



SEXUAL HARASSMENT POLICY

2023/2024

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"B" – INFORMAL SEXUAL HARASSMENT COMPLAINT FORM

1. PURPOSE

The purpose of this policy is to address, prevent and curb sexual harassment within Maruleng Municipality.

2. PREAMBLE

Maruleng municipality:

- (a) Is committed towards creating a working environment where the dignity and respect of employees, non-employees and municipalities is upheld;
- (b) Is concerned about the occurrence of Sexual Harassment and is committed to prevent this kind of behaviour;
- (c) Disapproves of any form of Sexual Harassment;
- (d) Encourages all employees who have been or are being subjected to Sexual Harassment to bring it to the attention of their respective directorate by way of the procedures set out in the disciplinary procedures manual;
- (e) Will deal with all allegations of Sexual Harassment in a serious, exceptional, sensitive and confidential matter, and
- (f) Will strive to protect the parties involved in alleged Sexual Harassment against victimization.

3. LEGAL REQUIREMENTS

- (a) Employment Equity Act, 1998, Chapter 2 Clause 6 (1) and (3).
- (b) The Constitution of the Republic of South Africa 1996 Chapter 2 Clause 9, 10, 12 and 24(a).
- (c) Labour Relations Act 66 of 1995, Chapter VII (Code of Good Practice promulgated by Notice 1367 in Government Gazette of 17 July 1998) Section 16 of the Labour Relations Act, Chapter 3 section 16.

4. APPLICATION

This policy is applicable to all employees and Councillors of Maruleng Municipality. It also covers non-employees who allege to be victims of Sexual Harassment within municipality premises and employees discharging their official duties outside municipality premises."

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4.1 Application of the code

Although this code is intended to guide employers and employees, the perpetrators and victims of Sexual Harassment may include:

- Owners
- Employers
- Managers
- Supervisors
- Employees
- Job applicants
- Clients
- Suppliers
- Contractors
- Others having dealings with Customer Care services

4.2. Nothing in Point 2(a) above confers the authority on employers to take disciplinary action in respect of non-employees.

4.3. A non-employee who is a victim of Sexual Harassment may lodge a grievance with the employer of the perpetrator where the harassment has taken place in the workplace, or in the course of the perpetrator's employment.

5. OBJECTIVES

- (a) To prevent abuse of Human Rights
- (b) To promote a professional relationship amongst all employees
- (c) To promote a professional client relationship, and
- (d) To have guidelines in dealing with incidents of Sexual Harassment.

6. DEFINITIONS OF SEXUAL HARASSMENT

Sexual Harassment is any unwanted or unwelcome conduct of a sexual nature or other conduct based on sex, which causes discomfort to the victim. This can include unwelcome physical, verbal or non-verbal conduct.

6.1 Types of Harassment

There are various forms of Sexual Harassment that range from unwanted attention to the worst form of violence like rape.

Examples of Sexual Harassment may include the following but are not limited to the listed examples:

- Physical form
Touching, patting, pinching, fondling, molestation, assault, attempted rape
- Verbal form
Sexual advances, telephone calls with sexual overtones, sex related jokes or insults, enquiries about a person's life, whistling, and comments about a person's body.
- Non-verbal form
Leering, public display of offensive or derogatory pictures.

6.2 ***Quid pro quo*** harassment occurs where an owner, employer, or supervisor, member of management or co-employee, undertakes or attempts to influence the process of employment, promotion, training, discipline, dismissal, salary increment or other benefits of an employee or job applicant, in exchange for sexual favours.

6.3 ***Sexual favoritism*** 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.

It is important to note that it is the recipient of the remark, gesture or physical contact who will decide whether it is unwelcome.

6.4 **General Definitions**

"Disciplinary Committee" means the Sexual Harassment Disciplinary Committee".

7. CONDUCT PROHIBITED BY MARULENG MUNICIPALITY AS CONSTITUTING SEXUAL HARASSMENT

Any conduct that has been stipulated in the definition of Sexual Harassment (see 6 above) constitutes prohibited conduct.

