II- QUESTIONNAIRE 2014

Laws and regulations

1) What is the definition of violence, bullying and sexual harassment in the legislation in your country applicable to the workplace, if any?

There is no statutory definition of violence, bullying or sexual harassment in the Norwegian legislation pertaining specifically and exclusively to the working environment. The most important statute in this field – the Working Environment Act\(^1\) – contains a general prohibition against "harassment" and "otherwise undue conduct", as well as against "violence" (Working Environment Act, **WEA**, Article 4-3 paragraphs 3 and 4). Furthermore, Section 13-1 paragraph 2 prohibits "harassment" on the grounds of political views, membership in a trade union and age. According to the WEA preparatory works\(^2\), harassment is an "unwanted conduct which takes place with the purpose or effect of violating another person’s dignity". This definition covers both bullying and sexual harassment.

Sexual harassment is specifically defined in the general Gender Equality Act\(^3\), as "unwanted sexual attention which is troublesome to the person affected" (Gender Equality Act, **GEA**, Section 8 paragraph 2). Section 8 of the GEA also gives an isolated definition of the term harassment, by which is covered "actions, omissions or statements with a mortifying, frightening, hostile, degrading or humiliating effect or purpose". This comprises both bullying and violence. The same definition is found in the Act prohibiting Discrimination on the grounds of Ethnic Origin, Religion and Belief\(^4\) (**ADERB** Section 9), the Act prohibiting Discrimination on the grounds of Sexual Orientation, Gender Identity and Gender Expression\(^5\) (**ADSGG** Section 8) and the Act

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\(^1\) Lov om arbeidsmiljø, arbeidstid og stillingsvern m.v. (arbeidsmiljøloven) 17. juni 2005 nr. 62.

\(^2\) Ot.prp. nr. 49 (2004-2005) side 325.

\(^3\) Lov om likestilling mellom kjønnene (likestillingsloven) 21. juni 2013 nr. 59.

\(^4\) Lov om forbud mot diskriminering på grunn av etnisitet, religion og livssyn (diskrimineringsloven om etnisitet) 21. juni 2013 nr. 60.

\(^5\) Lov om forbud mot diskriminering på grunn av seksuell orientering, kjønnssidentitet og kjønnsuttrykk (diskrimineringsloven om seksuell orientering) 21. juni 2013 nr. 58.
prohibiting Discrimination on the grounds of Functional Disabilities (ADFD Section 8), hereinafter collectively referred to as the General Discrimination Acts.

2) Does your country have specific regulations to guarantee the protection of workers against violence, bullying and sexual harassment in the workplace?

Yes. Section 4-3 of the WEA is specifically intended to guarantee the protection of employees against violence, bullying and sexual harassment at work. Additionally, the General Discrimination Acts, including the GEA, provide that their prohibitions against harassment apply to "all sides of an employment relationship" (GEA Section 17, ADERB Section 16, ADSGG Section 15 and ADFD Section 21)

Scope of application

3) Who has a legal obligation to refrain from all acts of violence and moral or sexual harassment at work? (private and / or public sector - employers, employees, third party?)

The statutory provisions cited above under questions 1 and 2 apply to both the private and the public sector, and impose an obligation on all persons – employers, employees and third parties – to refrain from violence and harassment at work.

The employer’s obligation

4) Is the employer required to put in place a policy to prevent violence, bullying and sexual harassment in the workplace?

Yes. Pursuant to Section 3-1 paragraph 1 of the WEA, employers are obliged to execute "systematic health, environment and safety (HES) work at all levels of operations". This includes adopting a policy to prevent violence, bullying and sexual harassment at work. More detailed requirements are laid down in Section 3-1 paragraph 2 and the appurtenant Internal Control Regulation (ICR).

The General Discrimination Acts require employers to work "actively, targeted and systematically" to achieve equality within their businesses (GEA Section 23, ADERB Section 20, ADSGG Section 19, ADFD Section 24). This obligation may entail an implementation of policies and measures aimed at preventing sexual harassment or other forms of harassment motivated by the various discrimination characteristics,

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6 Lov om forbud mot diskriminering på grunn av nedsatt funksjonsevne (diskriminerings- og tilgjengelighetsloven) 21. juni 2013 nr. 61.
7 Forskrift om systematisk helse-, miljø- og sikkerhetsarbeid i virksomheter (internkontrollforskriften) 6. desember 1996 nr. 1127.
but the requirements are much less specific and detailed than the ones following from the WEA and the ICR. An account for measures effectuated – if any – must be included in the employer’s annual report (GEA Section 24, ADERB Section 21, ADSGG Section 20, ADFD Section 25).

