

DBC TASK TEAM

POLICY AND PROCEDURES ON THE MANAGEMENT OF SEXUAL HARASSMENT IN THE DEPARTMENT OF TOURISM

broadening horizons



tourism

Department:
Tourism
REPUBLIC OF SOUTH AFRICA



SCOPE OF APPLICATION

- This policy applies to the working environment as guide to the employer and employees, the perpetrators and victims of sexual harassment may include: applicants for employment, clients, suppliers, contractors and any others having dealings with the department.
- While the department has no jurisdiction over third parties who are not employees of the Public Service, the department encourages all people who work in or have dealings with the Public Service to uphold and respect this policy and other related policies. As far as possible, Service Level Agreement (SLA) entered into with service providers should include the terms of this policy thus making all service providers who sign Service Level Agreements (SLAs) to be deemed to have consented to be subject to this policy.



PRINCIPLES

- The Department shall create a workplace that is free of sexual harassment, where the employer and employees respect one another's integrity and dignity, their privacy, and their right to equity in the workplace
- The Department shall create and maintain a work environment in which victims of sexual harassment will not feel that their grievances are ignored and/or underestimated, and/or fear of revenge and /or victimisation.
- The employer and its employees are required to refrain from committing acts of sexual harassment, both should ensure that their conduct do not cause offence and they should discourage unacceptable behaviour.
- The Department and employees shall ensure that persons such as clients, suppliers, applicants for employment and others, who have dealings with the Department, are not subjected to sexual harassment by the employer or its employees.
- The Department and employees are required to take appropriate action in accordance with this policy, when instances of sexual harassment are brought to their attention.



POLICY STATEMENT

- The Department of Tourism as a workplace is committed to prevent sexual harassment by providing a safe, healthy and amicable working environment and shall take steps to ensure the workplace that is ZERO-Tolerance to sexual harassment.
- All employees and other persons, who have dealings with the Department, have the right to be treated with respect and dignity.
- Persons who have been subjected to sexual harassment in the workplace have a right to raise a grievance and appropriate action shall be taken by the employer.
- Complainants shall be protected against victimisation and/or retaliation.
- False allegations of sexual harassment shall not be tolerated
- All employees of the department must be aware that violation of this policy will lead to serious disciplinary action up to and including dismissal.
- It will be a disciplinary offence to victimise or retaliate against a complainant who in good faith lodges a grievance of sexual harassment.
- The department must be considerate of persons with disabilities' needs when providing reasonable accommodation measures.
- The Department is committed to prevent sexual harassment.

FORMS OF SEXUAL HARASSMENT

Harassment on a prohibited ground

- The grounds of discrimination to establish sexual harassment are sex, gender and sexual orientation.
- Same-sex harassment can amount to discrimination on the basis of sex, gender and sexual orientation.

Unwelcome conduct

- There are different ways in which an employee may indicate that sexual conduct is unwelcome, including non-verbal conduct such as walking away or not responding to the perpetrator.
- Previous consensual participation in sexual conduct does not necessarily mean that the conduct continues to be welcomed.
- Where a complainant has difficulty indicating to the perpetrator that the conduct is unwelcome, such complainant may seek the assistance and intervention of another person such as a co-worker, superior, counsellor, human resource official, family member or friend.

Nature and extent of the conduct

- The unwelcome conduct must be of a sexual nature, and includes physical, verbal or non-verbal conduct.



FORMS OF SEXUAL HARASSMENT

- Physical conduct of a sexual nature includes all unwelcome physical contact, ranging from touching to sexual assault and rape, as well as strip search by or in the presence of the opposite sex.
- Verbal conduct includes unwelcome innuendos, suggestions, hints, sexual advances, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body made in their presence or to them, 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.
- Non-verbal conduct includes unwelcome gestures, indecent exposure and the display or sending by electronic means or otherwise of sexually explicit pictures or objects.



