



Moral harassment at work



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Preface

This brochure was prepared as part of an awareness and prevention campaign on moral harassment at work in the Higher Education and Research sector launched by the OGBL in 2022. More broadly, it is aimed at all workers, regardless of their sector of activity, hierarchical level or position in the company. Moral harassment is a harmful phenomenon both in the workplace and in society in general. In Luxembourg, the only current measure covering moral harassment is the convention of June 25, 2009 on harassment and violence at work signed between the OGBL and LCGB trade unions on the one hand, and the UEL (Union des Entreprises Luxembourgeoises) on the other hand.

This convention transposes the autonomous European framework agreement and is declared to be of general application by the Grand-Ducal regulation of December 14, 2009. In addition, a draft law on the subject has been submitted in 2021. Unfortunately, moral harassment at work is a reality in Luxembourg in all sectors. According to the figures of the CSL (Chambre des Salariés), 2 out of 10 employees say they are victims. In the Higher Education and Research sector, the OGBL has observed a recurrence and intensification of this disturbing phenomenon through the testimonies of its members and staff representatives.

This brochure aims at providing the first elements of information, possible actions and support to victims and witnesses of moral harassment, and raise awareness about mobbing at work.

The campaign of OGBL aims at breaking the silence around mobbing in Luxembourg. Indeed, OGBL considers that, in general, cases of mobbing within companies are inadequately and insufficiently managed, which results in the silencing of the victims. In this respect, the various actors in the field (trade unions, Stressberodung CSL support service, Mobbing Asbl, ITM, lawyers) have the responsibility to work together in order to better inform, prevent and protect victims and witnesses of mobbing. OGBL demands healthy workplaces for all employees!

What is moral harassment?

Moral harassment is an attack on a person; this attack is repetitive, systematic and takes place over a long period of time (+/- 6 months).

Definition

Moral harassment, also known as mobbing (from the verb "to mob" which means to criticize, to confront, to attack) is a notion applied to characterize psychological violence in the workplace, among others.

In Luxembourg, the Convention of June 25, 2009 on harassment and violence at work, takes up these different elements and retains the following definition:

Moral harassment occurs when a person under the authority of the company commits repeated and deliberate wrongful acts towards an employee or a manager, with the purpose or effect of

- to undermine her/his rights or her/his dignity; and/or
- to alter her/his working conditions or to compromise her/his professional future by creating an intimidating, hostile, degrading, humiliating or offensive environment; and/or
- to alter her/his physical or psychological health.

The below do not constitute moral harassment:

- justified surveillance of employees' work,
- warnings misinterpreted by employees,
- justified disciplinary sanctions,
- singular actions (e.g. requesting to work overtime or refusing a leave request).

What are the main causes of mobbing?

Moral harassment or mobbing within companies can have multiple causes.

It flourishes in companies that are organizationally and institutionally dysfunctional due to the intensification of workload, the ever-increasing search for profit, increased competition and the dismantling of solidarity. It can also result from deviant or perverse individual behavior or from small cowardly acts. In an economic context that demands unflinching availability from employees, moral harassment also occurs when hierarchies want to get rid of an employee.

In Luxembourg companies, the norm is international competition and a valorisation of work based on individual performance. At the same time, labour law does not sanction the deviant behaviour of harassers. As a result, the victims and witnesses of harassment are often silenced.

What are the consequences of mobbing?

Mobbing has serious repercussions on the physical and mental health of victims. If the mobbing is still recent, the victim presents symptoms similar to those of stress (e.g. tiredness, nervousness, sleep disorders, digestive disorders, reduced sense of pleasure, libido disorders, etc.) as well as manifestations specific to the phenomenon of mobbing (feelings of powerlessness, injustice, humiliation, etc.). If the harassment is not quickly stopped, the victim's condition worsens and is likely to develop into depression, psychosocial disorders, post-traumatic stress, etc. A sense of shame and humiliation may accompany these disorders. Victims suffer from the exclusion they feel, the loss of self-confidence and the loss of reference points in general. Although people have different levels of resisting, no victim can

handle mobbing for long because of the considerable amount of resources consumed.

