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CHAMBRE DES SALARIÉS  
LUXEMBOURG

**Practical Guide**  
for the  
staff delegation

STRESS AT WORK,  
PSYCHOLOGICAL  
HARASSMENT, AGGRESSION,  
BURNOUT...  
...ACT TO PREVENT PSYCHOSOCIAL RISKS



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CHAMBRE DES SALARIÉS  
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## PREFACE

This is the third edition of the publication originally published in 2014 and entitled "Taking action alongside workers on a daily basis: preventing psychosocial risks". After being republished in 2020, this guide needs to be updated following the entry into force on 9 April 2023 of a new law introducing provisions into the Luxembourg Labour Code aimed at protecting employees against psychological harassment in working relations.

Until then, the only mechanism covering psychological harassment was the agreement of 25 June 2009 on harassment and violence in the workplace signed by the OGB-L and LCGB trade unions and the Union des Entreprises luxembourgeoises (UEL).

The new protection is largely modelled on that for sexual harassment, apart from 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. Both administrative and criminal penalties are also provided for.

Employee representatives play an important role in preventing and combating psychological harassment.

In order to guide employee representatives in their role of protecting employees' health at work, and in particular the prevention of problems linked to psychosocial risks in the workplace, this brochure has been created with staff representatives in mind, in particular health and safety officers, but is also intended for employees in general.

The issue of psychosocial risks incorporates situations of all kinds: stress, burnout, relational conflicts, mental suffering, psychological and sexual harassment...

This is a complex subject to define, as experts do not always agree on the concept of psychosocial risks. And even when the parties involved agree that there are psychosocial risks within a company, the response is limited more to individual support and care than to an approach that questions the organisation or management.

In practice, employee representatives faced with problems of this kind are often left without any answers and do not know what to do.

The challenge is, therefore, to change people's mindsets and move away from a purely individual approach to a more collective one, based on work organisation. This guide proposes tools and methods to support such a change of mentality.

It is understood that certain conditions remain essential for progress to be made on these issues: the existence of previous social dialogue within the company, the commitment of those involved, including management if necessary, and the presence of forums for discussion and decision-making.

I hope you enjoy reading this brochure.

## ACKNOWLEDGEMENTS

We would like to thank all the trade unions and occupational health and safety professionals who, despite having to deal with conflicts and deteriorating working conditions and atmospheres, were kind enough to tell us about certain circumstances and the actions they had taken to counter these situations.

We would particularly like to thank the Inspectorate of Labour and Mines (Inspection du travail et des mines - ITM) for its contribution on the legislative aspects of psychosocial risks.

We found their statement on the practices regarding this issue extremely useful. It is only through sharing our experiences that we will be able to make progress. And when it comes to managing psychosocial risks, there is no miracle solution.

Indeed, the complexity of situations and contexts prompts those involved to take a careful look at what is happening in the field. Achieving satisfactory solutions for both employees and their employers requires a great deal of skill and situational intelligence, both methodological and relational.

Many thanks to everyone for their contribution to this publication.

The information contained in this book is without prejudice to the legal texts and their interpretation and application by the competent state authorities or courts.

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NB: In this publication, the masculine generic is used without discrimination and solely for the purpose of lightening the text.

## HOW TO USE THIS GUIDE

The aim of this guide is not to train occupational health and safety experts, nor to replace them in their work. Instead, the aim is to raise staff representatives' awareness of the problems caused by psychosocial risks, while giving them a few simple tools for dealing with the subject within the company.

It remains the prerogative of those involved in the company to concern themselves with health in the workplace and to find forums for discussion, and in this area the quality of social dialogue plays a key role.

- The **first part** of the guide, entitled: "When too much stress at work leads to burnout" introduces the subject and gives some statistical information on the frequency of stress at work and related aspects.
- The **second part** of the guide, entitled: "Taking action in the workplace" looks at the issue of psychosocial risks through case studies and in-depth analysis of their resolution.

These should not be seen as models for action, but rather as opportunities for trade union action.

The anonymity of the companies and individuals involved has been preserved for reasons of confidentiality.

These case studies will enable you to see how, in a given situation and context, a Health and Safety Representative, supported by the staff delegation, has managed to resolve a conflict through the use of certain union actions and find a solution to a deteriorating work situation. We analysed the success factors as well as the difficulties caused by the situation.

- The **third part** of the guide focuses on the regulatory and legal approach to psychosocial risks in Luxembourg.
- The **fourth part** of the guide provides Health and Safety Representatives with "tool sheets" that they can use either as part of a process of reflection on psychosocial risks, or to implement a risk prevention approach.
- In the **fifth part** of the guide, readers will find a glossary to help them decipher some of the concepts commonly used in the field of psychosocial risks.
- Finally, the **last part** of the publication directs readers to useful websites as well as to institutional players to contact in the event of psychosocial risks in the workplace. You will also find the full text of the Luxembourg agreement on psychological harassment and violence in the workplace.

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## I. WHEN TOO MUCH STRESS AT WORK LEADS TO BURNOUT

*Studies carried out by the European Foundation for the Improvement of Living and Working Conditions (EUROFOUND) reveal that employees in all sectors are complaining that they are under increasing pressure at work.*

*The way in which work is organised in most companies today has given rise to a number of dysfunctions linked to the densification and intensification of work rhythms, the development of multi-skilling, the individualised management of appraisals and the transformations that accompany technological change.*

*Against this backdrop, the Health and Safety Representative is often called upon by employees to resolve conflicts or, because of their role, are themselves involved in altercations that can lead to fairly serious, even violent, conflicts.*



*It is therefore essential that we address these problems and take action. In many cases, employees have the impression of being overwhelmed, of no longer being up to the job, of working without a common reference point, without shared values, without consultation on the content of their work.*

*All these factors lead to a sense of isolation in the workplace and the deconstruction of work teams or collectives, resulting in suffering, interpersonal conflicts and a deterioration in working conditions, with devastating effects on the physical and mental health of employees.*

*It is essential to put strategies in place to resolve the situation, in direct association with a reflection on work organisation, management style, the policy for communicating information within the company, and the policy for human resources management.*

### What is meant by psychosocial risk (PSR) factors?

Psychosocial risk factors are often summarised in simple terms as "stress at work". In fact, this stress is the manifestation of these risks. Stress at work is a physical reaction to psychosocial risk factors, which in reality incorporate occupational risks of varying origin and nature.

In simple terms, we can say that a pathogenic work situation and a stress reaction occur when an individual is exposed to **high psychological demands** (informational and/or emotional overload, lack of time, frequent schedule changes, etc.) and at the same time has **little power of control** over the situation (insufficient margin of freedom to decide on actions and schedules and poor use and development of skills).

A third dimension that has a moderating effect on stress is the existence, or not, of **social support** (support from colleagues and superiors). Low social support associated with high psychological demand and low decision latitude corresponds to the most pathogenic situation (Karasek and Theorell 1990)<sup>1</sup>.

Therefore, high psychological demands at work (e.g. information and emotional overload, lack of time, frequent schedule changes, etc.), low level of control (lack of autonomy and co-decision) and lack of social support from colleagues or superiors can be described as psychosocial risk factors.



<sup>1</sup> Karasek, R., & Theorell, T. (1990). Healthy Work: Stress, Productivity, and the Reconstruction of Working Life. New York: Basic Books.

## Key figures on psychosocial risks

Among workers in Luxembourg:



43%

say they work (often or always) under time pressure or in a hurry.



49%

are of the opinion that they do not (or only to a small/very small extent) have a say in their company's decisions.



24%

report major difficulties in reconciling work and private life.



34%

say their job requires them to hide their true feelings (often or always).



13%

feel that they are little or very little supported by their colleagues in their work.



51%

say they are unable (or only to a small/very small extent) to decide their own working hours.



37%

feel (often or always) stressed by their work.

Source: Quality of Work Index 2022, 2,696 employees and civil servants surveyed

If a stressful situation (and therefore exposure to PSR factors) persists over a long period or is repeated frequently, the risk of burnout, high blood pressure or depression increases. Burnout is physical, mental and emotional exhaustion, a profound lack of interest in the content of one's work and a depreciation in one's own results.

## Note

As for the consequences of PSR factors (exhaustion, stress, etc.), there is no single clearly identified "danger" that is the sole source of the illness (like the kitchen knife that causes the cut on the hand). In fact, "there is virtually no health disorder for which a psychosocial factor or even several psychosocial factors related to work in general are the only possible cause" (Gollac & Bodier, 2011). This is why we talk about "psychosocial risk factors".

On the other hand, although a single psychosocial risk factor cannot systematically be considered as the sole cause of burnout, it is nonetheless a major issue on which action can and must be taken.

### What is the risk of burnout in Luxembourg and are there differences between groups of workers?

To answer this question, we will use data from the 2022 Quality of Work Index Luxembourg survey to compare different groups of workers according to whether or not they show a high risk of burnout. The "burnout risk" measurement scale used includes several questions to take into consideration as many facets of the problem as possible, and to incorporate the various possible interpretations of the questions by the respondents.

Here is the composition of the "burnout risk" scale:

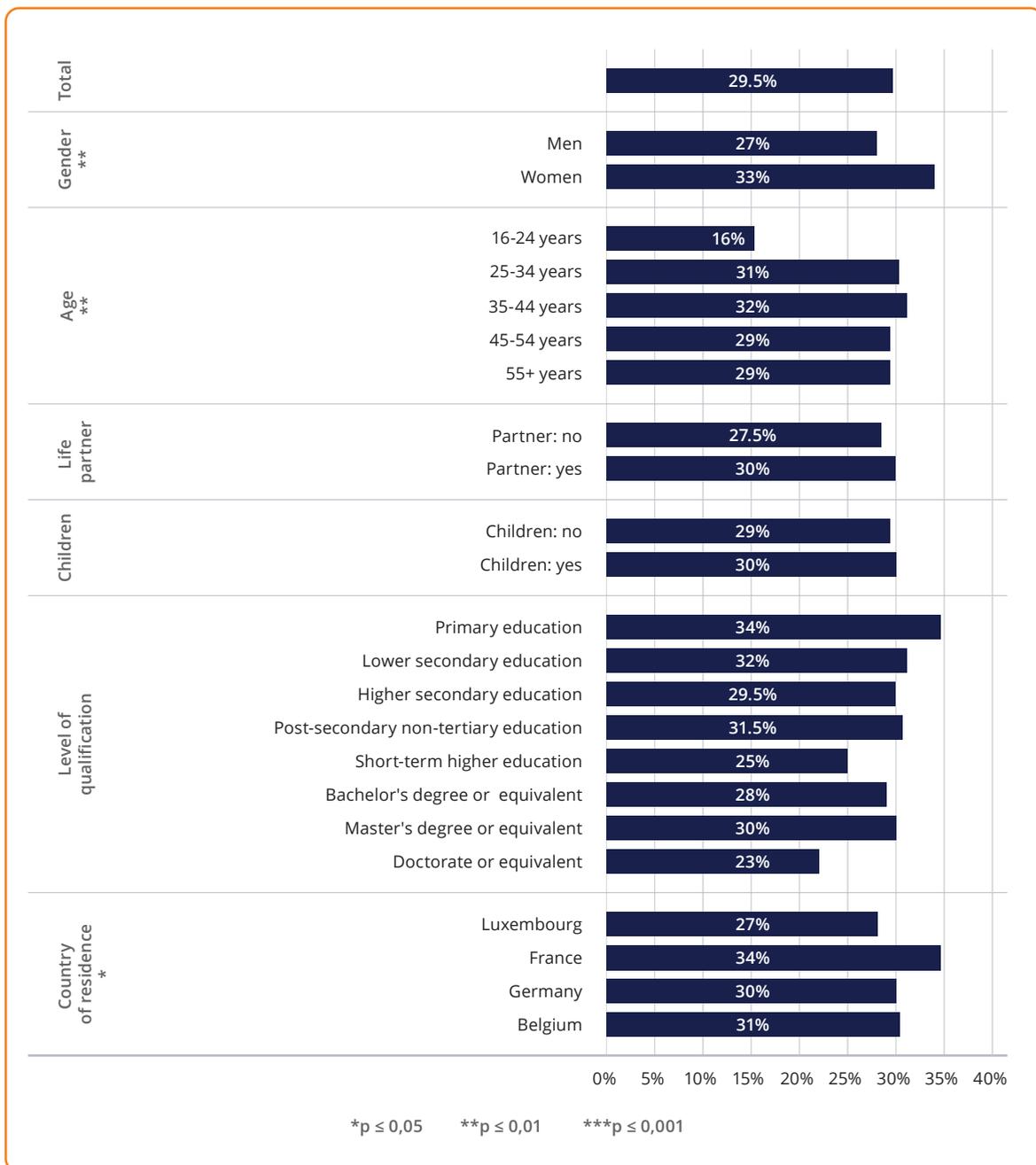
| Scale          | Question   | Cronbach's Alpha in 2022 |
|----------------|--|--------------------------|
| "burnout risk" | How often do you feel you can no longer tolerate your work?                | 0,86                     |
|                | How often do you feel you don't have enough energy for your daily routine? |                          |
|                | How often do you find it difficult to concentrate at work?                 |                          |
|                | How often do you no longer feel pleasure in your work?                     |                          |

Source: Quality of Work Index 2022, 2,696 employees and civil servants surveyed

The scores on the "burnout risk" scale are the averages of the unweighted answers to the questions (the scale used to measure the questions is a Likert scale with answers ranging from 1, "never", to 5, "(almost) all the time"). The average values therefore range from 1 to 5. To determine the proportion of the working population at risk of burnout, the results were dichotomised into "high burnout risk level" (scores between 3 and 5) and "low burnout risk level" (scores below 3).

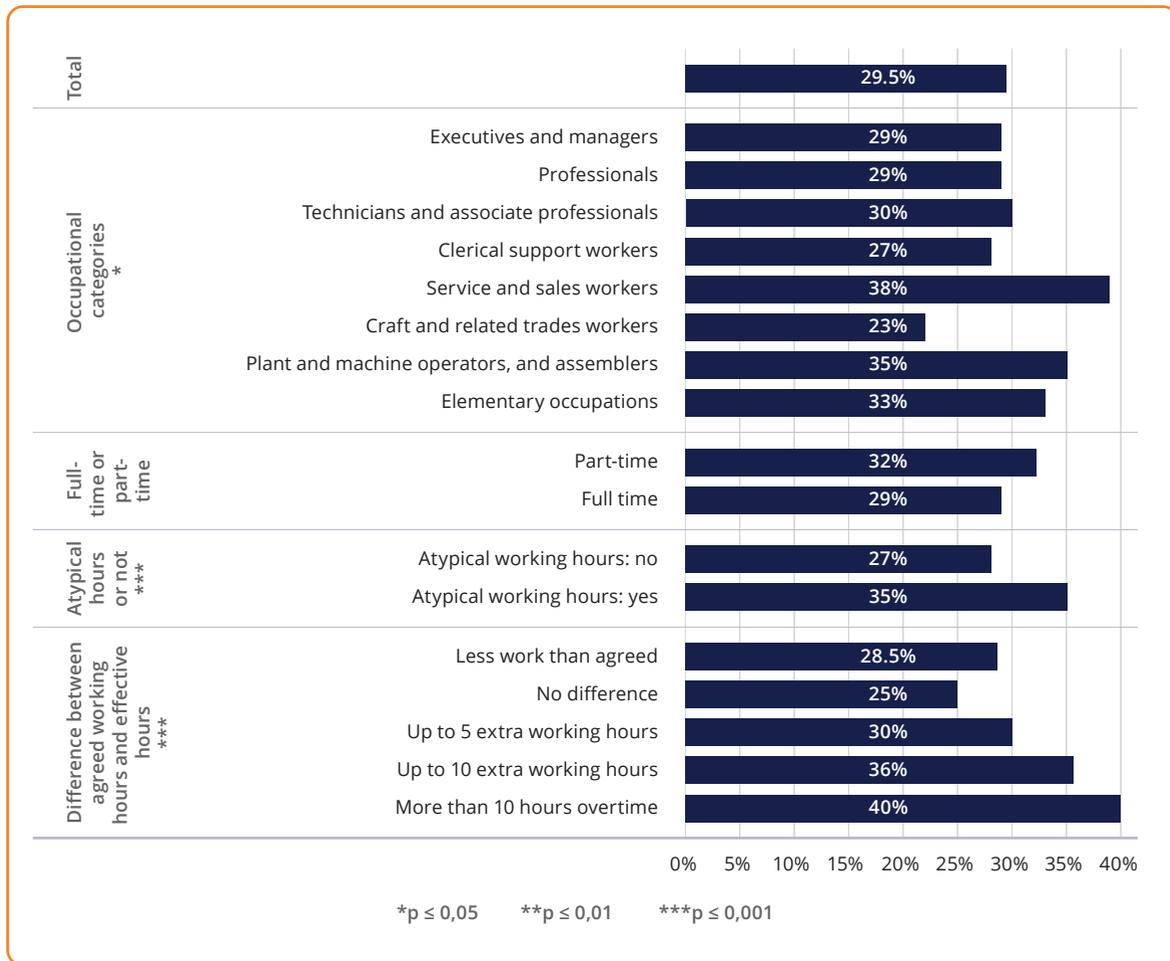
Here are some results by category of worker:

**Figure 1: "High burnout risk level" based on demographic data**



**Figure 1** shows the proportion of the working population affected by a serious risk of burnout according to demographic characteristics. The biggest difference is between the sexes, with women more affected (33%) than men (27%). Looking at age groups, we can see that employees aged over 24 are more exposed (29-32%) than employees aged between 16 and 24 (16%). The differences between single workers and those with a life partner, and between workers with and without children, are not significant, nor are those between different levels of qualification. However, the differences between workers according to their country of residence are significant. Indeed, employees coming to work from France are more affected (34%) than employees living in Luxembourg (27%).

**Figure 2: "High burnout risk level" based on professional position characteristics**



**Figure 2** shows the proportion of the working population affected by a serious risk of burnout based on the characteristics of the professional position held. The only statistically insignificant difference can be seen when comparing full-time and part-time employees.

The biggest differences in burnout risk are between people who work atypical hours (evenings, nights or weekends) and those who do not, and between workers who see no difference between their contractual hours and their actual hours and those who see greater differences. For example, 35% of workers who regularly work evenings, nights or weekends are at greater risk of burnout, compared with 27% of workers who do not (or should not) do so. Similarly, respondents who see no difference between contractual and actual working hours are less likely to have a higher risk of burnout (25%) than those who work (have to work) up to 5 hours more per week (30%), up to 10 hours more per week (36%) or more than 10 hours more per week (40%).

Figure 3: "High burnout risk level" based on company characteristics

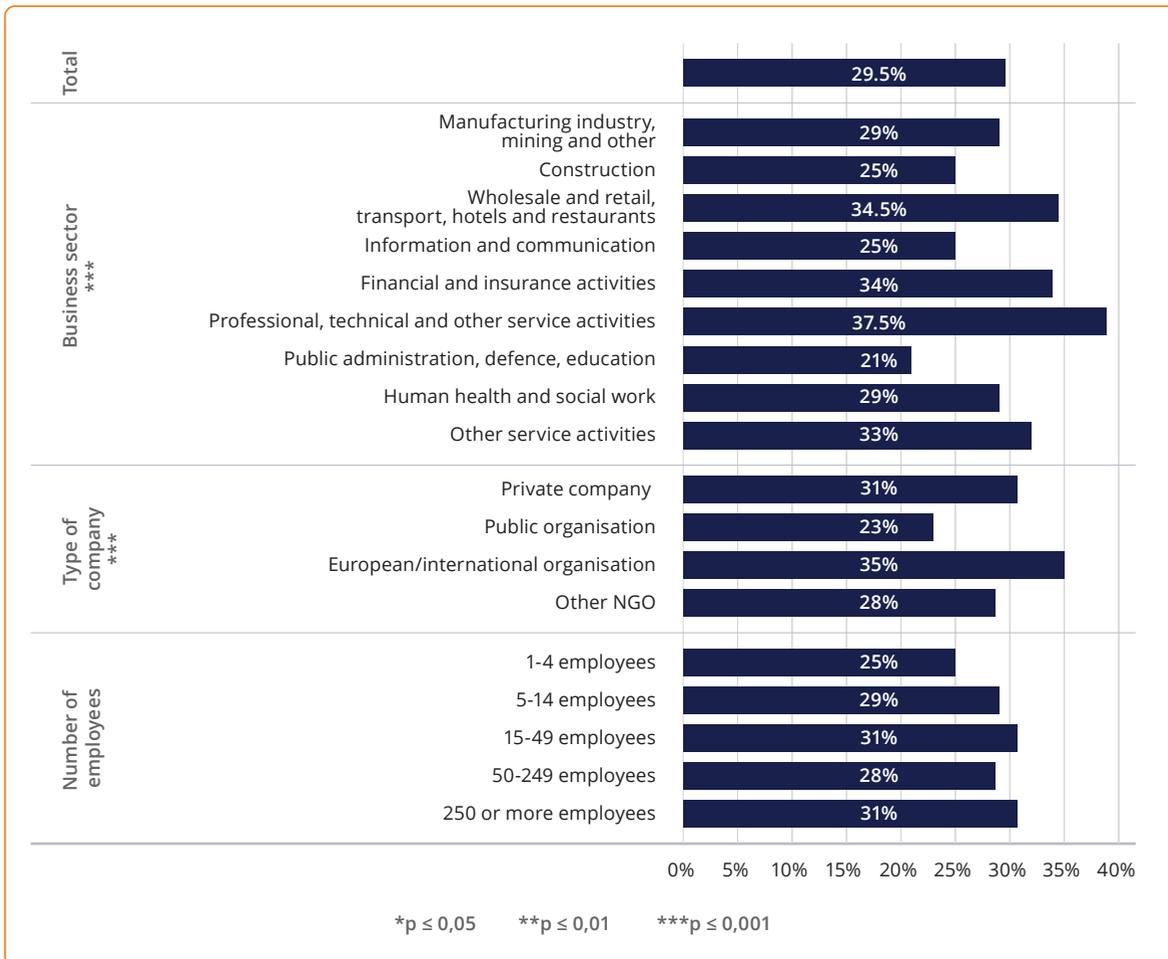


Figure 3 shows the proportion of the working population affected by a serious risk of burnout according to company characteristics. Statistically significant differences can be observed between sectors of activity and types of company. The risk of burnout is higher in private companies (31%) and in European or international organisations (35%), and more particularly in "Professional, technical and other service activities" (37.5%) and in Wholesale and retail trade, transport, hotels and restaurants (34.5%). It is also high in "Financial and insurance activities" (34%) and "Other service activities" (33%). On the other hand, the risk rate is lower in the "Information and Communication" (25%), "Construction" (25%) and "Public administration, defence, education" (21%) sectors. The differences between the different sizes of company (number of employees) are not significant.