FORMS OF SEXUAL HARASSMENT

- Sexual harassment may include, but is not limited to, victimisation, *quid pro quo* harassment and sexual favouritism.
 - Victimisation occurs where an employee is victimised or intimidated for failing to submit to sexual advances.
 - *Quid pro quo* harassment occurs where a person such as an owner, employer, supervisor, member of management or co-employee, influences or attempts to influence an employee's employment circumstances (for example engagement, promotion, training, discipline, dismissal, salary increments or other benefits) by coercing or attempting to coerce an employee to surrender to sexual advances. This could include sexual favouritism, which occurs where a person in authority in the workplace rewards only those who respond to his or her sexual advances.
 - A single incident of unwelcome sexual conduct may constitute sexual harassment.

Impact of the conduct

- The conduct should constitute an impairment of the employee's dignity, taking into account:
 - the circumstances of the employee; and
 - the respective positions of the employee and the perpetrator in the workplace.



EMPLOYER'S LIABILITY FOR SEXUAL HARASSMENT CASES

- Section 60 of the Employment Equity Act (NO. 55 of 1998) deals with the liability of the employer. The Director-General will be liable for the actions of an employee, if the Director-General fails to take corrective measures after an incident of sexual harassment has been reported or came to the employer's attention.
- The Director-General is liable for medical expenses, assessment and treatment of an employee who has experienced sexual harassment as it is categorised as an occupational injury by the Compensation for Occupational Injuries & Diseases Act (No. 130 of 1993).
- The Director-General is obliged to take reasonable steps to assist a complainant of sexual harassment to claim compensation accordingly if the incident has resulted in the employee developing a medical condition, e.g. a post-traumatic stress disorder.



TIME FRAMES

- Prompt reporting of sexual harassment is in the best interest of all parties and enables the Director-General to address and correct unacceptable behaviour and provide support to the complainant.
- The Director-General has an obligation to report any case of sexual harassment to the Compensation Commissioner within seven (7) days of receipt of the complaint or becoming aware of the incident (Compensation for Occupational Injuries & Diseases Act no 130 of 1993, sec 38).
- The Director-General shall ensure that a reported sexual harassment complaint is investigated and resolved within 30 working days, i.e. from reporting to conclusion of investigation and feedback.
- In the event that 30 days expire before the investigation of the sexual harassment case is concluded, the Director-General shall consult the complainant with a written request for an extension of up to a maximum of 14 days to conclude the case. Consent should not be unreasonably withheld and should be in writing.



STRUCTURES REQUIRED FOR POLICY IMPLEMENTATION

- The Director-General is responsible for the management of all sexual harassment cases.
- **Sexual Harassment Advisor (SHA)**
 - The Director-General shall appoint a Sexual Harassment Advisor to deal with sexual harassment complaints in the department. This appointment may be per case or for a fixed period.

The Director-General shall be guided by the following criteria in the appointment of a Sexual Harassment Advisor:

- Knowledge and understanding of general policy development and its implementation and knowledge of departmental policies.
- Psychological and emotional stability
- Integrity
- Compassion
- Ability to maintain confidentiality
- Objectivity
- Good communication skills (verbal and writing)
- Good listening skills
- Investigative skills



THE DIRECTOR-GENERAL'S RESPONSIBILITIES

- Communicate this policy to all employees, through regular awareness raising, training and education programmes.
- Appoint a Sexual Harassment Advisor and announce this to the department through internal communication channels.
- Ensure training of managers, specific staff that are nominated and those appointed to handle sexual harassment cases.
- Submit a report on sexual harassment cases dealt with to the DPSA annually.
- Encourage staff to report violations of the policy.
- Allocate resources (human and financial) to ensure that awareness raising and training programmes for employees on sexual harassment are implemented.
- Ensure that disciplinary measures applied are in accordance with the Disciplinary Code and Procedures (PSCBC Resolution 1 of 2003) in the Public Service.
- Ensure implementation of recommendations within five (5) working days after conclusion of investigations of sexual harassment complaints.
- Treat all complaints as confidential.
- Encourage all Trade Unions within the employ of the department to include sexual harassment in their education and training programmes of members and shop stewards.
- Report cases of sexual harassment to the Compensation Commission in terms of the Compensation for Occupational Injuries and Diseases Act (No 130 of 1993).



