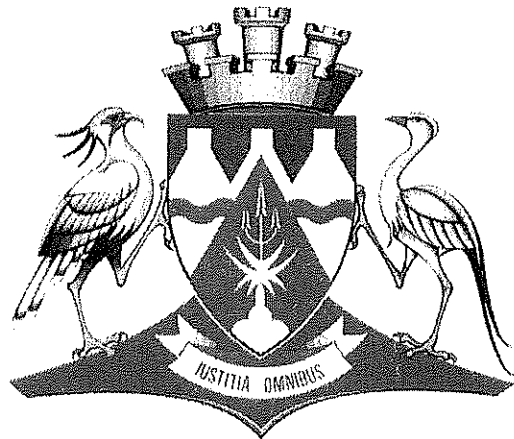


# **PIXLEY ka SEME DISTRICT MUNICIPALITY**



## **SEXUAL HARASSMENT AND INTIMIDATION POLICY**

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## 1. PREAMBLE

Pixley ka Seme District Municipality is committed to creating an environment free of any form of harassment (including sexual harassment), intimidation and bullying. Wherever harassment occurs it violates the basic human rights of the individual and undermines the values contained in the South African Constitution, as well as the integrity of the organisation. The establishment of this policy is a reflection of Pixley ka Seme District Municipality's commitment to a safe and secure work environment for all Pixley ka Seme District Municipality employees and visitors/service providers.

## 2. SCOPE AND APPLICATION

This policy applies to all employees and management of Pixley ka Seme District Municipality. The policy should be applied in conjunction with the Employment Equity Act, the Constitution, and Labour Relations Act. It should also be applied in conjunction with the disciplinary and grievance procedures.

## 3. OBJECTIVES

The objective of this policy is to provide a regulatory framework for the effective and efficient management of threats and events of harassment, intimidation and bullying in the workplace.

## 4. PRINCIPLES

This policy is underpinned by the following principles:

- 4.1 Pixley ka Seme District Municipality is committed to creating a working environment which is free of any form of harassment, intimidation and bullying, where mutual respect and the ability of employees to work together productively are supported. Pixley ka Seme District Municipality remains committed to cultivating an atmosphere of trust, respect and dignity within its workplaces;
- 4.2 Pixley ka Seme District Municipality believes in the prevention of harassment, intimidation and bullying, including any violation of human rights, and the development of processes that support a safe and supportive environment that protects all people from physical and emotional harm;
- 4.3 Management will maintain a working environment in which the dignity of employees is respected and victims of harassment, especially sexual harassment, will not feel that their grievances are ignored, trivialised, or fear reprisals;

- 4.4 Management will deal with any form of harassment, intimidation and victimisation in a decisive and consistent manner. Any employee found guilty after a proper process of disciplinary inquiry will be subjected to the most severe disciplinary action which could include dismissal. Management will ensure that victims of harassment, intimidation and bullying receive professional support, such as trauma counselling;
- 4.5 Allegations of any kind of harassment, intimidation and bullying depending on their degree and severity, will be dealt with seriously, expeditiously, sensitively, confidentially and without prejudice to ensure that Pixley ka Seme DM remains a harassment-free zone at all times.

## **5. TYPES OF HARASSMENT**

This policy distinguishes between two types of harassment namely harassment and intimidation, sexual harassment and bullying.

### **5.1 DEFENITION OF HARASSMENT AND INTIMIDATION**

- 5.1.1 Harassment is considered to be unsolicited, gratuitous, unwanted or unwelcome verbal or physical conduct that is known, or reasonably ought to be known, to have the purpose or effect of:
  - i. violating an individual's dignity, respect and self worth; and/or,
  - ii. instilling fear or discomfort

#### **5.1.2 Behaviour Constituting Harassment and Intimidation**

- 5.1.2.1 The following constitutes harassment and intimidation
  - i. Acts of intimidation, including threatening to harm an individual or his/her family, friends, associates, or their property;
  - ii. Making harassing or threatening telephone calls, letters, emails, or other form of written or electronic communications;
  - iii. Intimidating or attempting to coerce an employee to do wrongful acts that would affect the business interests of Pixley ka Seme DM;
  - iv. Behaviours or threats which imply loss of future opportunity, worsening abuse, or compromise of education;
  - v. Abuse of power through threats or coercions;
  - vi. Harassing surveillance, also known as "stalking", the wilful, malicious acts of intimidation, repeated following of another person and making a credible threat with intent to place the other person in reasonable fear of his/her safety;
  - vii. Racial harassment: any threatening conduct that is based on race, colour, language, national origin, association with a minority, birth or

other status that is unreciprocated or unwanted and which affects the dignity of women and men at work;

- viii. Verbal or mental abuse such as inappropriate comments and the use of obscene language, gestures or threats;
- ix. Behaviour which is unwelcome, or ought to be known as unwelcome – distinguishable from behaviour that is welcome and mutual. For example – racist remarks, lascivious leering or unwelcome physical contact, rape, attempted rape, indecent assault, or statutory rape (whilst rape is a form of harassment, it is a heinous criminal offence);
- x. Conduct which creates an intimidating, hostile, or offensive environment for working;
- xi. Display of inappropriate or offensive material in a public location;
- xii. Any other forms of harassment relating to the following: age; disability; HIV status; domestic circumstances; sex; sexual orientation; marital status; language; ethnic or social origin; religion; trade union or other opinion belief; property.

