



Province of the
EASTERN CAPE
PROVINCIAL TREASURY

**POLICY ON PREVENTION,
ELIMINATION
AND MANAGEMENT OF
HARASSMENT IN THE
WORKPLACE**

2024

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DEFINITIONS

“Client of the Department” means a representative of government, state and private institutions conducting their business in the Department.

“Complainant” means any person who alleges any contravention in terms of this policy and who institutes proceedings in terms of this policy.

“The Department” means the Eastern Cape Provincial Treasury.

“Designated official” means an official of the Department to whom incidents of sexual harassment may be reported.

“Employees of the Department” means employees of the Eastern Cape Provincial Treasury.

“Hate crime” means an offence recognized as a hate crime under any law of the land.

“Hate speech” means an offence recognized as hate speech under any law of the land.

“Head of Department” means the administrative head of the Eastern Cape Provincial Treasury.

“Leave Determination” means Determination and Directive on Leave of Absence in the Public Service.

“PILIR policy” means Policy and Procedure on Incapacity Leave and Ill-Health Retirement.

“the Provincial Treasury” means the Eastern Cape Provincial Treasury.

Quid pro quo- means an exchange of goods or services, in which one transfer is contingent upon the other, “a favor for a favor”.

ACRONYMS

DPSA	Department of Public Service and Administration
GPSSBC	General Public Service Sectoral Bargaining Chamber
MEC	Member of Executive Council
MPSA	Minister of Public Service and Administration
OTP	Office of the Premier
PILIR	Policy and Procedure on Incapacity Leave and Ill-Health Retirement
PSC	Public Service Commission
PSCBC	Public Service Coordinating Bargaining Chamber
SAPS	South African Police Service
LGBTQIA+	Lesbian, Gay, Bisexual, Trans, Queer, Intersex, Asexual, +
ILO	International Labour Organization
POPIA	Protection of Personal Information Act

1. BACKGROUND

- 1.1 The South African Constitution protects the right to dignity, equality, and fair labour practices in terms of the Bill of Rights. South Africa is committed to the elimination, prevention, and management of all forms of harassment, including gender-based harassment in the workplace with the aim to create safe workplaces that are free of harassment.
- 1.2 In terms of Section 54 (1) (b) of the Employment Equity Act, 1998 (Act No 55 of 1998), and on the advice of the Commission for Employment Equity (CEE), the Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace, 2005 published under Government Notice No. 1357 in Government Gazette 27865 of 4 August 2005, was repealed on 08 March 2022, replaced and published on 18 March 2022 with Government Gazette No. 11409 of the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace.

2. INTRODUCTION

- 2.1 Chapter 2, Section 9 (3) of the Constitution of the Republic of South Africa states that *“The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth”*. Section 24 (a) of the Constitution further states that *“Everyone has a right to an environment that is not harmful to their health or well-being”*.
- 2.2 The Labour Relations Act No.66 of 1995 is one of the regulatory frameworks that came into existence earlier, to give effect to and regulate the fundamental rights conferred by the Constitution. Some of the provisions that were contained in the Labour Relations Act, particularly on unfair discrimination, have since migrated to the Employment Equity Act No 55 of 1998. The current Code of Good Practice on the Handling of Sexual Harassment cases emanates from the Employment Equity Act.
- 2.3 The Code of Good Practice on the Handling and Elimination of Harassment Cases provides appropriate procedures to deal with the problem and prevent its recurrence. This Code encourages and promotes the development and implementation of policies and procedures that will lead to the creation of workplaces that are free of harassment where employers and their employees respect one another’s integrity, dignity, privacy and right to equity in the workplace. The need for the department to develop a policy on Prevention and Elimination of Harassment therefore emanates from the Code of Good Practice on the Handling and Elimination of Harassment Cases in the workplace.
- 2.4 Although there are no known or reported sexual harassment cases within the department, it is incumbent that the department has a policy in place that seeks to prevent as well as eliminate such occurrences in the workplace.

