HARASSMENT IN THE WORKPLACE: A MAJOR CHALLENGE FOR EMPLOYERS IN FRANCE

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During the first quarter of 2025, the French Supreme Court has rendered a number of rulings on harassment in the workplace. Whether moral, institutional, environmental or sexual, harassment is a burning topic and the French labor courts have repeatedly reminded employers of their obligations in this area.[1]

In addition to the important decision rendered by the Criminal Section of the French Supreme Court on 21 January 2025[2] establishing the concept of institutional moral harassment, a number of rulings have clarified the scope of the employer's obligation to ensure a safe place of work (safety obligation).

THE EMPLOYEE DOES NOT NEED TO EXPRESSLY DESCRIBE THE REPORTED BEHAVIOR AS “HARASSMENT”

In a decision dated 8 January 2025, the French Supreme Court confirmed that the employer's obligation to prevent harassment is independent of the categorization of the wrongful behavior by the employee victim of the harassment. In other words, there is no need for the victim to describe the alleged facts as harassment in order to benefit from the safety obligation.[3]

This position, which is in line with the Supreme Court's decision dated 19 April 2023[4], now prevents employers from avoiding liability based upon an employee's failure to describe prohibited acts as "harassment".

SCOPE OF THE SAFETY OBLIGATION: NO AUTOMATIC REINSTATEMENT OF A PROTECTED EMPLOYEE SUSPECTED OF SEXUAL HARASSMENT

In another decision rendered on 8 January 2025[5] by the French Supreme Court, an employee (who was a union representative) was accused of inappropriate behavior towards one of his colleagues, consisting of indecent advances and gestures with sexual connotations, insistent attitudes and physical contact such as kissing close to the lips. In accordance with French law, the employer asked for the labor inspector's authorization to dismiss this employee, which was denied. Despite this denial, the employer refused to reinstate the employee, who terminated his employment contract and brought an action before the labor court.

In this situation, the employer faced a dilemma: to either reinstate the employee, as provided for by French law under Article L.2411-1 of the Labor Code, or to comply with the safety obligation to prevent and put an end to any harassment situation in accordance with Article L.1153-5 of the Labor Code.

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The Court of Appeal found that the employer's refusal to reinstate the employee despite the labor inspector's decision constituted a violation of the protected status given to employees holding the position of trade union representative.

The French Supreme Court, on the other hand, considered that the Court of Appeal should have *"investigated whether the impossibility of reinstating the employee was not the result of a risk of sexual harassment that the employer was required to prevent"*. Reinstatement of the accused employee is therefore not automatic, and the employer must take into account its duty to avoid and prevent any situation of harassment.

INTERNAL INVESTIGATIONS: RECOMMENDATION OF THE FRENCH DEFENDER OF RIGHTS (DÉFENSEUR DES DROITS)

On 5 February 2025[6] the French Defender of Rights published a recommended guide for employers, to help them to deal with reports of harassment or discrimination more effectively. Even though this guide does not have legal force, in practice it provides general guidelines that judges could use as a check list in case of litigation.

These recommendations are designed in particular to help employers with the implementation of their reporting and internal investigation processes.

The French Defender of Rights has set out the following steps which employers should take:

- Set up reporting systems and informing employees of the same;
- React to the claim and protect the employees' interests (taking into account each employee's health situation and protecting the alleged victim's safety);
- Implement internal investigations in compliance with principles of confidentiality and impartiality;
- Legally qualify the facts brought to the employer's attention (e.g. harassment, mismanagement, etc.) and sanction employees accordingly.

The publication of this guidance confirms the importance of topics relating to employees' health and safety.

These decisions and guidance make it even more imperative that employers make certain that they are well-prepared to prevent and respond to claims of harassment and discrimination when they arise. Action items include making certain that compliant procedures are in place and that they are followed. Responses to claims should be audited to ensure both legal compliance and practical effectiveness. Given the specificities of the legal requirements, employers should not hesitate to seek assistance to do so.

FOOTNOTES

[1] Article L.1152-4 of the Labor Code; Article L.1153-5 of the Labor Code; Article L.4121-1 of the Labor Code

[2] Court of Cassation, Criminal Division, 21 January 2025, no. 22-87145

[3] Court of Cassation, Social Division, 8 January 2025, no. 23-19996

[4] Court of Cassation, Social Division, 19 April 2023, no. 21-21053

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[5] Court of Cassation, Social Division, 8 January 2025, no. 23-12574

[6] Framework decision no. 2025-019 of 5 February 2025

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