

DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

POLICY ON THE PREVENTION AND ELIMINATION OF HARASSMENT IN THE PUBLIC SERVICE WORLD OF WORK



the dpsa

Department:
Public Service and Administration
REPUBLIC OF SOUTH AFRICA



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1. INTRODUCTION

- 1.1 Harassment at work is a worldwide problem recognized as an occupational injury. It is a violation of human rights, and it undermines equality of opportunity. Harassment manifests as unequal power relations and has the potential to cause long-term negative psychological and physical effects on the affected party.
- 1.2 The Labour Relations Act and the Employment Equity Act are the main acts that deal with harassment in the world of work.
- 1.3 The “Code of Good Practice on the Prevention Elimination of Harassment in the Workplace Government Gazette No 46056” addresses the prevention, elimination, and management of all forms of harassment that pervade the world of work. It is guided by the ILO Convention 190 and its Recommendation concerning the elimination of Violence and Harassment in the World of Work, 2019; the Discrimination (Employment and Occupation) Convention No. 111 and the ILO Convention 155 relating to Occupational Safety and Health.
- 1.4 The Code reinforces and promotes the development and implementation of policies and procedures that will lead to the creation of a world of work that is free of harassment, where an employer and employee respect one another’s integrity, dignity, privacy, and the right to equity in the world of work. This Policy also finds expression from the Protection from Harassment Act no 17 of 2011.
- 1.5 South Africa regards all forms of harassment as a form of unfair discrimination and constitutes a barrier to equity and equality in the world of work. Therefore, all forms of harassment such as sexual harassment; gender-based violence, bullying, racial, ethnic, or social origin harassment must be eliminated. It must be acknowledged that harassment may include physical abuse, psychological abuse, emotional abuse, and sexual abuse.
- 1.6 Harassment also includes the use of physical force or power, threatened or actual, against another person or against an employee or group of employees, which either results in or has a high likelihood of resulting in social injustice, economic harm, injury, death, physical and psychological harm, mal-development, or deprivation.
- 1.7 All forms of harassment against persons living with disabilities, women, men, LGBTQIA+, and other vulnerable groups or persons in the world of work is an abuse of power. Harassment particularly affects workers in the most vulnerable work situations, who have poor access to labour rights such as freedom of association, collective bargaining, decent work, non-discriminatory practices, and access to justice.
- 1.8 The DPSA Gender Equality Strategic Framework for the Public Service provides a wide set of options for the transformation of the world of work premised on the promotion and protection of human dignity and the rights of women. It recognizes the role of government in promoting non-sexism and non-discrimination for employees in the Public Service.

4. OBJECTIVES

4.1 The objectives of the *Policy on the prevention and elimination of violence and harassment in the public service world of work* are to:

- a) Promote a world of work that is free of violence and harassment, sexual favours, intimidation, and victimization, where the employer and employees respect one another's integrity, dignity, privacy, and the right to equality in the world of work.
- b) Provide standardized, systematic, and consistent approaches to the prevention and management of violence and harassment within the public service through standardized procedures and guidance tools.
- c) Protect employees from experiencing or witnessing harassment and provide a sense of security and support by providing employees with a clear understanding of their rights and how to report incidents of violence and harassment without fear of retaliation.
- d) Strengthen confidentiality of violence and harassment cases, to protect related information, and apply sanctions at all levels if needed.
- e) Strengthen response given to harassment cases and ensure consequence management when applicable.
- f) Strengthen monitoring of the application of the Policy and identify violence and harassment trends to take appropriate action.
- g) Strengthen accountability in the management of all forms of harassment in the world of work.

5. GUIDING PRINCIPLES

5.1 The guiding principles of the *Policy on the prevention and elimination of violence and harassment in the public service world of work* are as follows:

- a) Zero tolerance shall be upheld against any form of violence and harassment in the world of work.
- b) The focus will be placed on preventive action against violence and harassment, including counselling for employees.
- c) Employees shall be encouraged to report violence and harassment and, complainants shall be protected against victimization and/or retaliation.
- d) Harassment is a form of discrimination that violates the rights of individuals and undermines the integrity of the employment relationship.

