

CONVENTION
OF 25 JUNE 2009
ON HARASSMENT AND VIOLENCE AT THE WORKPLACE



CONVENTION

THE UNION DES ENTREPRISES LUXEMBOURGEOISES (UNION OF LUXEMBOURG ENTERPRISES), referred to by the acronym UEL,

with registered office at L-1615 Luxembourg, 7, rue Alcide de Gasperi,

duly mandated for the present purposes by

the Luxembourg Bankers' Association (ABBL), with registered office at L-2449 Luxembourg, 59, boulevard Royal,

the Association of Insurance Companies (ACA), with registered office at L-8081 Bertrange, 75, rue de Mamer,

the clc (Luxembourg Confederation of Commerce), with registered office at L-1615 Luxembourg, 7, rue Alcide de Gasperi,

the Federation of Artisans (FDA), with registered office at L-1347 Luxembourg, 2, circuit de la Foire Internationale,

the Fedil – Business Federation Luxembourg, with registered office at L-1615 Luxembourg, 7, rue Alcide de Gasperi,

the National Federation of Hoteliers, Restaurateurs and Café Operators (HORESCA), with registered office at L-1615 Luxembourg, 7, rue Alcide de Gasperi,

parties of the first part,

and

the ONOFHÄNGEGE GEWERKSCHAFTSBOND LËTZEBUERG, referred to by the acronym of OGB.L, with registered office at L-4170 Esch/Alzette, 60, Boulevard Kennedy

and

LËTZEBUERGER CHRËSCHTLECHE GEWERKSCHAFTS-BOND, referred to by the acronym of LCGB, with registered office at L-1351 Luxembourg, 11, rue du Commerce

parties of the second part, hereby conclude the present convention:

CONVENTION ON HARASSMENT AND VIOLENCE AT THE WORKPLACE

Whereas, first of all, the social partners who represent different enterprise activities at European level, more particularly BusinessEurope, UEAPME, CEEP and CES, have signed an independent framework agreement concerning harassment and violence at the workplace dated 26 April 2007 on the basis of Art. 139 of the Treaty on the European Union; whereas the signatory organisations have undertaken to implement that agreement in compliance with the procedures and practices specific to the social partners in the Member States of the EU and in the countries of the European Economic Area (within three years of its signing);

whereas, further, the social partners believe that harassment and violence are unacceptable behaviour on the part of one or more persons and may take several different forms, some of them being more readily identifiable than others; whereas such actions have the aim or effect of violating the dignity of workers, affecting their health and/or creating a hostile working environment; whereas the different forms of harassment and violence may adversely affect the workplace;

whereas, finally, the objective of the European Framework Agreement is to make employers, workers and their representatives better aware and clearer in their own minds as to the nature of harassment and violence at the workplace, to provide employers, workers and their representatives at every level with a pragmatic framework enabling problems of harassment and violence at the workplace to be identified, prevented and managed; whereas it is important therefore for the signatory parties to this convention to transpose this objective at national level; whereas such transposition in no way prejudices the signing of sectoral agreements and/or the conclusion of more specific agreements within the enterprises with a view to preventing such behaviour and better assisting the victims of such actions;

the signatory parties have concluded the present convention:

1. General provisions

Harassment and violence are caused by unacceptable forms of behaviour by one or more workers or managers or, in the case of violence, possibly by persons from outside the enterprise and which may have as their aim or effect the violation of the dignity of workers or managers, causing damage to their health and/or creating a hostile working environment.

The signatory parties undertake to prevent such behaviour in all its forms at the workplace. They further define a number of approaches which the enterprises may adopt to assist the victims of such actions. To that end, they lay down general principles concerning the prevention of, and protection against, acts of harassment and violence at the workplace, information and consultation, together with general guidelines for the implementation of those principles. They take the view that acts of harassment and violence at the workplace must not be tolerated within the enterprise.

The signatory parties further believe that the victim and witness of any such form of behaviour must not suffer prejudicial consequences because they have reported or resisted a situation of harassment or violence.

