



SEXUAL HARASSMENT POLICY AND PROCEDURE

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Contents

1. Introduction.....	Error! Bookmark not defined.
2. Definitions	Error! Bookmark not defined.
3. Policy Statements.....	Error! Bookmark not defined.
4. Procedures	Error! Bookmark not defined.
5. Response to complaint	Error! Bookmark not defined.
6. Informal Procedures.....	Error! Bookmark not defined.
7. Formal Procedures	Error! Bookmark not defined.
8. Conflict of interest	Error! Bookmark not defined.
9. Victimisation	Error! Bookmark not defined.
10. Vexatious/Malicious complaints	12

SEXUAL HARASSMENT POLICY AND PROCEDURE

1. INTRODUCTION

The Municipality is committed to ensuring that employees are not subjected to any form of sexual harassment. Persistent, unsolicited and unwanted sexual advances or suggestions made by one employee to another, regardless of gender and/or sexual orientation will not be tolerated. Violations of this policy will lead to disciplinary action, which will include dismissal, and/or criminal charges. All managers at the Municipality have a responsibility for addressing all reports of harassment. In dealing with cases of sexual harassment, the Municipality shall be guided by the Code of Good Practice as contained in Schedule 8 of the Labour Relations Act, 1995 and the NEDLAC Code of Good Practice on the Handling of Sexual Harassment Cases.

Policies and procedures for resolving complaints of sexual harassment have been adopted by Garden Route District Municipality (hereinafter referred to as "the Municipality") to:

- promote a safe and secure work environment in which the dignity of all persons is respected and which is free from sexual harassment;
- provide an internal procedure for dealing with issues and complaints of sexual harassment which may arise;
- meet the requirements the Employment Equity Act, Labour Relations Act and the Code of Good Practice on the handling of Sexual Harassment Cases.

2. DEFINITIONS

- 2.1 "alleged perpetrator" means a person alleged to have committed an act of sexual harassment;
- 2.2 "SALGBC" means the South African Local Government Bargaining Council;
- 2.3 "Complainant" means a person who lodges a complaint under this policy, or a person against whom an act or acts of sexual harassment as defined in the policy has or have allegedly been perpetrated;
- 2.4 "Confidentiality" means ensuring that information is accessible only to those authorised to have access to it;
- 2.5 "Employee disciplinary procedure" means the disciplinary procedure that applies to a category of staff;

- 2.6 "Employee" means a person appointed by the Municipality or a person who has agreed to be bound by the rules and policies of the Employer relating to staff;
- 2.7 "Manager" means any Employee of the Municipality with managerial or supervisory responsibilities;
- 2.8 "serious misconduct" means conduct as defined in the Municipality's Disciplinary Code and Procedure;
- 2.9 "sexual assault" means an incident that involves sexual contact that is forced on an Employee;
- 2.10 "sexual harassment" is unwelcome conduct of a sexual nature that violates the rights of a person. In determining whether conduct constitutes sexual harassment the following factors are to be taken into account:
 - 2.10.1 whether the harassment is on the grounds of sex and/or gender (regardless of the sexual orientation of either the Complainant or the alleged perpetrator);
 - 2.10.2 the impact of the sexual conduct on the Complainant;
 - 2.10.3 whether the sexual conduct was unwelcome;
 - 2.10.4 the nature and extent of the sexual conduct.
- 2.11 "unwelcome sexual conduct" includes behaviour that is perceived by the Complainant as demeaning, compromising, embarrassing, threatening and/or offensive:
 - 2.11.1 the assessment of what is unwelcome should be informed by context, including language;
 - 2.11.2 previous consensual participation in sexual conduct does not mean that the conduct continues to be welcome;
 - 2.11.3 when a victim has difficulty indicating to the alleged perpetrator that the conduct is unwelcome, the victim may seek the assistance and intervention of another person in order to make it clear that the conduct is unwelcome;
 - 2.11.4 some forms of sexual harassment are such that the alleged perpetrator should have known that the behaviour would be unwelcome.
- 2.12 Unwelcome sexual conduct includes physical, verbal and non-verbal conduct. Such conduct may be direct or indirect and may include technological devices, images and weapons. A single incident of unwelcome sexual conduct can constitute sexual harassment.

