

A Handbook on Procedures for Bullying or Harassment Disputes

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Abstract

In this paper we are presenting an executive summary of the 'Handbook on Procedures for Bullying or Harassment Disputes' elaborated by the authors within the activities of the Basque Observatory on Bullying, an association composed of different kind of professionals: judges, lawyers, labour inspectors, psychologists and doctors. The content of the Handbook has been recently discussed in the Summer Course organized by the University of the Basque Country in Saint Sebastian (June 27th and 28th, 2013).

Index terms—

1 I.

What is a Procedure for Bullying Conflicts?

It is a procedure which regulates the intervention in workplace bullying or harassment disputes of any kind (whether sexual harassment or bullying) suffered by a person from other people who are working in the same company or workplace or by third parties.

2 II.

Why do we need a Procedure for Bullying or Harassment?

Because they all (company and workers) should know how to act quickly and safely when such a kind of conflicts arise, without being necessary to improvise a response before that particularly delicate situation.

3 III.

What is the Purpose of the Procedure?

The purpose of the procedure is to avoid and prevent the risk of harassment or bullying by early detection of the circumstances that can generate it and adopt appropriate preventive and corrective measures.

When a bullying behaviour has been verified or has actually occurred, other disciplinary proceedings have to be approached.

4 IV. Premises for the Good Functioning of the Procedure

The first premise is the commitment of the employer. The employer must believe in its usefulness and must be willing to put all the necessary means to achieve its aims.

The second premise is to provide information to workers. It is necessary that workers understand what bullying is and when and how to report it.

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The third premise is the participation of workers' representatives in the development of the procedure. This participation is desirable to reinforce its legitimacy and for its real and effective use.

V.

5 The Legal Basis of Procedures

The use of procedures for bullying situations is recommended by the ILO in its Guidelines on Workplace Violence (2003) and the European Social Partners in the Framework Agreement on Harassment and Violence (2007).

The only specific mention in the Spanish legislation to procedures is found in Article 48 of the Law on Effective Equality of Women and Men for sexual harassment and gender-related bullying.

We also have a growing number of collective agreements that oblige companies to follow an internal procedure for these disputes.

In any case, we consider that the most appropriate way for addressing harassment or bullying procedures is their inclusion within the policy of prevention on psychosocial risks in the company.

6 VI.

7 General Principles for the Development of a Protocol

The first and most basic principle is that the procedure should be adapted to the rules and practices of the company. The procedure should not be a simple copy or a mechanical translation of existing protocols in other organizations.

The second principle is clarity in the process. We consider that the process should be regulated and its stages must be well described, specifying who should perform each role and the binding force of the decisions adopted.

Lastly, the third principle is the immediacy. Detection of harassment should be as early as possible and the decisions should be taken immediately. For ensuring this aim deadlines must be prescribed and the procedure should not be interrupted at all.

8 VII.

9 People who Manage the Procedure

The people who manage the procedure must always be perfectly identified, be impartial, be properly trained for their role and should have recognized their powers to adopt binding decisions.

10 VIII.

How to Initiate the Procedure The procedure can be initiated by the complaint of the person who considers himself or herself aggrieved.

But there may also be requested by other instances, such as the Prevention Service, the workers' representatives or an appropriate number of workers.

In any case, the company managers should be able to start the procedure because of their legal responsibility to avoid and prevent bullying or harassment in the workplace.

11 IX.

12 Previous Stage to the Procedure

Before starting the procedure, it should be considered to try to resolve the dispute by informal arrangements through an assisted dialogue between the parties concerned.

In any case, any complaint should be subjected to a prior review and be determined the existence of reasonable suspicion of bullying or harassment This decision should adopted by an impartial person or body X.

13 Mediation Stage

Mediation must be carried out to try to resolve the dispute quickly and through the dialogue.

In some circumstances, this step can be omitted since it is not always convenient to carry it out.

In any case, the mediator may be a neutral person or plural group of persons and the participation of the parties in this stage should be voluntary. The mediator's proposals should not be binding.

14 XI.

15 Resolution Stage

This stage begins when mediation is not considered appropriate, when this attempt has been rejected or when the measures proposed by the mediator have not been accepted.

It has to be carried out a thorough investigation of the facts, giving hearing to the affected persons and witnesses.

External experts can also be used if necessary. The decision adopted shall be binding.

When it has been found evidence of harassment or bullying behaviour, disciplinary proceedings should be proposed. In any case, the need of preventive measures should be always considered, even if the harassment behaviour has not been able to be ascertained.

16 XII.

17 Guarantees of the Procedure

The main guarantee is the confidentiality of the complaint and the procedure for the parties.

The complaint should be strictly confidential and must be placed in a stage before the start of the procedure.

The procedure starts with the decision taken after considering the application.

Only the interested parties can get the facts and circumstances contained in the procedure and the decisions with regard to them.

The second guarantee is the protection of witnesses, to ensure their immunity and avoid pressure.

Lastly, the third one is to ensure the impulse of the procedure by the employer in order to prevent its stagnation.

18 XIII. Other Labour Conflicts should be Otherwise Treated

Finally, it should be noted that there are other similar conflicts whereby it is necessary to intervene but should not receive the same treatment than harassment or bullying.

Such situations can be e.g. serious and punctual offenses against the dignity of the people, labour disputes between management and staff or between groups of workers within the company, styles or forms of despotic management, poor communication problems or role conflicts among workers.

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