

# OVERBERG

## DISTRICT MUNICIPALITY

### SEXUAL HARASSMENT POLICY



<b>Council Resolution No:</b>	.....
<b>Date:</b>	.....
<b>Municipal Manager:</b>	.....
<b>Executive Mayor</b>	.....
<b>Reference No:</b>	.....
<b>Municipal Code No:</b>	.....

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## 1. INTRODUCTION

Overberg District Municipality is committed to ensuring that employees are not subject 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. Managers at Overberg District Municipality have a responsibility to address all reports of harassment.

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. Sexual harassment of a fellow employee or of a non-employee is serious misconduct.

## 2. POLICY STATEMENT

- All employees, job applicants and any other persons who have dealings with Overberg District Municipality have the right to be treated with respect and dignity.
- 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 Procedure and Code Collective Agreement and the related legislation.
- 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 Overberg District Municipality.
- Overberg District Municipality is committed to investigate all complaints and grievances brought to its attention.
- Overberg District Municipality undertakes to inform all employees of this policy and the need to refrain from any form of sexual harassment.
- It should be noted that this policy also protects prospective employees as well as clients of Overberg District Municipality.
- Management is required to implement this policy and take disciplinary action against employees who do not comply with this policy. Incidents of sexual harassment or continued harassment are dismissible offences.
- Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially.
- It is a disciplinary offence to victimize or retaliate against an employee who in good faith lodges a complaint of sexual harassment.
- False or vindictive accusations shall be viewed in a very serious light and will lead to disciplinary steps taken against such complainant.
- Anonymous complaints will be disregarded.

## 3. DEFINITION

Sexual harassment means any:

- (a) unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome;
- (b) unwelcome explicit or implicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances, which a reasonable person having regard to all the circumstances would have anticipated that the complainant or related person would be offended, humiliated or intimidated;
- (c) implied or expressed promise of reward for complying with a sexually oriented request; or
- (d) implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request.
- (e) sexual harassment is a form of unfair discrimination on the basis of sex and/or gender and/or sexual orientation which infringes the rights of the complainant and constitutes a barrier to equity in the workplace.

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#### 4. DIFFERENT FORMS OF SEXUAL HARASSMENT

Sexual attention becomes sexual harassment if:

- The behaviour is persistent, although a single incident of harassment can also constitute sexual harassment depending on the gravity of the incident.
- The recipient has made it clear that the behaviour is considered offensive and the perpetrator had continued with such behaviour.
- The perpetrator should have known that the behaviour is unacceptable.

Sexual harassment may include:

- Unwelcome remarks, jokes, innuendoes or taunts about a person's body, clothing or sex;
- Insulting gestures and practical jokes of a sexual nature which causes awkwardness or embarrassment;
- Displaying pornographic pictures, graffiti or other offensive material;
- Leering (suggestive staring);
- Demands for sexual favours.

The Employer will make every reasonable effort to ensure that no employee, members of the public, suppliers and job applicants is subjected to sexual harassment. In the event that sexual harassment is alleged, the disciplinary procedure must apply.

The following are examples of the various forms of sexual harassment but the list is not exhaustive:

**Physical conduct** of a sexual nature includes all unwanted physical contact, ranging from touching to sexual assault and includes a strip search by/or in the presence of another person.

**Verbal** forms of sexual harassment include unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtures, 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 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.

**5. PROCEDURE**

5.1 Complainants in sexual harassment matters has the right to follow procedures in the policy and appropriate action must be taken by the employer.

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5.2 Employees who are the victims of sexual harassment must bring it to the attention of the employer, immediately.

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5.3 Employees who are aware of acts of sexual harassment in the workplace must also report it to the employer, immediately. (In this context "employer" means the Municipal Manager, a Senior member of Management, co-employee, supervisor or HR Official.)

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5.4 Upon receipt of the complaint the employer other than a HR Official, must report the allegations to the Department Human Resources.

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5.5 In addition, the Department Human Resources will also offer the employee EAP assistance.

