



# Draft Policy Aims to Stop Workplace Harassment and Violence in South Africa

By Leah Shepherd  
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**T**he South African government recently published a draft policy on steps employers should take to prevent and eliminate violence and harassment in the workplace.

On Aug. 20, Labor Minister Thulas Nxesi released the draft, which falls under the Employment Equity Act. If passed, it would apply to all business sectors in all regions in South Africa.

"There is a high likelihood that the draft code will become law," said Johan Botes, a Johannesburg-based attorney with Baker McKenzie. "The draft code comes at a time when the South African government is under immense pressure to take serious action against the scourge of gender-based violence in South Africa, the levels of which are reported to be among some of the highest in the world."

## Scope of the Draft Policy

The draft states that workplace violence and harassment "may include physical abuse, psychological abuse, emotional abuse and sexual abuse," as well as the use of force or power, threatened or actual, against one's self or another person or against a group or community.

The policy aims to protect workers against race-based and gender-based discrimination. Examples of this discrimination include racist jokes and gestures, name-calling, negative stereotyping, exclusion and marginalization. Bullying can include withholding work-related information or providing wrong information, sabotaging someone's work performance, ostracizing or disregarding a person, surveillance with harmful intent and spreading rumors maliciously.

Conduct might not be bullying if the incident is an isolated, one-time event or if the two parties have equal standing in the company.

Under the draft policy, an employer would not be held liable for an employee's actions if the employer shows that it took all reasonable steps to prevent harassment and violence.

Employers in South Africa can fire an employee for workplace harassment or violence. "Our courts have consistently shown no sympathy for sexual harassers, corporate bullies or racists. This behavior is as abhorrent in the workplace as it is in our wider society," Botes noted.

There seems to be less tolerance for intimidation by leaders, as well. "We are seeing more senior managers and executives being held liable for bullying or harassing management styles, with businesses less likely to excuse unwarranted behavior from otherwise talented

or high-flying executives," Botes confirmed. "Public outcries, product or company boycotts, and social media campaigns arguably contribute to the pressure on businesses to take steps to address workplace harassment, especially where this relates to sexual harassment or racial bullying."

### **Consider Overall Company Culture**

The draft states that employers should establish a workplace culture in which violence and harassment are considered unacceptable. The employer's suppliers, clients, job applicants and other partners should never be subjected to violence or harassment.

Additionally, the policy would apply to employees' behavior during rest breaks and mealtimes; in the bathroom and other facilities; and during work-related travel, events and social activities.

Employers should provide necessary information and training to make sure the working environment is safe, meaning free of violence and harassment. Employers also should periodically remind employees that they can bring a complaint without fear of retribution, and supervisors should never trivialize or ignore complaints.

A failure to stop harassment could leave employees with a hostile work environment that persists for years.

"A hostile working environment exists when a person is deprived of their dignity," Botes said. "The ongoing work environment has a negative impact on the complainant" and constitutes a barrier to equality.

He added, "In the absence of a precise formula, we think the determination of a hostile working environment will come down to the cumulative impact of the prevailing circumstances, including the frequency and severity of the offending conduct, whether the conduct has a physical element to it, or whether the conduct unreasonably interferes with a victim's work performance."

### **Best Practices**

Botes recommended these anti-harassment best practices for employers:

- Have a company policy that explicitly prohibits workplace harassment and violence.
- Provide ongoing training and awareness on prohibited practices and appropriate avenues for raising complaints.
- Encourage buy-in and visible messaging from top management to deter harassment.
- Effectively investigate complaints.
- Safeguard complainants against retaliation.
- Bring consequences for employee misconduct. The company policy should specifically state what disciplinary sanctions would take place if an employee is guilty of harassment or violence.

According to Botes, the factors that can contribute to workplace harassment and violence include:

- A patriarchal work culture with a pronounced hierarchical structure.
- A lack of accountability.
- A culture of silence, impunity and sweeping complaints under the rug.
- A lack of awareness about oppression experienced by women in the workplace.
- A lack of internal grievance procedures.
- A lack of protections for employees who bring grievances.

Carefully consider whether any of those conditions exist at any of your organization's worksites. If so, find ways to change the culture and conditions that condone or enable harassment and violence in the work environment.

"It has been my professional experience that many organizations address threats of violence on a case-by-case basis without the benefit of a structured and formal assessment process," said Hector Alvarez, founder of Alvarez Associates, a firm in Sacramento, Calif., that specializes in preventing workplace violence. "This lack of structure supports, even encourages, a poor crisis-response environment. The time to prepare for and prevent workplace violence is before threats happen."

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