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Moral Harassment in the Workplace: Important Issues an Employer Must Be Aware of in the Spanish Market

Moral harassment, “mobbing” or “bossing” are expressions that refer to moral harassment in the work environment. Issues to be noted are:

- Ten percent of employees have been or will become victims of moral harassment some time during their working careers.
- The financial impact for employers is very high¹.
- There has recently been an increase in “moral harassment” claims, due to a variety of difficult work situations being incorrectly described as moral harassment.

Legal Elements that Constitute Moral Harassment

Due to the fact that there are no legal provisions to define moral harassment, case law has construed it as:

Violence or extreme psychological ill treatment. The manifestation of moral harassment is an act of persecution or extreme and serious plagues of a person. Such violence must conform with two conditions:

- It has to be clearly differentiated from conduct normally expected in a tense or bad work environment; and,
- The intensity of such violence is extreme and serious; minor acts or nonserious actions are not sufficient.

In both cases, the relevant judge will objectively determine the seriousness and nature of the violence.

Duration of ill treatment. The violence must be continuous and prolonged and of a constant and systematic nature, not simply with sporadic and particular actions. With regard to the duration, it is usually established as six months of continuous violence, although this is merely representative, as it depends on the continuity of the violence inflicted. The

greater the intensity of the violence, the shorter the time period required.

Objective of the harasser. The aim is to cause psychological harm to the affected employee in order to exclude him from his work environment. Neither doctrine nor case law recognises this as an essential element, since in some cases, the harasser exercises the violence with no specific intention, although this cannot be an excuse for his/her extreme and prolonged violence.

Damage to the employee. Jurisprudence and doctrine are divided with regard to this aspect. In the early days of moral harassment being considered a legal wrong, many legal decisions cited psychological harm as an integral element of it, without which the actions of the harasser could not be described as moral harassment. However, current case law only tends to evaluate the harm to the employee when quantifying the indemnity, without giving importance to this element when determining whether such actions constitute moral harassment.

Infringements Derived From Moral Harassment

An act of moral harassment breaches several articles of the Spanish Constitution. Article 10 refers to the dignity of a person, and article 15 protects moral integrity. Both articles have been interpreted by the courts in the same way, determining that such harassment constitutes a denigrating treatment that seriously humiliates the victim. Article 18 protects the right to honour, which, in this case, is the professional prestige of any worker.

Such conduct also breaches articles 17, 18, 20 and 39 of Workers’ Statute, which echo the rules established in the

¹ A study carried out by the Commerce Chamber of London has revealed that the expenses derived from moral harassment at work have an annual cost of £2,000,000.

Constitution. The first two refer to an employee's dignity and privacy, while articles 20 to 39 put limits, out of respect for the employee's dignity, on the power of management.

In the same way, Law 5/2000 of Infractions and Sanctions of Social Order, particularly articles 8.11 and 13, considers both acts by an employer to be a very serious infringement and to be contrary to the dignity and privacy of the employee, as well as placing workers in a position which is incompatible with their personal and professional ethics.

Moral Harassment as Labour Risk: The Role of the Company

Article 4 of the Law of Prevention of Labour Risks considers as labour risk the possibility of an employee suffering a substantial harm arising from the workplace. As above mentioned, the most common consequence of moral harassment is the psychological harm caused to the victim. This is the reason why companies must implement procedures now in order to avoid future cases of moral harassment.

Moreover, the company may also be damaged by the consequences of moral harassment: employee absenteeism, increased costs due to workers' lack of motivation and commitment, low productivity, hostile work environment, administrative sanctions, indemnities to the victims and negative public image.

Measures to be Followed

The damage that may be caused to the company is clear, not only from an economic point of view, but also from a social and production standpoint. Therefore, we believe that companies should follow a series of measures to raise awareness of these risks and, if possible, prevent them.

Flexible and responsible work environment. An intelligent, structured organisation avoids the isolation, both professional and physical, of employees. The establishment of a culture based on these principles is a basic element of all business organisations, both from the point of view of the organisation and the best use of human resources.

Psychology is an increasingly important field inside companies. Many experts propose making the services of a psychological team available to employees. With this approach, possible psychological illness can be avoided and potential situations of moral harassment could be detected.

A culture of **open communication** within the organisation should be fostered. Employees have to be conscious of the existence of the moral harassment as labour risk, and should be able to feel comfortable reporting instances of moral harassment. Promoting internal communication, the company will show its good will in case moral harassment happens. Likewise, all companies should have a procedure to follow up and investigate harassment situations.

Conclusion

Moral harassment, although present in many fields, is rapidly increasing in work environments. However, in parallel, another fact is arising: the abuses of this legality. In these cases, the objective of the "harassed" employee would be to modify an unfavourable labour situation, or even to obtain the termination of his/her contract, with the correspondent severance payment. Due to this situation, it has become advisable, even necessary, for companies to begin to take into account both problems (moral harassment and the abuse of it), so that measures can be adopted in order to prevent and address them.

Likewise, it is important for a company to consider moral harassment as a labour risk and therefore develop an internal labour policy carrying out the above advice, bearing in mind that there are risks associated with noncompliance.

Further Information

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