Sexual Harassment Policy

Annexure F to the Conditions of Service

Approved by the Employment Conditions Committee of Council on
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Sexual Harassment Policy

1. Preamble

1.1 The Constitution of the Republic of South Africa guarantees equality and right to equal protection under the law. This right is guaranteed for all people regardless of race, gender, sex, pregnancy, marital status, ethnic or social origins, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. The Employment Equity Act prescribes that the working environment should be free of discriminatory practices, including sexual and other forms of harassment.

1.2 The University strives to provide a place of work and study free of sexual harassment, intimidation or exploitation. It is expected that all persons covered by this policy will treat one another with respect.

1.3 Reports of sexual harassment will be taken seriously and will be dealt with promptly, but in a fair and objective manner. The nature and gravity of each instance will dictate the specific action to be taken, which may include intervention, mediation, investigation and the initiation of grievance or disciplinary processes.

1.4 The University views false claims as serious misconduct.

2. Definitions and interpretation

2.1 In this policy, unless the context clearly indicates otherwise:

“applicant” means any person who is applying for any position at the University;

“complainant” means a person who is subject to alleged sexual harassment;

“PAIA” means the Promotion of Access to Information Act, No. 2 of 2000 (as amended).

“policy” means this Sexual Harassment Policy and its annexures, which form part of all employees’ conditions of service.

“sexual harassment” means any form of unwanted or unwelcome conduct of a sexual nature, whether physical, verbal or non-verbal, by a person of the same or opposite sex towards another, which:

(a) has a negative impact on the complainant;

(b) persists in spite of the complainant’s clear indication that such behaviour is unwelcome;
(c) even if it is a single incident of harassment, can be deemed to constitute sexual harassment because of its seriousness;

“Sexual Harassment Officer” means the Chief Director: Human Resources, who is appointed by the University to investigate and deal with sexual harassment complaints;

“student” means any person who is registered as a student of the University.

2.2 Paragraph headings are inserted for convenience only and cannot be used in the interpretation of this policy.

2.3 If any provision confers any right or imposes any obligation on any party, then notwithstanding that it is only in the interpretation clause, effect must be given to it as if it were a substantive provision.

3. Application

3.1 This policy applies to all:

(a) employees of the University;
(b) applicants;
(c) clients or customers;
(d) contractors, including their consultants, employees or workers;
(e) guest-lecturers;
(f) students (but only insofar as an incident involves both a student and an employee);
(g) suppliers; and
(h) any other person who has any dealings of whatsoever nature with the University.

3.2 Nothing in 3(1) confers the right on the University to initiate disciplinary action against a non-employee for breach of this policy.

3.3 This policy applies to all University programmes and activities both on and off-campus, including overseas programmes, if applicable.

4. Forms of sexual harassment

4.1 The following list, which is not exhaustive, contains examples of sexual harassment:
(a) Physical conduct of a sexual nature, which includes all unwanted physical contact, ranging from touching to sexual assault and rape, or frisking or strip searches by another person.

(b) Verbal forms of sexual harassment, which include innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sexual-related jokes or insults or unwelcome graphic comments about a person's body made in their presence or directed at them, unwelcome and inappropriate enquiries about a person's sex life, unwelcome and inappropriate comments about a person's sexual orientation, and unwelcome whistling directed at a person or group of persons.

(c) Non-verbal forms of sexual harassment, which include unwelcome gestures, indecent exposure, and unwelcome displays of sexually explicit pictures and objects.

(d) Any form of communication of a sexual nature, including exerting pressure on a person for dates and sexual favours.

(e) Quid pro quo harassment, which occurs if the employer, line manager, member of management or co-employee, undertakes or attempts to influence the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of an employee or applicant, in exchange for sexual favours.

(f) Sending or viewing jokes, pictures or other information by e-mail or the internet in which the information is sexually explicit or ridicules a person's sexual orientation.

4.2 Sexual favouritism exists if a person who is in a position of authority rewards only those who respond to her/his sexual advances, whereas other deserving employees who do not submit themselves to any sexual advances are denied promotion, merit ratings or remuneration increases.

4.3 Occasional compliments of a socially acceptable nature do not constitute sexual harassment, and nor do acceptable teaching methods aimed at eliciting debate and discussion. Mutual attraction between people also does not constitute sexual harassment and should be treated as a private concern.

