**MUNICIPAL ADMINISTRATION**

**CHAPTER 3**

**3.10 POLICY ON WORKPLACE GENDER-BASED VIOLENCE**

**3.10.1 PURPOSE OF WORKPLACE GENDER-BASED VIOLENCE**

The Policy is developed for the purpose of identifying, preventing and addressing cases of work place gender-based violence or violence affecting an employee’s personal life which ultimately affect’s their work life.

The Policy focus is on employees who are victims of gender-based violence and is developed to assist the Municipality to:-

(a) take reasonable steps to promote equality and reduce the risk of gender- based violence;

(b) take action where incidents occur or allegations of abuse are raised; and

(c) support employees experiencing gender-based violence by facilitating access to specialist services where appropriate.

When gender-based violence impacts the workplace, regardless of where it occurs, it

* violates the victims’ human rights;
* compromises the safety of both the victim and the victim’s co-workers; and
* may result in lost productivity, increased health care costs and increased employee turnover.

The Municipality must, therefore, be committed to full compliance with all applicable laws governing gender-based violence, to providing a workplace in which employees who are victims have the support they need at work to address the violence in their lives, and to promoting the health and safety of all employees.

**3.14.2 LEGISLATIVE MANDATE**

This Policy must be read with the following prescripts:-

(a) the Constitution of the Republic of South Africa, 1996;

(b) the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), 1979;

(c) the Promotion of Equality and Unfair Discrimination Act, 2000 (Act No. 4 of 2000);

(d) the Protocol to the African charter on Human and People rights on the rights of Women in Africa;

(e) the SADC Declaration and Gender Protocol.

**3.14.3 APPLICATION OF POLICY**

The Policy is applicable to all employees of the Municipality.

Employees have the right to expect a place of employment that is free from behaviour that can be considered harassing, abusive, disorderly, or disruptive.  Any violent behaviour or behaviour that creates a climate of violence, hostility, or intimidation is not tolerated, regardless of origin.  Proactive measures will be undertaken by the Municipality to minimize the potential for violent acts.

This Policy includes, but is not limited to, the following behaviours and situations:

(i) violent or threatening physical contact including fights, pushing, and physical intimidation;

(ii) direct or indirect threats;

(iii) threatening, abusive or harassing phone calls;

(iv) possession of a weapon or company property;

(v) destructive or sabotaging actions against company or employees’ personal property;

(vi) stalking;

(vii) violation of a restraining order; and

(viii) threatening acts or abusive language that leads to tension within the work environment

**1. DEFINITIONS**

For the purpose of this Policy, the following terms are defined as follows:

**“abuser”** means a person who perpetrates gender-based violence;

**“domestic violence”** means violence committed between people regardless of race, sex, gender identity, sexual orientation, economic status, educational level or religious belief, whether they are living together or separately, are married or unmarried, or in short-term or long-term relationships. It includes, but is not limited to, physical, sexual and psychological violence occurring among family members or between Intimate Partners, including battering, sexual or physical abuse of children, dowry-related violence, marital rape, female genital mutilation and other practices harmful to women, economic coercion, violence related to exploitation, or other forms of physical, sexual, psychological or economic abuse;

**“employees”** means a person who has been appointed permanently or on contract, whether on probation or not to a post on the staff establishment of the Municipality.

**“family members”** includes, but is not limited to, members of the victim’s extended family, by blood or marriage, including the victim’s parents, children, dependents, aunts, uncles, cousins, parents-in-law, siblings, spouses and children, and other members of a shared household.

**“gender-based violence”** means:

(a) Physical, psychological, mental, economic or sexual harm or suffering, coercion and other deprivations of liberty including incidents of Domestic Violence, sexual violence, dating violence, and stalking, rumours, swearing, verbal abuse, pranks, arguments, property damage, vandalism, sabotage, pushing, theft, physical assaults, psychological trauma, anger-related incidents, rape, bullying and verbal and emotional abuse that is unfair, offensive, vindictive, and/or humiliating , but not including acts of self-defence that are directed against a person based on gender and committed, attempted or threatened

(i) by or against employees; and/or

(ii) against employees’ families or property; and

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, stalking, trafficking in women, forced prostitution, and sexual harassment or intimidation at work, educational institutions and elsewhere.

