



EMPLOYMENT

ALERT

THE NEW PROTECTION FROM HARASSMENT ACT

"So my boyfriend complained that I was stalking him. Well, he is not exactly my boyfriend yet." Anonymous.

Harassment is a menace that negatively affects the lives of countless people. Recent reports in the press highlighted the advent of cyber-bullying with school children harassing their victims using social networks or texting services. Derogatory comments are made about victims that can then turn into more traditional forms of harassment. Parents and victims of such vile behaviour can take comfort from new legislation that will assist to clamp down on this scourge.

On 5 December 2011, the Protection from Harassment Act (the PHA) was published in the Government Gazette. The date of proclamation is yet to be announced. In terms of this Act, victims of harassment may apply to the Magistrate's Court (the Court) to have a protection order issued. Such an order may be handed down against any person who engages in prohibited activities such as stalking, persistent electronic messaging, sexual harassment and any other behaviour calculated to cause psychological and/or other kinds of harm to the victim. A protection order is intended to interdict and restrain the perpetrator from engaging in the unwelcome conduct.

Interestingly, despite the fact that statutory protection against harassment in the workplace can already be found in the Employment Equity Act,

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harassment in the workplace is not excluded from the PHA. It is thus conceivable that a harassed employee may seek to have a protection order issued against a colleague or manager. This may have a significant impact on workplace relations and the employee relations climate in the workplace.

The protection order is issued by a Magistrate who must be convinced that the complainant has shown good cause. This should assist in preventing the issuing of protection orders sought frivolously or veraciously. The PHA also prescribes severe criminal penalties where the complainant makes a false representation to the Court.

The enactment of the PHA again stresses the importance of having internal communication channels in the workplace. Staff should be encouraged to utilise complaint or grievance procedures where informal discussions about workplace issues do not resolve the problems raised. Resorting to serious interventions such as obtaining a protection order against a colleague could have disastrous consequences for workplace harmony.

Employees should be well informed that (1) harassment - of any sort - will not be tolerated in the workplace and (2) to whom they may complain should they suffer any harassment. This should assist in avoiding the fall-out caused by a protection order issued against an employee in the workplace. A workplace policy on harassment and discrimination is a sound investment for any employer seeking to avoid the pitfalls occasioned by a growing list of statutory obligations.

Any additional assistance to victims of harassment should be welcomed. Employers should use this opportunity to spread the gospel of tolerance in the workplace.

Tim Mills and Mark Meyerowitz

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