It is clear that burnout can affect any category of worker, but some are more likely to be affected than others. In Luxembourg as elsewhere, sick leave due to depression and other stress-related illnesses has been rising steadily for years, according to social security statistics, with the exception of the figures for 2020 and 2021, which were heavily affected by the Covid pandemic<sup>2</sup>.

Quite apart from their effects on individual health, psychosocial risks also have immediate and delayed effects on the company's overall performance, resulting in considerable costs:

- more claims for incapacity for work;
- presenteeism, whereby people are at work (or teleworking), but are not in good physical or psychological shape;
- accidents at work because the work cannot be done properly;
- more incidents and conflicts between employees, with management or with customers;
- increasing staff demotivation;
- increasing staff turnover;
- a lack of product or service quality;
- the deterioration of the company's image;
- loss of customers.

Implementing preventive measures to avoid the accumulation and repetition of stress factors should therefore not frighten employers, as without taking action, the costs to which they risk exposing themselves are even greater. What's more, without having to embark on major preventive measures, it pays to invest in occupational health and safety prevention. According to a 2014 report by the European Agency for Safety and Health at Work (EU-OSHA), 1 euro invested by an organisation in a mental health prevention and promotion programme leads to a net benefit of up to 13 euros<sup>3</sup>.

---

2 IGSS (2020). <https://igss.gouvernement.lu/dam-assets/publications/aperçus-et-cahiers/aperçus/20200703-Rapport-Absenteeism-2019.pdf> & IGSS (2020). <https://gouvernement.lu/dam-assets/documents/actualites/2021/11-novembre/18-evolution-absenteisme/Absenteisme-pour-cause-de-maladie-2020.pdf>

3 EU-OSHA (2014) : Calculating the costs of work-related stress and psychosocial risks. <https://osha.europa.eu/fr/publications/calculating-cost-work-related-stress-and-psychosocial-risks>

## What is the Quality of Work Index Luxembourg (QoW)?

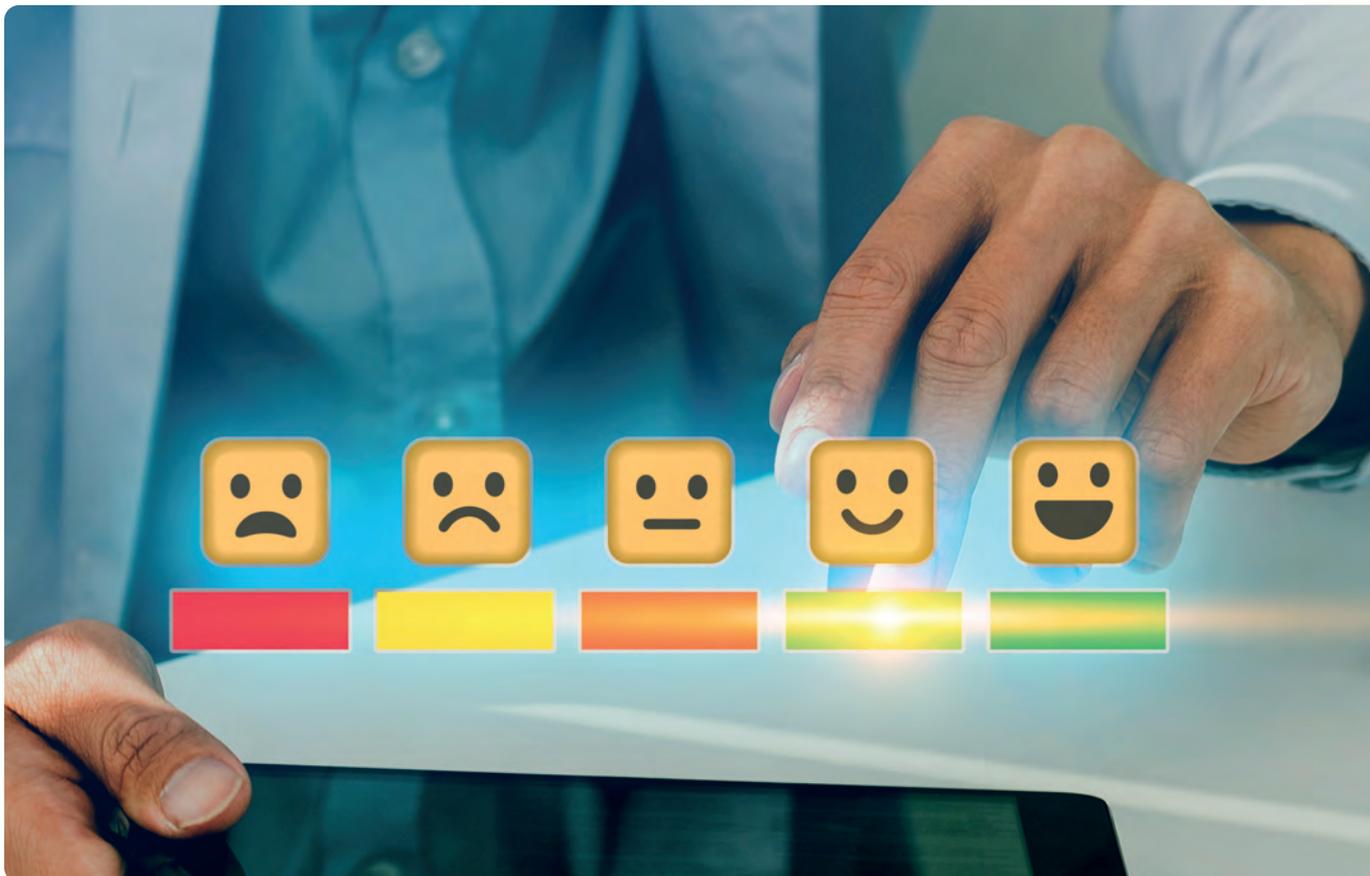
Reliable information is essential if we are to gain a better understanding of the realities of the changing world of work and to work towards better living and working conditions. For this reason, since 2013, the Chamber of Employees (CSL) has been conducting an annual survey of workers in Luxembourg. The survey is aimed at both employees resident in Luxembourg and cross-border workers living in Belgium, France or Germany.

In collaboration with the social research institute infas (since 2014) and the University of Luxembourg<sup>4</sup>, the survey is carried out annually on a representative sample of people working in Luxembourg. The topics covered by the QoW study include work demands and workloads, working hours, cooperation between colleagues, room for manoeuvre at work, opportunities for further training and promotion, and participation in decision-making in companies and much more.

This survey, which is repeated every year, enables us to track changes in the quality of life at work over time. It is a unique measurement tool in Luxembourg in that

the data collected is used to measure employees' assessment of the quality of their work and their well-being. Furthermore, changes in the subjective quality of work and workers' well-being are an indicator of social progress and can be used to measure the impact of political decisions.

**For more information: [www.csl.lu](http://www.csl.lu) > Health and security > Quality of Work Index Luxembourg**



<sup>4</sup> Sample size: 2014: 1,532 employees; 2015: 1,526 employees; 2016: 1,506 employees; 2017: 1,522 employees; 2018: 1,689 employees; 2019: 1,495 employees; 2020: 2,364 employees; 2021: 2,594 employees ; 2022: 2,696 employees.



## II. TAKING ACTION IN THE WORKPLACE

*"Let's be clear and honest, when someone is attacked, or isolated, we just stand back. It is the failure of work collectives that leads to increased suffering. Working means working together. And a team that says, go and have a coffee, you're tired, that will support you in the face of a boss... is becoming increasingly rare. In most cases, it's really pretty easy for someone to feel ostracised. If there's just one thing to say, it would be "let's foster solidarity again", because that's what's going to save our colleagues who are experiencing problems, that's what's going to save us when we're in trouble."*

Marie PEZÉ<sup>5</sup>

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5 Psychoanalyst and Doctor of Psychology. Initiator of the first "Suffering at work" consultation in France.



## 1. Company case studies

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To give you a better idea of the problems that can arise in terms of psychosocial risks, we have chosen to present a number of cases involving situations where employees have been exposed to psychosocial risks. Each case is commented on and presents the main trade union actions taken to try and resolve these problems.

# CASE 1

## Case of psychological harassment at work (1)



### **Céline, bank employee**

*A bank's Health and Safety Representative receives a complaint from an employee. Here is how the Health and Safety Representative reacted to this complaint and the actions they decided to implement, in agreement with their staff delegation.*

---

### Some background information about the “complainant”

The complaint was lodged by a young woman, Céline, aged 35 at the time of the incident.

Céline has a degree in management and has been with the bank for 10 years. Initially hired as an employee, she rose through the ranks to become an executive officer at the time of the incident.

On a personal level, she is the mother of a child, of whom she has full custody. She lives in the north of the country and works at her bank's head office in Luxembourg City.

Her employment contract is a permanent, full-time contract. She negotiated with her boss the possibility of taking part of her annual leave on Thursday afternoons, enabling her to devote more time to looking after her son, then aged 3.

This arrangement is of great importance to her as it allows her to balance between her personal and professional life. As the sole earner in a single-parent family, she would not be able to afford additional child-care.

On a professional level, she is one of the bank's experienced employees and works with key accounts, in addition to additional tasks such as generating reports and statistics.

She excels in this field because she likes to carry out complex work tasks, in line with her management skills. She works in a team with three other people.

Céline is described by her line manager and colleagues as a competent, friendly and available employee. With no history of relationship problems.

### Triggers

The problem occurs when a new head of department arrives. A department manager in her forties, who immediately wants to impose new working methods on the whole team.

### Description of the situation

The new head of department completely changes the content of Céline's work and, on the pretext of reorganisation, gives her menial tasks. The management part of the job, which she loved doing so much, is entrusted to another person, recently recruited to the department and with whom the new head of department used to work.

The new head of department constantly criticises Céline's work, giving her contradictory orders and bullying her. Her three other colleagues, with whom she had excellent relations and in whom she could confide, are transferred to another department, and she finds herself isolated.

The working climate deteriorates: very quickly, the new head of department wants to go back on the agreement regarding the reorganisation of her working hours. As this agreement is formal and not contractual, it is easy for her to impose new working hours on Céline on the pretext that Thursday afternoon is the only half-day of the week when she can organise a departmental meeting with the whole team.

Céline keeps quiet, not telling anyone about her problems for fear that the situation will get worse. She needs her job and her Thursday afternoon is also very important to her. Might she perhaps be able to find similar conditions with a new employer?

The constant bullying continues. She starts to lose her self-confidence and her faith in her abilities and makes more and more mistakes.

### Role and intervention of the Health and Safety Representative in this problem

Céline's individual appraisal comes round. The report on her is very harsh. It calls into question her skills and effectiveness at work to such an extent that it risks compromising her professional career.

Céline becomes depressed. This is followed by successive bouts of sick leave and a loss of self-esteem. At the end of her tether, she finally decides to confide in the Health and Safety Representative about the problem.

#### ► Step 1: The Health and Safety Representative meets the complainant for a private interview

He listens to her complaint and decides, with her agreement, to approach the Director of Human Resources to explain the situation and try to mediate.

### A few recommendations for the interview

It happens very often that an employee contacts a staff representative simply to tell his or her story. They need to be heard in their suffering. However, they are not ready to take the plunge and ask for the delegation's support in taking action against their employer or hierarchy, because in most cases they think that if the situation is exposed, they could potentially experience major work-related problems, up to and including dismissal.

However, if the delegate suspects harassment, they must inform the complainant that this is a destructive process and that, once caught up in it, the complainant will struggle to extricate themselves without outside help.

It is also absolutely essential to remind them about confidentiality right from the start of the interview.

It is important to be clear with the employee that no action can be taken without their agreement.

If the conflict is proven to exist, in most cases it ends with a breach of the employment contract (redundancy, resignation, illness, disability, etc.) or a change of department. Sometimes, however, a simple reminder can lead to a positive outcome for the employee. But one condition is essential for this action to be possible: the conflict must not have deteriorated too much and the bond of trust between the protagonists must not have been broken. Hence the importance of intervening quickly and taking action with the support of the staff delegation.

If the employee agrees to be supported by the staff delegation, it is necessary to assess the seriousness of the problem and identify possible actions, depending on the context, the room for manoeuvre and the employee's wishes with regard to the outcome of their personal situation.

► **Step 2: Send a written complaint to the Human Resources Department**

The Health and Safety Representative decides, with Céline's agreement and the support of the staff delegation, to send a written complaint to the human resources department.

The written complaint is not followed up, and the climate continues to deteriorate. Now she feels spied on, her belongings are searched, she is given meaningless tasks to do.

Céline is taking more and more time off work, and the situation can't go on any longer.

► **Step 3: Contacting the occupational physician**

When the first attempt at conciliation fails, the Health and Safety Representative decides, with the employee's agreement, to contact the occupational physician. As soon as they are informed, the occupational physician sees the employee and notes a deteriorating state of health, linked to working conditions.

The occupational physician asks the employer for a change of post. This is granted.

## Conclusion

After negotiations with management, Céline was moved to another department, with the possibility of taking a certain amount of leave on "Thursday afternoons" to look after her child.

The individual appraisal was not kept in Céline's personal file.

### Challenges faced by the Health and Safety Representative

No sanctions have been taken against the new head of department, despite the fact that other cases of suffering have been observed among other employees in the department, and that the absence rate (turnover and illness) is abnormally high in this department.

Proving that these practices are or may be psychological harassment is often very difficult and requires a complex case to be put together.

## What are the first things to be done for an employee who is suffering? <sup>6</sup>

### 1. Draw up a record of the situation

Draw up a record of the situation: start date at the company, then describe the moments when the situation began to deteriorate, with the dates and events that occurred, any witnesses and people present.

Writing a paper record makes it possible to distance oneself from the problem, and at the same time is the beginnings of a defence that can be presented before the competent courts, if necessary.

### 2. Request from the occupational physician at the employee's request

This is an employee right. Doctors are bound by confidentiality and medical secrecy, but at the same time, if they are informed, they can report problems in the company without naming the people concerned, provide medical advice, and possibly recommend a specialist consultation for distress in the workplace.

### 3. If confidentiality is lifted (with the employee's agreement), the delegation and the trade union can intervene with the employer

The delegation generally becomes involved when there is a risk of unfair dismissal, and/or in the event of psychological harassment or other psychosocial problems. Ideally, you should get a testimony from other employees and have a record of what happened.

Article L.246-3 of the Luxembourg Labour Code, in particular paragraph 4, requires employers to take steps to put an immediate end to acts of psychological harassment if they are made aware of such behaviour. In addition, an internal assessment must be carried out of the effectiveness of preventive measures and the possible implementation of new preventive measures to be taken, particularly in relation to the organisation of the company, the review of procedures applied in the event of psychological harassment and the provision of information to employees.

<sup>6</sup> Source: Marie PEZÉ – Consultations sur la souffrance au travail

The union can send a letter to the employer by recorded delivery, with a copy to the occupational health physician and, if necessary, to the Inspectorate of Labour and Mines (ITM), setting out the facts, their seriousness and the impact on health and/or the working environment.

The union can also refer to Chapter VI of the Labour Code on psychological harassment in employment relations, which stipulates that if psychological harassment persists or if the employer fails to take appropriate measures, the worker who considers themselves to be a victim or the staff delegation may, after obtaining the agreement of the employee concerned, refer the matter to the Inspectorate of Labour and Mines (ITM), which will then investigate the matter.

#### 4. Referral to consultations on suffering in the workplace

The Health and Safety Representative may spot signs of suffering (crying, shock, confusion) in the person they are interviewing. People who are suffering need to talk to doctors and psychologists about the situation they are experiencing. Victims are not always aware of their condition. In the event of mental distress, it is important for the Health and Safety Representative to refer the employee to specialist services that will be better able to deal with this aspect of the situation, in addition to any legal or trade union action taken elsewhere: occupational physician, consultation services on distress at work.

#### Follow-up: What happened to Céline?

The young woman changed departments. She still works for the company. However, this professional episode was very unsettling for her and it has had health consequences. Professionally, she never progressed any further in her career.

#### A look at the facts

Is the head of department exerting pressure to make Céline break down, in the form of unjustified criticism, isolation, downgrading, using devious means to force her to go back on working time arrangements previously negotiated on an individual basis? Or is it Céline who is unable to adapt to a new work situation with new ground rules? These are the questions that the Health and Safety Representative must ask themselves if they want to understand the situation fully. They must be neutral and non-judgemental. They must take into account the suffering of the complainant and may, if necessary, conduct their own investigation into the alleged harassment.

The facts, as presented, naturally raise questions, as they resemble practices used in psychological harassment. However, great care must be taken as psychological harassment is a serious accusation, which cannot be made without a complete and accurate case file.

## Questions to ask if you suspect harassment

The representative must try to define whether the facts reported relate to one or more breaches of the employment contract or the assignment, or whether the employee is experiencing personal conflict with their line manager.

Here are the questions to consider to advance a hypothesis of psychological harassment:

- Does this conduct appear to be in line with what usually happens in the workplace?
- Are these repeated incidents, and, if so, over what period of time?
- Has the behaviour led to a deterioration in the employee's health and/or a deterioration in the working climate, working conditions or even the employee's professional future?
- Does the conduct violate the employee's rights or dignity?

## A look at the work of the delegation

This situation, which initially appeared to be a conflict between individuals, was discussed within the delegation. After discussion with the other representatives, it emerged that other complaints had been lodged for similar situations.

On the basis of this information, the Health and Safety Representative and the Equality Officer, in agreement with the staff delegation, decided to work on a draft internal procedure for dealing with cases of harassment.

Among other things, the aim of the project is to define preventive measures and enable employees who are suffering to lodge a complaint with a joint committee made up of members of management, employee representatives and experts in the field of psychosocial risks.

The procedure is currently being negotiated and could be introduced as part of the bank's internal regulations.

The delegation is also considering the possibility of an in-house crèche, in response to staff needs. This subject will be included in the list of requirements.

## Employer's obligations

**Article L. 246-3, paragraph 3, of the Luxembourg Labour Code<sup>7</sup> states that the employer shall determine, after informing and consulting the staff delegation or, failing that, the entire workforce, the measures to be taken to protect employees against psychological harassment in the workplace.**

These measures, which must be adapted to reflect the nature of the business and the size of the company, include the following aspects at the very least:

1. the definition of the resources available to victims of psychological harassment, in particular the reception, help and support required by victims, the measures for their care and return to work, as well as information on how to contact the staff delegation;
2. the rapid and impartial investigation of acts of psychological harassment in the workplace;
3. awareness raising among employees and managers of the definition of psychological harassment, the ways in which it can be managed within the company and the sanctions available against those responsible for acts of psychological harassment;
4. information for the staff delegation or, failing that, all employees, regarding the employer's obligations in terms of preventing psychological harassment in the workplace;
5. employee information and training.

Under no circumstances may these measures be implemented in a manner that is detrimental to the victim of psychological harassment.