- (a) Submission to such conduct is either an explicit or implicit term of the condition of employment;
- (b) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individuals; or
- (c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.
- (d) Retaliation or reprisal by the municipality, its officers, agents or employees against any employee who objects to, has filed a complaint of, or has reported an occurrence of Sexual Harassment is prohibited.

8. PROCEDURES FOR SETTLING COMPLAINTS OR GRIEVANCES RELATING TO ALLEGATIONS OF SEXUAL HARASSMENT

Sexual Harassment complaints shall be reported to the OHS Officer who is accountable to the Human Resource Division.

The procedure is divided into two levels:

- (a) Informal
- (b) Formal

The grievant has an option to decide whether he or she wants to follow a formal or informal procedure.

8.1 INFORMAL PROCEDURE

1. The recipient should speak to the perpetrator and inform him/her that the behaviour is unacceptable. The recipient should try to remain calm and courteous.
2. The recipient should keep records of each event namely, the date, time, location, what happened, what was said, how he/she felt, the names of any witnesses and the name of anyone else victimized by the perpetrator.
3. The recipient should also write a letter to the perpetrator or fill in the formal Sexual Harassment complaint form. The letter should include the following:
 - a description of the unwelcome behaviour;
 - date(s) and time(s) when the behaviour occurred;
 - a clear message that the recipient wants this behaviour to stop immediately;

- a warning that if the behaviour does not stop the recipient will take further action;
- the recipient's signature and date.

A copy of this letter or form should be placed in the recipient's personal file.

4. The recipient should ask someone else to talk to the perpetrator, or to accompany him/her when he/she talks to the perpetrator.
5. The recipient should report the incident to his /her supervisor or line manager and request help in dealing with the problem.
6. A generic approach should also be followed. The Human Resources Section should be approached and if possible, the problem should be resolved without implicating anyone. The OHS Officer should interview the recipient to check the effect of Sexual Harassment and where applicable referrals should be made.

8.2 FORMAL PROCEDURE

If the employee (recipient) feels that the informal process is notable to resolve the problem to his/her own satisfaction, the formal grievance procedure may be followed.

Firstly, the recipient should report the matter to his/her immediate supervisor.

If this does not solve the problem, a formal grievance may be filed against the perpetrator in terms of the conditions of employment. The matter will be investigated and should the situation warrant it, the matter should be referred to the Disciplinary Committee for formal action.

A victim of sexual assault has the right to press separate criminal and /or civil charges against an alleged perpetrator.

8.2.1 Composition of the Disciplinary Committee and levels of handling discipline

- Labour Relations Officer/Legal Advisor

- HR Manager
- OHS Officer
- Head of the department
- Presiding officer (level 1-4)
- The Municipal Manager has the power to appoint the Disciplinary Committee that must be gender balanced.

8.2.2 Human Resource Division

- OHS Officer

8.2.3 Structural Reporting of Sexual Harassment offences

8.2.3.1 Reporting by non-employees

In cases where the offence has occurred outside the Municipality premises but within the jurisdiction of Maruleng Municipality in the execution of official duties, the victim can immediately:

- Report the offence to the immediate supervisor of the employee, the Head of Department or OHS Officer.
- Report to his/her Ward Councillor, the Chief Whip of the Council or any member of the Mayoral Committee.

In cases where the offence has occurred outside the municipal premises but within the jurisdiction of the Maruleng municipality.

The victim can immediately:

- Report to the immediate supervisor of employee (if known), HOD
- Report to his/her Ward Councillor or Ward Committee Member who should inform the OHS Officer.
- Report to the Chief Whip of the perpetrator or any member of the Mayoral Committee.

8.2.3.2 Reporting by Councillors

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Any councillor who is a victim of sexual harassment can report the matter to:

- The Chief Whip
- Any member of the Mayoral Committee
- Any councillor serving on the Administration portfolio committee, who will then take the appropriate steps.

