

# **PREVENTION AND ELIMINATION OF HARASSMENT IN THE WORKPLACE POLICY**

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### **1. BACKGROUND**

- 1.1 All employees have the right to work in a pleasant and productive work environment where the individual rights and dignity of each employee are respected. This includes the right to work in an environment that is free from conduct of a harassing or abusive nature. In order to maintain an atmosphere of mutual respect conduct characterized of any form of harassment will not be condoned or tolerated.**

### **2. OBJECTIVES OF THE POLICY**

- 2.1 It is to make known the Matatiele Local Municipality's concern for the well-being of its employees, and its commitment to providing a work**

environment free of any form of harassment. It outlines the procedure for dealing with harassment situations and seeks to increase employee awareness by creating credible and even-handed mechanisms.

- 2.2 To eliminate all forms of harassment as a form of unfair discrimination in the workplace.**
- 2.3 To provide appropriate procedures to deal with problems of harassment and prevent its recurrence.**
- 2.4 To encourage and promote the development and implementation of policies and procedures that will lead to creation of the workplace that is free of any form of harassment where the Municipality and its Councillors and employees respect one another's integrity, privacy and the right to equality at the workplace.**

### **3. APPLICATION OF THE POLICY**

- 3.1 The policy shall apply to all Municipal councillors and employees irrespective of the nature of attachment to the Municipality. It also includes applicants for employment.**
- 3.2 The protection of employees against harassment applies in any situation in which the employee is working or which is related to their work. This includes but not limited to:**
  - 3.2.1. workplace which includes both public and private spaces in which people perform their duties;**
  - 3.2.2. places where the employee is paid, takes a rest or a meal, or uses a sanitary, washing or changing, breastfeeding and medical facilities;**
  - 3.2.3. work-related trips, travel, training, events, or social activities;**
  - 3.2.4. work-related communications, including those enabled by information and communication technologies and internet based platforms;**
  - 3.2.5. employer provided accommodation, which includes housing;**
  - 3.2.6. when commuting to and from work in transport provided or controlled by the employer.**

### **4. DEFINITIONS**

- 4.1 Advance: Give active support to a person, cause or plan.**

- 4.2 Associate:** A person or an organization having partial rights or subordinate status whilst doing business with or for the Municipality
- 4.3 Brushing:** Graze or touch in passing.
- 4.4 Coerces:** Persuade or restrain an unwilling person by force.
- 4.5 Conduct:** Behaviour in its moral aspect.
- 4.6 Employee:** For the purpose of this policy, the meaning of an employee shall include a functionary and an employee of an associate
- 4.7 Functionary:** A person acting in an official capacity or in an organization.
- 4.8 Harassment:** Annoy continually and repeatedly.
- 4.9 Hostile:** Unfriendly or opposed.
- 4.10 Indecent:** Offending against recognized standards.
- 4.11 Intimidate:** To frighten; overawe; subdue or influence.
- 4.12 Isolating:** Cutting or separating off from others.
- 4.13 Leering:** Look slyly or maliciously.
- 4.14 Obscene:** Offensively indecent by offending accepted sexual morality.
- 4.15 Offensive:** An aggressive action, forceful action in pursuit of a cause.
- 4.16 Patting:** A sign of affection by striking gently with the inner surface of the hand.
- 4.17 Proctor:** A member of staff designated to assist in handling harassment cases.

4.18 Suggestive: Conveying a suggestion of an indecent or improper remark.

4.19 Unsolicited: Not asked for; given or done voluntarily.

4.20 (Un)reciprocate: Offer or give something in return.

## 5. LEGAL FRAMEWORK

5.1. The International Labour Law (ILO) provides for the elimination of violence and harassment in the world of work.

5.2. The Employment Equity Act No. 55 of 1998, prohibits the harassment of employees

*on grounds listed in terms of section 6 (1) (no person may unfairly discriminate, directly or indirectly against an employee, in any employment policy or practice, on one or more grounds. Including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth).*

5.3. Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, 18 March 2022.

