

# GBV in the workplace: Where to from here?

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In September 2019, the #SandtonShutdown protest took place in an effort to highlight the crucial role of businesses in tackling gender-based violence. One of the placards during the protest read, "Make my safety your business". The message was clear. Businesses were urged to make gender-based violence one of their strategic issues and actively address it in the workplace.



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Just over a year later it appears not much has changed. According to the 2019/20 crime statistics for South Africa published in July 2020, women continue to be, if not more so, disproportionately impacted by gender-based harassment and violence in the workplace. Not only do these statistics depict the widespread nature of workplace harassment and violence in South Africa, they also reveal the systemic failure to stop it.

Gender-based harassment and violence can have profound effects on an individual's employment regardless of whether or not the incident occurred at the workplace. It is accordingly vital for victims to be provided with sufficient assistance and protection. But, do our employment laws go far enough to protect and assist victims? Compared to other jurisdictions, our laws may be paper tigers.

## Where are we now?

Currently, the Code of Good Practice on the Handling of Sexual Harassment (Code) places obligations on employers to take steps to address the issue of workplace sexual harassment and provide protection for employees who may be victims of such conduct. The Code requires employers to, among other things, designate a person to provide confidential advice or counselling, consider granting additional paid leave to victims, and consider assisting victims with the cost of medical advice or trauma counselling.

In the wake of the #MeToo movement, the International Labour Organisation introduced the Convention on Violence and Harassment at Work. This Convention was adopted in June 2019 and seeks to set out measures for governments and employers to tackle the scourge of harassment and violence in the workplace. While this new convention has positive potential, the ratification process is only beginning, with Fiji and Uruguay ratifying the convention in June this year. While the President has indicated South Africa's willingness to ratify the convention, to date we have not yet done so.

In an apparent effort to align our laws with the Convention, the Minister of Employment and Labour published a Draft Code of Good Practice on the Prevention and Elimination of Violence and Harassment in the World of Work (Draft Code). While the Draft Code is largely a restatement of the Code, it expands on the different types of harassment employees may experience in the workplace, referring explicitly to gender-based violence, and the steps employers are required to take to deal with these issues. Again, the Draft Code requires employers to consider adopting treatment, care and support programmes and to consider additional measures to mitigate the impact of domestic violence in the world of work.

## Protection provided by other countries

In light of the scourge of gender-based violence in South Africa, the question that arises is: *Does the Code and Draft Code go far enough to protect victims of gender-based violence? Is it enough to require employers to merely consider providing the necessary assistance and protection?* The answer is probably not; particularly when one has regard to the laws adopted by other countries to protect victims of gender-based violence. For example:

- The laws in both the Philippines and New Zealand provide for 10 days paid leave for domestic violence survivors to pursue legal proceedings and/or to take steps to protect themselves and their children.
- In Puerto Rico, employers are permitted to request a protection order for an employee against visitors to their premises, if the employee has been a victim of domestic violence.
- Spain affords female workers who are victims of gender-based violence the right to a reduction and/or reorganisation of working time, to move their location, and to suspend their employment contract (while maintaining their social security rights and a right to return).
- In Peru, employers are required by law to provide medical and psychological assistance to victims of sexual harassment in the workplace.

While the Code and Draft Code show empathy with people who are victims of gender-based harassment or violence, the country has not acted decisively by ratifying the Convention on Violence and Harassment at Work and doing more to protect victims by making laws that are enforceable. Given that gender-based violence is considered to be a second pandemic in our country, now is the time to align our laws with the magnitude of the problem and to ensure that an adequate level of protection and assistance is provided to women who are victims of gender-based harassment and violence.

Though this process may take some time, employers should not wait for the paper tigers to be given teeth. Affording victims of gender-based violence the right to 10 days paid leave or providing them with legal assistance to obtain protection orders may increase employee morale, promote a culture of wellness and boost an employer's reputation. Businesses can take the lead by adopting the type of benefits for victims of gender-based violence demonstrated by those countries mentioned

above without waiting for the laws of the country to be strengthened.

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