

## SAFETY AND SECURITY SECTORAL BARGAINING COUNCIL


AGREEMENT NO:	01/2011
DATE:	18 January 2011

### AGREEMENT ON SEXUAL HARASSMENT IN THE WORKPLACE

Parties to the Safety and Security Sectoral Bargaining Council hereby agree to conclude a Collective Agreement on the Sexual Harassment Policy as Annexure A to the Agreement.

1. This agreement binds the parties to the agreement and all employees who are not members of a registered trade union admitted to this Sectoral Bargaining Council, as well as all members of registered trade unions admitted to this Sectoral Bargaining Council who are not parties to this agreement.
2. This agreement shall be valid as from the date of signing of this agreement until it is either amended or revoked in the Sectoral Bargaining Council.
3. This agreement should be subjected to the provisions of any applicable Act of Parliament, or secondary legislation promulgated in terms thereof.
4. The representatives of all the parties concerned undertake to take every reasonable step necessary to ensure the implementation of this agreement.
5. Amendments to this agreement shall not be in force of effect unless they have been reduced to writing.

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6. If there is a dispute the interpretation or application of this agreement any party may refer the matter to the Council for resolution in terms of the dispute resolution procedure of the Council.



7. **DATE OF IMPLEMENTATION**

This Agreement shall come into effect from the date of signing.

This agreement is signed on behalf of the SA Police Service as EMPLOYER and the relevant employee organizations, all signatories being duly authorised thereto at **CENTURION** on this **18** day of **January 2011**.

  
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**SOUTH AFRICAN POLICE SERVICE**

  
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**POLICE AND PRISONS CIVIL RIGHTS UNION**

  
  
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**SOUTH AFRICAN POLICE UNION**

**POLICY ON SEXUAL HARASSMENT IN THE WORKPLACE**

**1. Purpose**

The purpose of this policy is to-

- a) Promote a safe and secure work environment in which the dignity of all persons are respected and which is free from sexual harassment; and
- b) Provide measures to address and eliminate sexual harassment by employees of the Service against co-employees and third parties of the same or the opposite sex.

**2. Legal Framework**

This policy must be read, amongst other, with the following-

- a) Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)
- b) Labour Relations Act, 1995 (Act No. 66 of 1995)
- c) Employment Equity Act, 1998 (Act No. 55 of 1998) including the Code of Good Practice on Handling of Sexual Harassment Cases in the Workplace as amended
- d) Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997)
- e) Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000)
- f) Protected Disclosures Act, 2000 (Act 26 of 2000)
- g) South African Police Service Discipline Regulations

**3. Scope of application**

This Policy is applicable to every employee of the Service.

**4. Definitions**

In this policy unless the context otherwise indicates-


- a) "complaint" means an employee who complains that he or she is being or has been sexually harassed;
- b) "employee" means any person employed by the Service in a full time or part time capacity, and for purposes of this policy includes any other person who has dealings with the Service including job applicants, members of the public, suppliers and contractors;

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- c) "harasser" means an employee who has allegedly committed an act of sexual harassment;
- d) "immediately" means as soon as reasonably possible in the circumstances and without undue delay, taking into account the nature of sexual harassment, including that it is a sensitive issue and, that the complainant and the alleged harasser in the workplace;
- e) "Service" means the South African Police Service;
- f) "sexual harassment" means an unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace;
- g) "sexual harassment officer" means an employee of the Service who is appropriately trained to deal with sexual harassment issues and "harassment officer" has a corresponding meaning;
- h) "work environment" means any place or area where the interests of the Service are carried out including but not limited to community service centres, offices, conferences, workshops.

