

# **Rustenburg Local Municipality**

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## **SEXUAL HARASSMENT POLICY**

## **SEXUAL HARASSMENT POLICY : RUSTENBURG LOCAL MUNICIPALITY**

### **PREAMBLE**

The Rustenburg Local Municipality as part of local government should be seen to portray standards and practices that promotes justice in the workplace. Rustenburg Local Municipality has got a duty to provide a workplace free of harassment and unwelcome sexual advances.

It must be noted that when sexual harassment affects employee's performances at work, the productivity, focus and effectiveness of the individual and the group may suffer as the victim of harassment attempts to cope with his/her situation. Therefore Rustenburg Local Municipality has to end the frequency of constructive dismissal related to sexual harassment activity, the increase in staff turnover, and related expenses in training replacement employees are all hidden costs of sexual harassment in a workplace that we must avoid at all costs.

### **1. OBJECTIVES**

#### **THE OBJECTIVE OF THIS POLICY IS:**

- 1.1 to seek to eliminate sexual harassment in the Rustenburg Local Municipality and to provide appropriate procedures to deal with the problem and prevent its recurrence.
- 1.2 to encourage and promote the development and implementation of policies and procedures that will lead to the creation of workplaces free of sexual harassment, in which employers and employees respect one another's integrity and dignity, their privacy, and their right to equality in the workplace.
- 1.3 to deal with sexual harassment cases in a very sensitive, prompt, unbiased and confidential manner.
- 1.4 to ensure that neither the aggrieved nor the alleged harasser are victimized in any way by either management or workers.
- 1.5 to prevent employees, including job applicant, casuals and part-time employees from requesting or compelling to engage in sexual activity in return for employment, job retention, salary increase, promotion, or service benefits.
- 1.6 to guarantee job security and job related benefits of the aggrieved.
- 1.7 to ensure that all employees in the Rustenburg Local Municipality are conversant about sexual harassment and its related behaviour.

## 2. APPLICATION OF THE POLICY:

Perpetrators and/or victims of sexual harassment shall include, inter alia, the following:

- 2.1 Municipal Manager;
- 2.2 Directors;
- 2.3 Co-employees;
- 2.4 Subordinates;
- 2.5 Job applicants;
- 2.6 Clients;
- 2.7 Suppliers;
- 2.8 Contractors;
- 2.9 Others having dealings with the Council.

## 3. DEFINITION

- 3.1 Sexual harassment is any speech and/or conduct of a sexually discriminatory nature, which was neither welcomed or encouraged, committed by a co-employee which would be so offensive to a reasonable person as to create an abusive working environment and/or impair his/her job performance.
- 3.2 Sexual attention becomes sexual harassment if:
  - (a) the behaviour is persistent notwithstanding that this is a single incident of sexual harassment;
  - (b) the recipient has complained that he/she considers this behaviour as offensive, and/or;
  - (c) the perpetrator should reasonably have known that the behaviour is regarded as unacceptable and/or;
  - (d) the incident took place within the premises of the employer or in an area where official duties were to be performed.

## 4. FORMS OF SEXUAL HARASSMENT

Sexual harassment can take various forms that range from subtle attention to the worst forms of violence such as rape. Examples of forms it can take are outlined as follows:

### 4.1 QUID PRO QUO

This intentional act of harassment is an abuse of authority by an employer, supervisor or any member of management who has the power to employ or dismiss or change the working conditions of an employee. This can be done by suggestion of sex in return for a job, salary increases, application of threatened application of unfair disciplinary measures. This form amounts to sexual favoritism, which is unacceptable.

## 4.2 PHYSICAL FORMS

Physical conduct of a sexual nature includes all unwanted physical contacts, ranging from touching to sexual assault or rape, and includes but not limited to fondling breasts, pinching of buttocks, sexual patting, strip search by or in the presence of the opposite sex. This form also relates to people of the same sex and also refers to where unconventional sexual orientations are maintained and also to females harassing males.

## 4.3 VERBAL FORMS

These 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 towards them, unwelcome whistling directed at an individual or group of individuals.

## 4.4 NON-VERBAL FORMS

These forms include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects, leering and winking.

## 5. PROCEDURES REGARDING SEXUAL HARASSMENT CASES

The procedure is divided into two options including:

- 5.1 The informal procedure and
- 5.2 The formal procedure

### 5.1 THE INFORMAL PROCEDURE

The informal procedure shall be used for subtle forms of sexual harassment. This 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* or persistent forms of sexual harassment, unless the aggrieved chooses to follow an informal procedure.

- 5.1.1 Where possible, the aggrieved may wish to resolve the complaint without reference to formal procedures by approaching the alleged harasser, by writing a letter to the alleged harasser and/or by asking a member of management to mediate.
- 5.1.2 Should the informal mediation as described in 5.1.1 be successful in resolving the matter, no disciplinary action shall be taken against the alleged harasser.
- 5.1.3 The aggrieved and the alleged harasser shall be referred to relevant trauma crisis centres for counseling should they so wish. This will be the responsibility of the Council in the case of the aggrieved.