Bullying also affects the health of the company. The negative effects of mobbing on work relations result in an atmosphere of unease in the company: stress, insecurity, fear, demotivation, relational conflicts. Absenteeism is often a sign of uneasiness at work. Not only does the company risk bad PR, there is as well a financial cost affecting the whole of society: the care of the victims is often very long and weighs on the social security systems of the countries.

What to do if you are a victim of harassment at work?

In Luxembourg, in cases of moral harassment at the workplace, the burden of proof still lies with the victim and it is laborious to "prove" the harassment. Many victims therefore hesitate to come forward. However, any victim of moral harassment can assert his or her rights.

Harassment is a complex phenomenon with legal, psychological, ethical and sometimes political aspects. The situations of harassment are also very different: some companies are better prepared than others to deal with harassment (for example, via a negotiated agreement or a charter); in some sectors of activity, the high number of fixed-term contracts prevents victims from organizing their defense; some staff delegations are better trained than others to prevent and act against mobbing; in some sectors or companies, more employees are unionized than in others; some victims are better supported than others by their colleagues or family circle, etc. In the current Luxembourg context, it is not easy to propose a clear procedure to follow for victims, witnesses or interveners. The answers below are based on the experiences of the staff delegations and the testimonies of victims and witnesses.

"He has forbidden my colleagues to speak to me, the situation is so untenable that I had to take several days off sick again."

Ideally, it is best to react early

As soon as the first deviant, inappropriate, unfair or hurtful behaviour is noticed, it is advisable to observe what is happening - in the other person, but also in yourself: Is the colleague in a bad mood? Am I more sensitive than usual? If this is the case, a dialogue with the person concerned is often a good idea in order not to let a conflict situation at work deteriorate.

It is important not to isolate yourself

Sometimes, the victim does not immediately realize that a situation of moral harassment against him or her is being set up, because violence at the workplace is established "in small steps". Hence the importance of taking one's feelings seriously. Especially if the aggressions are repeated, it is not advisable to isolate oneself. In such a situation, it is important to talk to a trusted person in one's professional environment (a staff representative, a colleague, etc.) or in one's family environment (one's partner, a friend) who can help to unravel the events or the aggressions felt.

Requesting mediation early in the process

At the beginning of the process, i.e. when things have not yet "escalated" and the alleged victim and the alleged harasser can still work together despite

**"The last time he came
to visit us at the agency,
I had to leave to go throw
up in my car."**

their difficulties and conflicts, the victim can ask his or her employer to set up an external mediation. Ideally, this mediation should be part of any company's harassment prevention and management policy. If it is not, the person concerned can explore other options by contacting existing resources (see "Who to contact?"). If the employer agrees to mediation, the situation may result in a workable solution for both victim and harasser. In the event that the employer refuses to mediate, the employer will be civilly liable.

While desirable, the establishment of a dialogue between a harasser and his or her victim is unfortunately often impossible. The harasser is often aware of his or her actions and commits them intentionally.

It might be that the harasser refuses to talk and continues or even escalates their attacks once they realize that they are reaching their target. Especially if the victim is unable to confront the stalker directly, it is important to organize protection by turning for support to existing internal and external resources (staff delegation, trade union, CSL Stressberodung consultation service, Mobbing Asbl, ITM, Human Resources, hierarchy, occupational medicine, lawyer, etc.). Facing a situation of mobbing requires a lot of energy; this aspect should not be underestimated!

The evidence file is a valuable tool

When an alleged victim of mobbing approaches a professional (staff delegation, OGBL, Stressberodung CSL support service, Mobbing Asbl, ITM, etc.), it is important to listen to his/her story. A story consists of objective facts (e.g.: "There were 4 team members present at this meeting") and subjective feelings (e.g.: "I felt that he did not like my intervention").

In order to untangle the events, to sort out the objective facts from the subjective feelings, it is important to build a file of evidence. Be careful, it is not a question of banishing (subjective) feelings, but of making the difference between facts and feelings!

The evidence file, also called "diary" or chronological report, has several advantages:

- by arranging in chronological order, it allows one to put past events in order;
- it allows the elements defining moral harassment to be verified (harm to the person, repetition, long duration, installation of a system);
- it is an essential prerequisite for understanding and convincing the other person;
- it allows for the alleged harasser to be confronted;
- On a more personal level, it allows one to distance oneself from one's experience and to relativize (and, as a result, to breathe a little).

