

Workplace mobbing: introduction of a Legislative Framework

Introduction

On 9 March 2023, the Chamber of Deputies at long last adopted the bill n°7864 concerning the introduction of specific protection against workplace harassment, otherwise known as “mobbing”.

The only legal mechanism covering the field of mobbing up to now was the **Convention of 25 June 2009** signed by and between the OGBL, LCGB and UEL trade unions, which transposed into national law an autonomous European framework agreement. This convention, which was declared to be of general requirement, provided for certain principles and recommendations on this front, but as it did not include any sanctions, it had no real binding force.

An employee who was the victim of workplace mobbing and wanted to claim damages had to rely on **Article 1134 of the Civil Code** which stipulates that “legally formed agreements shall take the place of law for those who have entered into them” and “must be performed in good faith”.

Here once again, few actions were successful in practice due to lack of evidence.

In order to fill the existing legal vacuum therefore, workplace mobbing will henceforth be an integral part of the Labour Code and will reinforce the **obligation of result concerning the health and safety of employees for which employers are responsible**.

The new Article L.246-2 of said Code defines **workplace** mobbing as “(…) any behaviour or act, as well as any conduct which, **by its repetitive or systemic nature, undermines the dignity or psychological or physical integrity** of a person by creating an **intimidating, hostile, degrading, humiliating or offensive** environment, **as well as repeated acts** which are intended to or actually effect a **deterioration in working conditions**, likely to **undermine the rights and dignity** of the employee, to **alter his or her physical or mental health or to compromise his or her professional future** ”.

- > [What situations and persons are targeted?](#)
- > [What are the employer's obligations?](#)
- > [What is the role of the staff delegation?](#)
- > [What role can the Labour and Mines Inspectorate play?](#)
- > [What about termination of the employment contract by way of retaliation?](#)

1/ What situations and persons are targeted?

The legislator wanted to extend the scope of application of this new obligation to the utmost.

First of all, the new provision **applies to employers and employees as well as to their customers and suppliers**, who **must refrain from any form of workplace mobbing**. This prohibition is therefore not limited to acts committed by persons within the company. Consequently, harassment becomes legally possible not only in relation to employees of the company, but also in relation to persons outside the company.

Moreover, not only employees but also trainees, apprentices, pupils and students employed during the school holidays are now covered by the new protective measures.

Furthermore, and in order to protect employees in as many situations as possible when performing their work, the scope of application covers business trips, professional training, communications in connection with or as a result of work by any means whatsoever and even outside normal working hours.

2/ What are the employer's obligations?

First of all, **the employer must define all the measures to be taken to ensure the protection of his employees against behaviour or acts of workplace mobbing**. Prior to doing so, the employer must have informed and consulted the staff delegation when it exists, or failing that, all the staff.

To this end, and even if no form is specified for the support of these new measures, they could be inserted in internal rules of procedure, when such a document is already in place in the company, or even via a separate charter.

According to point (3) of the new Article L.246-3, the size and nature of the company's activities must be taken into account when drawing up these measures, which must cover at least :

“1° the definition of the means and resources available to victims of workplace mobbing to obtain help and the way to address the staff delegation, which is competent in terms of prevention and protection against workplace mobbing;

2° the rapid and impartial investigation of acts of workplace mobbing;

3° the reception, help and support required by victims of workplace mobbing;

4° raising the awareness of employees and managers on the definition of workplace mobbing, the methods for managing such situations in the company and sanctions against the perpetrator(s);

5° measures of looking after and getting victims of mobbing to return to work;

6° the employer's obligations in the prevention of workplace mobbing;

7° the information and training of employees.”

Of course, this list is not exhaustive and the employer may decide to go further.

Once this framework has been enshrined, the employer who is apprised of acts of mobbing must act.

His obligations include in particular **the immediate need to put an end to the acts of workplace mobbing**. The employer must therefore **take all such as necessary and appropriate measures which do not, however, have a negative impact on the victim**; and then evaluate the existing provisions in order to assess how effective they are and change them or add new ones as and where necessary.

