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EMPLOYMENT ALERT

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Violence and Harassment in the workplace: The latest from the ILO.

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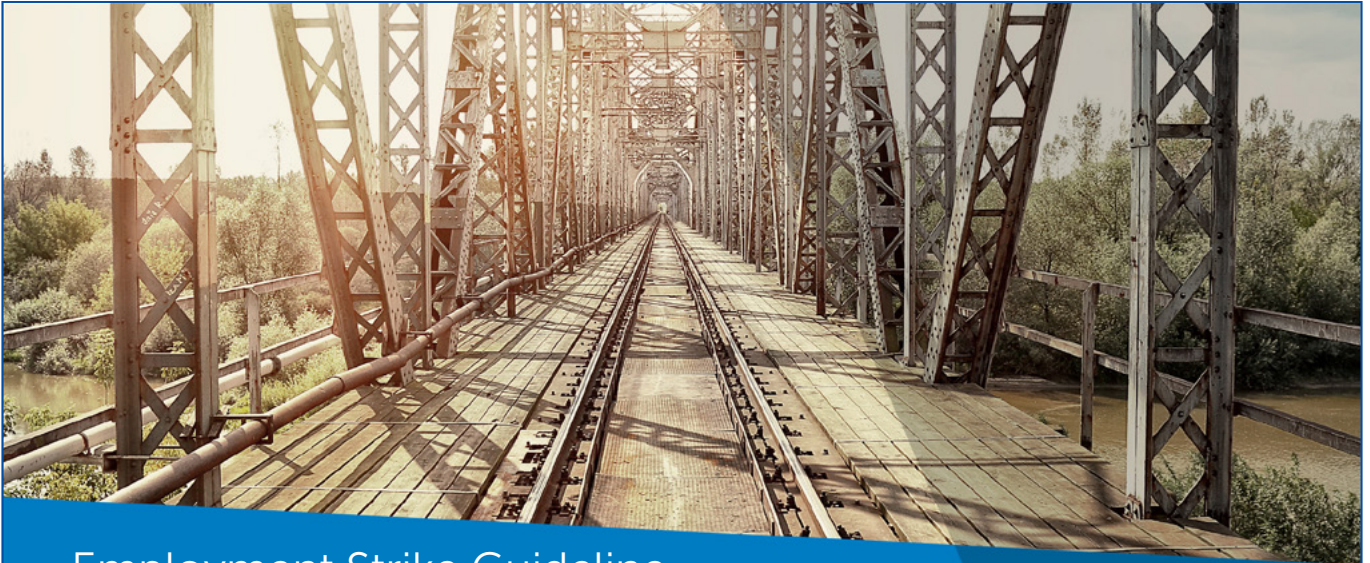
There has been, in the recent years, a growing realisation and appreciation of the prevalence and the devastating effects of sexual harassment in the workplace, both in South Africa and in international jurisdictions. This was highlighted by the “MeToo” movement, where shocking discoveries and revelations were made, regarding the number of persons that were sexually harassed (especially by their employers or by persons in positions of power over them). This movement brought awareness to this pandemic. This led the ILO to adopt its first global convention to combat violence and harassment in the workplace. Conventions are legally binding international instruments, which means that member states have a responsibility to promote a general environment of zero tolerance. South Africa is a signatory to such conventions and is obliged to ensure that there are adequate laws giving effect to the provisions of the convention. *Article 6* of the Convention requires that each member state must adopt laws, regulations and policies ensuring the right to equality and non-discrimination in employment and in occupation.

South Africa has progressed in terms of recognising the threat that harassment poses in working life. In *E v Ikhwezi Municipality and Another* 2016 (5)

SA 114 (ECG) the High Court stated that harassment creates an offensive and very often intimidating work environment and is “the most heinous misconduct that plagues the workplace”. In *Media 24 and Another v Grobler* (2005) 3 All SA 297 (SCA), the Supreme Court of Appeal ruled that the employer’s duty of care cannot be confined to an obligation to take reasonable steps to protect employees from physical harm, it must also in appropriate circumstances include a duty to protect employees from psychological harm that is a result of sexual harassment.

What does all this mean for an employer in South Africa? An employer must ensure that there are competent policies against harassment in its organisations which will inform and educate employees about sexual harassment and harassment generally, as it often tends to be veiled by other flattering gestures, this is highlighted by *Article 4(b)* of the Convention. The Employment Equity Act, No 55 of 1998 (The Employment Equity Act) is the legislation which sets out practical details on handling sexual harassment, particularly in the Code of Good Practice and Handling of Sexual Harassment (The Code). The Code describes the various forms of sexual harassment and conduct which can constitute sexual harassment. Employers that do not ensure that their relevant policies address these aspects may be held liable for failure to take reasonable steps and, to prevent sexual harassment face the prospect of punitive damages as a consequence.

Fiona Leppan & Kgodisho Phashe



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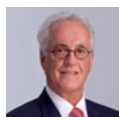
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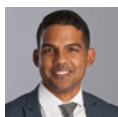
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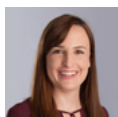
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