- 2.13 Unwelcome physical conduct ranges from touching to sexual assault and rape.
- 2.14 Unwelcome verbal conduct includes innuendos, suggestions or hints of a sexual nature, sexual advances, sexual threats, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body, 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.
- 2.15 Unwelcome non-verbal conduct includes gestures, indecent exposure and the display or sending by electronic or other means sexually explicit pictures or objects.
- 2.16 Sexual harassment may take the form of special victimisation, *quid pro quo* harassment and the creation of a hostile environment.
 - 2.16.1 special victimisation occurs when a person is victimised or intimidated for failing to submit to sexual advances;
 - 2.16.2 *quid pro quo* harassment occurs when an alleged perpetrator influences or attempts to influence a person's employment circumstances by coercing or attempting to coerce that person to engage in sexual activities;
 - 2.16.3 creation of a hostile environment occurs where the purpose or effect is to interfere with another's performance at work.

3 POLICY STATEMENTS

- 3.1 Management should be placed under a positive duty to implement the policy and take disciplinary action against employees who do not comply with the policy.
- 3.2 A policy on sexual harassment should also explain the procedure which should be followed by employees who are victims of sexual harassment. The policy should also state that:
 - 3.2.1 allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially;
 - 3.2.2 employees will be protected against victimisation, retaliation for lodging grievances and from false accusations.
- 3.3 Policy statements on sexual harassment should be communicated effectively to all Employees.

- 3.4 Sexual harassment will not be permitted or condoned and will be regarded as a form of serious misconduct. Action will be taken in terms of the disciplinary code of the Municipality.
- 3.5 The Municipality is committed to investigate all complaints and grievances brought to its attention.
- 3.6 The Municipality undertakes to inform all employees of this policy and the need to refrain from any form of sexual harassment.
- 3.7 Management is required to implement this policy and take disciplinary action against employees who do not comply with this policy. Serious incidents of sexual harassment or continued harassment are dismissible offences.
- 3.8 Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially.
- 3.9 It is a disciplinary offence to victimize or retaliate against an employee who in good faith lodges a complaint of sexual harassment.
- 3.10 False or vindictive accusations shall be viewed in a very serious light.
- 3.11 Anonymous complaints will be disregarded.

3.1.1 SCOPE

- 3.1.2 The policy is applicable to all Councillors and employees including contract workers, interns and service providers irrespective of the position they hold and does not discriminate at any level.
- 3.1.3 All employees, job applicants and any other persons who have dealings with the Municipality have the right to be treated with respect and dignity.
- 3.1.4 Employees or any other person who have been subjected to sexual harassment have the right to lodge a grievance or lay a formal complaint with the Municipality
- 3.1.5 It should be noted that this policy also protects prospective employees as well as clients of the Municipality.

3.1.2 BASIC PRINCIPLES

The Employer wishes to create and maintain a working environment which is free of sexual harassment, where all employees respect one another's integrity and dignity, privacy and their right to equity in the workplace. The Employer views sexual harassment of a fellow employee or of a non-employee as serious misconduct. The Employer undertakes to take strict action in sexual harassment cases but cannot be held criminally or civilly liable for the actions of its employees where the Employer has acted appropriately.

In addition, victims of sexual harassment must not be made to feel that their grievances are ignored or trivialized, or fear reprisals. Implementation of the following guidelines can assist in achieving these ends:

- All employees must refrain from committing acts of sexual harassment.
- All employees have a role to play in contributing towards a working environment in which sexual harassment is unacceptable. They should therefore ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others.
- Management will attempt to ensure that persons such as the public, suppliers, job applicants and others who have dealings with the organization, are not subjected to sexual harassment, which occurs within the workplace.
- A victim of sexual assault/harassment has the right to institute separate criminal and/or civil proceedings against an alleged perpetrator, and the legal rights of the victim are in no way limited by this policy.