The ideal situation for the delegation is to reach an agreement with management to establish a clear internal procedure for receiving and investigating complaints.

It is important to ensure that complaints are handled in accordance with this procedure to guarantee successful prevention. The solution must be found first and foremost within the company, to avoid the traumatic and uncertain path of legal proceedings.

If the victim of psychological harassment is unable to put a stop to the behaviour, they should be able to choose between an informal procedure for handling their complaint, which is always preferable, or a formal procedure resulting in a judgement and possibly compensation if they believe that the facts are sufficiently serious and substantiated.

In the informal procedure, they can contact:

- the alleged harasser directly, with the support of a colleague or a staff or trade union representative, informing them that their behaviour is violent and must stop (implementation of a mediation procedure agreed by both parties);
- the harasser's line manager, the human resources department or the company doctor, indirectly and with the same support, who will carry out their investigation, inform the alleged harasser of the complaint and urge them to change any offending behaviour.

The labour inspector may intervene in the event of a dispute, and at written requests for intervention from victims of harassment.

<sup>7</sup> Article L. 246-3(5): "If psychological harassment in the workplace persists after the measures have been implemented or if the employer fails to take appropriate measures, the employee concerned or the staff delegation, with the agreement of the employee concerned, shall refer the matter to the Inspectorate of Labour and Mines.

The Inspectorate of Labour and Mines will hear any employee who believes that they have been the victim of psychological harassment in the course of their employment relationship representative.

Following the investigation of the case and the hearings held, the Inspectorate of Labour and Mines will draw up a report containing, where appropriate, recommendations and proposals for measures to put an end to the acts of psychological harassment.

No later than forty-five days after receipt of the file, the Director of the Inspectorate of Labour and Mines or their representative will send the complete report to the employer concerned.

In the event of psychological harassment, the Director of the Inspectorate of Labour and Mines will urge the employer to take the necessary measures to put an immediate end to the harassment within a period of time determined on the basis of the information contained in the report.

In the event of failure to comply with the duly notified injunction within the specified time limit, the Director of the Inspectorate of Labour and Mines is entitled to impose an administrative fine on the employer."

## CASE 2

### Case of psychological harassment at work (2)



**Albert, temporary worker in the industrial sector**

*Nico, a Health and Safety Representative in an industrial company, receives a complaint from a temporary worker, Albert, who works as a cloakroom attendant in one of the factory's workshops. Two witnesses support his defence.*

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### Some background information about the “complainant”

Albert works as a "cloakroom attendant" on a temporary contract for a large industrial company in Luxembourg. He may soon be on a permanent contract. The 53-year-old father of 8 has always worked hard to provide for his family. With no qualifications and having stopped going to school at a very early age, he finds it very difficult to read and write. Consequently he has spent his entire career in unskilled jobs. For several years, he worked as a materials handler for an industrial company in France. He was made redundant when his factory closed 5 years ago, and has since been working on insecure assignments.

Working as a cloakroom attendant at this factory involves cleaning the premises, showers and toilets, as well as the refectory.

Albert is much appreciated by the workshop staff, he always has a smile and a kind word for everyone. Although he is a temp, he is considered to be a member of staff.

This department is run by a foreman who is responsible for the environment and the upkeep of the premises. This is his direct line manager. He also manages the renewal of temporary contracts within the department.

### Triggers

The trouble starts when the foreman asks Albert to do tasks that have nothing to do with his job, such as washing his personal vehicle.

### Description of the situation

The foreman orders him to do a lot of work outside his remit and continually threatens not to renew his contract if he doesn't submit to his authority.

Albert is overwhelmed with work, to the point where he can no longer correctly carry out the duties for which he was hired.

The condition of the premises deteriorates over time. Until the day the union delegate receives an unofficial complaint. The workshop team is not happy with lack of maintenance of the premises, showers and toilets. The team also expresses their surprise at the state of affairs as Albert had always done his job conscientiously.

Nico is the Health and Safety Representative. He has always taken his role very seriously. He is known as a warm and people-oriented person. He has held this position for ten years. He knows every workstation, every nook and cranny of the factory inside out. He knows how to talk to people frankly and directly, and the union team is asking him to settle this matter "between men".

Nico decides to meet Albert and tells him about the team's discontent. He assures him that this informal discussion would remain "between them", but reminds him that he has to do his job properly if he doesn't want this problem to come to the attention of management one day.

Albert finds himself in a very uncomfortable position. He wants to stay with the company, he's so close to getting a permanent contract. He decided to find the foreman and tell him that he was in the workshop staff's line of fire and that from now on he is going to have to devote himself exclusively to his work. But the foreman doesn't see it that way. One day, when he thinks he is alone with Albert in the refectory, the foreman threatens him again and tells him that his contract will end the following week, with no possibility of renewal. This leaves Albert in a state of great distress and confusion.

Jacques and Roland, both mechanics, are present in the refectory at the time of the discussion and witness this verbal aggression. They are flabbergasted by what they have just heard. The foreman is not their direct line manager, but all the same, his reputation as a 'tyrant' is well known throughout the factory. It's not his first time, as they say.

The two mechanics decide to go and find Nico and tell him about the conversation they overheard. Nico considers the matter. The facts are serious. Albert has to be persuaded to discuss the matter with the chief engineer. The latter eventually accepts the delegation's help.

### Role and intervention of the Health and Safety Representative and of the delegation

#### ► **Step 1: Presentation of the case to the staff delegation to decide on the action to be taken**

Nico immediately informed his delegation chairman. Together they decide to inform the workshop's chief engineer of the situation.

#### ► **Step 2: Meeting with the chief engineer to outline the situation**

An appointment is made with the chief engineer. He is an uncompromising manager on many issues, but he knows how to be fair in his decisions. He is both feared and appreciated by the staff.

He meets them and listens to the story with great attention. He is used to working with Nico on a wide range of subjects and, although they don't always see eye to eye, they have a relationship based on mutual trust and respect.

The facts are as follows: a temporary worker was obliged to carry out work on behalf of a line manager that had nothing to do with his work in the company, preventing him from doing the job for which he had been hired and threatening to terminate his employment contract, even though a permanent contract was being considered.

The events being reported are serious and, what's more, took place in front of witnesses. As head of production, he cannot ignore this event. He immediately summons the foreman and asks him to explain his actions, in the presence of Nico and the two witnesses.

### ► Step 3: Confrontation with the protagonist

To make his action official, the workshop's chief engineer informs the delegation's chairman and the human resources manager that he had summoned the foreman for serious misconduct and invites them to attend the meeting.

The interview takes place in the office of the workshop's chief engineer.

The confrontation is tough. The foreman denies the facts and tries to defend himself. But the evidence is overwhelming.

### Conclusion

On the strength of this evidence, the production manager decides to punish the foreman in accordance with the facts: a two-week lay-off. He was relieved of his supervisory duties and ended his career as a simple assistant.

As for Albert, he remained on the production site.

### Challenges faced by the Health and Safety Representative

The main difficulty lay in convincing Albert to lodge a complaint against the foreman. But also because the facts implicated a hierarchical superior. The fact that the team presented a united front and that the two mechanics witnessed the conflict made it much easier to resolve the problem.

### Follow-up: What happened to Albert?

Albert was initially kept on as a temporary worker, then was hired on a permanent contract.

### A look at the facts

In this specific case, the foreman was punished. The facts were serious, and suspicions about his management methods had been hanging over him for some time. If the acts had not been punished, they could have resulted in serious conflicts within the workshop team, as solidarity and justice are strongly respected values in this professional environment.

### A look at the work of the union

This is a well-structured delegation. The Health and Safety Representative knows the staff well and management is confident in his abilities. So this is a company where social dialogue works well. Negotiation is possible in such instances because there is room for discussion. The facts have been heard and the decision to impose sanctions is irrevocable.

Together, these conditions made it possible for the delegation to rescue a temporary employee from a deteriorating situation.

## Success factors

Constructive social dialogue

+ teamwork, with support from witnesses

= **room for manoeuvre in terms of negotiation and conflict resolution.**

## What are the consequences of the existence of psychosocial risks inside and outside the company?

### Psychological consequences:

- over-investment, then burnout;
- aggressiveness in relationships, irritability;
- difficulty concentrating, errors, forgetfulness;
- low self-esteem, anguish, anxiety, depression that can lead to suicide;
- mood disorder;
- alcoholism, drug addiction, gambling addiction;
- psychological decompensation of the personality.

### Physical consequences:

- appearance of a psychosomatic pathology (cardiac, neurological, digestive, dermatological, etc.);
- the onset of illnesses such as musculoskeletal disorders (MSDs);
- sleep disorders, fatigue, headaches, pain, digestive disorders, obesity;
- physical decompensation of a pre-existing latent pathology (eczema, psoriasis, arterial hypertension, heart attack, respiratory or skin allergies, neurological disorders, etc.);
- anxiety-depressive disorders and suicide or attempted suicide.

### Social consequences:

#### For the company

- professional disengagement;
- repeated absences;
- delays in provisional schedules;
- loss of quality in results;
- increase in the number of accidents at work and occupational illnesses;
- conflicts within the company;
- damage to work equipment.

For the family

- family breakdown;
- abuse of spouse and/or children;
- divorce.

For social life

- social exclusion;
- urban violence.

### What situations should alert the Health and Safety Representative to psychosocial risks and what are the indicators of suffering or distress in the company? <sup>8</sup>

- number of complaints lodged and requests for appointments with the labour inspectorate or employee representative bodies;
- number of disputes and even strikes;
- number of malicious acts authenticated;
- number and cumulative duration of sick leave;
- number of accidents at work and commuting accidents;
- number of occupational and work-related illnesses;
- repeated absences;
- number of disputes in the workplace;
- number of disciplinary measures;
- number of "psychological harassment" complaints;
- number of acts of violence;
- suicide attempts;
- staff turnover rate;
- early retirement (%);
- request for mobility, transfer, change of department;
- number of unfilled positions.

<sup>8</sup> Source: Charge psychosociale au travail - Violence, harcèlement moral ou sexuel, stress - Guide pour l'action syndicale - Confédération des Syndicats Chrétiens - Bruxelles.

## CASE 3

# Case of violence in the workplace



***José, a formwork carpenter in a construction company***

*Study of a case of violence in the workplace, with the complainant expressly lodging a complaint with the staff delegation. He is a delegate on the staff delegation. Thomas, the company's Health and Safety Representative, is particularly involved in defending this case.*

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### Some background information about the “complainant”

José is a young employee aged 26, who has been with the company for 5 years. He has been a delegate for 2 years.

Initially hired as a labourer, he successfully completed a training course in formwork at a construction training centre. When he returned from training, despite the promises of career development that he had received when he left, he returned to his position as a labourer.

He was told that his training as a form worker would not be put to good use because there were no jobs available.

At the time of the incident, José was working with two other members of the team, unloading pallets and other materials from the crane and tidying up and cleaning the site.

### Triggers

José started having problems with his team leader as soon as he returned to work after the training.

### Description of the situation

José receives daily orders from a team leader which, in his opinion, are given in a particularly aggressive manner. His status as a delegate is a pretext for all sorts of insults and insinuations. He is called lazy, good for nothing, and many other insults. This occurs daily. José feels he is the target of repeated mockery, his locker is regularly broken into and his personal belongings are either stolen or damaged. His two other colleagues are not spared by the boss's mood swings, but José seems to be the object of more severe mistreatment, in this case attacks and bullying, with the aim of ridiculing the training he has completed. He feels humiliated and degraded.

José clenches his fists and takes the blows. He considers resigning, then falls into depression, and ends up taking repeated sick leave.

On his return to work, José is accused of stealing equipment from the worksite. This time, he can no longer take the insults and makes this clear to his team leader. An altercation ensues between the two men and they come to blows.

The site manager will be called to attend. He doesn't want to hear about the situation. The two men have to sort out the problem between themselves.

José decides instead to take it further and files a harassment complaint with the delegation.

### Role and intervention of the Health and Safety Representative in this problem

#### ► Step 1: The Health and Safety Representative meets the complainant for a private interview

Initially, José is heard by Thomas, the Health and Safety Representative, who immediately informs the staff delegation of the problem. They decide not to stop there and, with José's agreement, inform management of the situation.

A meeting is called with management, who want to compare the versions of the protagonists.

#### ► Step 2: The delegation made an appointment with its union

The delegation makes an appointment with its union. The situation is serious. It is all the more so because management is trying to play down the facts. According to management, it is a simple isolated act in a "virile" environment. Management seems to want to ignore the consequences this altercation has had on José, without making any changes to his position.

The union drafted a letter setting out the facts and the team leader's management methods, referring to articles L. 246-3 et seq. of the Labour Code and the inter-professional agreement against harassment and violence at work, signed in 2009 by social partners in Luxembourg.



## Sample letter sent by the union to the employer

UNION

EMPLOYER

Luxembourg, Date

Subject: Complaint of violence in the workplace

Dear Sir/Madam

Our union has been informed of a complaint lodged by the staff delegation concerning Mr XXXX, on the basis of the following facts:

For several months Mr XXXX has been subjected to repeated acts carried out by \_\_\_\_\_ [indicate the name of the harasser] resulting in a deterioration in their working conditions and repercussions on their health. [Specify the facts and actions and the duration, the sick leave related to these problems]

Your duty as an employer is to take all necessary steps to put an end to any form of harassment within your company; you are also authorised to discipline employees who have engaged in such conduct. (ref: articles L. 246-1 et seq. of the Luxembourg Labour Code, and the 2009 inter-professional agreement against psychological harassment and violence at work)

The union is therefore asking you to take appropriate measures to put an end to this situation.

If you fail to do so, we shall be obliged to take the matter before the competent courts in order to assert the rights of Mr XXXX.

Yours faithfully,

### Conclusion

José remains with the company but is transferred to another work team. His site bonus for the month in question is withdrawn.

### Challenges faced by the Health and Safety Representative

Despite the seriousness of the facts, the team leader was not given any sanctions or warnings.

### Follow-up: What happened to José?

José worked for the company for a few more months before leaving. He is currently working as a form worker in another company.

### A look at the facts

The main difficulty in this case lies in the fact that it is the word of one against the other. Without witnesses, each party can blame the other, and abusive behaviour, especially when it involves a superior, is rarely punished.

### The outcome of union action

The fact that a inter-professional agreement was signed in 2009 by the social partners on violence in the workplace and the existence of Chapter VI of the Labour Code on psychological harassment in the workplace, designed to protect employees from such acts, has served as a reminder of the rule. Management agreed to an immediate change of worksite, for fear of having to deal with reprisals.

## What are the main causes of psychosocial risks?

- poor economic health of the company or uncertainty about the future;
- weakening of collectives (fragmentation of statutes, etc.);
- major changes in professions, altering professional reference points and causing loss of professional identities;
- increased management constraints;
- individualisation of management methods and skills management;
- intensification of work;
- less time for formal or informal cooperation;
- employees given more responsibility;
- excessive development of multi-skilling;
- outsourcing of many of the company's services;
- technological and organisational changes that result in isolation;
- physical difficulties at the workplace (noise, heat, humidity).

### What are the moderating factors in workplace violence<sup>9</sup>

Certain factors could play a role in reducing the effects of workplace violence or protecting against the effects of exposure to violence.

To date, very little attention has been paid to these factors. Based on research into stress at work, among other things, it is assumed that social support is of some importance in moderating the effects of violence at work.

Support-seeking strategies appear to be the most effective and highlight the importance of support at work. Denial and a personal disposition to optimism also influence the way in which the event is perceived by the victim.

**8 factors of resistance to violence in the workplace have been demonstrated:**

- 1. a good physical and mental constitution;**
- 2. self-confidence;**
- 3. the consideration of those around you;**
- 4. support from those around you;**
- 5. stable material conditions;**
- 6. room for manoeuvre;**
- 7. the ability to solve problems;**
- 8. the ability to 'find one's way' in society (requires a good knowledge of the society in which we live and the way it works).**

The study of protection factors linked to the organisation of work against psychological or nervous strain can also provide clues to protective or mediating factors against violence at work. These are decision-making autonomy (use and development of skills, decision-making power over operating methods) and social support at work (help and cooperation from colleagues, recognition from the environment).

<sup>9</sup> Source: Recension documentaire sur la violence au travail – Nathalie JAUVIN – June 1999.

# CASE 4

## Case of managerial abuse



***A team leader in an industrial company and implicating a workshop team***

*The Health and Safety Representative and the delegation were called in to intervene in a case where a departmental manager was spreading terror on the shop floor. These management methods are challenged. The people working under him are at their wits' end and are asking to be moved to another department.*

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## Context

This department specialises in mechanical assembly and pipework, and employs around 20 people, all qualified in different fields: electricians, mechanics, pipe fitters and welders.

The head of this department is a technician recognised for his professional skills, which is why he has been given this promotion, but he is showing serious interpersonal tactlessness towards the employees who work under him. In short, he's a "tyrant". Imposing and authoritarian, he spreads terror in the workshop, creating an unhealthy climate. He is unable to give work instructions or communicate with members of his team without shouting, insulting or threatening them. He puts pressure on the employees, has furious outbursts on the shop floor, constantly criticises the work and sends out warnings. This behaviour makes working conditions difficult. Since his arrival in the department, the number of workplace accidents has increased. The members of his team say that accidents mostly happen when they are too stressed. They are unable to do the tasks that require attention and concentration correctly, the pace of work is too intense and they get tired. Their work and efforts are never recognised, despite their professionalism, and the overtime they put in...

After a few months, the number of sick days increases, and some people ask to change departments.

## Trade union action

Two members of the team report the problem to the delegation and to the Health and Safety Representative, with the aim of finding a solution and putting an end to this unhealthy climate.

Once the delegation has been informed of the problem, it contacts the head of department for help in finding a fair solution.

Once the head of department had been informed of the growing problem in the workshop, he calls a meeting with the technician in charge of the department, the delegation and the Health and Safety Representative, because the problem involves difficulties with working conditions.

At the end of the meeting, an agreement is reached with all those involved: the technician in charge of the department must go on a team management training course. He is also asked to stop behaving aggressively towards members of his team. The team must be able to work in a calm atmosphere.

After attending a management training course, the team manager, who initially made some efforts, started behaving unacceptably again: shouting, screaming, name-calling, verbal abuse of all kinds, threats, bullying - anything and everything.

The delegation met with management again to inform them the members of this team categorically refused to work in these conditions and that there was a threat of strike action within the department, should management fail to intervene to stop the violence. The maintenance team had also joined the protest movement.

Management decided to move the manager to a technical assistant position, judging that he did not have sufficient skills to manage a team.

### What is managerial abuse?

#### How is this practice different from psychological harassment? <sup>10</sup>

The tyrannical behaviour of certain managers with a lot of 'character' and a tendency to treat their employees badly, insult them or speak to them disrespectfully and even violently, is reminiscent of psychological harassment.

However, this is not psychological harassment, but what Marie-France Hirigoyen calls managerial abuse in her book: "Malaise dans le travail, harcèlement moral, démêler le vrai du faux" (Malaise in the workplace, psychological harassment, disentangling the true from the untrue). In the first chapter in particular, she denounces various situations, including managerial abuse, which are not, strictly speaking, psychological harassment.

Psychological harassment is usually directed at a specific individual, and seeks to undermine their dignity. It is often hidden or takes place without other team members being aware of it. Conversely, the violence of managers practising what is known as managerial abuse is visible to everyone and can be identified by everyone. All employees are treated equally badly, all are likely to be subjected to pressure.

As the previous example shows, it is necessary to envisage collective action at company level to put an end to a situation of managerial abuse. All those affected by the actions of this manager need to react as soon as possible and agree to seek a solution and denounce this behaviour.

### Factors that contributed to a positive outcome to this problem

The company had a delegation that was organised in its union actions, i.e. the case had been well prepared, with knowledge of the field, the issues and the people, and of the approach to be adopted vis-à-vis management (organisation of meetings): i.e. respect for hierarchy and protocol as regards the conduct to be followed.

The head of department was willing to listen, recognising the validity of the complaints, so the existence of constructive social dialogue made it possible to resolve the situation.

The team was united and qualified, and the violence in question affected the whole team, so was visible to everyone. This increases the room for manoeuvre in terms of negotiation, unlike insidious harassment, where there is room for doubt and one person's word can be used against the other.

<sup>10</sup> Source: Malaise dans le travail, harcèlement moral, démêler le vrai du faux – Marie-France HIRIGOYEN – 1998.

# CASE 5

## Case of overwork and stress



### **Testimonial of an administrative employee**

*Testimonial from a 45-year-old woman who works as an executive secretary in a large company in the industrial sector.*

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## Context

Alexandra works for a large company in the industrial sector. For a number of years, she held the position of Executive Secretary to the Chairman, and her main duties included secretarial work, drawing up annual reports and keeping his diary. She is a discreet and conscientious employee who is greatly appreciated.

