4th Study Commission - Protection against violence, bullying and sexual harassment at the workplace

Answers to the Questionnaire of 2014 from Sweden

General remarks

According to the Swedish Work Environment Act the employer has the main responsibility for the working environment. According to the act the people who are in charge of the company are considered to be the employer. Depending on the size of the company the responsibility can, however, be delegated to other persons in the company.

The employer has, according to the Work Environment Act, a general obligation to, among other things

- take all the precautions necessary to prevent the employee from being exposed to health hazards or accident risks, and
- systematically plan, direct and control activities in a manner which leads to the working environment meeting the prescribed requirements for a good working environment. He/she shall investigate work injuries, continuously investigate the hazards of the activity and shall take the measures necessary.

The Work Environment Act is a frame law. The government has given the Work Environment Authority the task to issue regulations and guidelines as to the contents of the employers’ obligations. These regulations are binding but the guidelines are only recommended actions. The authority has issued a lot of regulations and guidelines, for example

- Violence and Menaces in the Working Environment (AFS 1993:2)
- Victimization at Work (AFS 1993:17)

Sweden has also enacted a Discrimination Act, which is in part based on regulations from the European Union. The Discrimination Act contains rules on discrimination on grounds of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age and is applicable for example at work, at school, at university, in health and
medical care, in social services and in the social insurance system. In this act there are some paragraphs dealing with sexual harassments.

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

In Sweden there is no specific definition of violence.

*Sexual harassment* is defined as “a behaviour of sexual nature that violates a person’s dignity”.

*Bullying* (and also sexual harassment) is included in the conception of victimization, which is defined as “recurrent reprehensible or distinctly negative actions which are directed against individual employees in an offensive manner and can result in those employees being placed outside the workplace community”.

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

Yes, in part. See *General remarks*. There is a Work Environment Act, an Act of Discrimination and also regulations and guidelines from The Work Environment Authority.

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?)**

Anyone who has committed a crime involving violence or harassment can be convicted according to criminal laws and can also be liable to pay damages. In that sense everyone has a legal obligation to refrain from such acts.

According to the Discrimination Act an employer has a legal obligation to refrain from any discrimination against an employer or someone who applies for a job.

The regulations and guidelines from The Work Environment Authority are aimed at what obligations the employers have in different situations and what measures they have to take. It goes without saying that the employer himself has to refrain from any violence, threats or sexual harassment. In the guidelines to the regulation on Victimization at Work it says that an important principle for all persons in working life is that offensive behaviour or treatment can never be accepted, no matter who is involved or who is the target.
It doesn’t matter if the employer is public or private – the rules are the same.

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

There is no specific and directly pronounced legal obligation for an employer to adopt such policies but you could say that such an obligation is included in the employer’s general obligation to make sure that the working environment is good. In the guidelines to the regulation on Victimization at Work the employer is also recommended to design a distinct work environment policy which among other things declares the employer’s general aims, intentions and attitude to the employees concerning victimization at work.

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?**

There is no legal obligation to conduct specific risk analysis but the employer has to plan and organize work so as to prevent victimization. He/she also has to investigate risks and take appropriate measures if something has occurred. The laws, regulations and guidelines apply to all employers regardless the kind of business the employer runs, but the concept of “appropriate measure” can differ from employer to employer depending on the size and nature of activity.

According to the guidelines to the regulation on Violence and Menaces in the Working Environment the employer has a more specific obligation to size up the risk of violence and menaces at the workplace. A careful survey of the work may then have to be carried out.

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?**

According to the Work Environment Act the employer shall ensure that the employee acquires a sound knowledge of the conditions in which work is conducted and that he is informed of the hazards that the work may entail. The employer shall make sure that the employee has received the training necessary and that he knows what measures shall be taken for the avoidance of risks in the work. The employer shall see to it that only employees who have received adequate instructions gain access to areas where there is a palpable risk of ill-health or accidents.

The guidelines to the regulation on Violence and Menaces in the Working Environment give additional information about the employer’s obligations. A special security program may need
to be drawn up. Different categories of employee may need different kinds of training. It may be appropriate to practice the appropriate response to a violent situation.

