



POLICY ON THE PREVENTION AND ELIMINATION OF HARASSMENT IN THE WORKPLACE

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1. PREAMBLE & SCOPE

PREAMBLE

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 in section 6 (1) of the “EEA.”

SCOPE

The employer regards all forms of harassment as a form of unfair discrimination that constitutes a barrier to equity and equality in the workplace. Therefore, all forms of harassment such as sexual harassment; gender-based violence and harassment; bullying; and racial, ethnic or social origin harassment must be eliminated. It is acknowledged that harassment may include physical abuse, psychological abuse, emotional abuse, and sexual abuse.

Harassment also includes the use of physical force or power, threatened or actual, against another person or against a group or community, 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.

All forms of harassment against women, men, LGBTQIA +, and vulnerable persons in the workplace is an abuse of power. Harassment particularly affects employees 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.

2. LEGISLATIVE FRAMEWORKS

- 2.1 Constitution of the Republic of South Africa, 1996.
- 2.2 Labour Relations Act 66 of 1995 as amended.
- 2.3 Basic Conditions of Employment Act 75 of 1997 as amended.
- 2.4 Employment Equity Act 55 of 1998 as amended.
- 2.5 Occupational Health and Safety Act and Regulations, Act 85 of 1993
- 2.6 Compensation for Occupational Injuries and Diseases Act 130 of 1993
- 2.7 Local Government Municipal Systems Act and Regulations, Act 32 of 2000
- 2.8 Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace.

3. DEFINITIONS

- 3.1 **“Complainant”** means any person who alleges any contravention in terms of this policy and who institutes proceedings (including lodging a grievance) in terms of this policy.
- 3.2 **“Harassment”**, see section 7 of this policy
- 3.3 **“Sexual Harassment”**, see section 8 of this policy
- 3.4 **“Employee”** means any person other than an independent contractor who-
- works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
 - in any manner assists in carrying on or conducting the business of an employer, and **'employed' and 'employment'** have corresponding meanings.
- 3.5 **“Employer”** means Overstrand Municipality.

4. POLICY STATEMENT

It is the policy of the Employer that:

- 4.1 All employees, job applicants and any other persons who have dealings with the employer have the right to be treated with respect and dignity.
- 4.2 Harassment will not be permitted or condoned and will be regarded as a form of serious misconduct. Appropriate disciplinary action will be taken in terms of the applicable disciplinary code.
- 4.3 Employees or any other person who have been subjected to harassment have the right to lodge a grievance or lay a formal complaint with the employer.
- 4.4 The employer is committed to investigate all complaints and grievances brought to its attention.
- 4.5 The employer undertakes to inform all employees of this policy and the need to refrain from any form of harassment.
- 4.6 It should be noted that this policy also protects prospective employees as well as clients of the employer.
- 4.7 Management is required to implement this policy and take disciplinary action against employees who do not comply with this policy. Serious incidents of harassment or continued harassment are dismissible offences.

- 4.8 Allegations of harassment will be dealt with seriously, expeditiously, sensitively, and confidentially.
- 4.9 It is a disciplinary offence to victimize or retaliate against an employee who, in good faith, lay a complaint of harassment.
- 4.10 False or vindictive accusations shall be viewed in a very serious light and will lead to disciplinary steps taken against such complainant.
- 4.11 Anonymous complaints will be disregarded.