**“intimate partners”** mean

(a) persons legally married to one another;

(b) persons formerly married to one another;

(c) persons who have a child in common, regardless of whether such persons are married or have lived together at any time;

(d) couples who live together or have lived together; or

(e) persons who are dating or who have dated in the past;

**“protection order”** means an order of protection, restraining order or other court order in response to gender-based violence, which serves as a mechanism through which a victim can petition an appropriate court for protection from an abuser;

**“safety plan” or “safety planning”** means the process through which a representative of the Department works with a victim to facilitate development of a support plan designed to reduce the risk of gender-based violence to the victim and ensure the safety of the victim's co-workers;

**“victim”** means an employee against whom an abuser directs gender-based violence.

**“Workplace violence”**includes any form of physical assault, threatening behaviour or verbal abuse occurring in the work setting.

**2. ROLES AND RESPONSIBILITIES**

(1)(a) The Municipal Manager is responsible for:-

(i) creating and maintaining an environment that prevents gender-based violence and must take appropriate measures for this purpose.

(ii) informing employees of the contents of the Policy and ascertain that each employee receives and acknowledges receipt of a copy thereof.

(ii) informing the appropriate designated authorities about investigations into cases of gender-based violence, and of the action taken as a result of such investigations.

(iv) taking appropriate action in cases in which there are reason to believe that any of the standards listed in this Policy have been violated or any prohibited behaviour has occurred.

(2) Managers and Supervisors must:-

(a) maintain open channels of communication and

(b) ensure that employees who wish to raise their concerns in good faith can do so freely and without fear of adverse consequences

Failure to take action may be considered a breach of duty and result in administrative action and/or disciplinary proceedings.

(3)(a) Employees are responsible for familiarizing themselves with the Policy and with the various options and internal channels available for addressing such gender-based violence.

(b) In the event employees suspect or witness acts of gender-based violence in the workplace, or suspect or witness gender-based violence being perpetrated either against an employee or by an employee, they must

(i) first talk to the perceived victim; and express concern and ask what can be done to help;

(ii) alert the perceived victim that they will disclose the concern to a supervisor; and

(iii) report the concern to an appropriate supervisor.

(c) Any employee who believes he or she has been subjected to adverse action for making a report pursuant to this Policy must contact the designated unit within the Municipality.

(4) Designated unit to address gender-based violence cases within the Municipality must attend to any allegations of violations of this Policy and promptly investigate such cases

**3. CONFIDENTIALITY**

(a) Information related to an employee being a victim must be kept confidential to the extent permissible by law and Municipal Policies. Such information must be kept in a confidential and separate file from the employee’s personnel file.

(b) The victim’s information must not be divulged without the consent of the victim unless the Municipality reasonably determines that maintaining the victim’s confidentiality

(i) puts the victim or other employees at risk of physical harm, is required by law,

(ii) is deemed necessary to enforce a Protection Order or a Safety Plan, or

(iii) is necessary for the administration of the Municipality.

(c) Information must be released to other individuals or Departments only on a need-to-know basis, to the extent reasonably necessary to protect the safety of the victim or others, and with advance notice being given to the victim whenever possible.

**4. NON-DISCRIMINATORY RESPONSE TOWARDS VICTIMS OF GENDER-BASED VIOLENCE**

(1) The Municipality must not discriminate in hiring, staffing or other terms and conditions of employment against any person:-

(a) for disclosing his or her status as a victim of gender-based violence;

(b) because such person is perceived as a victim of gender-based violence; or

(c) because such person has submitted a complaint or disclosed concerns about gender-based violence to the Municipality.

