

iGlobal Law 2021 Annual Update : South Africa

Legal Change	Effective Date	Action required
<p>Violence and Harassment in the Workplace</p> <p>The International Labour Organisation (“ILO”) adopted the ILO Convention 190 concerning the Elimination of Violence and Harassment in the World of Work (the “Convention”) and the related Recommendation 206 in 2019. The Convention will come into force for Members (countries) 12 months after they register ratification with the ILO. The purpose of this Convention is the creation of a workplace that is free from violence, harassment and gender-based violence. The Convention triggers the provisions of the Employment Equity Act (“EEA”) regards harassment as a form of discrimination. All member states are required to take proactive steps and implement policies that are in compliance with the Convention to address gender-based violence and harassment in the workplace.</p> <p>South Africa’s Draft Code of Good Practice on Prevention and Elimination of Harassment in the Workplace (the “Code”) is drafted in response to the ILO Convention in order to prevent violence and sexual harassment in the workplace. The Code provides a framework and clarity on the interpretation and implementation of the EEA relating to the prevention and elimination of violence and harassment including gender-based violence and harassment. The Code includes a broad definition of violence and harassment.</p> <p>Employers will be held vicariously liable if they or employees fail to comply with the provisions of the Code.</p>	<p>Yet to come into effect.</p>	<p>The Draft Code is also aligned with the EEA and employers are expected to comply with the Code once it has come into effect. This includes conducting a risk assessment for harassment and violence in the workplace. The Code provides a framework and clarity on the interpretation and implementation of the EEA relating to the prevention and elimination of violence and harassment including gender-based violence and harassment. It is therefore imperative that an employer, in addressing workplace bullying, ensures that procedures that are followed in addressing these issues are substantively and objectively fair.</p>
<p>Employment Equity Amendment Bill</p> <p>The Employment Equity Amendment Bill (“EEAB”) makes significant changes to South Africa’s employment equity laws. Amongst others, it makes changes to the definition of a “designated employer” and aligns itself to the National Minimum Wage (“NMW”). Furthermore, the EEAB makes it mandatory for employers to submit an Employment Equity Plan to determine the representation in the sector. The Minister of Employment and Labour is empowered to identify economic sectors and determine numerical targets in those sectors. These targets may differ depending on the occupational level, sector and or region. This has to be done in consultation with the NMW Commission in order to report income differentials that are disproportionate. The EEAB also removes the requirement for compulsory medical testing.</p>	<p>Yet to come into effect.</p>	<p>There are no implications as yet given that the EEAB is yet to come into effect. However, it would be advisable to continue to monitor its status.</p>