5. APPLICATION OF THE POLICY

- 5.1 This Policy applies to the employer, councillors, and employees, as provided for in the Employment Equity Act, 1998 (Act 55 of 1998). Any reference in this Policy to “employees” includes applicants for employment. For determining whether a person is an employee for the purposes of the EEA, the presumption of employment in section 200A of the Labour Relations Act is applicable. Volunteers who in any manner assist in the carrying on or conducting the business of the employer, fall within the definition of an employee.
- 5.2 The alleged perpetrators and victims of harassment may include, but are not limited to:
 - 5.2.1 Employer;
 - 5.2.2 Councillors
 - 5.2.3 Managers;
 - 5.2.4 Supervisors;
 - 5.2.5 Employees;
 - 5.2.6 Job seekers and Job applicants;
 - 5.2.7 Persons in training including interns, apprentices and persons on learnerships;
 - 5.2.8 Volunteers;
 - 5.2.9 Clients and customers;
 - 5.2.10 Suppliers; contractors; and
 - 5.2.11 Other persons having dealings with the employer.
- 5.3 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 is not limited to:

- 5.3.1 The workplace which includes both public and private spaces in which employees perform their work;
- 5.3.2 Places where the employee is paid, takes a rest break or a meal, or uses sanitary, washing, changing, restroom, and medical facilities;
- 5.3.3 Work-related trips, travel, training, events, or social activities;
- 5.3.4 Work-related communications, including those enabled by information and communication technologies and internet-based platforms;
- 5.3.5 Employer-provided accommodation, which includes housing;
- 5.3.6 When commuting to and from work, in transport provided or controlled by the employer, and
- 5.3.7 In the case of employees who work virtually from their homes, or any place other than the employer's premises, the location where they are working constitutes the workplace.

6 COMMITMENT BY MANAGEMENT

- 6.1 Management undertakes to deal with any allegations of harassment speedily and without favour.
- 6.2 Management further undertakes to deal with allegations of harassment in a confidential manner.
- 6.3 Any person bringing allegations of harassment to the attention of management will be protected against victimisation.
- 6.4 Whilst management will act against anyone who commits acts of harassment it will also protect employees against false accusations.
- 6.5 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 presumed to be guilty.
- 6.6 Harassment is a serious form of misconduct and if found guilty employees may be dismissed, even for a first offence.

7. DEFINITIONS AND MAIN FORMS OF HARASSMENT COVERED BY THE POLICY

WHAT IS HARASSMENT?

- 7.1 The term "harassment" is not defined in the EEA. Harassment is generally understood to be –
 - 7.1.1 unwanted conduct, which impairs dignity;

- 7.1.2 which creates a hostile or intimidating work environment for one or more employees or is calculated to, or has the effect of, inducing 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(1) of the EEA.
- 7.2 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 or community.
- 7.3 Harassment against all employees in the workplace is an abuse of power. Moreover, the intersection of factors such as race, religion, gender, or disability increases the risk of harassment.
- 7.4 **Unwanted conduct**
- 7.4.1 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.
- 7.4.2 Firstly, the issue arises as to whether the complainant communicated to the harasser/perpetrator that the conduct was unwelcome. Secondly, this may have occurred verbally or non-verbally and may have been communicated directly or indirectly to the harasser/perpetrator.
- 7.4.3 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 conduct of the type engaged in, is generally considered to be unacceptable.
- 7.4.4 While violent conduct may amount to harassment, harassment may also occur as a result of non-violent conduct. Accordingly, an act or threat of violence is not an essential element of harassment. Likewise, certain acts of harassment

may involve a criminal offence, and the employer may be under a duty to report certain acts of harassment to the SAPS.

- 7.4.5 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 inquiry 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. In such circumstances, an employee charged with harassment, may seek to establish that the complainant’s perceptions are not consistent with societal values reflective of our constitutional ethos.

7.5 Repeated or serious conduct

- 7.5.1 Harassment may occur as a result of a pattern of 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, it must be determined in light of the event that is the subject of the complaint.
- 7.5.2 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.
- 7.5.3 It is not necessary to establish the intention or state of mind of the harasser/perpetrator in order to prove harassment for the purposes of the EEA. The fact that the conduct was calculated or intended to offend the complainant(s) may be an aggravating factor relevant to determining a remedy for the complainant. The intention of a harasser/perpetrator may also be relevant to disciplinary proceedings.