What is an evidence file?

The burden of proof is on the victim of harassment. The facts must demonstrate the extent to which the repeated acts created an intimidating, humiliating and degrading environment.

In order to build a solid case, the person concerned must gather the following evidence in a chronological manner: e-mails, texts/sms, letters, meeting minutes, conversations attended



by witnesses, the names of witnesses, the dates of the events, the circumstances, etc. If this is the only way to obtain evidence, audio and video recordings, although prohibited by law in Luxembourg, can nevertheless be used in court to prove acts of harassment.

The victim will have to build up a file of evidence over a sufficiently long period of time (one to six months depending on the amount of evidence) to prove that the harassment is regular and intentional. The actions must be deliberate and voluntary. All of the evidence will serve to give credibility to the victim's situation of distress.

Legal action is possible

The victim of moral harassment can take legal action to put an end to it, as well as to claim damages. The burden of proof lies with the victim, who must gather evidence and testimony and establish a chronological list of the facts

In order to be recognized as responsible for moral harassment, the employer must have had knowledge of such conduct. This knowledge is established when the head of the company, the human resources manager or the employee representatives have received the information. This information can take the form of a letter of formal notice which sets out the chronology of the facts sent to the employer, obliging the latter to intervene.

In addition, the jurisprudence holds that the condition of "prior knowledge" of the facts of

moral harassment is a "sine qua non" condition of the employee's action for liability against the employer and that "this knowledge is obtained by the information given to the managers of the company who have the power to stop or prevent the facts of moral harassment" or "by the information given to persons such as human resources managers, staff delegates or the representatives of the company", the staff delegates or union representatives who have met with the agreement of the managers to collect this information on their behalf." (Court of Appeals, April 28, 2016, Docket No. 41470).

Resignation from the victim's position is not a condition for legal intervention.

What to do as a witness to harassment?

Testimony is an important element in a harassment case. You must not tolerate such behaviour around you, because everyone is concerned! Zero tolerance for harassment!

In addition to the story and the evidence file, witnesses play an essential role in a harassment case. If written evidence is insufficient or absent (harassers are smart!), witnesses become a very important part of the victim's evidence file.

If a person witnesses inappropriate, disrespectful or humiliating words and gestures, it is important to testify (testimonial or other evidence, depending on the case), even if the actions of the harasser are not directed against the witness personally. Harassment does not only take place between the harasser

"She systematically refuses my requests for a training that all my other colleagues are taking."

"I was being considered for the position of administrative director, but my boss forced me to replace a secretary on maternity leave in the billing department. I am not trained in the duties required."

and his/her victims. It is a perverse system that, if not stopped, settles in and pollutes the working environment of all.

How can it be stopped? By agreeing to testify, by adopting a benevolent attitude towards one's colleagues, by defending fundamental values such as respect and dignity of the person in the workplace!

What are the employer's obligations in case of moral harassment?

In the case of moral harassment, the employer is liable. The management of cases of moral harassment is subject to a series of principles provided for by the Convention of June 25, 2009 on harassment and violence at work. Their implementation is however left to the goodwill of the employer.

In addition to the obligation of prevention, the employer is obliged to prohibit acts of mobbing and to provide for the tackling of such acts committed in his establishment.

If the employer notices or is informed of an act of

moral harassment, he/she has the obligation to conduct an investigation. Even he/she is not the perpetrator of the harassment, he/she is liable and has an obligation of result.

The Convention on Harassment and Violence in the Workplace, signed by the social partners, sets out a series of principles that the internal procedure for dealing with cases of harassment in the workplace must include, such as

- the parties must act with discretion;
- complaints must be examined without delay and dealt with within a reasonable period of time, and each party has the right to be assisted by an employee representative ;
- each complaint, supported by detailed information, shall be dealt with in an impartial manner ;
- false accusations may result in disciplinary action;
- external assistance in the analysis and handling of complaints may be provided;
- victims will be provided with support, the nature of which is yet to be specified;

The Convention does not, however, mention sanctions against the employer if these principles are not implemented.

How to prevent and fight against bullying at the workplace?

