking behaviour;
- ❑ Subtle or explicit demands for, or offers of, sexual favours; and
- ❑ Verbal sexual harassment such as unwelcome innuendos, suggestions and hints; comments with sexual overtones; sex-related jokes or insults or unwelcome graphic comments about a person's body made in his/her presence or directed to him/her; unwelcome and inappropriate enquiries about a person's sex life; and unwelcome whistling directed at a person or group of persons.

Sexual favouritism exists where a person who is in a position of authority favours only those who respond to his/her sexual advances, whilst other deserving employees who do not respond to sexual advances are disadvantaged or denied opportunities for example in relation to promotion, nominations for merit awards, training opportunities and job grading.

Some forms of sexual conduct, which are considered innocuous by some people, may be considered offensive by others. It may, however, be difficult for the offended person to convey her or his displeasure, especially if the person giving offence is in a position of authority.

In particular, the employer has concerns where sexual harassment:

- ❑ Implicitly or explicitly imposes a condition on staff recruitment, selection, appraisal or career progress;
- ❑ Interferes with work performance; and
- ❑ Creates an intimidating or offensive working environment.

4. Responsibilities of Employers, Supervisors and Managers

All employees have a responsibility to uphold the employer's policy on sexual harassment, but the employer, managers and supervisors have a particular responsibility to ensure their areas are free from sexual harassment. This includes:

- ❑ Refraining from committing acts of sexual harassment;
- ❑ Ensuring that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others;
- ❑ Ensuring that persons such as customers, suppliers, job applicants and others who have dealings with the business are not subjected to sexual harassment by the employer or its employees;
- ❑ Ensuring that employees are aware of appropriate and acceptable standards of behaviour;
- ❑ Making known the employer's policy, including the procedures for resolving complaints;
- ❑ Promoting awareness programmes designed to prevent sexual harassment in the workplace; and
- ❑ Taking appropriate action in accordance with this code where instances of sexual harassment occur in the working environment.

5. Procedures for Resolving Complaints

5.1 Procedures

The employer has instituted a set of procedures, which aim to ensure that:

- ❑ 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.

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

A person who believes she or he 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 employer's internal procedure.

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

- Informal mediation; and
- Formal complaint.

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

5.2 Time Frames

The employer must investigate all complaints regarding sexual harassment, but to ensure maximum protection complainants should note that:

- Section 60(1) of the Employment Equity Act provides that conduct in contravention of the Employment Equity Act must *immediately* be brought to the attention of the employer; and
- The word "*immediately*", in the case of sexual harassment shall mean as soon as is reasonably possible in the circumstances and without undue delay, taking into account the nature of sexual harassment, including that it is a sensitive issue, that the complainant may fear reprisals and the relative positions of the complainant and the alleged perpetrator in the workplace.

5.3 Who May Lodge the Complaint?

Sexual harassment may be brought to the attention of the employer by the complainant or any other person aware of the sexual harassment, for example a friend, colleague or human resources official acting on the request of the complainant, where the complainant has indicated that she/he wishes the employer to be made aware of the conduct. However, where the sexual harassment is of a particularly serious nature, the complainant should be encouraged to inform the employer.

6. Advice

The employer will appoint an appropriate Advisor to *inter alia*, provide information and support to people who believe they have been sexually harassed. The Advisor provides a point of first contact to discuss the issue in confidence. The Advisor, amongst other things, ought to advise:

- The complainant of the informal and formal procedures available to deal with the sexual harassment;
- That she/he may choose which procedure to follow;
- That the employer may choose to proceed with a formal procedure if, in the opinion of the employer, the allegation poses a threat to the entire workplace;
- That the matter will be dealt with confidentially; and
- That the complainant will not be victimized as a consequence of seeking advice or following either the informal or formal procedure.

7. Informal Procedure

If the matter remains unresolved after discussion with an Advisor, the complainant may, request intervention by a Mediator who must be an independent third party.

The role of the Mediator is to assist in the informal resolution of the complaint. This may involve:

- Informing the alleged perpetrator or assisting the complainant to inform the alleged perpetrator that the conduct in question is not welcome, that it offends the complainant, makes him/her feel uncomfortable and that it interferes with his/her work; or
- Approaching the perpetrator, without revealing the identity of the complainant, and explaining to him/her that certain forms of conduct constitute sexual harassment, are offensive and unwelcome, make employees feel uncomfortable, and interfere with their work.