Policy on Prevention, Elimination and Management of Harassment in the workplace, 2024**2. PURPOSE**

- 2.1 The aim of this policy is to provide a mechanism to manage and dispose of all complaints, grievances and misconduct related to harassment.
- 2.2 This policy recognizes the primacy of collective agreements regulating the handling of harassment cases. It is therefore not intended to be a substitute for measures that are a product of collective agreements or that are an outcome of joint decision making between the employer and an employee or employee organization. The provisions of this policy also do not substitute determinations issued by the MPSA but may complement such determinations.
- 2.3 The provisions of this policy have been developed to guide, advise and assist persons who have been or are being subjected to harassment in the workplace on the procedure to follow when such incidents occur and when the provisions of the policy have not been complied with.

3. OBJECTIVES

The objectives of this policy are as follows:

- 3.1 To eliminate all forms of harassment in the workplace and in any activity linked to, or arising out of work.
- 3.2 To promote among employees and towards clients of the department an environment that is free of harassment, where the employer and employees respect one another's integrity and dignity, their privacy, and their right to equality and equity in the workplace.
- 3.3 To provide appropriate procedures to deal with harassment and eliminate its occurrence or recurrence in the workplace.
- 3.4 To educate and create awareness through training in the department, thus taking reasonable steps to discourage, prevent and eliminate any form of harassment.
- 3.5 To prevent the proliferation of conduct amounting to a hate crime or hate speech relating to gender, gender identity, sex and sexual orientation.

4. SCOPE OF APPLICATION

- 4.1 This policy seeks to protect the rights of the following:
 - (a) All employees of the Department including job applicants;
 - (b) Employees of suppliers, contractors and service providers of the department;
 - (c) Clients of the department;

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- (d) Members of the public who are on personal, private or public business in the department or seeking assistance by an official or an employee of the department.
- 4.2 All persons participating in an internship, learnership, in-service training or experiential learning programme of or in the department, regardless of who funds such a programme, are deemed employees of the Department in terms of this policy.

5. LEGAL AND POLICY FRAMEWORKS

5.1 Employment relations in the public service are governed by a number of statutes. The following have been the most relevant and have taken into account in this policy:

- (a) International Labour Organization (ILO) - Convention 190 on Elimination of Violence and Harassment in the World of work.
- (b) Constitution of the Republic of South Africa, 1996.
- (c) Public Service Act, 1994 as amended.
- (d) Labour Relations Act 66 of 1995 as amended.
- (e) Basic Conditions of Employment Act 75 of 1997 as amended.
- (f) Employment Equity Act 55 of 1998 as amended.
- (g) Promotion of Administrative Justice Act 3 of 2000 as amended.
- (h) Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2004.
- (i) Occupational Health and Safety Act (OHSA)

5.2 In addition, the relevant provision of the following legal frameworks has been taken into consideration:

- (a) Prevention and Combating of Hate Crimes and Hate Speech Bill, 2018;
- (b) Code of Good Practice on Handling Sexual Harassment cases in the workplace, as amended.

5.3 This policy also recognizes that the relevant legislative framework is further ameliorated by the following:

- (a) Other relevant Codes of Good Practice issued in terms of the relevant legislation;
- (b) Collective agreements concluded in the PSCBC and the GPSSBC; and
- (c) Determinations and directives issued by the MPSA.

Policy on Prevention, Elimination and Management of Harassment in the workplace, 2024**6. PRINCIPLES AND COMMITMENT**

- 6.1 The Eastern Cape Provincial Treasury as an employer takes a strong view on the elimination of all forms of discrimination and the promotion of equality and human dignity.
- 6.2 The Eastern Cape Provincial Treasury views any form of harassment as a form of discrimination and strongly emphasizes that any form of harassment in the work environment is condemned and will not be tolerated.
- 6.3 The Eastern Cape Provincial Treasury further commits to:
- (a) Create an environment which upholds personal integrity and freedom, thus condemning any sort of harassment; on any of the prohibited grounds; and
 - (b) Discourage and prevent harassment in the workplace; by taking into account recent developments in case law, statutes, issues dealt with in ILO C190.
 - (c) Create awareness of behavior that constitutes harassment in an effort to eliminate such behavior in the workplace.
- 6.4 The Eastern Cape Provincial Treasury holds the following values:
- (a) Dedication - 100% committed to our work;
 - (b) Integrity - steadily adheres to high professional standards;
 - (c) Accountability - take full responsibility for our actions and our work.

