

43. HR-WRM404 - SEXUAL HARASSMENT

43.1 PREAMBLE

- i. All employees have the right to work in a pleasant and productive work environment where the individual rights and dignity of each employee are respected.
- ii. This includes the right to work in an environment that is free from conduct of a harassing or abusive nature.
- iii. In order to maintain an atmosphere of mutual respect, conduct characterised as sexual harassment will not be condoned or tolerated.

43.2 SCOPE OF APPLICATION⁹

- i. This policy applies to all people, male and female, having business dealings with the NRF. This includes:

– Executives	– Managers	– Supervisors
– Employees	– Interns	– Job applicants
– Clients	– Suppliers	– Contractors
– Others having dealings with the NRF		
- ii. Nothing in (i) above confers the authority on employers to take disciplinary action in respect of non-employees.
- iii. A non-employee who is a victim of sexual harassment may lodge a grievance with the employer of the harasser where the harassment has taken place in the workplace or in the course of the harasser's employment.

43.3 DEFINITION

- i. **Sexual harassment** is defined as unwelcome conduct of a sexual nature that may consist of one or more of the following acts:
 - a. Suggestive comments, remarks or insinuations.
 - b. Unwelcome physical contact.
 - c. Obscene gestures and/or indecent exposure.
 - d. Displaying sexually explicit material in offices.

⁹ Based on Notice 1367 of 1998: Code of Good Practice for the handling of Sexual Harassment Cases

- e. Direct sexual proposition.
- f. Continued pressure for dates or sexual favours.
- g. Offensive written, telephonic or electronic communications.
- h. Any of the above actions as a form of coercion or blackmail for employment, advancement or salary increments or lack of advancement or dismissal if the recipient refuses.

Sexual assault and rape are criminal offences and the person assaulted will be advised to report the offence to the police.

- ii. Sexual harassment does not refer to behaviour or compliments that are acceptable to the parties involved. Friendships, whether sexual or otherwise, are a private concern.

43.4 THE NATURE OF SEXUAL HARASSMENT

- i. Sexual harassment is usually associated with the exercise of power by one person over another.
- ii. It most often occurs in relationships of unequal power or authority as in a "supervisor/subordinate" relationship. However, it may also take place between peers.
- iii. Although women are much more likely to be harassed than men are, it is possible for men to be harassed by women or other men, as well as for women to be harassed by other women.
- iv. Different social or cultural backgrounds may lead people to perceive the same conduct in different ways. What one person may accept as reasonable behaviour may be seen as offensive by another person.

Complaints of sexual harassment are often more to do with a clash of values than a clash of facts.

43.5 POLICY/STATEMENT OF INTENT

- i. The NRF will not tolerate sexual harassment, whether by top management, managers, supervisors or employees.
 - a. To ensure that employees are treated fairly, all reports of sexual harassment will be investigated immediately. These investigations must be sensitive, thorough and remain confidential.
 - b. It is the responsibility of management to ensure that complainants and witnesses are not victimised in any way.
- ii. Employees are prohibited from harassing outsiders, including stakeholders, suppliers and their employees who may have business with the NRF.
 - a. Employees who are found to have sexually harassed a co-worker or work associate will be subject to appropriate disciplinary action, which may include dismissal.
- iii. In addition, any employee who joins in or condones the harassment or abuse of another employee shall also be liable for discipline.
- iv. The NRF also recognises that false or vindictive accusations can have a serious effect on innocent individuals. Such claims will be regarded in a serious light.

43.6 PROCEDURE

- i. Any incident of sexual harassment must be reported by the employee, to his/her manager or the Legal and Workplace Relations Office.
- ii. This discussion should be treated as private and strictly confidential.
- iii. No immediate judgement on whether sexual harassment has or has not occurred should be made.
- iv. Careful and deliberate consideration must be given to protect both the person bringing the allegation and the person accused.
- v. The complainant shall make the judgement on the severity of the incident, following from which either informal or formal procedures may be followed.
- vi. The employee should be under no duress to accept one or the other option.

