

EMPLOYMENT LAW ALERT

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INCORPORATING
KIETI LAW LLP, KENYA

IN THIS ISSUE

A workplace harassment policy without a thorough risk assessment is a “*hollow symbol signifying nothing*”

The duty of an employer to create and maintain a safe working environment includes ensuring that the workplace is free from all forms of harassment, discrimination and violence. This requires acting expeditiously when claims of harassment, discrimination and violence are reported, but also taking advance measures to mitigate against any risk that renders the workplace unsafe. One such proactive measure is the drafting and implementation of a workplace harassment policy that makes it clear to all those having dealings with the business, that the company has a zero-tolerance approach to all forms of harassment and violence.



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In order for a workplace harassment policy to be effective, it must be preceded by a risk assessment that takes into account the specific circumstances of each workplace, all the parties with whom the business has dealings and the parties to whom the business owes a duty to ensure a safe working environment. The duty to provide a safe working environment extends beyond working hours and a workplace harassment policy that lacks specific context is unlikely to assist employers in meeting their obligations in terms of the Occupational Health and Safety Act 85 of 1993 and the Code of Good Practice on the Prevention and Elimination of Harassment and Violence in the Workplace, 2022 (Code).

When determining vicarious liability in terms of section 60 of the Employment Equity Act 55 of 1998 (EEA), the courts analyse both the proactive steps taken by an employer against harassment and whether appropriate remedial action was taken

where harassment has occurred. In *National Union of Metal Workers of South Africa (NUMSA) and Another v Passenger Rail Agency of South Africa* [2021] 42 ILJ 2637 (LC), when assessing the employer's vicarious liability in terms of the EEA, the court placed great emphasis on the fact that the employer had a clearly communicated, accessible sexual harassment policy.

Some of the considerations an employer must take into account when assessing risk include:

- whether the workplace harassment policy meets the minimum requirements set out in item 9 of the Code;
- what proactive measures must be taken in relation to third parties with whom the business has dealings; and
- what measures the business must take to ensure that employees and volunteers are safe during workplace functions, gatherings and trips.

Risk assessments are live documents and must be reviewed periodically and when incidents of harassments arise.

CDH EMPLOYMENT LAW



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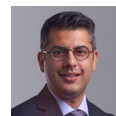
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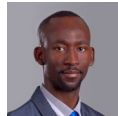
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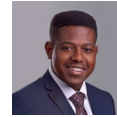
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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