



UNIVERSITY *of the*
WESTERN CAPE

UNIVERSITY OF WESTERN CAPE (UWC)

POLICY:


Sexual Harassment and Assault in the Workplace

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	HR POLICY DOCUMENT POLICY ON SEXUAL HARRASSMENT AND ASSAULT IN THE WORKPLACE.	Reference Number	C2013/5
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1. Preamble:

UWC's Mission Statement commits the university to the pursuit of a distinctive academic role in South Africa which, through critical and creative ways, seeks to build an equitable and dynamic society. The mission further emphasises that UWC will strive, among other things, to promote gender equality. It recognises that the promotion of gender equality is important to addressing past inequalities that continue to shape our society, and to enhancing UWC's capacity to take forward its envisaged role. UWC is also cognisant of the fact that this commitment may be substantially challenged by discriminatory practices in the academy which undermine the personal dignity and freedom of any staff member or student and which perpetuate the forms of discrimination and abuse which South Africa's Constitution and other relevant laws seeks to eradicate. As an academic institution UWC is constantly striving to be "a place of quality, a place to grow" where employees and students alike have the opportunity to work, learn and live in an enabling and supportive environment, free from any form of harassment, intimidation or prejudice. For these reasons UWC exercises zero tolerance towards any form of sexual harassment and sexual related abuse and will pursue all means necessary to eradicate such practices from the workplace.

This policy is applicable to all employees of the UWC including, but not limited to the following: employers/management notwithstanding of being permanent, contract, visiting or exchange academic and administrative and support staff and students including external members of university committees, employees and contractors to the university irrespective of "*race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.*"¹

The University takes into account the particular nature of the academy and stakeholders involved in the academic environment.

2. Definitions

"UWC" or "university" means the University of the Western Cape;

"Alleged offender" means that until a person is proved to be guilty of an offense, the person is an "alleged offender"

"Employee" means an employee of the UWC or a person who has agreed to be bound by the rules and policies of UWC relating to staff. It includes all categories of staff i.e. senior management, Deans, Academic or Teaching and Research staff, Administrative and Support staff as well as any person who has dealings with the UWC.

"Victimisation" means the re-traumatisation of a person who has been subjected to for example sexual harassment. It includes acts of denying promotion opportunities, subjecting the person to bigger workloads, demotions, unfair and bias performance appraisals, using

¹ EE Act 55 of 1998, Chapter 2, section 6

authority to create an unbearable work environment as well as verbally discrediting the victim.

"Complainant" means a person who lodged a complaint under this policy, or a person against whom an act/(s) of sexual harassment, rape or assault as defined in this policy has or has allegedly been perpetrated.

"Confidentiality" means ensuring that the information is accessible only to those authorised to have access to it;

"Employee" means an employee of the UWC or a person who has agreed to be bound by the rules and policies of UWC relating to staff. It includes all categories of staff i.e. Senior management, Deans, Academic or Teaching and Research staff, Administrative and Support staff as well as any person who has dealings with the UWC.

"ER office" means the Employee Relations office in the Human Resources department;

"GEU" means the Gender Equity office residing under the Office of the Rector and Vice-Chancellor.;

"Restraining Order" or "Order of Protection" means a form of legal injunction that requires a party to refrain from doing certain acts;

"SAPS" means the South African Police Service;

"Student" means a registered student of the University of the Western Cape or a student who has agreed to be bound by the rules and policies of the university relating to students;

3. Introduction

All employees, (academic or administrative), job applicants and other persons, who have dealings with the university have the right to be treated with dignity. Sexual harassment at UWC will not be tolerated or condoned. Persons who have been subjected to sexual harassment in the workplace have a right to raise a grievance about it and appropriate action will be taken by the university.

The university is placed under a positive duty to implement the policy and take disciplinary action against employees who do not comply with the policy. Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially. Employees will be protected against victimisation, retaliation for lodging grievances and from false accusations.

This policy will be communicated effectively to all employees at the University of the Western Cape.

4. Core purpose

The objective of this policy is to eliminate sexual harassment in the workplace and is predominantly based on the Code of Good Practice on the Handling of Sexual Harassment cases² in the workplace, the Protection of Harassment Act, 17 of 2011 and the UWC Code of Conduct. It also provides appropriate procedures to deal with the problem and prevent its recurrence. This policy further encourages and promotes the development and implementation of rules and procedures that will lead to the creation of a workplace that is free of sexual harassment, where employers and employees respect one another's integrity

² Labour Relations Act 66 of 1995 (section 203(2))

and dignity, their privacy, and their right to equity in the living, learning, teaching and working environment as defined by the nature of the academic environment.

