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BRANCH AGREEMENT ON MORAL HARASSMENT

1. Moral harassment in employment relationships – the legal situation in Luxembourg

No specific law on moral harassment exists at present in Luxembourg.

However, the courts and tribunals remedy this shortcoming by stipulating that the employer's obligation in respect of moral harassment flows from Article 1134 of the Civil Code. This Article 1134 states that "*agreements (including employment contracts) must be performed in good faith.*"

According to the reasoning followed by the courts and tribunals, the obligation resulting from Article 1134 of the Civil Code to provide normal working conditions for employees requires the employer, as the sole possessor of authority to direct and organize the enterprise, to take all necessary measures to prevent all forms of moral harassment within his enterprise or to cause such harassment to cease.

Moreover, by an agreement of 25 June 2009, the social partners in Luxembourg (UEL, OGBL, LCGB) transposed a European framework agreement on harassment and violence at the workplace.

The agreement of 25 June 2009 was declared generally binding on 15 December 2009 and has the force of a regulation today. This agreement forms an integral part of the collective employment agreement for personnel in the banking sector.

Finally, with more specific reference to the banking sector, the collective employment agreement for personnel in the banking sector has for a long time included a declaration of principle concerning sexual and moral harassment in its Article 33 which stipulates that "*the banks undertake not to tolerate sexual harassment, as defined in Articles L245-1 et seq of the Code of Labour Law, within their businesses. They must make sure that all employees benefit from a workplace which respects individual dignity and is free from all sexual or moral harassment of any kind whatsoever. They further undertake to adopt the measures necessary to prevent and resolve cases of sexual and moral harassment, should they occur, under the best possible conditions and in the strictest possible confidentiality. In order to assist the victims of sexual or moral harassment, the ASTF has put in place a suitable advisory structure (...)*"



2. Definition of the notion of moral harassment

The agreement of 25 June 2009 on harassment and violence at the workplace defines moral harassment in the following terms:

“Moral harassment occurs when a person who is a member of the enterprise commits unacceptable, repeated and deliberate actions against a worker or a manager, the purpose or effect of such actions being to:

- *damage his/her rights or dignity;*
- *impair his/her working conditions or jeopardize his/her professional future by creating an intimidating, hostile, degrading, humiliating or offensive environment;*
- *or damage his/her physical or mental health.”*

The courts and tribunals give the following definition:

“Moral harassment in the enterprise takes the form of repeated unacceptable conduct whose vexatious or humiliating nature or impairment of dignity interferes with the performance of the employment contract by the person who is a victim of harassment. The position within the hierarchy of the perpetrator of the harassment has no influence on the legal qualification: harassment may be caused by the employer, a hierarchical superior or a working colleague.”

3. The employer confronted with moral harassment

The employer must make sure that his employees benefit from normal working conditions.

If these conditions have become abnormal for an employee because of moral harassment, the responsibility of the employer as head of the business may be involved even if he is not himself at the origin of the moral harassment.

This harassment may in fact be caused by a hierarchical superior of the employee concerned or by a colleague at work.

According to the courts and tribunals, the responsibility of the employer for ensuring normal working conditions for his employees requires him, as the sole possessor of authority to manage and organize the business, to take all necessary measures to prevent all forms of moral harassment within his team or to cause such harassment to cease.

Consequently, the employer must put concrete measures in place both for prevention and for dealing with such acts of moral harassment as may occur.

The agreement of 25 June 2009 which is attached to the collective employment agreement for the banking sector lays out general principles on the subject of the prevention of acts of moral harassment at the workplace and for the management of acts of moral harassment.



These two aspects must be implemented and handled in a way which respects the powers entrusted to the staff representation.

A. The aspect of prevention of moral harassment

Here are some important points which the employer will embody and develop in his internal procedure for the prevention of moral harassment:

- a declaration of principle to the effect that moral harassment is not tolerated in the enterprise;
- creation of awareness on the part of employees, executive and non-executive staff, of the definition of moral harassment, the ways in which it is to be dealt with in the enterprise and the penalties which may be imposed on the perpetrator of acts of moral harassment (*for example, the ASTF provides training sessions on the subject of moral harassment*);
- training for employees, executive and non-executive staff, on the policy of prevention and protection against harassment at the workplace;
- appointment of a discussion partner with authority to deal with prevention and protection against harassment at the workplace;
- definition of the means and procedures made available to the victim.

