



Bird & Bird & Unacceptable behaviour in the workplace

Don't let #MeToo become #YouToo

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- 1 What is unacceptable behaviour?
- 2 How can you prevent unacceptable behaviour and protect employees?
- 3 What are the procedures?
- 4 What protection is guaranteed to Employees?
- 5 Takeaways



What is unacceptable behaviour?

Forms

Sexual harassment
Unwanted, sexual, dignity,
environment

**Bullying or
harassment**
Series of
behaviours

Violence
Psychological or
physical attack

What is unacceptable behaviour?

Prevalence

8.3% of employees were confronted with sexual harassment

3 most prevalent forms:

- "ogling" - 6.8%
- "sexual approaches via body language, in speech, e-mail" - 3.2%
- "unwelcome physical contact or touching" - 2.1%

Who is affected?

- More women (6.8%) than men (6.1%)
- slightly younger (<45 y - 9.5%) than older (>45 y - 6.9%)

Prevalence per business sector



10.6%
Health care



10.3%
Construction



10.2%
Retail



6.6%
Services



4.6%
Education

*Source: [Survey conducted by IDEWE](#) (ESPPW) in 2018

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How can you prevent unacceptable behaviour and protect employees?

Sexual harassment
means
psychosocial risk

Employer has duty to
provide a **safe work
environment**

How can you prevent unacceptable behaviour and protect employees?

Specific obligations

1

Internal
Procedures

i.e.: work rules. Who to contact?
What to do?

2

Prevention
Advisor
Psychosocial
Risks (PAPR)

- < 50 employees: External Service for Prevention and Protection at work (ESPPW)
- > 50 employees: ESPPW or Internal Service

3

Confidential
Advisor (CA)

Employee - first "Go-To"
Person/Mediator

4

Prevention
Policy

- General risk analysis and prevention measures
- Specific risk analysis – upon request

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What are the procedures?

Internal procedure

Informal intervention:

- ✓ Employee ⇒ PAPR/CA:
dialogue – reconciliation
– intervention

Formal intervention:

- ✓ Employee ⇒ PAPR: mandatory information (facts, date, place, accused, ...) - PAPR accepts or refuses to proceed with formal intervention
- ✓ If accepted - employer must take appropriate collective or individual measures - must be logged.

What are the procedures?

External procedure

1 Social Inspection services

2 Police/judicial authorities

- Perpetrator: imprisonment for 6 months to 3 years or fines of €4,800 to 48,000 or both
- Employer: criminal fine of €800 to 8,000 or administrative fines of €400 to 4,000

3 Bring civil claim before Labour Court against perpetrator or his employer

4 File summary proceedings and obtain Court injunction

What are the procedures?

Who?

Victim +
representative
trade unions /
Institute for
equal rights men
/ women

Damages:

Lump sum of 3 months capped
(2019: €3,694.18/month) or actual
damages – 3 months could become
6 if :

- linked to discrimination or
- perpetrator is employer or
- seriousness of offenses.

Liable?

= perpetrator – employer liable
under art. 1384, § 3 Civil Code -
recourse against perpetrator if

- (i) on purpose or
- (ii) inexcusable fault.

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What protection is guaranteed to Employees?

Protected against dismissal

Notion

Dismissal or any act of retaliation or retribution

Who?

- Employee or witness who filed request for formal intervention via the **internal procedure**
- Employee who filed complaint with **Social Inspection Services**, under specific conditions

What protection is guaranteed to Employees?

Protected against dismissal

For how long?

- 12 months as of filing of request for intervention
- 12 months as of filing of witness statement
- 3 months after judgment in case filed by employee becomes final

Options?

- If dismissed: employee can ask to be *reinstated*
- If reinstatement is refused (and employer unable to prove dismissal unrelated to complaint): 6 months' additional wages or actual damages (if proven).

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Takeaways

Not to be taken lightly

1. Make sure **Work Rules** are up to date
2. Choose **confidential advisor** with care
3. Provide **training**
4. Draft **action plans** to ensure respectful work environment
5. Take complaints seriously and follow **proceedings**



Prevention is always
better than the cure!

Thank you & Bird & Bird

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