5. Applicable legislation:

The primary law guiding the UWC policy is the Constitution of South Africa and thereafter all subsidiary laws, rules and procedures applicable to the eradication of a hostile working, learning, teaching and living environment, such as the Code of Good Practice on the Handling of Sexual Harassment cases in the workplace and the Protection from Harassment Act 17 of 1910.

A person not in the employ of UWC, , but who becomes a victim of sexual harassment by a UWC staff member, may lodge a grievance with UWC in instances where the harassment has taken place at the workplace or in the course of the alleged offender's employment with UWC.

6. Guiding principles

UWC is committed in creating and maintaining a working teaching, learning and living environment in which the dignity of all employees and students is respected. It will entail the protection of complainants of sexual harassment in order to ensure that employees feel that their grievances are not ignored or trivialised and are free from reprisals. Implementing the following **guidelines** can assist in achieving these ends:

- 6.1 All UWC staff members have a role to play in contributing towards creating and maintaining a working environment in which sexual harassment is unacceptable. They should ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others.
- 6.2 Management should attempt to ensure that persons such as suppliers, job applicants, contractors, clients and others, who have dealings with the university, are not subjected to or instigators of sexual harassment at the UWC. Any person who is subjected to such behaviour will have the right to file a complaint through the university internal structures.
- 6.3 The university is required to take appropriate action in accordance with this policy, when instances of sexual harassment occurring within the workplace are brought to their attention.
- 6.4 The **Code of Good Practice on the Handling of Sexual Harassment Cases in the workplace as well as the Protection from Harassment Act 17 of 2010** recognises the primacy of collective agreements regulating the handling of sexual harassment cases, and is intended as a substitute for disciplinary codes and procedures containing such measures, where these are the subject of collective agreements, or the outcome of joint decision making by an employer and a workplace forum. However, collective agreements and policy statements should take cognisance of and be guided by the provisions of this code.

7. Definition of sexual harassment

- 7.1 UWC recognises that sexual harassment in the working environment is a form of unfair discrimination and is prohibited on the grounds of sex and/or gender and/or sexual orientation.
- 7.2 Sexual harassment as defined by the Protection from Harassment Act 17 of 2010 means any:
- 7.2.1 Unwelcome attention or conduct of a sexual nature from a person who knows or ought reasonably to know that such attention is unwelcome;
- 7.2.2 Unwelcome explicit or implicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant;
- 7.2.3 Implied or expressed promise of reward for complying with a sexually- orientated request; or
- 7.2.4 Implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually orientated request
- 7.2.5 It includes acts such as:
- 7.2.5.1 "following, watching, pursuing or accosting of the complainant, or loitering outside of or near the building or place where the complainant resides, works or carries on business, studies or happens to be;
- 7.2.5.2 Engaging in verbal, electronic or any other forms of communication aimed at sexually harassing the complainant, whether or not conversation ensues;
- 7.2.5.3 Sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or the use of social media or any other object/s of offensive nature to the complainant or leaving them where they will be found, given to or brought to the attention of the complainant
- 7.2.6 UWC believes that such acts violate the rights of an individual which may constitute a barrier to equity in the workplace, taking into account all of the following factors:
- whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;
 - whether the sexual conduct was unwelcome;

- the nature and extent of the sexual conduct;
- and the impact of the sexual conduct on the employee

7.3 Sexual attention becomes sexual harassment if:

- 7.3.1 The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; and/or
- 7.3.2 The recipient has made it clear that the behaviour is considered offensive; and/or;
- 7.3.3 The alleged offender should have known that the behaviour is regarded as unacceptable.

8. Forms of sexual harassment

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

8.1 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.

8.1.1 **"Rape"** means an unlawful and intentional act of sexual penetration with another person without that person's consent including acquaintance, spousal and date rape where the complainant submits or is subjected to an act of sexual penetration as a result of:

8.1.1.1 The use of force or intimidation by the alleged perpetrator against the complainant, another person or the property of these persons;

8.1.1.2 A threat of harm, real or perceived, by the alleged perpetrator against the complainant, another person or the property of these persons.