- 5.1.4 Should the informal mediation as described in 5.1.1 be unsuccessful in resolving the matter, formal procedures should be followed.

## **5.2 THE FORMAL PROCEDURE**

Where informal procedures are not applicable as contemplated in 5.1, the Council shall adopt the formal procedure. Only the disciplinary procedure shall be used to address such a complaint because of the sensitivity and seriousness of sexual harassment.

### **5.2.1 SUSPENSION**

In extreme forms of sexual harassment that involve 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 emoluments pending the outcome of the disciplinary hearing.

### **5.2.2 INVESTIGATION**

5.2.2.1 Once allegations of sexual harassment are brought to the attention of the Directors. The Director refer the matter to the Municipal Manager, an investigating officer shall be appointed by the Director-General or his/her delegate within five working days to investigate such claims.

### **5.2.3 DISCIPLINARY ACTION**

5.2.3.1 All rights as outlined in the Disciplinary Policy of the Council shall apply to both the aggrieved and the alleged harasser.

5.2.3.2 Upon failure by the Department to hold a disciplinary inquiry, the aggrieved shall declare a dispute by applying for a Conciliation Board in the prescribed manner. If the Conciliation Board fails to settle the matter, the aggrieved shall reserve the right to seek the intervention of the Commission for Conciliation, Mediation and Arbitration (CCMA).

5.2.3.3 Where the alleged harasser is not found guilty, disciplinary action will not be taken by the Rustenburg Local Municipality, against an employee who has filed a complaint in good faith. However, this Policy does not debar the alleged harasser from taking appropriate action on the grounds of defamation and the Council shall not be held responsible for any civil claims.

## 5.2.4 DISCIPLINARY MEASURES

5.2.4.1 Disciplinary measures shall include the following, but shall not be limited to:

- ❖ Verbal warning
- ❖ Written warning
- ❖ Final written warning
- ❖ Dismissal
- ❖ Suspended dismissal

5.2.4.2 For any sexual assault such as attempted rape, molestation, rape or strip search, summary dismissal shall be the appropriate sanction.

5.2.4.3 The Council shall be guided by the Code of Good Practice as contained in Schedule 8 of the Labour Relations Act, 1995 whenever it has to consider the action to take following the sexual harassment claim.

5.2.4.4 The aggrieved of sexual assault shall have the right to lodge separate criminal and/or civil claims against the alleged harasser, and the legal rights of the aggrieved shall in no way be limited by this Policy.

## 6. DISPUTE RESOLUTION

- 6.1 Where the alleged perpetrator is not satisfied with the outcome of the disciplinary hearing, the alleged perpetrator shall be afforded the opportunity to appeal.
- 6.2 The appeal against the decision of the disciplinary hearing shall be referred to the appeal committee.
- 6.3 Should a dispute that has been handled through conciliation not be resolved, the Commission of Conciliation, Mediation and Arbitration shall give the final ruling on the matter through arbitration.

## 7. LEAVE

- 7.1 In cases where the victim or the perpetrator has suffered emotional or physical stress, the Council shall, on request, grant the individual sick leave for trauma therapy.
- 7.2 Depending upon the environment and the extent of the relations between the aggrieved and the alleged harasser, the former, after having formally lodged the sexual harassment claim and during investigation, may be granted special paid vacation leave pending the outcome of the investigation.

- 7.3 Through the Employee Assistance Program (EAP) of the Council: Human Resources shall keep a list of service organizations that deal with trauma cases for the victim and/or alleged perpetrator.

## **8. CONFIDENTIALITY**

- 8.1 Although it might be difficult to guarantee confidentiality in sexual harassment cases given the legal duties involved and frequent conflict of rights and obligations, the Council has got the duty to ensure limitations on the number of persons that will have to be acquainted with the case.
- 8.2 Both the Council and employees must undertake reasonable steps to ensure that sexual harassment complaints are investigated and handled in a manner whereby the identities of the persons involved are kept confidential.
- 8.3 Management, employees and the parties concerned shall endeavour to ensure confidentiality in the disciplinary enquiry. Only appropriate disciplinary hearing, that is the aggrieved, alleged harasser, witnesses and interpreter, and chairperson shall be present in the disciplinary enquiry sessions.

## **9. EMPLOYEE'S RESPONSIBILITIES**

- 9.1 All employees have a role to ensure that a climate is created in which sexual harassment is unacceptable.
- 9.2 All employees shall ensure that their standards of conduct do not cause offence and that they discourage unacceptable behaviour on the part of others.

## **10. IMPLEMENTATION OF THIS CODE**

The above code shall be applicable from the date upon which the Council and Local Labour Forum approve this policy. Further, this policy will be superceded by national agreement on sexual harassment policy.