Departmental restructuring marks the beginning of her problems. The company made financial losses. Savings have to be made, and consequently several assistant posts are cut. Alexandra's role also "evolves": in addition to her current role with the Chairman, she has to do some secretarial work, on an occasional basis she is told, for the sales director. From the outset, her role is unclear and her tasks ill-defined. In the absence of a concerted discussion on the subject, the provisional quickly becomes the definitive, and after a few weeks she finds herself working full-time as secretary to two executives, who also very demanding in terms of the additional work to be accomplished.

Alexandra also handles the sales director's phone calls, so she is constantly interrupted in the course of her work. After each call, she has to get her head back into the files that require her to concentrate. She loses time and feels less and less effective, despite spending more and more time at work. Everything is done in a hurry, with everyone prioritising their own files, without considering her ability to handle the workload on her own. Everything is placed on her desk, sometimes with instructions on post-it notes.

When the work isn't done on time, it's her fault, because she's the one who didn't do her job.

She is constantly under pressure from one or other of the managers to finish a task as a matter of priority. There is talk of taking on a new assistant to help her. But this assistant never appears.

She's in charge of everything from buying sandwiches when the Chairman decides at the last minute to hold a team meeting over lunchtime, to photocopying files and serving coffee.

In the morning, when she leaves for work, she already has a list of everything she has to do that day running through her head. She no longer takes a lunch break, choosing to advance her work instead. And in the evenings, she leaves the office later and later, thinking about all the things she hasn't been able to finish because of lack of time. She doesn't allow herself any respite and is beginning to feel exhausted.

One day, the sales director asks her to send out a mailing to major customers and sends her the whole file around midday. The mail has to be drafted, printed, labelled and put into envelopes. That's 1,000 letters. Everything has to be ready by 3 p.m., which is the last post collection of the day at the company. He's constantly in and out of her office, checking that everything is running smoothly and that his letter will leave on time.

### How to qualify this situation?

The photocopier finally jams, Alexandra can't finish the job, her heart starts beating abnormally fast and she collapses.

This is a tachycardia attack triggered by stress. The doctor decides to sign her off for a period of enforced rest lasting 8 months.

### What are the mechanisms and factors behind stress?

This situation<sup>11</sup> is typical of a stress-related problem: this employee is overwhelmed by her workload.

Work-related stress is now one of the major health problems that organisations and companies will have to deal with, or are already having to deal with. It's an occupational risk on two counts: scientific studies have shown that the risk of psychosomatic disorders, burnout, hypertension or depression increases when a stressful situation lasts a long time or is repeated frequently.

The difficulties this secretary is encountering are not deliberately created to break her down; they are linked to the organisation of her work and the workload. Additionally, the fact that there is no consultation between the two managers, with it be with regard to workload distribution, the priorities of each in terms of the department's imperatives, or the resources needed to achieve them.

### What can be done?

In this example, preventive measures could focus on better planning of the workload, taking everyone's priorities into account. This workload could also be the subject of a joint working meeting each week. For example, entrusting the telephone calls to another assistant when she has to work on writing reports that require a lot of concentration.



<sup>11</sup> Source: J'ai mal au travail, stress, harcèlement moral et violences - INRS - 2004.

## Burnout: preventing professional exhaustion<sup>12</sup>

Many consider burnout to be the professional evil of our century. And with good reason: cases of burnout, or work-related exhaustion syndrome, are increasing rapidly. A psychologist specialising in the subject explains how to recognise these cases and, more importantly, how to prevent them. Burnout can have serious consequences for those it affects. It's therefore important to know how to recognise it, so you can better protect yourself.

### The cause: our chronic stress

Literally, to experience burnout is to "burn from the inside out". "It's a gradual process of wear and tear that originates in the workplace," explains the psychologist. What's the cause? The chronic stress that many of us experience at work. "Contrary to popular belief, the primary cause of burnout is not psychological, but physiological. It is caused by severe and repeated stress.

Stress is a physical reaction that puts the body on alert in the event of danger. The problem is that today, urgency has become a way of life. People are on the alert 24 hours a day. Result: their bodies are exhausted. And this underlying fatigue will have an impact on their morale". Doubts about their skills and qualities, self-deprecation, irritability... Very quickly, emotional exhaustion is added to the state of physical exhaustion.

### An insidious process

Burnout "is a process, not a state", says the psychologist. A process that can vary in severity. "You don't have to go all the way to the bottom to bounce back. And burnout develops very slowly".

But one day, you reach the limit of your exhaustion limits. We hear things like "suddenly I snapped", "he/she just went berserk". The thing about burnout is that the person suffering from it often doesn't realise it straight away. Neither do the people around them. "This person will tend to do a lot," analyses the psychologist. "They think about their work constantly, and always make themselves available and do things at a frenetic pace without necessarily realising it. In so doing, they lose contact with themselves, forget themselves, and end up ignoring their limits". Until the day they lose control.



<sup>12</sup> Source: testimonial published in [psychologie.com](http://psychologie.com) – octobre 2011.

## 2. What trade union action should the staff delegation take to deal with psychosocial risks?

**The delegation plays a key role in terms of preventing psychosocial risks. It has a number of levers at its disposal on which it must try to act:**

- remind employers of their obligations in terms of health and safety at work;
- draw everyone's attention to the issue of psychosocial risks;
- try to impose a psychosocial risk assessment within the company;
- promote the idea that it is by transforming work and organisation that we can take action to prevent psychosocial risks;
- encourage employee participation in this transformation process (involving employees in the analysis of their work...);
- ask for a steering committee to be set up with a multi-disciplinary membership. (management, employee representatives, prevention specialists, experts, etc.);
- know how to recognise and develop alert procedures for situations of suffering at work;
- encourage discussion that could lead to a charter on respect for human dignity at work;
- request a clear position from management on this issue;
- develop (through training) a specific methodology for investigating accidents or near-accidents related to suffering at work.

## 3. Who can take action in cases of psychosocial risks?

### 3.1. Can the delegation call in an expert?

- Yes, to **assess the presence and extent of psychosocial risks in the company**. Article L.412-2 of the Labour Code states that the delegation may decide to appoint an external expert when it considers that the matter is of decisive importance for the company or the employees. Unless there is a prior agreement to the contrary, the company's financial contribution is limited to one expert and may not exceed 0.10% of the total annual payroll of employees declared by the employer to the Joint Social Security Centre during the year preceding the decision on the mandate<sup>13</sup>.

The head of the company must be informed in advance of the nature of the mandate thereby conferred. Similarly, in companies with a staff delegation, the latter may decide, at the request of the delegates or the head of the company, to entrust specific questions to a joint examination by a professional employers' organisation and a trade union which benefits from general or sectoral national representativeness.

- Yes, **in the event of a risk situation**, whether or not it was revealed by an accident at work or a work-related illness. And also when any major change is made to health and safety conditions at work: changes to working hours, organisation... for example, the delegation may call on occupational health services, which may decide, depending on the context and the nature of problem to be addressed, to request the input of an ergonomist or a psychologist, or an occupational physician, for an opinion or to intervene with the employer. In the event of imminent danger, the delegation may involve the Inspectorate of Labour and Mines (ITM) or the Occupational Health and Environment Division of the Ministry of Health.

<sup>13</sup> Grand-Ducal Regulation of 15 December 2017 implementing Article L. 412-2 of the Labour Code.

### 3.2. In the event of psychosocial risks in the workplace, who can the Health and Safety Representative turn to for support, with the support of the staff delegation?

To assess psychosocial risks in the workplace, specialist services are being developed or are already operational, for example in some occupational health services. When choosing a service provider, it is important to ensure that the necessary skills are available (in this case, those of an occupational psychologist or ergonomist) to support such a complex process.

In the event of a known and imminent danger, the Health and Safety Representative, with the support of the staff delegation, must notify the employer, who is responsible for the health and safety of their employees, and the worker in question.

Once the employer has been informed of the facts, they must do everything in their power to resolve the problem. If they feel that they do not have the necessary skills, they can call in an external party, such as internal or external occupational health services. Their role is to provide assistance to employees who request it, and they can advise the employer of any physical or psychological hazards they identify. If the medical opinion highlights psychological or physical problems, the employer must take the expert's opinion into account.

If they refuse, the delegation must inform the ITM, whose role is to intervene with the employer to ensure that they take all necessary steps to protect the health and safety of employees.

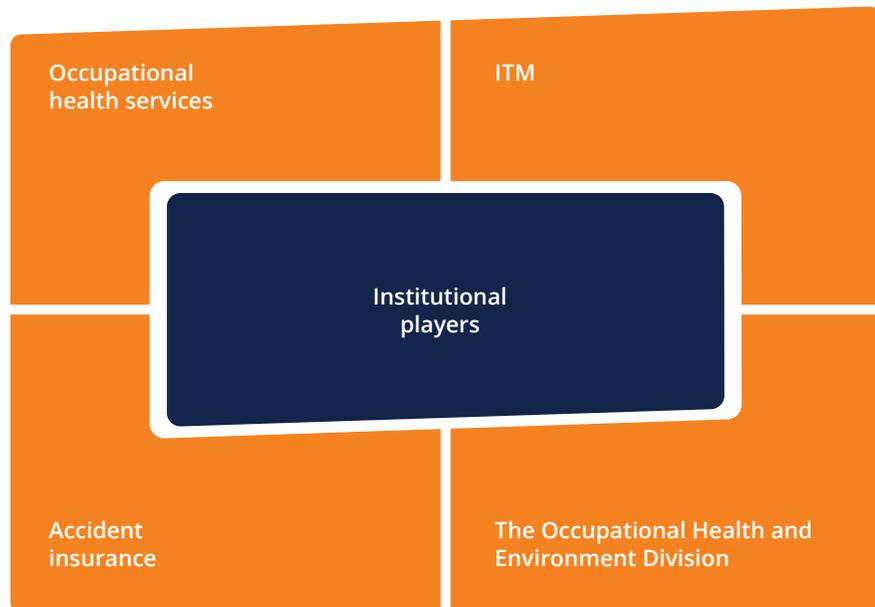


Role and mission of key players involved in health and safety at work

The key players within the company



Players with decisive roles outside the company



\* TD = designated worker  
 \*\* HSO = Health and Safety Representative

### Factors for success in implementing a risk prevention policy in terms of health, safety and psychosocial risks

An ESENER survey by the Agency for Safety and Health at Work was carried out in Europe on new and emerging risks in 2009, 2014 and 2019. It questioned managers, employees and their Health and Safety Representatives about psychosocial risks, in this case work-related stress, violence and harassment. The data also made it possible to analyse employee involvement in OHS (occupational health and safety) management, an important factor in the successful implementation of preventive measures in the workplace.

Here are the main findings:

- OHS policies are more common in large companies and differ according to country and the OHS management culture;
- risk assessments are more common in companies with a health and safety officer, and in the most dangerous sectors;
- employee representation is a key factor in the consideration of OHS issues;
- the participation of operational managers is a key factor in the implementation of good OHS practices;
- accidents, musculoskeletal disorders and stress at work are the main concerns for companies. Violence, bullying and harassment are cited as major concerns;
- companies are offering training and making changes to the way work is organised to manage psychosocial risks;
- compliance with legal obligations and staff demands are the main factors in driving the management of OHS and psychosocial risks;
- the main obstacles to managing psychosocial risks: the sensitive nature of the subject, lack of awareness and resources;
- the role of the social partners remains crucial in implementing effective measures;
- management involvement is seen as a key factor in the success of OHS management.

#### ***Examples of situations that can alter the relationship with work and expose people to psychosocial risks***<sup>14</sup>

- *having to perform actions that go against one's ethics;*
- *having to achieve paradoxical objectives (quantity/quality);*
- *living with an uncertain future;*
- *not having any control over the organisation of their work;*
- *not having any control over their career path;*
- *not seeing the results of their work recognised;*
- *having to break official rules to get the job done;*
- *have to hide the way they work;*
- *being confronted with emotionally charged situations (death of patients, misery of users) without the means to talk about them;*
- *living in a climate of constant social tension;*
- *experiencing exclusion at work;*
- *being constantly on the go, with no time to breathe;*
- *seeing a profession transformed and experience/qualifications no longer relevant;*
- *being confronted with public violence;*
- *experiencing conflicts (within a team, between employees, with supervisor, the employer, etc.);*
- *being in a perpetual hurry to produce..*

## 4. The main prejudices regarding psychosocial risks<sup>15</sup>

- ▶ "A burnout is due to a person's 'fragility'".

**FALSE**

Because no one is immune. Burnout affects men and women in all professions. What do they have in common? "More often than not, they are people who are very committed to their work, who love their company, people who are 'pillars' in the workplace. They are the ones who bear the brunt of tension and stress". Individuals who are perfectionists, in search of recognition, devoted to their company... who count neither their hours nor their energy and find themselves the most vulnerable to what is known as "ideality sickness".

- ▶ "There is such a thing as "good stress", which enables employees to give their best".

**FALSE**

It is widely believed that good stress enables employees to perform at their best, while bad stress makes people ill. Scientifically, however, there is no such thing as good or bad stress, but rather a phenomenon whereby the body adapts to its environment. On the other hand, we need to differentiate between "acute stress" and "chronic stress", which have different effects in terms of health.

Acute stress corresponds to our body's reactions when we are faced with a specific threat or challenge (public speaking, change of job, unexpected situation, etc.). When the situation comes to an end, the symptoms of stress stop shortly afterwards.

Chronic stress is our body's response to a stressful situation that builds up over time: every day at work, we have the impression that what is asked of us at work exceeds our capacities. Chronic stress always has a harmful effect on health.



<sup>15</sup> Source: La prévention des risques psychosociaux – vademecum à l'usage des agents de contrôle de l'Inspection du travail et des médecins du travail – Regional Department for employment and professional training.

► **"Stress is linked to family problems".**

**TRUE AND FALSE**

Whether this explanation is true or false, it says nothing about whether or not there are problems at work. Especially since, if we accept that family problems spill over into the workplace, the reverse is also true: problems at work can have an impact on family balance.

► **"It's his character, he can't stand the pressure".**

**TRUE AND FALSE**

Whether this explanation is true or false, it says nothing about the pressure the person is being subjected to. For example, when an employee coughs after coming into contact with a chemical product, we check that the product is dangerous, and don't just say that they must have caught a cold!

What's more, looking at individual abilities to withstand stress is an illusion: our abilities vary over time, and so do the demands of the job. An employee who might experience difficulties in one context could be an extremely important resource in another. Add to that the fact that "it's up to work to adapt to people, not people to adapt to work" (prevention principle no. 4 of article L.312-2 of the French Labour Code), and you've come full circle!

► **"Stress is part of the job, there's nothing you can do about it".**

**TRUE AND FALSE**

Some professions are intrinsically highly demanding. But we can act on regulatory factors that limit the effects. Stress is such a complex matter due to its multi-faceted nature. And as such, it's an opportunity for the company to be able to act on extremely varied levers for improvement.

► **"There's no stress as no one has complained to me".**

**FALSE**

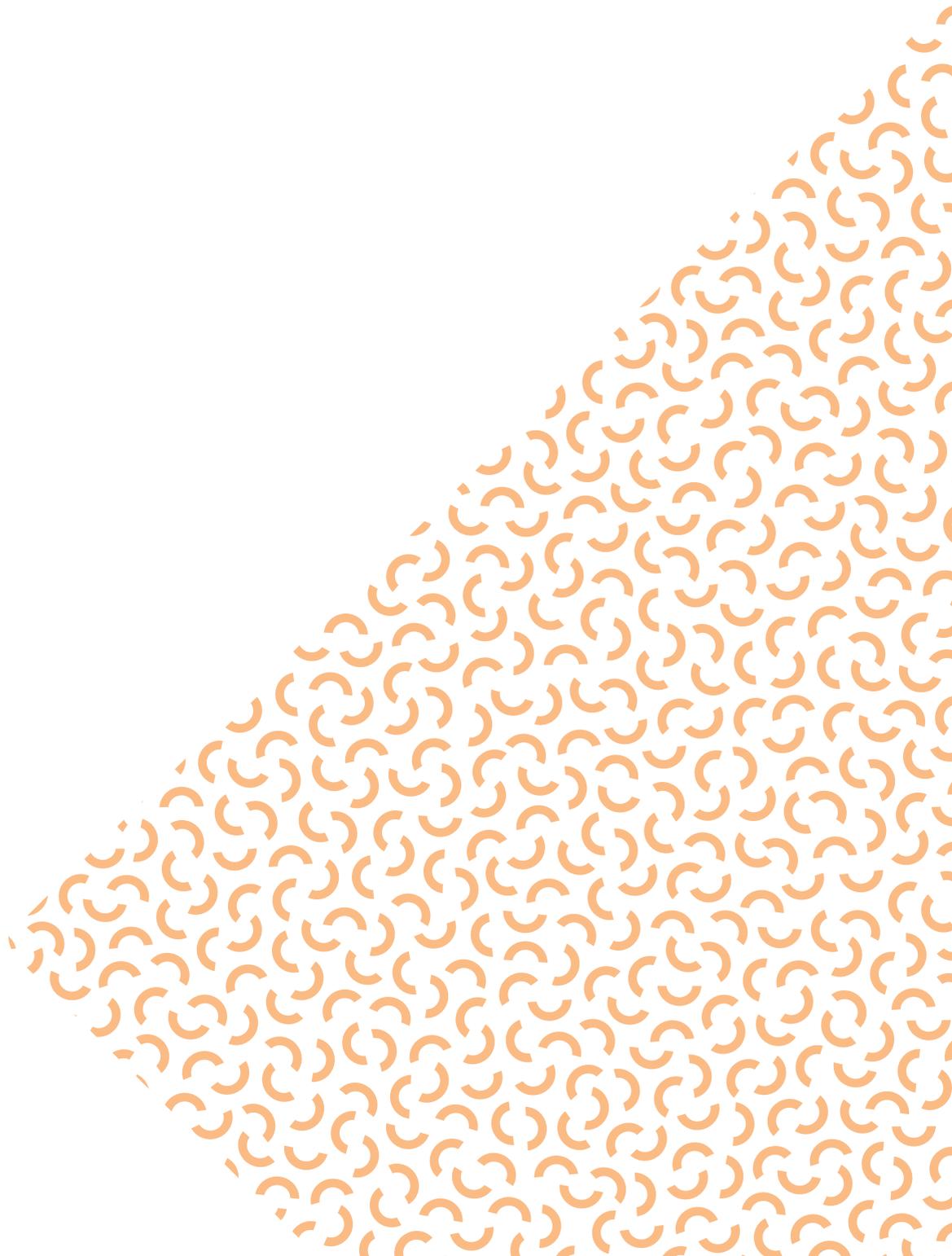
The absence of complaints does not mean that stress is not present. The fact that no complaints are received is sometimes a sign that it is not possible, from an organisational or cultural point of view, to raise the alarm about working conditions. If it is impossible to discuss the difficulties experienced at work in the company, it is not easy for an employee to admit to a difficulty that they think they are the only one feeling.

Furthermore, in terms of prevention and cost for the company, it is more cost-effective to act before a complaint is filed.

► **"You get used to stress".**

**FALSE**

We don't get used to stress: in fact, the more we have to deal with it, the more our resistance diminishes. Past exposure to a number of crisis situations makes us more sensitive to the effects of new stress factors. Even the toughest boxer can't take the blows forever.







### III. THE MAIN LEGAL REMEDIES

*"It's easier to contain and carry out an act of violence than an act of justice."*

JEAN LE ROND D'ALEMBERT<sup>16</sup>

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<sup>16</sup> Co-author with Diderot of the Encyclopédie 1717-1783.

## 1. Legal recourse in Luxembourg

According to the report by the Observatoire de l'Absentéisme au Travail (Observatory of Absenteeism at Work)<sup>17</sup>, mental and behavioural disorders<sup>18</sup> (14.5%) are behind diseases of the osteo-articular system (15.4%) as the main source of work incapacity (in terms of number of sick days) among employees resident in Luxembourg<sup>19</sup>.

The tendency to have suicidal thoughts is significantly higher among employees who are more exposed to psychological harassment (mobbing), emotional demands at work (the job often requires you to hide your own emotions), working under pressure and competition between colleagues<sup>20</sup>.

At present, psychosocial risks (PSR) are not legally or statistically defined in Luxembourg, but there are legal remedies available.

### 1.1. Q&A on psychological harassment

#### DEFINITIONS:

#### What do we mean by psychological harassment or "mobbing"?

According to Article L. 246-2 of the Luxembourg Labour Code, psychological harassment in the context of employment relations is any conduct which, by its repetitive or systematic nature, undermines the dignity or psychological or physical integrity of a person.

In this respect, business travel, professional training and communications related to or arising from work by any means whatsoever, even outside normal working hours, are an integral part of carrying out one's work.

*Legal reference: Article L. 246-2 of the Labour Code*

#### Question 1. Is there a law on psychological harassment?

Yes.

