

NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY



SEXUAL HARRASMENT POLICY

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SEXUAL HARASSMENT POLICY

1. INTRODUCTION

The Ngaka Modiri Molema District Municipality in line with Section 203 (2) of the Labour Relations Act, 1995 (Act No. 66 of 1995) endeavours to create and maintain a working environment in which the dignity of its employees is respected. It will also embrace practices that promote justice and create a workplace that is free of sexual harassment in which both the employer and the employee respect one another's integrity, dignity, the right to privacy and recognition to the right to equality.

2. DEFINITION

SEXUAL HARASSMENT IS AN UNWANTED CONDUCT OF A SEXUAL NATURE/BEHAVIOUR

- It is any speech (verbal or non verbal) and/or conduct of a sexual nature which is discriminatory and is neither welcomed nor encouraged, committed by an employee towards any person(s) in the aforementioned categories.
- The speech and/or conduct should be offensive to a reasonable person to an extent that it creates an abusive working environment and/or weaken job performance.

3. OBJECTIVE

- The policy seeks to prevent and eliminate all forms of sexual harassment within the Municipality.

- To set down procedures that would deal with the problem in a manner that would completely eliminate and prevent its recurrence.
- To promote the development and implementation of policies and procedures that will lead to the creation of a workplace free of sexual harassment.
- To deal with sexual harassment cases in accordance with the laid down procedure and in a very sensitive and prompt manner.
- To deal with sexual harassment cases in an unbiased manner and with strict confidence.
- To ensure that neither party (the aggrieved employee nor the alleged offender/harasser) are victimized in any way by either management or workers during investigation or after the enquiry had been finalized.
- To prevent sexual favouritism by way of ensuring that employees, job applicants, temporary and part time employees do not engage in any sexual activities in return for employment, job creation, salary increases, promotion or other service benefits.
- To guarantee the aggrieved employee/victim of job security and benefits subsequent to the event.
- To ensure that all employees in the municipality are conversant with the phenomenon of sexual harassment and any other related conduct.

4. APPLICATION AND SCOPE OF THE ACT

The potential victims and perpetrators of sexual harassment include the following:

- Top Management

- Middle Management
- Junior Management
- Employees, co-workers and Subordinates
- Job Applicants
- Clients
- Councillors
- All Employees

SEXUAL ATTENTION BECOMES SEXUAL HARASSMENT IF:-

- The behaviour is persistent notwithstanding that is unwanted
- The victim has made it clear that the behaviour is offensive
- The perpetrator should reasonably have known or expected that the behaviour would be perceived as unacceptable.
- The incident took place within the premises of the employer during and in the course of employment or in an area where official duties were to be performed.
- Suppliers
- Contractors
- Others having dealings with the Municipality

5. FORMS OF SEXUAL HARASSMENT

Sexual harassment may include unwelcomed physical, verbal or non verbal conduct.

5.1 PHYSICAL FORM

The physical conduct of a sexual nature includes all unwanted physical contacts, from touching to sexual assault or rape, and includes but not limited to fondling breasts, pinching of buttocks,

sexual bathing, and strips search by or in the presence of the opposite sex.

This form of harassment also relates to people of the **same sex** and also to female harassing males.

5.2 VERBAL FORMS

This form of sexual harassment includes unwelcome allusive remarks, suggestions and hints, sexual advances, sex related jokes or insults, or unwelcome graphic comments about a person's body made in their presence and/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.

5.3 NON – VERBAL FORMS

They include unwelcome gestures, indecent exposure, and the unwelcome display of sexual explicit pictures and objects, including winking.

5.4 QUAD PRO QUO

Quad Pro Quo harassment is an act of intentional abuse of authority by an employer, supervisor, member of management or co-worker where there is an attempt to influence the process of employment, promotion, training, discipline, dismissal, salary increment or benefits of an employee or job applicant in exchange of sexual favours.

Sexual favouritism exists where a person who is in a position of authority rewards only those who respond to his/her sexual advances, while other deserving employees who do not submit to sexual advances are denied, for example, promotion, merit rating or salary increases.

6. PROCEDURES REGARDING SEXUAL HARASSMENT

6.1 THE INFORMAL PROCEDURE

The informal procedure shall be used for subtle forms of sexual harassment.

However, the informal 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 harassment or other forms of persistent sexual harassment unless the aggrieved chooses to follow the informal procedure.