5) Does the employer have to conduct a risk analysis taking into account the nature of his activities and the size of his business? What are the minimum preventive measures that he has to provide?

Yes. Under Section 3-1 paragraph 2 c) of the WEA and Section 5 of the ICR, employers are required to analyze and assess "risks and problems" related to the business. This analysis forms the basis for the employer’s implementation of policies and measures aimed at reducing the risks. Thus, the necessary measures will vary according to the nature, activities, risks and size of the business. However, all employers must – at a minimum – establish a routine for reporting incidents of violence, bullying or sexual harassment, informing the employees of the person or persons to whom such reports should be addressed.

6) How are employees informed of the risks, the preventive measures and the procedures applicable to the victims of violence and moral or sexual harassment at work?

The employer is required to establish, execute and maintain the HES policies and measures in cooperation with the employees and their representatives (WEA Section 3-1 paragraph 1, ICR Section 5), and the employees have a corresponding obligation and right to contribute (WEA Section 2-3, ICR Section 4). The risk analysis and the resulting policies, measures and routines must be documented in writing and made available to all employees. Additionally, the employer is responsible for providing that all employees are adequately informed of the policies and measures, and that they have the necessary skills regarding the routines for preventing, discovering and rectifying incidents of harassment or violence.

7) Is the employer required to appoint persons with specific skills to deal with cases of violence and moral or sexual harassment at work?

No, the employer is not required to appoint persons with specific skills, but the employees must be informed whom to approach with reports of violence and harassment. Normally, the personnel safety representative, other trade union representatives or the immediate supervisors will deal with such cases.

8) What are the sanctions against the employer who doesn’t adopt policies against violence and moral or sexual harassment at work?
If the employer fails to adopt policies, measures or routines in accordance with the WEA or the ICR, the Labor Inspection Authority\(^8\) may issue an order against the employer to comply with the relevant requirements within a given time limit (WEA Section 18-6, ICR Section 10). If the order is not met within the time limit, the Authority may impose a coercive daily, weekly or monthly fine running until the employer has taken the necessary measures to fulfil the order (WEA Section 18-7). In certain serious cases, the employer’s omission to establish a framework for preventing violence or harassment may also be subject to penal sanctions (WEA Chapter 19).

The General Discrimination Acts contains no formal sanctions against infringements of the obligation to work actively, targeted and systematically towards equality. The duty to account for this work in the annual report, may, however, be enforced by orders and coercive fines, imposed by the Equality and Anti-Discrimination Ombud\(^9\) (Anti-Discrimination Ombud Act\(^10\) Sections 7 and 8).

**Remedies available to victims**

*9) What are the ways of actions available to the victims?*

- **Internal procedures in the enterprise?**

As mentioned under question 5, all employers are required to implement a specific routine for reporting and dealing with incidents of harassment and violence. This routine must enable the victim to communicate and discuss the problem confidentially, and to be assisted by a personnel safety representative or other trade union representatives when approaching the management of the business. Furthermore, the procedure should arrange for confidential dialogue between the management, the victim and – eventually – the alleged perpetrator. The victim should also be offered the necessary medical assistance.

If the business employs 50 or more employees, or if it is demanded by an employers’ or an employees’ organization or the Labor Inspection Authority, the employer is obliged to set up a Working Environment Committee (WEA Section 7-1). Where such a committee has been established, it may – provided that the persons concerned consent – examine reports of harassment or violence with a view to proposing specific measures to prevent further incidents.

- **External procedures?**

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\(^8\) Arbeidstilsynet, see [www.arbeidstilsynet.no](http://www.arbeidstilsynet.no)

\(^9\) Likestillings- og diskrimineringsombudet, see [www.ldo.no](http://www.ldo.no)

If attempts at solving the case by internal procedures do not succeed, the victim or his or her representatives may contact the Labor Inspection Authority for assistance. The Authority will consider the case as a neutral third party, and may conduct such inspections and adopt such decisions as it finds necessary to prevent similar incidents from occurring again. Decisions adopted by the Authority are legally binding and may be enforced by way of coercive fines.