7. THE NATURE OF HARASSMENT**7.1 Definition – WHAT IS HARASSMENT**

- A) in the broadest sense, the term “violence and harassment” in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical psychological, sexual or economic harm, and includes gender-based violence and harassment.
- B) The term “gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender or affecting persons of a particular sex or gender disproportionately and includes sexual harassment.
- C) Harassment includes unwelcome conduct such as violence, physical abuse, psychological abuse, emotional abuse, sexual abuse, gender-based abuse and racial abuse. Harassment also includes physical force of power, whether threatened or actual, against another person or against a group or community.

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- D) 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.
- E) Vertical harassment refers to harassment between the employer/ manager and employees. Horizontal harassment refers to harassment between employees in the same position or on the same level.

7.2 Unwelcome conduct

- (a) The criterion that harassment involves unwanted conduct distinguishes acts of harassment from acceptable conduct in the workplace.
- (b) This may have occurred verbally or non-verbally and may have been communicated directly or indirectly to the harasser/ perpetrator.

7.3 Nature and extent of the conduct

- (a) The unwelcome conduct that constitutes harassment in terms of this policy must be violence, physical abuse, psychological abuse, emotional abuse, sexual abuse, gender- based abuse and racial abuse, as a result of a pattern of persistent conduct or a single instance or event.
- (b) A wide range of conduct in the workplace may constitute harassment. Examples of harassment include but are not limited to:
- Slandering or maligning an employee or spreading rumours maliciously
 - Conduct which humiliates, insults or demeans an employee.
 - Withholding work-related information or supplying incorrect information.
 - Sabotaging or impeding the performance of work.
- (i) **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).\
- (ii) **Verbal bullying** – includes threats, shaming, hostile teasing, insults, constant negative judgement and criticism, or racist, sexist, or LGBTQIA+ phobic language.
- (iii) **Psychological harassment** may be associated with emotional abuse and involves behaviour that has serious negative psychological consequences for the complainant(s).
- (c) This also includes physical force of power, whether threatened or actual, against another person or against a group or community.
- (d) While violent conduct may amount to harassment, harassment may occur as a result of non-violent conduct. Accordingly, an act of threat of violence is not an essential element of harassment. Likewise, certain acts of harassment

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

8. THE NATURE OF SEXUAL HARASSMENT

8.1 Definition

- (a) 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. In the broadest sense, harassment means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to (a) sex, gender or sexual orientation, or (b) a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group.
- (b) Sexual harassment is unwelcome conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutually acceptable. Sexual harassment is unwanted behavior that violates the rights of a person and constitutes a barrier to equality in the Provincial Treasury, taking into account all the following factors:
 - (i) whether the harassment is on the grounds of sex and/or gender and/or sexual orientation;
 - (ii) whether the sexual conduct was unwelcome;
 - (iii) the nature and extent of the sexual conduct; and
 - (iv) the impact of the sexual conduct on the person.
- (c) Sexual attention becomes sexual harassment if:
 - (i) the complainant has made it clear that the behaviour is considered offensive; or
 - (ii) the perpetrator should have known that the behaviour is regarded as unacceptable; and
 - (iii) the unwanted behaviour persists, although a single incident of harassment can constitute sexual harassment.

8.2 Establishment of sexual harassment

In establishing the above factors, the following guidelines, while not exclusive, ought to be considered:

8.2.1 Harassment on the grounds of sex, gender or sexual orientation

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- (a) The grounds of discrimination to establish sexual harassment are sex, gender, gender identity and sexual orientation.
- (b) Same-sex harassment can amount to discrimination on the basis of sex, gender and sexual orientation.

8.2.2 Unwelcome conduct

- (a) The different ways in which a person may indicate that sexual conduct is unwelcome, include non-verbal conduct such as walking away or not responding to the alleged perpetrator.
- (b) Previous consensual participation in sexual conduct does not necessarily mean that the conduct of the alleged perpetrator continues to be welcome.
- (c) When a complainant has difficulty with indicating to the alleged perpetrator that the conduct is unwelcome, such complainant may indicate this to the alleged perpetrator by seeking the assistance and intervention of another person, who may either be a superior or a human resource management official.
- (d) It is recognised in terms of this policy that some forms of sexual harassment are such that the alleged perpetrator should have known that the behaviour would be unwelcome.

