

# **POLICY ON THE HANDLING OF SEXUAL HARASSMENT CASES EMNAMBITHI/LADYSMITH MUNICIPALITY**

## **1. INTRODUCTION**

The objective of this policy is to eliminate sexual harassment in the workplace. This policy provides appropriate procedures to deal with the problem and prevent its recurrence. This policy encourages and promotes the development and implementation of policies and procedures that will lead to the creation of workplaces that are free of sexual harassment, where employers and employees respect one another's integrity and dignity, their privacy, and their right to equity in the workplace.

## **2. APPLICATION OF THE POLICY**

- 2.1 Although this policy is intended to guide relevant parties, the perpetrators and victims of sexual harassment may include:
- 2.2.1 Councillors
  - 2.1.2 Executive Managers
  - 2.1.3 Managers
  - 2.1.4 Supervisors
  - 2.1.5 Employees
  - 2.1.6 Job applicants
  - 2.1.7 Community
  - 2.1.8 Suppliers
  - 2.1.9 Contractors
  - 2.1.10 Others having dealings with the municipality
  - 2.1.11 Unions
- 2.2 Nothing in 2.1 above confers the authority on the Municipality to take disciplinary action in respect of non-employees.
- 2.3 A non-employee who is a victim of sexual harassment may lodge a grievance with the Municipal Manager of the Emnambithi/Ladysmith Municipality where the harassment has taken place in the workplace.

## **3. DEFINITION OF SEXUAL HARASSMENT**

- 3.1 Sexual harassment is unwanted conduct of a sexual nature. The

unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual.

3.2 Sexual attention becomes sexual harassment if:

3.2.1 The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; and/or

3.2.2 The recipient has made it clear that the behaviour is considered offensive; and/or

3.2.3 The perpetrator should have known that the behaviour is regarded as unacceptable.

**4. FORMS OF SEXUAL HARASSMENT**

4.1 Sexual harassment may include unwelcome physical, verbal or non-verbal conduct, but is not limited to the examples listed as follows:

4.1.1 Physical conduct of a sexual nature includes all unwanted physical contact, ranging from touching to sexual assault and rape, and includes a strip search by or in the presence of the opposite sex.

4.1.2 Verbal forms of sexual harassment include unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments about a person's body made in their presence or directed toward them, unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling directed at a person or group of persons.

4.2 Non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects.

4.3 Quid pro quo harassment occurs where a Councillor, Executive Manager, Supervisor, member of Management or co-employee, undertakes or attempts to influence the process of employment, promotion, training, discipline, dismissal, salary increment or other benefit of an employee or job applicant, in exchange for sexual favours.

4.4 Sexual favouritism 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 increases.

## **5. GUIDING PRINCIPLES**

- 5.1 Managers should create and maintain a working environment in which the dignity of employees are respected. A climate in the workplace should also be created and maintained in which victims of sexual harassment will not feel that their grievances are ignored or trivialised, or fear reprisals. Implementing the following guidelines can assist in achieving these ends:
  - 5.1.1 Councillors/management and employees are required to refrain from committing acts of sexual harassment.
  - 5.1.2 All Councillors/management and employees have a role to play in contributing towards creating and maintaining a working environment in which sexual harassment is unacceptable. They should ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others.
- 5.2 Councillors/management should attempt to ensure that persons such as suppliers, job applicants, the community and others who have dealings with the municipality, are not subjected to sexual harassment by the municipality or its employees and vice versa.
- 5.3 Councillors/management are required to take appropriate action within 5 days in accordance with this policy, when instances of sexual harassment that occur within the workplace are brought to their attention.
- 5.4 This policy recognises the primacy of collective agreements regulating the handling of sexual harassment cases, and is not intended as a substitute for disciplinary policies and procedures containing such measures, where these are the subject of collective agreements.

## **6. POLICY STATEMENTS**

- 6.1 As a first step in expressing concern and commitment to dealing with the problem of sexual harassment, the Emnambithi/Ladysmith Municipality's policy statement provides that:
  - 6.1.1 All employees, job applicants and other persons who have dealings with the Municipality, have the right to be treated with dignity.
  - 6.1.2 Sexual harassment in the workplace will not be permitted or condoned.
- 6.2 Persons who have been subjected to sexual harassment in the workplace have a right to raise a grievance about it should it occur and appropriate action will be taken by the Municipality
- 6.3 Management is required to implement the policy and take disciplinary action against perpetrators who do not comply with

the policy.