- h) National Policy Framework for Women's Empowerment and Gender Equality, 2000
- i) Criminal Sexual Offences and Related Matters Amendment Act No 32, 2007
- j) Gender Equality Strategic Framework for the Public Service, 2008
- k) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1995
- l) Beijing Platform for Action, 1995
- m) The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 2003
- n) Protection from Harassment Act No 17, 2011.
- o) Public Service Coordinating Bargaining Council (PSCBC) Res 7 of 2000 as amended by Res 5 of 2001
- p) Compensation for Occupational Injuries and Diseases Act No 130, 1993
- q) Policy & Procedure on Incapacity Leave and Ill Health Retirement (PILIR), 2009
- r) C190 - Violence and Harassment Convention, 2019 (No. 190)
- s) Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, Government Gazette No 46056, 18 March 2022.

8. DEFINITION

- 8.1 Section 6(3) of the Employment Equity Act (EEA) states that harassment of an employee is a form of unfair discrimination and is prohibited on any one or a combination of grounds of unfair discrimination listed in subsection 6(1) of the EEA.
- 8.2 This Policy uses the definition from the Protection from Harassment Act 17 of defines harassment and sexual harassment as follows:

" **harassment**" means directly or indirectly engaging in conduct that the respondent knows or ought to know that:

- a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably:
 - I. following. watching. pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies, or happens to be;
 - II. engaging in verbal, electronic, or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
 - III. sending, delivering, or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail, or other objects to the complainant or a related person

- c) **Non-verbal forms** of sexual harassment include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects.
- d) **Sexual favouritism** 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 ratings, salary increases, or other forms of recognition.
- e) **Quid pro quo sexual harassment** occurs where an owner, employer, 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. Quid pro quo sexual harassment is an intentional act of sexual harassment which is an abuse of authority by a supervisor or any member of management and or employees who have the power to employ/dismiss or change the working conditions of an employee
- f) **Sextortion** is a form of quid pro quo sexual harassment which is an abuse of authority by a supervisor or any member of management and or employees who have the power to employ/dismiss or change the working conditions of an employee. It has a sexual as well as a corruption component.

9.3 Discriminatory Harassment

The following are considered discriminatory harassment:

- a) **Racial Harassment** is harassment perpetrated against victims based on their race, ancestry or skin colour, country of origin, or citizenship.
- b) **Gender Harassment** is a form of harassment based on the victim's gender. This is a form of gender discrimination.
- c) **Religious Harassment** is a form of harassment that occurs due to the victim's religious beliefs.
- d) **Disability-Based Harassment** is a form of harassment targeted at disabled individuals. It includes teasing, refusal to accommodate, or patronizing comments.
- e) **Sexual orientation-based harassment** refers to unwelcome or offensive behaviour directed at an individual because of their actual or perceived sexual orientation.

10.4 The Head of Department is obliged to take steps to assist a complainant of harassment to claim compensation accordingly if the incident has resulted in the employee developing a medical condition, e.g. post-traumatic stress disorder.

11. ROLES AND RESPONSIBILITIES

11.1 The Head of Department

The roles and responsibilities of the Head of Department are to:

- a) Communicate this Policy to all employees, through regular awareness-raising, training, and education programs.
- b) Designate a harassment advisor and announce to the department through all communication channels of the department.
- c) Ensure training of managers, and specific staff that are designated or appointed to handle harassment cases.
- d) Allocate trained staff to carry out Investigation and Mediation when required.
- e) Submit a report on harassment cases dealt with to the DPSA on an annual basis, using the appropriate template.
- f) Allocate resources (human and financial) to ensure that awareness-raising and training programs for employees on harassment are implemented.
- g) Ensure that disciplinary measures applied are in line with the Disciplinary Code and Procedures in the Public Service and the Senior Management Handbook.
- h) Regularly monitor compliance with the Policy.
- i) Report cases of harassment to the Compensation Commission in terms of the Compensation for Occupational Injuries and Diseases Act.

**The HOD may delegate their responsibilities to a subordinate, through a formal process, to facilitate operation but remain ultimately responsible.*

11.2 The Individual designated by the Head of Department

- (a) The Head of Department is responsible for the management of all harassment cases, however, they may delegate their responsibilities to a subordinate, through a formal process, to facilitate operation but remain ultimately responsible for the management of harassment in the world of work.