8.2.3.3 Reporting by employees

An employee who is a victim of sexual harassment offences can report the matter to:

- His/her immediate supervisor who should inform the Head of Department;
- Head of Department who should write a report to the OHS Officer, who will then take the appropriate steps.

9. INVESTIGATION AND DISCIPLINARY ACTION

- a) Care should be taken during an investigation of a Sexual Harassment grievance that the aggrieved person is not disadvantaged, and that the position of other parties is not prejudiced if the grievance is found to be groundless.
- b) The Code of Good Practice regarding Dismissal contained in Schedule 8 of the Labour Relations Act 1995 (No 66 of 1995) ("The Act"), reinforces the provisions of Chapter VII of the Act and provides that an employee may be dismissed for serious misconduct or repeated offences. Serious incidents of Sexual Harassment of continued harassment after warning are dismissible offences.
- c) In case of persistent harassment of single incidents of serious misconduct, employers ought to follow the procedures set out in the Code of Good Practice contained in Schedule 8 of the Labour Relations Act.
- d) The range of disciplinary sanctions to which employees will be liable should be clearly stated, and it should also be made clear that it will be a disciplinary offence to victimize or retaliate against an employee who in good faith lodges a grievance of Sexual Harassment.
- e) In cases where a Councillor has harassed or has been harassed the

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matter will be dealt with according to the Code of Good Practice of Councillors.

9.1 Disciplinary measures

Disciplinary measures should include the following, but will not be limited to:

- Counselling
- Verbal Warning
- Written Warning
- Final Written Warning
- Dismissal

9.2 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 policy.

9.3 Dispute Resolution

Should a complaint of alleged Sexual Harassment not be satisfactory resolved by the internal procedure set out above, the dispute should be referred to the Bargaining Council.

If unresolved, then the dispute should be referred by either party within 30 days of the dispute having arisen to the CCMA for conciliation in accordance with the provision of section 135 of the 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)

10 CONFIDENTIALITY

10.1 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.

10.2 In cases of Sexual Harassment, management, employees and

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parties concerned must endeavour to ensure confidentially at the disciplinary enquiry. Only appropriate members of management, and aggrieved person, his or her representative, the alleged perpetrator, witnesses and an interpreter, if required, should be present at the disciplinary enquiry.

10.3 Employer is required to disclose to either party or their representatives such information as may reasonably be necessary to enable the parties to prepare for any proceedings in terms of the policy.

10.4 The relevant provisions of the Labour Relations Act, 1995 (No 66 of 1995) section 16 will apply to the disclosure of information in terms of this policy.

11 ADDITIONAL SICK LEAVE

Where an employees existing sick leave entitlement has been exhausted, the employer should give due consideration to the granting of additional sick leave in cases of serious Sexual Harassment where the employee is on medical advice, requires trauma counselling.

12 INFORMATION AND EDUCATION

The Human Resource should ensure that copies of this policy are accessible and available.

Employers and employers' organisations should include information on Sexual Harassment in their orientation, education and training programmes for employees.

Trade unions should also include information on Sexual Harassment in their education and training programmes for shop stewards and their members.

NB: Maruleng Municipality will make use of relevant approved disciplinary codes and procedures to implement and enforce this policy

13 COUNSELLING

Where necessary, counselling will be provided via the Employees

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Assistance Programme.

14 MONITORING


Monitoring of the enforcement of this policy shall be done by the OHS Officer.

15. COMMENCEMENT

Irrespective of the date on which the policy is signed by the municipal manager, the policy comes into effect on the date of its adoption by council.

16. POLICY REVIEW

The policy will be revised on annual basis.

Resolution Number	SC05/05/2023
Version	02
Compiled by	Human Resources
Date Approved	29/05/2023
Effective Date	01 July 2023
Signature	

ANNEXURE "A"

THE IMPACT OF SEXUAL HARASSMENT

Sexual Harassment affects people's lives in a number of different ways. The impact of harassment is not confined to the psychological alone-harassment entails very real consequences for a person's job.