The following factors may be relevant to the issue of whether harassment has occurred –

- 7.5.3.1 The context of the harassment;
- 7.5.3.2 The circumstances of the complainant and the impact that the conduct has had on an employee; and
- 7.5.3.3 The respective positions of the harasser/perpetrator and complainant.

7.6 Direct or Indirect Harassment

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.

7.7 Types of harassment

- 7.7.1 As already stated above, harassment may be the result of physical, verbal, or psychological conduct.
- 7.7.2 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).
- 7.7.3 Verbal bullying may include threats, shaming, hostile teasing, insults, constant negative judgment, and criticism, or racist, sexist, or language that is intolerant to sexual orientation.
- 7.7.4 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.
- 7.7.5 A wide range of conduct in the workplace may constitute harassment. Examples of harassment include, but are not limited to:
 - 7.7.5.1 Slandering or maligning an employee or spreading rumours maliciously;
 - 7.7.5.2 Conduct which humiliates, insults or demeans an employee;
 - 7.7.5.3 Withholding work-related information or supplying incorrect information;
 - 7.7.5.4 Sabotaging or impeding the performance of work;

- 7.7.5.5 Ostracising, boycotting, or excluding the employee from work or work-related activities;
 - 7.7.5.6 Persecution such as threats, and the inspiration of fear and degradation;
 - 7.7.5.7 Intolerance of psychological, medical, disability or personal circumstances;
 - 7.7.5.8 Surveillance of an employee without their knowledge, without cause and with harmful intent;
 - 7.7.5.9 Misuse of the Employer's disciplinary process in order to falsely accuse a fellow employee to further a personal agenda;
- 7.7.6 Bullying – where harassment involves the abuse of coercive power by an individual or group of individuals in the workplace. Intimidation – this is intentional behaviour that would cause a person of ordinary sensibilities to fear injury or harm with the purpose of obtaining a specific result. Workplace bullying may involve aggressive behaviour in which someone repeatedly causes another person injury or discomfort.
- 7.7.7 Harassment may be referred to as being “vertical” or “horizontal”. Vertical harassment (also known as “tangible or material”) involves the use of formal power (i.e., title, position, or supervisory control) or material leverage (i.e., financial, informational, resource or legal) to intimidate, threaten, harass, or harm an employee or to dominate and control the complainant. Vertical harassment refers to harassment between the employer/manager and employee. Horizontal harassment refers to harassment between employees in the same position or on the same level.
- 7.7.8 Passive-aggressive or covert harassment may include negative gossip, negative joking at someone's expense, sarcasm, facial expression, or gestures, mimicking to ridicule, deliberately causing embarrassment and insecurity, invisible treatment, marginalisation, social exclusion, professional isolation, and deliberately sabotaging someone's dignity, well-being, happiness, success, and career performance.

7.7.9 Mobbing is a form of harassment by a group of people targeted at one or more individuals.

7.7.10 Online harassment is harassment which is committed, assisted, or aggravated in part or fully, by the use of information and communications technology such as mobile phones, smart phones, the Internet, social media platforms or email. Bullying when conducted online is referred to as cyber-bullying.

7.8 Prohibited grounds

7.8.1 Harassment of an employee is prohibited in terms of section 6(1) of the EEA, if the harassment is related to one or more prohibited grounds.

7.8.2 It may also be possible for a person who has been harassed to establish that the conduct was a result of an arbitrary ground, as contemplated by section 6(2) of the EEA.

8 SEXUAL HARASSMENT

8.1 Sexual harassment of an employee is a form of unfair discrimination and is prohibited on the grounds of sex, gender, or sexual orientation. Same-sex harassment can amount to discrimination on the basis of sex, gender, sexual orientation and gender-based harassment.

8.2 Unwanted Conduct: Factors to establish sexual harassment

8.2.1 There are different ways in which an employee may indicate that sexual conduct is unwanted, including non-verbal conduct such as walking away or not responding to the perpetrator.