Within the framework of this convention, the signatory parties use the terms worker, employer and manager with the following definitions:

- the term “worker” designates every employee, trainee and apprentice dependent upon the enterprise and any pupil or student employed during the educational holidays in the enterprise;
- the term “employer” designates any natural person or corporate body who or which is responsible for the working relationship with the worker or the manager and who or which is in charge of the enterprise;
- the term “manager” designates every person in the hierarchy within the enterprise who is authorised, in one way or another, to give orders to the workers.

2. Provisions specific to moral harassment

Definition

Moral harassment occurs when a person who is dependent upon the enterprise commits unauthorised, repeated and deliberate actions towards a worker or a manager, with the aim or effect of:

- either infringing their rights or their dignity;
- or damaging their working conditions or jeopardizing their professional career by creating an intimidating, hostile, degrading, humiliating or offensive environment;
- or else causing damage to their physical or mental health.

Prevention of moral harassment at the workplace

Prohibition of acts of harassment at the workplace

In consultation with the staff representatives, the employer will state, if necessary by including a provision to this effect in the internal regulation, that he will not tolerate any form of harassment within the enterprise. The employer will point out that each worker and manager is responsible for preventing the occurrence of such acts of harassment at the workplace.

Creation of an awareness on the part of workers and managers

In consultation with the staff representatives, the employer will take steps to make workers and managers aware of this issue using the available means of internal communication. This awareness creation will concern the definition of harassment, the methods by which such situations are to be managed within the enterprise and the sanctions to be imposed upon the perpetrator or perpetrators of acts of harassment.

Preventive measures

Within the framework of the prevention policy, the employer will determine, in consultation with the staff representatives, the measures to be taken to protect workers and managers against harassment at the workplace.

The preventive measures may be determined in whole or in part by agreements between the social partners. If they are set out in an agreement at sectoral level, each enterprise will be responsible for implementing these measures, unless it has its own measures that are equivalent to the provisions of the agreement.

These measures which must be adapted to the nature of the activities and the size of the enterprise may relate in particular to:

- the information and training of the workers and managers in respect of the policy of prevention of, and protection against, harassment at the workplace;
- the identification of a competent discussion partner in the area of prevention of, and protection against, harassment at the workplace;
- the definition of the resources and procedures made available to the victims who wish to seek assistance.

Internal assessment if acts of harassment occur

If acts of harassment towards workers and/or managers occur, the employer will make an internal assessment of the effectiveness of the preventive measures and of the possible implementation of new preventive measures to be taken, in particular in relation to the organisation of the enterprise, the review of the procedures applied in the event of harassment and the information for the workers. This assessment and subsequent reassessments will be made in consultation with the staff representatives.

Management of acts of harassment

Definition of a procedure to manage acts of harassment

The employer, acting in consultation with the staff representatives, will implement a procedure to manage problems of harassment on the basis of the internal assessment and subsequent reassessments of harassment within the enterprise.

The management procedure may be determined in whole or in part by agreements between the social partners. If it is set out in an agreement at sectoral level, each enterprise will be responsible for implementing this procedure, unless it has its own procedure which is equivalent to the provisions of the agreement.

The procedure will be based, in particular, on the following considerations:

- the parties will act with all the discretion needed to protect the dignity and private life of each individual;
- no information will be disclosed to any parties who are not involved in the case;
- complaints will be examined without delay and dealt with in a reasonable time frame;
- each party must be heard at the earliest possible opportunity and will be entitled to be assisted by a staff representative during the interview;
- each complaint will be dealt with impartially;
- each complaint must be backed by detailed information;
- false accusations will not be tolerated and may lead to disciplinary measures or sanctions which may even include dismissal;
- external assistance may be provided to analyse and deal with complaints;
- victims will benefit from support, the nature of which will be determined within the enterprise in the absence of any sufficiently precise agreement on this subject between the social partners applicable to the enterprise.