8.2.3 Nature and extent of the conduct

- (a) The unwelcome conduct that constitutes sexual harassment in terms of this policy must be of a sexual nature, and includes physical, verbal or non-verbal conduct.
 - (i) **Physical conduct** of a sexual nature includes all unwelcome physical contact, ranging from touching to sexual assault and rape, as well as strip searches by or in the presence of the opposite sex.
 - (ii) **Verbal conduct** includes unwelcome innuendos, suggestions, or hints of a sexual nature, sexual advances, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body made in their presence or directed towards them, inappropriate enquiries about a person's sex life, unwelcome whistling or suggestive noises.
 - (iii) **Non-verbal conduct** includes unwelcome gestures, indecent exposure and the display or sending by electronic means or otherwise of sexually explicit pictures or objects.
- (b) Sexual harassment may include, but is not limited to, victimization, *quid pro quo* harassment and sexual favoritism.
 - (i) **Victimization** occurs when a person is victimized or intimidated for failing to submit to sexual advances.
 - (ii) **Quid pro quo harassment** occurs where a supervisor, member of management or co-employee, influences or attempts to influence the

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process of employment circumstances, for example, promotion, training, discipline, dismissal, salary increments or other benefits, or attempting to coerce that person to surrender to sexual advances.

- (iii) **Sexual favouritism** occurs when a person favors or rewards only those who respond to his/her sexual advances whilst other deserving persons who do not respond to sexual advances are disadvantaged or denied opportunities.
- (c) A single incident of unwelcome sexual conduct may constitute sexual harassment.

8.2.4 Impact of the conduct

- (a) The conduct amounting to sexual harassment should constitute an impairment of the person's dignity, taking into account the following:
 - (i) the circumstances of the complainant; and
 - (ii) the respective positions of the complainant and the alleged perpetrator in the Provincial Treasury.

8.3 It is unacceptable, and it constitutes misconduct in terms of this policy to commit an offence of a sexual nature relating to a person's gender, gender identity, sex and sexual orientation. In this respect a person who has been convicted or found to have committed an offence constituting a hate crime or hate speech will be subject to the normal and existing disciplinary procedures.

9. PROCEDURES FOR DEALING WITH SEXUAL HARASSMENT

9.1 Informal procedures

9.1.1 The complainant in respect of sexual harassment may choose to pursue one or both of the following informal procedures:

- (a) Explain to the perpetrator that the conduct in question is not welcome, that it offends the complainant, makes him or her feel uncomfortable and that it interferes with his or her work.
- (b) Report the sexual harassment to one of the Designated Officials mentioned in 7.1 above. On receiving a complaint, the Designated Official may approach the perpetrator, on behalf of the complainant, and explain to the perpetrator that certain forms of conduct, including his or her conduct towards the complainant, constitute sexual harassment, are offensive and unwelcome, make employees feel uncomfortable, and interfere with their work.

9.1.2 Designated Officials must report all cases brought to their attention to the Head of Department who may direct that further steps be taken.

9.1.3 The Head of Department or an official delegated by the Head of Department will consider any further steps which can be taken to assist in dealing with the complaint.

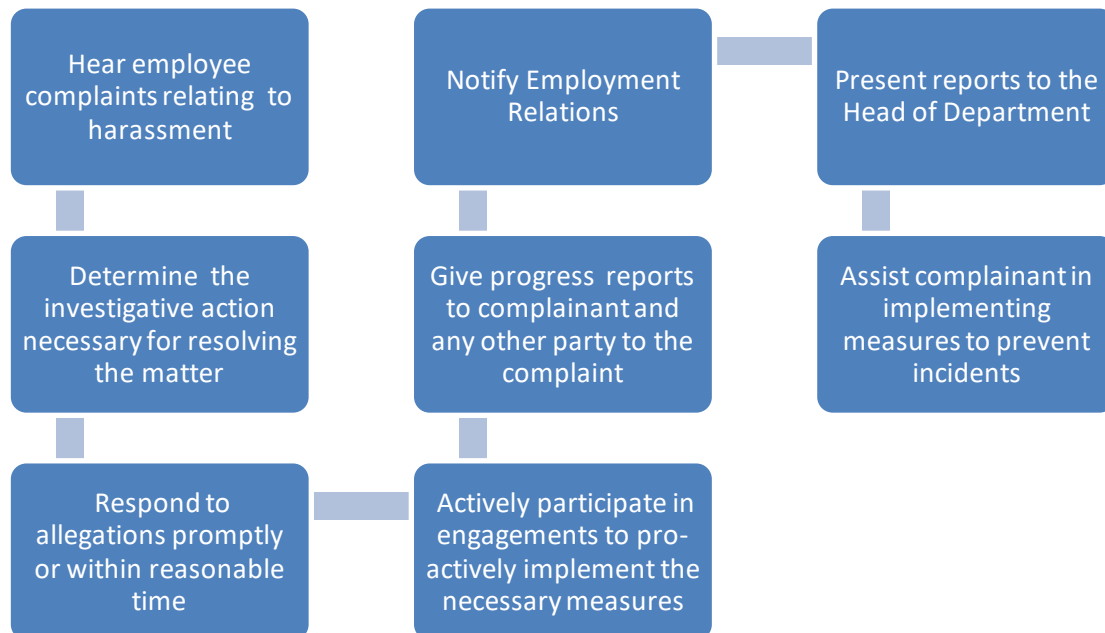
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9.2 Formal procedures