8.2.2 Previous consensual participation in sexual conduct does not necessarily mean that the conduct continues to be acceptable to the employee.

8.2.3 Where a complainant has difficulty indicating to the perpetrator that the conduct is unwanted, such complainant may seek the assistance and intervention of another person such as a co-worker, superior, counsellor, Employee Assistance Program (EAP) official, family member or friend.

8.2.4 The fact that the complainant does not indicate that the conduct is unwanted does not entail that there has not been sexual harassment, if the conduct is such that the harasser/perpetrator ought to have known it could be regarded as unwanted.

8.3 Nature and extent of the conduct

8.3.1 The unwanted conduct must be of a sexual nature and includes physical, verbal, or non-verbal conduct, whether expressed directly or indirectly. Conduct amounting to sexual harassment may include –

8.3.1.1 Physical conduct of a sexual nature, ranging from touching, kissing, to sexual assault and rape;

8.3.1.2 Strip searching, including by a person of the same sex in the presence of the opposite sex, or without appropriate privacy;

8.3.1.3 Following, watching, pursuing or accosting of an employee;

8.3.1.4 Sexual attention, advances or proposals; or other behaviour, whether explicit or implicit, including suggestions, messages, advances, attention or proposals of a sexual nature;

8.3.1.5 Implied or express threats of reprisal or actual reprisal to comply with sexually oriented requests, advances, attention or proposals;

8.3.1.6 Verbal conduct such as innuendos, suggestions, hints, sexual advances, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body, inappropriate enquiries about a person's sex life, whistling of a sexual nature and the sending by electronic means or otherwise of sexually explicit text; or

- 8.3.2 non-verbal conduct such as unwelcome gestures, indecent exposure and the display or sending by electronic means or otherwise of sexually explicit pictures or objects and messages and emojis.
- 8.3.3 Sexual harassment may include, but is not limited to, victimization, *quid pro quo* harassment, sexual favouritism, 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, pin-up pictures, graffiti or other offensive material, leering (suggestive staring), demands for sexual favours and creating or permitting a hostile working environment (i.e., conduct that creates an intimidating, hostile or humiliating working environment for the recipient).
- 8.3.3.1 Victimization occurs where an employee is victimized or intimidated for failing to submit to sexual advances, attention, or proposals or for complaining about gender-insensitive conduct.
- 8.3.3.2 *Quid pro quo* harassment occurs where a person such as a senior official, employer, supervisor, member of management or co-employee, influences or attempts to influence an employee's employment circumstances (for example engagement, promotion, training, discipline, dismissal, salary increments or other benefits) by coercing or attempting to coerce an employee to surrender to sexual advances.
- 8.3.3.3 Sexual favouritism is a form of *quid pro quo* harassment, which occurs where a person in authority in the workplace seeks to utilise this power to reward those who respond to his or her sexual advances.
- 8.3.4 A single incident of unwelcome sexual conduct may constitute sexual harassment.

- 8.3.5 Sexual harassment has nothing to do with affection, flirtation, romance or relationships, when both parties consent freely thereto. Sexual harassment is about coercion of power.

8.4 Impact of the conduct

- 8.4.1 The conduct should constitute an impairment of the employee's dignity, taking into account:
- 8.4.1.1 the circumstances of the employee; and
 - 8.4.1.2 the respective positions of the employee and the perpetrator in the workplace.

8.5 Test for Sexual Harassment

- 8.5.1 Sexual harassment is unwelcome conduct of a sexual nature, whether direct or indirect, that the perpetrator knows or ought to know is not welcome. Sexual harassment may be offensive to the complainant, make the complainant feel uncomfortable or cause harm or inspire the reasonable belief that the complainant may be harmed. Sexual harassment may interfere with the work of the complainant although it need not necessarily do so. Sexual harassment violates the rights of an employee and constitutes a barrier to equality in the workplace.
- 8.5.2 The test for establishing whether there has been sexual harassment takes into account the following factors:
- 8.5.2.1 whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;
 - 8.5.2.2 whether the sexual conduct was unwanted or unacceptable;
 - 8.5.2.3 the nature and extent of the sexual conduct; and
 - 8.5.2.4 the impact of the sexual conduct on the employee.