#### **4. Principles**

- a) Sexual harassment in the working environment is a form of unfair discrimination and is prohibited on the grounds of sex and/or sexual orientation.
- b) A complainant in a sexual harassment matter has the right to follow the procedures provided for in this policy and appropriate action must be taken by the employer.
- c) Every complaint of sexual harassment must be dealt with promptly and fairly.
- d) A single incident of unwelcome sexual conduct may constitute sexual harassment.
- e) All sexual harassment matters must be dealt with in a sensitive and confidential manner.
- f) Disciplinary action may not be instituted against an employee who, in good faith, lodged a complaint of sexual harassment.
- g) Disciplinary action may be instituted against an employee who lodges false accusations of sexual harassment.
- h) Disciplinary action may be instituted against any employee who victimises or retaliates against a complainant who in good faith lodges a complaint of sexual harassment.

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## 5. Sexual Harassment

Sexual harassment is a form of unfair discrimination and includes, but is not limited to-

- a) Sexual demand, the non-compliance of which could result in victimization by the harasser;
- b) Comments or conduct of a sexual nature which the harasser reasonably ought to have known could be objectionable to a complainant;
- c) Comments or conduct of sexual nature resulting in the creation of a work environment in which the dignity of a complainant is impaired and his or her right to equity is not respected;
- d) Sexual favouritism where an employee in authority in the Service influences an employee's employment circumstances such as promotions, training or other benefits or rewards only those employees or third parties who respond to his or her sexual advances;
- e) Unwanted sexual advances;
- f) Requests for sexual favours in return for employment benefits;
- g) Verbal abuse having sexual overtones;
- h) Innuendoes, including inappropriate remarks or insinuations, about a person's sex life or private life;
- i) Unwanted infringement of an individual's personal space, which leads to discomfort;
- j) Suggestive comments about a person's appearance, body or clothing;
- k) Unwelcome physical contact ranging from touching to sexual assault and intercourse;
- l) Obscene gestures and indecent exposure;
- m) Staring, leering or whistling;
- n) Any physical or computerized display of sexually offensive or explicit material;
- o) Direct sexual propositioning;
- p) Continued pressure for dates or sexual favours; or
- q) Letters or calls of a sexual nature.

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## 7. Test for Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace; taking into consideration all of the following factors-

- a) Whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;
- b) Whether the sexual conduct was unwelcome;
- c) The nature and extent of the conduct; and
- d) The impact of the conduct on the employee.

## 8. Procedures for resolving complaints

### 8.1 The procedures to deal with complaints of sexual harassment aim to ensure that-

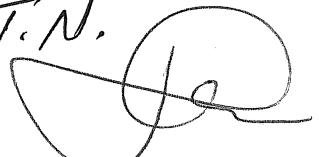
- 8.1.1 Complaints of sexual harassment are considered seriously and sympathetically and are dealt with promptly and confidentially; and
- 8.1.2 The rights of both the complainant and the alleged harasser are respected.

### 8.2 Reporting

- 8.2.1 A complainant must *immediately* bring the alleged conduct to the attention of his or her immediate supervisor, a sexual harassment officer or the supervisor of the alleged harasser;
- 8.2.2 If the immediate supervisor of an employee is involved, the report may be made to the next level in supervision.
- 8.2.3 Sexual harassment may be brought to the attention of the supervisor or the sexual harassment officer by the complainant or by any other person, such as a colleague or a friend, acting on the request of the complainant.
- 8.2.4 A complainant may be assisted by a union representative or a fellow employee when reporting an act of sexual harassment.

### 8.3 Advice and Assistance

- 8.3.1 A complainant may require advice and assistance, including counselling.
- 8.3.1 The employee advising the complainant must-
  - i) Advise the complainant that there are formal and informal procedures which could be followed to deal with the matter;

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- ii) Explain the formal and informal procedures to the complainant and advise the complainant that he or she may choose which procedure to follow;
- iii) Re-assure the complainant that he or she will not face job loss or any adverse consequences if he or she chooses to follow any of the procedures provided; and
- iv) Advise the complainant that the matter will be dealt with confidentially if the complainant so chooses.

