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# **Mpumalanga Provincial Government of Education Department**

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## **Whistle Blowing Policy**

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## **1. INTRODUCTION**

- 1.1** The Mpumalanga Department of Education recognises the fact that:-
- a. Criminal and other irregular conduct within the Department of Education is detrimental to good, effective, accountable and transparent governance within Department of Education and can endanger the operation mandate stability of Department of Education and have the potential to cause social damage;
  - b. There is a need for procedures in terms of which employees may, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct affecting the Department of Education;
  - c. Every employer and employee in Department of Education has a responsibility to disclose criminal and any other irregular conduct in the workplace; and
  - d. Every employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from any reprisals as a result of such disclosure.

## **2. OBJECTIVES OF THE POLICY**

- 2.1** The Protected Disclosures Act, Act 26 of 2000, came into effect on February 2001. In order to remain in compliance with the Act, the Department of Education will:-
- a. Strive to create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure; and
  - b. Promote the eradication of criminal and other irregular conduct within the Department of Education.



**2.2** The Policy is intended to encourage and enable staff to raise concerns within Department of Education rather than overlooking a problem or blowing the whistle to inappropriate channels.

**2.3** Furthermore the policy aims to:-

- i). Provide avenues for staff to raise concerns and receive feedback on any action taken;
- ii). Inform staff on how to take the matter further if they are dissatisfied with the response; and
- iii). Reassure staff that they will be protected from reprisals or victimisation for whistle blowing in good faith.

### **3. SCOPE OF THE POLICY**

There are existing grievance procedures in place to enable employees of the Department of education to raise grievances relating to their employment. This Policy is intended to cover concerns that fall outside the scope of grievance procedures. These concerns indicated in the Act, are the following:-

- (a) That a criminal offence has been committed, is being committed or is likely to be committed;
- (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- (c) That a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) That the health or safety of an individual has been, is being or is likely to be endangered;
- (e) That the environment has been, is being or is likely to be damaged;
- (f) Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, Act 4 of 2000; or
- (g) That any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed.



#### **4. THE POLICY**

##### **Protected Disclosures Act of 2000**

**4.1** Section 2 of The Protected Disclosures Act of 2000 clearly defines the "Objects of the Act" as follows:

- i). To protect an employee from being subjected to an occupational detriment on account of having made a protected disclosure;
- ii). To provide for remedies in connection with any occupational detriment suffered on account of having made a protected disclosure; and
- iii). To provide for procedures in terms of which an employee can, in a responsible manner, disclose information regarding improprieties by his or her colleagues, other stakeholders and employer.

**4.2** This Policy is developed based on the principle objects of the Protected Disclosures Act of 2000, which encourages employees to disclose any acts of misconduct without fear of any recriminations or reprisals.

##### **4.3 Harassment or Victimization**

The Department of Education 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 Of Education will not tolerate harassment or victimisation and will take action to protect employees when they raise a concern in good faith. Any act of harassment or victimisation should be reported to the Head of Department, alternatively to the Manager for: Risk Management or the Protected Disclosure Coordinator. 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.

##### **4.4 Confidentiality**

The Department of Education will do its best to protect an individual's identity when he/she raises a concern and does not want their identity to be disclosed. It must be appreciated, however, that the investigation process may reveal the source of the information and a statement by the employee may be required as part of the evidence.



#### **4.5 Anonymous Allegations**

The Department of Education encourages employees to put their names to allegations. Concerns expressed anonymously are difficult to investigate; nevertheless they will be followed up at the discretion of the Head of Department, in consultation with the Internal Audit Unit or other internal investigation structures. This discretion will be applied by taking into account the following:-

- a) seriousness of the issue raised;
- b) credibility of the concern; and
- c) likelihood of confirming the allegation.

#### **4.6 False Allegations**

Employees or other parties must understand the implications (resources and costs) of undertaking investigations and should therefore guard against making allegations, which are false and made with malicious intent.

### **5. REPORTING OF CONCERNS**

**5.1** For some minor issues (e.g. personal use of the Departments equipment etc.), employees should normally raise the concerns with their immediate supervisor/ manager. In general, however, the whistle blowing procedure is expected to be used for potentially more serious and sensitive issues (e.g. fraud and corruption).