B. The aspect of management of acts of moral harassment

The employer will define an internal procedure to deal with any cases of moral harassment which may occur.

The procedure will be defined having regard in particular to the following issues:

- how to deal with a complaint about moral harassment in a discreet and confidential manner;
- designation of a discussion partner with authority to receive and handle the complaint;
- time limits for dealing with complaints;
- the way in which a complaint concerning a case of moral harassment will be dealt with;
- the support from which the victim will benefit;
- the type of external assistance which the person concerned may seek;
- the penalties which the employer may impose in the event of moral harassment or of false accusations.



The employer must likewise stipulate in his internal procedure that neither the victim nor any worker or manager may suffer reprisals for having disclosed acts of proven harassment at the workplace..

The employer must impose proportionate penalties on the proven perpetrator of harassment and must do everything possible to ensure that the situation is not repeated.

The effectiveness of the internal procedures will be assessed following an actual case of moral harassment.

4. The means of assistance open to employees

The employee must decide the person in whom he wishes to confide – the employee remains at liberty to consult in particular one or more of the following:

- a staff representative,
- the head of personnel,
- another person of his/her choice,
- the ASTF,
- a trusted doctor,
- the trade union organisations,
- lawyers.

The victim is absolutely free to make his own choice.

5. Special redress for financial sector employees: the Association for Occupational Health in the Financial Sector

Since its inception in December 1994, the Association for Occupational Health in the Financial Sector (ASTF for short) has developed a wide range of services for the attention of financial sector enterprises to help these businesses to promote the health, safety and the well-being of their employees.

Following the adoption of the law on sexual harassment, this range of services has been extended to employees who purport to be victims of sexual harassment and to whom the ASTF has offered its advice.



For some time now, and as stipulated in Article 33 of the collective employment agreement for personnel in the banking sector, this assistance by the ASTF has been broadened informally to include employees who complain that they have been the victims of moral harassment.

The social partners and the ASTF propose to place this advisory unit of the ASTF on moral harassment on a formal basis through this branch agreement so as to make employees in the banking sector who have been victims of moral harassment better aware of this assistance and to enable the employer to refer to it in his internal procedure for dealing with moral harassment.

A. What procedure is available?

The employee is given an appointment free of charge and anonymously with an occupational physician at the ASTF. In a second stage, and if the employee so wishes, an appointment is made with one of the psychologists or psycho-social assistants at the ASTF.

On the basis of their training and professional experience, the psychologist or psycho-social assistant at the ASTF will be able to assist the victim, especially as follows:

- by helping him/her to deal with the initial emotional shock,
- by providing moral and psychological support,
- by assessing the gravity of the situation,
- by acting as an intermediary between the victim and the employer.

The aim of the consultations will be to make the person aware whether or not he or she is the victim of moral harassment, to provide information on possible action to be taken and, above all, to help the victim to recover.

The ASTF will provide further details on the procedure to be followed and on the options available to the employee.

B. What are the benefits for the employee?

- **Optional**

Referral to the advisory unit at the ASTF is optional for the employee.

It is up to the employee to decide the person in whom he or she wishes to confide – the employee remains at liberty to consult one or more of the persons or bodies referred to in Section 4 above.



- **Free service**

No charge is made for the first 3 consultations at the ASTF.

If the employee decides to inform his employer of the situation of moral harassment, the ASTF may offer follow-up for the employee after the 3rd consultation; further consultations will then be charged to the enterprise concerned.

- **Discretion / Anonymity**

The employer will not be informed that an employee has contacted the advisory unit at the ASTF.

This initial contact and the consultation will take place in absolute discretion, respecting medical secrecy.

- **Professionalism**

The psychologists and the psycho-social assistant who receive the employees are persons who have been trained and are experienced in dealing with problems arising in the world of work.

They will handle all complaints in a competent, serious and confidential manner; they will listen and speak to the victim, provide support, suggest solutions and help the victim to choose the best way of dealing with the situation.

ABBL

ALEBA

OGB-L

LCGB - SESF