11.5 The Department of Public Service and Administration (DPSA)

The roles and responsibilities of the DPSA are to:

- a) Develop, review, and disseminate the *Policy on the prevention and elimination of violence and harassment in the public service world of work*.
- b) Provide advisory services to all departments on the applications and monitoring of the Policy.
- c) Support departmental training initiatives on request and provide advisory services for training material development.

The responsibilities of the DPSA are to:

- a) Monitor the application of the Policy and produce annual reports from data submitted by all departments on an annual basis.

11.6 The Complainant(s)

The roles and responsibilities of the Complainant(s) are to:

- a) An employee being subjected to offensive behaviour should, whenever possible, attempt to put a halt to the unwelcome behaviour as early as possible by making it clearly known to the offender, orally or in writing, that his/her behaviour is not appropriate and that it should cease immediately.
- b) The complainant is to report any harassment incidents as soon as possible.
- c) Provide a truthful and accurate account of the incident(s). False allegations of harassment shall not be tolerated and whoever acts in bad faith will face disciplinary action.

11.7 The Respondent(s)

The roles and responsibilities of the Respondent(S) are to:

- a) Fully comply with any investigations conducted into the allegations of harassment.
- b) Respect the confidentiality of the investigation process and not disclose information related to the case to others who are not directly involved or authorized to know.
- c) Refraining from engaging in any form of retaliation against the individual who has made the harassment complaint, or any witnesses involved in the investigation.

11.11 The Mediators

The roles and responsibilities of Mediators are to:

- a) Provide a channel for dialogue and conciliation between Public Servants.
- b) Assist employees who so wish, during the informal procedure of a harassment complaint.
- c) Assist parties involved in coming to a resolution, and taking steps to mediate between them, if requested by the complainant,
- d) Advise and make suggestions, as appropriate, on actions needed to settle conflicts.
- e) Draft and facilitate the signing of the resolution agreement.

11.12 The Harassment Committee

The Harassment Committee is mandatory. However, for departments that opt to have a Harassment Committee, its roles and responsibilities are to:

- a) Promote a safe work environment that is free of harassment.
- b) Advocate for the protection of the rights of harassment complainants.
- c) Create an atmosphere that promotes equality and gender justice.
- d) Work with the gender directorate to ensure that programs for gender sensitization and harassment are implemented.
- e) Support the Harassment Advisor where necessary with the investigation of complaints.
- f) Design/develop, with the Harassment Advisor mechanisms for registering complaints that are safe and accessible to all employees.
- g) Develop programs that educate all employees about harassment and its consequences in the world of work.
- h) Together with the Harassment Advisor, actively promote the provisions of the Policy through the development and distribution of multimedia education materials.

11.13 The Managers / Supervisors

The roles and responsibilities of Managers and Supervisors are to:

- a) Know and understand this Policy and assume responsibility for its implementation.
- b) Communicate the Policy to all employees, including newly appointed employees.

12.3 The Head of Department shall ensure that a reported violence or harassment complaint is investigated and resolved within 30 calendar days, i.e. from reporting to the conclusion of investigation and feedback.

12.4 If 30 calendar days expire before the investigation of the harassment case is concluded, the department shall extend, for exceptional reasons, up to 14 additional workdays by performing the following two actions before the expiring date:

- a) Informing the complainant in writing before the end of the 30 days.
- b) Informing the DPSA, in writing, of the standard delay not respected and outlining reasons for the extension.

13. EDUCATION AND TRAINING

13.1 Continuous education and training are necessary to ensure that employees and Third Parties know and understand this Policy and can prevent and report violence and harassment when it occurs.

13.2 As part of the induction processes, new employees must undergo training on violence and harassment in the world of work within four weeks of employment.

13.3 A refresher training on violence and harassment shall be given every 24 months to employees.

13.4 Harassment Advisors and members of the Harassment Committee must undergo regular training to increase their knowledge of violence and harassment and enhance their skills in investigation, communication, conflict resolution, mediation, and legal developments concerning harassment.