**5.2** The first step will be for the employee to approach his/her immediate supervisor/ manager unless he/she or relevant senior manager is the subject of the complaint, in which case Risk Management or the Protected Disclosures Co-ordinator should be informed. Should the complaint be found by the manager to be substantiated, he/she will consult with the Risk Management Unit or Protected Disclosures Co-ordinator on whether the matter should be investigated internally or referred to the appropriate external body (e.g. SIU, SAPF and/or the Hawks).

- 5.3** Concerns are better raised in writing although verbal would be appreciated. The background and history of the concern, giving names, dates and places where possible should be set out and the reason why the individual is particularly concerned about the situation. Those who are uncomfortable to put their concern in writing can telephonically to the Mpumalanga Provincial Government Fraud Hotline number (0800 701 701). The earlier the concern is reported, the easier it is to take action and initiate recovery procedures where necessary.
- 5.4** Employees are not expected to prove the truth of an allegation; they will need to demonstrate to the person contacted that there are sufficient grounds for concern.
- 5.5** Advice and guidance on how matters of concern may be pursued can be obtained from the Manager: Risk Management.

## **6. HOW THE COMPLAINT WILL BE DEALT WITH**

- 6.1** The responsibility to conduct investigations relating to the actions listed in this policy resides with the Senior Managers within the Department of Education who have the advisory and supporting assistance from units / departments which include the following:
- a) Internal Investigating, for example establish structures;
  - b) State Attorney;
  - c) External investigating agencies, for example the South African Police Force, where matters fall within their mandate;
  - d) External consultants, for example Forensic Accounting consultants;
  - e) Office of the National Director of Public Prosecutions;
  - f) Special Investigating Units established under any law;
  - g) The Public Protector.
- 6.2** In order to protect individuals and Department, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take.

- 6.3** Some concerns may be resolved by agreed action without the need for investigation.
- 6.4** The Department of Education will write to complainants who have identified themselves:-
- a. Acknowledging that the concern has been received; and
  - b. Informing them whether further investigations will take place, and if not, why not.
- 6.5** The amount of contact between the body investigating the issues and the persons raising the concern will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from the individual.
- 6.6** The Department of Education accepts that employees need to be assured that the matter has been properly addressed. However, the progression of investigations will be handled in a confidential manner and will not be disclosed or discussed with any persons other than those who have a legitimate right to such information. This is important in order to avoid damaging the reputation of suspected persons who are subsequently found innocent of wrongful conduct.

## **7. PROTECTION OF WHISTLE BLOWERS**

- 7.1** The Protected Disclosures Act, 26 of 2000 makes provision for the protection of employees who makes a disclosure that is protected in terms of this Act. Employee reporting suspected cases of fraud and/or corruption shall be protecting from retribution, vilification or other consequences pursuant to the terms of the Department Whistleblower Policy, irrespective of the method used to report suspected cases of fraud or corruption.
- 7.2** Any disclosure made in good faith and substantially in accordance with any procedure prescribed by the employee's employer for reporting is considered a protected disclosure under this act. An employee making



such a protected disclosure is protected from being subjected to an occupational detriment on account of having made a protected disclosure.

**7.3** An employee who suspects or reports suspected dishonest activity or such activity which he/she has witnessed should be afforded the opportunity to remain anonymous should he/she so require.

**7.4** Allegations made by employees who are false and made with malicious intentions, should be discouraged by Managers. Where such malicious or false allegations are discovered, the person who made the allegations must be subjected to firm disciplinary action. Such disclosures are not protected by the Protected Disclosures Act of 2000.

**8. CREATING AWARENESS**

**8.1** In order for the Policy to be sustainable, it must be supported by a structured education, communication and awareness programme.

**8.2** It is the responsibility of all head of department and managers to ensure that all employees, are made aware of, and receive appropriate training and education with regard to the Whistle Blowing Policy.

**9. ADMINISTRATION**

The Department of Education has overall responsibility for the maintenance and operation of this policy and will be supported by the Risk Management Unit, Labour Directorate and Internal Audit Unit services in maintaining a record of concerns raised and the outcomes (but in the form which does not endanger confidentiality).

**10. IMPLEMENTATION**

This policy is implemented with effect from 1<sup>st</sup> August 2014.

HEAD OF DEPARTMENT:.....*M. Labce*..... DATE:.....*12/9/14*.....  
SIGNATURE.....*hoc mlabcce*.....