



BA-PHALABORWA MUNICIPALITY
HUMAN RESOURCES
SEXUAL HARASSMENT POLICY

Revision History

REVISION	DATE	AUTHOR	REASON FOR CHANGE
1.0	MAY 2014	MOKOENA SS	NEW

Issued Date :

Effective Date : Date of Council Approval

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1. PREAMBLE

The Ba-Phalaborwa municipality is committed to providing an institutional environment where all employees perform their duties free from any form of harassment. Sexual harassment covers a range of behaviours, which constitute unwelcome conduct of a sexual nature and violates the rights of an employee and constitutes a barrier to equity in the workplace.

All managers of Ba-Phalaborwa municipality have a responsibility for addressing all reported harassment.

2. DEFINITIONS OF TERMS

2.1. **"Sexual Harassment"** is defined as an unwanted conduct of a sexual nature that violates the rights of a person. To determine whether a conduct constitute sexual harassment, the following factors are to be taken into account:-

- (i) Whether harassment is on the prohibited grounds of sex and /or gender (regardless of the sexual orientation of either the complainant and the alleged perpetrator)
- (ii) Whether the sexual conduct was unwelcome
- (iii) The impact of the sexual conduct on the complainant
- (iv) The nature and extent of the sexual conduct

2.2. **"Alleged perpetrator"** means a person alleged to have committed a act of sexual harassment

2.3. **"Complainant"** means a person who lodges a complaint under this policy or a person against whom an act of sexual harassment has allegedly been perpetrated.

2.4. **"Employee"** means an person who has been appointed by the Ba-Phalaborwa Municipality, who is subject to the rules and policies of the institution.

- 2.5. **"Confidentiality"** means that information is accessible only to those authorised to have access to it.
- 2.6. **"Same sex harassment"** means harassment where the alleged perpetrator and victim are of the same sex.

3. LEGISLATIVE FRAMEWORK

- 3.1. The Constitution of the Republic of South Africa
- 3.2. The Employment Equity Act
- 3.3. The Labour Relations Act
- 3.4. The Local Government Municipal Systems Act

4. SCOPE AND APPLICATION

The policy will apply to all employees of Ba-Phalaborwa Municipality regardless of the level of the position.

5. OBJECTIVES OF THE POLICY

The objective of the policy is 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.

To ensure that all employees refrain from committing acts of sexual harassment, and to regulate the processes to be followed when an act of sexual harassment has been reported.

6. POLICY CONTENT

6.1. FORMS OF SEXUAL HARASSMENT

The following becomes the **forms of sexual harassment** that warrants investigations and where necessary, disciplinary actions be taken against the alleged perpetrator.

6.1.1. Physical conduct

It includes all unwanted physical contact ranging from unwelcome patting, pinching, fondling, touching and kissing to molestation, sexual assault and rape including a strip (body) search by or in the presence of a member of the opposite sex, displaying pornography.

6.1.2. Verbal conduct

It includes unwelcome hints, suggestions, advances, comments, jokes, whistling and inappropriate enquiries that have sexual overtones or are sex-related and directly or in their absence directed at a person or group of persons. Examples are: unwelcome remarks, telephone call with sexual overtones, persistently rude or sexist jokes, unwelcome request for dates and graphic comment about a person's body.

6.1.3. Non-verbal conduct

It includes unwelcome gestures, e.g. persistent unwelcome winking and flirting, leering (suggestive staring), indecent exposure, the public display of sexually explicit or suggestive objects and pictures, eg pornographic pictures.

6.1.4. Sexual favouritism

This form of sexual harassment will be regarded as taken place if a person in authority shows inconsistency in the application of employment practices and procedures to the advantage of employees who respond to his/her sexual advances.

6.1.5. QUID PRO QUO harassment

This form of harassment occurs when 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.

NOTE: Sexual harassment has nothing to do with affection, flirtation, romance or relationships, **when both parties** consent freely thereto. Its only has to do with **coercion of power** and when an employee has **made it clear** that the behaviour is considered offensive and the perpetrator had continued with such behaviour.

6.2. PRINCIPLES AND RESPONSIBILITIES

6.2.1. Responsibility of management

- (i) Management must refrain from committing acts of sexual harassment.
- (ii) Management undertakes to deal with any allegations of sexual harassment speedily and without favour.
- (iii) Management further undertakes to deal with allegations of sexual harassment in a confidential manner.

