

## BAVIAANS MUNICIPALITY

### SEXUAL HARASSMENT POLICY

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#### 1. PURPOSE OF THE POLICY

- the object of this policy is to eliminate sexual harassment in the workplace
- this policy provides appropriate procedures to deal with the problem and prevent its recurrence
- is policy encourages and promotes the development and implementation of policies and procedures that will lead to the creation of workplaces that are free of sexual harassment where employers and their employees respect one another's integrity, privacy and right to equity in the workplace

#### 2. APPLICATION OF THE POLICY

Although this policy is intended to guide Council and employees, the perpetrators and victims of sexual harassment may include:

- Council
- Managers
- Supervisors
- Employees
- Job applicants
- Clients
- Suppliers
- Contractors
- Others having deals with the Council

None of the points mentioned above grants Council the authority to take disciplinary action in respect of non-employees.

A non-employee who is a victim of sexual harassment may lodge a grievance with the Council where the harassment has taken place in the workplace or in the course of the harasser's employment.

#### 3. DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual.

Sexual attention becomes sexual harassment if:

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

#### 4. FORMS OF SEXUAL HARASSMENT

Sexual harassment may include unwelcome physical, verbal or non-verbal conduct, but is not limited to the following examples:

- physical conduct of a sexual nature includes all unwanted physical contact, ranging from touching to sexual assault and rape, and includes a strip search by or in the presence of the opposite sex
- verbal forms of sexual harassment include unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments about a person's body made in their presence or to them, unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling at a person or group of persons
- non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects
- quid pro quo harassment occurs where a councillor, supervisor, member of management or co-employee undertakes or attempts to influence or influences the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of an employee or job applicant in exchange for sexual favours

Sexual favouritism exists where a person who is in a position of authority rewards only those who respond to his or her sexual advances, while other deserving employees who do not submit to sexual advances are denied promotions, merit rating or salary increases.

6. PROCEDURES

6.1 Advice and assistance

Sexual harassment is a sensitive issue and a victim may feel unable to approach the perpetrator, lodge a formal grievance or turn to colleagues for support. Victims may approach the Human Resources Officer, the trade union representative or co-employee for confidential advice:

These persons should have the appropriate skills and experience or be properly trained and give adequate resources. They should also be required to have counselling and relevant labour relations skills and be able to provide support and advice on a confidential basis

6.2 Options in resolving a problem:

Employees are advised that there are two options in resolving a problem relating to sexual harassment. Either an attempt can be made to resolve the problem in an informal way or a formal procedure can be embarked upon

The employee should be under no duress to accept one or the other option.

6.3 Informal Procedure

It may be sufficient for the employee concerned to have an opportunity to explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable and that it interferes with their work

If the informal approach does not resolve the matter satisfactorily, if the case is severe, or if the conduct continues, it may be more appropriate to embark upon a formal procedure. Severe cases may include sexual assault, rape, a strip search and quid pro quo harassment

6.4 Formal Procedure

Where a formal procedure has been chosen by the aggrieved, the following procedure is to be followed:

5. GUIDING PRINCIPLES

Managers should create and maintain a working environment in which the dignity of employees is respected. A climate in the workplace should also be created and maintained in which victims of sexual harassment will not feel that their grievances are ignored or trivialised, or fear reprisals. The following guidelines are to be compiled with:

- councillors / management and employees are required to refrain from committing acts of sexual harassment
- all councillors / management and employees have a role to play in creating and maintaining a working environment in which sexual harassment is unacceptable. They should ensure that their conduct does not cause offence and they should discourage unacceptable behaviour on the part of others
- councillors / management should attempt to ensure that persons such as customers, suppliers, job applicants and others who have dealings with the municipality are not subjected to sexual harassment by the Council or its employees
- managers are required to take appropriate action in accordance with this policy when instances of sexual harassment which occur within the workplace are brought to their attention

Management has the positive duty to implement the policy and take disciplinary action against employees who do not comply with the policy.

The Council emphasises that:

- allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially
- employees will be protected against victimisation, retaliation for lodging grievances and from false accusations

This policy statement on sexual harassment will be communicated to all employees and the unions.

- the employee should lodge a grievance with the Human Resources Officer within 10 days of occurrence of the event
- the grievance must be dealt with, as expeditiously as possible, within the framework of the applicable grievance / disciplinary policy
- should the case not be resolved satisfactorily, the parties may refer this matter to the CCMA.

#### 6.5 Investigation and disciplinary action

Care should be taken during any investigation of the sexual harassment grievance that the aggrieved person is not disadvantaged, and that the position of other parties is not prejudiced if the grievance is found to be groundless.

The Code of Good Practice regulating dismissal contained in Schedule 8 of the Labour Relations Act, 1995 ( Act 66 of 1995 ) ( "the Act" ), reinforces the provisions of chapter 8 of the Act and provides that an employee may be dismissed for serious misconduct or repeated offences. Serious incidents of sexual harassment or continued harassment after warnings are dismissible offences.