According to the guidelines to the regulation on Victimization at Work the employer shall provide a good introduction, which enables the employee to adjust well to the working group. The rules applying at the workplace should be made quite clear. The employer should also give each employee the best knowledge of and regular information about the working environment, give all employees information about and a share in the measures agreed on for prevention of victimization and give the employees opportunities of improving their knowledge and developing in their jobs.

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

According to the guidelines employers are recommended to give managers and supervisory personnel training and guidance on these matters. It is stressed that it is important that managers who are directly involved in the supervision of personal should have sufficient insight and knowledge in this field.

8. **What are the sanctions against the employer who doesn`t adopt policies against violence and moral or sexual harassment at work?**

As declared above there is no designated legal obligation to adopt such policies, they are only recommendations. However, an employer that doesn´t provide an appropriate working environment, can be subject to sanctions. The Work Environment Authority may decide injunctions and prohibitions towards the person who has the protection responsibility in order that the Act or regulation which has been issued with support of the Act is followed. When deciding on injunctions or prohibitions, the Work Environment Authority may issue a monetary fine. If someone does not follow an injunction, the Work Environment Authority may decide that rectification shall occur at the person’s cost.

An employer that doesn´t comply with the provisions in the Discrimination Act may be liable to pay damages to the injured party.

9. **What are the ways of actions available to the victims? Internal procedures in the enterprise? External Procedures? Legal remedies before the court? Civil Criminal?**

The employer has the obligation to act if a risk of violence or victimization is detected. The victim can draw the employer`s attention to a problem and get his/hers assistance.
If the victim feels discriminated on grounds of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age, he/she could turn to the Equality Ombudsman (DO). DO could give advice, provide information and represent the victim in court.

If a crime has been committed the victim can take the case to the court and get the perpetrator convicted in a criminal case. He/she could also claim damages in such a case or in a separate civil case. If it is a matter of public interest the public prosecutor can raise a claim and represent the victim in court.

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

Anyone who thinks that there is a problem concerning the working environment can call the employers attention to this problem. The employer then has to investigate and take appropriate action. Especially the trade unions have the role to supervise that the employer fulfil his/hers obligations.

When it comes to actions before the court the employee can raise a claim in a civil or criminal case against the perpetrator. The employer can also do that and sue the employee or the perpetrator. The prosecutor can start a criminal case. The trade union can represent a member of the union in the Labour Court. The Equality Ombudsman can represent the victim and start a case in the Labour Court under the Discrimination Act. Colleague workers or other persons in contact with the victim cannot take these kinds of actions in court.

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

Under the Discrimination Act there is a specific rule for the burden of proof, based on European Union’s Directives. According to this the victim has to establish facts from which it may be presumed that discrimination has occurred. The other party is then obliged to prove that there has been no discrimination.

In criminal and civil cases the victim or the prosecutor bears the burden of proof.

If another employee is the perpetrator the employer may take measures concerning the perpetrators employment. In those cases the employer always bears the burden of proof.
12. In order to avoid reprisals at work, is there special protection provided for the victim and the witness? Specify the nature and duration of the special protection.

According the Discrimination Act the employer has a legal obligation to refrain from reprisals against employers who exercise their rights under the Act. If he doesn’t he could be liable to pay damages.

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?

An employee may be subject to measures concerning his employment, such as warning, deduction from salary, notice to quit and dismissal. If the worker has committed a crime he can be punished for that.

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

The employer always has the overall responsibility for the working environment at the work place.

The Work Environment Authority supervises that the employers fulfil their obligations according to the law.

The Equality Ombudsman supervises the Discrimination Act.

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

Anyone who commits a crime regarding these matters can be convicted according to criminal laws. Then she/he could also be liable to pay damages to the victim for violation of the personal integrity. If the perpetrator has caused the victim physical or mental personal injury he/she can be obliged to pay damages if he/she has acted negligently and regardless of any crime being committed.

If the perpetrator is an employee he/she can be subject to measures concerning his employment.