



GLOBAL JOURNAL OF HUMAN SOCIAL SCIENCE
ARTS & HUMANITIES

Volume 13 Issue 5 Version 1.0 Year 2013

Type: Double Blind Peer Reviewed International Research Journal

Publisher: Global Journals Inc. (USA)

Online ISSN: 2249-460X & Print ISSN: 0975-587X

Procedures for Bullying or Harassment Disputes in the Workplace

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Abstract - The Basque Observatory on Bullying has recently presented a Handbook on Procedures for Managing Bullying or Harassment Conflicts in the Workplace¹.

These procedures should regulate 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.

We need them because everybody (company and workers) should know how to act quickly and safely when such a kind of conflicts arises, without being necessary to improvise a response before that particularly delicate situation.

GJHSS-A Classification : FOR Code: 179999



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Procedures for Bullying or Harassment Disputes in the Workplace

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I. Why do we Need a Procedure for Bullying Conflicts?

The Basque Observatory on Bullying has recently presented a Handbook on Procedures for Managing Bullying or Harassment Conflicts in the Workplace¹.

These procedures should regulate 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.

We need them because everybody (company and workers) should know how to act quickly and safely when such a kind of conflicts arises, without being necessary to improvise a response before that particularly delicate situation.

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 or disputes proceedings have to be approached.

II. Assumptions for the Good Functioning of the Procedure

We are considering three basic assumptions for the good functioning of these procedures.

The first 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 is to provide information to workers. It is necessary that workers understand what bullying or harassment is and when and how to report it.

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

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III. The Legal Basis for the Procedures

At International level, the use of procedures for violence at work disputes situations is only recommended by the ILO in the Code of practice on workplace violence in services sectors and measures to combat this phenomenon (2003) on Workplace Violence (2003)². There is not, however, any ILO Convention or Recommendation in this matter although the internal rules of UN, WHO and ILO lay down these kind of procedures on bullying disputes.

In the European Union Legal Framework, we can rely on the Council Declaration of 19 December 1991 on the implementation of the Commission Recommendation on the protection of the dignity of women and men at work, which includes a code of practice to combat sexual harassment³, the European legislation on equal treatment, especially the Directive 2002/73/EC of the European Parliament and of the Council⁴ and more recently in the Framework Agreement of the European Social Partners on Harassment and Violence (2007)⁵.

All these instruments foresee the setting-up of internal procedures for disputes and the European Commission has also adopted these procedures in its internal personnel regulations⁶.

In many European countries we also have a growing number of collective agreements that require companies to follow up a 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 within the Framework Directive on Occupational Health and

² Available at http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@safework/documents/normativeinstrument/wcms_107705.pdf

³ The Council Declaration was published in the Official Journal C 27 of 04.02.1992 and the Commission code of practice on sexual harassment has been published in the Official Journal L 49 of 24.02.1992

⁴ It was published in the Official Journal L 269 of 05.10.2002

⁵ Available at http://ec.europa.eu/employment_social/dsw/public/actRetrieveText.do?id=8446

⁶ Commission Decision of 26th April 2006 on the European Commission policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment C(2006) 1624/3

¹ It can be uploaded in the website of the Basque Observatory on Bullying <http://www.observatoriovascosobreacoso.com>

Safety 89/391/EEC⁷, because the aim should be the prevention of future illegitimate behaviours which can simultaneously violate the rights to dignity, privacy, health and physical and moral integrity.

IV. General Principles for the Development of a Procedure

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 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 every stage must be well described, specifying who should perform each role and the binding or non-binding force of the decisions adopted.

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 established and the procedure should not be interrupted at all.

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

V. Who can Initiate the Procedure?

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

However, it 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.

VI. Procedure Stages

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

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

Secondly, mediation must be carried out to try to resolve the dispute quickly and through the dialogue.

However, 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. Mediator's proposals should not be binding.

Finally, the resolution 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 and the decisions 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.

VII. Guarantees in 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.

VIII. Other Conflicts Should be Otherwise Treated

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

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.

The resolution of conflicts or disputes which have not a preventive aim should be conducted to other remedies because otherwise they can hinder the good functioning of these procedures.

⁷ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (*Official Journal L 183, 29/06/1989 P. 0001 – 0008*)