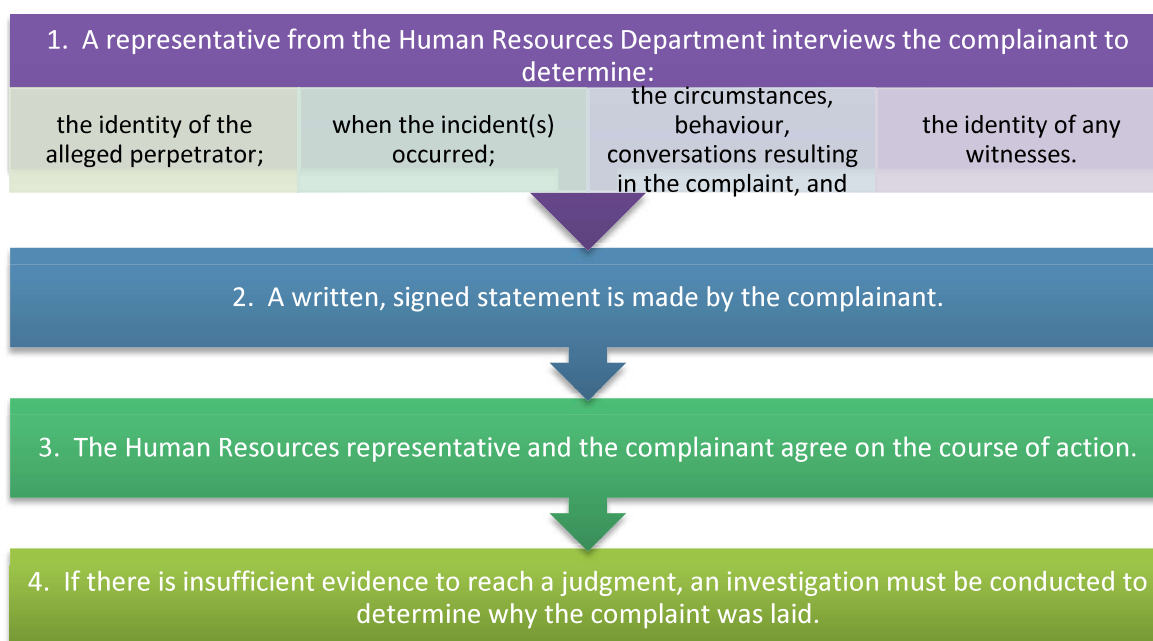
43.6.1 INFORMAL COMPLAINTS

This is normally handled by the employee's manager, with discussions being conducted along the following lines:

- i. The employee should furnish his/her description of the incident.
- ii. A verbal summary should be made to the employee as confirmation of understanding.
- iii. The options available to the complainant should be reviewed. These include attempting to resolve the problem informally with the alleged harasser:
 - a. a verbal/written request to the harasser from the complainant to stop the harassment.
 - b. filing a formal complaint or;
- iv. The manager must agree with the complainant on a course of action.

43.6.2 FORMAL COMPLAINTS

- i. These are initiated when the employee wishes to pursue the matter through a formal investigation.
- ii. These are handled by the designated Legal and Workplace Relations functionary, with the following procedure being followed:



43.6.3 APPROPRIATE ACTION

- i. Once the investigation has been completed, management shall decide whether or not to institute formal disciplinary action. This can take one of the following forms

43.6.3.1 CORRECTIVE DISCIPLINE

- i. This aims to prevent the recurrence of the unacceptable conduct.
- ii. This unacceptable conduct must be pointed out by management to the accused.
- iii. Further, management and the accused must explore alternatives to prevent the incident happening again.
- iv. No final disciplinary record is kept.
- v. An apology by the accused to the complainant would be appropriate. However, this apology needs to be accepted by the complainant.

43.6.3.2 DISCIPLINARY HEARING

- i. In cases of serious sexual harassment, it is necessary to hold a disciplinary hearing in terms of the NRF's disciplinary procedure.
- ii. Should the employee be found guilty of sexual harassment, an appropriate disciplinary sanction must be imposed.
- iii. This can include summary dismissal, or a warning with the requirement to attend corrective workshops.

43.6.4 GRIEVANCE PROCEDURE

- i. Where the complainant has reported the matter to the appropriate manager or Human Resources Department but feels that no action or in appropriate action has been taken, he/she should make use of the NRF's grievance procedure.

44. HR-ERM405 - GRIEVANCE PROCEDURE

44.1 INTRODUCTION

- i. The effective management of conflict and employee dissatisfaction requires a systematic and orderly process. This will help to ensure:
 - a. that the trust of the employee in management is maintained;
 - b. application of the organisation's policy;
 - c. that grievances are handled as speedily as possible at the appropriate level and at the point of origin.