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5.6 It is the duty of the Department Human Resources to advise the complainant of the procedures that may be followed in dealing with the allegations, in accordance with the provisions of paragraph 8.5 of the amended Code of Good Practice on the Handling of Sexual Harassment cases in the Workplace issued in terms of the Employment Equity Act, Act 55 of 1998.

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5.7 The complainant may choose to follow one of the following procedures:

**A. Informal Procedures**

- The complainant or another appropriate person explains to the perpetrator that the conduct in question is not welcome, that it is offensive to the complainant, makes the complainant feels uncomfortable and it interferes with the complainant's work.

Or,

- An appropriate person approaches the perpetrator without revealing the identity of the complainant and explains to the perpetrator that certain forms of conduct constitute sexual harassment are offensive and unwelcome, make employees feel uncomfortable and interfere with their work.
- An employer should consider any further steps which can be taken to assist in dealing with the complaint.

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## B. Formal Procedures

- A complainant may choose to follow a formal procedure either with or without following an informal procedure.
- In the event that the complainant does not choose to follow a formal procedure, the employer will still assess the risk to other persons in the workplace, where formal steps have not been taken against the perpetrator.
- If it appears to the employer after proper investigation that there is a significant risk of harm to other persons in the workplace the employer may follow a formal procedure irrespective of the wishes of the complainant and advise the complainant, accordingly.
- A formal procedure is triggered by lodging a formal grievance in terms of the grievance procedure.
- A copy of the grievance must be submitted to the Department Human Resources.
- The grievance will then be dealt with in terms of the grievance procedure.
- The outcome of the grievance can lead to formal disciplinary action in terms of the Disciplinary Procedure Collective Agreement of the SALGBC.
- Should the complainant not be satisfied with the outcome of the grievance a dispute may be referred to the SALGBC.

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## 6. SPECIFIC CONDITIONS

### 6.1 Confidentiality

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.

In cases of sexual harassment, management, employees and the parties concerned must 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.

### 6.2 Protection of Identity and employees

Overberg District Municipality will as far as possible protect the identity of the complainant, ~~until such time as the investigation has been completed and decided to pursue with a disciplinary enquiry.~~

Care should be taken not to disadvantage or prejudice any of the parties.

It is a disciplinary offence to victimise or retaliate against a complainant, who in good faith lodges a complaint of sexual harassment.

It will also be a disciplinary offence to lodge a malicious claim of sexual harassment against any employee.

### 6.3 Assistance

Sexual harassment must be reported to the victim's immediate supervisor or any colleague or the Manager Human Resources. Cases of sexual harassment will be resolved in a sensitive, effective and efficient manner.

Where an employee's existing sick leave entitlement has been exhausted, the employer 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 counselling.

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.

#### 6.4 DISCIPLINARY SANCTIONS

Depending on the circumstances of the matter, the following sanctions may be imposed on an employee found guilty of sexual harassment:

- A warning may be issued for minor instances of sexual harassment.
- Dismissal may ensue for continued minor instances of sexual harassment after warnings, as well as serious instances of sexual harassment.
- In appropriate circumstances on being found guilty of sexual harassment the perpetrator may be transferred to another position in the workplace.
- Despite the above, any other appropriate sanction as prescribed in the Disciplinary Procedure Collective Agreement may be imposed.

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#### 7. EFFECTIVE DATE

This policy shall come into effect on the date which it was adopted by Council and shall remain in full force and effect until it is reviewed, revoked or amended by Council.

#### 8. ROLES

The policy applies to all employees, Councillors, prospective employees and members of the public.

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#### 9. RELATED POLICIES/LEGISLATION

- ~~Code of Good Practice: Dismissal, Schedule 8 of the LRA, 1995~~
- ~~Code of Conduct for Municipal Employees, Schedule 2 of the Local Government: Municipal Systems Act, Act 32 of 2000~~
- ~~Code of Good Practice on the Handling of Sexual Harassment, sec 203 of the LRA, 1995~~
- Protection from Harassment Act, 17 of 2011
- Amended Code of Good Practice on Handling Sexual Harassment in the Workplace: Employment Equity Act, 55 of 1998
- Disciplinary Procedure and Code Collective Agreement (SALGBC)
- Main Collective Agreement (SALGBC)