(2)(a)The Municipality must not retaliate, discipline or take punitive employment actions against any employee for:-

(i) for disclosing his or her status as a victim, or for acts of gender-based violence against such employee that occur in or have an impact on the workplace;

(ii) reporting in good faith concerns about workplace-related incidents of gender-based violence pursuant to this Policy, including an allegation that the act was perpetrated by a fellow employee or person in a management capacity.

(b) Prohibited acts of retaliation include, but are not limited to, demotion or withholding of earned pay, as well as acts of personal retaliation.

(3) Paragraph 4(1) and (2) must not preclude the Department from taking adverse action against an employee who perpetrates gender–based violence whether within or outside the workplace.

**5. ASSESSMENT PROCESS**

(1)(a)The information that managers gather through direct disclosures from employees or allegations, must form the basis for any decision about how best to respond to the employee and identify what kind of support or sanctions are required.

(b) Managers must assess the potential impact of the alleged abuse on the employee's role at work to determine whether or not an investigation must be carried out.

(c) When undertaking an assessment, the manager must take account of the following factors:

(i) the nature of the conduct and the nature of the employee's work;

(ii) the extent to which the employee's role involves contact with vulnerable individuals or groups, and assessment of any potential risk that this might pose to them or other employees;

(iii) whether or not the alleged actions of the employee could breach their corporate and/or professional code of conduct; and

(iv) whether or not the alleged actions of the employee could bring the Municipality into disrepute and into conflict with its aims and values.

(2)(a) The manager must weigh up the above factors to determine whether or not there are sufficient grounds to investigate. If sufficient grounds are established, then the manager must proceed to carry out an investigation using local Policies developed in line with the Disciplinary Policy and consider following appropriate procedure to place the alleged perpetrator on precautionary suspension.

(b) Whilst an investigation process is ongoing, employees alleged to be perpetrators must receive support from HR; and

(c) In the event that an allegation does not result in an investigation or no formal disciplinary sanction is imposed, no record must be kept in the employee's personnel file.

(3) The Municipality must keep a note of the number of allegations made to provide monitoring data as evidence that the Policy is being implemented and to monitor the level of complaints and/or allegations within the Municipality.

**6. SAFETY PLANNING**

(a) The Municipality must make every reasonable effort to collaborate with a victim to develop a Safety Plan, which recognizes and encourages workplace modifications designed to reduce the risk of harm and increase security measures.

(b) Such security measures may include making the abuser’s identity known to security personnel, changing locks, modifying work schedules, changing workplace locations, arranging telecommuting options or other measures tailored to an individual’s circumstances that are designed to increase safety.

(c) The Municipality may convene a multi-disciplinary task force with representatives from relevant Business units within the Municipality, including human resources and security, to respond in the event of an emergency.

(d) In all instances, when assessing safety risks associated with gender-based violence, the Municipality must defer, whenever reasonably possible, to the victim’s judgment about steps that pose a safety risk to the victim and the victim’s workplace, and those that increase safety and support for the victim and the workplace.

**7. LEAVE AND WORK PERFORMANCE**

(a) The Municipality recognizes that employees may need time off to secure medical assistance, legal assistance, counselling or to attend to other matters related to the gender-based violence for themselves or for a family member, such as court proceedings, relocation or Safety Planning.

(b) The Municipality must make every reasonable effort to assist an employee in maintaining employment when the employee is experiencing or has experienced gender-based violence or is assisting a family member who has experienced gender-based violence.

(c) The Municipality must provide reasonable and flexible leave options when an employee, or a child, spouse, parent or parent-in-law of an employee is a victim of gender-based violence. Every reasonable effort must be made to first provide paid leave before requiring an employee to utilize unpaid leave.

(d) When the need for time off is foreseeable, an employee must provide reasonable advance notice to the Municipality unless advance notice is not feasible.

(e) The Municipality recognizes that victims may experience temporary difficulty fulfilling their job responsibilities.

(f) When the Municipality becomes aware that an employee’s work performance or conduct has been negatively affected by gender-based violence, the Municipality must offer support to the victim and cooperate with the victim to address the issues, which may include the development of a Safety Plan.