9 RACIAL, ETHNIC OR SOCIAL ORIGIN HARASSMENT

- 9.1 Racial harassment is a form of unfair discrimination prohibited by section 6(1) of the EEA 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 a characteristic 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. Conduct that is calculated to induce submission by actual or threatened adverse consequences constitutes harassment although this is not an essential element of its definition.

9.3 Racial harassment includes direct or indirect behaviour which involve issues such as racist verbal and non-verbal conduct, remarks, abusive language, racist name calling, offensive behaviour gestures and racist cartoons, memes, or innuendos.

9.4 Racial harassment occurs where a person is subject to physical, verbal, or non-verbal conduct or other conduct based on race which undermines their dignity or which creates an intimidating, hostile or humiliating working environment for the recipient.

9.5 Conduct, whether verbal or non-verbal, involving racial innuendo stereotyping or other types of racial conduct, is assumed to be offensive and unwanted to any individual who may be exposed to the language or conduct. It should be assumed, consistent with the values of the Constitution that conduct of this type is unwanted and unacceptable and impacts negatively on the dignity of employees. The Constitutional Court has emphasised that when determining whether language or conduct is racial and derogatory, account must be taken of South Africa's history of institutionalised racial discrimination which legitimised racial prejudice and the impact of the legacy of racial discrimination on the present. The test to be applied in identifying whether language is racist is whether it is reasonably capable of conveying a racist meaning to the reasonable hearer.

9.6 **The forms of racial harassment may include:**

9.6.1 Abusive language and racist jokes, cartoons, or memes, including communications that amount to hate speech;

9.6.2 Racially offensive written or visual material, including on-line harassment;

- 9.6.3 Racist name calling or negative stereotyping impacting on a person's dignity;
- 9.6.4 Offensive behaviour in the form of open hostility to persons of a specific racial or ethnic group;
- 9.6.5 Subtle or blatant exclusion from workplace interaction and activities and other forms of marginalisation; and
- 9.6.6 Threatening behaviour, which intimidates a person or creates a hostile work environment.

9.7 Factors to be considered in Racial Harassment:

- 9.7.1 Whether the language or conduct complained of is abusive;
- 9.7.2 Whether the language or conduct complained of impairs the dignity of the complainant(s);
- 9.7.3 Whether the language or conduct is directed at a particular employee or employees;
- 9.7.4 The extent and degree of abuse or impairment to a person's dignity; and
- 9.7.5 The impact of the conduct.

9.8 The test to be applied for Racial Harassment includes:

- 9.8.1 Racial Harassment must be assessed objectively with reference to the reaction of the normal or reasonable person in keeping with the values underlying the constitutional order.
- 9.8.2 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 group. An important factor establishing racial harassment is whether a perpetrator would have spoken the words or behaved in the manner complained of towards the complainant but for the complainant's race or ethnic or social origin.

- 9.8.3 Explicit racial conduct is assumed to be unwanted conduct. A relevant factor would be how the alleged perpetrator treats other persons not of the complainant's racial group or ethnic or social origin.
- 9.8.4 Whether language or conduct amounts to harassment depends on the circumstances of the particular incidence, including –
 - 9.8.4.1 whether the conduct was persistent or harmful,
 - 9.8.4.2 demeaning, impairing dignity, humiliating, or creating a hostile or intimidating environment or;
 - 9.8.4.3 was calculated to induce submission by actual or threatened adverse consequences; and
 - 9.8.4.4 whether the language and conduct are insulting, abusive and/or derogatory.