Chapter VI of the Labour Code deals with the protection of employees against psychological harassment in the course of their employment.

It stipulates that employers and employees, as well as any of the company's customers or suppliers, must refrain from any form of psychological harassment in the context of labour relations.

All employees, as well as trainees, apprentices and pupils and students working during the school holidays, are therefore protected.

*Legal reference: Chapter VI of the Labour Code*

*Case law: Superior Court of Justice (CSJ) of 26 May 2011, no. 35822 of the roll*

17 L'Observatoire de l'Absentéisme au Travail (2021). Absenteeism due to illness in 2020.

18 Depression accounts for the majority of diagnoses associated with absences in this category.

19 Figures not available for cross-border workers.

20 Chambre des salariés (CSL) and Ligue luxembourgeoise d'hygiène mentale (LLHM) (2019). Presence of suicidal thoughts among workers.

**Question 2. Is psychological harassment punishable under Luxembourg law?**

Yes.

A criminal fine of between €251 and €2,500 is imposed on anyone who fails to comply with these provisions, i.e. according to Article L. 246-7 of the Labour Code:

1. an employer, employee, customer or supplier of the company who commits acts of psychological harassment in disregard of the prohibition referred to in Article L. 246-3 paragraph 1;
2. an employer who fails to take steps to put an immediate stop to acts of psychological harassment in breach of Article L. 246-3, paragraph 2;
3. an employer who fails to determine the measures to be taken to protect employees against psychological harassment at work in breach of Article L. 246-3, paragraph 3;
4. an employer who fails to carry out an internal assessment in breach of Article L. 246-3, paragraph 4;
5. the employer, the hierarchical superior, the work colleague or any outside person in a relationship with the employer, in particular the company's customer and supplier, who does not comply with the prohibition referred to in Article L. 246-4, paragraphs 1 and 2.

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

In addition, Article L. 246-3 paragraph 5 of the Labour Code provides for a procedure enabling the ITM to hear the employee(s) who consider themselves to be victims of psychological harassment, as well as the employer or their representative. A report containing recommendations and proposals for action, as well as an injunction, is sent to the employer to put an end to any act of psychological harassment. In the event of non-compliance, the director of the ITM may impose an administrative fine of up to €25,000.

*Legal references: Articles L. 246-3 and L. 246-7 of the Labour Code*

*Case law: CSJ of 29 March 2007, no. 30765 of the roll; CSJ of 26 May 2011, no. 35822 of the roll*



### ***Question 3. Who is liable in cases of psychological harassment?***

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The employer is responsible.

Even if the employer or their replacement is not the cause of the psychological harassment, they may still be liable as the head of the company.

The same applies if the psychological harassment comes from another employee or the victim's line manager.

This is demonstrated in the Court ruling that the employer's obligation to protect the health and safety of employees in the workplace is an obligation of result.

*Legal reference: Article L. 246-3 of the Labour Code*

*Case law: CSJ of 21 June 2011, no. 36790 of the roll*

### ***Question 4. What are the employer's obligations in terms of psychological harassment?***

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Under article L. 246-3 of the Labour Code, the employer is required to determine, after informing and consulting the staff delegation or, failing that, the entire workforce, the measures to be taken to protect employees against psychological harassment in the course of their employment.

These measures must be determined by the employer, for example in the form of anti-harassment guidelines or an anti-harassment section in the internal regulations.

These measures, which must be adapted to reflect the nature of the business and the size of the company, include the following aspects at the very least:

1. the definition of the resources available to victims of psychological harassment, in particular the reception, help and support required by victims, the measures for their care and return to work, as well as information on how to contact the staff delegation;
2. the rapid and impartial investigation of acts of psychological harassment in the workplace;
3. raising awareness among employees and managers of the definition of psychological harassment and how it can be managed within the company and sanctions against the perpetrators of acts of mobbing;
4. information for the staff delegation or, failing that, all employees, regarding the employer's obligations in terms of preventing psychological harassment in the workplace;
5. employee information and training.

Under no circumstances may these measures be implemented in a manner that is detrimental to the victim of psychological harassment.

When an employer is informed of a situation involving psychological harassment in work relations, they must immediately take measures to stop acts of psychological harassment and an internal assessment must be carried out into the effectiveness of preventive measures and the possible implementation of new preventive measures to be taken, particularly in relation to the organisation of the company, the review of procedures applied in the event of psychological harassment and the provision of information to employees.

This assessment and any subsequent reassessments are carried out after consultation with the staff delegation or, failing that, with the entire workforce.

As a general rule, it is up to the employee representatives and the equality representative to set an example by refraining from harassment.

If the employer observes or learns of the existence of acts of psychological harassment against one of their employees, or if such acts are reported to the employer by an employee, whether they are involved or not, a staff representative or a trade union, the employer is obliged to investigate the acts they know about or which have been reported to them.

In all cases, the employer must put an end to the misconduct.

*Legal reference: Article L. 246-3 of the Labour Code*

**Question 5. Can an isolated wrongful act be considered to constitute psychological harassment?**

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No.

Psychological harassment is repeated misconduct that is vexatious, humiliating or degrading and that disrupts the person who is the victim of the harassment in carrying out their duties. In view of the very definition of psychological harassment, an isolated act is therefore not sufficient to constitute psychological harassment.

Consequently, any isolated behaviour that is unfair, inappropriate or vexatious does not constitute harassment, even if it is wrongful.

It has been ruled that a single act of physical violence, even if it is vexatious or violates the employee's dignity, and even if it has particularly serious consequences for the employee's health, does not constitute psychological harassment.

**Nota Bene**

*Facts which, in isolation, are devoid of meaning can become wrongful if repeated and constitute harassment.*

*Case law: CSJ of 28 June 2007, no. 30994 of the roll; CSJ of 17 September 2009, no. 33735 of the roll*

**Question 6. Can repeated acts that undermine the dignity of one or more employees constitute psychological harassment?**

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Yes.

Article L.246-2 of the Luxembourg Labour Code defines psychological harassment as any conduct which, by its repetition or systematic nature, undermines the dignity or psychological or physical integrity of a person.

Moreover, it is up to the employee claiming to be the victim of psychological harassment to prove to what extent the alleged acts, through their repetition, may have undermined their dignity or psychological or physical integrity, thereby constituting psychological harassment.

*Legal reference: Article L.246-2 of the Labour Code*

**Question 7. Who is responsible for providing evidence of psychological harassment?**

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In cases of psychological harassment, the onus is on the victim to prove in full the reality of the acts of psychological harassment that they are accusing the harasser of committing.

**Examples**

- *If the employer simply denies that there has been any psychological harassment, without providing any further explanation, and the employee merely states that they have been harassed without providing any evidence, the employee will lose the case, since the courts will consider that the employee has not provided proof to back up their allegations.*
- *It is also up to the employee claiming to be the victim of psychological harassment to prove to what extent the alleged acts, through their repetition, may have undermined their dignity or psychological or physical integrity.*

*Case law: CSJ of 28 June 2007, no. 30994 of the roll; CSJ of 16 December 2010, no. 33684 of the roll*

**Question 8. Is it necessary to show that the perpetrator intended to act in order to prove psychological harassment?**

No.

Article L.246-2 of the Labour Code defines psychological harassment in the context of employment relations as being any conduct which, by its repetitive or systematic nature, undermines the dignity or psychological or physical integrity of a person.

However, the text makes no reference to the voluntary or involuntary nature of the behaviour, which suggests that voluntary behaviour or intent to harm on the part of the harasser are not required.

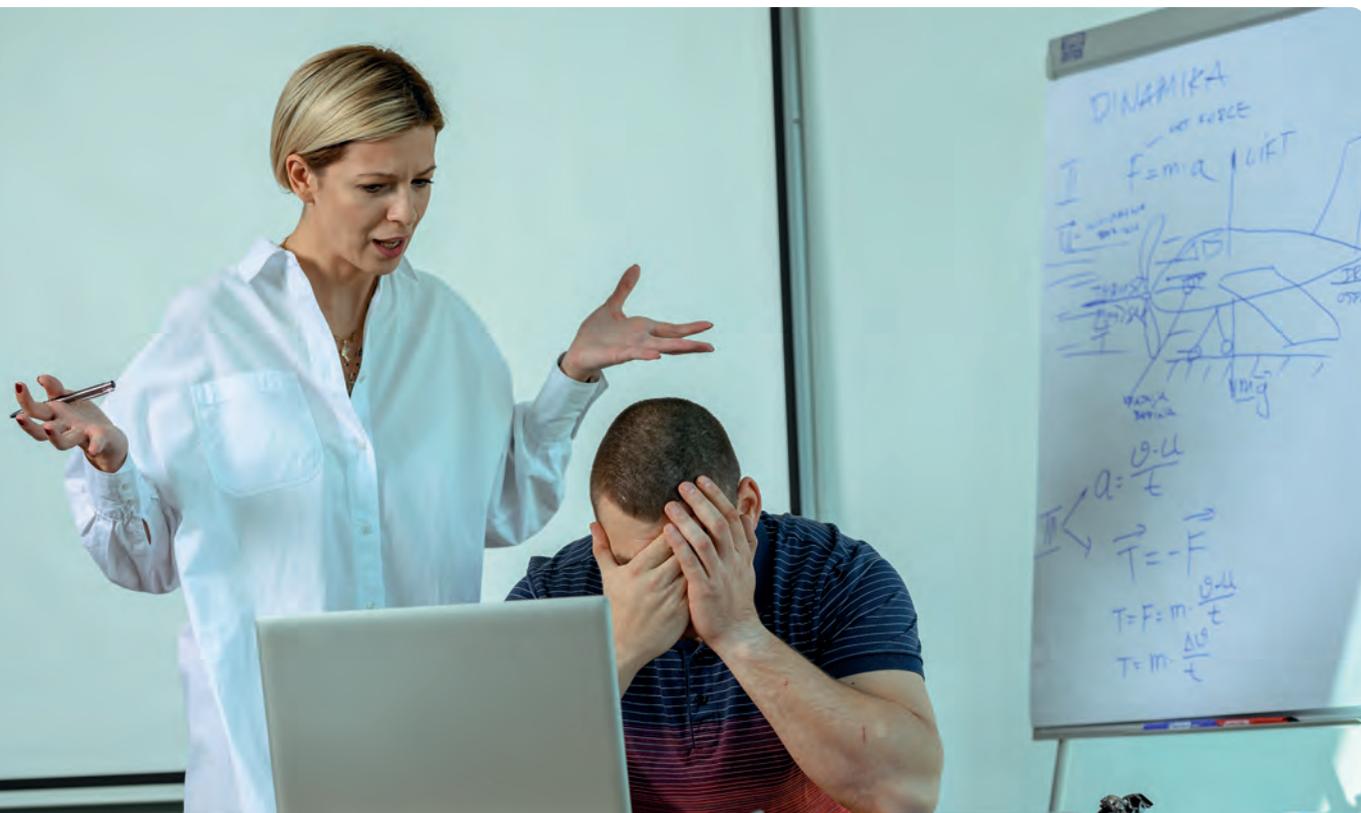
**Question 9. What types of acts do the courts consider to be psychological harassment?**

The following are considered to be acts of psychological harassment:

- isolating someone and refusing to communicate with them;
- unequal and unfair treatment compared to other employees;
- misuse of disciplinary powers;
- failure to pass on useful information;
- discrediting them to colleagues;
- requesting countless hours of overtime;
- successive changes in positions held.

Reference: 45 mobbing actions by Leymann (1996) <sup>21</sup>

Case law: TT of 12 February 2004, no. 735/04; CSJ of 28 June 2007, no. 30994 of the roll; CSJ of 26 May 2011, no. 35822 of the roll



21 Source: LEYMAN, Heinz (1996) – Mobbing : La persécution au travail – éditions du seuil.

### **Question 10. What types of acts should not be considered as constituting psychological harassment?**

Psychological harassment is not to be confused with the employer merely exercising their power to control and monitor the activity of their staff during working hours, which represents a constraint inherent in any relationship of subordination.

The following acts do not constitute psychological harassment:

#### **Examples**

- *simple circumstances, rightly or wrongly misunderstood by the employee, linked to management imperatives and hazards inherent in the life of the company and often leading to a questioning of the resulting situation;*
- *the employer's actions in having the employee monitored by his trusted doctor during a period of incapacity for work do not constitute psychological harassment;*
- *the normal exercise of the power to supervise and criticise an employee for not having properly fulfilled the duties assigned to them.*

*Case law: CSJ of 17 September 2009, no. 29533 of the roll; CSJ of 4 March 2010, no. 34311 of the roll*

### **Question 11. What measures must employers take to protect against psychological harassment?**

The employer determines, after informing and consulting the staff delegation or, failing that, the entire workforce, the measures to be taken to protect employees against psychological harassment in the course of their employment.

These measures must be determined by the employer, for example in the form of anti-harassment guidelines or an anti-harassment section in the internal regulations.

These measures, which must be adapted to reflect the nature of the business and the size of the company, include the following aspects at the very least:

1. the definition of the resources available to victims of psychological harassment, in particular the reception, help and support required by victims, the measures for their care and return to work, as well as information on how to contact the staff delegation;
2. the rapid and impartial investigation of acts of psychological harassment in the workplace;
3. raising awareness among employees and managers of the definition of psychological harassment and how it can be managed within the company and sanctions against the perpetrators of acts of mobbing;
4. information for the staff delegation or, failing that, all employees, regarding the employer's obligations in terms of preventing psychological harassment in the workplace;
5. employee information and training.

Under no circumstances may these measures be implemented in a manner that is detrimental to the victim of psychological harassment.

*Legal reference: Article L.246-3 of the Labour Code*

### **Question 12. What procedure should employers follow if acts of harassment occur?**

When an employer is informed of a situation involving psychological harassment in work relations, they must immediately take measures to stop acts of psychological harassment and an internal assessment must be carried out into the effectiveness of preventive measures and the possible implementation of new preventive measures to be taken, particularly in relation to the organisation of the company, the review of procedures applied in the event of psychological harassment and the provision of information to employees.

This assessment and any subsequent reassessments are carried out after consultation with the staff delegation or, failing that, with the entire workforce.

*Legal references: Articles L.311-1, L.311-2, L.312-1, L.312-7 and L.246-3 of the Labour Code*

### **Question 13. What sanctions can employers take against those perpetrating acts of harassment?**

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If it is established that harassment has occurred, appropriate measures will be taken against the perpetrator(s), after consultation with employee representatives.

They may include disciplinary action and sanctions, up to and including dismissal.

*Legal reference: Harassment and Violence at Work Convention of 25 June 2009*

### **Question 14. Can victims and witnesses of harassment be subject to reprisals?**

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No.

Employees may not be subjected to reprisals because of their protests or refusals to accept bullying behaviour on the part of the employer or any other hierarchical superior, work colleagues or external persons in contact with the employer.

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

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

### **Question 15. How might the victim of psychological harassment react?**

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1. If psychological harassment in work relations persists or if the employer fails to take appropriate measures, the employee who believes they are a victim or the staff delegation, with the agreement of the employee concerned, can refer the matter to the Inspectorate of Labour and Mines (ITM).

The ITM receives the employee and the alleged perpetrator of the psychological harassment, and possibly other employees, and the employer or their representative.

Following the investigation of the case and the hearings held, the ITM will draw up a report containing, where appropriate, recommendations and proposals for measures to put an end to the acts of psychological harassment.

No later than forty-five days after receipt of the file, the Director of the Inspectorate of Labour and Mines or their representative will send the complete report to the employer concerned. In the event of psychological harassment, the Director of the Inspectorate of Labour and Mines will urge the employer to take the necessary measures to put an immediate end to the harassment within a period of time determined on the basis of the information contained in the report.

In the event of failure to comply with the duly notified injunction within the specified time limit, the Director of the Inspectorate of Labour and Mines is entitled to impose an administrative fine on the employer.

2. An employee who has been the victim of psychological harassment may refuse to continue to fulfil the employment contract and terminate it without notice on serious grounds, with damages payable by the employer whose fault led to the immediate termination of the contract.

In cases of resignation motivated by an act of harassment, the jobseeker may, by simple request, ask the president of the competent labour court to authorise the provisional award of full unemployment benefit pending the final judicial decision in the dispute concerning the legality or validity of their resignation.

The president of the labour court issues an order that is eligible for appeal within 40 days of their notification to the President of the Court of Appeal.

The person claiming to be a victim of harassment must be registered as a jobseeker and have previously brought the dispute concerning their resignation before the relevant employment tribunal.

The president of the labour court determines the period for which provisional payment of unemployment benefit is authorised, up to a maximum of one hundred and eighty-two calendar days.

The unemployed person may request an extension of the authorisation for provisional payment of unemployment benefit, provided that the total duration of the authorisation does not exceed three hundred and sixty-five calendar days.

The judgment or ruling declaring the resignation justified on the grounds of harassment orders the employer to reimburse the Employment Fund (Fonds pour l'emploi) for the unemployment benefit paid by the Fund to the employee for the period or periods covered by the wages or benefits that the employer is required to pay pursuant to the judgment or ruling.

The amount of unemployment benefit that the employer is 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 order.

The victim of psychological harassment may therefore take legal action to stop the harassment and claim damages.

In order to be able to take legal action, employees are advised to gather evidence from work colleagues, staff representatives, trade union members and medical staff, and to draw up a chronological list of the facts relating to the harassment to which they have been subjected.

### Nota Bene

*Unlike sexual harassment, the burden of proof in the case of psychological harassment lies with the victim.*

It is therefore up to the employee who is the victim of psychological harassment to establish that the employer acted wrongfully, and therefore may be ordered to pay damages.

Victims are therefore advised to retrace the events in detail and over time, and to keep any correspondence to which they may have had legal access in the course of their work and which documents the harassment.

### Examples

- emails;
- warning letters;
- sanctions...

### Attention

- *To be held liable for psychological harassment, the employer must have actual knowledge of the harassment. This knowledge is acquired through information given to the company's managers themselves or to human resources managers, staff representatives and trade union representatives.*
- *The judgment or ruling declaring that an employee's resignation motivated by an act of harassment is unjustified orders the employee to repay, in instalments if necessary, all or part of the unemployment benefit advance payments they received to the Employment Fund.*
- *The employee may apply for partial or deferred reimbursement to the State of the advance unemployment benefit payments they received. However, the employee must expressly request such a repayment facility, and the court cannot substitute itself for the employee in deciding at its own initiative to reduce the amount to be repaid.*
- *In cases where the action brought by the employee on the grounds of resignation motivated by an act of harassment is not brought to a conclusion due to a withdrawal of the complaint, the employee is obliged to reimburse to the Employment Fund the advance unemployment benefit payments they received. If the withdrawal is the result of a settlement between the employee and the employer, unemployment benefit will be reimbursed half by the employee and half by the employer.*

*Legal reference: Article L. 246-3 and L. 246-6 of the Labour Code; Law of 5 June 2009 inserting an article 442-2 into the Criminal Code to criminalise obsessive harassment*

### Question 16. Can a victim of psychological harassment react to dismissal?

As in the case of sexual harassment or discriminatory harassment, the victim may, within 15 days of being notified of their dismissal, submit a simple request to the president of the labour court, who will rule as a matter of urgency, with the parties heard or duly summoned, and declare the dismissal null and void and to order that their employee is kept in position or, where appropriate, that the employee be reinstated.

***Question 17. What is the role of the staff delegation?***

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In companies with 15 or more employees, the staff delegation is responsible for protecting employees against psychological harassment in the course of their employment. To this end, it may suggest any preventive action it deems necessary to the employer.

The staff delegation is empowered to assist and advise an employee who has been subjected to psychological harassment. It is obliged to respect the confidentiality of facts of which it has knowledge in this regard, unless otherwise exempted by the employee in question. An employee who is the subject of psychological harassment has the right to be accompanied and assisted by a member of the staff delegation or, failing that, by a person of their choice from among the members of staff in interviews with the employer, or the employer's representative, which take place as part of the investigation into psychological harassment.

*Legal reference: Article L.246-5 of the Labour Code*



## 1.2. Q&A on sexual harassment<sup>22</sup>

### DEFINITIONS: What do we mean by sexual harassment?

The Labour Code defines sexual harassment in the context of employment relations as "any behaviour with a sexual connotation or any other behaviour based on sex which the perpetrator knows or ought to know affects the dignity of a person, when one of the following conditions is met:

- the behaviour is unwanted, inopportune, abusive and hurtful to the person subjected to it;
- the fact that a person refuses or accepts such conduct on the part of an employer, employee, customer or supplier is used explicitly or implicitly as the basis for a decision affecting that person's rights in relation to vocational training, employment, continued employment, promotion, pay or any other decision relating to employment;
- such behaviour creates an intimidating, hostile, degrading, humiliating or offensive environment for the person who is the subject of it.