5.4. Constitution of the Republic of South Africa 108 of 1996 Sec 23(1) provides that everyone has the right to fair labour practices.

5.5. Promotion of Equity and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA). The Act regulates harassment and discrimination occurring in the society in general, this applies in cases where for instance, harassment of an employee by a client, customer, independent contractor or any other member of the public as well as where the employee is commuting on public transport

5.6. Labour Relations Act, 66 of 1995. Employers are required to ensure that persons who engage in harassment, including violence are subjected to discipline in accordance with the Code of Good Practice.

5.7. Occupational Health and Safety Act, 85 of 1993. Employers have an obligation to protect employees against any harassment which would endanger the health and safety of an employee.

5.8. Protection Disclosure Act, 26 of 2000. Prohibits the acts of harassment against an employee for having made a protected disclosure (whistleblowing).

5.9. Protection from Harassment Act, 17 of 2011. Enables individuals who are subjected to harassment to obtain protection order, including an interim protection order against the harasser.

## 6. DEFINITION OF HARASSMENT

Harassment is understood to be unwanted conduct, which impairs dignity;

- Which creates a hostile or intimidating work environment for one or more employees or is calculated to, or has the effect of, including submission by actual or threatened adverse consequences and
- Is related to one or more grounds in respect of which discrimination is prohibited in terms of section 6(91) of the Employment Equity Act.
- Harassment includes violence, physical abuse, psychological abuse, emotional abuse, sexual abuse, gender-based abuse and racial abuse. It includes the use of physical force or power, whether threatened or actual against another person or against a group of community.

## **6.1. Unwanted conduct**

- 6.1.1. The criterion that harassment involves unwanted conduct distinguishes acts of harassment from acceptable conduct in the workplace. Two primary issues arise in evaluating whether the harasser/perpetrator knew or should have known that the conduct was unwanted.
- 6.1.2. the issue arises whether the complainant communicated to the harasser/perpetrator that the conduct was unwelcome. This may have occurred verbally or non-verbally and may have been communicated directly or indirectly to the harasser/perpetrator.
- 6.1.3. if there is no such communication, it will still be necessary to examine whether the conduct was of such a nature that the harasser/perpetrator knew or should have known that the conduct of the type engaged in, is generally considered to be unacceptable.
- 6.1.4. while violent conduct may amount to harassment, harassment may occur as a result of non-violent conduct.
- 6.1.5. Whether or not conduct constitutes harassment, should be assessed on an objective basis from the perspective of the employee who alleges harassment. The primary focus of the enquiry as to whether there has been harassment, is on the impact of the conduct on the employee. However, there may be circumstances in which the perceptions of the person harassed are not consistent with the views of a reasonable person in the situation of the complainant.

## **6.2. Repeated or serious conduct**

- 6.2.1. harassment may occur as a result of a pattern or persistent conduct or a single instance or event. In the case of a single instance, harassment will be present if the conduct is of a serious nature. Whether a single instance of conduct will be sufficiently serious to constitute harassment must be determined in light of the event that is the subject of the complaint.
- 6.2.2. harassment, in particular bullying, may be an escalating process in the course of employment in which the complainant ends up in an inferior position and becomes the target of systematic negative social acts.
- 6.2.3. the following factors may be relevant to the issue of whether harassment has occurred:

- 6.2.3.1. the context of the harassment;
- 6.2.3.2. the circumstances of the complainant and the impact that the conduct has had on an employee; and
- 6.2.3.3. the respective positions of the harasser/perpetrator and complainant.

