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HARASSMENT**

THE FIGHT IS NOT OF ONE, IT IS OF ALL WOMEN. AND MEN.

In forums, courts and offices, moral and sexual harassment is still a reality for women lawyers throughout Brazil. A reality that, fortunately, we are able to change.

With resilience, empathy, and the confidence acquired with each new conquest. So, know that you are not alone: OAB is by your side. Against harassment and for equality.

After all, justice also means being able to exercise your profession with dignity.

Beto Simonetti
National President of the OAB

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In the last years, significant transformations happened in Brazilian society, including the massive incorporation of women into the workplace and the performance of more important roles in public life. However, women's situation in the labor market still suffers from serious inequality, besides being the main victim of harassment.

Confronting harassment in workplace has become one of the demands most felt by male and female workers, and one of the main goals for institutions that want to move towards respectful conditions, with the personal dignity of those who are part of it, as well as to cultivate good practices in the workplace.

In the Brazilian context, it became evident in the studies and debates the absence of a normative instruction and of specific mechanisms to regulate workers' rights, specifically with regard to the approached topic and to the prevention and intervention related to the psychosocial and sometimes physical health and safety in the workplace. This is a vacuum in the legal order and in the adoption of standards that promote psychosocial safety and health at work, as recommended by the International Labor Organization (ILO).

The International Bar Association (IBA) conducted global survey on sexual and moral harassment in the legal professions that revealed alarming data. One in three female lawyers and 1 in 14 male lawyers have experienced sexual harassment, and one in two interviewed women and one in three interviewed men have already suffered moral harassment. The research points out that in 57% of bullying cases, the incidents were not reported, and this percentage increases to 75% cases of sexual harassment; 65% of the female professionals who were victims of bullying or harassment thought about quitting their jobs. In Brazil, 23% of the respondents have already suffered some kind of sexual harassment and 51% revealed that they have already been a victim of bullying.

Sexual and moral harassment in the workplace is recognized as an element that affects working conditions, as an increasingly severe problem that results in a series of damaging consequences for the victim's physical, psychological and financial health. In addition, it causes financial damage and damage to the company's reputation.

It is necessary to prevent and fight against conducts recognized as harassment, preventing their occurrence and eradicating any attitude that can be considered harassment in the workplace, in order to ensure the protection of the fundamental rights of the person, recognized constitutionally.

Cristiane Damasceno

President of the National Commission of Women Lawyers

AWARENESS, PREVENTION AND FACING CAMPAIGN TO MORAL AND SEXUAL HARASSMENT

Harassment is a widely commented subject, but many people are unaware of it, have a wrong or incomplete understanding of what harassment is. Moral or sexual harassment is a type of violence that occurs in the workplace, it is a complex behavior that manifests itself in different ways, direct and indirect, of varying intensity and severity, isolated or continued, hardly recognized and assumed by society and that mostly affects women.

This booklet aims to make the reader aware of the topic, from different perspectives. It brings definitions, legal provisions, practical examples where situations that constitute moral and sexual harassment are indicated, it also lists the presumed causes and consequences of this type of behavior. To that end, parameters are exposed to prevent and deal with moral and sexual harassment in order to provide a more positive and healthy work environment, with special emphasis on large corporations and/or law firms.



WHAT IS MORAL HARASSMENT?

It is the abusive behavior that manifests itself notably through behaviors, words, acts, gestures, which can cause damage to a person's personality, dignity or physical or psychological integrity, putting their employment at risk or degrading the work climate, according to the author Marie-France Hirigoyen. (Hirigoyen. 1988, p. 55).

The expression moral harassment or psychoterror, harassment, bullying is used to identify constant and repeated attacks that threaten the psychological integrity of the person to whom they are directed. The word moral refers to the social construction of morality as it is understood by society as 'good' and 'evil', acceptable or not, what should and should not be done.

Moral harassment is the exposure of one or more individuals to humiliating and embarrassing situations in the workplace, in a repetitive and prolonged way, in the exercise of their activities.

It is a conduct that leads to damage to the dignity and integrity of the person, putting physical and mental health at risk and harming the work environment.



TYOLOGY AND CLASSIFICATION OF HARASSMENT

Regarding the type, moral harassment emerges in three ways, as follows:

VERTICAL MORAL HARASSMENT

It runs between individuals of different hierarchical level, bosses and subordinates, and can be subdivided into two classes:

The vertical that can occur in the downward or upward direction:

- **Downward:** harassment characterized by pressure from managers in relation to subordinates, it is also the most common. The superiors take advantage of their authority to put the employee in situations of discomfort.
- **Upward:** Harassment by a subordinate or group of subordinates against their superior. It consists of causing embarrassment to the hierarchical superior motivated by diverse interests. Actions or omissions to harm the manager.

