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First do no harm

A clean record is a non-negotiable requirement for those working with children and other vulnerable individuals, or so you would think. Sometimes prevention and intervention is in fact the proper process to follow, because turning a blind eye can have devastating consequences.

Last year a prominent Durban high school made headlines when one of its drama teachers was arrested for inappropriate sexual conduct. To make matters worse, it later emerged that the school had already been made aware of the teacher's criminal history since one of his previous victims had alerted the school to his compromised record. Apparently the teacher's chequered past dates all the way back to the nineties but, for reasons unknown, he has been able to skirt around legal checks and balances for more than 20 years.

Those employers that employ staff that come into contact with vulnerable persons (including children and mentally disabled people) have both a moral and legal implication to ensure that pre-employment screening and ongoing screening of current employees is a standard process. The purpose of strongly regulated legislation in terms of section 45, Chapter 6 of the Criminal Law Amendment Act 32 of 2007 is simple – to prevent employees from committing sexual acts against these two most vulnerable population groups.

While schools are the most obvious impacted workplace this legislation extends to those workplaces that employ nurses, psychologists, doctors, teachers, airline staff, domestic workers, church employees, scoutmasters, social workers, crèche staff, child counselling centre workers and other employees dealing with children.

The National Register for Sex Offenders (NRSO), in place since 2009, provides a list of those found guilty of sexual offences against children and mentally disabled people. Legislation requires employers to screen all job applicants and not to appoint them if they are sexual offenders. Employers must also screen existing employees and terminate the employment of those names found on the list.

Thereafter the law becomes more hazy. It states that employers should not terminate employment if it is possible to transfer the sex offender to a post where there is no risk of this person committing sexual misconduct. If the employee claims that their registration as a sex offender is erroneous or has lapsed, the employer should suspend employment while the employee applies to have their name struck from the list. While employers can be held liable for knowingly or unwittingly employing a sexual offender, the law is not clear on what happens to employers if a cleared person then commits an offense after their name has been struck from the list. For this reason most employers are advised to consult a labour expert without delay if one of their employees' names raises a red flag.

However, first things first - to ensure that a thorough employee pre-employment screening process becomes part and parcel of the appointment process. Aside from the irreparable reputational damage the schools or other institutions suffer when sexual misconduct takes place, at the core of this issue are hundreds of innocent potential victims. Make sure that when parents place their children in your care you are not unwittingly placing these vulnerable persons in harm's way.