### **6.3. Hostile environment**

- 6.3.1. A hostile work environment will be present where conduct related to a prohibited ground impacts on the dignity of one or more employees. This will be present if the conduct has a negative impact on the employee's ability to work and /or on their personal well-being. This may be the result of conduct of the persons in authority such as managers and supervisors or the conduct of the other employees.
- 6.3.2. A hostile environment may also be present where an employer should anticipate that employees will be subject to abusive conduct related to a prohibited ground by members of the public, customers or clients and fails to take reasonable steps to protect employees from such conduct.
- 6.3.3. Harassment is considered to be direct where it is aimed at the complainant, for example, violent conduct or abusive language which is directed at the complainant. Harassment may occur indirectly where the conduct, even though not directed at the complainant, has the effect of undermining dignity or threatening safety.

## **7. Types of harassment**

- 7.1. Harassment may be the result of physical, verbal, or psychological conduct.
- 7.2. Physical harassment includes physical attacks, simulated or threatened violence, or gestures (such as raising a fist as if to strike a person or throwing objects near a person).
- 7.3. Verbal bullying may include threats, shaming, hostile teasing, insults, constant negative judgement and criticism, or racist, sexist.
- 7.4. Psychological harassment in the workplace may be associated with emotional abuse and involves behaviour that has serious negative psychological consequences for the complainant(s) such as is often the case with verbal abuse, bullying and mobbing.
- 7.5. A wide range of conduct in the workplace may constitute harassment. Examples of harassment include but not limited to:
  - 7.5.1. slandering or maligning an employee or spreading rumours maliciously;
  - 7.5.2. conduct which humiliates, insults or demeans an employee;
  - 7.5.3. withholding work-related information or supplying incorrect information;
  - 7.5.4. sabotaging or impeding the performance of work;
  - 7.5.5. ostracising, boycotting, or excluding the employee from work or work-related activities;
  - 7.5.6. persecution such as threats, and the inspiration of fear and degradation;

- 7.5.7. intolerance of psychological, medical, disability or personal circumstances;
- 7.5.8. surveillance of an employee without their knowledge and with harmful intent;
- 7.5.9. use of disciplinary or administrative sanctions without objective cause, explanation, or efforts to problem solving;
- 7.5.10. demotion without justification;
- 7.5.11. abuse, or selective use of, disciplinary proceedings;
- 7.5.12. pressurising an employee to engage in illegal activities or not exercise legal rights or
- 7.5.13. pressurising an employee to resign.

## **7.6. Prohibited grounds**

- 7.6.1. Harassment of an employee is prohibited in terms of section 6(1) of the Employment Equity Act, if the harassment is related to one or more prohibited grounds.
- 7.6.2. It may also be possible for a person who has been harassed to establish that the conduct was a result of an arbitrary grounds, as contemplated by section (1) of the Employment Equity Act.

## **8. SEXUAL HARASSMENT**

**Sexual Harassment may be broadly defined as constituting unwanted sexual attention or any unwanted pressure involving one's sexuality and/or unwanted, unsolicited and unreciprocated conduct of a sexual nature which substantially interferes with an employee's work performance.**

**It can also be defined as any form of sexual behaviour that has a detrimental effect on the terms and conditions of employment, and/or creates an intimidating, hostile or offensive work environment.**

**It can further be described as unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual, although sexual harassment encompasses a broad range of conduct it usually falls into two broad categories, that is power relationships and a hostile working environment: -**

- 8.1. A power relationship is where a person authority coerces a subordinate to render sexual favours as an implicit term or condition of employment: -
  - 8.1.1. If the employee accedes to the request, tangible job benefits follow.
  - 8.1.2. If the employee refuses he/she may face adverse job related consequences which may range from assignment change, transfer, demotion, denial of promotion or withholding confirmation from probationary status and finally to dismissal or threat of dismissal.
- 8.2. A hostile working environment is where a co-employee and/or subordinate's conduct has the purpose or effect of interfering with an employee's work performance or creates a sexually intimidating or hostile or offensive work environment which negatively affects the victim's psychological health.