10 GUIDING PRINCIPLES ON THE PREVENTION, ELIMINATION, AND MANAGEMENT OF HARASSMENT

- 10.1 The employer has an obligation in terms of Section 60 of the Employee Equity EEA to take proactive, and remedial steps to prevent all forms of harassment in the workplace.
- 10.2 The employer is committed to zero-tolerance towards harassment. The work environment shall create and maintain a working environment in which the dignity of employees is respected. Employees who raise complaints about harassment should not feel that their complaints are ignored or trivialized, or fear reprisals.
 - 10.2.1 The employer shall ensure awareness initiatives to educate employees to reinforce and maintain compliance.
 - 10.2.2 Harassment, including acts of violence, will not be tolerated in the workplace;
 - 10.2.3 Harassment on a prohibited ground is a form of unfair discrimination which infringes the rights of the complainant and constitutes a barrier to equality in the workplace.
 - 10.2.4 Harassment related to any prohibited ground in the workplace will not be permitted, tolerated, or condoned.
 - 10.2.5 Complaints about harassment will be investigated and handled in a confidential manner.

- 10.2.6 Complainants in harassment matters have the right to follow the procedures in the policy and appropriate action must be taken by the employer.
- 10.2.7 It will be a disciplinary offence to victimize or retaliate against an employee who, in good faith, lodges a complaint about harassment, whether in respect of themselves or another employee.

11 PROCEDURES

- 11.1 All complaints pertaining to any form of harassment and/or related victimisation and intimidation may be lay with any of the following persons:
- a) A Supervisor;
 - b) A Manager;
 - c) A Director;
 - d) The Municipal Manager;
 - e) The Employee Assistance Program (EAP) Officer at Human Resources Department;
 - f) The Speaker (in the case of Councillors);
- 11.2 All complaints as intended in 11.1 shall when requested by the complainant, immediately be referred to the line manager for further action.
- 11.3 The line manager shall, as soon as a complaint has been laid, with the approval and instruction of the Municipal Manager or his authorised representative and with the assistance of the labour relations office conduct a preliminary investigation to make a *prima facie* assessment of the soundness of the complaint applicable with the disciplinary code.
- 11.4 The complaint itself, the name of the alleged harasser, the names of other persons involved and the proceedings during the preliminary investigation shall be treated as strictly confidential and the complainant will be advised accordingly.
- 11.5 Should the line manager with the assistance of the labour relations office believe no *prima facie* case exists in favour of the complainant, he/she shall furnish reasons in writing to the municipal manager and or his authorised representative in this regard for their consideration as to whether to dismiss the complaint or not.

11.6 Should the complainant maliciously lodge a complaint he/she may be subjected to a disciplinary investigation in accordance with the applicable Disciplinary Code.

11.7 Should the line manager with the assistance of the labour relations office believe a *prima facie* breach of the policy has been established, he/she shall, with the consent of the complainant, immediately follow one of the following procedures:

11.7.1 Informal Procedure

A complainant of harassment may indicate whether either of the following informal procedures are preferred, subject to the Employer's discretion as to which of the following may be followed:

- a) the line manager with the assistance of the labour relations office and the complainant and/or another appropriate person present explains to the perpetrator that the conduct in question is not welcome, that it offends the complainant, makes him/her feel uncomfortable and that it interferes with his/her work; or
- b) the line manager with the assistance of the labour relations office approaches the perpetrator, without revealing the identity of the complainant, and explains to the perpetrator that certain forms of conduct constitute harassment, are offensive and unwelcome, make an employee feel uncomfortable and interfere with his/her work.
- c) The outcome of the informal procedure must be documented and placed on the personal file of the perpetrator.

11.7.2 Formal Procedure

A complainant may indicate whether a formal procedure, either with or without first following an informal procedure is preferred, subject to the Employer's discretion as to which may be followed.