HORIZONTAL MORAL HARASSMENT

It occurs among workers without distinction of hierarchy level. It is a behavior instigated by the climate of exaggerated competitiveness among coworkers. The harasser promotes negative leadership towards those who intimidate their colleagues, a behavior that is close to bullying, as it commonly targets vulnerable victims.

MIXED MORAL HARRASSMENT

It consists of the accumulation of vertical and horizontal moral harassment. The person is harassed by hierarchical superiors and also by other coworkers, with whom he/she does not have a subordinate relationship. The abuse begins with an author, followed by others with the same harmful behavior pattern.

The authors classify moral harassment according to its scope:

- **Interpersonal moral harassment:** It happens in an individual, direct and personal way, with the purpose of harming or eliminating the professional's participation in the relationship with the team;
- **Institutional moral harassment:** It happens when the organization/ institution encourages or consents to harassing acts. In this case, the legal entity itself is also the author of the investee, since, through its collaborators/administrators, it uses inhumane organizational strategies to increase productivity, disseminating an institutional culture of humiliation.

ACTS THAT CHARACTERIZE/CONSTITUTE MORAL HARASSMENT

YES

- Purposeful deterioration of working conditions;
- Remove autonomy from the victim;
- No longer provide the useful information for carrying out tasks;
- Systematically contest all his/her decisions;
- Criticize his/her work in unfair or exaggerated way;
- Deprive him/her of access to work tools: telephone, fax, computer;
- To suppress the work that normally belongs to him or her;
- Give him/her new tasks permanently;
- Assign purposely and systematically tasks that are inferior to his/her competences;
- Pressure so that he/she does not assert his/her rights (vacations, schedules, prizes);
- Act in such a way as to prevent him/her from obtaining promotion;
- Assign dangerous work to the victim, against his/her will;
- Assign to the victim tasks that are incompatible with his/her health;
- Cause damage to his/her workplace;
- Deliberately give him/her instructions that are impossible to execute;
- Do not take into account medical recommendations given by the occupational physician;
- Mislead the victim purposely.



NO

Moral harassment is an abuse and cannot be confused with legitimate decisions, which concern work organization and professional requirements with:

- Isolated or occasional behavior;
- Demand that work is done efficiently and encourage achievement of goals;
- Complaints for tasks not completed or carried out carelessly;
- Normal increase in workload;
- Use of technological control tools and mechanisms;
- Transfers and function changes, if they are in accordance with the employment contract;
- Constructive criticisms and assessments of the work performed, as long as they are made explicit, and not used for the purpose of reprisal;
- Reproof with opening for defense.

It is natural that all work presents a degree of imposition and dependence, within the possibilities of the labor legislation.

WHAT IS SEXUAL HARASSMENT

The practice of sexual harassment violates human dignity and other fundamental rights of employees. It violates workers' rights to safety at work and equal opportunities, in addition to harming their health. It is fueled by secrecy, which hides the real size of the problem.

Legal definition - to embarrass someone, in order to obtain sexual advantage or favor, prevailing the agent of his/her condition of superior hierarchy or ancestry inherent in the exercise of a job, position or function (Penal Code, art. 216-A).



SEXUAL HARASSMENT AT WORK

The harasser does not exhibit a pattern, and it may be the employer, a co-worker, a false friend or a stranger, always in the work environment. Sexual harassment is something that has no precise form and can occur at any time and the harassed person must seek and find ways to protect herself/himself.

EPISODES THAT CAN BE CHARACTERIZED AS SEXUAL HARASSMENT:

- Talking or telling jokes with a sexual and obscene character;
- Send e-mails, letters, messages or make phone calls of a sexual nature;
- Share or show drawings or images of sexual connotation;
- Expose a person's assessment solely by his/her physical attributes;
- Whistle or make inappropriate sounds for someone;
- Make sexual comments about how to dress or present himself/herself;
- Make gestures or make sounds of a sexual nature;
- Insulting or swearing;
- Make direct or indirect threats with the aim of obtaining sexual favors;
- Invite a person repeatedly to have sex or to go out;
- Raising inappropriate questions about someone's sex life;
- Hug, touch or kiss a person without permission;
- Follow a person or try to control him or her;
- Touching a person without their permission;
- Harass with words or gestures;
- Attack sexually.

A person who was sexually harassed can file a police report at any police station (preferably a woman's station).



CAN WOMEN AND MEN BE VICTIMS OF HARASSMENT?

Yes, anyone can be a victim, but women are more commonly affected by this form of violation in the workplace, as evidenced by different research on the subject. It is also noticed that, in addition to the gender issue, race is also a factor present in discrimination.