- (iv) Any person bringing allegation of sexual harassment to the attention of management will be protected against victimization
- (v) Whilst Management will act against anyone who commits acts of sexual harassment it will also protect employees against false accusation.
- (vi) Subject to an investigation, management may suspend an employee on full pay but this is to be regarded as a precautionary measure only and does not in any way imply that the employee is guilty of any wrongdoing.
- (vii) Ensure that persons such as customers, suppliers, job applicants and others who have dealings with the business are not subjected to sexual harassment
- (viii) Promoting awareness programmes designed to prevent sexual harassment in the workplace.
- (ix) Making known the employer's policy, including the procedures for resolving complaints.

6.3. SPECIFIC CONSIDERATION

6.3.1. Confidentiality

The employer must ensure employee confidentiality and protection while dealing with investigation into the alleged sexual harassment due to its sensitivity.

6.3.2. Identity

The employer must endeavour as far as possible to withhold the identity of the complainant until such time as the investigation has been completed and has since decided to pursue the enquiry route.

6.3.3. Protection

The employer must investigate the reported sexual harassment, whether it was reported formally or informally to avoid legal steps that may be instituted against the employer should the matter not be resolved adequately.

It shall become the responsibility of the employer to give the harassed employee adequate sick leave and or assistance for counselling where possible.

6.4. PROCEDURES FOR RESOLVING COMPLAINTS

The procedure to give effect to this policy should ensure the resolution of problems in a sensitive efficient and effective way.

6.4.1. ADVICE AND ASSISTANCE

(a) It should be noted that Sexual harassment is a sensitive matter and the victim may not feel comfortable to approach the perpetrator, lodge a formal grievance or turn to colleagues for support.

(b) Therefore it becomes imperative that the employer should designate a person outside of line management whom victims of sexual harassment may approach for confidential advice.

(c) The name and location of the designated person will be communicated to all employees and the employer will put appropriate measures to support the person in fulfilment of his/her duties.

6.4.2. OPTIONS TO RESOLVE A PROBLEM

Employees have two options to resolve the sexual harassment conflict:-

(a) INFORMALLY

It may be sufficient, depending on the circumstances and the identity of the perpetrator, for the victim to request his/her supervisor, departmental head or in a very sensitive case, the designated person to create an opportunity where the victim can explain to the perpetrator that the behaviour displayed is unwanted and interferes with his/her work.

(b) FORMALLY

The victim may choose to follow the formal procedures as follows:-

- (i) The victim submit a grievance in writing to the designated person
- (ii) The matter must be pursued within the time frames stipulated in formal grievance procedure and in a confidential manner.
- (iii) The audi alteram partem rule must apply where the alleged perpetrator should be given an opportunity to state his side of the story in writing.

6.4.3. INVESTIGATION AND DISCIPLINARY ACTION

- (a) The sexual harassment case should be investigated with caution, taking into account the sensitivity it has. It shall be done without biasness, favouritism and in a confidential manner that will protect the affected employees.

- (b) Employers and employees must ensure that the grievance about sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.
- (c) Management, employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary enquiry i.e only appropriate members of management as well as the aggrieved person, representatives and the alleged perpetrator, witness and interpreter if required, must be present in the disciplinary enquiry.
- (d) If the outcome of the enquiry proved that there has been sexual harassment, the perpetrator will undergo disciplinary hearing against which a written warning will be issued. However, the repeated action or serious incidents of sexual harassment might lead to dismissal.
- (e) However, if the opposite is true that sexual harassment did not take place, the complainant may be dealt with following the disciplinary procedure where a verbal or written warning will be issued against him/her.
- (f) Depending on the severity of the case, disciplinary steps may also include redeployment of the complainant employee.
- (g) Victimization or retaliation against the employee who lodged a grievance of sexual harassment will not be tolerated and will constitute a disciplinary offence.
- (h) In case where sexual harassment has taken place, the employer will be obliged to support the victim by offering sick leave and counselling where necessary.

6.4.4. CRIMINAL AND CIVIL CHARGES

Despite the internal investigations and disciplinary action taken against the perpetrator, the victim has the right to press separate criminal/civil charges against the alleged perpetrator and the legal rights of the victim are in no way limited.

7. IMPLEMENTATION AND MONITORING

The policy will be implemented and become effective once approved by Council.

8. COMMUNICATION

The policy will be communicated to all employees using a full range of communication methods available in the municipality.

9. POLICY REVIEW

The policy shall be reviewed annually and revised whenever it is necessary.

10. DISPUTE RESOLUTION

Any dispute resolution processes shall be followed in the event of any grievances and disputes arising out of the implementation of this policy.

11. APPROVAL

MUNICIPAL MANAGER

DATE

COUNCIL

DATE