13.5 Trade Unions should include the issue of sexual harassment and other forms of harassment in their education and training programs for shop stewards and employees in an accessible format.

13.6 CCMA, Bargaining Council Commissioners, and Labour Court Judges should receive specialized training to deal with harassment cases.

all documents related to complaints, including contents of meetings, interviews, and investigation reports.

16.3 Breach of confidentiality shall not be tolerated and shall be sanctioned accordingly.

B. THE DESIGNATION OF THE HARASSMENT ADVISOR

16.4 The Head of Department shall designate a Harassment Advisor to deal with harassment complaints in the department. This designation may be per case or for a fixed period.

16.5 The Head of Department shall be guided by the following criteria when appointing a Harassment Advisor:

- (a) Knowledge and understanding of general Policy development and its implementation and knowledge of department policies
- (b) Psychological and emotional stability
- (c) Integrity
- (d) Compassion
- (e) Ability to maintain confidentiality
- (f) Objectivity
- (g) Good communication skills (verbal and written)
- (h) Good listening skills
- (i) Investigative skills

16.6 The designation of a Harassment Advisor requires a formal process that involves:

- a) The evaluation of the qualifications and experience of the candidate
- b) The vetting and reference check (if applicable)
- c) The evaluation of the position within the structure of the department to ensure need for confidentiality, independence, and the latitude to perform sensitive tasks.
- d) A documented decision by the Head of Department.

C. THE HARASSMENT COMMITTEE CONSTITUTION

16.7 A Harassment Committee is a support structure and is not mandatory. However, based on the needs of the departments, a committee should be established as follows:

- a) Members are nominated by the Head of Department.
- b) The Committee is bound by the same rules of confidentiality as the Harassment Advisor

G. CONFLICTS OF INTEREST - SENIOR-LEVEL OFFICIALS

- 16.11 Where the Head of Department or a high-ranking official is implicated in potentially violent or harassing conduct, the Executive Authority becomes the authority that appoints the Harassment Advisor, directs the investigation, and makes decisions on the case.
- 16.12 Once the Harassment Advisor has been designated, all terms and procedures set out in this Policy for subsequent action shall apply without exception.

H. INTERIM MEASURES TO ENSURE HARASSING CONDUCT DOES NOT CONTINUE

- 16.13 Before conducting a thorough investigation into the allegations of violence or harassment misconduct, a manager/supervisor, upon the advice of the Harassment Advisor, must take any necessary interim steps to ensure that the alleged harassment conduct does not continue. The interim measures taken may include but are not limited to issuing a No Contact Instruction and separation of the respondent from the Complainant.

I. LEAVE OF ABSENCE CONSIDERATION

- 16.14 The department may give due consideration to the granting of special leave in cases of harassment where the complainant, upon medical advice from a registered medical practitioner, requires leave for medical or related reasons.
- 16.15 Where an employee's existing sick leave entitlement has been exhausted, the employee shall follow the application for temporary incapacity leave as specified in the *Policy and procedure on incapacity leave and ill-health retirement (PILIR)*.
- 16.16 If harassment results 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.

J. DISCIPLINARY MEASURES

- 16.17 A range of appropriate disciplinary sanctions for violence and harassment will be enforced on individuals found guilty; these may include counselling, reprimands, suspensions, or termination. Monitoring will be strengthened to ensure standardization across all departments to ensure compliance with the Policy.

avenues available to resolve harassment. Unattributed information will be collected for statistical purposes on alleged harassment incidents in departments to inform strategic responses. The Harassment Advisor may organize an informal discussion, at the request of the complainant, to explain to the respondent that the behaviour in question is not welcome, that it offends the complainant or makes them uncomfortable, and/or it also interferes with their work. In addition, the discussion will provide the respondent with an opportunity to respond and share their perception. If the complainant is not satisfied with the outcomes of the informal discussion, they may then follow a formal procedure.

