

From #MeToo to #AmINext: How to address gender-based sexual violence in the workplace

By [Nadine Mather](#) and [Lusanda Raphulu](#)

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Earlier this week, #AmINext flooded social media as women in South Africa drew attention to the magnitude of gender-based sexual violence, rape and murder taking place throughout the country.



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The hashtag was shared in response to the rape and murder of 19-year-old UCT student Uyinene Mrwetyana, allegedly by a Post Office employee. This follows the global #MeToo campaign that went viral after the allegations against Hollywood producer Harvey Weinstein, who is accused of using his position of power for decades to harass and sexually assault women.

Gender-based sexual violence is an issue requiring systemic transformation, which can be greatly influenced or hindered by our various social structures. A crucial structure for such change is the workplace.

Why employers must address gender-based sexual violence

In the face of this widespread pattern of abuse and efforts by South African citizens to pressure Parliament into declaring gender-based sexual violence a national state of emergency, employers are urged to actively address gender-based sexual violence in the workplace.

This is necessary in circumstances where an employee has or continues to perpetrate violence or harassment against a fellow employee, or where an employee has been made a victim of harassment or violence (inside or outside the workplace).

South African law prohibits any form of sexual harassment or violence in the workplace. It is a form of unfair discrimination on the basis of sex, gender and/or sexual orientation and has been described by the Labour Appeal Court as 'the most heinous misconduct that plagues a workplace'.

An employer that does not address allegations of sexual harassment or violence in the workplace may be deemed to have contravened the Employment Equity Act (EEA) by virtue of (i) the perpetrator contravening the EEA by committing sexual harassment or violence; and (ii) the employer failing to take the necessary steps to eliminate the sexual harassment or violence.

Consequently, the employer may be liable to pay damages or compensation to the victim. A complainant may also institute a delictual claim against the employer for damages on the basis of the employer's vicarious liability for the perpetrator's actions as an employee.

The cost of gender-based sexual violence and constructive steps that employers can take to address it

Extended unforeseen absenteeism, interrupted job performance, a despondent workforce, loss of valued employees and reputational damage are some examples of the costs that employers bear as a direct result of gender-based sexual violence. In conjunction with what the law requires, employers should give serious consideration to vigorously taking further steps to eliminate and prevent gender-based sexual violence in their workplace.

These may include:

- Engaging everyone in the workplace, especially men, on the widespread gender-based sexual violence issues in South Africa and requesting their input and suggestions on how best to eradicate this and support their colleagues.
- Engaging employees in specialised sensitivity and awareness training in relation to inappropriate conduct towards, and remarks made, in the workplace.
- Conducting a workplace climate survey to understand the sexual harassment or violence that may have already taken place and to determine the gaps in the employer's current policies.
- Creating or updating the sexual harassment policy in place to incorporate employees' suggestions. The policy should provide clear guidance in relation to the reporting of sexual harassment or violence, the protections in place for victims and the strict sanctions that may be imposed. The policy should be reviewed regularly.
- Establishing a confidential complaint line for employees to report acts of violent conduct, and identify ways for complainants to remain anonymous within the employer's reporting structure.
- Providing free counselling to address emotional and mental support that employees may need.
- Ensuring that there is sufficient security in place at the workplace. For example, employers should consider providing employees with transport or security escort services, especially when employees are required to work at night.
- Amending its leave policies to provide employees with paid leave in the event that they seek medical attention, counselling or seek to attend a programme as a result of an experience of sexual harassment or violence.
- Introducing activities in the workplace that aim to empower employees. An example is inviting a local victim-services provider to provide training in the workplace or an instructor to give self-defence classes.

Ultimately, the most effective way to eliminate gender-based sexual violence from the workplace is for all individuals to be actively involved, and become part of the solution. In fact, the workplace can be a powerful structure for much-needed

social benefit, providing information, education, support and other vital resources that employees may not otherwise get.

ABOUT THE AUTHOR

Nadine Mather is a senior associate and Lusanda Raphulu is a partner and head of Bowmans' Employment and Benefits Practice.

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