

# Employment Law

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### SOUTH AFRICA

Dealing with discrimination based on language, culture and bias in the workplace



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## Dealing with discrimination based on language, culture and bias in the workplace

A decision by the Labour Court of South Africa dealt with the consequences of workplace discrimination and harassment. The court found the Gauteng Department of Education (Department) liable for unfair discrimination and harassment against Melissa Padayachee, a Black woman of Indian descent who was employed as a social worker at the Ezibeleni School for Physically Disabled Children in Katlehong.

### Background

Padayachee (the employee) began working at Ezibeleni School in 2013. For nearly a decade, she was the only person of Indian descent at a school serving predominantly Black African learners. Until 2022, she experienced few difficulties in her role. However, things changed when the newly appointed head of department informed her that an auxiliary social worker would be appointed to help her overcome supposed “*language barriers*”. Padayachee was surprised by this, as she had not encountered any such issues and felt the appointment was unnecessary.

The situation escalated in 2022, when the head of department and another official informed the employee that she did not understand “*our children and their culture*”. This sentiment was echoed by two educators, who refused to refer learners to her, claiming she did not understand the children or their culture. The Department went ahead and appointed an auxiliary social worker, but according to the employee, this person had little experience, no clear job description, and provided minimal assistance.

Feeling targeted and unsupported, the employee, through her attorneys, sent letters of demand to the Department alleging discrimination and harassment based on race, ethnicity, culture and language. Although the Department promised to investigate, no meaningful action was taken, and her formal grievance remained unresolved for over two years. As the harassment continued, the employee suffered emotional, psychological and physical harm.

### Court findings

With no resolution in sight, the employee referred her dispute to the Commission for Conciliation, Mediation and Arbitration and then to the Labour Court, seeking compensation under the Employment Equity Act 55 of 1998.

The Department did not respond to the claim or participate in the proceedings, so the Labour Court accepted the employee’s evidence. The court found that the Department’s officials had engaged in persistent, unwanted and humiliating conduct that amounted to harassment and unfair discrimination on the grounds of race, ethnicity, culture and language. The officials’ actions created a hostile and intimidating work environment, undermined the employee’s dignity, and ostracised her within the school community.

Importantly, the court noted that if language proficiency had been an inherent requirement of the job, this should have been established at the time of the employee’s appointment. No such evidence was presented. The Department’s failure to investigate or address the grievances, despite repeated notifications, made it directly liable for the discriminatory conduct of its officials.

**EMPLOYMENT LAW  
ALERT**

## Dealing with discrimination based on language, culture and bias in the workplace

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**The outcome**

The Labour Court ordered the Department to pay the employee R50,000 in damages for the harm she suffered. The Department was also instructed to investigate her grievances and take appropriate action within 60 days, and to pay her legal costs.

**Lessons for employers**

This case highlights several important lessons for employers. Employers must act promptly and effectively when discrimination or harassment complaints are raised. Ignoring or inadequately addressing grievances can result in direct liability and significant financial and reputational damage.

Persistent, unwanted conduct that demeans or humiliates an employee based on race, ethnicity, culture or language is considered harassment and is prohibited. Employers should ensure they understand what constitutes harassment.

Making assumptions about an employee's abilities or suitability based on race, ethnicity, or language is unlawful and undermines the values of equality and dignity. Employers must investigate discrimination or harassment complaints swiftly and, where necessary, take disciplinary action.

**Aadil Patel, Nadeem Mahomed, and Thato Maruapula**



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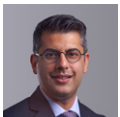
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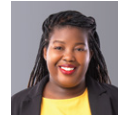
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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