

# Not in my name - gender violence in the workplace

 By [Johan Botes](#)

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People are revolting. Some people protest about the violence against women but others are just plain revolting. Let us be clear - violence against women is predominantly at the hands of men. Such men deserve our utmost contempt and scorn. As a society, we have been less than clear on our attitudes towards our brothers, fathers, sons and uncles who rape, assault and murder women. The message to these men should be as clear as a church bell ringing loudly overhead: they are not our friends, we do not laugh at their jokes, we do not join them for a round of golf, and we do not have drinks with them at the pub.



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It is possible to change this self-perpetuating cycle of violence against women. Employers can play a critical role in stigmatising such base behaviour and ensuring that perpetrators are ostracised from civilised society. No employer should have any doubt about its ability to dismiss any employee who assaults a female colleague, client or supplier. Our employment law does not protect employee perpetrators of violence in the workplace. Employees who harm, bully or harass females in the workplace can expect no sympathy from either the employment tribunal or our labour courts.

But perhaps the time for employer activism has arrived. Now may be the most opportune time for businesses to stand up and test the bounds of our employment regime by dismissing staff who have committed violence against women outside the workplace. Dealing with workplace violence, as a form of misconduct, is relatively straightforward and settled in law. It is less clear where to draw the boundary on such employee behaviour after hours and away from the scrutinising gaze of the employer.

## Blurred boundaries

As a rule, an employer's right to discipline and dismiss an employee is limited to work-related conduct. Private conduct, outside office hours or at non-work premises, generally falls outside the employer's reach or control. However, our courts have recognised the employer's limited right to terminate the employment of employees where their private conduct has made continued employment intolerable. Thus, where an employee assaulted a supervisor on private property, after hours, the industrial court (as it then was) acknowledged that an employer cannot be expected to ask the supervisor to work with the same subordinate who assaulted him merely because the offensive conduct did not take place in the workplace. There

was no possibility of a healthy employment relationship as a result of the employee's after hours conduct.

Similarly, our courts and tribunals accept that an employee may be dismissed from service where the employee posted offensive material on social media. This remains so even where the employee posted the meme or comment outside business hours and using private means. By the same token, a chief financial officer who is convicted for credit card fraud (unrelated to the workplace) cannot expect to be retained as chief guardian of the company purse strings. The person who is arrested for reckless driving in his private vehicle cannot expect that this will not have a bearing on his role as company driver.

## Zero tolerance

Employers should send a clear message to their (male) staff that they risk their jobs if they were to commit a gender-based violent offence in their private capacity. Before men spill their beers, this proposition has merit in law. Even a cursory reading of posts, tweets, comments and articles on the impact of gender-based violence against women will clarify that women are under constant threat of untoward action by men. The risk faced, purely on the basis of their gender, lives with them every day and informs their conduct and behaviour in various situations. It is a fear that is absent in our lives as men. Yes, we have other fears and concerns, but we do not cross the street to run on the opposite pavement when a male runner approaches us from behind and wants to have a chat. We do not worry about being the last person in the office when all others working late are of the opposite gender.

With this in mind, how do we expect a female colleague to continue to work unaffected next to a male colleague who was convicted of raping his girlfriend, killing his wife or assaulting his sister? Surely that can never be the basis for a healthy workplace and sound employee relations?

Employers should consider establishing workplace rules that state that it is a workplace offence to commit acts of violence against women and that employees who are convicted of gender-based violent crimes may be dismissed, even if the crime took place away from the workplace and against a private person. Let's seek support from our employment tribunal and court to confirm the validity of such a workplace rule in our efforts to isolate the Neanderthals who prey on women. They should never find gainful employment again.

## ABOUT JOHAN BOTES

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