44.2 OBJECTIVE

- i. This grievance procedure serves a dual purpose:
 - a. To recognise that it is in the interests of both employer and employee to consider and resolve issues arising between them in a fair and reasonable manner as soon as possible. In this respect, the grievance procedure is intended to provide channels for the resolution of any problem which an employee or group of employees may have.
 - b. To enable any employee or group of employees to have a grievance resolved as quickly and as close to the point of origin as possible. Failure to respond to a grievance in terms of this grievance procedure will be deemed as a breach of the procedure and may result in a dispute being declared.
- ii. This grievance procedure shall not be used as:
 - a. an alternative to, or as an appeal mechanism against, any disciplinary action which has been instituted.
 - b. as a forum for collective bargaining.

44.3 DEFINITIONS

- i. **Grievance** means any feeling of injustice an employee may suffer regarding his/her employment.
- ii. **Chairperson** means:
 - a. a Director of the affected Business Unit or his/her nominee, in the instance where the Grievant is below the level of Director;
 - b. the CEO of the NRF or his/her nominee, in the instance where the Grievant is a Director or member of the NRF Executive Committee;
 - c. an independent person appointment on the basis of his/her the competencies in presiding over disciplinary and grievance hearings, in the instance where: -
 - the Grievant is the CEO of the NRF;
 - the Supervisor is the person against whom the grievance is lodged and there is no higher level of management to which the matter can be referred;
 - based on the circumstances of the grievance, it is proper and fitting and in the interest of fairness to appoint an outside person.
- iii. **Grievance Committee** means:
 - a. the Chairperson, whose role shall be to preside over the hearing; and
 - b. a designated person from the Workplace Relations Office, whose role shall be to facilitate and exercise oversight of the hearing.
- iv. **Grievant** means any employee of the NRF who is aggrieved and who lodges a grievance in terms of this policy.
- v. **Supervisor** means the person to whom the Grievant directly reports.
- vi. **Recognised Union** means a Trade Union formally recognised by the NRF in accordance with the provisions of the Labour Relations Act.
- vii. **Respondent** means the NRF employee against whom a grievance is lodged.
- viii. **Union Representative** means an employee of the NRF who has been appointed as a shop steward of a Recognised Union