ROLE OF SEXUAL HARASSMENT ADVISOR

The Sexual Harassment Advisor serves as the first line of contact to complainants of alleged sexual harassment. Her/his role is to:

- Explain the disciplinary procedure and time frames to complainants and respondents in both formal and informal procedures.
- Advise the complainant on the appropriate course of action and support available.
- Advise the complainant on the two procedures available to follow, namely the informal and formal route.
- Provide guidance (if necessary) on how to complete the appropriate grievance form.
- Issue a written notice of the complaint to the respondent and explain the protective measures available to the complainant.
- Provide the respondent with a copy of this policy and any relevant document on disciplinary rules and procedures of the Public Service and the Department.
- Once appointed, investigate the complaint and bring to the attention of the Director-General.
- Maintain confidential statistics and narrative reports on all sexual harassment cases reported and handled.
- Avoid unreasonable delays during the investigation and conclusion of any sexual harassment complaint.



ROLE OF SEXUAL HARASSMENT ADVISOR

- Provide a neutral, confidential and supportive environment for employees who report to have been sexually harassed.
- Protect the complainant from victimisation as a result of reporting the matter.
- Monitor and submit quarterly reports on all cases reported, resolved and pending to the Director-General. Such reports should use non-identifying statistical information to maintain confidentiality.
- Contribute to the development, coordination, implementation of educational programmes and awareness raising activities for prevention and management of sexual harassment in the Department.
- Advocate for research and other resources on sexual harassment to improve expertise on this issue.



ROLE OF MANAGERS / SUPERVISORS (MANAGEMENT)

- Refrain from sexual harassment in the workplace.
- Take all reasonable steps to create and maintain an environment that is free from sexual harassment.
- Know and understand this policy, and assume responsibility for its implementation.
- Communicate the policy to all employees, including newly appointed employees.
- Undergo training and/or attend workshops and/or information session on the sexual harassment policy and related topics.
- Respond appropriately to a complaint of sexual harassment from employees.
- Take appropriate action when instances of sexual harassment occur and act in accordance with the reporting and disciplinary procedures of this policy.
- Prevent retaliation and victimisation against any employee making a sexual harassment complaint;
- Allegations and complaints of sexual harassment shall be responded to promptly and dealt with seriously, expeditiously, fairly, sensitively and confidentially.



ROLE OF EMPLOYEES

- All employees should refrain from sexual harassment of others in the workplace.
- An employee may indicate that sexual conduct is unwelcome, including non-verbal conduct such as walking away or not responding to the perpetrator. If able to, also do so in writing and keep a record of this correspondence.
- Report the harassment.
- Treat fellow employees with respect, and dignity.
- Know and understand this policy.
- In the event a fellow employee informs you of any form of sexual harassment occurred to her/him, encourage the employee to report the offensive behaviour and maintain confidentiality.



CREATING INFORMATION AWARENESS AND TRAINING

- Continuous information awareness sessions are necessary to ensure that employees and third parties know and understand this policy and are able to prevent and report sexual harassment when it occurs.
- Sexual Harassment Advisor and Employee Relations unit should undergo regular training to increase their knowledge on sexual harassment, to enhance their skills in investigation, communication, conflict resolution, mediation and legal developments related to sexual harassment.
- Employees shall make time to attend information awareness sessions when arranged by the department.



MONITORING AND EVALUATION

- The Director-General assisted by the Deputy Director-General: Corporate Management is responsible for policy monitoring and implementation.
- Department shall report directly to the DPSA annually on the Management of Sexual Harassment in the Workplace.

POLICY IMPLEMENTATION AND REVIEW

- The implementation date of the policy shall be the date on which the Director-General approves the policy and policy will be subject to review when it is required.