It is inferred that the women most affected by harassment are black women.



LEGAL PROTECTION AGAINST HARASSMENT

There is no specific penalty for employers who morally harass their employees, however the national legal framework allows penalties to be applied to the company.

Harassment is a kind of violence that offends fundamental constitutional principles, since it results in the disrespect of the principle of human dignity and the social value of work (art.1, item III and IV, of the Federal Constitution - CF) with consequent damage to honor, to physical and mental health of the worker (arts. 5 and 6, of the CF), and increased health risks (art.7, item XXII, of the CF).

The Brazilian Civil Code establishes that anyone who, through voluntary action or omission, negligence or recklessness, violates the right and causes harm to others, even if exclusively moral, commits an unlawful act (art. 186).

Sexual harassment, on the other hand, is a crime typified as the act of embarrassing someone, with the aim of obtaining sexual advantage or favoring, with the agent prevailing in his/her condition of superior hierarchy or ancestry inherent in the exercise of a job, position or function (Brazilian Penal Code, 216-A).

Recently, ILO 190 International Labor Organization Convention* established the following definition for harassment: A set of unacceptable behaviors and practices, or threats of such behaviors and practices, which manifest only once or repeatedly, that aim to cause, or are likely to cause physical, psychological, sexual, or economic damage, including gender-based violence and harassment.

Worker's dignity is a supreme value that underlies the normative content of the fundamental social right to health. A work environment free from stress and violence is fundamental to guaranteeing this right in the context of work.

Important! Isolated situations can cause moral damage, but they do not necessarily constitute moral harassment. For harassment to be characterized, aggressions must occur repeatedly, for a prolonged period, and with the intention of emotionally harming the victim.

* Not yet ratified by Brazil **ORGANIZATION INTERNATIONALE DU TRAVAIL - ILO. Conférence internationale du Travail. Commission normative: violence et harcèlement in the monde du travail** 2019 (No. 190). Available at: Accessed on: 24 march 2021.



CAUSES

The causes of moral harassment in the workplace are linked to cultural, economic and/or emotional factors.

Main acts that contribute to the practice of harassment:

- Abuse of directive power;
- Relentless pursuit of achieving goals;
- Authoritarian culture;
- the boss's lack of preparation for people management;
- Rivalry in the workplace;
- Envy, among others.



CONSEQUENCES

Moral and sexual harassment have psychological, physical, social and professional consequences for the harassed person and harms the work environment, organizations and the State.

Harassment is a subjective experience that causes practical and emotional damage to the worker and the company/institution/office where he/she works. The chosen victim is usually isolated from the group without explanation, starting to be ridiculed, harassed, diminished and even discredited in front of colleagues.

CONSEQUENCES FOR THE WORKER:

Harassment can cause:

- Insecurity;
- Generalized pain; palpitations; digestive disorders; headaches; arterial hypertension; sleep disturbance; irritability;
- Crying attacks; abandoning personal relationships; family problems; isolation; depression; Panic Syndrome; stress; physical and emotional exhaustion;
- Loss of meaning of work; incapacity for work;
- Suicide.

Repetitive and long-lasting humiliation directly interferes with the worker's life, compromising his identity, his dignity and his affective, personal and social relationships, which causes serious damage to his physical and psychological health.

CONSEQUENCES FOR THE LEGAL ENTITY/EMPLOYER/OFFICE

Harassment can cause:

- Reduced productivity; repeated absences of the worker; staff turnover;
- Increased errors and accidents; medical leaves;
- Negative brand exposure; judicial demands;
- Labor indemnities; administrative and/or legal proceedings before the Labor Public Prosecutor's Office (MPT) and administrative fines.

REFLECTIONS FOR SOCIETY AND THE STATE

Harassment can cause:

- Families' disruption;
- Expenditure on medical treatments;
- Costs with social benefits;
- Expenses with administrative processes of inspection and investigation and costs with the movement of Justice in judicial processes.

CAN THE HARASSER BE PUNISHED BY THE COMPANY/OFFICE?

Yes, within the scope of the employer, after a fair, wide and competent investigation, some of the possible educational/repressive measures for the harasser are to assign a warning, change the sector or function of the aggressor, change the workday, suspension or even dismissal for just cause.

It is essential that these punishments are satisfactorily clear and accessible (written, disseminated and recycled, through periodic training) to all employees of the company/office, without distinction; such measures are useful as a resource for raising awareness, preventing sexual harassment at work, but also as an incentive to formally allow a possible dismissal for a just cause and, eventually, to an administrative defense before the Public Ministry of Labor-PML, or judicial in labor action.