6.1.1 Where possible, the aggrieved may wish to resolve the complaint without reference to formal procedure. That is, it may be sufficient for the employee concerned to have an opportunity to explain to the person engaging in the unwanted conduct that the behaviour in question is unacceptable.

6.1.2 Should the informal mediation process be successful in resolving the matter, no disciplinary action shall be taken against the alleged harasser.

6.1.3 The aggrieved and the alleged harasser shall be referred for counselling, should they so wish.

6.1.4 Municipality shall take responsibility for cost of counselling for aggrieved.

6.1.5 Municipality shall only take responsibility for cost of counselling of the offender/harasser only if found innocent after investigation and/or enquiry.

6.2 THE FORMAL PROCEDURE

Where the formal procedure does not resolve the matter satisfactorily not, the Municipality shall adopt the formal procedure.

Only the disciplinary procedure shall be used to address such complaints because of the sensitivity and seriousness of sexual harassment.

6.2.1 LODGING OF HARASSMENT GRIEVANCE

- An aggrieved employee may lodge a complaint of sexual harassment with his/her Head of Department, if the complaint is against the Head of Department complaint may be lodged with the Municipal Manager, and if complaints is against the Municipal Manager grievances may be lodged with the Executive Mayor of the Municipality.
- A grievance / complaint of sexual harassment may be investigated and resolved within (10) working days.
- Should a complaint of alleged sexual harassment not be satisfactorily resolved by the internal procedures, either

party may within thirty (30) days of the dispute having arisen, refer the matter to the Bargaining Council for conciliation in accordance with the provision of section 135 of the Act. Should the dispute remain unresolved, either party may refer the dispute to the Labour Court within thirty (30) days of the receipt of the certificate, issued by the commissioner in terms of section 135 (5).

6.2.2 INVESTIGATION AND DISCIPLINARY ACTION

6.2.2.1 Care should be taken during investigation of a sexual harassment grievance that the aggrieved person is not disadvantaged, and that the position of the parties in the matter is not prejudiced if the grievance is found to be groundless.

6.2.2.2 It will be a disciplinary offence to victimize or retaliate against an employee who in good faith lodges a grievance of sexual harassment.

6.2.2.3 In case of serious incidents of sexual harassment or continued harassment the sanction of dismissal is allowed, after action had been instituted in terms of the Municipality's disciplinary and grievance procedure.

6.2.2.4 A victim of sexual assault has the right to institute criminal and/or civil action against an alleged perpetrator, as the legal rights of the victim are no way limited by this policy.

6.2.3 SUSPENSION

In extreme forms of sexual harassment that involves sexual assault such as rape, strip search by or in the presence of the opposite sex, molestation or attempted rape, the alleged harasser may be suspended with or without emoluments pending the outcome of the disciplinary and/or criminal action.

Such suspension shall be in accordance with Municipality's Disciplinary Code.

7. CONFIDENTIALITY

7.1 Although no guarantee can be given, Municipality shall as much as possible attempt to ensure that a number of persons in and outside the workplace shall come to know about the alleged sexual harassment case.

Cognizance should be taken that it is difficult for Municipality to guarantee absolute confidentiality in sexual harassment cases given the legal duties involved and frequent conflict of rights and obligations.

7.2 Municipality, management, employees and the parties involved must undertake all reasonable steps to ensure that sexual harassment complaints are investigated and handled promptly and in a manner which shall ensure that the identities of the persons involved are kept confidential.

7.3 Management, employees and the parties concerned shall endeavour to ensure confidentiality at the disciplinary

enquiry. Only appropriate and necessary members of management as well as the aggrieved party, the alleged harasser, witness and interpreter if necessary, shall be present at the actual disciplinary hearing.

7.4 Municipality shall ensure that such information as may be reasonably necessary is disclosed or given to either party or their representative to enable preparations for any subsequent proceedings.

8. EMPLOYEE RESPONSIBILITIES

8.1 All employees have a duty to ensure that working environment is created and maintained in which sexual harassment is totally unacceptable.

8.2 All employees should ensure that their conduct does not cause offence and should completely discourage unacceptable behaviour on the part of others.

9. IMPLEMENTATION OF SEXUAL HARASSMENT POLICY

9.1 The Municipality shall ensure that a copy of this policy is made available to all employees.

9.2 Municipality shall include the subject of sexual harassment in their induction programmes.

10. Amendment

All amendments shall be made through a council resolution