5.1.2.2 For the purposes of this policy harassment and intimidation do not include the legitimate exercise of an individual's supervisory authority in an appropriate manner. This recognition of the appropriate use of supervisory authority is not meant to deflect attention from the intent of this policy;

5.1.2.3 The standard for determining whether any conduct constitutes harassment is whether a reasonable person in the same or similar circumstances would find such conduct intimidating, hostile or abusive.

## **5.2 DEFINITION OF SEXUAL HARASSMENT**

Sexual Harassment can be defined as:

5.2.1 Any unwelcome sexual advances, requests for sexual favours, and other verbal or non-verbal or physical conduct of a sexual nature;

5.2.2 The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual;

5.2.3 Sexual attention becomes sexual harassment if:

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

## **5.2.4 FORMS OF SEXUAL HARASSMENT**

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

- i. 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.
  - ii. 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 directed toward them, unwelcome and inappropriate inquiries about person's sex life, and unwelcome whistling directed at a person or group of persons.
  - iii. Non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects.
  - iv. 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.
- 5.2.4.2 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.

### **5.3 CONFIDENTIALITY**

- 5.3.1 Managers and employees must ensure that grievances regarding sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.
- 5.3.2 In cases of sexual harassment, management, employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary inquiry. Only appropriate members of management as well as the aggrieved person, representative, alleged perpetrator, witnesses and interpreter if required must be present in the disciplinary inquiry.
- 5.3.3 Managers are 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

### **5.4 ADVICE AND ASSISTANCE**

- 5.4.1 As sexual harassment is a sensitive issue, the victim may feel unable to approach the perpetrator, lodge a formal grievance or turn to colleagues for support.
- 5.4.2 The victim may approach an HR representative or shop steward for confidential advice, who will explain that there are two options to resolve a problem relating to sexual harassment, i.e. formally or informally. The employee should be under no duress to accept one or the other.

## **5.5 INFORMAL PROCEDURE**

- 5.5.1 It may be sufficient for the employee concerned or his/her representative to have an opportunity where he/she can explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, and that it is offensive or makes him/her uncomfortable, and that it interferes with his/her work;
- 5.5.2 However, if the informal approach has not provided a satisfactory outcome, if the case is severe or if the conduct continues, it may be more appropriate to embark on a formal procedure.

## **5.6 FORMAL PROCEDURE**

- 5.6.1 Where it is necessary to follow a formal procedure, the employee is required to file a written grievance in the manner as set out in the Grievance Procedure Policy;
- 5.6.2 During the investigation it is important that care should be taken to ensure that the aggrieved person is not disadvantaged and that the position of the other parties is not prejudiced if the grievance is found to be unwarranted;
- 5.6.3 Should it be proved that a staff member has falsely accused another employee of sexual harassment the accuser will face disciplinary action;
- 5.6.4 Should investigations reveal that a disciplinary inquiry is necessary in order to discipline the perpetrator the procedure, as set out in the SALGBC Disciplinary Code and Procedure should be followed;
- 5.6.5 Pixley ka Seme DM views sexual harassment as a serious offence and an employee who is found guilty of such offence could be dismissed.

## **5.7 DISPUTE RESOLUTION**

- i. 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 relevant Act;
- ii. 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 CCMA in terms of section 135(5) of the relevant Act.

## **5.8 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 policy.

**5.9 ADDITIONAL SICK LEAVE**

Where an employee's existing sick leave entitlement has been exhausted, Pixley ka Seme DM will give due consideration to the granting of additional sick leave in cases of serious sexual harassment where the employee, on medical advice, requires trauma counselling.

**6. Bullying**

Workplace bullying shall entail any form of abuse of power and authority by the Manager and it will be handled in the same manner as the harassment should a concern be registered.

**7. AMENDMENTS TO THE POLICY**

No substantive amendments to this policy shall be effected without the approval of the Pixley ka Seme DM Council. However, should there be any impossibility associated with any of its provisions; such may be amended by a directive from the Municipal Manager.

**8. SANCTIONS FOR BREACH OF THE POLICY**

Pixley ka Seme DM shall view any fundamental breach of this policy in a serious light and any employee including management who is found guilty of such breach will be liable for serious disciplinary action.



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**EXECUTIVE MAYOR**

**POLICY APPROVED :**

**28 March 2014**

**COUNCIL RESOLUTION:**

**R 2014 – 03 – 28 (9.3)**

**REVIEWED POLICY APPROVED :**

**30 May 2017**

**COUNCIL RESOLUTION :**

**R 2017 – 05 – 30 (9.12.13)**