PROCEDURES ON MANAGING SEXUAL HARASSMENT IN THE DEPARTMENT

Lodging a Sexual Harassment Complaint:

- An employee who experience sexual harassment is encouraged to report this to the Director-General either in writing or verbally through relevant structures of authority.
- The Director-General shall then appoint a Sexual Harassment Advisor to conduct an investigation into the complaint. On appointment, the Sexual Harassment Advisor shall commence with the investigation and report back within the set time frames.
- It might be advisable to separate the respondent and complainant to reduce the risk of tension, unpleasantness or victimisation.
- If a false allegation is established, the Director-General should immediately institute disciplinary processes against the accuser.



PROCEDURES ON MANAGING SEXUAL HARASSMENT IN THE DEPARTMENT

Obligation of the employer

When sexual harassment has been brought to the attention of the employer, the employer should:

- consult all relevant parties;
- take the necessary steps to address the complaint in accordance with this procedure and policy; and
- take the necessary steps to eliminate the sexual harassment.



PROCEDURES ON MANAGING SEXUAL HARASSMENT IN THE DEPARTMENT

The steps to be taken by the employer

The steps to be taken by the employer on receipt of a complaint by a complainant, should include but not be limited to the following:

- advising the complainant of the informal and formal procedures available to deal with the sexual harassment, as set out in items **16.5**, **16.6** and **16.7** of this procedure;
- where reasonably practicable, offering the complainant advice, assistance and counselling as set out in item **16.4** of this procedure, including during any disciplinary enquiry that may be instituted; and
- following the procedures required by items **16.5**, **16.6** and **16.7** of this procedure, in a manner that is procedurally and substantively fair.



PROCEDURES ON MANAGING SEXUAL HARASSMENT IN THE DEPARTMENT

Advising and assistance

- A complainant of sexual harassment may require advice and assistance, including counselling.
- As far as is practicable, the Director-General should designate a person outside of line management or the Sexual Harassment Adviser, that complainants may approach for confidential advice and/or counselling.



PROCEDURES ON MANAGING SEXUAL HARASSMENT IN THE DEPARTMENT

Advising the complainant of workplace procedures to deal with sexual harassment

When an incident of sexual harassment is brought to the attention of an employer, such employer should:

- advise the complainant that there are formal and informal procedures which could be followed to deal with the problem;
- explain the formal and informal procedures to the complainant;
- advise the complainant that she/he may choose which procedure should be followed by the employer, except that in certain limited circumstances, as set out in clause **16.7.4**, the employer may choose to follow a formal procedure even if the complainant does not wish to do so;
- re-assure the complainant that she/he will not face job loss or any adverse consequences if she/he chooses to follow either the formal or informal procedure;
- advise the complainant that the matter will be dealt with confidentially if the complainant so chooses.
- advise the complainant that a false allegation may lead to disciplinary action in line with the Disciplinary Code and Procedures in the Public Service (PSCBC Resolution 1 of 2003).



PROCEDURES ON MANAGING SEXUAL HARASSMENT IN THE DEPARTMENT

Informal Procedure

A complainant of sexual harassment may choose to follow either of the following informal procedures:

- the complainant or another appropriate person explains to the perpetrator that the conduct in question is not welcome, that it offends the complainant, makes him or her feel uncomfortable and that it interferes with his or her work; or
 - An appropriate person approaches the perpetrator, without revealing the identity of the complainant, and explains to the perpetrator that certain forms of conduct constitute sexual harassment, are offensive and unwelcome, make employees feel uncomfortable, and interfere with their work.
- The responded must be given an opportunity to explain his/her behaviour in question.
 - If the complaint cannot be resolved and/or it is found through discussion that the incident warrants more serious action, the formal disciplinary procedure may be instituted against the respondent.



PROCEDURES ON MANAGING SEXUAL HARASSMENT IN THE DEPARTMENT

Formal Procedure

- The complainant can take the option of formal proceedings to resolve a sexual harassment complaint if the harassment could not be resolved through an informal procedure.
- The complainant can also choose to resolve the complaint through the formal process without firstly using the informal route.
- In dealing with the matter the complainant must first lodge a formal grievance according to the Disciplinary Code and Procedures in the Public Service (PSCBC Resolution 1 of 2003).
- 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.



