

## NEW LAW ON MORAL HARASSMENT AT WORK

On 9 March 2023, a new law was voted by the Parliament to introduce in the Labour Code a mechanism of protection against moral harassment in the context of employment relations (the "**Moral Harassment Law**")<sup>1</sup>. It provides for a new uniform legal framework applicable in all companies, including specific obligations for employers.

### PROHIBITION OF MORAL HARASSMENT

The Moral Harassment Law expressly prohibits any moral harassment in the context of employment relations<sup>2</sup>, which is defined as "*any conduct which, by its repetition or systematisation, undermines the dignity or the psychological or physical integrity of a person*"<sup>3</sup>.

This prohibition applies to the employer and the employee<sup>4</sup>, but also any customer or supplier of the company.

### RELATED OBLIGATIONS OF EMPLOYERS

The Moral Harassment Law imposes a series of obligations on the employer to protect employees against moral harassment, namely:

- determining, after informing and consulting the staff delegation, if any, or all the employees, the measures to be taken to protect employees against moral harassment (as developed in the section below)
- ensuring that any moral harassment against its employees, of which the employer is aware, ceases immediately
- in case of moral harassment, carrying out an internal audit, after consultation with the staff delegation or all employees, on the effectiveness of the preventive measures in place and the possible implementation of new preventive measures.

#### Key issues

- A new law on moral harassment in the context of employment relations has just been voted and includes new obligations for employers.
- These obligations include, in addition to taking the necessary measures to end immediately any moral harassment the employer is aware of, the implementation, with the information and consultation of the staff delegation or of all the employees, of measures to prevent and manage moral harassment.
- The victims of such acts (or the staff delegation) may, in case of deficiency of the employer to manage the situation, refer the matter to the Labour Inspectorate.
- Employees having refused, protested against, or testified on acts of moral harassment are protected against retaliation
- It is now time to check the compliance of your policies and practices with these new statutory requirements.

<sup>1</sup> *Loi portant modification du Code du travail en vue d'introduire un dispositif relatif à la protection contre le harcèlement moral à l'occasion des relations de travail.*

<sup>2</sup> in which, the Moral Harassment Law expressly includes work-related travels, professional trainings, work-related communications by any means and even outside normal working hours.

<sup>3</sup> New art. L.246-2 of the Labour Code.

<sup>4</sup> including, under the Moral Harassment Law, interns, apprentices, and pupils and students employed during school holidays.

## **MEASURES AGAINST MORAL HARASSMENT**

The measures that the employer must take to protect its employees against moral harassment must be adapted to the nature of the activities and to the size of the company.

They must cover at least:

- the definition of the means available to victims of harassment, in particular the reception, assistance and support needed by victims, the measures for their care and return to work and the way in which the staff delegation can be contacted
- the rapid and impartial investigation of acts of moral harassment
- raising the awareness of employees and managers about the definition of moral harassment, the ways in which it can be managed within the company and the sanctions against the perpetrators of those acts
- informing the staff delegation, if any, or all employees, of the employer's obligations in preventing acts of moral harassment
- informing and training employees.

## **INVOLVEMENT OF THE LABOUR INSPECTORATE**

If the moral harassment continues after the measures to prevent and end the moral harassment have been actioned or if the employer fails to take appropriate measures, the employee concerned or the staff delegation (with the agreement of the employee concerned) may refer the matter to the Labour Inspectorate.

If the Labour Inspectorate finds the existence of moral harassment, the employer will be ordered to take the necessary measures to end it, under the penalty of an administrative fine.

## **PROTECTION OF THE EMPLOYEES INVOLVED**

An employee may not be subject to retaliation for protesting or refusing any act of moral harassment, or for testifying about it. Any retaliatory measure, including any dismissal, would be null and void.

Any measures taken by the employer to end acts of moral harassment cannot be taken to the detriment of the victim.

## **IMMEDIATE ACTIONS TO TAKE**

The Moral Harassment Law will enter into force three days after having been published in the Luxembourg official gazette, which will occur in the coming days or weeks.

It is now time to check the compliance of your policies and practices with these new statutory obligations.

Our team of experts is at your disposal to advise you in this regard or provide you with any other legal assistance you may need.

## CONTACTS



**Albert Moro**  
Partner

**T** +352 48 50 50 204  
**E** albert.moro  
@cliffordchance.com



**John Ted**  
Senior Associate

**T** +352 48 50 50 379  
**E** john.ted  
@cliffordchance.com



**Gwenn Gissing**  
Associate

**T** +352 48 50 50 329  
**E** gwenn.gissing  
@cliffordchance.com

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Clifford Chance, 10 boulevard G.D. Charlotte,  
B.P. 1147, L-1011 Luxembourg, Grand-Duché  
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