- 9.2.1 A complainant may choose to follow a formal procedure, either with or without first following an informal procedure. The formal procedure may entail submitting a formal written complaint or lodging a grievance. The employer or appropriate representative of employer will thereafter follow the applicable procedures relevant to the lodging of a complaint or a grievance.
- 9.2.2 Where an official or an employee has witnessed sexual harassment, however, the victim chooses not to follow a formal procedure; the employer or representative of employer shall still assess the risk to other persons in the workplace where formal steps have not been taken against the perpetrator. In assessing such risk the employer or the representative must take into account all relevant factors, including the severity of the sexual harassment and whether the perpetrator has a history of sexual harassment. If it appears to the employer, after a proper investigation, that there is or has been significant risk of harm to other persons in the workplace, the employer may follow a formal procedure, irrespective of the wishes of the complainant, and advise the complainant accordingly.

10. FLOW CHART FOR HANDLING HARASSMENT INCIDENT

The following represents a guide on the course of action that will generally be taken on the handling and management of reported incidences of sexual harassment:



11. REPORTING SEXUAL HARASSMENT

- 11.1 Any employee or client of the department who has reason to believe that he or she has been a victim of harassment may report the matter to any person who

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is a Designated Official in terms of this policy. The following persons are the responsible and Designated Officials and in terms of this policy:

- (a) Head of Department- as the Accounting Officer of the department, is responsible for consulting all relevant parties; taking the necessary steps to address the complaint in accordance with this Code and the department's policy, where applicable, the collective bargaining agreement.
- (b) Head of Office in the Office of the MEC for Finance – responsible for taking the necessary steps to prevent and eliminate harassment; as failure to take adequate steps to eliminate harassment once an allegation of harassment by an employee has been submitted within a reasonable time, will render the employer vicariously liable for the conduct of the employee in terms of section 60 of the EEA. This is the case even if the harassment consists of a single incident.
- (c) All Deputy Directors General- responsible for the overall elimination of harassment in their respective Directorates.
- (d) Chief Director responsible for Human Resource Management- overseer of all the measures taken in handling of the harassment.
- (e) Director responsible for Employee Wellness and/or Employment Relations- responsible for both Employee Wellness and Employment Relations Deputy Directors' intervention on handling of the harassment.
- (f) Deputy Director responsible for Employee Wellness- responsible for offering the complainant advice, assistance and counselling in terms of this Code.
- (g) Deputy Director responsible for Employment Relations- responsible for advising the complainant of the informal and formal procedures available to deal with harassment, as set out in this Code.

11.2 In cases where harassment involves physical abuse, indecent assault or any other form of criminal conduct, every employee has the right to report the matter to the SAPS and pursue criminal and/or civil remedies.

12. RESPONSIBILITIES OF DESIGNATED OFFICIALS

The following, though not exhaustive, constitute the responsibilities of designated officials:

- (a) Hear employee complaints relating to sexual harassment;
- (b) Determine the investigative action necessary for resolving the matter referred for consideration or intervention;
- (c) Respond promptly or within reasonable time whenever an employee complaint contains allegations of unfair employment practices and sexual harassment;

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- (d) Actively participate in engagements to pro-actively implement the necessary measures to combat incidences of sexual harassment;
- (e) Give progress reports to complainant and any other party to the complaint;
- (f) Notify Employment Relations in the event it is appropriate to conduct an investigation into the complaint.
- (g) Present reports to the Head of Department on complaints submitted, investigated or handled;
- (h) Assist complainant in implementing measures to prevent incidents or escalation of incidents relating to sexual harassment.