Actions and sanctions against the perpetrator of acts of harassment

The sanctions which the employer may impose in the event of harassment will be similarly determined in a clear and transparent manner after consulting the staff representatives. If harassment is proven, appropriate measures will be taken against the perpetrator or perpetrators. These may include disciplinary measures and sanctions which may even include dismissal.

Protection of the victim and witness of acts of harassment

A stipulation will be made to the effect that the victim of harassment at the workplace cannot be the subject of reprisals following the reporting of, or resistance to, an act of harassment, that his file will be treated with the utmost discretion and that measures intended to end the harassment may not be taken to the detriment of the victim.

In addition, no worker or manager may be the subject of reprisals for having reported acts of harassment which occurred at the workplace.

3. Provisions specific to violence at the workplace

Definition

Violence at the workplace occurs when a worker or a manager is the victim of aggression caused by one or more deliberate actions on the part of another person which are designed to damage, or have the effect of damaging, their physical or mental integrity. The violence may be perpetrated by persons who belong to the enterprise or by third parties. It may take the form of a single action of some gravity or more than one action of a similar or different kind.

Prevention of violence at the workplace

Prohibition of acts of violence at the workplace

In the case of violence which may be caused by persons who are dependent upon the enterprise, the employer will state, in consultation with the staff representatives, if necessary by including a provision to this effect in the internal regulation, that he will not tolerate any form of violence within the enterprise. The employer will point out that each worker and manager is responsible for preventing the occurrence of such acts of violence at the workplace.

Creation of an awareness on the part of workers and managers

In consultation with the staff representatives, the employer will take steps to make workers and managers aware of this issue using the available means of internal communication. This awareness creation will concern the definition of violence, the methods by which such situations are to be managed within the enterprise and the sanctions to be imposed upon the perpetrator or the perpetrators of acts of violence.

Preventive measures

Within the framework of the prevention policy, the employer will determine, in consultation with the staff representatives, the measures to be taken to protect workers and managers against violence at the workplace.

The preventive measures may be determined in whole or in part by agreements between the social partners. If they are set out in an agreement at sectoral level, each enterprise will be responsible for implementing these measures, unless it has its own measures that are equivalent to the provisions of the agreement.

These measures which must be adapted to the nature of the activities and the size of the enterprise may relate in particular to:

- the definition of a risk plan taking due account of the specific features of the activity of the enterprise;

- the material steps, appropriate to the risks of the enterprise, taken on the premises in order to prevent violence perpetrated at the workplace by persons from outside the enterprise;
- the information and training of the workers and managers in respect of the policy of prevention of, and protection against, violence at the workplace;
- the identification of a competent discussion partner in the area of prevention of, and protection against, violence at the workplace;
- the definition of the resources and procedures made available to the victims who wish to seek assistance.

Internal assessment if acts of violence occur

If acts of violence towards workers and/or managers occur, the employer will make an internal assessment of the effectiveness of the preventive measures and of the possible implementation of new preventive measures to be taken, in particular in relation to the organisation of the enterprise, the review of the procedures applied in the event of violence and the information for the workers. This assessment and subsequent reassessments will be made in consultation with the staff representatives.

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In addition, no worker or manager may be the subject of reprisals for having reported acts of violence which occurred at the workplace.

4. Final provisions

The signatory parties hereby stipulate that this agreement shall be reviewed after a period of five years of the date on which it is signed at the request of any of the parties and may be the subject of a subsequent revision.

The signatory parties further agree that no unnecessary burdens shall be imposed upon small and medium-sized enterprises for the purpose of implementing this agreement.

Finally, the signatory parties agree that this agreement does not prejudice the right of the social partners to conclude, at the appropriate level, further agreements for the implementation of this Convention, taking due account of the specific needs of the parties concerned.

This Convention was drawn up in four copies and signed in Luxembourg on 25 June 2009.

In case of contradiction between the English and the French version, the French version shall prevail.

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