5. Reporting

5.1 Any persons who believe that they have experienced or witnessed sexual harassment or related retaliation are encouraged to report such behaviour promptly to the University's Sexual Harassment Officer or to any line manager or manager, as the University cannot take any action against the accused unless it is aware of such incidents.
5.2 Incidents must be reported within 30 working days after the incident. If the complainant can show good cause for reporting the incident after this period, the Sexual Harassment Officer may waive the 30-day requirement.

5.3 Any line manager who experiences, witnesses or receives a written or oral report or complaint of sexual harassment or related retaliation must promptly report it to the Sexual Harassment Officer.

5.4 The Sexual Harassment Officer must treat all reports of sexual harassment as confidential.

5.5 The Sexual Harassment Officer must inform complainants that they may elect to resolve the problem on a formal or an informal basis. Where appropriate, the Sexual Harassment Officer may also recommend counselling or other appropriate support services to provide the complainant with assistance. If necessary, the complainant can also be transferred to another work environment in the University.

5.6 Although it is for the complainant to decide whether to follow either the formal or the informal route, the University reserves the right to act as complainant itself and to institute formal proceedings against an employee. The Sexual Harassment Officer must ensure that whichever option has been elected is followed to its full and logical conclusion.

5.7 Regardless of whether the formal or informal route is followed, it is recorded that the intention is to stop the offending behaviour, resolve the complaint, protect all parties’ rights and reputations until a decision has been reached, and to resolve the matter in a manner that is timely and equitable to all parties concerned.

5.8 The Sexual Harassment Officer disregards anonymous complaints.

6. Investigation

6.1 The University’s Employee Relations Officer, in consultation with the Sexual Harassment Officer, undertakes a preliminary investigation to establish whether there is enough evidence to substantiate the allegation.

6.2 This investigation begins within 10 working days after the allegation was reported to the Employee Relations Office and is completed in the shortest reasonable period of time, but not later than 10 working days after the investigation was begun.

6.3 The preliminary investigative report becomes part of the record and may be used in either the informal or formal proceedings as defined below.

6.4 If the Employee Relations Officer determines through the preliminary investigation that the allegations of sexual harassment cannot be substantiated, the Officer may decide that a formal hearing process
under the disciplinary code is not justified. It is, however, still possible to pursue the matter through the informal resolution process.

6.5 If complainants wish to appeal against the Employee Relations Officer’s decision not to use the formal hearing process, they may direct their appeal to the Chief Director: Human Resources and the Deputy Vice-Chancellor: Human Resources, who will discuss the decision with the Employee Relations Officer. The resulting decision is final.

7. **Informal process**

7.1 In some instances, it is more effective to deal with a sexual harassment complaint informally than formally.

7.2 The informal process involves either intervention by the Head of Department, Head of Division or the Faculty Dean, or a mediation session arranged by the Sexual Harassment Officer.

7.3 In a direct intervention, the Head of Department, Head of Division, line manager, the Faculty Dean or any other University official takes action to eliminate the factors that caused the original complaint. Such action may assume many forms, but in each instance the official must contact the Employee Relations Officer to determine if the allegation had any substance and to decide on measures to resolve the matter.

7.4 If the parties agree to mediation, the Employee Relations Officer arranges for a mediator who is mutually acceptable to them. The mediator consults with and advises both the parties about the mediation process. If the mediation results in a mutually acceptable agreement, copies of the agreement are forwarded to the Human Resources Director and the Employee Relations Officer for review and monitoring. If the mediation does not result in an agreement, the case is returned to the Employee Relations Officer at the earliest opportunity for a formal hearing.

7.5 If it is not possible to comply with paragraph 6.2, every effort must be made to finalise the mediation process within 30 calendar days from the day of first referral.

8. **Formal process**

8.1 Complainants may file a formal written complaint immediately after an incident or after efforts to reach an informal settlement have proved unsuccessful.

8.2 The complaint is lodged on the form set out in Annexure A.

8.3 The Employee Relations Officer sends a copy of the complaint, signed by the complainant, to the accused of sexual harassment and to the
Human Resources Department within five working days of the finalisation of the investigation referred to in paragraph 6.

8.4 In accordance with the University’s disciplinary or grievance code, the Employee Relations Officer sets a date for a disciplinary or a grievance hearing within 10 working days of receipt of the complaint.

8.5 In spite of any other provision in the University’s disciplinary or grievance code, the disciplinary hearing is completed within 10 working days after its beginning, unless all the parties agree otherwise in writing.

8.6 The accused’s silence at or absence without good reason from a disciplinary or grievance hearing does not prevent the hearing from proceeding. The accused’s failure or refusal to respond may result in the hearing proceeding solely on the basis of the complainant's testimony.

