



SOCIONEWS

PROTECTION AGAINST PSYCHOLOGICAL HARASSMENT IN THE LABOUR CODE



LAW

On 9 March 2023, the Chamber of Deputies adopted bill Nr.7864 introducing a provision on protection against psychological harassment or mobbing in labour relations into the Labour Code.

Until then, the only mechanism covering psychological harassment was the agreement dated 25 June 2009 on harassment and violence at work signed between the OGB-L and LCGB trade unions and the Union des entreprises luxembourgeoises (UEL).

The protection introduced is largely modelled on that addressing sexual harassment, except for a special procedure for intervention by the Inspectorate of Labour and Mines (Inspection du travail et des mines - ITM), which does not exist for sexual harassment. In addition, it does not include the principle of reversal of the burden of proof applicable to discrimination based on sex and therefore to sexual

harassment, which unfortunately was not adopted in favour of the victim of psychological harassment. It is therefore up to an employee who is the victim of psychological harassment to prove a series of facts of which he or she was the victim and to convince the court that these were not justified by the needs of the company but were in fact unjustified attacks on the employee.

The initial definition of psychological harassment has been replaced by the definition used in the public sector, which, because of its general nature, makes it possible to take into account the various forms that psychological harassment can take at work.

Staff delegations have an important role to play in preventing and combating psychological harassment.

Finally, both administrative and criminal sanctions are provided for.

Legal basis:

- Loi du 29 mars 2023 portant modification du Code du travail en vue d'introduire un dispositif relatif à la protection contre le harcèlement moral à l'occasion des relations de travail.
- Article L. 246-1 and subsequent of the Labour Code



1. PROHIBITION OF ANY PSYCHOLOGICAL HARASSMENT IN THE CONTEXT OF WORKING RELATIONSHIPS

Employers and employees, as well as any customer or supplier of the company, must refrain from any form of psychological harassment occurring during working relationships.

Any conduct which through repeated or systematised action undermines the dignity or the psychological or physical integrity of a person shall constitute psychological harassment as part of relations at work.

In this respect, business trips, professional training, communications in connection with or as a result of the work by any means and even outside normal working hours, are an integral part of the performance of work.

Accordingly, all employees, to include trainees, apprentices or pupils and students employed during the school holidays are protected.

2. INITIATING A SYSTEM OF PROTECTION AGAINST PSYCHOLOGICAL HARASSMENT IN THE REALM OF WORK RELATIONS

Employers shall determine the measures to be taken to protect employees against psychological harassment in the course of their work, after informing and consulting their staff delegations or, where none exists, the entire staff.

These measures should be determined by the employer, by setting up an anti-harassment charter or including an anti-harassment section in companies' internal regulations.

These measures, which must be adapted to the nature of the activities and the size of the company, cover the following as a minimum:

- 1° specifying resources available to victims of mobbing, in particular services, help and support required for victims, measures for their care and return to work as well as how to address the staff delegation;
- 2° a rapid and impartial investigation of acts of psychological harassment in the labour relations environment;
- 3° raising the awareness of employees and managers on the definition of mobbing, its management within the company and the sanctions against the perpetrators of psychological harassment;

4° informing the staff delegation or, where none exists, all company staff of the employer's obligations to prevent psychological harassment as part of relations between people at work;

5° informing and training of employees.

Under no circumstances may these measures be taken to the detriment of a victim of psychological harassment.

When employers become aware of mobbing behaviour at work, they shall take measures to put an immediate stop to the acts of psychological harassment and shall carry out an internal assessment of the effectiveness of existing preventive measures, as well implementing any new preventive measures, particularly in relation to the organisation of the company, a review of the procedures applied in the event of mobbing and informing employees.

This evaluation and subsequent re-evaluations shall be carried out after consultation with the staff delegation or with the entire staff, if no delegation exists.

3. REFERRING THE MATTER TO THE INSPECTORATE OF LABOUR AND MINES THROUGH A SPECIAL PROCEDURE

If psychological harassment at work persists or if an employer fails to take appropriate measures, employees who feel that they are victims, or the staff delegation - with the agreement of the employee concerned - may refer the matter to the Inspectorate of Labour and Mines (Inspection du travail et des mines - ITM).

The ITM interviews the employee and the alleged perpetrator of the mobbing, as well as any other employees and the employer or his representative.

Following the investigation of the case and the interview, the ITM prepares a report that includes any necessary recommendations and proposals for measures to put an end to acts of psychological harassment.

No later than 45 days following receipt of a file, the director of ITM or his representative forwards the complete report to the employer concerned. Where acts of psychological harassment exist, ITM enjoins the employer to take all necessary measures to put an immediate end to such acts of

harassment within a period of time set in accordance with to the elements presented in the report.

