

**SEXUAL HARASSMENT
POLICY**

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DIRECTIVE ON FAIR MANAGEMENT OF SEXUAL HARASSMENT

1. PURPOSE

The purpose of this directive is to ensure that O R Tambo District Municipality complies with the requirements as set in Item 6 of the "Code of good Practice on the Handling of Sexual Harassment Cases" as per General Notice 1367 in Government Gazette 19049 of 17 July 1998 (hereafter called the "Code of Good Practice").

2. OBJECTIVE

Workplace: To create a workplace which is free of sexual harassment.

Prevention: To provide direction in terms of dealing with sexual harassment and the prevention of its occurrence/recurrence.

3. NORMATIVE / INFORMATIVE REFERENCES

Normative References:

- Constitution of the Republic of South Africa
 - Labour Relations Act Number 66 of 1995 as amended
 - Employment Equity Act 55 of 1998 as amended
 - Codes of Good Practice notice 1367 GG 19049
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Informative References:

- Employment References Policy
 - Grievance Procedure ó Under review
 - Disciplinary Code Procedure and Directives
 - Business Conduct Policy and Guidelines
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4. DEFINITIONS

Line Manager: A manager appointed in terms of section 57 , in whose direct line of report the alleged perpetrator (in the event that the alleged perpetrator is a O R Tambo District Municipality employee), or alleged victim (in the event that the alleged perpetrator is not a O R Tambo District Municipality employee) is employed.

**Senior/
Responsible
Person:** Any supervisor or manager senior to the alleged victim or any other person who receives the report in the line of their duties.

**Occupational
Health Services:** May be construed to mean:

- Occupational Health Nurse
- Occupational Health Medical Practitioner
- Employee Assistance Practitioner

Victim: Any O R Tambo District Municipality employee or any other person (including an outsider and a community member) who has an association, engagement or duties with O R Tambo District Municipality who falls victim to an act of sexual harassment.

Perpetrator: Any O R Tambo District Municipality employee or any other person (including an outsider and a community member) who has an association, engagement or duties with O R Tambo District Municipality who commits an act of sexual harassment.

**Code of Good
Practice:** The "Code of Good Practice on the Handling of Sexual Harassment Cases" as per General Notice 1367 in Government Gazette 19049 of 17 July 1998.

**Sexual
Harassment:** It is impossible to provide an exhaustive list of conduct that may constitute sexual harassment. However, the Code of Good Practice defines sexual harassment as follows:

	Conduct That May Constitute Sexual Harassment
1.	Unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual.
2.	Sexual attention becomes sexual harassment if: <ul style="list-style-type: none"> • The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; • The recipient has made it clear that the behaviour is considered offensive. • The perpetrator should have known that the behaviour is regarded as unacceptable.

Note: A single incident of unwanted conduct of a sexual nature would immediately constitute an act of sexual harassment and no prior warning from the recipient is required.

Forms of Sexual Harassment:

Sexual harassment may include unwelcome physical, verbal and non-verbal conducts, but is not limited to the examples listed as follows:

	Examples of Forms of Sexual Harassment
Physical	Forms include 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 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 directed towards them, unwelcome and inappropriate enquiries about a person's

	sex life, and unwelcome whistling directed at a person or group of persons.
Non-verbal	Forms include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects.
Quid pro quo	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 benefit 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/her sexual advances, whilst other deserving employees who do not submit themselves to any sexual advances are denied promotions, merit rating or salary increases.

Note: It is not a requirement for the sexual harassment to take place on the premises or during working hours for it to constitute misconduct. The guiding principle is whether such conduct directly or indirectly relates to or ensues from party's employment, association, engagement, association, engagement or duties with O R Tambo District Municipality.

5. GENERAL POLICY STATEMENT

Statement: O R Tambo District Municipality is committed to and declares that:

- It subscribes to a work environment where employees respect one another:
 - Integrity
 - Dignity
 - Privacy

- Right to equity
 - All job applicants and other persons who have dealings with the business have a right to be treated with dignity equal to employees
 - Sexual harassment in the workplace will not be permitted or condoned
 - Every person who has been subjected to sexual harassment in the workplace has the right to raise a complaint with a senior or responsible person
 - All complaints of sexual harassment shall be dealt with:
 - Seriously
 - Expeditiously
 - Sensitively
 - Confidentially
 - Employees will be protected against
 - Victimization
 - Retaliation for lodging grievances
 - False accusations
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Communication: The contents of this document should be communicated throughout the O R Tambo District Municipality via the appropriate internal communication media.

Such communication should make every employee aware of the existence of the Directive and that it is available at the Corporate Services Department.

Familiarization With Directive: Every employee has an obligation to ensure that he / she is conversant with the content of this document. Ignorance shall not be accepted as defense against contravention of this directive.