The behaviour may be physical, verbal or non-verbal. The intentional element of the behaviour is presumed".

*Legal reference: Article L. 245-1 of the Labour Code*

### **Question 1. Who is protected against sexual harassment?**

The following are protected against sexual harassment:

- employees;
- trainees;
- apprentices and
- pupils and students during the school holidays.

*Legal reference: Article L. 245-1 of the Labour Code*

### **Question 2. What are the employer's obligations in terms of sexual harassment?**

The employer is obliged to take all necessary preventive measures to ensure the protection of the dignity of all persons in the context of their employment relationships. These measures must include information measures.

Employers must refrain from any form of sexual harassment in the course of their employment relationship.

Employers are obliged to ensure that any sexual harassment of which they become aware ceases immediately.

#### **Nota Bene**

*Employers must not only refrain from any form of sexual harassment, but must also prevent and put a stop to any harassment by colleagues, superiors or other persons with whom the employer has dealings, such as customers or suppliers.*

*Legal references: Articles L. 245-4, L. 245-5, L. 311-1, L. 312-1, L. 312-2 and L. 312-6 of the Labour Code*

<sup>22</sup> Source: Question and answer posted online by the ITM at the following address: <https://itm.public.lu/fr/questions-reponses/droit-travail/harcelement/a.html>

### ***Question 3. What rights and means are available to victims of sexual harassment?***

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Under no circumstances may measures to put an end to sexual harassment be taken to the detriment of the victim of the harassment.

Any provision or act taken to the detriment of the victim of harassment, and in particular any termination of the victim's employment contract, is automatically null and void.

In the event that their employment contract is terminated, the employee who is a victim of harassment may, within 15 days of being notified of their dismissal, submit a simple request to the president of the labour court, who will rule as a matter of urgency and declare the dismissal null and void and to order that the employee is kept in position or, where appropriate, that the employee be reinstated.

The delegate responsible for ensuring equality between women and men, or in their absence, the staff delegation, if any, is responsible for ensuring the protection of salaried employees against sexual harassment in the course of employment. To this end, they may suggest any preventive action they deem necessary to the employer.

The staff delegation and the delegate responsible for ensuring equality between women and men, if there is one, are entitled to assist and advise an employee who is the subject of sexual harassment. They are required to respect the confidentiality of any facts of which they become aware in this respect, unless they are exempted from doing so by the person being harassed (with the agreement or permission of the person being harassed).

An employee who is the subject of sexual harassment has the right to be accompanied and assisted by a delegate in interviews with the employer, or the employer's representative, which take place as part of the investigation into sexual harassment.

*Legal references: Articles L. 245-5 and L. 245-6 of the Labour Code*

### ***Question 4. Can an employee who has been the victim of sexual harassment refuse to continue to fulfil the employment contract?***

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An employee who has been the victim of an act of sexual harassment may refuse to continue to fulfil the employment contract and terminate it without notice on serious grounds, with damages payable by the employer whose fault led to the immediate termination of the contract.

*Legal reference: Article L. 245-7 of the Labour Code*

### ***Question 5. Is an employee who is the victim of sexual harassment and resigns from their job still entitled to unemployment benefit?***

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In principle, an employee who resigns from their job is not entitled to unemployment benefit. However, if the resignation is the result of an act of sexual harassment of which the employee was a victim, the employee may be authorised by the President of the Labour Court to receive unemployment benefit on a temporary basis.

In order for the application for provisional unemployment benefit to succeed, the victim must first have lodged an application with the Labour Court, seeking a ruling that their resignation, based on sexual harassment, was justified in view of the employer's wrongful conduct in failing to take adequate measures to put an end to the sexual harassment.

*Legal reference: Article L. 245-7 of the Labour Code*

### ***Question 6. Who is responsible for providing evidence of sexual harassment?***

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Sexual harassment is deemed to be discrimination on the grounds of sex.

Victims of sexual harassment must therefore provide some evidence, i.e. they need only establish facts from which it can be presumed that sexual harassment has taken place (e.g. gestures or words with a sexual connotation, touching, etc.).

However, mere allegations or statements by the victim of sexual harassment are not enough. The victim must also provide proof of these allegations or statements (e.g. by producing witnesses or documents).

If the perpetrator of the sexual harassment is not the employer, the victim must also prove that they had informed the employer of the harassment committed by the perpetrator and that the employer did not take steps to stop the sexual harassment against them.

The burden of proof then shifts to the employer. The onus is then on the employer to justify their actions and prove that there was no sexual harassment or that it took all necessary measures to put a stop to the sexual harassment.

*Legal reference: Article L. 244-3 of the Labour Code*

*Case law: CSJ of 30 January 2003, no. 26327 of the roll*

## 2. Europe's position on these issues

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### 2.1. Stress, psychological harassment and violence in the workplace

The European social partners (UNICE, UEAPME and CEEP for the employers, ETUC, CEC and EUROCADRES for the employees) have signed European conventions on both stress at work and psychological harassment and violence in the workplace.

The European Convention on Stress at Work was signed in October 2004. The European Commission had emphasised the economic and social cost, drawing on studies by the Bilbao agency (EU-OSHA) which estimated the consequences of stress at work at several billion euros each year. Following the European initiative, the Economic and Social Council (CES) has also proposed to the Luxembourg social partners that they assess stress situations in companies and develop preventive measures.

The European Convention on Combating Harassment and Violence at Work, signed in 2007, obliges companies to state clearly that harassment and violence in the workplace will not be tolerated, specifies the procedure to be followed in the event of problems and recognises that the responsibility for determining, examining and monitoring appropriate measures lies with the employer, in consultation with employees and/or their representatives. The social partners had undertaken to apply these provisions by April 2010 at the latest.

The 2007 European Convention on combating harassment and violence at work was transposed to Luxembourg in the Convention of 25 June 2009 on harassment and violence at work.





## IV. TOOL CARDS

*"It is generally believed that work poses no danger to health, with the exception of exposure to pathogens, excessive work rhythm or accidents. As the saying goes: "work is health". As research progresses, we are beginning to introduce nuances."*

*Marc RENAUD<sup>23</sup>*

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<sup>23</sup> Holder of the Chair of Public and Social Policy at the University Institute of Lisbon.

## 1. Defining psychosocial risks

# TOOL CARD 1

## Measuring psychosocial risks (PSR) and methods<sup>24</sup>



*Michel Gollac identifies 6 families of psychosocial risk factors in the workplace.*

<sup>24</sup> Source: Michel GOLLAC (dir.) – “Les risques psychosociaux au travail : d’une question de société à des questions scientifiques” – Travail et emploi, n° 129, janvier-mars 2012 – La Documentation Française.

This grid can be used as a basis for developing a strategy to prevent psychological and social risks.

| Risk factors                                     | Problems giving rise to PSR   |
|--|---|
| <p>▶ <b>Work intensity and working hours</b></p> | <ul style="list-style-type: none"> <li>• The <b>intensity of the work</b> can be assessed in terms of its quantity, its complexity and the loss of quality it leads to.</li> <li>• <b>Pace constraints</b> linked to unrealistic or unclear objectives, quality standards to be met, multi-skilling and increased responsibilities.</li> <li>• <b>Working time</b>, with its atypical schedules (night shifts, evenings, weekends, 2 or 3 8-hour shifts), the obligation to work overtime without choosing to do so, and having to stay on the job despite being tired when staffing levels are low.</li> </ul>   |
| <p>▶ <b>Emotional demands</b></p>                | <ul style="list-style-type: none"> <li>• <b>Relations with the public</b> can be a source of violence, especially if the standardisation of responses does not meet their expectations.</li> <li>• <b>Contact with suffering</b> becomes a source of devaluation if action is impossible.</li> <li>• <b>The need to hide one's emotions in front of the public</b>, in situations of fear or risk, or when jokes are made, is stressful, as is the need to keep one's opinions to oneself and/or to simulate the behaviour expected in the company.</li> <li>• <b>Fear</b> is destabilising, whether it's the fear of an accident in risky work situations, the fear of external violence or the fear of not being up to the task in hand.</li> </ul> |
| <p>▶ <b>The quality of autonomy</b></p>          | <ul style="list-style-type: none"> <li>• <b>Lack of autonomy</b> in organising one's work (procedural or time autonomy), lack of opportunity for taking initiative.</li> <li>• <b>The inability to anticipate future tasks</b> due to a lack of predictability.</li> <li>• <b>Lack of opportunity to develop</b> or apply <b>new skills</b>.</li> <li>• <b>Monotony and boredom</b> linked to the repetition of tasks and the loss of pleasure at work.</li> <li>• <b>Autonomy without the necessary aids</b> and/or with very high demands.</li> </ul>   |

### Risk factors

#### ► Social relations at work

#### ► Conflicts of values about work

### Problems giving rise to PSR

- **Relationships with colleagues** become a risk when there is no cooperation and professional isolation is created; when the work collective does not translate into solidarity and conviviality but into competition; when it is difficult to discuss working conditions within the collective; when collective defence ideologies impose standards of behaviour on employees.
- **Relationships with superiors** become a risk when the latter is absent, is constantly monitoring employees, issuing unclear directives, lacking self-confidence, failing to communicate, failing to value the work of subordinates, and failing to listen or even be polite.
- **Other forms of relationship within the company.** The following are considered to be risks: mismatches between the work done and its remuneration, skills and remuneration, skills and career development, failure to assess work at its fair value, lack of procedural justice (e.g. unfair treatment, discrimination, etc.), lack of attention to workers' well-being.
- **Relations external to the company.** The social recognition of certain professions is a protective factor: a feeling of usefulness or prestige of the activity, but this protective effect is cancelled out if the company does not communicate its values, or does not give employees the means to do a job that lives up to the expectations of the public or customers.
- **Internal violence.** It leads to depression and even suicide. It may involve racial or sexist discrimination within the company or by customers, psychological harassment, the first signs of which may go unnoticed (isolation of the employee, lack of dialogue, harshness of relations, lack of respect, uninteresting tasks, exclusion from decision-making, etc.), or sexual harassment.
- **Ethical conflicts:** the hierarchy's request is contrary to professional rules or personal values.
- **Quality is hindered:** lack of time, lack of resources, lack of autonomy, pressure from quantitative assessments preventing quality work.
- **Work that serves no purpose.**

...continued

## Risk factors

## ► Insecurity of the work situation

## Problems giving rise to PSR

**The insecurity of the work situation** is a destabilising factor for workers. It may include:

- **Socio-economic insecurity**, when job, salary and career security are threatened, which can be the case with precarious work, fixed-term contracts, temporary agency work, imposed part-time work, imposed overtime and undeclared work. Workers can put their health at risk by taking on multiple assignments, taking risks to meet deadlines, etc
- **Unsustainable nature of work**. This is the perceived impossibility on the part the worker of being able to do their job and/or remain in their position until retirement.
- **Change**. These may be strategic, organisational, technical or statutory changes. These changes lead to health risks when they result in a work overload that is not compensated, a lack of time for training, a loss of a sense of purpose in the work, a loss of qualifications, and even unhappiness among those who remain with the company after restructuring.
- **Other situations:**
  - Strongly expressed management constraints;
  - individualisation of management methods and skills management;
  - employees given ever greater levels of responsibility;
  - excessive development of multi-skilling;
  - externalisation of services;
  - technological and organisational changes without consultation and with insufficient training.



2. Supporting and advising an employee who is suffering

## TOOL CARD 2

### Interviewing the complainant using a questioning grid



To identify the existence and origin of the employee's suffering with a view to guiding, advising and/or developing trade union action, the delegate can use this questioning grid:

## Questioning grid

### ► Situate the complainant in the context of their company

- Who is the complainant? (age, marital status, qualifications, position held in the company) How long have they been with the company? Do they have any responsibilities? Where do they live? Have there been any recent changes in their role or with the team?
- Who do they work with? How are relations with the team? With their line manager?
- Is the employee a union member? Are they an employee representative?
- Has the complainant ever experienced relationship problems of this kind before? With whom? In what circumstances?
- How long has this situation been going on? (Is the conflict in its early stages, or is the situation already very serious?)

### ► Collect information about the department (investigate to find out what is happening in the department)

- Which department is concerned?
- Has there ever been a history of problems in this department? And which ones? (turnover, absence, redundancies...)

### ► What is the nature of the problem?

- What is the nature of the complaint? What aspects does it include?
- Describe the alleged facts and/or attitudes, the people involved, any witnesses.
- Describe any general operational, organisational, communication or work climate problems that may have contributed to the attitudes being complained of.
- Is this a situation involving organisational change? (merger, change of strategy, work organisation, hierarchy)

### ► Have the situation described

- Help the employee to focus the interview on factual elements:
  - According to the complainant, what triggered the situation?
  - What malfunctions has this situation produced?
  - Is this person the only one in the team to be subjected to this behaviour? Or are there other people involved? Who?
  - What are the consequences of this behaviour for the complainant? Their health? The team? The working climate? The quality of work? Productivity? Interpersonal relations within the team? (clans, conflicts)
  - If other people are affected, how do they react?

### Questioning grid

► **Why is this?**

- Does the complainant have any hypotheses as to the reasons behind the situation?

► **What steps has the complainant already taken?**

- Have they already had a discussion with the person(s) with whom the problem exists?
- Did the interview help to clarify the relationship or the situation?
- If not, what steps have already been taken? And if so, with whom?
  - None;
  - Written warning ;
  - Complaint to colleagues;
  - Complaint to management;
  - Consultation with a doctor;
  - Consultation with a trade union.

Once all the information has been gathered, they will be able to carry out a summary diagnosis of the situation and consider the next steps.

### Summary diagnosis

► **According to the company representative who conducted the interview**

- What facts and behaviours can be observed?
- What types of problems does the employee express? (stress, worry, unease, suffering...)
- Do you consider this to be an "abnormal" work situation?
- What are the perceptible negative impacts on working conditions? (tension, conflict, loss of motivation, isolation, lack of support from superiors, etc.) On the individual? (loss of self-esteem, illness...)
- How do you intend to follow up this complaint?
- Can union action be taken?

# TOOL CARD 3

## Advice for victims of psychological harassment<sup>25</sup>



<sup>25</sup> Source: Association *Mots pour maux* from Strasbourg – Michèle DRIDA

### Step 1: identify the process used

- **Keep a log book** in which you will record in detail all the facts, attitudes, gestures and remarks that seem to you to indicate an abnormal work situation.
- **Seek confirmation of your impressions** from people you trust (colleagues, line managers, staff representatives, the company doctor).
- **Seek explanations from the person or group of people who seem to be the cause of your concerns.** What exactly do they have against you? If necessary, ask for their grievances to be put in writing.

If your attempts at dialogue are in vain and the situation persists or worsens, it's time to put defensive strategies in place.

### Step 2: defending yourself while remaining with the company

#### 1. PUT AN END TO ISOLATION BY DRAWING ATTENTION TO YOUR SITUATION AND MAKING YOUR VOICE HEARD

- alert the hierarchy (head of personnel or general management) to the difficulties you are encountering.
- look for contacts who can support you in this process (shop stewards).

#### 2. GATHERING EVIDENCE

- testimonials;
- written records;
- medical certificates;
- any other indication: difference in treatment between the person concerned and other employees (in the awarding of a bonus, in the granting of days of leave, etc.); evidence of an overload or reduction in activity, withdrawal of responsibilities, dismissal, etc

### Step 3: find a satisfactory solution

- **Resignation:** not recommended, as it is often synonymous with loss of rights.
- **Transfer:** a change of establishment or simply department, so that you are no longer in contact with the malicious contact.
- **Settlement:** this is a contract by which the parties settle disputes relating to the performance or termination of the employment contract.
- **Declared unfit for work by the occupational physician:** this is the decision stating that the employee is unable, due to their state of health, to hold their position or any other position in the company.
- **Go to court:** there are a number of options, provided you have sufficient evidence to support your claim.

**Recommendation:** Before taking any legal action, it is recommended that you consult a legal adviser to ensure that you are taking the right course of action.

...continued

### Step 4: the procedure to be implemented

#### 1. PROTECTING THE VICTIM

- Protect the victim and remove them from the harassment situation as quickly as possible;
- Implement the necessary medical and psychological treatments to give the patient the means to cope with the situation and prevent complications arising from a situation that is in the process of becoming irreversible.

#### 2. INFORM THE EMPLOYEE OF THEIR RIGHTS

##### Make the employee aware of:

- the violation of their fundamental rights;
- the need to break out of isolation, to seek support internally and externally;
- the need to establish a chronology of events by keeping a diary of incidents and preserving objective data (written items, notes, emails, etc.);
- the need to try to gather testimonials from current and former employees, customers and suppliers;
- and inform them of their rights.

#### 3. TAKING CHARGE OF THE PERSON BEING HARASSED

**Support them in the steps they decide to take (union support recommended) to find the most acceptable solution. Remind them that nothing will happen without their prior agreement:**

- staying in employment within the company;
- a transfer;
- change of department, official dismissal, courts.

(To be determined on a case-by-case basis with the person concerned)

**Not recommended:** Resignation, because the employee loses their rights, and successive sick leave should be avoided. Of course, it is essential to protect the person from abusive treatment, but beware of exceeding the 78 weeks of sick leave (during a reference period of 104 weeks), which will result in the loss of the employee's rights.

#### 4. COMPILING A FILE

Harassment in the workplace is regarded as a risk to an employee's health. Its prevention is organised around the traditional prevention system.

Evidence must be collected if psychological harassment is suspected.

##### 4 avenues to explore:

- 1. abuse of the subordinate relationship**
  - vexatious incivility, refusal to engage in dialogue, hurtful words ...
- 2. abuse of disciplinary rules**
  - unjustified sanctions based on non-existent or minor facts.
- 3. abuse of management powers**
  - not giving work, giving unachievable objectives, giving work that lacks purpose ...
- 4. abuse of organisational power**
  - arbitrarily changing working conditions or the essential characteristics of the job.

#### 5. GIVING YOURSELF THE MEANS TO PREVENT HARASSMENT IN THE WORKPLACE

- By reintroducing ethics into the company.
- Prevent all forms of harassment and violence in the workplace.
- Protect the physical and mental health of employees and plan prevention, in particular by taking into account risks associated with psychological harassment.
- Include provisions in the internal rules prohibiting any form of harassment.
- Train employees to deal with psychosocial risks in the workplace. Certain behaviours can be avoided by providing people with clear, concrete and objective information about these processes. Ignorance, aggression and their negative effects can be combated through knowledge and relational intelligence.
- By putting in place within the company:
  - a procedure;
  - a mediator;
  - an anti-harassment charter.



# TOOL CARD 4

## List of pathogenic management techniques<sup>26</sup>



<sup>26</sup> Source: Marie PEZÉ – Informations essentielles – les techniques de management pathogènes – [www.souffrance-et-travail.com](http://www.souffrance-et-travail.com)

### Overuse of the subordinate relationship

Relational practices will seek to establish the relationship of subordination as a relationship of power:

- being on first-name terms without reciprocity;
- ordering the use of first-name terms and kissing by way of greeting;
- establishing a hierarchical asymmetry designed to humiliate;
- systematically cutting off the subordinate mid-speech;
- using a high level of threatening language;
- doing away with social skills (not saying hello, goodbye or thank you, etc.);
- systematically criticising an employee's appearance in private or in public;
- using sexist or racist insults in public, or accusing the subordinate of professional misconduct in front of colleagues or the public (customers);
- ceasing all verbal communication (exclusive use of post-it notes, memos, e-mails, etc.);
- avoiding eye contact, looking with contempt;
- using the appraisal interview to destabilise emotions.

Isolation practices also use the relationship to separate an employee from their work group, or part of the group from the other clan. Outcasting, isolation and loneliness generate major psychological distress:

- changes in meal times to separate colleagues who regularly spend time together;
- omission of information about meetings;
- failure to invite the employee to meetings that regard them;
- injunction to other employees not to communicate with the person in question;
- complacency for some, excessive rigour for others – e.g. in the management of working hours or break times;
- unequal workload distribution, in terms of quality and quantity;
- public stigmatisation of one or more employees in front of the rest of the team;
- strategic management of competition.

### Overuse of disciplinary rules

Disciplinary practices and work control are part of the employer's prerogatives, but must be used loyally and in good faith. Human or technological surveillance of our every move can become persecutory:

- monitoring telephone communications by amplification or listening in;
- checking the employee's drawers, lockers, bins, handbag and purse;
- checking the length of breaks and absences;
- controlling conversations and relations with colleagues;
- requirement to leave the office door open "so that I can see you";
- abusive reporting requests, use of new information technologies (NIT) to control, measure and monitor employees' physical and mental activity.

