



education

Department:
Education
REPUBLIC OF SOUTH AFRICA

POLICY ON SEXUAL HARASSMENT IN THE WORKPLACE

Directorate: Internal Training, Social Responsibility and
Labour Relations

2007

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1. INTRODUCTION

The Department of Education regards sexual harassment in all its forms as unequivocally unacceptable.

The Department believes that every person has the right to work in an equitable environment, and acknowledges its responsibility to prevent sexual harassment in the workplace. It expects all managers and staff to treat each other with respect. It will ensure that all reported cases of sexual harassment are treated confidentially, and that there are no reprisals against victims who report sexual harassment.

2. PURPOSE

The purpose of this policy is to –

- sensitise employees in the Department to the fact that sexual harassment is unacceptable and discriminatory behaviour;
- provide formal procedures for dealing with sexual harassment;
- create a working environment free from sexually intimidating behaviour and discrimination; and
- offer guidelines on how to address sexual harassment cases in an objective, sensitive and unbiased way.

3. DEFINITION OF CONCEPTS

- **Counselling** means therapeutic intervention by a trained professional such as a psychologist, psychiatrist or social worker.
- **Discipline** means corrective action aimed at changing undesirable, negative behaviour into acceptable, positive behaviour.
- **Discrimination** means treatment based on certain aspects or characteristics of a person such as gender, sex, marital status, parenthood, race, ethnicity, disability or sexual orientation.
- **Grievance procedure** means the ways through which differences are resolved as set out in the Rules for Dealing with the Grievances of Employees in the Public Service.
- **Perpetrator** means someone who repeatedly attacks or uses his or her position of authority to harass someone.
- **Harassment** means a range of behaviours including bullying, badgering, pestering, intimidating and maliciously teasing others on the basis of race, gender, sexual orientation, etc.

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- **Sexual harassment** means persistent, unwanted attention of a sexual nature, whether verbal or non-verbal, including gestures and physical contact.
- **Union representative** means an official or shop steward of any recognised trade union.
- **Victim** means someone who is at the receiving end of sexual harassment.

4. STATUTORY PROVISIONS AIMED AT PREVENTING SEXUAL HARASSMENT

The following are some of the key principles, goals, norms, values and standards that govern the Department's dealings with sexual harassment, and the prevention and elimination of sexual harassment in the workplace:

4.1 The Constitution of South Africa, 1996

Chapter 2 of the Constitution provides that –

- everyone is equal before the law and has the right to equal protection and benefit of the law - section 9(1);
- everyone has the right to have their dignity respected and protected – section 10;
- everyone has the right to freedom and security of person, which includes the right to be free from all forms of violence from either public or private sources - section 12(1);
- everyone has the right to fair labour practices - section 23(1);
- everyone has the right to an environment that is not harmful to their health or well-being - section 24(a).

4.2 Employment Equity Act, 1999

The Employment Equity Act provides that –

- every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice – section 5.
- no person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status or sexual orientation – section 6(1).

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4.3 Labour Relations Act, 1995

No person may prejudice or threaten to prejudice an employee or a person seeking employment because of refusal to do something that an employer may not lawfully permit or require an employee to do – section 5(c).

4.4 Public Service Regulations, 2001

The Code of Conduct for the Public Service, published under the Public Service Regulations, 2001, provides that an employee -

- should loyally execute the policies of the Government of the day in the performance of her or his official duties as contained in all statutory and other prescripts – regulation C.1.3;
- should strive to be familiar with and abide by all statutory and other instructions applicable to her or his conduct and duties – regulation C.1.4;
- should not unfairly discriminate against any member of the public on account of race, gender, sexual orientation, etc. – regulation C.2.6;
- should respect and protect every person's dignity and her or his rights as contained in the Constitution – regulation C.2.8;
- should deal fairly, professionally and equitably with other employees, irrespective of race, gender, sexual orientation, etc. – regulation C.3.6.

5. GUIDING PRINCIPLES

The Policy is based on the following principles:

5.1 Confidentiality

- (a) Grievances about sexual harassment should be investigated and handled in a confidential manner.
- (b) Only parties to the grievance, their representatives and relevant members of management should be present at the disciplinary inquiry.
- (c) Allegations of sexual harassment should be dealt with in a sensitive, effective and efficient manner.

5.2 Non-sexism

No person should be discriminated against on the basis of gender or sexual orientation, or requested to grant sexual favours in return for employment, promotion, transfer, better conditions of employment or to avoid suspension or dismissal.

5.3 Equity

Everyone has the right to fair, equitable and reasonable conditions of employment

5.4 Health and safety

Everyone has the right to a safe and healthy work environment.

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5.5 Objectivity

All cases of sexual harassment should be handled rigorously, objectively, confidentially and impartially.

6. FORMS OF SEXUAL HARASSMENT

The following are forms of sexual harassment:

6.1 Physical harassment

Any unwanted touching, stroking, grabbing, kissing, poking or pulling. These may involve touching someone's clothing, hair or body (e.g. stroking their cheek), impeding their exit from a room, or rubbing up against them.

6.2 Verbal harassment

Persistent requests for dates, offensive remarks, insults, calling people names, making suggestive comments or jokes that demean someone, playing games with someone's name, or asking questions about someone's private life, sexual habits or sexual practices.

6.3 Written or graphic harassment

Any unwelcome gestures, the display of suggestive material or pin-ups in the workplace, unwanted love letters, graffiti, poems, notes, faxes, emails or other communication of a sexual or sexist nature.