In cases of persistent harassment or single incidents of serious misconduct, Managers must follow the procedures set out in the Code of Good Practice contained in Schedule 8 to the Act.

It is also made clear that it will be a disciplinary offence to victimise or retaliate against an employee who in good faith lodges a grievance of sexual harassment.

#### 6.6 Criminal and civil charges

A victim of sexual assault has the right to press separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by this Code.

#### 6.7 Dispute resolution

Should a complaint of alleged sexual harassment not be satisfactorily resolved by the internal procedures set out above, either party may within 30 days of the dispute having arisen, refer the matter to the CCMA for conciliation in accordance with the provisions of Section 135 of the Act. Should the dispute remain unresolved, either party may refer the dispute to the Labour Court within 30 days of receipt of the certificate issued by the Commissioner in terms of Section 135 ( 5 ).

#### 7. CONFIDENTIALITY

Managers, trade unions and employees must ensure that grievances about sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.

In cases of sexual harassment, management, unions, employees and the parties concerned must endeavour to ensure confidentiality at the disciplinary inquiry. Only appropriate members of management, and the aggrieved person, his or her representative, the alleged perpetrator, witnesses, an industrial relations representative and an interpreter, if required, may be present at the disciplinary inquiry.

Managers are required to disclose to either party or to their representatives such information as may reasonably be necessary to enable the parties to prepare for any proceedings in terms of this code.

The relevant provisions of Section 16 of the Act will apply to the disclosure of information in terms of this code.

#### 8. ADDITIONAL SICK LEAVE

Where an employee's existing sick leave entitlement has been exhausted, the employer may give due consideration to the granting of additional sick leave in cases of serious sexual harassment where the employee, on medical advice, required trauma counselling.

#### 9. INFORMATION AND EDUCATION

The Municipality will ensure that copies of this code are accessible and available.

Trade Unions should include the issue of sexual harassment in their education and training programs for shop stewards and employees.

Staff should receive specialised training to deal with sexual harassment cases.

BAVIAANS MUNICIPALITYEMPLOYMENT POLICY FOR HIV / AIDS1. INTRODUCTION

It is necessary for the municipality to implement a policy in order to:

- provide for the fair and non-discriminatory treatment of employees and applicants for employment with HIV / AIDS
- provide a means of educating employees and management in order to prevent unfair discrimination and a harmonious labour force
- prevent unfair labour practices and any labour unrest
- minimise the physical, psychological, social and financial implications of AIDS for employees and their families

2. RECRUITMENT AND SELECTION OF NEW EMPLOYEES

In terms of this policy, the Council undertakes not to:

- deny employment to any prospective employee on the grounds that the employee is HIV positive ( should this information be voluntarily given ) provided that the employee is medically fit enough to undertake the work
- require any prospective employee to undertake an HIV test or to victimise any applicant for employment who refuses to take such a test
- deny any employee the right to join any of Council's approved medical aid schemes on the basis of their HIV status ( if this information is voluntarily given )
- disclose any information to any other parties on the HIV / AIDS status of any applicant who voluntarily provides this information to a Council employee.

3. DEALING WITH HIV / AIDS : EXISTING EMPLOYEES

- 3.1 All employees, irrespective of their HIV / AIDS status, have the same rights, duties and obligations
  - 3.2 Testing for HIV, with informed consent ( as required by the Health Professions Council ) and pre-test as well as post-test counselling, will be offered to any employee who feels he may be at risk.
  - 3.3 No employee will be required to divulge their HIV status and the HIV status of all employees will be regarded as confidential.
  - 3.4 No information must be recorded on the employee's medical or personnel records to indicate their HIV status.
  - 3.5 Any employee to whom an HIV positive person discloses their HIV status, may not disclose such information to any other party without the HIV status employee's written consent.
  - 3.6 Managers are required to ensure that all steps are taken to ensure that no employee or member of the public is placed at risk if an HIV positive employee is working in a high risk work environment. The status of the infected employee should not be disclosed without the employee's informed consent.
  - 3.7 All employees known to have HIV / AIDS will remain in their normal employment position as far as is practicable, without endangering fellow workers. Managers must ensure a safe working environment through the promotion of universal precautions.
  - 3.8 Employees with HIV / AIDS are entitled to the same sick leave benefits as any other employee and their HIV status will not be used as a justification for refusing to perform normal duties.
  - 3.9 HIV positive employees may seek recourse in the event of discrimination, in terms of Council's grievance procedure.
  - 3.10 The reason for death of an employee, whether due to AIDS or not, does not legally have to appear on the Death Certificate and the employer therefore has no right to know whether the employee has died of an AIDS related illness.
4. PROMOTION AND TRAINING OPPORTUNITIES
- 4.1 An employee who is known to have HIV / AIDS is entitled to the same promotion and training opportunities as any other employee.
  - 4.2 No employee shall be required to take an HIV test as a pre-requisite for promotion.