...continued

Punitive practices put employees in a situation of constant justification and prove counter-productive by destroying recognition and acknowledgement of work:

- repeated refusal of the employee's requests for training, even though such training is necessary to cope with changes in the job and cannot be refused more than once;
- inconsistency in the marking and assessment procedures affecting the position and grade advancement tables;
- systematic memos (up to several a day);
- disciplinary meetings, reprimands and warnings for minor offences;
- repeated use of registered letters with acknowledgement of receipt, delivered by a bailiff;
- unfounded disciplinary proceedings;
- authoritarian assignment to a department;
- strong incentive to transfer or resign;
- blocking a transfer;
- overtime not validated and not compensated;
- holidays imposed or not granted at the last minute;
- intentional proliferation of emails.

### Overuse of management and organisational power

The power to direct and organise work can lead to a sense of loss in the purpose of work, in connecting with reality, making employees "invisible" or exhausting them.

#### The loss in the purpose of work:

- working too sequentially with no overall vision of the work product;
- working on the edge of illegality: false invoices, uncontrolled spraying, incomplete repairs, poor quality materials involving customer safety;
- having to apply so-called quality standards, in line with those of the market but not those of the workplace;
- having quality procedures imposed at the same time as work that is carried out in unsatisfactory conditions.

#### Paradoxical injunctions:

- giving confusing and contradictory instructions that make the work impossible, leading to further criticism at a later stage;
- defining a procedure for carrying out the task and, once it has been carried out, challenging this procedure;
- providing work in "mission impossible" mode;
- instructing employees to prioritise tasks with a similar degree of urgency;
- demanding that a task that has already been done is done again;
- setting objectives without providing the means to achieve them, in terms of quality and quantity;
- setting rigid rules, to be followed "to the letter", without taking into account the reality of the work;
- imposing obedience to the rule "to the letter", to the detriment of the work the rule is supposed to organise;
- correcting non-existent mistakes;
- tearing up a report that has just been written, deeming it useless;
- asking the employee to be present and not giving them work to do.

**Staging a disappearing act:**

- removing tasks defined in the employment contract or the workstation, in particular tasks of responsibility, and assigning them to someone else without informing the employee;
- removing the use of a desk, telephone, computer, emptying cupboards;
- removing the employee from organisation charts and letterheads;
- instructing colleagues to stop talking to them;
- eliminating work and relational tools (intranet, meetings).

**Emotional surrender through hyperactivity:**

- setting unrealistic and/or unachievable targets, exceeding legal working hours, maintaining a situation of failure, burnout and systematic criticism;
- assigning urgent files five minutes before the employee leaves;
- excessively increasing the workload within a given time;
- forcing the employee without respite, resulting in the loss of physiological, cognitive and psychological downtime;
- invading the employee's 'space' cognitively, intellectually and physically, outside working hours – through NIT.

**But be careful:**

The occasional use of one of the practices described above does not necessarily constitute abuse.



### 3. Preventing psychosocial risks

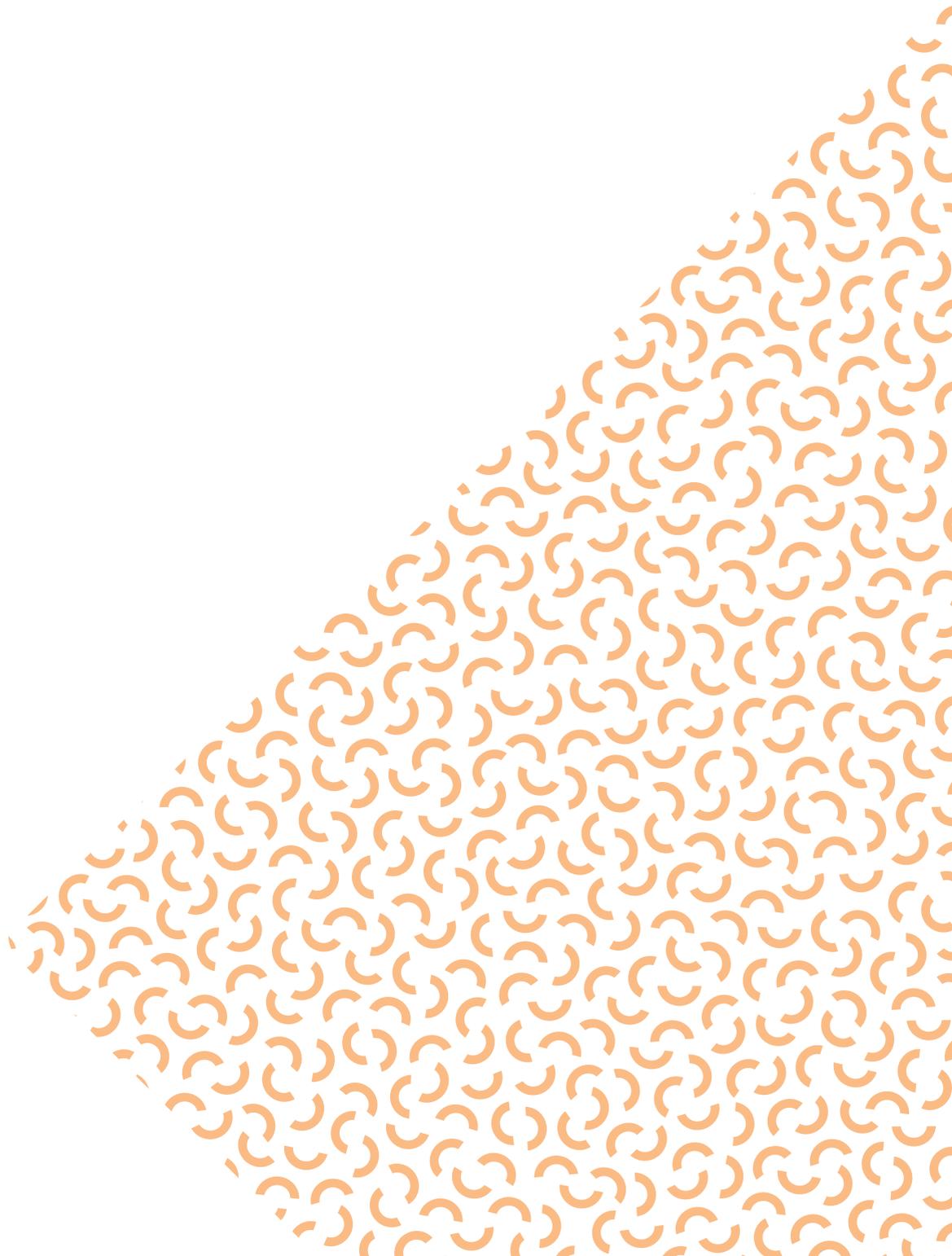
## TOOL CARD 5

# Method for a strategic approach to preventing psychological health problems in the workplace<sup>27</sup>



<sup>27</sup> Source: Chaire en gestion de la santé et de la sécurité du travail dans les organisations – Laval.

| Steps                                       | Content  |
|---|--|
| <p>▶ <b>Prerequisites</b></p>               | <ul style="list-style-type: none"> <li>• Obtain management commitment to work on health and safety issues.</li> <li>• Obtain a commitment to follow up the working group's recommendations.</li> <li>• Ensure the support of employees and their representatives.</li> </ul>   |
| <p>▶ <b>Set up a working group</b></p>      | <p>The working group (or steering committee) must:</p> <ul style="list-style-type: none"> <li>• be structured;</li> <li>• bring together representatives of management and staff, as well as stakeholders concerned with health, safety and well-being at work;</li> <li>• specify the tasks, roles, responsibilities and powers of its members;</li> <li>• establish the financial and technical resources available;</li> <li>• keep staff informed throughout the process.</li> </ul> |
| <p>▶ <b>Make a diagnosis</b></p>            | <p>Determine problems and identify causes, e.g.:</p> <ul style="list-style-type: none"> <li>• observation of the environment and working conditions;</li> <li>• individual and group interviews;</li> <li>• questionnaire-based surveys.</li> </ul>  |
| <p>▶ <b>Develop interventions</b></p>       | <ul style="list-style-type: none"> <li>• Identify existing prevention activities.</li> <li>• Determine the objectives to be achieved.</li> <li>• Apply interventions specific to the company context.</li> <li>• Present an action plan to management.</li> </ul>  |
| <p>▶ <b>Implement the interventions</b></p> | <ul style="list-style-type: none"> <li>• Prioritise actions.</li> <li>• Integrate prevention activities into the day-to-day running of the company.</li> <li>• Encourage actions that lead to concrete results.</li> </ul>   |
| <p>▶ <b>Assess the interventions</b></p>    | <ul style="list-style-type: none"> <li>• Draw up a plan and monitor activities;</li> <li>• Define a method for assessing the effectiveness of interventions;</li> <li>• Update strategies as necessary.</li> </ul>   |
| <p>▶ <b>Communicate results</b></p>         | <p>Monitor the project and communicate progress to the company's employees.</p>  |







## V. GLOSSARY

*Work is suffering, and that's what needs to be looked after."*

Yves CLOT<sup>28</sup>

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<sup>28</sup> Professor of Psychology, CNAM Paris.

"Stress", "burnout", "psychosocial risks" and "mental health" are increasingly frequent terms in business vocabulary. But what exactly are we talking about? How and when should they be used? Choosing the right words is not always easy, especially as they are highly indicative of the prevention strategy chosen by the company.

Here are a few definitions of the terms most commonly used in this field.

### BURNOUT

Burnout is a set of reactions resulting from situations of prolonged professional stress. It expresses itself through physical, mental and emotional exhaustion, a profound lack of interest in the content of one's work and a depreciation of one's own results. *(INRS)*

### HARASSMENT AND VIOLENCE

Harassment and violence are expressions of unacceptable behaviour by one or more individuals and can take many forms, some of which are easier to detect than others. People's exposure to harassment and violence can also depend on the work environment.

Harassment occurs when one or more employees or managers are repeatedly and deliberately mistreated, threatened and/or humiliated in work-related situations.

Violence occurs when one or more workers or managers are attacked in work-related situations.

Harassment and violence may be perpetrated by one or more managers or members of staff, with the aim or effect of violating the dignity of the person concerned, damaging their health and/or creating a hostile working environment. *(European Framework Agreement of 26 April 2007, www.eur-lex.europa.eu)*

Repeated acts which have as their aim or effect a deterioration in working conditions likely to infringe the victim's rights and dignity, affect their physical or mental health or compromise their professional future.

The National Consultative Commission on Human Rights makes the following points:

Firstly, harassment is one of the forms of violence in the workplace that is becoming more widespread throughout the world, and across all economic contexts and professional categories. It calls into question the principles contained in the founding texts of Human Rights. It constitutes an attack on the employee's dignity, personal integrity and right to work. It endangers not only personal equilibrium, but also the health of the individual and their family.

It takes effect in a specific way, independently of occupational diseases and accidents, which it can also help to cause or aggravate.

Secondly, the emergence and development of these practices are furthered in particular by the organisation of technologically advanced industrial societies, especially because economic globalisation is driving companies to ever greater competitiveness and, as a result, encouraging new and increasingly demanding forms of management. *(www.cncdh.fr)*

Different forms of harassment and violence can occur in the workplace. Harassment and violence can:

- take physical, psychological and/or sexual forms;
- be isolated incidents or more systematic patterns of behaviour;
- occur between colleagues, between superiors and subordinates, or come from third parties such as customers, suppliers, patients, students...;
- range from minor expressions of disrespect to more serious acts, such as criminal offences, requiring the intervention of the public authorities. *(European Framework Agreement of 26 April 2007, www.eur-lex.europa.eu)*

### HEALTH

Health is a state of complete physical, mental and social well-being, and does not consist solely of an absence of illness or infirmity. *(OMS, 1946)*

### MEDIATION

Mediation is an alternative method of conflict resolution that makes it possible to reintroduce dialogue and see things more clearly when dealing with a subjective or emotional problem. It is an aid to the negotiation

process through the presence of a neutral, independent third party, with no power other than the authority accorded to them by the protagonists. (Marie-France Hirigoyen, "Le harcèlement moral dans la vie professionnelle", Ed. La Découverte and Syros 2002)

### MENTAL HEALTH

The WHO defines mental health as a state of well-being in which each person achieves their potential, copes with the normal difficulties of life, works successfully and productively and is able to contribute to the community.

### MENTAL LOAD

Mental workload corresponds to the definition of thresholds in the level of constraint of particular tasks, beyond which the resulting strain on operators whilst carrying out these tasks is excessive and results in a drop in performance (mainly from the point of view of quality), the appearance of symptoms of fatigue, an increase in the risk of incidents or accidents, increased dissatisfaction for operators, etc.

### MUSCULOSKELETAL DISORDERS (MSD)

These are injuries or disorders of the musculoskeletal system, resulting from exposure to various risk factors present in the workplace which have either contributed to the development of the disorder or aggravated a pre-existing condition. ([www.anses.fr](http://www.anses.fr))

### PREVENTION

"Prevention is the set of measures that aims to prevent or reduce the number and severity of illnesses, accidents and disabilities". (WHO)

In terms of psychosocial risks, there are three levels of prevention: primary, secondary and tertiary. According to the various studies, priority should be given to primary prevention actions (actions targeting the causes within the organisation) over secondary prevention actions (actions aimed at employees to help them manage stressful situations) or tertiary prevention actions (actions to support employees in difficulty). (ANACT, France, 2009, [www.anact.fr](http://www.anact.fr))



## PSYCHOSOCIAL RISKS

The term psychosocial risk, which is broader than stress, refers to a range of situations in which people feel uncomfortable or uneasy or have negative feelings about their work. In concrete terms, this can manifest itself in burnout, violence, hostile behaviour and addictive behaviour. This relates to a wide variety of company contexts and causes: work overload, excessive time constraints, but also loss of bearings, difficulty in finding a sense of purpose in work, conflicts of values, etc.

Psychological health is not just an individual dynamic, it is also built through relationships with others: through recognition, through the possibility of exchange and cooperation at work, with the support of colleagues and line management. (ANACT, France, 2009, [www.anact.fr](http://www.anact.fr))

## REPEATED ABSENCES

Repeated absences are regular and unforeseen absences which could have been avoided by sufficiently early prevention of the factors leading to a deterioration in working conditions, understood in the broadest sense (physical conditions, but also work organisation, the quality of the employment relationship, the reconciliation of professional and private time, etc.).

On the other hand, in some cases, there are forms of "excessive presenteeism" in which employees are keen to remain at their posts despite physical and mental health problems, resulting in an alteration in their performance. (T. Rousseau, Anact, 2009)

## STRESS

A state of stress occurs when there is an imbalance between a person's perception of the constraints imposed on them by their environment and their perception of their own resources for coping with them. The individual is capable of managing pressure in the short-term, but has great difficulty with prolonged or repeated exposure to intense pressure. Work-related stress can be caused by various factors, such as the content of work organisation, poor communication, etc. (European Agency for Safety and Health at Work, [www.osha.europa.eu](http://www.osha.europa.eu))

The terms 'good' and 'bad' stress are commonly used to describe stress at work. "Good stress" leads to high levels of commitment and motivation, while "bad stress" leads to illness.

Scientifically speaking, however, there is no such thing as "good" or "bad" stress, but rather a phenomenon whereby the body adapts to its environment. On the other hand, there is a difference between acute stress and chronic stress, which have different effects in terms of health.

Acute stress corresponds to our body's reactions when we are faced with a specific threat or challenge (public speaking, urgent requirement to hand in a report, change of the work station chosen). When this stressful situation comes to an end, the symptoms of stress generally recede shortly afterwards.

Chronic stress is our body's response to a stressful situation that builds up over time: this is the case when we have the impression every day that what is being asked of us at work exceeds our capacities. This type of chronic stress, even when chosen, is always harmful to health.

### The 3 phases of the general syndrome for adapting to a stressful situation:

#### 1. Alarm reaction:

As soon as the body is confronted with a situation considered to be stressful, hormones are released via a gland located above the kidneys, the medullo-adrenal gland: these are catecholamines. These hormones increase heart rate, blood pressure, levels of alertness and body temperature, and cause vasodilation of muscle vessels. The aim of all these physical changes is to get oxygen to the muscles and heart, thereby preparing the body to react.

#### 2. Resistance after the alarm:

A second neurohormonal axis (the corticotropic axis) is activated, preparing the body for the energy expenditure required to respond to stress. New hormones, glucocorticoids, are secreted: they increase blood sugar levels to provide the energy needed by the muscles, heart and brain. Glucocorticoids have the unique ability to slow down their own secretion by feedback: the amount of hormone released into the bloodstream is detected by receptors in the central nervous system, which regulate further release.

#### 3. Exhaustion:

If the stressful situation is prolonged or intensified, the body's capacities can be overwhelmed: this is the state of chronic stress. The body produces more and more hormones to cope with the situation. The regulatory system mentioned above becomes inefficient, and the receptors in the central nervous system become less sensitive to glucocorticoids, levels of which constantly rise in the blood. The body is flooded with hormones and constantly

activated. It becomes exhausted. There are ways of preventing stress in the workplace. The collective prevention approach is the preferred approach as it is more effective over time. It consists of reducing the sources of stress in the company by taking direct action on organisation of work, working conditions, social relations at work and/or the workstation. ([www.inrs.fr](http://www.inrs.fr))

[...] a high level of absence, particularly of short duration, or staff turnover, in particular based on resignations, frequent personal conflicts or complaints on the part of workers, a high frequency of accidents at work, violent acts against oneself or others, even if they are few in number, and a significant increase in spontaneous visits to the medical service are some of the signs that may indicate the presence of stress at work. (*Accord national interprofessionnel du 2 juillet 2008 sur le stress au travail*, [www.journal-officiel.gouv.fr](http://www.journal-officiel.gouv.fr), France)

### VIOLENCE AT WORK

Internal violence is violence perpetrated within a company by a person or group of people, with or without hierarchical authority, against other employees. It includes cases of psychological and/or sexual harassment. It can also take the form of verbal aggression or insults, bullying, intimidation, conflicts or physical aggression between employees, etc

Taken in isolation, some of these actions may appear harmless. But their repetition on a daily basis can seriously affect employees and have major repercussions on their physical and psychological health. They can also damage the social climate at the company. The deterioration in working relations they cause is quite often based on organisational dysfunctions or problems. The absence of social support, solidarity and checks and balances in the company also plays a role, both in the occurrence of violence of this kind and in employees' ability to deal with it. Internal violence is one of the so-called psychosocial risks. Its prevention is based on the same approach as that described for work-related stress. Management, supervisors and employee representatives need to be involved in violence prevention measures. This involves a pre-diagnosis, setting up a project group, carrying out an in-depth diagnosis, reporting the results, drawing up and implementing an action plan and monitoring the actions taken. ([www.inrs.fr](http://www.inrs.fr))

The concept of "external" violence in the workplace generally includes insults, threats and physical or psychological aggression directed at a person in the workplace by people outside the company, including customers, and which jeopardise their health, safety or well-being. Violence can sometimes have a racial or sexual connotation.

Aggressive or violent acts can take the form of:

- incorrect behaviour - lack of respect for others;
- physical or verbal aggression - intent to harm. ([www.osha.europa.eu/fr/](http://www.osha.europa.eu/fr/))

Any action, incident or behaviour that deviates from reasonable conduct as a result of which a person is attacked, threatened, harmed or injured, in the course of or as a direct result of their work. ([www.ilo.org](http://www.ilo.org))

Different forms of harassment and violence can occur in the workplace. Harassment and violence can:

- take physical, psychological and/or sexual forms;
- be isolated accidents or more systematic patterns of behaviour;
- occur between colleagues, between superiors and subordinates, or come from third parties such as customers, patients, students...; range from minor expressions of disrespect to more serious acts, such as criminal offences, requiring the intervention of the public authorities. (*European Framework Agreement of 26 April 2007*, [www.eur-lex.europa.eu](http://www.eur-lex.europa.eu))

Any action, incident or behaviour that deviates from reasonable conduct as a result of which a person is attacked, threatened, harmed or injured, in the course of or as a direct result of their work. (ILO)

In the workplace, violence is the deliberate or unintentional use of physical or moral force, directly or indirectly, against a person or group, threatening the physical and/or psychological integrity of the person or persons. (*Bernard Jolivet – Travaux préparatoires à l'élaboration du Plan Violence et Santé en application de la loi relative à la politique de santé publique du 9 août 2004 – Christophe Dejourns*)

Violence occurs whenever a person feels abused, threatened, intimidated or assaulted in the workplace. (*Centre canadien d'Hygiène et de Sécurité au Travail*)

### WELL-BEING AT WORK

Well-being at work refers to a more encompassing state than that of health, since it takes into account the person as a whole, which translates into: a feeling, a sensation of fulfilment, of comfort, of general satisfaction, in terms of both body and mind. The term can also refer to concepts such as job satisfaction, motivation and pleasure. (IRSST, 2009)

**Well-being at work: Making work meaningful<sup>29</sup>**  
**What factors underpin well-being at work?**

**Moral rectitude**

I work in an environment that respects people and human values. I'm doing work that is morally justifiable, both in the way it is done and in the results it produces.