All people are vulnerable to sexual harassment, but some more than others. Additionally, the experience of sexual harassment carries negative consequences for all people – but once again, these consequences are more severe for some people. For example: a single person classified as an unskilled worker, is likely to find it considerably more difficult than a well-qualified professional person to find another job. Being without employment is also a risk that many single people simply cannot afford. Keeping quiet or submitting to the harassment may seem the lesser of two evils.

Knowing this, certain perpetrators target these vulnerable groups of people, comfortable in the knowledge that they are likely to get away with their behaviour.

JOB RELATED EFFECTS OF SEXUAL HARASSMENT

- Dismissal from work
- Involuntary transfer
- Demotion
- Loss of promotion, salary increases and/or other benefits
- Absenteeism
- Poor job performance
- Negative performance appraisals
- Resignation
- Retaliation/victimisation by other workers

PSYCHOLOGICAL EFFECTS OF SEXUAL HARASSMENT

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Listed below are some of the common psychological effects of sexual harassment.

Self-doubt

Many people believe that they ought to cope with sexual harassment on their own as well as prevent it from happening. When they are not able to do so, they may begin to lose confidence and doubt themselves. In addition, because so many myths surround sexual harassment, people may also doubt their understanding and perceptions of the incident(s).

Denial and self blame

Another way that some people might cope with harassment is by denying that it is happening or by blaming themselves. Since so few people know their legal rights or get help immediately, they may think that the harassment is their fault.

Humiliation

People feel devalued, demeaned and embarrassed when they experience harassment.

Loss of interest in work

Sexual harassment undermines trust in people – such as friends, family and colleagues who do not support or believe the aggrieved. Equality, it may cause the aggrieved to lose trust in her/his ability to judge people and situations.

Anger

Victims of sexual harassment often feel tremendous anger towards the perpetrator. They may also feel anger with others who do nothing about the harassment.

Depression

Some people may start to feel hopeless and despairing about the harassment. This can lead to a loss of weight or appetite, loss of energy, thoughts of suicide, changes in sleeping patterns, as well as impaired concentration. This can be particularly dangerous for people working with machinery where a lack of concentration may lead to accidents.

Psychosomatic ailments of illness

People might develop a range of stress related problems such as headaches, stomach cramps, diarrhoea or constipation and ulcers.

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Physical illnesses

In severe forms of sexual harassment, physical illnesses may easily be transmitted from one person to another, such as the sexually transmitted diseases and or HIV and AIDS.

Finally, it is important that every aggrieved be treated individually. Every experience of sexual harassment is different, and people may have different reactions to the experience of harassment.

These reactions will vary depending on:

- The degree of violence used
- Past exposure to trauma
- The reaction of family and friends
- The reaction of co-workers, union officials and management
- The police and the justice system
- Relationship to the perpetrator
- Age and background
- Peoples own personal resources

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Annexure "B"

INFORMAL SEXUAL HARASSMENT COMPLAINT FORM

The objectives of this report are three fold: firstly, it aims to deal with the nature of the offence that you have experienced in as much detail as possible. Secondly, it is intended to be a letter that you hand over to your perpetrator in order to (a) let him/her know that he/she has offended you and (b) let him/her know that you would like to be redressed (compensated for) in some reasonable way. Thirdly, this form is to be kept as a record of the perpetrators behaviour should the need for a formal disciplinary hearing arise.

Please fill out the form as honestly as possible and remember that what you write is confidential between you and your perpetrator.

COMPLAINANT'S NAME: _____

COMPLAINANT'S DEPARTMENT: _____

DATE (DD/MM/YY): _____

PERPETRATORS DEPARTMENT: _____

NUMBER OF OFFENCES: _____

1. Particulars of the incident. Please describe the nature of the offence (s) in as much detail as possible. In other words, was the offence verbal, non-verbal or physical? Describe it/them.

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2. Where and when did the incident (s) take place?

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3. Who was present at the time of the offence?

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4. How did the incident make you feel?

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5. Please state how you would like this problem to be solved. In otherwords, what would you like the perpetrator to do?

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.....
.....

DATE:

SIGNATURE:

N.S