



health

Department of Health
NORTHERN CAPE

This is to confirm that this policy was reviewed
according to the agreed time-frame

Whistle -Blowing Policy

Version control

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Definitions and Abbreviations

In this Policy, unless the context otherwise indicates, the following terms shall bear the meaning assigned as reflected by the Protected Disclosures Act:

“What is Disclosure” Disclosure” is defined as “any disclosure of information regarding any conduct of an employer, or an employee of that employer, made by any employee who has reasons to believe that the information concerned shows or tend to show one or more of the following; that a criminal offence has been committed, is being committed or is likely to be committed; that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject; that a miscarriage of justice has occurred or is likely to occur; that the environment has been, is being or is likely to be damaged; unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No.4 of 2000); or that any matter referred to above has been, is being or is likely to be deliberately concealed”.

“Occupational detriment” (in relation to the working environment of an employee) includes the following; Disciplinary action; Dismissal, suspension, demotion, harassment or intimidation; Transfer against the employee’s will; Refusal of transferring or promoting the employee; A return of condition of employment or retirement that disadvantages the employee; Refusal of a reference from the employer; Denial of appointment to any employment, profession or office; A threat regarding any of abovementioned actions; Adversely being affected in respect of employment opportunities and work security.

“Whistle-blowing” generally refers to the process of disclosing information or raising a concern about a wrong doing, some kind of malpractice or mistreatment which members of staff may have come across during the course of their work (within an organisation) and which they feel would put the interests of the Department, public and provincial administration at risk.

“Whistleblower” is any employee or member of staff who has a reasonable belief that there is fraud, corruption, unlawful act, harmful act or misconduct relating to any of the matters specified above and may raise a concern under the procedure as described. For the purpose of this policy, an employee or member of staff is a person who is; employed on a

permanent basis; on a fixed term or temporary contract of employment; on secondment to the Department.

1. Policy Aim

- 1.1 The aim of this policy is to encourage employees to report or raise concern about any aspect of the departmental work in line with the Protective Disclosure Act without fear of reprisals.

2. Policy Scope

- 2.1. The policy is designed to deal with concerns raised, outside the scope of grievance procedures, regarding issues relating to:

2.1.1. Financial misconduct (Fraud)

2.1.2. Environmental damage

2.1.3. Health and Safety Risk

2.1.4. Unfair discrimination (Promotion of Equality and Prevention of Unfair Discrimination Act, Act 4 of 2000) – Malpractices with Procedural injustice

2.1.5. Corruption and misconduct

2.1.6. Attempts to suppress or conceal any information relating to above.

- 2.2. The policy will not apply to personal grievances, which will be dealt with under existing procedures on grievances, discipline and misconduct. Details of these procedures are obtainable from Human Resource Directorate.

- 2.3. If in the course of the investigation any concern raised in relation to the above matters appears to the investigator to relate more appropriately to grievance or discipline, those procedures will be evoked.

3. Policy Statement

- 3.1. The Protected Disclosures Act (no. 26 of 2000) became effective in February 2001 and sets out a clear and simple framework to promote responsible whistle-blowing by:

- 3.1.1. Reassuring workers that silence is not the only safe option
- 3.1.2. Providing strong protection for workers who raise concerns internally reinforcing and protecting the right to report concerns to public protection agencies such as the Public Protector and Auditor-General, and
- 3.1.3. Protecting more general disclosures provided that there is a valid reason for going wider and that the particular disclosure is a reasonable one.
- 3.2. To endorse this commitment, the Department has designed procedures for dealing with cases of whistle-blowing that protects the individual and ensure that the matter is fully and vigorously investigated (on a confidential basis) by the internal Security: Fraud & Corruption Investigation Division (Integrity Unit).
- 3.3. Department will ensure that an employee will not be at risk of losing his/her occupation or suffer any form of retribution as a result of raising a concern in good faith.

