

Employers' role in eradicating Gender-Based Violence: Legally required or simply virtuous?



The National Council on Gender Based Violence and Femicide draft Bill, published on 30 September 2022 prompts employers to reflect on their role in dealing with gender-based violence.

According to the 2022/2023 quarter one crime statistics, 855 women were killed in South Africa. As the modern workplace extends beyond company offices to employees' homes, the risk that employees become victims of gender-based violence (GBV) has increased. Employers' responsibilities to protect their employees may, in certain circumstances, extend into their employees' homes. Historically, domestic violence, GBV and femicide were treated as unfortunate social ills that are unrelated to the employment relationship and are outside of the jurisdiction of an employers' sphere of influence. Such a stance is, however, quickly becoming unacceptable. Two legal developments that took place in 2022 suggest a major shift in the duties of employers when addressing GBV.

In March 2022, the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace (**Code**) introduced new measures to address and limit harassment and gender-based violence occurring on a company's premises, as well as any other place which falls into the definition of a workplace (read more about the Code [here](#)). More recently, the National Council on Gender Based Violence and Femicide draft Bill, was published on 30 September 2022. The draft Bill proposes the establishment of an administrative structure to prevent and eradicate GBV and recognise the role labour plays in this endeavour (read more about the draft Bill [here](#)).

GBV affects the physical safety, mental well-being, and productivity of employees. While there is no

legislation that provides specific direction to employers on how to deal with GBV and its effect on the workplace, it is an issue that requires action from employers. In developing an appropriate framework to respond to GBV and inform a practical approach to assist employees who are victims of GBV, employers need to look to the Occupational Health and Safety Act (**OHSA**), the Code, the Protection from Harassment Act, and the Domestic Violence Act.

Where an employee works from home, that house becomes a workplace under OHSA and the Code, both of which apply to any situation related to work and may form the basis of an employer's responsibility to take proactive measures to protect employees from GBV. In practice, such measures may include providing:

- temporary, alternative hospitality;
- security or policing; or
- assistance with accessing the criminal justice system.

Employers do not have jurisdiction over a partner or spouse committing acts of violence toward an employee while working from home. This limits the employer's sphere of influence to its relationship and duties toward the employee only and cannot take steps against the partner or spouse directly, particularly where GBV is suspected and not reported.

The employer can assist, if for example, the employee informs the employer that their partner is perpetrating GBV at home. In such a circumstance, the employer must investigate the complaint. If the investigation indicates that the employer has to intervene, the employer could do so by making arrangements for that employee to work from the company premises as a practical start to addressing the broader safety concern. The employer does not have to provide an expensive protective space but merely take reasonable practical steps. The employer should also provide assistance and advice. A harassment officer who is trained to deal with such situations should be in place.

The effect of the Code is that employers need to take a more holistic and proactive approach to GBV. This includes providing better education for their staff, as well as training for "first responders" to a complaint on how to counsel victims and undertake investigations. Investigations should be inquisitorial, not adversarial, and may be best dealt with by an independent team. The employer has a duty to create an environment where everyone is aware of what constitutes harassment and its effects, and enables victims to speak freely, without fear of reprisals. If employers fail to take active steps to prevent and eliminate harassment in the workplace, (including but not limited to updating their policies), they may become liable for damages by virtue of vicarious liability.

Webber Wentzel has assisted employers obtain what is known as an "*employer-initiated protection order*" under the Protection from Harassment Act and Domestic Violence Act, with the employee's consent. The employer can also provide counselling, ICAS involvement, and refer the victim to a family law practitioner. From a practical point of view, employers must review policies that will help them deal with the sensitive nature of GBV incidents, which must be approached having regard to the unique set of facts

that inform the particular situation.