Misconduct: Note must be taken that sexual harassment constitutes misconduct not only against the victim, but also against the employer. O R Tambo District Municipality shall therefore pursue appropriate disciplinary action on its own behalf and not as an agent or a representative of an alleged victim.

Directive on Fair Management of Sexual Harassment

Grievance: Any O R Tambo District Municipality employees who are a victim of sexual harassment shall have the right to avail themselves formally in accordance with O R Tambo District Municipality's Grievance Procedure or may elect to follow an informal procedure such as envisaged by the Code of Good Practice.

**Enforcement:
Policy** Every employee who becomes aware of a possible incident of sexual harassment shall report such an incident to the relevant line Manager or the Labour Relations Section.

Investigation: Every allegation of sexual harassment shall be properly and thoroughly investigated. The method of the investigation will be determined by the circumstances of an individual case.

**Purpose of
Investigation:** The purpose of such an investigation shall be to *inter alia* to ensure whether the allegations of sexual harassment appears to be founded and to ensure that proper action is taken when necessary or to protect employees against false accusations.

Accountability: The relevant line manager will be accountable for ensuring that every allegation is properly and thoroughly investigated.

Failure: Any failure by an acceptable line manager or responsible functionary to properly and thoroughly investigate an allegation of sexual harassment or to properly pursue the appropriate action shall constitute a serious disciplinary offence that may be visited with dismissal sanction upon the alleged perpetrator being found guilty of such allegation.

Disciplinary Disciplinary action shall be instituted against perpetrators of sexual harassment in all instances where prima facie evidence of such misconduct is available. Such action shall be instituted notwithstanding any other formal or informal action embarked on by the victim and regardless of any possible settlement between the victim and the perpetrator.

6. PROCEDURE (WHERE ALLEGED PERPETRATOR IS AN O R TAMBO DISTRICT MUNICIPALITY EMPLOYEE)

Report: In the event that an allegation of sexual harassment is reported to a senior / responsible person other than the accountable line manager, the senior / responsible person shall report such an allegation to the relevant line manager.

Reasons for Reports: Reports of sexual harassment may be the result of:

- A direct report / complaint to a senior / responsible person or line manager
 - The result of a formal grievance
 - The result of an informal procedure
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Action Upon receipt of a report of sexual harassment, the responsible line manager shall take such steps to ensure that the matter is properly and thoroughly investigated.

Assistance Upon receipt of a report of sexual harassment, the senior / responsible person / line manager shall immediately offer assistance to the victim via the applicable employee assistance co-ordinator.

Such assistance shall be rendered in accordance with relevant O R Tambo District Municipality Policies and Directives and Conditions of Service and the exact nature thereof will depend on the particular circumstances. (For instance, applications for sick leave or additional sick leave may be considered in accordance

with the Conditions of Service in such instances where it may be appropriate).

In the event that the alleged victim is not a O R Tambo District Municipality employee, O R Tambo District Municipality will still offer the person such assistance as is reasonable in the circumstances.

Investigation: During the investigation, the relevant line manager may avail himself of the services of any person / functionary that may substantially assist in the investigation. Such functionaries may include but are not limited to:

- Human Resources Practitioners
- Labour Relations Practitioners
- EAP co-ordinator
- External experts (criminologists, psychiatrists and medical specialists).