**8.3. It is Matatiele Local Municipality's belief that employees should be able to work in an environment that is free from all forms of harassment, particularly those involving: -**

**8.3.1 Unwelcome, unwanted, unsolicited and unreciprocated sexual advance/attention in return for money, promotions, or other workplace opportunities.**

**8.3.2. Workplace decisions affecting an individual's employment when the same individual believes that these were made because of his/her reactions to those kinds of advances.**

**8.3.3. Other sexually harassing conduct in the workplace that may create offensive work environment, whether it be in the form of physical, verbal or visual harassment by supervisors, co-workers and/or non-employees.**

**8.3.4. Should any of these become a concern, the Municipality has a need to know about the circumstances that are affecting the employee's performance or making him/her uncomfortable at work.**

**8.4 What constitutes sexual harassment?**

**8.4. Any action or behaviour that involves:**

**8.4.1 Verbal abuse, gesture or innuendos of a sexual nature;**

**8.4.2. Display of sexually offensive material (e.g. posters, magazines, cartoons, drawings etc);**

**8.4.3. Sexist or suggestive remarks regarding a person's sex or private life;**

**8.4.4. Sexual teasing and jokes;**

**8.4.5. Obscene gestures;**

**8.4.6. indecent exposure;**

**8.4.7. Suggestive comments regarding a person's appearance or body;**

**8.4.8. Unwanted physical touching, patting or brushing up against another person;**

**8.4.9. Leering, suggestive looks, whistling;**

**8.4.10. Direct sexual proposition or continued pressure for dates and / or sexual favour.**

**8.4.11. Letters or telephone calls or texts of a sexual nature.**

**8.4.12. sexual demands or requests or propositions in return for hiring or promotion or as condition of employment;**



**8.4.13. Employment decisions based on submission to or rejection of the request;**

**8.4.14. Indecent assaults;**

**8.4.15. Rape**

**8.5. The following do not constitute sexual harassment: -**

**8.5.1. Behaviour acceptable to the recipient, such as occasional compliments.**

**8.5.2. The mutual attraction between employees, which is a private concern.**

**8.6. Sexual attention becomes sexual harassment if:**

- a) The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; and or**
- b) The recipient has made it clear that the behaviour is considered offensive; and or**
- c) The perpetrator should have known that the behaviour is regarded as unacceptable.**

## **9. RACIAL, ETHNIC OR SOCIAL ORIGIN HARASSMENT**

**9.1. Racial harassment is a form of unfair discrimination prohibited by section (6)1 of Employment Equity Act which is related to a person's membership or presumed membership of a group identified by one or more of the listed prohibited grounds or characteristics associated with such group. Racist conduct, including derogatory language, is contrary to the founding principles of the Constitution, in particular the values of non-racialism, dignity and equality.**

**9.2. Racial harassment is unwanted conduct which can be persistent or a single incident that is harmful, demeaning, humiliating or creates a hostile or intimidating environment.**

**9.3. the forms of racial harassment may include:**

**9.3.1. Abusive language and racist jokes, cartoons, or memes, including communications that amounts to hate speech;**

**9.3.2. Racially offensive written or visual material, including on-line harassment;**

**9.3.3. Racist name calling or negative stereotyping impacting on a person's dignity;**

**9.3.4. offensive behaviour in the form of open hostility to persons of a specific racial or ethnic groups;**

**9.3.5. Subtle or blatant exclusion from workplace interaction and activities and other forms of marginalisation; and**

**9.3.6. Threatening behaviour, which intimidates a person or creates a hostile environment.**

**9.4. The test to be applied for racial harassment includes:**

- 9.4.1. Racial harassment must be assessed objectively with reference to the reaction of a normal or reasonable person in keeping with the values underlying the constitutional order.**
- 9.4.2. to establish harassment based on race or ethnic or social origin, it has to be established on a balance of probabilities that the conduct complained of was related to race, ethnic or social origin, or a characteristic associated, or assumed to be associated with such as group.**