- 6.4 The Municipality has instituted a set of procedures, which aim to ensure that:
  - 6.4.1 Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially.
  - 6.4.2 Employees will be protected against victimisation, retaliation for lodging grievances and from false accusations.
  - 6.4.3 the rights of both the complainant and the alleged harasser are respected
- 6.5 Policy statements on sexual harassment will be communicated effectively to all employees.

## **7. PROCEDURES**

The following procedures have been developed to deal with sexual harassment. These procedures will ensure the resolution of problems in a sensitive, efficient and effective way.

### **7.1 Advice and Assistance**

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. The Municipality has designated the Manager Corporate Services, or any person preferred by the victim, as the person whom victims may approach for confidential advice.

### **7.2 Options to resolve a problem**

- 7.2.1 Employees shall 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.
- 7.2.1 The aggrieved employee shall indicate in writing his or her preference whether to follow the informal or formal procedure and shall also be informed of his/her right to institute criminal and/or civil charges.
- 7.2.2 The employee shall be under no duress to accept one or the other option.

### **7.3 Informal procedure**

- 7.3.1 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.
- 7.3.2 If the employee concerned is satisfied that the matter has been dealt with amicably and to his/her satisfaction, he/she shall indicate in writing that he/she is satisfied with the way the matter has been dealt with and that he/she has no further desire to pursue the matter beyond the level of the informal procedure.
- 7.3.3 If the informal approach has not provided a satisfactory outcome, or if the conduct continues a formal procedure will be embarked upon. Severe cases may include: sexual assault, rape, a strip search and quid pro quo harassment.

### **7.4 Formal procedure**

- 7.4.1 When the informal procedure 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 Manager Corporate Services.
- 7.4.2 On receiving a formal complaint, the Manager Corporate Services shall ensure that the matter is dealt with in accordance with the relevant formal grievance and/or disciplinary procedures contained in the Conditions of Service.
- 7.4.3 Serious incidents of discrimination or continued or persistent harassment after warnings will be dealt with in terms of misconduct proceedings.
- 7.4.4 If the case is not resolved satisfactorily, the issue can be dealt with in terms of the dispute procedures contained in item 7(7) of this policy.

### **7.5 Investigation and disciplinary action**

- 7.5.1 Care shall 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.

- 7.5.2 The Code of Good Practice regulating dismissal contained in Schedule 8 of the Labour Relations Act, reinforces the provisions of Chapter VIII of the Labour Relations 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.
- 7.5.3 In cases of persistent harassment or single incidents of serious misconduct, the Municipality shall follow the procedures set out in the Code of Good Practice on Handling Sexual Harassment.
- 7.5.4 The range of disciplinary sanctions to which employees will be liable is clearly stipulated in the Disciplinary Procedure Collective Agreement entered into by the S A Local Government Bargaining Council, and it shall be a disciplinary offence to victimise or retaliate against an employee who in good faith lodges a grievance of sexual harassment.

## **7.6 Criminal and civil charges**

A victim of sexual harassment 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 this policy.

## **7.7 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 S A Local Government Bargaining Council for conciliation and thereafter to the CCMA 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 Bargaining Council in terms of section 135(5).

## **8. CONFIDENTIALITY**

- 8.1 Management and employees shall ensure that grievances about sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.
- 8.2 In cases of sexual harassment, management, employees and the parties concerned shall endeavour to ensure confidentiality in the disciplinary enquiry. Only appropriate members of management

as well as the aggrieved person, representative, alleged perpetrator, witnesses and interpreter if required, shall be present in the disciplinary enquiry.

- 8.3 Management shall disclose to either party or to their representatives, such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this policy.
- 8.4 The relevant provisions of section 16 of the Labour Relations Act shall apply to the disclosure of information in terms of this policy.
- 8.5 Correspondence relating to cases of sexual harassment shall be forwarded to a recipient in a sealed envelope marked "confidential" in all cases.

## **9. INFORMATION AND EDUCATION**

- 9.1 The Emnambithi/Ladysmith Municipality shall ensure that copies of this policy are accessible and available in the official languages.
- 9.2 The Emnambithi/Ladysmith Municipality shall include the issue of sexual harassment in the orientation, education and training programmes of employees.
- 9.3 Trade unions shall be requested to include the issue of sexual harassment in their education and training programmes of shop stewards and members.

## **10. ADDITIONAL SICK LEAVE**

- 10.1 When an employee's sick leave entitlement has been exhausted, the Council should give due consideration to the granting of additional paid sick leave in cases of serious sexual harassment, where the employee, on medical advice requires trauma counselling.
- 10.2 In appropriate circumstances, Council may give consideration to assist with the cost of the medical advice and trauma counselling, where such amounts are not covered by any applicable medical aid scheme.

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