The staff delegation or all staff will have to be consulted during subsequent evaluations and reassessments.

3/ What is the role of the staff delegation?

When it exists, **the staff delegation must ensure that employees are protected against workplace mobbing.**

As already mentioned, by informing and consulting the employer, the staff delegation participates in the development of measures to be implemented so as to ensure such protection in the company, but also in the evaluation and re-evaluation of these measures.

Furthermore, it can propose any preventive action to the employer, if it should consider such action necessary.

On the employee side, while guaranteeing the confidentiality of the facts brought to its attention, it is entitled to assist and advise the employee who has been a victim of workplace mobbing during interviews with the employer or his representative when internal investigation is conducted by the latter.

It may also intervene in the procedure for referring the matter to the Inspectorate of Labour and Mines (ITM), as described in the next section.

The employee must be able to count on internal support in such a situation. The support role of the staff delegation is therefore reaffirmed here, this time as regards the employee who has been the victim of mobbing.

4/ What role can the Labour and Mines Inspectorate play?

The major novelty introduced by the new legislative framework is the possibility of referring the matter to the Inspectorate of Labour and Mines (ITM).

In fact, when acts of workplace mobbing persist after the employer has taken measures to put an end to them or when the employer has not implemented any adequate and necessary measures to achieve this objective, the employee can refer the matter to the ITM.

The staff delegation may also refer the matter to the ITM, with the prior agreement of the employee who considers himself to be a victim of psychological harassment.

The ITM is then entitled to investigate and may, in particular, interview the employee who is the victim but also the employer or the latter's representative, as well as any other employees of the company.

A period of 45 days will then commence as of the date of referral, during which the ITM will conduct an investigation. At the end of this period, a report containing proposals and recommendations will be drawn up and sent to the employer in order to put an end to the acts of mobbing against the employee.

The Director of the ITM will then order the employer to take appropriate measures to put an effective end to the acts of workplace mobbing.

A timeline for action will be communicated at the same time according to the different elements of the report drawn up.

If the employer fails to act within the time limit set following the injunction, an **administrative fine** of up to **€25,000** may be imposed by the Director of the ITM.

5/ What about termination of the employment contract by way of retaliation?

The new legislation sets out the principle that **both the employee who is the victim of workplace mobbing and the employee(s) who witnessed the mobbing may not be subject to retaliation by the employer or other superior.**

In such a case, any dismissal would **be null and void by operation of law.**

By means of an application to the president of the labour court ruling in summary proceedings, the employee can then request, within 15 days of being notified of the termination of his or her employment contract, that said termination be declared null and void. The labour court may then order the employee to remain or be reinstated in the company.

In addition, the employee may request that the employer be ordered to pay damages for two reasons:

- wrongful dismissal from the employment contract ;
- having been subjected to acts of workplace mobbing.

Although this is not a new development, the employee will also be **able to refuse to continue to perform his or her employment contract and will be able to terminate it without notice**, i.e. for serious misconduct on the part of the employer who proceeded to said termination. The employee will moreover be able to claim compensation from the labour court for damages from his former employer.

Conclusion

This law, which finally establishes a real legislative framework in the Labour Code, will certainly make it possible to act against situations of workplace mobbing.

Even though **new obligations arise for employers with regard to their employees, however, this law does not provide for a reversal of the burden of proof in favour of the victims of mobbing**, as is the case with sexual harassment.

In this situation, an employee who considers himself or herself to be a victim of mobbing will have difficulty in providing evidence for the mobbing he or she has reported to his or her employer, who must conduct an internal investigation in order to put an end to the alleged harassment.

Nevertheless, despite a text of law that does not convince everyone, employers must bear in mind that **new obligations are required of them** since in the event of non-compliance with those set out throughout this newsletter, **criminal penalties of between €251 and 2,500** - which may be doubled in the event of a repeat offence within 2 years - may be imposed on them.

An administrative fine may however also be imposed for non-compliance with the injunction pronounced by the ITM.

As the legislative process is slowly coming to an end, the date of entry into force of this text should be known very soon.

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