If the victim has been exposed to harassment contrary to the General Discrimination Acts, he or she may lodge a complaint with the Equality and Anti-Discrimination Ombud. The Ombud will make a statement as to whether or not the incident constitutes illegal harassment or discrimination. Such a statement is non-binding, but if the parties do not voluntarily abide by it, the case may be brought before the Equality and Anti-Discrimination Committee, which has the power to adopt legally binding and enforceable orders.

### Legal remedies before the court?

- **Civil?**
  
The victim may raise a claim for compensatory damages and/or damages for injury of non-pecuniary character. Depending on the circumstances – e.g. if the harassment or bullying takes the form of public statements – the victim may also file for injunctive relief.

- **Criminal?**

If the actions of the perpetrator constitute a criminal offence, pursuant to either the criminal provisions of the WEA (WEA Chapter 19) or the Criminal Code, the public prosecutor may institute criminal proceedings against the perpetrator. Violence will normally be pursued according to criminal rather than civil procedure. In such cases, the prosecuting authority may – on behalf of the victim – raise a civil compensation claim in conjunction with the criminal prosecution.

10) **Who can take an action (the worker and/or the employer, colleague workers of the victim, others persons in contact with the victim, the union representative or the agent of an organization of employers, etc.)?**

The employee victim can take action against the perpetrator and – in many cases – against the employer based on his liability for injuries caused by his employees. Colleagues of the victim or union representatives cannot take action themselves. Trade unions as such, may, however, in certain cases intervene in support of the employee, provided that the employee is a member of the union.

The employer may raise a claim against the perpetrator – whether this is an employee or e.g. a customer – on the grounds that the perpetrator's actions constitute a breach
of contract. Such claims are, accordingly, contingent on a contractual relation between the employer and the perpetrator.

11) **Who bears the burden of proof of the violent acts and moral or sexual harassment at work?**

In civil court actions, the burden of proof is normally on the plaintiff. An employee raising a claim for damages against another employee or the employer, will accordingly bear the burden of proof him- or herself. Within the scope of the General Discrimination Acts, however, the burden of proof shifts to the defendant if the employee can establish facts which give reason to believe that discrimination has occurred (GEA Section 27, ADERB Section 24, ADGG Section 23, ADFD Section 30).

In criminal cases, the burden of proof is always on the prosecutor.

12) **In order to avoid reprisals at work, is there special protection provided for the victim and the witnesses?**
   Specify the nature and duration of the special protection.

Under the WEA, all employees are entitled to warn the employer and others of unsound incidents or circumstances in the business, and the employer is required to establish proper routines for such warning (WEA Sections 2-4 and 3-6). If this right to warn is exercised, the employee is protected by law against all forms of reciprocation from the employer (WEA Section 2-5). Should reciprocation occur, the employee concerned may claim damages for non-pecuniary injury irrespective of whether or not the employer is at fault (WEA Section 2-5 paragraph 3). In these cases, the burden of proof is on the employer (WEA Section 2-4 paragraph 3 and Section 2-5 paragraph 1).

What about any improper use of the procedures?

13) **What would be the consequences for a worker who has abused the procedure put in place to combat violence and moral or sexual harassment at work?**

Depending on the individual circumstances, such an employee may be subject to sanctions regarding his or her employment relationship, e.g. written warning, dismissal or – if the case is sufficiently serious – dismissal without notice.

If an employee makes false accusations, this may constitute a criminal offence and lead to penal sanctions.
Supervision and sanctions

14) Who is responsible for monitoring the measures put in place to combat violence and moral or sexual harassment at work?

The Labor Inspection Authority is in charge of monitoring measures under the WEA and the ICR. Within the scope of the General Discrimination Acts, the Equality and Anti-Discrimination Ombud is the supervisory body.

15) What are the sanctions applicable to perpetrators of violence and moral or sexual harassment at work?

As regards the victim, the perpetrator may be liable for damages, compensatory and/or non-pecuniary.

Furthermore, the perpetrator may be subject to sanctions regarding his or her employment relationship, e.g. written warning, dismissal or – if the case is sufficiently serious – dismissal without notice.

Provided the actions of the perpetrator constitute a criminal offence, they may entail penal sanctions, e.g. a fine or imprisonment.

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