

IAJ/UIM/Meeting in Nur-Sultan

employer

Study Group Four—2019

Answers from Finland

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Harassment, in a broad sense—moral and sexual—and its consequences on labour relations

Although sexual harassment is consistently in the news today, the topic of workplace misconduct is much broader. It encompasses general harassment and other misconduct typically experienced by employees at the hands of their managers, including judges, as well as their peers. Harassment is broadly defined as unwelcome physical, verbal, non-verbal, and psychological behaviour that interferes with work performance or the work environment. Examples of harassment include offensive jokes, name-calling, disparaging comments, displaying inappropriate images, unwelcome sexual advances, and inappropriate touching.

Workplace misconduct is a universal problem that causes serious harm to those subjected to it. There is much to be gained by exploring what causes such misconduct to persist, what actions can prevent such misconduct, and what consequences violators should bear. Discussing how to break down barriers to reporting this misconduct, such as limitations on confidentiality, is also paramount.

Questions:

1. Does your country have laws or regulations that cover workplace harassment? Is harassment defined separately or is it incorporated within other provisions of the labour code?

Yes, the main laws covering workplace harassment in Finland are:

The most important law is Occupational Safety and Health Act (738/2002). The other important laws are and Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006), Tort Liability Act (412/1974), Non-Discrimination Act, Act on Equality between Women and Men, Employment Contracts Act, Government officials Act and Municipal officials Act and Criminal Code of Finland and also the Constitution of Finland.

Harassment is mentioned in Occupational Safety and Health Act. But harassment is not strictly defined and is incorporated within other provisions in the laws mentioned above.

Sexual harassment as a crime is specially mentioned and defined in law of Criminal Code.

Occupational Safety and Health Act (Section 8) rules: (1) Employers are required to take care of the safety and health of their employees while at work by taking the necessary measures. For this purpose, employers shall consider the circumstances related to the work, working conditions and other aspects of the working environment as well as the employees' personal capacities. (4) Employers shall continuously monitor the working environment, the state of the working community and the safety of the work practices. Employers shall also monitor the impact of the measures put into practice on safety and health at work.

Occupational Safety and Health Act (Section 28) rules that if harassment or other inappropriate treatment of an employee occurs at work and causes hazards or risks to the employee's health, the employer, after becoming aware of the matter, shall by available means take measures for remedying this situation.

In practice Sections 8 and 28 are very important because these contain the main rule that the employer has the duty to monitor the working conditions, protect employee and to do all the best to solve the problems.

2. What remedies exist for victims reporting workplace misconduct? What penalties or ramifications do offenders face? Do you have examples of court cases/judgments or administrative proceeding involving harassment?

Occupational Safety and Health Act (Section 17) rules that the employees for their part shall act in cooperation with the employer and the employees' representatives in order to achieve the objectives of this Act. The employees have the right to submit proposals on safety and health in the workplace and other matters to the employer and get a response to them.

Employees shall avoid such harassment and other inappropriate treatment of other employees at the workplace which causes hazards or risks to their safety or health (Section 18).

Employees shall without delay inform the employer and the occupational safety and health representative of any such faults and defects they have discovered in the working conditions or working methods which may cause hazards or risks to the employees' safety or health. Then the employer, on the other hand, shall inform the employee who gave the report and the occupational safety and health representative what measures have been taken or will be taken in the matter concerned (Section 19).

If the employer does not do his/her duty to provide safety in the working place the employer shall be sentenced to a fine for violation of occupational safety and health (Section 63).

If the question is of sexual harassment that is considered to be a crime, Criminal Code is applied: A person who, by touching, commits a sexual act towards another person that is conducive to violating the right of this person to sexual self-determination, shall be sentenced, unless punishment is provided elsewhere in this Chapter for the act, for sexual harassment to a fine or to imprisonment for at most six months (Criminal Code 20 Chapter, Section 5 a).

When harassment or bullying has happened, the employee should contact the nearest superior or some of the superiors. Also, he/she has the possibility to contact safety representative or/and confidential representative of the trade union, which work in the workplace. All these should investigate and help to solve the problem.