8.1.1.3 An abuse of power or authority such that the complainant is inhibited from expressing her/his resistance or unwillingness to participate in the act;

8.1.1.4 False pretences or by fraudulent means;

8.1.1.5 the inability of the complainant to appreciate the nature of the act of sexual penetration; including where the complainant is at the time of the commission asleep or unconscious, in an altered state of consciousness including but not limited to, under the influence of medicine, drugs, alcohol, or other substances, to the extent that her/his ability to consent is adversely affected, where the person is mentally disabled or a child below the age of legal consent.

"Sexual assault" means any sexual act or attempted sexual act in which a person is threatened, coerced, or forced to comply against their will, or is incapable of giving consent or unconscious of the nature of the act.

- 8.2 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 enquiries about a person's sex life, whistling of a sexual nature and the sending by electronic means or otherwise of sexually explicit text or pictures.
- 8.3 Non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure, and the display or sending by electronic means or otherwise of sexually explicit pictures and objects.
- 8.4 Sexual harassment may include, but not limited to victimisation, quid pro quo harassment and sexual favouritism.
 - 8.4.1 **Victimisation** occurs where an employee is victimised or intimidated for failing to submit to sexual advances
 - 8.4.2 **Quid pro quo harassment** occurs where an employer, supervisor, member of management or co-employee, influences or attempts to influence an employee's employment circumstances (for example engagements, promotion, training, discipline, dismissal, salary increment or other benefit) by coercing or attempting to coerce an employee to surrender to sexual advances.
 - 8.4.3 **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.

9. Procedures

The following procedures will apply when dealing with issues of sexual harassment. These procedures must ensure the resolution of problems in a sensitive, efficient and effective way.

9.1 Reporting sexual harassment

Section 60(1) of the EEA provides that the conduct in the contravention of the EEA must immediately be brought to the attention of the employer.

In instances of sexual harassment, the word "immediately" shall mean as soon as it is reasonably possible in the circumstances and without undue delay, taking into account the nature of the sexual harassment, including that it is a sensitive issue, that the complainant may fear reprisals and relative positions of the complainant and the alleged offender in the workplace.

Sexual harassment may be brought to the attention of the employer by the complainant or any other person aware of the sexual harassment for example a

friend, colleague or human resource official acting on the request of the complainant where the complainant has indicated that s/he wishes the employer to be made aware of the conduct.

The University may investigate alleged incidents of sexual harassment of which it becomes aware, even if no formal complaint has been filed or the individual(s) is unwilling to pursue a complaint or cooperate in an investigation.

9.2 Advice and Assistance

Sexual harassment is a sensitive issue and the complainant may feel unable and helpless to approach the alleged offender, lodge a formal grievance or turn to colleagues for support.

In terms of the UWC process a complainant of sexual harassment must immediately seek advice and assistance from the Employee Relations (ER) Office in the Human Resources department. The complainant will be assisted with advice and a preliminary investigation will be done. With severe instances happening afterhours or during university closure periods, the complainant must lodge the complaint with the Campus Protection Services (CPS) who will proceed to assist the complainant with laying a complaint at the South African Police Services (SAPS). Severe cases will include acts of rape and sexual assault where the complainant needs immediate medical attention and protection from further harm.

The ER office will further offer support by referring the complainant to the on- and off-site counselling services currently employed by UWC. This service is available at no additional fee (in line with our EAP policy). This company, has experienced, professional and registered counsellors to assist with any emotional trauma including that of sexual harassment.

9.3 Additional sick leave

In cases where an employee's existing sick leave entitlement has been exhausted, UWC will give due consideration in terms of set processes in cases of serious sexual harassment where the employee on medical advice requires trauma counselling.

9.4 Options to resolve the problem

The investigation will assemble all evidence necessary for the case. The amount of time that it will take to complete the investigation will depend on the particular circumstances. If multiple individuals were harassed, then it will take longer to interview the parties and the witnesses.

- 9.4.1 The complainant will be requested to complete a pre-investigation form detailing the events.
- 9.4.2 The investigation will start within three (3) days of receiving the complaint.
- 9.4.3 The complainant will be informed of both the informal and formal procedures available internally to the UWC to deal with the sexual harassment complaint..

- 9.4.4 The complainant will be reassured that s/he will not face any job losses as a result of the complaint or any adverse consequences if s/he chooses to follow either the formal or informal procedure.