4 PROCEDURES

- 4.1 The municipality has instituted a set of procedures, which aim to ensure that:
- 4.1.1 complaints of sexual harassment are considered seriously and sympathetically and are dealt with promptly and confidentially; and
 - 4.1.2 the rights of both the Complainant and the alleged harasser are respected.
- 4.2 Where possible and appropriate, complaints should be resolved at a local level with a minimum of formal processes.
- 4.3 A person who believes he or she has experienced sexual harassment should attempt to resolve the matter by stating an objection directly to the alleged harasser. If the person feels unable to do this, or if this approach does not result in the cessation of the behaviour, the person may choose to activate the Municipality's internal procedure.
- 4.4 In addition to seeking advice, there are two possible steps in the internal procedures:
- 4.4.1 informal procedure; and
 - 4.4.2 formal complaint
- 4.5 The Complainant may withdraw the complaint at any stage. Despite this, the Municipality should still assess the risk to other persons in the workplace and determine whether formal steps ought to be taken.

5 RESPONSE TO A COMPLAINT

- 5.1 Complaints of sexual harassment must be brought to the attention of the Municipal Manager or his/her nominee as soon as is reasonably possible in the event if it's an employee who is referring the complaint. If the complaint is against the Municipal Manager or Senior Managers, to be referred to the Executive Mayor. In the event if it is a Councillor it must be brought under the attention of the Executive Mayor. If the complaint is against the Executive Mayor, to be referred to the Speaker.
- 5.2 Sexual harassment must be brought to the attention of the Manager by the Complainant or any other person aware of the sexual harassment. However, if the incident is of a serious nature, the Complainant is encouraged to inform the Manager in person.
- 5.3 Any complaint of sexual harassment will be recorded in writing by the Manager and will be referred to the Municipal Manager. The Municipal Manager or his/her nominee will manage the complaint.
- 5.4 The steps to be taken by the Municipal Manager on receipt of a Complainant should include, but are not limited to, the following:
 - 5.4.1 advise the Complainant that there are formal and informal procedures which can be followed;
 - 5.4.2 explain the formal and informal procedures to the Complainant;
 - 5.4.3 advise the Complainant that he/she may choose which procedure should be followed by the Municipality;
 - 5.4.4 advise the Complainant that the co-employee assisting him or her may not be called as a witness during any formal procedure;
 - 5.4.5 reassure the Complainant that he/she will not face any adverse consequences in choosing to follow either the formal or informal procedure;
 - 5.4.6 advise the Complainant that he/she is not bound by the outcome of the informal procedure and will have the right to appeal directly to the Municipal Manager or his/her nominee within five (5) days of the conclusion of that process;
 - 5.4.7 advise the Complainant that the matter will be dealt with confidentially;
 - 5.4.8 if applicable, advise the Complainant that no negative inference on his/her credibility will follow as a result of late reporting;

5.4.9 provide the Complainant with information about counselling available as well as information on how to access independent counselling services;

5.4.10 in appropriate circumstances, advise the Complainant of his/her right to refer the matter to the SAPS and obtain further legal advice outside of the Municipality.

5.5 The Complainant may withdraw the complaint at any stage. Despite this, the Municipality should still assess the risk to other persons in the workplace and determine whether formal steps ought to be taken.

6 INFORMAL PROCEDURES

6.1 An informal procedure is a process, managed by the Manager, in which relationships between the Complainant and alleged perpetrator(s) are explored with the consent of both, the aim of which is to reach resolution of a complaint in a manner that is satisfactory to all Complainant and alleged perpetrator(s).

6.2 The Complainant has the right to pursue formal proceedings after the conclusion of informal proceedings. The choice to pursue informal proceedings shall not in any way diminish the force of the original complaint.

6.3 The alleged perpetrator has the right to refuse participation in informal proceedings, and may exercise this right during any stage of the informal process. No negative inference shall be drawn from refusal to consider, participate or withdraw from the informal process.

6.4 An informal procedure may be followed by a formal procedure if the Manager believes that there are compelling reasons for this as specified in paragraph 5.

6.5 In an informal procedure, only the following information is recorded:

6.5.1 the fact that the informal procedure took place;

6.5.2 the names of the participants;

6.5.3 the date, time and location of the alleged incident;

6.5.4 the outcome of the informal procedure.