## **10. PROCEDURE FOR REPORTING, AND DEALING WITH HARASSMENT**

- 10.1. All councillors and employees are to report sexual harassment to a human resource manager, to any manager or supervisor or any another other person in the position of authority.**
- 10.2. If the person to whom harassment normally would be reported is the individual accused of harassment, report may be made to another manager, supervisor or Human Resource Manager.**

**All the above mentioned must acknowledge and record when a report is received.**

- 10.3. Report of sexual harassment shall be brought as soon as possible after the alleged conduct occurred, or any time within a period of two months from date of the alleged offence.**
- 10.4. Prompt reporting will enable the municipality to investigate the facts, determine the issues and provide an appropriate remedy or disciplinary action.**
- 10.5. The Municipality shall respond to the report of any form of harassment brought after two months to the greatest extent possible, taking into account the amount of time that has passed since the alleged conduct occurred**
- 10.6. Individuals making allegations of harassment shall be informed about options for resolving potential violations of the Policy on Prevention and Elimination of Harassment in the workplace.**

**These options shall include procedures for early resolutions, procedure for formal investigation and filing of complaints or grievances under applicable municipal complaint resolution and grievance procedure**

**Individuals making allegations also shall be informed about policies applying to confidentiality of reports under this policy.**

**Municipality shall respond to a greater extent possible to reports of harassment brought anonymously or brought not directly involved in the harassment.**

**Individuals bringing allegation of harassment shall be informed about the range of possible outcomes of the report, including interim protection, remedies for the**

**individual harmed by the harassment and disciplinary actions that might be taken against the accused.**

**Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially.**

**Employees will be protected against victimization, retaliation for lodging grievances and from false accusations.**

**The discussion should be treated as private and strictly confidential and should not result in a formal complaint, unless the complainant wishes to pursue the matter through formal investigation.**

**In this case only those people affected by the investigation will be informed of the case at hand**

**Immediate follow up by the Municipality is necessary to establish its concern for prevention.**

**There should, however, be no immediate judgement that harassment has or has not occurred. Careful and deliberate consideration must be given to protect both the person bringing the allegation, and the person accused.**

## **10.7. FORMAL INVESTIGATION OF ALLEGED HARASSMENT**

### **10.7.1. shall incorporate the following standards:**

- **The individual accused of conduct violating this Policy shall be provided with a copy of the written request for formal investigation or otherwise given a full and complete written statement of the allegations, a copy of this Policy and procedure for responding to allegation of any form of harassment.**
- **The individual(s) conducting the investigation shall be familiar with the policy and have training or experience in conducting investigation.**
- **The investigation general shall include interviews with the parties if available, interviews with witnesses as need a review of the relevant document as appropriate.**
- **Disclosure of facts to parties and witnesses shall be limited to what is reasonably necessary to conduct a fair and thorough investigation.**
- **Participants in an investigation shall be advised that maintaining confidentiality is essential to protect the integrity of the investigation.**
- **Upon request the complainant and the accused may each have a representative present when he/she is interviewed.**
- **Other witnesses may have a representative present at the discretion of the investigator or as required by applicable Municipal Policy or a Collective Bargaining Agreement.**

- At anytime during the investigation, the investigator may recommend that interim protections or remedies for the complainant or witnesses be provided by appropriate municipal officials.
- These protection or remedies may include separating the parties, placing limitation on contact between the parties or making alternative working arrangement. failure to comply with the terms of interim protection may be considered a separate violation of this policy.
- The investigation shall be completed as promptly as possible and in most cases within 60 working days of the date the request for formal investigation was filed. These deadlines maybe extended on approval by the Municipal Manager.
- Generally, an investigation should result in a written report that includes a statement of allegations and issues, the positions of the parties, a summary of the evidence, findings of fact, and a determination by the investigator as to whether the municipal policy has been violated.
- The report may also contain a recommendation for actions to resolve the complaint, including educational programmes, remedies for the complainant and a referral to the disciplinary procedures as appropriate.
- The report shall be submitted to the appropriate municipal official with authority to implement the actions necessary to resolve the complaint.
- The complainant and the accused shall be informed promptly in writing when the investigation is completed.
- The complainant and the accused may request a copy of the investigation report, pursuant to municipal Policy governing privacy and access to personal information.

