

# HR PRACTICAL INFORMATION

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## MORAL HARASSMENT, SEXUAL HARASSMENT AND DISCRIMINATION

The recent movements #Metoo and #Balancetonporc, in its French version, have lifted the veil on acts, which were previously ignored. While the liberation of speech is a good thing, it is nevertheless important to be informed about what is considered sexual or moral harassment or even discrimination at work, from the legal point of view, in order to know how to recognize illegal behavior and act accordingly.

### **MORAL HARASSMENT**

#### **Definition**

Moral harassment is a prohibited offense punishable by both the Labor Code and the Penal Code. It results in deterioration of working conditions.

According to the Labor Code, psychological harassment is manifested by repeated acts that have the purpose or effect of a deterioration of working conditions, which may affect the employee's human rights at work and his or her dignity, adversely affect his physical or mental health or jeopardize his professional future.

These actions are prohibited, even in the absence of a hierarchical link between you and the perpetrator and any victim, employee or trainee, enjoys the protection of the law.

#### **What actions constitute moral harassment?**

The following acts are recognized as constituting moral harassment by the courts: denigration and bullying, isolation, persecution or punitive measures, paradoxical injunctions, removal of tasks stipulated in the contract of employment....

#### **What prevention?**

The employer must take all necessary measures to prevent moral harassment.

He must inform employees of laws against harassment (see our policy on sexual and moral misconduct by clicking [here](#)). He works with the personnel representatives. The occupational doctor can also participate in the prevention of moral harassment in the company or institution.

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No action can be taken against people who denounce or combat bullying. Penalties are only allowed in the event that the whistleblower is in bad faith, and that he denounces for the sole purpose of harming, for example based on facts of which he is well aware of the inaccuracy.

### **What to do in case of moral harassment?**

Start by informing your employer and / or the occupational doctor in writing, so that an investigation can be conducted and, if the harassment is proven, measures can be taken against the person who has harassed you.

You can also ask for the assistance of the members of the *Délégation Unique du Personnel* who can help you in your efforts.

Finally, you can also alert the *Inspection du Travail*, whose authority extends to recognition of moral harassment, and who can, where appropriate, forward the case to the judicial authorities.

The victim can pursue two actions: an action before the Labor Court to obtain damages, and criminal proceedings where the perpetrator faces up to 2 years in prison and a €30,000 fine.

If the victim can substantiate a serious and imminent danger to his /her health, the law and the case law give him/her; the right to leave his/her work based on the right to withdraw (L. 4131-3 Labor Code).



There may be penalties up to and including dismissal for serious misconduct in the case where the whistleblower is in bad faith and maliciously presents assertions, which he knows to be untrue.

A mediation procedure may also be initiated with the perpetrator. The choice of mediator is the subject of a joint agreement between the two parties. The mediator tries to reconcile the parties and submits written proposals to end the harassment - a change of position for the perpetrator, for example.

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### What sanctions?

There are two types of sanctions that can be combined: sanctions imposed by the employer and penalties imposed by the courts.

- Sanctions taken by the employer  
Any employee who has committed acts of moral harassment is liable to disciplinary sanctions: transfer, suspension, dismissal
- Sanctions taken by the courts  
Moral harassment is an offense punishable by up to 2 years in prison and a fine of up to €30,000.

In addition, the author of moral harassment may be ordered to pay to his victim damages for moral injury, medical expenses....

### **SEXUAL HARASSMENT**

#### Definition

Sexual harassment is characterized by imposing sexual or sexist comments or behaviors on a person that:

- Undermine his/her self-respect due to their degrading or humiliating character
- Or create an intimidating, hostile or offensive situation

In addition, any form of serious pressure exercised for the real or apparent purpose of obtaining a sexual act to the benefit of the perpetrator or a third party is considered sexual harassment.

In the workplace, there may be sexual harassment even if there is no hierarchical relationship between the victim and the perpetrator (between colleagues of the same level, different services ...). If there has been undesired physical contact, this may constitute a sexual assault subject to more severe penalties.

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Unlike moral harassment, which only exists when the acts are repeated, a single inappropriate word or gesture is sufficient for sexual harassment to be established.

### **What type of behaviour constitutes sexual harassment?**

The definition of sexual connotation depends on the social norms and a practice considered simply familiar in one country or company (putting a hand on someone's shoulder, making jokes of a sexual nature ...) can be considered to exceed the limits elsewhere. Aside from the cases that may give rise to controversy, we can consider that there is no possible dispute in the following cases:

- Use of hierarchical power and intimidation to force sexual favors, with threats to employment, either direct consequences such as dismissal, lack of promotion, bonus or salary increase ....
- Insistent repetition of words, sexual gestures or bodily contact without consent, whether it is the supervisor or a colleague.