4. Culture of Openness

- 4.1. The Department commits itself to encourage and ensure a culture that promotes openness within its ranks. This will be done by:
 - 4.1.1. Involving employees, listening to their concerns and encouraging the appropriate use of this policy on whistle-blowing promoted by Senior Management.
 - 4.1.2. Issuing the policy to all existing and new employees during Induction Programmes by Human Resource Directorate (HRD).
 - 4.1.3. Educating, informing, and explaining to employees what constitutes fraud, corruption and malpractice and its effect on service delivery.
 - 4.1.4. Encouraging Organised Labour to endorse and support this approach.

5. Assurances to Employees

5.1. Employee Safety

- 5.1.1. The Department will ensure that an employee who makes a disclosure in the above-mentioned circumstances will not be penalised or suffer any occupational detriment for doing so.
- 5.1.2. If a concern is raised in good faith as provided in this policy, an employee will not be at risk of losing his/her job or suffering any form of retribution as a result. This assurance is not extended to employees who maliciously raise matters they know to be untrue.

5.2. Employee Confidentiality

- 5.2.1. Employees who disclose information in terms of this policy and act of parliament will be protected against victimization or suffer any occupational detriment.
- 5.2.2. If the employee wishes that his/ her identity must not be divulged, it will not be disclosed without consent, unless required by law.
- 5.2.3. If the situation arises where the matter could not be resolved without revealing an employee's identity (where evidence will be needed in court), the matter will be handled in accordance to the relevant legislation.

5.3. Anonymity

- 5.3.1. If an employee, do not disclose to the Department who they are, it will be much more difficult for the Department to look into the matter, to protect their position, or to give feedback. Accordingly, while the Department will consider anonymous reports, these arrangements are not well suited to deal with concerns raised anonymously. Information of raising a concern can be obtained from the departments' Security unit.

5.4 Harassment and Victimization

- 5.4.1. The Department of Health acknowledges the fact that the decision to report a concern can be a difficult one to make, not least because of fear of reprisal from

those responsible for the irregularity. The Department will not tolerate harassment of victimisation and will take action to protect employees when they raise a concern in good faith. This does not mean that if an employee is already the subject of disciplinary or other action, that action will be halted as a result of their whistle-blowing.

6. Handling of Whistle Blowing

- 6.1. Employees do not need to have firm evidence of malpractices before raising a concern, as allegation is sufficient on grounds of concern. However, a written allegation should set out the background and history of the concern (giving names, dates and places where possible) and the reason why the employee is particularly concerned about the situation. The Department shall make provision for employees to unanimously, written or verbally (later reduced to written) make a protected disclosure.
- 6.2. If the concern falls more properly within the Grievance Procedure, the employee will be advised accordingly.
- 6.3. Integrity Unit will formally (in writing) respond directly and confidentially to whistle-blowers (when identity of person is known) within 40 days to provide progress on the reported case/ investigation.
- 6.4. A referral of a concern will be acknowledged, and, where possible, an indication of how management proposes to deal with the matter. An indication of the likely time-scales involved in providing a final response will also be provided. If it is not possible for initial enquiries to be completed within ten working days (10), the letter of acknowledgement will explain the situation. If a decision is made not to investigate, a brief explanation would be provided of the reasons for the decision.

7. How to raise concerns

7.1. Door one - Legal Advice

7.1.1. The first door is termed legal advice. A disclosure made by a whistle-blower to someone for the purposes of getting legal advice about the disclosure is a protected disclosure. This would include the employee's attorney or shop steward.

7.2. Door two - An Internal disclosure

7.2.1. The Protected Disclosures Act signals that it is safest if concerns are raised internally. A disclosure to the employer will be protected if the whistle-blower acts in good faith, and follows the process set out for such disclosures by the employer. They should have a reason to believe that there is a problem of some sort, including the law being broken, the health or safety of people being endangered, or discrimination taking place.

7.3. Door three - Regulatory disclosures

7.3.1. The Act reinforces and strengthens the right to make disclosures to specified regulatory bodies. These currently include:

- a) the office of the Public Protector
- b) the office of the Auditor-General.