PROCEDURES ON MANAGING SEXUAL HARASSMENT IN THE DEPARTMENT

Lodging a Formal Complaint/Grievance

- The sexual harassment complaint must be reported to the Director-General or Sexual Harassment Advisor in writing, and the statement must include:
 - The name of the respondent
 - Date when incident occurred
 - Where it occurred
 - Details of how the actual sexual harassment occurred.
 - the complainant's desired outcome of the procedures
- In the event where the grievance procedure has been finalised, and management is of the view that there is a prima facie case against the respondent, disciplinary steps must be instituted as per the provisions of the Disciplinary Code and Procedures in the Public Service (PSCBC Resolution 1 of 2003).



PROCEDURES ON MANAGING SEXUAL HARASSMENT IN THE DEPARTMENT

Sanctions

- Should the respondent be found guilty of the offence, the Director-General will impose a disciplinary sanction which may include any of the following or a combination of them:
 - Counselling
 - Verbal warning
 - Written warning
 - Final written warning
 - transfer to another position in the workplace
 - Suspension/fine
 - Demotion (as an alternative to dismissal)
 - Dismissal



PROCEDURES ON MANAGING SEXUAL HARASSMENT IN THE DEPARTMENT

CONFIDENTIALITY

- Employers and employees must 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.
- In cases of sexual harassment, management, employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary inquiry. Only appropriate members of management as well as the aggrieved person, representatives, alleged perpetrator, witnesses and interpreter if required should be present in the disciplinary inquiry.
- Employers are required to disclose to the complainant, the perpetrator and/or their representatives, such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this procedure.




PROCEDURES ON MANAGING SEXUAL HARASSMENT IN THE DEPARTMENT

LEAVE OF ABSENCE

- The department may give due consideration to the granting of special leave in cases of sexual harassment where the complainant, upon medical advice from a registered medical practitioner, requires leave for medical or related reasons.

MEDICAL EXPENSES

- In appropriate circumstances the employer may give consideration for medical expenses, assessment and treatment of an employee who has experienced sexual harassment as it is categorised as an occupational injury by the Compensation for Occupational Injuries & Diseases Act (No. 130 of 1993).
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PROCEDURES ON MANAGING SEXUAL HARASSMENT IN THE DEPARTMENT

THE DIRECTOR-GENERAL AS A VICTIM OR PERPETRATOR

- Where the Director-General is the victim or perpetrator, the Executive Authority becomes the authority that appoints the Sexual Harassment Advisor and makes decisions on the case.
- Once the Sexual Harassment Advisor has been appointed, all terms and procedures set out in this policy for subsequent action shall apply without exception, read with the necessary changes.

CRIMINAL CHARGES AND/OR CIVIL CLAIMS

- A complainant of sexual harassment has the right to press separate criminal charges and/or civil claims against the respondent if they so wish. The legal rights of the complainant are in no way limited by this policy.

DISPUTE RESOLUTION

- Should a complaint of alleged sexual harassment not be resolved through the departmental internal procedures, the complainant may within 30 (thirty) days of the dispute having arisen, refer the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA) for conciliation in accordance with the provisions of the Labour Relations Act (No 66 of 1995).
- Should the matter not be satisfactorily resolved by the internal procedures outlined above, a complainant of sexual harassment may refer the dispute to the Commission for Conciliation Mediation and Arbitration (CCMA). Similarly, an alleged perpetrator of sexual harassment may refer a dispute arising from disciplinary action taken by the employer to the CCMA;

PROCEDURES ON MANAGING SEXUAL HARASSMENT IN THE DEPARTMENT

INFORMATION AWARENESS AND TRAINING

- The Policy and Procedure on the Management of Sexual Harassment in the Department of Tourism should be available to all employees on the Electronic Document Management System (EDMS) and the Departmental Registry.
- The employer should include sexual harassment in their orientation programme.
- The employer will conduct information and awareness sessions for employees.
- Education and training will be done in line with the Departmental Learning and Development Policy.
- The Department will include the Policy and Procedure on the Management of Sexual Harassment in the Department of Tourism on Service Level Agreements (SLAs).
- Employees shall attend information awareness sessions when arranged by the employer.



THANK YOU

