

NEXUS SURGICAL AND MEDICARE LIMITED

POLICY ON SEXUAL HARASSMENT

1. Introduction

This policy aims at providing a work environment that is free from Sexual Harassment for all its employees, job applicants and other persons dealing with the department, as they have the right to be treated with dignity and respect. This includes the protection, as far as possible, from the repeated harassment by non-employees in the working environment. Sexual harassment is the violation of the Code of Conduct which can result in a charge of misconduct. It is also a criminal offence, which can result in criminal charges being instituted.

2. Purpose

This policy provides appropriate procedures to deal with Sexual Harassment and prevent its recurrence.

3. Scope of Application

This policy applies to all Educators/employees and prospective employee whose employment is regulated by the Employment of Educators Act, No. 76 of 1998, as amended and the Public Service Act, No. 103 of 1994, as amended.

4. Definition

Sexual harassment can be broadly defined as any unwanted and unwelcome comments or behaviour, with sexual overtones that have a negative effect on the dignity of other persons in the workplace.

5. Interpretation of the Definition

Sexual Harassment encompasses unwelcome physical, verbal or non-verbal conduct that denigrates or violates, or is intimidatory or physically abusive of an employee because of his or her sex. The essential characteristic of Sexual Harassment is that it is unwanted by the recipient. This definition encourages that Sexual Harassment must be avoided at all costs.

It is also important that Sexual Harassment is not limited to behaviour between males and females, but also between people of the same sex and need not always be instigated by a male employee. Sexual Harassment may take a variety of forms, many of which are not readily detectable to a party not directly involved. It also involves a victim whose experience and interpretation of the conduct in question, is an essential factor in the defining of the conduct as Sexual Harassment.

It is for this reason that Sexual Harassment can be a difficult form of misconduct to deal with in a manner that is clearly perceived as consistent and proper.

Where staff have different cultural backgrounds, there may exist different interpretations as to whether particular conduct, under particular circumstances, constitutes Sexual Harassment. Some of the points to consider include:

- Most importantly, how does the person subjected to the conduct interpret it that is, is it unacceptable and unwelcome as defined above.
- Where it is known to the person contemplating certain conduct, that this conduct may be interpreted by those of a different cultural background as Sexual Harassment, he/she must refrain from that conduct where members of that cultural group would be involved, and may not, as a justification for that conduct, refer to it as normally being acceptable in his/her own culture.
- Even where it is not known to the perpetrator that the conduct was being experienced as Sexual Harassment, the behaviour can nevertheless constitute Sexual Harassment which would have to be corrected, either informally (by consultation and counselling) or formally (the formal disciplinary procedure).

6. Actions that constitute Sexual Harassment

Actions that constitute Sexual Harassment may include, but are not limited to:

- Remarks with sexual overtones;
- Insinuations about a person's sexual activities, sexual orientation or personal life;
- Suggestive comments about a person's appearance or body;
- Unwanted physical contact, ranging from less violent (e.g. Patting) to violent sexual assault such as rape;
- Indecent gestures;
- Improper exposure;
- Direct or subtle sexual proposals;
- Persistent pressure for social contact, e.g. "dates"
- Communication such as letters, literature, e-mails or telephone calls of a sexual nature;
- Managers and/or Supervisors subject subordinates to Sexual Harassment in an explicit or implicit way as a condition of employment, for example, subjecting persons to such behaviour in order that the subordinate may secure employment, receive increases and ensure promotions; and
- The hostile environment situation: whereby an employee interfere with another employee's work performance or creates an intimidating or unpleasant work environment through sexual harassment.

7. SEXUAL BEHAVIOUR NOT CONSTITUTING SEXUAL HARASSMENT

- Sexual Harassment is not present where mutual attraction and consent is involved in the behaviour of the parties concerned, and the matter is therefore regarded as a private one.

- Behaviour or compliments that are acceptable to the recipient cannot be regarded as Sexual Harassment.
- It must be borne in mind that sexual behaviour in the workplace, even when not constituting Sexual Harassment, may be unacceptable conduct to others and therefore constitute misconduct.

8. PROCEDURE TO DEAL WITH SEXUAL HARASSMENT

Victims of Sexual Harassment in the workplace have the right to complain to their supervisor/ manager and expect appropriate action. Complaints of Sexual Harassment must be reported in writing to the complainant's supervisor/manager. Where the supervisor is the alleged harasser, the complaint must be reported to the next level of supervision/ management.

All reports of Sexual Harassment must be treated seriously and sympathetically and investigations must be effected immediately, thoroughly and with greatest confidentiality. Anonymous complaints will be disregarded.

Once investigations are complete and it has been established that the complainant has a case, the alleged harasser and offender must be dealt with in terms of the disciplinary procedure, either formal or informal, depending on the nature and circumstances of the misconduct.

9. DETERMINATION OF DISCIPLINARY ACTION

The following factors may be considered in the determination of appropriate disciplinary action where an offender is found guilty:

- The nature/severity of Sexual Harassment;
- The effect on the complainant;
- Degree of humiliation of the complainant and violation of his/her dignity
- The effect of the misconduct on other employees
- The disturbance of sound working and personal relationships in the workplace; and
- Repetition and persistence of Sexual Harassment despite the complainant having advised that the behaviour is unacceptable.
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In cases of less severe Sexual Harassment, a reprimand or warning may be an appropriate penalty. Where the Sexual Harassment is of a more serious nature, a harsher penalty may be considered.

10. CRIMINAL CIVIL AND MISCONDUCT CHARGES

Victims are at liberty to institute both criminal and civil charges, in their private capacities, against the alleged offender. The internal disciplinary and criminal processes may run concurrently.

A false complaint made intentionally and maliciously, will also constitute a form of misconduct rendering the complainant liable for disciplinary action.

This provision is not intended to discourage complaints where an individual sincerely believes that Sexual Harassment has occurred.

11. IMPLEMENTATION OF THE POLICY

Management and Supervisors must ensure the following:

- A work environment free of any Sexual Harassment is created and maintained;
- All complaints of Sexual Harassment are investigated immediately; and
- Complainants and victims are not victimized in any way;
- The department's disciplinary procedure must be invoked where a formal complaint has been submitted and evidence indicates that a person may be guilty of Sexual Harassment.

12. RESPONSIBILITY FOR COMPLIANCE

All officials of the department are responsible for ensuring that they do not make themselves guilty of any form of Sexual Harassment, or allow such conduct.

13. DISPUTE RESOLUTION MECHANISM

Any dispute that arises out of the interpretation and application of this policy shall be dealt with in terms of the grievance and dispute mechanism applicable within the relevant Sectoral Bargaining Council.