



education

---

Department:  
Education  
PROVINCE OF KWAZULU-NATAL

# WHISTLE BLOWING POLICY

## Contents

1. INTRODUCTION.....	3
2. DEFINITIONS.....	3
3. OBJECTIVES OF THE POLICY.....	4
4. SCOPE OF THE POLICY .....	4
5. THE POLICY.....	5
6. REPORTING OF CONCERNS .....	6
7. HOW THE COMPLAINT WILL BE DEALT WITH .....	7
8. CREATING AWARENESS.....	7
9. ADMINISTRATION .....	7
10. ADOPTION AND EFFECTIVE DATE.....	7

## 1. INTRODUCTION

The KwaZulu-Natal Department of Education ("The Department") recognises the fact that:

- 1.1. Criminal and other irregular conduct within the Department is detrimental to good, effective, accountable and transparent governance and can endanger the economic stability of the Department and have the potential to cause social damage
- 1.2. 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.
- 1.3. Every employer and employee has a responsibility to disclose criminal and any other irregular conduct in the workplace
- 1.4. 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. DEFINITIONS

**"disclosure"** means any disclosure of information regarding any conduct of an employer, or an employee of that employer, made by any employee who has reason to believe that the information concerned shows or tends to show one or more of 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, 2000 (Act No, 4 of 2000)*
- (g) *that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed*

**"occupational detriment"** in relation to the working environment of an employee, means being subjected to any disciplinary action

- (h) *being dismissed, suspended, demoted, harassed or intimidated*
- (i) *being transferred against his or her will*
- (j) *being refused transfer or promotion*

- (k) *being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage*
- (l) *being refused a reference or being provided with an adverse reference, from his or her employer*
- (m) *being denied appointment to any employment, profession or office*
- (n) *being threatened with any of the actions referred to paragraphs (a) to (g) above; or*
- (o) *being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security.*

### **3. OBJECTIVES OF THE POLICY**

- 3.1. The Protected Disclosures Act 26 of 2000 ("PDA") came into effect on 16 February 2001. In order to remain in compliance with the Act, the Department will:
  - 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.
  - Promote the eradication of criminal and other irregular conduct within the Department.
- 3.2. The Policy is intended to encourage and enable staff to raise concerns within the Department rather than overlooking a problem or blowing the whistle to inappropriate channels.
- 3.3. Furthermore, the policy aims to:
  - Provide avenues for staff to raise concerns and receive feedback on any action taken
  - Inform staff on how to take the matter further if they are dissatisfied with the response
  - Reassure staff that they will be protected from reprisals or victimisation for whistle-blowing in good faith.

### **4. SCOPE OF THE POLICY**

- 4.1. There are existing grievance procedures in place to enable employees of the Department 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:-
  - 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, is occurring, or is likely to occur
- That the health or safety of an individual has been, is being, or is likely to be endangered
- 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, Act 4 of 2000

## 5. THE POLICY

### **Protected Disclosures Act**

- 5.1. Section 2 of the Protected Disclosures Act clearly defines the "*Objects of the Act*" as follows:
- To protect an employee from being subjected to an occupational detriment on account of having made a protected disclosure
  - To provide for remedies in connection with any occupational detriment suffered on account of having made a protected disclosure
  - 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.
  - This Policy is developed based on the principle objects of the Protected Disclosures Act, which encourages employees to disclose any acts of misconduct without fear of any recriminations or reprisals.

### **Harassment or Victimisation**

- 5.2. The Department 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 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 Accounting Officer, alternatively to the Manager: Risk Management within the Internal Audit unit.
- 5.3. 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.

### **Confidentiality**

- 5.4. The Department 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.
- 5.5. The Department does not allow press conferences on cases still under preliminary investigations unless otherwise authorised by the Executive Authority. (Press

conferences have a tendency of creating hype which in turn jeopardises the safety of the whistle blower and compromises the preliminary investigation).

#### **Anonymous Allegations**

- 5.6. The Departments' [AO or delegated authority] encourages employees to put their names to allegations [however anonymous allegations will also be investigated based on the following: Concerns expressed anonymously are difficult to investigate; nevertheless they will be followed up at the discretion of the Department, in consultation with the Internal Audit Unit. This discretion will be applied by taking into account the following:-
- Nature and seriousness of the issue raised
  - credibility of the concern, and
  - likelihood of confirming the allegation [without the need of confirming the information with the individual/ anonymous whistle blower].

#### **False Allegations**

- 5.7. 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.

### **6. REPORTING OF CONCERNS**

- 6.1. For some minor issues (e.g. personal use of the Department equipment etc.), employees should normally raise the concerns with their immediate supervisor/manager. In general, however, the whistle-blower procedure is expected to be used for potentially more serious and sensitive issues (e.g. fraud and corruption).
- 6.2. The first step will be for the employee to approach his/her immediate supervisor/manager unless that supervisor or senior management is the subject of the complaint, in which case the Internal Audit Unit should be informed. Should the complaint be found by the manager to be substantiated, he/she will consult with the Internal Audit Unit on whether the matter should be investigated internally or referred to the appropriate external body (e.g. the SAPS).
- 6.3. Concerns are better raised in writing. 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 telephone the National Anti-Corruption Hotline number is 0800 701 701. The earlier the concern is reported, the easier it is to take action and initiate recovery procedures where necessary.
- 6.4. 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.
- 6.5. Advice and guidance on how matters of concern may be pursued can be obtained from the Manager: Internal Audit Unit.

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

- 7.1. The action taken by the Department will depend on the nature of the concern. The possible actions to the matters raised may, among others be to:-
  - investigate internally by Internal Audit Unit/ Forensic Unit (the forensic investigations division of the Internal Audit Unit)
  - refer to the SAPS or other relevant law enforcement agency.
- 7.2. In order to protect individuals and the Department initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take.
- 7.3. Some concerns may be resolved by agreed action without the need for investigation.
- 7.4. The Department will write to complainants who have identified themselves:-
  - Acknowledging that the concern has been received, and
  - Informing them whether further investigations will take place, and if not, why not.
- 7.5. 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.
- 7.6. The Department 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.

## **8. CREATING AWARENESS**

- 8.1. In order for the Policy to be sustainable, it must be supported by a structured communication and awareness programme.
- 8.2. It is the responsibility of the Accounting Officer 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**

- 9.1. The Accounting Officer has overall responsibility for the maintenance and operation of this policy and will be supported by the Internal Audit Unit and Human Resources in maintaining a record of concerns raised and the outcomes (but in the form which does not endanger confidentiality).

## **10. ADOPTION AND EFFECTIVE DATE**

This Policy comes into effect on the date of signature hereof by the Accounting Officer.

Bawa.  
Signature of Accounting Officer

27/11/2020  
Date