In the policy of good practices implemented by the organization/office on how it deals with this matter, it should be included in the statement that, if this occurs, the harasser, regardless of the penalties that are applied internally in the work environment, in the event that the facts have an external impact and give rise to the movement of institutions responsible for the inspection and protection of collective and/or social rights, you will not be immune from becoming a defendant in a lawsuit filed by the Public Ministry of Labor or by a union entity or even in the criminal sphere, in cases of sexual harassment.

Thus, the complaints related to moral and sexual harassment deserve special care and zeal, in order to safeguard the institution of future imbroglios.



HOW CAN THE VICTIM TRY TO PREVENT AND PROTECT HERSELF/HIMSELF?

- Talk about the issue with someone close to you;
- Note all harassment situations suffered with date, time and place;
- Confront the harasser;
- List the names of those who witnessed the facts;
- Seek help from your support network (family, friends, women's collectives, unions, professional bodies);
- Gather evidence of harassment;
- Seek support from colleagues, especially those who have witnessed the fact or who have gone through similar circumstances;
- Provide psychological guidance on how to behave in order to face such situations;
- Report the situation to the responsible sector, to the harasser hierarchical superior or to the Ombudsman;
- If you are not successful in the complaint, seek the professional union or class representative body or association;
- Evaluate the possibility to file a lawsuit to repair moral damages.



HOW TO HELP THE VICTIM?

- Coworkers can sympathize with the victim by offering support;
- Not to encourage or cover up the harasser;
- Communicate to the responsible sector, to the hierarchical superior of the harasser or to the class entity situations of moral harassment that he/she witnessed, even anonymously, and/or making himself/herself available as a witness.



HOW CAN THE COMPANY/OFFICE PREVENT IT?

The Policy for the Prevention and Combating of Moral and Sexual Harassment must be developed with the purpose of preventing, facing and intervening in behaviors that may characterize moral and sexual harassment in the workplace.

There are several ways to prevent moral and sexual harassment at work, the main one being information. Ensuring that employees know what moral and sexual harassment is, what conducts and acts are acceptable in the work environment, contributes to education, prevention, reduction and even the elimination of this practice.

PREVENTIVE MEASURES:

- Promote the effective participation of employees in the life of the company, with a clear definition of tasks, functions, goals and healthy working conditions;
- Encourage dialogue and disseminate good practice guides. Working together to tackle moral and sexual harassment in the legal profession, sharing what doesn't work and most of all what works;
- Promote lectures, workshops and courses on the subject;
- Encourage good relations in the work environment, with tolerance to the diversity of professional profiles and work rhythms;
- Extend the autonomy for work organization, after providing information and resources needed to perform tasks;
- Introduce personalized and periodic training. Adequate training can contribute to good practices in the workplace. Training must be the rule, not the exception;
- Observe the sudden and unjustified increase in absenteeism (absences from work);
- Collect information and improve transparency. It is important to obtain adequate information regarding the nature, frequency and impact of bullying and sexual harassment.



- Perform assessment of psychosocial risks in the workplace;
- Offer psychological support and guidance to employees who consider themselves victims of moral and sexual harassment;
- Ensure the incorporation of more effective policies and improvement in their implementation;
- Ensure that administrative and managerial practices in the organization are applied equally to all employees, with fair and respectful treatment, more effective policies and improved implementation;
- Bring out, maintain and take advantage of existing synergies;
- Give an example of appropriate behavior and conduct, avoiding omission in the face of situations of moral harassment;
- Establish receiving channels and protocols for forwarding complaints;
- Create and or improve reporting channels and explore new mechanisms for this purpose;
- Institute and disseminate an institution's code of ethics, emphasizing that moral harassment is incompatible with organizational principles and that sexual harassment is a crime.

FINAL CONSIDERATIONS

Taking responsibility, this problem belongs to society, and for this reason it belongs to everyone. From professionals in leadership positions to recent graduates, everyone has the job and must work in adherence to achieve job development and a working environment without these evils.

Moral and sexual harassment hardly ever happen out of context. Lack of respect for the dignity of the human being; mental problems; lack of empathy; job dissatisfaction and lack of diversity are related. These dynamics have to be understood and addressed together to foster healthy relations in work environment.

With a common effort, it is possible and viable to change people's mentalities and to eradicate moral and sexual harassment in work environments and of the institutions.



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ACKNOWLEDGEMENTS

We thank the Brazilian Bar Association/Distrito Federal Chapter (OAB/DF), in the person of its president, Mr. Délio Lins e Silva Júnior, and also its Women Lawyers Commission, represented by Ms. Joana D'Arc Alves Barbosa Vaz de Mello, Ms. Veranne Magalhães, Ms. Ana Paula de Oliveira Tavares and, in special the president, Ms. Nildete Santana de Oliveira, for bringing out this booklet.



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