The employee has also possibility to bring his/her case outside the workplace to the Occupational Safety and Health Administration that has the power to help, to investigate the matter and to give its opinion of the case.

If harassment or bullying causes damages to the employee, he/she may sue the employer and demand compensation of damages.

3. Do you have examples of judicial misconduct related to harassment or bullying?

The Supreme Court of Finland has made a decision KKO:2014:44 *K v. the State of Finland* (3-2). Person K had experienced to be subjected to inappropriate treatment in work from closest superior side. K had first left on sick leave and then resigned. K has claimed damages from the employer under the Occupational Safety Act.

The question was whether K was treated inappropriately within the meaning of Article 28 of the Occupational Safety Act and then the conditions for liability for damages under that law.

In this case person K had worked in the Government Controller Section first as a controller assistant 11.7.2007-15.11.2007 and then as a vice-controller 16.11.2007-31.12.2012. K had experienced that K had not been adequately trained and advised for the work. K was also kept out of the agency's daily affairs and the closest superior had refused to negotiate with K. Because of this treatment K had gone on sick leave 4.4.2008-20.1.2009. When K's employer had not taken the necessary steps to remedy the injustice at work K had resigned the office 12.2.2009. K claimed to be a victim of inappropriate treatment in the office of the government. K demanded compensation of lost salary 118 270,20 euro, of mental suffering 50 000 euro and of medical treatment 8 846 euro.

The District Court decided that K was a victim of bullying and ordered the State to pay compensation of damages. *The Appellative Court* held that K was mistreated to some minor extent but there was not a violation of Occupational Safety and Health Act (Section 28) and K did not have the right to compensation of damages.

The Supreme Court decided as the District Court and found out that there was a violation of Occupational Safety and Health Act (Section 28). The employer had not done enough to solve the problems. In the Decision of the Court was stated that in the Occupational Safety and Health Act (Section 28) is not specified what in practice is considered to be harassment or bullying. However, the question may be e.g. an offensive, humiliating or nullifying behaviour against the employee. Liability to compensate damages is based on the Tort Liability Act, because the provisions of liability are neither in Civil Service Act nor Occupational Safety and Health Act.

The Supreme Court based its decision on the fact that inappropriate treatment by superior has caused harm and danger to K's health. The employer had not taken enough steps to eliminate the inappropriate treatment even after K had brought the matter to the attention of superior. The Supreme Court changed the judgment of the Court of Appeal and ordered the State to compensate K for loss of earnings and medical and medical expenses and also the litigation costs. The Supreme Court did not consider justified compensation for mental distress.

The opinion of the minority of justices was that K had been treated inappropriately to some minor extent but Occupational Safety and Health Act (Section 28) was not violated because the situation had been handled properly. K should not have the right to compensation of damages.

4. Does the judiciary have rules, ethics codes, or legislation relating to harassment by judges and judicial staff? What are the procedures for reporting misconduct and enforcing the rules? What sanctions can be imposed against a judge?

The Finnish Association of Judges with the Association of Supreme Court Justices formed a working group on 3 May 2010 to begin to draft The Ethical Principles for Judges. The Ethical Principles for Judges were adopted unanimously at the annual general assembly meeting of the Finnish Association of Judges on 4 May 2012.

The Ethical Principles are not a collection of rules that would directly provide judges with solutions to all problems involving professional ethics. The Principles contain general principles for the identification and interpretation of ethical issues as well as guidelines for the deliberation and resolution of these issues. The purpose of these ethical principles is to describe the ethically correct approach to a judge's work. The principles serve as ethical objectives that help judges to make ethically justified choices. The principles do

not describe the minimum requirements for ethical action but set out the level that judges should aim at when administering justice.

The Ethical Principles Section 7 describes: A judge must respect the human dignity of all parties involved. A judge must have an appreciative and cordial attitude towards the parties to a court case, the audience, professional colleagues and members of the work community and treat them in a manner that does not negatively affect the authority of the court.

In Finland a judge must obey the same rules and laws as the other professionals. However, in Finland among judges has been discussions of going further with the question of Judges' ethics.