6.4 Quid pro quo harassment

The abuse of authority to employ, dismiss or change the working conditions of subordinates in return for giving or withholding sexual favours, e.g. a supervisor forcing a subordinate to grant sexual favours in return for a notch increment or promotion.

6.5 Emotional harassment

Behaviour by that is psychologically destructive, e.g. isolating or demeaning someone on the grounds of his or her gender. All the above forms of harassment include some element of emotional harassment.

7. RESPONSIBILITIES OF MANAGEMENT AND STAFF IN RESPECT OF SEXUAL HARASSMENT

7.1 Management will create and maintain a working environment where the dignity of employees is respected.

7.2 Management will ensure that victims of sexual harassment are supported and feel free to report harassment without fear of reprisal.

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- 7.3 Management will take action when instances of sexual harassment occur and grievances are brought to their attention, in accordance with the Code of Conduct for the Public Service and other relevant legislation.
- 7.4 Management will ensure that complaints of sexual harassment are dealt with expeditiously, sensitively and confidentially.
- 7.5 Management will ensure that persons accused of sexual harassment will be informed of the allegations and given the opportunity to respond to them.
- 7.6 Management and staff must refrain from committing acts of sexual harassment.
- 7.7 Management and staff must work together to create an environment free of sexual harassment, and ensure that unacceptable behaviour is discouraged.
- 7.8 Management and staff may not permit or condone acts of sexual harassment in the Department.

8. THE ROLE OF THE ADVISER

- 8.1 The Department will appoint one of its employees to act as an adviser in sexual harassment cases.
- 8.2 The adviser will be a professionally trained person with counselling skills, whom victims of sexual harassment will be encouraged to consult.
- 8.3 The adviser should -
- listen carefully to the victim's complaint
 - offer advice;
 - provide information on the procedures for lodging a complaint
 - ensure that the victim is given an opportunity to relate his or her story without any form of intimidation;
 - create a supportive environment
 - not conduct an interrogation;
 - make a recommendation regarding the investigation of the allegations of sexual harassment;
 - keep records of complaints.

9. PROCEDURES TO BE FOLLOWED IN THE DEPARTMENT IN DEALING WITH CASES OF SEXUAL HARASSMENT

- 9.1 In dealing with such cases, the Department will follow formal procedures, in accordance with the Labour Relations Act, 1995, the

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Public Service Act, 1994, the Employment of Educators Act, 1998, and the Senior Management Service Handbook.

- 9.2 Sexual harassment will be regarded as misconduct.
- 9.3 The victim will be advised to lodge his or her complaint in writing in order for the investigation to take place.
- 9.4 Once it has been established that sexual harassment took place, the adviser will recommend that the matter be investigated.
- 9.5 If the adviser establishes that the behaviour constitutes a criminal offence, he or she may advise the victim to lodge a complaint with the South African Police Service.
- 9.6 Even if a complaint is lodged with the South African Police Service, the Department will hold an investigation and institute disciplinary proceedings against the alleged perpetrator, which will be separate from and independent of the SAPS investigation or court proceedings.

10. GRIEVANCE PROCEDURES

- 10.1 If an employee feels that they are the victim of sexual harassment, she or he may raise the matter with the adviser.
- 10.2 The victim may make a written representation about the matter to the Director-General through the Directorate: Internal Training, Social Responsibility and Labour Relations.
- 10.3 The written representation should contain the following information:
 - (a) The name and the rank of the victim.
 - (b) The reasons for his or her dissatisfaction.
 - (c) The measures that have already been taken to address the issue, and its outcome.
 - (d) Statements or reports from the adviser, the alleged perpetrator's supervisors, or any other evidence that can support the victim's allegations.
- 10.4 The Director-General of the Department will appoint an investigating officer to investigate the matter.

11. THE ROLE OF THE INVESTIGATING OFFICER

- 11.1 The Director-General will appoint an investigating officer to investigate each formal allegation of sexual harassment.
- 11.2 The investigating officer will be provided with the resources required to perform his or her duties.

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- 11.3 The Department will ensure that the investigating officer is impartial, trustworthy and honest, and is not a friend of, nor employed in the same section as, either party.
- 11.4 The investigation officer will collect as much evidence as possible and interview a variety of witnesses.
- 11.5 Once the evidence has been collected, the investigating officer will write a report to the Director-General.
- 11.6 If the investigating officer recommends disciplinary action against the perpetrator, the Director-General will appoint a presiding officer and will order that a disciplinary hearing be convened.
- 11.7 The disciplinary committee and the union representatives will be provided with the investigating officer's report.
- 11.8 The disciplinary committee will make a decision based on the evidence. If an employee is found guilty of sexual harassment, he or she may be dismissed, transferred to another position or demoted.

12. DISCIPLINARY PROCEDURE

Cases of sexual harassment will be dealt with as determined by the Disciplinary Code and Procedures for the Public Service.

13. COUNSELLING

Both the alleged perpetrator and the victim will be provided with counselling services irrespective of the outcome of the hearing. The adviser will offer counselling services on a short-term basis (i.e. not longer than three months). If further counselling is required, or the parties do not feel comfortable with receiving counselling in the Department, they will be referred to a professional outside the Department, depending on the availability of funds.

14. POLICY REVIEW

This policy will be reviewed whenever necessary.

Signed at Port Elizabeth on this day 17th of May of 2007

Mr D Hindle
Director-General