- a) Should the complainant decline to follow informal procedure, or should the an informal procedure be unsuccessful, the complainant may request to follow the grievance procedure or that the line manager with the

assistance of the labour relations office refer the complaint to the Municipal Manager or his authorised representative who shall further treat the complaint as a disciplinary matter in terms of the existing disciplinary codes and practices of the Employer.

- b) Should the line manager with the assistance of the labour relations office believe the employee is reluctant to lay a complaint or to proceed with it because of possible intimidation or victimisation, the line manager, on his/her own initiative, report the matter to the Municipal Manager or his authorised representative, who shall further treat the complaint as a disciplinary matter in terms of the existing disciplinary codes and practices of the Employer.
- c) The preliminary investigation, as intended in 11.5, will serve *mutatis mutandis* as an investigation intended in the disciplinary process.

11.8 The line manager, with the permission of the complainant, aside from the informal or formal procedure and disciplinary action, submit proposals to the Municipal Manager or his authorised representative of which problems emanating from the complaints could be resolved.

11.9 Proposals, as intended in 11.9, may not lead to possible prejudice against an alleged harasser without him/her having been granted an opportunity to state his/her statement of case (audi alteram partem rule).

11.10 The line manager shall ensure that no unreasonable delays occur during the investigation, continuation or conclusion of any complaint.

11.11 It will amount to misconduct to victimise or retaliate against a complainant who in good faith lodges a complaint of harassment.

12 DISCIPLINARY SANCTIONS

In the event of disciplinary action, sanctions can be imposed. The sanctions must be proportionate to the seriousness of the harassment in question and in line with the disciplinary procedure of the SALGBC.

13 CRIMINAL AND CIVIL CHARGES

A victim of assault, including 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.

14 SOCIAL ASSISTANCE

Should it be deemed necessary by the line manager, any victim of harassment, or related intimidation or victimisation may be referred to the EAP officer (the Employee Assistance Program), for counselling, attention, assistance and support.

15 CONFIDENTIALITY

15.1 All municipal employees mentioned in 11.1 must ensure that complaints about harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential on a need-to-know basis only.

15.2 In cases of sexual harassment, management and relevant employees as well as any other party concerned must endeavour to ensure confidentiality in the disciplinary investigation. Only appropriate members of management as well as the complainant, representatives, alleged perpetrator, witnesses, labour relations official/initiator and interpreter, if required, may be present at the disciplinary hearing.

16 ADDITIONAL SICK LEAVE

16.1 Where an employee's existing sick leave entitlement has been exhausted, the Employer should give due consideration to granting of additional paid sick leave in cases of serious harassment, where the employee, on medical advice, requires trauma counselling.

16.2 In appropriate circumstances, the Employer may consider assisting with the cost of the medical advice and trauma counselling, where such amounts are not covered by COIDA and or any applicable medical aid scheme.

16.3 This clause will be interpreted in line with and subject to the provisions of the Main Collective Agreement applicable to the parties of the SALGBC from time to time.

17 DISPUTES

Should a complaint not be satisfactorily resolved by the internal procedures outlined above, a complainant of harassment may refer the dispute to the Commission for Conciliation Mediation and Arbitration (“CCMA”) or Bargaining Council with jurisdiction for conciliation and, if not resolved, to the CCMA, Bargaining Council with jurisdiction, or Labour Court for adjudication, as provided for in section 10 of the EEA. Claims of harassment under PEPUDA may be referred to the Equality Court. Similarly, an alleged perpetrator of harassment may refer a dispute arising from disciplinary action taken by the employer to the SALGBC.

18 INFORMATION AND EDUCATION

18.1 The issue of sexual harassment and other types of harassment must be dealt with during induction by the Labour Relations Section where the process to follow will be explained should an employee become a victim of harassment but also explain what could constitute harassment.

18.2 Trade unions should include the issue of sexual harassment and other types of harassment in their education and training programs for shop stewards and employees in an accessible format.

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