## **11. ADDITIONAL SICK LEAVE**

- Where an employee's sick leave entitlement has been exhausted, the Municipality shall give due consideration to the granting of sick leave in cases of serious harassment where the employee on medical advice requires trauma counselling.
- If harassment result in an employee being ill for longer than two weeks, the employee may be entitled to claim illness benefits in terms of section 20 of the Unemployment Insurance Act, 2001.
- In appropriate circumstances, employers may give consideration to assisting with the cost of medical advice and trauma counselling and care through Employee Assistant Programme.

## **12. ADVICE AND ASSISTANCE**

- ### **12.1 Sexual harassment is a serious and a sensitive issue and a victim may feel unable to approach the perpetrator lodge a formal grievance or turn to colleagues for support. The Human Resources Department shall in consultation with employee representatives appoint a male and a female and have them trained as proctors to**

deal with sexual and other harassment complaints and whom victims may approach for confidential advice.

#### **12.2. 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.

#### **12.3. External Dispute resolution**

Should a complaint of alleged harassment not be satisfactorily resolved by the internal procedures set out above, either party may within 30 days of the dispute having arisen, refer the matter to the SALGBC for Conciliation in accordance with the provisions of section 135 of the Labour Relations Act. Should the dispute remain unresolved, either party has the right to refer the matter to the Labour Court.

#### **12.4. Confidentiality**

12.4.1. The Council, Management and employees must ensure that grievances about harassment are investigated and handled in a manner that ensures that the identities of persons involved are kept confidential.

12.4.2. In cases of sexual harassment, Management, Employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary enquiry.

12.4.3. Only relevant members of management as well as the aggrieved person, representative, alleged perpetrator, witnesses and interpreter (if required), must be present in the disciplinary enquiry.

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

12.4.4. The relevant provisions of section 16 of the Labour Relations Act will apply to the disclosure of information in terms of this policy.

#### **12.5. Victimisation**

Employees will be protected from intimidation, victimization or discrimination following the complaint or their assisting in an investigation of harassment. Any action constituting retaliation against an employee for lodging a complaint about harassment will constitute a disciplinary offence and will be treated accordingly.

### **13. INTERPRETATION OF THE POLICY**

13.1. All words contained in this policy shall have a direct grammatical meaning unless the definition or context indicates otherwise.

- 13.2. The dispute on interpretation of this policy shall be declared in writing by any party concerned.
- 13.3. The office of the Municipal Manager shall give a final interpretation of this policy in case of a written dispute.
- 13.4. If the party concerned is not satisfied with the interpretation of the policy, a dispute may then be referred to the South African Local Government Bargaining Council.

#### **14. PERMANENT /TEMPORARY WAIVER OF THIS POLICY**

- 14.1.1. This policy may be partly or wholly waived by the Municipal Council on temporary or permanent basis.
- 14.2 Notwithstanding clause 14.1 the Municipal Manager may under circumstances of emergency temporarily waive this policy subject to reporting of such waiver to Council.

#### **15. AMENDMENT AND OR REPEAL OF THIS POLICY**

15.1. This policy may be partly or wholly amended by the Council

15.2. This policy may be partly or wholly repealed by the Council.

#### **16. VIOLATION OR NON – COMPLIANCE WITH THIS POLICY**


- 16.1. Violation of or non – compliance of this policy will give a just cause for disciplinary steps to be taken.
- 16.2. It will be the responsibility of all Managers, Supervisors, Executive Committee and Council to enforce compliance with this policy.

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