8.7 A complainant may withdraw a charge after it has been filed, provided that the accused agrees to the withdrawal.

8.8 A complainant's failure to cooperate with the process in a timely manner may negate the University's obligation to continue with the proceedings.

8.9 The Employee Relations Officer makes every effort to cooperate closely with the complainant to ensure due process, but may administratively close a complaint if the complainant fails to cooperate or participate fully in the process.

9. **Burden of proof**

Sexual harassment is proven on a balance of probabilities to discharge the burden of proof.

10. **Prohibition on retaliatory acts**

No retaliatory acts may be engaged in against any employee or student who reports an incident of alleged sexual harassment, or any employee or student who testifies, assists or participates in any proceeding, investigation or hearing relating to such allegation of sexual harassment.

11. **Confidentiality**

11.1 The University recognises that confidentiality is important.

11.2 The Sexual Harassment Officer and all other employees responsible for the implementation of this policy must respect the confidentiality and privacy of the complainant and the accused to the extent that is reasonably possible.
11.3 The University may, however, in some instances be unable to maintain confidentiality; for example, if it is compelled by an order of court to disclose information, or if communal interests outweigh individual ones.

11.4 In sexual harassment disciplinary inquiries, all parties endeavour to ensure confidentiality and only appropriate members of management, the complainant, the accused, their representatives, witnesses and interpreters may be present.

11.5 The University discloses to either party or their representatives such information as may be reasonably necessary.

11.6 The relevant provisions of section 16 of the LRA and the PAIA apply to the disclosure of information.

12. Criminal and civil charges

The complainant's right to initiate criminal or civil proceedings is not limited by this policy.

13. Additional sick leave

The University may grant additional sick leave to a complainant upon receipt of a medical certificate.

14. Time limits

14.1 All time limits outlined in this policy are aimed mainly at speeding up the resolution of complaints in order to protect the interests of all concerned.

14.2 If time limits are not adhered to strictly, they may not be used by any party to justify objections to or an appeal against findings unless a form of prejudice can be demonstrated (for example prejudice to a party's abilities to present a case).

14.3 Time limits may be waived if all parties agree to this, but bearing in mind that the case should be resolved as quickly as possible.

15. Offences

The following constitute offences under this Policy:

(a) engaging in any form whatsoever of sexual harassment (see paragraph 4);

(b) intentionally making a false report of sexual harassment;

(c) engaging in any form of retaliatory act;

(d) failure by a line manager or any other manager to report sexual harassment;
(e) failure by the Sexual Harassment Officer or the Employee Relations Officer to treat a report of sexual harassment as confidential;

(f) failure to comply with any other duty as set out in this Policy.

16. Maximum penalties

16.1 Any offences as listed in paragraph 15 must be handled in accordance with the provisions of the University’s Disciplinary Code.

16.2 Employees may be summarily dismissed if found guilty of an offence listed in paragraph 15, but a lesser penalty may be imposed if the degree of the offence is less serious.

17. Extension of the application of the Policy

The Policy also applies in the following instances, with the necessary changes in terms of reporting and responsibility for investigation.

17.1 Sexual harassment of an employee by a student

The employee reports the matter in writing to the Sexual Harassment Officer, who instructs the Dean of Student Affairs to undertake an investigation.

17.2 Harassment of a student by an employee

The student reports the matter in writing to the Sexual Harassment Officer, who instructs the Dean of Student Affairs to undertake an investigation.

17.3 Sexual harassment of a non-employee by an employee

A non-employee reports the matter in writing to the Sexual Harassment Officer, who instructs an appropriate person to undertake an investigation.

18. Romantic or sexual relationships

18.1 The University strongly disapproves of romantic or sexual relationships between employees and students, even if the relationships:

(a) are consensual;

(b) do not involve any position of authority (such as that of a lecturer who is responsible for the supervision or evaluation of the student’s work).

18.2 The University also strongly disapproves of romantic or sexual relationships between employees.
19. Dispute resolution

19.1 Should a complaint of alleged sexual harassment not be satisfactorily resolved by the internal procedures as set out above, either party may, within 10 working days of the dispute having arisen, refer the matter to the CCMA for conciliation in accordance with section 135 of the LRA.

19.2 Should the dispute still remain unresolved, either party may refer the dispute to the Labour Court within 30 days of receipt of the certificate of the commissioner in terms of section 135(5).