

“ The City of Heritage ”



ULUNDI LOCAL MUNICIPALITY

(“The Municipality”)

SEXUAL HARASSMENT POLICY

1. Background

All employees have the right to work in a pleasant and productive work environment where the individual rights and dignity of each employee are respected. This includes the right to work in an environment that is free from conduct of a harassing or abusive nature. In order to maintain an atmosphere of mutual respect, conduct characterised as sexual harassment will not be condoned or tolerated.

The Municipality accepts the Code of Good Practice on the Handling of Sexual Harassment Cases published in terms of section 203 (2) of the Labour Relations Act, 1995 (Act No. 66 of 1995), by the National Economic Development and Labour Council under Notice Number 1367 of 1998.

2. Definition of sexual harassment

- a) Sexual harassment is unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual.
- b) Sexual attention becomes sexual harassment if:
 - The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; and/or
 - The recipient has made it clear that the behaviour is considered offensive; and/or
 - The perpetrator should have known that the behaviour is regarded as unacceptable.

3. Forms of sexual harassment

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

- Non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects.
- Quid pro quo harassment occurs where an owner, employer, 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.

b) 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

4. Guiding principles

The Council, Management and employees should create and maintain a working environment in which the dignity of employees is 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. The following guidelines can assist in achieving these ends:

- Councillors, managers and employees are required to refrain from committing acts of sexual harassment.
- All Councillors, managers 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.
- Councillors and managers should attempt to ensure that the Councillors or the municipal employees do not subject persons such as the general public, suppliers, job applicants and others who have dealings with the municipality, to sexual harassment.
- Councillors and Managers are required to take appropriate action in accordance with this code, when instances of sexual harassment, which occur within the workplace, are brought to their attention.

5. Policy statements

- All employees, job applicants and other persons who have dealings with the Municipality have the right to be treated with dignity.
- Sexual harassment in the workplace will not be permitted or condoned.
- 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 Council and/or Managers.
- Councillors, Managers and Employees who do not comply with the policy shall be subjected to disciplinary action.

6. Procedures

Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially. Employees will be protected against victimisation, retaliation for lodging grievances and from false accusations.

Employees who have a complaint about sexual harassment should report it to their manager or supervisor. The discussion should be treated as private and strictly confidential and should not result in a formal complaint, unless the employee wishes to pursue the matter through a formal investigation. In this case, only those people necessary to the investigation will be informed. Immediate follow-up by the Municipality is necessary to establish its concern for prevention.

There should, however, be no immediate judgement that sexual harassment has or has not occurred. Careful and deliberate consideration must be given to protect both the person bringing the allegation, and the person accused.

7. 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 Council shall designate a person outside of line management whom victims may approach for confidential advice. Such a person:

- Could include persons employed by the municipality to perform inter alia such a function, a trade union representative or co-employee, or an outside professional.

- Should have the appropriate skills and experience or be properly trained and given adequate resources.
- Could be required to have counseling and relevant labour relations skills and be able to provide support and advice on a confidential basis.

8. Options to resolve a problem

- Employees should 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.
- The employee should be under no duress to accept one or the other option.

9. Informal procedure

The employee should furnish a description of the incident and discussions should be conducted along the following lines:

- 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. A verbal/written request to the harasser from the complainant to stop the harassment could also be an alternative.
- If the informal approach has not provided a satisfactory outcome, if the case is severe or if the conduct continues, it may be more appropriate to embark upon a formal procedure. Severe cases may include: sexual assault, rape, a strip search and quid pro quo harassment.

10. Formal procedure

These are handled in an official capacity, using the following procedure to resolve the problem:

The aggrieved person must lodge the grievance with his/her Departmental Head and/or with the Shop Stewart of his/her Union.

A sexual harassment grievance once lodged must be dealt with expeditiously and procedures must commence within 24 working hours from the time it was lodged.

The complainant should be interviewed to determine details such as:

- the identity of the alleged perpetrator;
- when the incident(s) occurred;

- the circumstances, behaviour, conversations resulting in the complaint; and
- the identity of witnesses.

The complainant makes a written, signed statement.

The complainant is advised of how the complaint has been handled and is asked for a reaction. Further information is requested from the complainant if problems develop due to the complaint. An informal 30-day follow-up is recommended.

If there is insufficient evidence to reach a judgement, an investigation must be conducted to determine why the complaint was laid.

If the case is not resolved satisfactorily, the issue must be dealt with in terms of the dispute procedures contained in item 14.6.5 hereof.

11. Investigation and disciplinary action

Care should 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.

The Code of Good Practice regulating dismissal contained in Schedule 8 of the Labour Relations Act reinforces the provisions of Chapter VIII of this 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.

In cases of persistent harassment or single incidents of serious misconduct, the Council shall follow the procedures set out in the Code of Practice contained in Schedule 8 of the Labour Relations Act.

Once the investigation has been completed, management shall decide whether or not to institute formal disciplinary action. Disciplinary action can take one of two forms:

12. Positive Discipline

This aims at the prevention of a recurrence of unacceptable conduct. Management should point out the unacceptable conduct to the accused and together with him/her, explore alternatives to ensure the prevention of a recurrence. No formal disciplinary record is kept. An apology by the accused to the complainant would be appropriate.

13. Disciplinary hearing

In cases of serious sexual harassment, it would be necessary to hold a disciplinary hearing in terms of the Municipality's Disciplinary Procedure.

Should the employee be found guilty of sexual harassment, an appropriate disciplinary sanction, up to and including, summary dismissal, a warning, or the attendance of corrective workshops, could be imposed.

Where the complainant has reported the matter to the appropriate manager/supervisor and he/she is of the opinion that no action or inappropriate action has been taken, he/she should make use of the Municipality's grievance procedure to bring the matter to the attention of the next level of management. If this procedure fails and the complainant is still dissatisfied, he/she may resort to the dispute mechanism provided for in the Labour Relations Act. Such action could culminate in the Industrial Court and payment of compensation to the complainant could well be awarded.

14. Victimisation

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

15. Criminal and civil charges

A victim of sexual assault 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 code.

16. 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 CCMA for conciliation 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 Commissioner in terms of section 135(5).

17. Confidentiality

- a. The Council, Management 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.
 - b. In cases of sexual harassment, management, employees and the parties concerned must 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, must be present in the disciplinary enquiry.
 - c. The Council are required to 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 code.
- (4) The relevant provisions of section 16 of the Labour Relations Act will apply to the disclosure of information in terms of this code.

18. Additional sick leave

Where an employee's existing sick leave entitlement has been exhausted, the Council or the Municipal Manager shall give due consideration to the granting of additional sick leave in cases of serious sexual harassment where the employee on medical advice requires trauma counseling.

19. Responsibility

Each manager and supervisor is responsible for communicating the formal policy to employees within their area of responsibility. It is expected that managers/supervisors should familiarise themselves with this policy. Furthermore, each manager/supervisor is responsible for ensuring that corrective and appropriate action is taken when improper behaviour is observed or reported.

Failure on the part of management to timeously take the necessary steps to deal with sexual harassment could result in legal proceedings being instituted against the employer.