**Social interest**

I do work that serves a purpose, that leads to results that I value, that is useful to society, that is useful to others.

**Quality in social and professional relations**

I do a job in which I have good relations with my colleagues, my superiors and co-workers, as well as their support.

**Autonomy**

I do work that allows me to use my skills and judgement to solve problems, that allows me to take the initiative to improve my results, where I am free to organise things in the way I think is most effective.

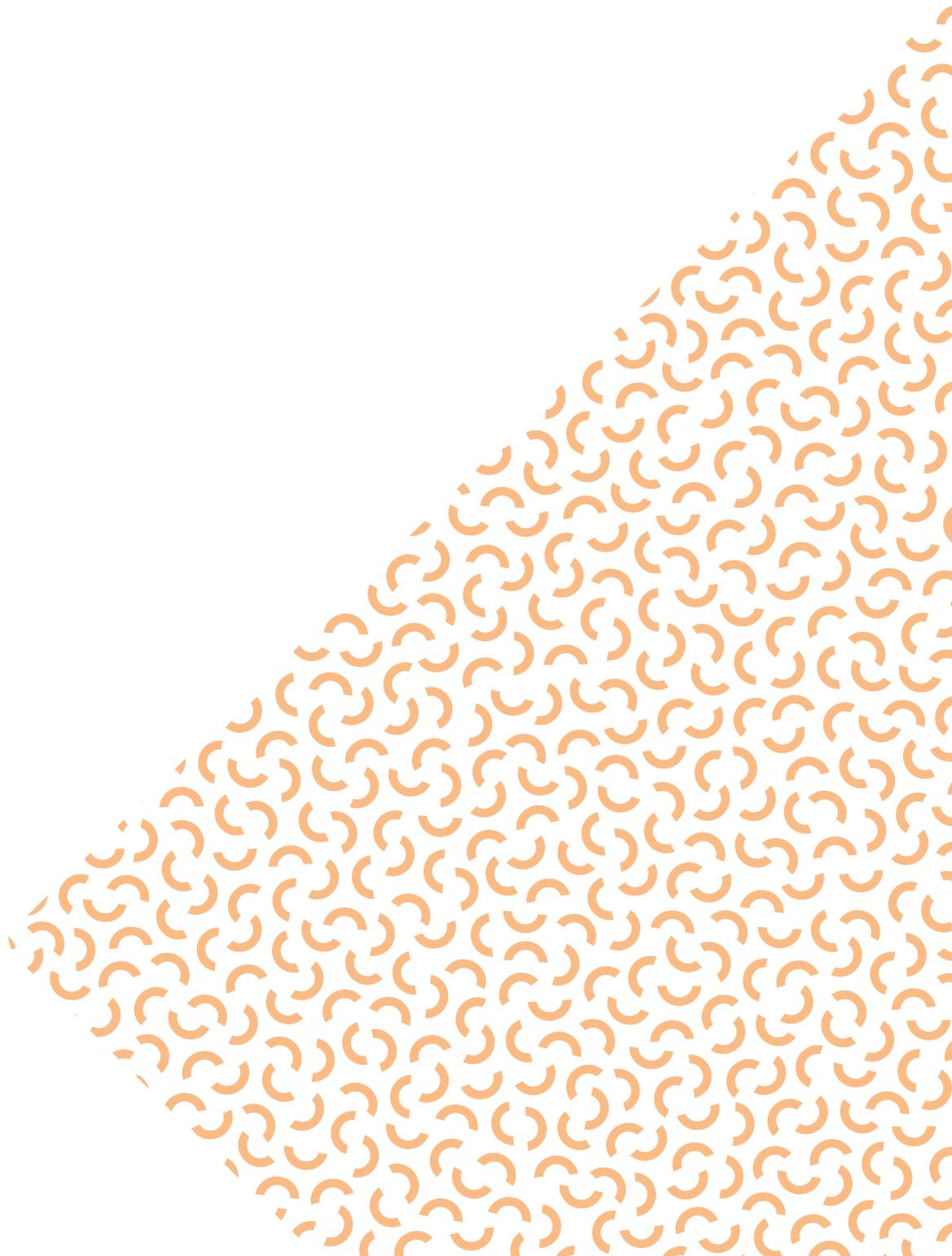
**Opportunities for professional and/or personal development**

I do work that allows me to learn or improve, that allows me to develop further.

**Recognition**

I do a job where my skills are recognised, where my results are recognised, where I can count on the support of my manager and the esteem of my colleagues. I do a job where I'm respected, where I'm happy with my salary and my prospects for promotion.

<sup>29</sup> Source: Promouvoir le bien-être psychologique – Estelle MORIN – HEC MONTREAL.







## VI. APPENDICES

*"Stress is nothing more than a self-confessed submission to unchosen constraints."*

Grégoire LACROIX<sup>30</sup>

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<sup>30</sup> French writer, journalist and poet.

## 1. Useful addresses

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- **Association d'assurance contre les accidents (AAA) / Association for accident insurance**  
Cité de la sécurité sociale  
4, rue Mercier  
L-2144 Luxembourg  
T +352 26 19 15 - 1
- **Association pour la santé au travail du secteur financier (ASTF) / Association for occupational health in the financial sector**  
15-17, avenue Gaston Diderich  
L-1420 Luxembourg  
T +352 22 80 90 - 1  
[www.astf.lu](http://www.astf.lu)
- **Caisse nationale de santé Luxembourg / Luxembourg national health service**  
Cité de la sécurité sociale  
4, rue Mercier  
L-2144 Luxembourg  
T +352 27 57 - 1  
[www.cns.public.lu](http://www.cns.public.lu)
- **Ministry of Health – Occupational Health Division / Ministère de la Santé – Division de la santé au travail**  
20, rue de Bitbourg  
L-1273 Luxembourg  
T +352 247 85 587  
<https://dirsante.gouvernement.lu/fr/la-direction/structure/sante-travail.html>
- **Santé au travail multisectoriel (STM) / Multi-sectoral occupational health**  
32, rue Glesener  
L-1630 Luxembourg  
T +352 400 942 1  
[www.stm.lu](http://www.stm.lu)
- **Service de santé au travail de l'industrie (STI) / Industrial occupational health service**  
6, rue Antoine de Saint Exupéry  
L-1432 Luxembourg  
BP 326  
L-2013 Luxembourg  
T +352 260 061  
[www.sti.lu](http://www.sti.lu)
- **Ligue luxembourgeoise d'hygiène mentale asbl / Luxembourg league for mental health**  
11, rue du Fort Bourbon  
L-1249 Luxembourg  
T +352 49 30 29  
[www.llhm.lu](http://www.llhm.lu)
- **Inspection du travail et des mines (ITM) / Inspectorate of Labour and Mines**  
3, rue des Primeurs  
L-2361 Strassen  
T +352 247 76 100  
[www.itm.public.lu](http://www.itm.public.lu)

### Consultations on distress at work

- **Stressberodung**  
T +352 27 494 - 222  
[www.csl.lu/en/health-well-being-and-security-at-work/stressberodung/](http://www.csl.lu/en/health-well-being-and-security-at-work/stressberodung/)
- **ASBL MOBBING**  
64, avenue de la Liberté  
L-1930 Luxembourg  
T +352 28 37 12 12  
[www.mobbingasbl.lu](http://www.mobbingasbl.lu)

## 2. To find out more

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### Our website

- [www.csl.lu/en](http://www.csl.lu/en) > Health and security > Quality of Work Index Luxembourg
- [www.csl.lu/en](http://www.csl.lu/en) > Your rights > Employees > Health and safety in the workplace > Harassment > Psychological harassment

### Other websites

- [www.anact.fr](http://www.anact.fr) > Thèmes > Risques psychosociaux
- [www.ars.sante.fr](http://www.ars.sante.fr)
- [www.assurance-maladie.ameli.fr](http://www.assurance-maladie.ameli.fr) > Études et données > Études / publications > Assurance Maladie - Risques professionnels
- [www.baua.de](http://www.baua.de) > Themen > Prävention > Mentale Gesundheit
- [www.beswic.be](http://www.beswic.be) > Thèmes > Risques psychosociaux
- [www.copsoq.de/en/](http://www.copsoq.de/en/)
- [www.emploi.belgique.be](http://www.emploi.belgique.be) > Thèmes > Bien-être au travail
- [www.etuc.org](http://www.etuc.org)
- [www.eur-lex.europa.eu](http://www.eur-lex.europa.eu)
- [www.eurofound.europa.eu](http://www.eurofound.europa.eu)
- [www.hse.gov.uk](http://www.hse.gov.uk)
- [www.ilo.org](http://www.ilo.org)
- [www.inrs.fr](http://www.inrs.fr) > Risques > Psychosociaux
- [www.inspq.qc.ca](http://www.inspq.qc.ca)
- [www.irsst.qc.ca](http://www.irsst.qc.ca)
- <https://journals.openedition.org/pistes/2503> > L'autoévaluation du stress - un indicateur de santé trompeur
- [www.osha.europa.eu](http://www.osha.europa.eu)
- [www.souffrance-et-travail.com](http://www.souffrance-et-travail.com)
- [www.wocccq.be](http://www.wocccq.be)

### 3. The main legal texts <sup>31</sup>

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#### Labour Code

- Article L. 162-12
- Article L. 244-3
- Article L. 245-1
- Article L. 245-4
- Article L. 245-5
- Article L. 245-6
- Article L. 245-7
- Article L. 246-2
- Article L. 246-3
- Article L. 246-4
- Article L. 246-5
- Article L. 246-6
- Article L. 246-7
- Article L. 311-1
- Article L. 311-2
- Article L. 312-1
- Article L. 312-2
- Article L. 312-6
- Article L. 312-7
- Article L. 412-2

#### Penal code

- Article 442-2 en vue d'incriminer le harcèlement obsessionnel

#### Conventions and guidelines

- Accord sectoriel en matière de harcèlement moral, signé entre ABBL, ALEBA, OGBL, LCGB du 09/07/2013
- Convention du 25 juin 2009 relative au harcèlement et à la violence au travail
- Directive 2000/78/CE du conseil du 27 novembre 2000

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<sup>31</sup> The legal texts are only available in the original French language.



## Harassment and Violence at Work Convention of 25 June 2009<sup>32</sup>

### *General provisions*

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Harassment and violence are caused by unacceptable behaviour on the part of one or more workers or managers or, in the case of violence, by people from outside the company, which may have the purpose or effect of violating the dignity of workers or managers, affecting their health and/or creating a hostile working environment.

The signatory parties undertake to prevent all forms of such behaviour in the workplace. The provisions also set out a number of ways in which companies can help the victims of such behaviour. To this end, they establish general principles concerning prevention of and protection against harassment and violence at work, information and consultation, and general guidelines for the implementation of these principles. They are based on the conviction that acts of harassment and violence in the workplace must not be tolerated within the company.

The signatory parties also consider that the victim and witness of such behaviour must not suffer any prejudicial consequences as a result of reporting or resisting a situation of harassment or violence.

For the purposes of this agreement, the signatory parties use the terms "worker", "employer" and "manager" to mean the following:

- the term "worker" refers to any employee, trainee or apprentice working for the company, as well as any pupil or student working for the company during the school holidays;
- the term "employer" refers to any natural or legal person who is the holder of the employment relationship with the employee or manager and who is responsible for the business;
- the term "manager" refers to any person in the company hierarchy who is in one way or another empowered to give orders to workers.

### *Provisions specific to psychological harassment*

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#### *Definition*

Psychological harassment occurs when a person working for the company commits wrongful, repeated and deliberate acts against a worker or a manager which have the purpose or effect of:

- violating their rights or dignity;
- altering their working conditions or compromising their professional future by creating a work environment that is intimidating, hostile, degrading, humiliating or offensive ;
- impairing their physical or mental health.

#### *Preventing psychological harassment at work*

##### Prohibition of harassment in the workplace

The employer will make it clear, in consultation with the staff representatives and, where appropriate, by including a reference to this effect in the internal regulations, that they do not tolerate any form of harassment within the company. The employer will specify that it is the responsibility of each worker and manager to ensure that acts of harassment of this nature do not occur in the workplace.

##### Raising awareness among employees and managers

In consultation with staff representatives, the employer will ensure that employees and managers are made aware of the issues via the various internal communication channels available. This awareness-raising will include the definition of harassment, the ways in which it can be managed within the company and the sanctions that will be taken against the perpetrator or perpetrators of acts of harassment.

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32 <https://legilux.public.lu/eli/etat/leg/rgd/2009/12/15/n2/jo>

The collective agreement on psychological harassment and violence in the workplace remains applicable and coexists with the legal provisions on psychological harassment in employment relationships.

It should be remembered, however, that any stipulation in a collective agreement that is contrary to laws and regulations is null and void unless it is more favourable to employees.

The provisions of the collective agreement relating to psychological harassment and violence in the workplace which are more favourable to employees therefore take precedence over the legal provisions.

### Preventive measures

As part of the prevention policy, the employer will determine, in consultation with employee representatives, the measures to be taken to protect workers and managers against harassment at work.

Preventive measures may be laid down in whole or in part by agreements between the social partners. If they are set by an agreement at sectoral level, each company will be responsible for implementing these measures, unless it has its own measures equivalent to the provisions of the agreement.

These measures, which must be adapted to reflect the nature of the business and the size of the company, may include the following aspects:

- information and training for employees and managers on the policy for the prevention and protection against harassment at work;
- the identification of a competent contact for prevention and protection against harassment in the workplace;
- definition of the means and procedures available to victims to obtain help.

### Internal assessment in the event of harassment

In the event of harassment towards workers and/or managers, the employer will carry out an internal assessment of the effectiveness of preventive measures and the possible implementation of new preventive measures to be taken, particularly in relation to the organisation of the company, the revision of procedures applied in the event of harassment and the provision of information to employees. This assessment and any subsequent reassessments will be carried out in consultation with staff representatives.

### Managing harassment

#### Drawing up a procedure for dealing with harassment

The employer will implement, in consultation with employee representatives, a procedure for dealing with harassment, based on the internal assessment and subsequent reassessments of harassment within the company.

The management procedure may be laid down in whole or in part by agreements between the social partners. If the procedure is set by an agreement at sectoral level, each company will be responsible for implementing this procedure, unless it has its own procedure equivalent to the provisions of the agreement.

The procedure will be based in particular on the following considerations:

- the parties will act with all the discretion required to protect the dignity and privacy of each party;
- no information will be disclosed to parties not involved in the case;
- complaints will be investigated without delay and dealt with within a reasonable timeframe;
- each party must be heard as soon as possible and will have the right to be assisted by an employee representative during the interview;
- each complaint will be dealt with impartially;
- each complaint must be supported by detailed information;
- false accusations will not be tolerated and may result in disciplinary action or even dismissal;
- external assistance in analysing and handling complaints may be provided;
- victims will benefit from support of a nature to be specified within the company in the absence of a sufficiently precise agreement on the subject between the social partners applicable to the company.

#### Actions and sanctions against the perpetrator of acts of harassment

Similarly, the sanctions that the employer may take in the event of harassment will be determined in a clear and transparent manner, after consultation with employee representatives. If it is established that harassment has taken place, appropriate action will be taken against the perpetrator(s). This may include disciplinary action and sanctions, up to and including dismissal.

### Protection of victims and witnesses of harassment

It will be specified that the victim of harassment in the workplace will not be subject to reprisals as a result of reporting or resisting an act of harassment, that their case will be treated with the greatest possible discretion and that measures intended to put an end to the harassment will not be taken to the detriment of the victim.

Furthermore, no employee or manager may be subject to reprisals for having testified to proven acts of harassment in the workplace.

## ***Specific provisions on violence in the workplace***

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### ***Definition***

Violence in the workplace occurs when a worker or manager is attacked as a result of one or more deliberate acts carried out by others, the purpose or effect of which is to damage their physical or mental integrity. Violence can be perpetrated by people inside or outside the company. It may involve a single act of a certain seriousness or several acts of the same or different nature.

### ***Preventing violence at work***

#### Prohibition of violence in the workplace

With regard to violent acts carried out by people employed by the company, the employer will make it clear, in consultation with the staff representatives and, where appropriate, by including a reference to this effect in the internal regulations, that they do not tolerate any form of violence within the company. The employer will specify that it is the responsibility of each worker and manager to ensure that acts of violence of this nature do not occur in the workplace.

#### Raising awareness among employees and managers

In consultation with staff representatives, the employer will ensure that employees and managers are made aware of the issues via the various internal communication channels available. This awareness-raising will include the definition of violence, the ways in which it can be managed within the company and the sanctions that will be taken against the perpetrator or perpetrators of acts of violence.

#### Preventive measures

As part of the prevention policy, the employer will determine, in consultation with employee representatives, the measures to be taken to protect workers and managers against violence at work.

Preventive measures may be laid down in whole or in part by agreements between the social partners. If they are set by an agreement at sectoral level, each company will be responsible for implementing these measures, unless it has its own measures equivalent to the provisions of the agreement.

These measures, which must be adapted to reflect the nature of the business and the size of the company, may include the following aspects:

- drawing up a risk plan that takes account of the specific nature of the company's business;
- physical arrangements of the workplace appropriate to the risks faced by the company in order to prevent violence in the workplace from people outside the company;
- information and training for employees and managers on the policy for the prevention and protection against violence at work;
- the identification of a competent contact for prevention and protection against violence in the workplace;
- definition of the means and procedures available to victims to obtain help.

#### Internal assessment in the event of violence

In the event of violence towards workers and/or managers, the employer will carry out an internal assessment of the effectiveness of preventive measures and the possible implementation of new preventive measures to be taken, particularly in relation to the organisation of the company, the revision of procedures applied in the event of violence and the provision of information to employees. This assessment and any subsequent reassessments will be carried out in consultation with staff representatives.

### *Managing violence*

#### Drawing up a procedure for dealing with violence

The employer will implement, in consultation with employee representatives, a procedure for dealing with problems of violence, based on the internal assessment and subsequent reassessments of violence within the company.

The management procedure may be laid down in whole or in part by agreements between the social partners. If the procedure is set by an agreement at sectoral level, each company will be responsible for implementing this procedure, unless it has its own procedure equivalent to the provisions of the agreement.

The procedure will be based in particular on the following considerations:

- the parties will act with all the discretion required to protect the dignity and privacy of each party;
- no information will be disclosed to parties not involved in the case;
- complaints will be investigated without delay and dealt with within a reasonable timeframe;
- each party must be heard as soon as possible and will have the right to be assisted by an employee representative during the interview;
- each complaint will be dealt with impartially;
- each complaint must be supported by detailed information;
- false accusations will not be tolerated and may result in disciplinary action or even dismissal;
- external assistance in analysing and handling complaints may be provided;
- victims will benefit from support of a nature to be specified within the company in the absence of a sufficiently precise agreement on the subject between the social partners applicable to the company.

#### Actions and sanctions against the perpetrator of acts of violence

Similarly, the sanctions that the employer may take in the event of violence will be determined in a clear and transparent manner, after consultation with employee representatives. If it is established that acts of violence have occurred, appropriate action will be taken against the perpetrator(s). This may include disciplinary action and sanctions, up to and including dismissal.

#### Protection of victims and witnesses of acts of violence

It will be specified that the victim of violence in the workplace will not be subject to reprisals as a result of reporting or resisting an act of violence, that their case will be treated with the greatest possible discretion and that measures intended to put an end to the violence will not be taken to the detriment of the victim.

Furthermore, no employee or manager may be subject to reprisals for having testified to proven acts of violence in the workplace.

### *Final provisions*

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The signatory parties agree that this agreement will be evaluated after a period of five years following the date of its signature at the request of one of them and may be the subject of a subsequent revision.

The signatory parties also agree that it will be necessary to avoid imposing unnecessary burdens on small and medium-sized businesses when implementing this agreement.

Finally, the signatory parties agree that this agreement is without prejudice to the right of the social partners to conclude, at the appropriate level, agreements specifying the present agreement and taking into account the specific needs of the parties concerned.







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This brochure supports employee representatives in their mission to prevent psychosocial risks and protect mental health at work, but it is also aimed at all employees and contains a wealth of practical information.

It includes clear definitions of key concepts, relevant statistical data on the risk of burnout in Luxembourg, and toolkits offering structured approaches to tackling various work-related situations.

Updated Q&As on legal remedies relating to the prevention of psychosocial risks and the protection of employees are also included, enhancing understanding of the legal aspects.

The brochure also offers a practical approach through five case studies illustrating common challenges in the workplace. It goes beyond theoretical information by offering practical solutions to staff representatives and employees, encouraging collective action and changes in company practices.

In addition, useful addresses and contacts are provided to help readers in their endeavours, thereby improving access to the resources they need to implement the advice given in the guide.

In short, this comprehensive guide is designed to be an essential companion in promoting the prevention of psychosocial risks and the protection of mental health.



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