The Mediator may also consider to:

- Provide details of the employer's policies and procedures concerning discipline, sexual harassment and equal opportunity and employment equity;

- ❑ Inform the alleged harasser of his/her rights as well as the rights of the complainant; and
- ❑ Explain the employer's legal responsibilities and the rights of the complainant.

The purpose of mediation is to ensure that any offensive behaviour does not recur; that there will be no reprisals against the complainant; and that if the allegations are shown to be unfounded, they are withdrawn.

8. **Formal Complaint**

A complainant may choose to follow a formal procedure, either with or without first following an informal procedure.

In the event that a complainant chooses not to follow a formal procedure, the employer should still assess the risk to other persons in the workplace where formal steps have not been taken against the perpetrator. In assessing such risk, the employer must take into account all relevant factors, including the severity of the sexual harassment and whether the perpetrator has a history of sexual harassment. If it appears to the employer after a proper investigation that there is a significant risk of harm to other persons in the workplace, the employer may follow a formal procedure, irrespective of the wishes of the complainant, and advise the complainant accordingly.

When the process of mediation is not agreed to by the parties, or if it fails to resolve the matter, the complainant may make a formal complaint in writing to the Municipal Manager, Human Resources Officer, other Manager or Sectional Head.

- ❑ Where the Municipal Manager/Human Resources Officer/other Manager/Sectional Head is of the opinion that the formal complaint may be resolved through mediation and where mediation has not been considered, the complainant may be referred to mediation;
- ❑ If mediation is not agreed to by the parties or does not resolve the matter, the formal complaint will be dealt with in accordance with the formal grievance procedures contained in Council's duly adopted Grievance Procedure Agreement; and
- ❑ While the Council's Disciplinary Code Agreement 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:

- Warnings may be issued for minor instances of sexual harassment;
- In appropriate circumstances upon being found guilty of sexual harassment, a perpetrator may be transferred to another position in the workplace; and
- Dismissal may ensue for continued minor instances of sexual harassment after warnings, as well as for serious instances of sexual harassment.

Should the matter not be satisfactorily resolved by the internal procedures outlined above, a complainant of sexual harassment may refer the dispute to the South African Local Government Bargaining Council (SALGBC). Similarly an alleged perpetrator of sexual harassment may refer a dispute arising from disciplinary action taken by the employer to the SALGBC.

9. Confidentiality

At all stages the utmost care will be taken to ensure confidentiality.

Complainants and respondents will be advised at all stages of the internal procedure to maintain confidentiality and to discuss the complaint only with those who have an official responsibility for dealing with it.

Advisors, Mediators and the Municipal Manager/Human Resources Officer/other Manager/Sectional Head and all parties consulted will be required to preserve anonymity wherever possible and, as far as practicable, to seek advice from others without divulging the identity of the respondent or complainant.

As part of the mediation process, limited information (preferably non-identifying) may need to be given to a third party for the purpose of working out a resolution, for example a supervisor or line manager. This may be done with the agreement of the complainant and respondent as part of the mediation process. Such limited information should only be provided on a strictly "need to know" basis to those who have a genuine and official role in dealing with and resolving the matter. The person who is provided with such information is required to preserve confidentiality.

Information may also be disclosed where there is an imminent physical threat of danger to a person.

10. **Conflict of Interest**

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.

Employees who have concerns about perceptions of possible conflict of interest or partiality should exclude themselves from the process, refer on to another Advisor or Mediator if appropriate, or seek advice from the Municipal Manager/Human Resources Officer/other Manager/Sectional Head.

11. **Victimization**

Complaints of victimization will be treated seriously. Victimization of complainants is unlawful.

Victimization includes any unfavourable treatment of a person who has been involved with a sexual harassment complaint. Unfavourable treatment could include adverse changes in the working environment, denial of training or promotion, making negative, unfounded or belittling comments, lower assessment of work performance.

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.

12. **Vexatious/Malicious Complaints**

If the complaint is found to be vexatious, action against the complainant may be taken under the employer's disciplinary procedures.