### **Prevention of sexual harassment**

The employer must take all necessary measures to prevent acts constituting sexual harassment (see our policy on sexual and moral misconduct by clicking [here](#)). To this end, he informs employees of the laws prohibiting sexual harassment.

The victim can apply to the Labor Court and conduct criminal proceedings at the same time.

Before the *Conseil des Prud'Hommes*, the employer must show that the facts presented do not constitute sexual harassment.

People who report sexual harassment cannot be penalised or dismissed.



In an enterprise, any representative trade union organization may, with the written agreement of the victim, institute legal proceedings in his stead.

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### **What sanctions?**

Sexual harassment is a crime punishable by up to 2 years in prison and a fine of up to €30,000

In the event of abuse of authority, for example by a supervisor, penalties may be increased to up to 3 years in prison and a fine of € 45,000.

The perpetrator of sexual harassment may also have to pay damages to his victim.

He is also liable to disciplinary sanctions within the company.

### **DISCRIMINATION**

#### **Definition**

According to the law of May 27, 2008, amended in November 2016, discrimination is a distinction of treatment meted out to the employee or to a person applying for a job, internship or training on grounds other than the needs of the job or the professional qualities of the employee. The employee is treated less favorably than was or would have been another in a comparable situation. To see our policy on non-discrimination and equal opportunities, click [here](#)

#### **What are the criteria of discrimination?**

Article L. 1132-1 of the Labor Code lists the following criteria as undermining the employee's self-respect: origin, sex, morals, sexual orientation, gender identity, age, family situation or pregnancy, genetic characteristics, real or supposed membership (or not) of an ethnic group, a nation, a purported race or a given religion, political opinions, trade union or mutualist activities, religious convictions, physical appearance, surname, place of residence, state of health or disability, particular vulnerability resulting from the economic situation of the person concerned which is apparent or known to the author of the decision, loss of autonomy, ability to express oneself in a language other than French, banking domiciliation.

Discrimination is direct when it is clearly visible obtrusive or assumed. For example, if a job advertisement refuses women with children.

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Discrimination can be indirect when seemingly neutral measures significantly disfavor a given category of people.

Some differences in treatment may not be considered discriminatory when justified by a legitimate aim. Example: the fixing of a minimum or maximum age to preserve the health or the safety of the employee, to favor his professional insertion, to ensure his employment, his reclassification or his compensation in the event of loss of employment.

The differences in treatment allowed related to age, state of health or disability, sex, place of residence, vulnerability due to the economic situation.

### **Whom to contact in case of discrimination?**

The employee who feels discriminated against may turn to several people:

- *The Inspection du Travail*
- Representative trade union organizations may take legal action against discriminatory acts in favor of an employee of the enterprise or a candidate for employment, an internship or training
- Anti-discrimination associations regularly constituted for at least 5 years
- Staff representatives have a right of alert in case of violation of the rights of individuals and individual freedoms resulting from discriminatory measures. They can refer the case to the employer, who must investigate immediately and put an end to any proven discrimination.
- *Le Défenseur des Droits* is an independent constitutional authority whose responsibilities include combating direct or indirect illegal discrimination.

Employees who are victims or witnesses of discrimination also have recourse before the industrial tribunal judge.

### **What sanctions?**

The person found guilty of illegal discrimination incurs a disciplinary sanction, if he acts as an employee of the company, 3 years of prison, 45 000 € of fine.

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### WHERE TO FIND INFORMATION?

<https://www.interieur.gouv.fr/A-votre-service/Ma-securite/Aide-aux-victimes>

<http://www.justice.gouv.fr/aide-aux-victimes-10044/stop-au-harcelement-sexuel-desormais-la-loi-protege-les-victimes-24799.html>

[www.stop-discrimination.gouv.fr](http://www.stop-discrimination.gouv.fr)

### **Help and Listening**

Institut national d'aide aux victimes et de médiation (Inavem)

Open daily from 9am to 9pm

Telephone: 08 842 846 37

By email (using the contact form):

[http://www.france-victimes.fr/index.php/component/chronofoms5/?chronoform=contact\\_victimes](http://www.france-victimes.fr/index.php/component/chronofoms5/?chronoform=contact_victimes)

### ***Défenseur des Droits***

<https://www.defenseurdesdroits.fr/>

Claim Form

[https://formulaire.defenseurdesdroits.fr/code/afficher.php?ETAPE=accueil\\_2016](https://formulaire.defenseurdesdroits.fr/code/afficher.php?ETAPE=accueil_2016)

Still have questions? Do not hesitate to contact the Human Resources department