7.3.2. Disclosures to these bodies will be protected where the whistle-blower makes the disclosure in good faith and the employee reasonably believes the Public Protector or Auditor General would usually deal with the kind of problem that the whistle-blower wants to talk about. There is no requirement that the concern should first have been raised with the employer.

7.4. Door four - Wider disclosures

7.4.1. Workers (Employees) can also be protected under the Act if they make wider disclosures (e.g., to the police, MPs, and even the media). To be protected there must also be a good cause for going outside and the particular disclosure must be reasonable. There are four good causes recognised in the law as follows:

7.4.2. The concern was raised internally or with a prescribed regulator, but has not been properly addressed.

7.4.3. The concern was not raised internally or with a prescribed regulator because the whistle-blower reasonably believed he or she would be victimized.

7.4.4. The concern was not raised internally because the whistle-blower reasonably believed a cover-up was likely and there was no prescribed regulator, or

7.4.5. The concern was exceptionally serious.

8. Dissatisfaction with Response

8.1. The Department is committed to handle the matter fairly and properly. If an employee is at any stage is dissatisfied with any response, he/she may approach other levels and institutions mentioned in the policy.

8.2. The employee remains protected if he/she has exhausted all the reporting lines. There must be a good cause for approaching other institutions. Good cause shall be recognised as follow:

8.2.1. The concern was raised internally, but has not been properly addressed;

8.2.2. The concern was exceptionally serious.

9. Roles and Responsibilities

9. 1. The Member of Executive Council (MEC) shall:

9.1.1. Support all employees who are willing to disclose information of irregularities within the department.

9. 2. The Head of Department (HOD) shall:

9.2.1. Support all employees who are willing to disclose information of irregularities within the department.

9.2.2. Allow the Security directorate to have full access to all information systems, processes and people to gather evidence to verify allegations and make proper recommendations to rectify.

9.3. The Employee shall:

9.3.1. Disclose anonymously or in writing any concern on issues in the department that constitute fraud, corruption, malpractices or impacting on effective service delivery, which falls outside normal grievance procedures.

9.4. The Immediate Supervisor

9.3.1. The **Immediate Supervisor / Line Manager** or **any other person whom information was reported** to shall:

9.3.2. Handle the reporting with Confidentiality and the employee must be treated fairly without being harassed or victimised.

9.3.3. Confirmed irregularity must be rectified and if the matter cannot be resolved on their respective level, the matter must be escalated to a higher authority for intervention

9.4. The Director: Security Services, shall:

9.4.1. Keep record of all disclosures received from PSC or internally and keep register thereof

9.4.2. Investigate all allegations (disclosures) to confirm or refute information.

9.4.3. Make recommendations on how to resolve confirmed irregularities.

9.4.4. Provide feedback on the progress of cases to employee (if information is available) as stipulated under heading "**7, How Concerns are raised?**".

10. Review and Distribution

10.1. The **Director- Security Management / Services** is the responsible manager for this policy and for ensuring it is reviewed and updated.

10.2. The policy shall be reviewed at least annually for its effectiveness and to factor changes in legal frameworks and relevant legislation, organizational development, as well as ensuring compliance with the practices and procedures within the Department of Health.

10.3. The Director for Policy and Planning will distribute updated versions to:

10.3.1. Member of the Executive Council for Health

10.3.2. Head of Department of Health

10.3.3. All Chief Directors, Directors and Deputy Directors (who will in turn distribute to their staff as appropriate).

11. Acknowledgements and Sources

11.1. Protected Disclosures Act 26 of 2000

11.2. Promotion of Access to Information Act 2 of 2000

12.3. A guide for Public Sector Accountability Implementation the Protected Disclosure Act

11.4. Prevention and Combating of Corrupt Activities Act 12 of 2004

11.5. Public Finance Management Act 1 of 1999

11.6. Treasury Regulations

11.7. Labour Relations Act 66 of 1995

11.8. Public Service Act 103 of 1994

11.9. Public Service Bargaining Council Resolution 14 of 2002

11.10. Public Service Bargaining Council Resolution 1 of 2003

Approved by the

Head of Department :  Date: 25/05/2016
Ms GE Matlopane