#### **8.4 Informal procedure**

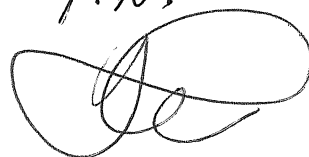
- 8.4.1 An employee who believes that he or she has experienced sexual harassment may inform the alleged harasser that the conduct in question is not welcome, that it offends the complainant, that it makes him or her feel uncomfortable and that it interferes with his or her work.
- 8.4.2 If the employee feels unable to state an objection directly to the alleged harasser, the employee may request the assistance of a co-employee or a sexual harassment officer to inform the alleged harasser that the conduct in question is not welcome.
- 8.4.3 The employee may also request a co-employee or sexual harassment officer to approach the alleged harasser, without revealing the identity of the complainant, and explain to him or her that certain forms of conduct constitute sexual harassment, are offensive and unwelcome, make employee's feel uncomfortable and interfere with their work.
- 8.4.4 If the alleged harasser denies the unwanted conduct or if the informal procedure does not result in the cessation of the unwanted conduct, the employee may invoke the formal procedure.
- 8.4.5 If the alleged harassment is serious in nature, the employee must be encouraged to invoke the formal procedure.

#### **8.5 Formal procedure**

- 8.5.1 A complainant may follow the formal procedure without first invoking the informal procedure.
- 8.5.2 If a complainant chooses to follow the formal procedure, the complainant must lodge a grievance and the matter must be dealt with in terms of the South African Police Service Grievance Procedure.

#### **8.6 Disciplinary action**

- 8.6.1 A formal complaint may result in an enquiry against an alleged harasser in accordance with the South African Police Service Discipline Regulations at any point in time.

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8.6.2 In considering the complaint during disciplinary action in terms of the Discipline Regulations, the following must be taken into account by a presiding officer-

- i) The context in which the alleged incident occurred;
- ii) The extent, nature and severity of the sexual harassment;
- iii) The positions of the complainant and the alleged harasser;
- iv) Impact of harassment on the part of the complainant;
- v) Impact on other employees; and
- vi) A history or previous record of sexual harassment of the harasser.

## 9. Confidentiality

- a) All parties involved in a complaint of sexual harassment must at all stages take the utmost care to ensure confidentiality and sign an undertaking to that effect.
- b) Limited information may only be disclosed to a third party with the agreement of the complainant and the alleged harasser and on "need to know" basis to those who have a genuine and official role in dealing with and resolving the matter.
- c) The person who is provided with information is also required to preserve confidentiality.

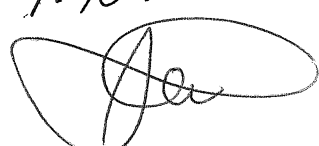
## 10. Training

**Each Provincial and Divisional Commissioner** must ensure that an adequate number of employees in every province and division, who are eligible to act as presiding officers and employer and employee representatives in disciplinary hearings, are trained in the handling of sexual harassment matters.

## 11. Roles and responsibilities

The Divisional Commissioner: Personnel Services must-

- a) Monitor trends of sexual harassment in the Service;
- b) Ensure that joint awareness programmes on sexual harassment matters are implemented; and
- c) Record instances where employees admit to or had been found guilty of sexual harassment on a database, including amongst others the nature of the harassment, the steps taken, the outcome thereof and the sanction imposed in the disciplinary hearing, if applicable.

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- d) Every provincial and divisional commissioner must designate an employee or employees in his or her province or division as sexual harassment officers and the contact details of the harassment officers must be made available to every employee in that division or province.

## **12. Sick leave**

- 12.1 Where sexual harassment leads to stress related or other medical conditions, the normal provisions for sick leave apply.
- 12.2 Where the employee's existing sick leave entitlement has been exhausted, the employer should give due consideration to the granting of additional paid sick leave in cases of serious sexual harassment, where the employee on medical advice require trauma counselling.
- 12.3 In appropriate circumstances, the employer may give consideration to assisting with the cost of the medical advice and trauma counselling, where such amounts are not covered by any applicable medical aid scheme.

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