44.4 PROCESS



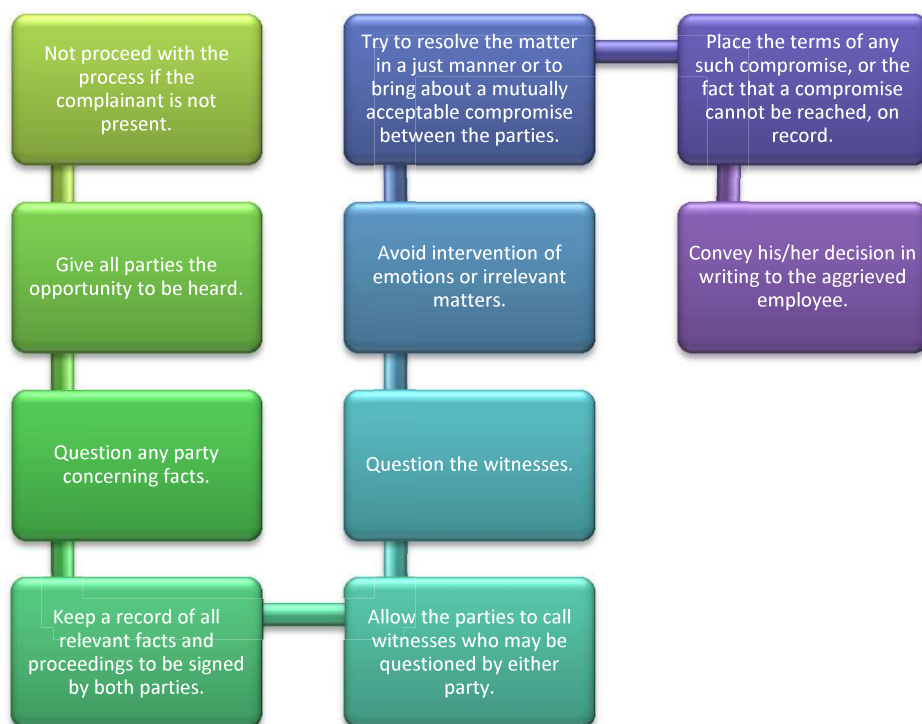
44.4.1 STAGE 1

- i. The grievant must discuss the grievance verbally with his/her supervisor.
- ii. The grievance should be resolved as soon as practically possible but in any event addressed within three (3) working days from the time it was lodged with the Supervisor.
- iii. If the matter is unresolved, the grievant may put his/her grievance in writing to his/her supervisor within five (5) working days of the occurrence of the event giving rise thereto.
- iv. The signed written grievance shall state:
 - a. the facts upon which it is based,
 - b. when the event leading to the grievance occurred,
 - c. the alleged violation and the remedy sought.
- v. If there is a group grievance, no more than three (3) employees within the group or their Union Representatives may be nominated as representatives to follow the procedure outlined above.
- vi. Any grievant has the right to be supported, or represented by, a fellow employee of his/her choice or a Union Representative.
- vii. The Supervisor must endeavour to the best of his/her ability to settle the matter and respond to the grievant in writing within three (3) working days after receipt of the grievance form.

If the grievance concerns his/her Supervisor, the grievant has a right to approach the next level of management, or to contact the designated Workplace Relations Office functionary.

44.4.2 STAGE 2

- i. If the grievance has not been satisfactorily settled after Stage 1, the grievant must register his/her written grievance with the next management level within three (3) working days after receipt of the outcome from Stage 1.
- ii. A copy of the grievance form must be filed with the Workplace Relations Office. The designated Workplace Relations Office functionary must furnish a copy of the grievance form to the relevant parties.
- iii. The relevant manager must, within three (3) working days from the date on which the grievance was filed, call a meeting with the Grievant and the Respondent.
- iv. A representative from the Workplace Relations Office shall also be present.
- v. The Grievant and Respondent may be represented by a fellow employee of his/her choice or by a Union Representative.
- vi. The meeting will take the form of an investigation. At the meeting, the relevant manager should:



- vii. Should the Respondent not attend the meeting, the grievance meeting shall be postponed.

- viii. If the Respondent does not attend the rescheduled meeting, such meeting will continue in his/her absence.

44.4.3 STAGE 3

- i. If the grievance is not satisfactorily resolved, the Grievant may, within five (5) working days, request the Grievance Committee to review the decision delivered under Stage 2.
- ii. The Grievance Committee must review the grievance within five (5) working days of receiving such request or as soon thereafter as may be practicable.
- iii. The Grievance Committee must convey its decision in writing to the aggrieved employee with five (5) day of the review.
- iv. The procedure outlined in Stage 2 should, if necessary, be followed by the Grievance Committee.
- v. Nothing herein contained shall be interpreted as prohibiting the Chairperson to depart from the procedure outlined in Stage 2, provided such departure does not offend the principles of fairness and justice as contemplated in laws of South Africa.
- vi. The Grievance Committee must convey its decision in writing to the Grievant with five (5) day of the review.
- vii. This is the final stage in the grievance procedure. The decision of the Chairperson will be final.

44.4.4 DISPUTE

- i. If the grievance remains unresolved after Stage 3, the Grievant may invoke procedures provided for by employment legislation or the common law.
- ii. The Grievant/s may only resort to an external dispute resolution mechanism if the NRF has failed to resolve the grievance.

44.5 POLICY REFERENCES

Policy Code	HR-ERM405
Policy Name	HR-ERM405 - Grievance Procedure
Policy Owner	NRF Human Resources
Approved by:	
Date Approved	
Revision Date	
Amendments	
Related Policies	<ul style="list-style-type: none"> – Sexual Harassment (HR-WRM400) – Union Representation (HR-WRM403) – Disciplinary Code and Procedures (HR-WRM406)
Related Forms	–
Related Legislation	<ul style="list-style-type: none"> – Basic Conditions of Employment Act (No. 72 of 1997) – The Constitution of the Republic of South Africa (No. 108 of 1996) – The Labour Relations Act (No. 66 of 1995) – The Employment Equity Act (No. 55 of 1998) – The Promotion of Equality and Prevention of Unfair Discrimination Act (No. 4 of 2000)
Related Documents	– Contract of Employment