13. CONFIDENTIALITY

In line with the **Protection of Personal Information Act (POPIA)**- which is a piece of legislation which governs the law of data protection and privacy in South Africa and/or sets out the minimum standards regarding accessing and 'processing' of any personal information belonging to another:

- 13.1 Employers and employees must as far as possible, ensure that grievances about harassment are investigated and handled in a manner which ensures that the identities of the persons involved are kept confidential.
- 13.2 In cases of harassment, management, employees and the parties concerned must endeavor to ensure confidentiality in the disciplinary enquiry. Only the appropriate participants in the disciplinary hearing such as the aggrieved person, the alleged perpetrator, the trade union or employee representative, the employer representative, witnesses and interpreter, if required, may be present at the disciplinary enquiry.
- 13.3 The Provincial Treasury is required to disclose to either party or to their representatives such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this Policy.

14. VICTIM SUPPORT

- 14.1 Support to victims of harassment shall be given through the departmental employee wellness program.
- 14.2 Where a victim of harassment's existing sick leave entitlement has been exhausted, the Department should give due consideration to the granting of additional sick leave where the employee on medical advice requires trauma counseling. This should be done taking into consideration the provisions of the Leave Determination and the PILIR policy.
- 14.3 In terms of this policy, harassment of any kind is viewed by the department in a serious light, bearing serious consequences in respect of those found to have committed it.
- 14.4 Anyone found guilty of harassment after the disciplinary hearing shall be dismissed at first offence.

Policy on Prevention, Elimination and Management of Harassment in the workplace, 2024**15. INFORMATION AND EDUCATION**

The department shall include the briefing on this policy in its orientation, education and training programs.

16. RISKS AND MITIGATION

- 16.1 Lack of awareness of the provisions of policy and its underlying national policy frameworks by both employees and management may result in the manifestation of obstacles that may frustrate or undermine its implementation. In this respect, it is necessary to conduct ongoing workshops on the provisions of this policy and on the developments relating to its underlying national policy frameworks.
- 16.2 Resistance to change, especially when evident in social practices that are viewed as acceptable in certain social settings, but are prohibited in the workplace or in society, may also undermine implementation of this policy, if such practices are allowed to manifest. Some common examples are wolf whistling and catcalls. Continuous education and awareness workshops will be conducted in order to mitigate proliferation of such behaviors.
- 16.3 Changes in the relevant or underlying national legislation, regulations and codes of good practice may also render some of the provisions of this policy redundant or outdated. In order to mitigate this risk, the personnel entrusted with the responsibility to ensure its implementation must, at least once yearly, attend employment law update seminars and also have access to regular online employment law updates. The department is responsible for the provision of access to the aforementioned updated facilities.

17. REVIEW OF POLICY

- 17.1 This policy will be reviewed within 3 years from its effective date.
- 17.2 Notwithstanding 17.1 above, changes in the relevant or underlying legislation, regulations and codes of good practice will also trigger the need to review or update this policy. In this respect, changes in the policy may be made prior or immediately after the application of the change.

18. DISPUTE RESOLUTION

Any dispute arising from the application of this policy must be resolved through the normal grievance resolution process and procedure.

19. DATE OF IMPLEMENTATION

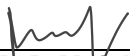
This policy shall be implemented on the date of its signing, in approval, by the Head of Department.

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20. MONITORING AND EVALUATION

- 20.1 Implementation of this policy will be enabled by inclusion of its salient deliverables and their performance indicators in the operational plan of the department. This, in turn, will enable measurement of achievement of the deliverables.
- 20.2 Reporting on the deliverables will be done on a quarterly and annual basis to management and to external stakeholders such as the Office of the Premier, the DPSA and the Public Service Commission.
- 20.3 Annual surveys and analysis reports on the employment relations climate in the department will also form part of the tools used to determine effectiveness in the application of this policy.

Approved by:



Mr D Majeke
Head of Department

30/03/2024

Date