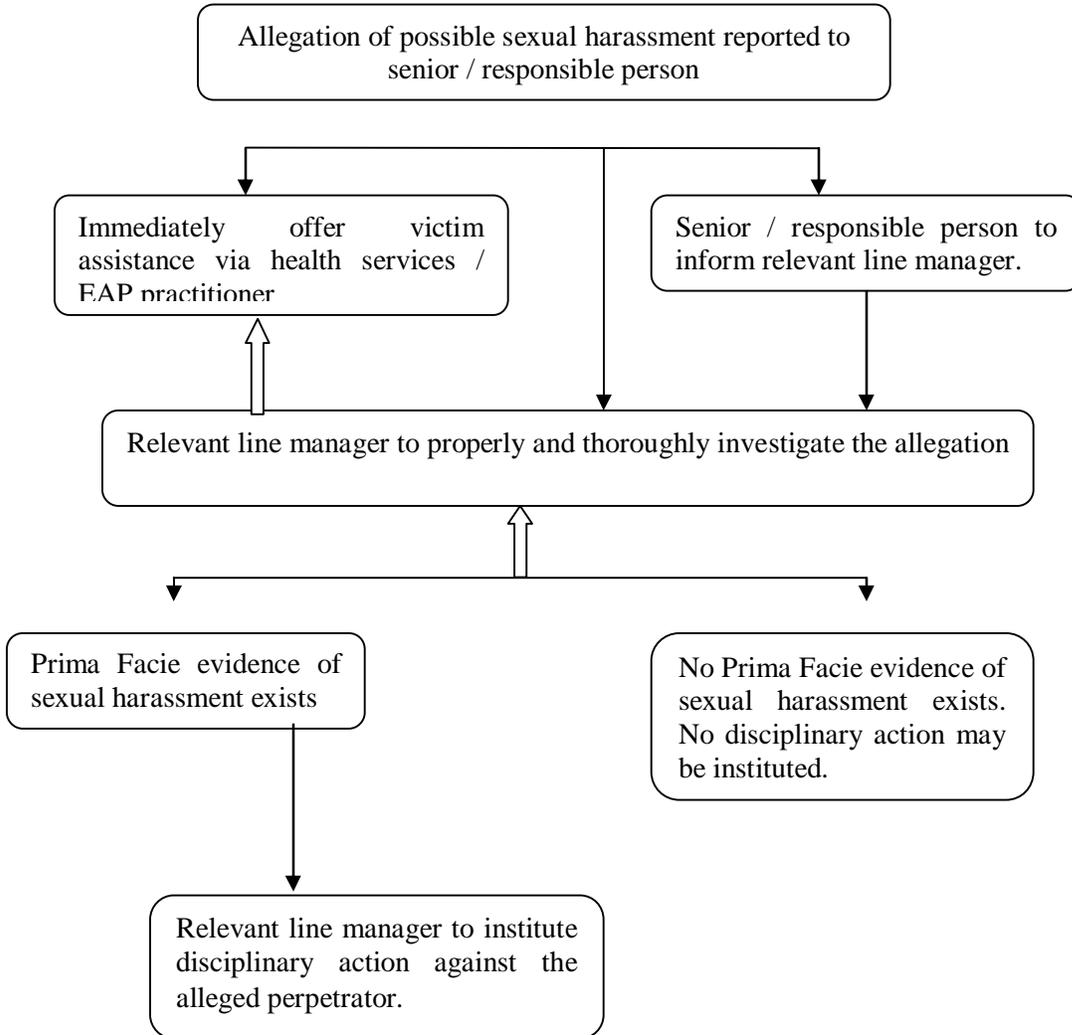
Confidentiality: All persons involved have the obligation to ensure the confidentiality of the matter.

Disciplinary Action: Should the investigation reveal prima facie evidence that an act of sexual harassment occurred, disciplinary action shall be instituted according to O R Tambo District Municipality Disciplinary Code, Procedure and Directives.

No disciplinary action shall be pursued in the absence of prima facie evidence.

**7. PROCESS FLOW DIAGRAM:
WHERE ALLEGED PERPETRATOR IS A O R TAMBO DISTRICT
MUNICIPALITY EMPLOYEE**

In the event of a report of sexual harassment to a senior / responsible person, the following process should be adhered to:



8. PROCEDURE (WHERE ALLEGED PERPETRATOR IS NOT A MBIZANA MUNICIPALITY EMPLOYEE)

Report In the event that an allegation of sexual harassment is reported to a senior / responsible person other than the accountable line manager, the senior / responsible person shall report such an allegation to the relevant line manager.

Reason for Report Such a report of sexual harassment may be the result of:

- A direct report / complaint to a senior / responsible person
- The result of a formal grievance
- The result of an informal procedure

Action Upon receipt of a report of sexual harassment, the responsible line manager shall take such steps as are reasonable and possible to ensure that the matter is investigated as thoroughly as circumstances allow.

Assistance Upon receipt of a report of sexual harassment, the senior / responsible person / line manager shall immediately offer assistance to the victim via the applicable occupational health services practitioner. Such assistance shall be rendered in accordance with the relevant O R Tambo District Municipality Policies and Directives and Conditions of Service and the exact nature thereof will depend on the particular circumstances. (For instance, applications for sick leave or additional sick leave may be considered in accordance with the Conditions of Service in such instances where it may be appropriate.)

Investigations During the investigation, the relevant line manager may avail himself of the services of any person / functionary that may substantially assist in the investigation. Such functionaries may include but are not limited to:

- Human Resources Practitioners
- Labour Relations Practitioners
- EAP co-ordinator
- External Experts (Criminologists, Psychiatrists and Medical Specialists).

Confidentiality

All persons involved have the obligation to ensure the confidentiality of the matter.

**Disciplinary
Action**

Should the investigation reveal prima facie evidence that an act of sexual harassment occurred. O R Tambo District Municipality will inform the perpetrator / or his employer if applicable of:

- The findings of the investigation and
- The required actions and / or appropriate remedies

In the event that the perpetrator or his employer, as applicable, refuses or fails to comply with O R Tambo District Municipality's requirements, O R Tambo District Municipality will provide the victim with guidance and / or assistance where appropriate to pursue criminal and/or civil action.

9. PROCESS FLOW DIAGRAM:

WHERE ALLEGED PERPETRATOR IS NOT A O R TAMBO DISTRICT MUNICIPALITY EMPLOYEE

The following process should be adhered to in circumstances where an allegation of Sexual harassment has been made and the alleged perpetrator is not an employee of O R Tambo District Municipality employee.