(g) The Municipality must make all reasonable efforts to consider all aspects of the victim’s situation in evaluating performance issues, which may result from the victim’s experience with gender-based violence. If reasonable attempts to resolve the victim’s performance-related issues are unsuccessful, the Municipality may take action as identified in the established human resources procedures of the Municipality.

**8. PROTECTION ORDERS**

(a) The Municipality recognizes that a victim may seek and/or be granted a Protection Order as part of his or her efforts to seek safety, and that this Protection Order may be part of his or her Safety Plan.

(b) The Municipality recognizes that the workplace may or may not be included on a Protection Order as a location that is off-limits to the abuser.

(c) If a victim chooses to disclose the existence of such a Protection Order to the Municipality, the Municipality may assist the Victim in enforcing his or her Protection Order.

(d) The Municipality must archive its copy of the Protection Order in a confidential and separate file from the Victim’s personnel file.

(e) If applicable, the Municipality may assist the victim in gathering documentation from the workplace, such as e-mails or voice messages, which could support the victim’s efforts in a justice system, or otherwise in obtaining or maintaining safety.

**9. PROHIBITED USE OF WORKPLACE RESOURCES**

1. Employees are prohibited from using any workplace resources, such as work time, phones, e-mail, computers, fax machines or other means to threaten, harass, intimidate, embarrass or otherwise harm another person.

(b) An employee is considered to be in the workplace while in, or utilizing the resources of the Municipality, including but not limited to facilities, work sites, equipment, or vehicles, or while on work-related travel.

**10. DISCLOSURE OF FINAL COURT ORDERS AND GENDER-BASED VIOLENCE**

1. An employee who is subject to a final court order, or who has been convicted in a criminal or civil action as a result of a threat or act of gender-based violence, must disclose the existence of the final court order to his or her supervisor or other appropriate person within the Municipality.

(b) Failure to disclose the existence of such a final court order in these circumstances may result in disciplinary action, up to and including termination.

1. If a supervisor becomes aware through employee self-disclosure, reports by a third party or any other means that an employee may have committed an act of gender-based violence, the supervisor must conduct, or refer the matter to the designated authority within the Municipality to conduct, appropriate investigations, interventions and referrals.
2. The supervisor or designated authority must investigate immediately and must take disciplinary action, up to and including termination, against any employee who threatens to commit, who commits or has committed incidents of gender-based violence.

(e) In the event an employee discloses to a supervisor within the Municipality hat he or she has committed an act of gender-based violence, the Municipality must make best efforts to take more reasonable disciplinary actions and to provide appropriate references medical or otherwise, as appropriate to assist the employee.

**11. PREVENTANTIVE MEASURES**

(1)(a) As part of the awareness programmes the Municipality must conduct regular and mandatory awareness programs for employees to raise awareness of the ways gender-based violence may impact the workplace, for employees to take all reasonable measures to create a harmonious working environment, which is free from intimidation, hostility, offense and any form of violence, and to encourage victims to seek assistance in negotiating abuse through Safety Planning.

(2) Targeted training for managers and supervisors must be offered for the advancement to successive levels of responsibility. Training must include information on:

(a) the physical, social and cultural realities that may affect victims of gender-based violence;

(b) the ways in which such violence impacts the workplace, including the potential impact on worker productivity and safety risks; and

(c) the steps that all employees may take to reduce the risk of violence and to support victims.

(3) In an event of imminent threat of gender-based violence, employees must contact

**Position:**

**Department**

**Location:**

**Contact Details:**

[This section must spell out the members of a multi-disciplinary team in the Municipality, is trained to respond in the event of an emergency.]

**12. MONITORING AND REVIEW OF THE POLICY**

(a) The application of this Policy must be monitored by the Human Resources component ensure equitable treatment of all employees.

(b) The Municipal Managers assisted by Senior Managers must monitor the implementation of the Policy and ensure it is reviewed and/or amended as and when necessary or after a period of 2 years after its implementation.

**13. IMPLEMENTATION OF THE POLICY**

This Policy comes into effect on date of adoption by the Municipal Council.