Prevention tools exist in view of creating healthy work environments for employees; they must be used wisely! In all cases, the employer has an obligation to implement a policy to prevent moral harassment in his/her establishment, including (but not limited to) :

- the employer's obligations in the prevention of moral harassment at work;
- the awareness-raising of employees and managers on the definition of mobbing, its management within the company and the sanctions

against harassers;

- measures for the care and support of victims;
- information and training for employees.

In the event of moral harassment, the employer is also obliged to carry out an internal evaluation of the preventive measures against moral harassment and the possible implementation of new preventive measures.

A combination of tools to promote a healthy work environment

The prevention of mobbing at the workplace ideally combines different actions within companies:

- **Information and awareness-raising of employees and management** on the phenomenon of mobbing in the workplace is a first step in becoming aware of the harmful effects on individuals and on the way people live together in the company and in society in general.
- **The training of employees, representatives and management** in order to draw attention to the way ("by little steps") in which harassers attack the victim, in order to recognize the first signs of harassment, on oneself or on colleagues, and in order to give the keys to act, to know who to contact, how to support the victims and to denounce the harassers. The training should also enable professional conflict management and responsible, supportive and ethical behavior.
- **Job satisfaction**, collected through ad hoc surveys on working conditions or through the indicators of the Absenteeism Observatory, are tools for measuring the well-being of staff at work.
- **Procedures negotiated within the framework of collective bargaining agreements** between social partners are likely to put in place bulwarks against moral harassment, provided that these measures reflect a real and concrete will to prevent and act.
- **A corporate culture** that promotes values such as equality, diversity, solidarity and open & healthy working relationships, that practices non-violent communication and that prevents

deviant behavior from taking root, constitutes to some extent a bulwark against mobbing.

A right for all employees to work in conditions free of all forms of violence

Moral harassment is a complex phenomenon that is harmful both to the victims and to the proper functioning of companies. It is the responsibility of each member of a company (management, employees, human resources, team leaders, colleagues, clients and suppliers, staff delegation) to be attentive to his or her own behavior towards colleagues, as well as to any manifestation of moral harassment that he or she may witness against a person, regardless of his or her hierarchical level or position in the company.

It is in everyone's interest that dialogue, listening and solidarity prevail in a work context where competition between colleagues, stress, tiredness, work overload, etc. may accentuate acts of moral harassment.



Read more

As the concept of mobbing is complex, it has been the subject of research by several specialists in the field. According to the Swedish researcher Dr. Heinz Leymann, who conducted a survey on this phenomenon, "psychological terror" or "mobbing" in the context of professional life consists of hostile and unethical communication by one or more people directed against an individual. These actions are often repeated and last over time. Because of this frequency and duration, incredible psychological, psychosomatic and social misery is generated.

After analyzing the testimonies of the 1500 people questioned, the results of this survey led Heinz Leymann to categorize 45 harassment actions listed in 5 groups:

1. Impairment of the ability to communicate: preventing the victim from expressing himself
2. Impairment of social relations: isolating the victim

3. Damage to social reputation: harming the victim's reputation in front of colleagues
4. Damage to the quality of life and professional situation: Discrediting the victim in his work
5. Damage to health: endangering the victim's health

While Leymann speaks of "psychological terror", the French psychiatrist, Marie-France Hirigoyen, insists on the moral destruction of the victims.

She defines moral harassment at the workplace as "any abusive conduct (gesture, word, behavior, attitude...) which undermines, by its repetition or systematization, the dignity or the psychological or physical integrity of a person, jeopardizing the latter's employment or degrading the work climate."

She explains that this is "violence by little steps," where each isolated attack is difficult to identify. It is the cumulative effect of frequent and repeated attacks that constitutes aggression and is destructive to the individual.



Who to contact if you are a victim or witness to bullying or if you have questions about it?

**Apart from the obligation to inform the employer,
several persons can be contacted to assist victims
or witnesses of moral harassment in their efforts:**

- ♦ Staff Delegation
- ♦ Employer
- ♦ OGBL
- ♦ Mobbing ASBL
- ♦ CSL "Stressberodung" Support Service
- ♦ ITM
- ♦ Occupational medicine
- ♦ Lawyer

**"Let's break the
silence around
mobbing!"**