9.5 Fact finding investigation:

- 9.5.1 This will include an official interview with the complainant's and witness/es,
9.5.2 Also an official interviewing of alleged offender/s and witness/es,
9.5.3 All possible supporting documentation or other evidence in support of the case will be collected.
9.5.4 A formal written recommendation will be issued for the attention of the ER office.

10. Employee Relations:

Based on the recommendations the ER department will advise the employee on the procedures required to address the sexual harassment complaint. Either an attempt can be made to resolve the problem in an informal way or a formal procedure can be embarked upon. The employee will be under no duress to accept one or the other option.

11. Informal Procedure

The informal process may be sufficient for the employee concerned to have an opportunity where she/he can explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable, and that it interferes with their work.

The ER office will also at this point make sure that the perpetrator is informed of the 'Sexual Harassment' policy of the UWC and that a warning be issued. At the discretion of the university, the person could also be earmarked to attend awareness workshops on the issue of sexual harassment.

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 upon a formal procedure. Examples of severe cases may include: sexual assault, rape, a strip search and quid pro quo harassment.

12. Formal Procedure

The purpose of the formal proceedings is to test the complainant's allegations through the UWC Disciplinary process.

The Employee Relations office of the University of the Western Cape will follow the formal procedure if it is preferred by the aggrieved or where the conduct is deemed to be of a severe nature as per the recommendation.

In the event that a complainant chooses not to follow a formal procedure and it appears after a proper investigation that there is a significant risk of harm to other persons in the

workplace, the Employee Relations Office (ER) has the right to follow a formal procedure, irrespective of the wishes of the complainant, and advise accordingly.

- 12.1 Employee Relations will immediately start the process by:
- 12.2 Contemplating the suspension of the alleged offender, with paid leave, till the process is concluded. This will happen especially if the safety and emotional wellbeing of the victim is being threatened.
- 12.3 Collect further evidence if necessary.
- 12.4 Arrange for disciplinary hearing or further investigation as soon as reasonably possible. Pending the outcome of the investigation, inform both the complainant as well as the alleged offender, in writing, as to the date of the hearing and nature of the allegation.
- 12.5 ER will arrange the disciplinary hearing in accordance with the UWC prescribed rules.

13. Criminal and civil charges:

A complainant of sexual assault and rape has the right to institute separate criminal and/or civil charges against an alleged offender. The legal rights of the complainant are in no way limited by this policy.

L4. Disciplinary process relating to students:

The 'Policy and Procedure on Sexual Harassment' that was approved by Council in 1995 (refer R95/6) as well as the 'University of the Western Cape Sexual Harassment and Sexual Assault Protocol' written in 2010, details the procedure for complaints raised by or against students. This process is handled through the Proctor's office and includes a formal as well as an informal disciplinary process.

15. Confidentiality

Employers and employees must ensure that complaints about sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.

- 15.1 In cases of sexual harassment, management, employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary enquiry. Only appropriate members of management as well as the aggrieved person, representative, alleged offender, witnesses and interpreter if required, must be present in the disciplinary enquiry.
- 15.2 Employers 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 in terms of this policy.

L6. Information and education

The University of the Western Cape will endeavour to raise awareness and to educate our staff on the issue of sexual harassment.

17. Relevant Statute and Compliance

- 17.1 Code of Good Practice on the Handling of Sexual Harassment cases, Notice 1367 of 1998, Labour Relations Act 66 of 1995.
- 17.2 Amended Code of Good Practice on the Handling of Sexual Harassment cases in the Workplace, Notice 1357 of 2005, Employment Equity Act, 1998 (Act 55 of 1998)
- 17.3 Constitution of the Republic of South Africa, 1996
- 17.4 The Protection from Harassment Act, 2010 (No.17 of 2011), and the Regulations (No 26357), 12 April 2013
- 17.5 Employment Equity Act 55 of 1998.
- 17.6 UWC Mission Statement and Core Values

- 17.7 National Health Act No. 61 of 2003
- 17.8 Higher Education Act No. 101 of 1997
- 17.9 The Prevention of Family Violence Act (Republic of South Africa, Act No.133 of 1993)
- 17.10 South African Schools Act No. 84 of 1996

18. Revision Cycle and Maintenance

This is a new policy for employees of the UWC; the other policy on sexual harassment prescribes the code of conduct and procedures relating to **students**. (See: "*University of the Western Cape Sexual Harassment and Sexual Assault Protocol*" - written by SDSSC in 2010).

19. Annexures / Appendices

- 19.1 Process map on the Sexual Harassment Procedure