17.4 PROCEDURE 4: LODGING A FORMAL HARASSMENT GRIEVANCE AND ANALYSIS

The purpose of this procedure is to enable a formal and confidential reporting of violence and harassment in the world of work. The harassment complaint must be reported to the HR or Harassment Advisor in writing. The full statement will be recorded and will include information such as the names of both the complainant(s) and respondent(s), the date(s) when the incident(s) occurred, and where it occurred. The information will be presented to the decision maker to support their decision on the next steps to be taken such as mediation, investigation, or other appropriate process.

17.5 PROCEDURE 5: DECISION-MAKING FOR MEDIATION OR INVESTIGATION

The purpose of the procedure is to outline the mandatory steps required to decide on whether a grievance received should be further investigated or resolved through mediation. It assures standardization across all public services and ensures that violence and harassment cases are resolved through the correct channels. The procedure also ensures that the conclusion and recommendation in the preliminary analysis report are not biased, and key information is not missing or overlooked. Both the complainant and respondent must consent to undergo the mediation process.

17.6 PROCEDURE 6: HARASSMENT MEDIATION

The purpose of the mediation procedure is to provide standardized steps to facilitate a controlled problem-solving conducive environment between the parties involved. This procedure involves mediation after the matter has been formally reported and the decision has been taken by the Complainant to have the complaint resolved through a mediation process. If the complainant is not satisfied with the outcomes of the mediation, they may then

For investigations that prove to be conclusive based on information from the harassment complaint, immediate disciplinary proceedings shall be taken align with the Disciplinary Code and Procedures in the Public Service.

The procedure emphasizes the importance of enforcing sanctions by the decision-maker. This will assure an environment free of any harassment and, demonstrate it is not tolerated. In addition, for individuals found guilty, sanctions will provide an educational opportunity to correct their behaviour and ensure accountability for their actions. Finally, acting systematically sets the tone at the top and reduces the likelihood of future prohibited conduct. In the event that management is of the view that there is a prima facie case against the respondent, disciplinary steps must be instituted as per the provisions of the Disciplinary Code and Procedures in the Public Service.

At a minimum, a verbal or written warning will be issued with guidance on how to avoid future misconduct. Further action may be taken, including job reassignment, sensitivity training, suspension, demotion, termination of employment, or other measures depending on the severity of the offense. Sanction to be enforced will take into consideration mitigation and aggravation factors.

17.10 PROCEDURE 10: COMMUNICATION AND TRAINING

The purpose of this procedure is to ensure that all employees are aware of the *Policy on the prevention and elimination of violence and harassment in the public service world of work*, understand its implications, and are equipped to prevent and address instances of violence and harassment in the public service world of work. Moreover, it will ensure communication and training are provided to managers and employees to ensure clarity of their respective roles and responsibilities in the management, elimination and prevention of violence and harassment in the world of work. The Procedure defines the content to be communicated (what), period and frequency of communication and training (when), responsibility of communication (whom), and tools to be used (methods) such as communication product, awareness campaign, or target training in the department.

17.11 PROCEDURE 11: MONITORING AND COMPLIANCE

The purpose of this procedure is to ensure that the Policy is being effectively implemented and adhered to within the public service world of work. This involves ongoing oversight and evaluation to uphold the standards set forth in the Policy and to address any issues related

- **Quid Pro Quo Harassment:** Submission to or rejection of unwelcome conduct used as the basis for employment decisions affecting the individual.
- **Reporting Mechanisms:** The procedures and channels through which employees can report incidents of harassment, discrimination, or retaliation.
- **Respondent** - an individual or entity that answers in a complaint alleging unlawful discrimination or harassment or the person(s) accused of alleged unlawful discrimination or harassment.
- **Retaliation:** Adverse action taken against an individual in response to a complaint of harassment or discrimination, or participation in an investigation of such a complaint.
- **Sextortion,** a form of quid pro quo sexual harassment, is an abuse of authority by a supervisor or any member of management and or employees who have the power to employ/dismiss or change the working conditions of an employee. It involves implied or expressed promise of reward for complying with a sexually oriented request or implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request.
- **Sexual Harassment:** Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature that creates an intimidating, hostile, or offensive work environment. 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 related person would be offended, humiliated, or intimidated.

APPROVAL BY THE EXECUTIVE AUTHORITY

Policy Approved:



INKOSI MZAMO BUTHELEZI MP
MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION
DATE 21/08/24