If the injunction is not complied with within the time limit, ITM may assess an administrative fine between 25 and 25,000 euros against an employer.

4. EMPLOYEE AND WITNESS PROTECTION

Employees shall not be subjected to reprisals because of their protest or refusal to accept mobbing behaviour by the employer or any other superior, work colleagues or persons extraneous to the company in contact with the employer.

Similarly, an employee may not be subjected to reprisals for having testified to facts relating to psychological harassment.

Any stipulation or act to the contrary, particularly any dismissal in breach of these provisions, shall be null and void.

Should an employment contract be terminated, employees may submit a simple petition to the Chief Magistrate of the Labour court within 15 days of notification of the termination, who shall make an urgent ruling with the parties heard or duly summoned, to rule that the dismissal is null and void and to order that the employment contract be maintained, or, where applicable, that it be reinstated.

The order of the Chief Magistrate of the Labour court is provisionally enforceable; within 40 days of notification through the registry it may be appealed by simple petition to the magistrate presiding over the chamber of the Court of Appeal to which appeals in labour law matters are assigned.

Should legal action for compensation for unfair termination of the employment contract be launched, and should the court before which the case is brought find that the termination of the contract is deemed abusive, it shall order an employer to pay employee damages not only in respect of the damage suffered by them as a result of a dismissal but also, where applicable, the damage suffered as a result of the psychological harassment that terminated persons suffered during the employment relationship.

5. POSSIBLE RESIGNATION WITHOUT NOTICES BY AN EMPLOYEE WHO WAS A VICTIM OF PSYCHOLOGICAL HARASSMENT

An employee who is a victim of psychological harassment may refuse to continue to work under the employment contract and terminate it without notice for a serious breach, with damages to be paid by the employer whose fault caused the immediate termination.

In cases of resignation justified by an act of harassment, job-seekers may petition the Chief Magistrate of the competent Labour court to authorise a provisional award of full unemployment benefits pending the final judicial decision on the legality or merits of their resignation.

The Chief Magistrate of the Labour court issues an appealable order within 40 days of its notification to the Chief Magistrate of the Court of Appeal.

You must be registered with the authorities as a jobseeker and have previously brought the dispute concerning your resignation before the competent labour court.

The Chief Magistrate of the Labour court shall determine the period for which the provisional award of unemployment benefit is authorised, up to a maximum of 182 calendar days.

Unemployed persons may request an extension of these provisional unemployment benefits, but the total duration of such an authorisation may not exceed 365 calendar days.

A judgment or ruling declaring this type of resignation justified on the grounds of harassment orders an

employer to reimburse the unemployment benefits paid by the Employment Fund to the employee for the period or periods during which the employer is obliged to pay wages or benefits pursuant to the judgment or ruling.

The amount of unemployment benefit that an employer shall be ordered to repay to the Employment Fund is deducted from the wages or compensation that the employer is ordered to pay to the employee pursuant to the judgment or ruling.

CAUTION: A judgment or ruling declaring an employee's resignation motivated by an act of harassment to be unjustified condemns this employee to reimburse all or part of the unemployment benefits paid to him or her to the Employment Fund, if necessary, in instalments.

Employees may request a partial remission or deferment of the repayment of benefits to the State. However, such a repayment facility must be expressly requested by the employee and Judges cannot substitute themselves for employees in deciding ex officio on a reduction of the amount to be repaid.

In cases where a suit brought by an employee on the grounds of resignation due to psychological harassment is dropped due to withdrawal, employees shall reimburse any unemployment benefits paid to them to the Employment Fund. If suit is withdrawn following a settlement between the employee

and the employer, half of the unemployment benefit shall be repaid by the employee and half by the employer.

6. ROLE OF THE STAFF DELEGATION

In companies with at least 15 employees, the staff delegation, is responsible for ensuring that employees are protected against psychological harassment in the course of their work relations. To this end, it may recommend any preventive action it deems necessary to the employer.

The staff delegation is entitled to assist and advise an employee who has suffered from psychological harassment. It is obliged to observe strict confidentiality of the facts of

which it has knowledge in this respect, unless the employee concerned waives this obligation. Employees who have suffered from psychological harassment have the right to be accompanied and assisted by a member of the staff delegate at interviews held with the employer or the employer's representative as part of the investigation into psychological harassment, or, failing that, by a person of their choice from among the members of staff.

7. SANCTIONS

A fine ranging between 251 euro and 2,500 euros may be assessed against those who fail to comply with these new

provisions. In the event of a repeat offence within 2 years, these penalties may be increased to twice the maximum.

8. ENTRY INTO FORCE

The provisions of this new law will enter into force on 9 April 2023.

9. EVALUATION

The Government is requested to evaluate the new law 2 years after its entry into force in order to determine its effectiveness and to identify any shortcomings.