6.6 Informal proceedings require the written consent of both the Complainant and the alleged perpetrator, and

- 6.6.1 the availability and implications of informal proceedings shall be explained to the Complainant by the Manager before such proceedings;
 - 6.6.2 with the consent of the Complainant preparatory interviews with the alleged perpetrator may be held in the absence of the Complainant and with any other person(s) that may provide information to assist with the informal process;
 - 6.6.3 the structure, procedure and facilitation of any informal procedure will be agreed upon beforehand by the Manager, Complainant, alleged perpetrator and their representatives.
- 6.7 The informal procedure may include:
- 6.7.1 an approach to the alleged perpetrator with or without revealing the identity of the Complainant (depending on the choice of the Complainant) with information that certain forms of conduct constitute sexual harassment;
 - 6.7.2 a discussion where the objective is to give the alleged perpetrator an opportunity to apologise. The terms, conditions and acceptance of such an apology will be facilitated by the Manager;
 - 6.7.3 the presentation of the case in confidence to a group of not more than four persons, to consider suggestions and to make recommendations that may achieve a resolution based on agreement between the alleged perpetrator and the Complainant. The choice of participants in the discussion will be at the discretion of the Manager.
- 6.8 Every endeavour must be made to conclude the informal procedure within ten (10) days of the incident being reported.
- 6.9 Strict confidentiality regarding the process, participants and report will be maintained throughout this process.
- 6.10 No part of the informal procedure may be used as evidence in a subsequent hearing following the outcome of this process.

7 FORMAL PROCEDURES

- 7.1 A Complainant may choose to initiate formal proceedings, either with or without first following an informal procedure. The purpose of formal proceedings is to test the Complainant's allegations through the disciplinary process.

- 7.2 If a Complainant, following an informal procedure that does not result in a mutually acceptable outcome, does not wish to follow a formal procedure, the Employee Relations Practitioner will establish whether the Complainant requires any further advice or support.
- 7.3 If the Complainant wishes to proceed with a formal procedure, he/she shall advise the Employee Relations Practitioner of this, and prepare and sign a written statement providing full particulars of the alleged sexual harassment.
- 7.4 The formal processes for the presentation of the Complainant's case within the Municipality's Disciplinary Procedures will be initiated through the Supervisor/Manager.
- 7.5 While the Municipality's Disciplinary Code specifies a range of disciplinary sanctions, sanctions ought to be proportionate to the seriousness of the sexual harassment in question and the following range of sanctions ought to be considered:
 - 7.5.1 warnings may be issued for instances of sexual harassment;
 - 7.5.2 dismissal may ensue for continued instances of sexual harassment after warnings, as well as for serious instances of sexual harassment.
- 7.6 An alleged perpetrator of sexual harassment may refer a dispute arising from disciplinary action taken by the Municipality to the Bargaining Council.

8 CONFLICT OF INTEREST

- 8.1 All Employees involved in the informal or formal resolution of complaints of sexual harassment will ensure that they have no conflict of interest or bias in relation to any party to the complaint and that there is no perception by the parties that they have a conflict of interest or bias.
- 8.2 Employees who have concerns about perceptions of possible conflict of interest or partiality should exclude themselves from the process, refer on to another Manager if appropriate, or seek advice from the Employee Relations Practitioner.

9 VICTIMISATION

- 9.1 Complaints of victimisation will be treated seriously. Victimisation of Complainants is unlawful.
- 9.2 Victimisation includes any unfavourable treatment of a person who has been involved with a sexual harassment complaint. Unfavourable treatment could

include adverse changes in the working environment, denial of training or promotion, making negative, unfounded comments, lower assessment of work performance.

- 9.3 Complaints of victimisation related to a sexual harassment complaint will be dealt with in the same manner as complaints of sexual harassment and may result in disciplinary action.

10. SPECIFIC CONSIDERATIONS

10.1 Confidentiality

The Employer will endeavor to proceed with its investigation with caution and such protocol as to ensure that a case exists before proceeding. Because of the sensitivity and the nature of the issue employee confidentiality and protection must be ensured.

10.2 Identity

The Employer will endeavor as far as possible to withhold the identity of the complainant until such time as the investigation has been completed and it has been decided to pursue the enquiry route.

10.3 Protection

The Employer will investigate every complaint, whether reported or not, as the Employer could be found liable where steps have not been taken to resolve a case of sexual harassment. Sexually harassed employees should be given adequate sick leave and/or assistance for counseling where appropriate.

11. VEXATIOUS/MALICIOUS COMPLAINTS

If the complaint is found to be vexatious, action against the complainant may be taken under the municipality's disciplinary procedures.

This document was signed on the _____ of _____ 20__.

Municipal Manager

Union Representative (IMATU)

Union Representative (SAMWU)