

Protocol for the prevention, detection, response to and resolution of psychological harassment and other forms of discrimination in the workplace

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INTRODUCTION

Employees have the right to respect for their privacy and to due consideration of their dignity in the context of their workplace relationships. Discriminatory conduct in the workplace on personal, ideological, religious or political grounds is prohibited by law and will not be tolerated.

This protocol sets out the measures to prevent, detect, respond to and resolve instances of workplace harassment, mobbing, sexual harassment and other forms of discrimination that take place in any company setting. It also represents the company's commitment to the complete eradication of all such behaviour and to safeguarding the health and welfare of those affected by it.

Employees affected by harassment of any type may lodge a complaint with the Spanish labour inspectorate or bring action before a labour tribunal. Where circumstances allow, they may also claim the right to the restoration of conditions prior to the discriminatory acts or to the termination of the employment relationship with the right to compensation.

DEFINITIONS

Workplace harassment

Workplace harassment is considered to be any abusive behaviour exercised in the workplace by superiors or peers that creates an intimidating, hostile or humiliating environment for the victim and jeopardizes the victim's job or the condition of their professional career.

In general, the law considers harassment on the grounds of race or ethnic origin, religion or belief, disability, age, gender or sexual orientation to be a serious labour offence when it occurs within the scope of the company's

managerial powers, regardless of the person who may have caused the situation, and if the company fails, once aware of the circumstances, to adopt the measures necessary to stop it.

Sexual harassment

Sexual harassment in the workplace consists of any verbal or physical conduct of a sexual nature that violates a person's dignity, especially if it creates an intimidating, degrading or offensive environment.

The European Union has adopted measures to address sexual harassment and has drafted a code of conduct to combat such behaviour, as well as guidelines for good practices in companies. Companies must strive to ensure that harassment cannot take place in the workplace and adopt all necessary measures to prevent it. Among other measures, the guidelines recommend that companies clearly disclose their commitment to resolving such situations by publishing statements of principles, holding open discussion meetings on the subject, establishing formal and informal systems for resolving problems, and designating a trusted person or service to support potential victims.

Some collective agreements also set out protocols of action and other measures for harassment situations. Sexual harassment can be deemed grounds for a company to be fined for a very serious offence, can be cause for compensated termination of contracts, and, depending on the injuries suffered by the victim, can be considered a workplace accident.

Psychological harassment (mobbing)

Psychological or moral harassment (commonly referred to in Spain as "mobbing") is considered to include a set of behaviours, actions and conducts exercised in a systematic and prolonged manner that have the purpose or effect of objectively degrading personal and/or professional conduct with the consequent injury to the dignity and moral integrity of the victims and the degradation of their working environment.

Harassing behaviour of this type may include assigning work with no inherent value or usefulness, systematic undermining of a person's value, actions intended to restrict a person's ability to communicate with colleagues, ostracising or knowingly ignoring a person, and other similar conduct.

Shortcomings in a company's organisation (lack of definition of tasks and functions, abuse of power, promoting competition, job insecurity, management style, lack of codes of conduct and procedures for conflict resolution) are cited as the foremost reasons for the failure to address harassment in the workplace. Therefore, preventive measures must be specified and possible risks identified in the company's risk assessment. Employer responsibilities in this regard are similar to those for sexual harassment, with greater emphasis on offences related to the prevention of workplace risks.

In general, the working conditions set out in labour legislation can be strengthened or amended in collective agreements.

Psychological harassment also includes bullying or hostile treatment in the context of work activities or public service that degrades and seriously violates the dignity of the person subjected to it (from preamble 11 of Organic Law 5/2010 of 22 June modifying Organic Law 10/1995 of 23 November of the Criminal Code).

It consists of recurrent, insistent psychological abuse of one or more people by another person in a position of power (not necessarily hierarchical) with the aim or effect of creating an intimidating environment that disrupts the victim's working life. In the context of an employment relationship, this abuse constitutes an attack on the person's dignity and a risk to their health.

All of the conditions of the definition above must be met for conduct to be deemed psychological harassment. However, intent and/or destructive intent are considered aggravating factors for the purposes of the application of this protocol.

These processes take the form of psychologically abusive behaviours (humiliation, criticism, stigmatisation, social isolation, hostile conduct intended to force people out of their job or to degrade their working situation, and verbal violence of varying degrees of intensity)

that constitute an attack on the dignity or physical, psychological or moral integrity of the person subjected to them.

HARASSING BEHAVIOUR

Harassment takes different forms, depending on the direction of the interactions between the harasser and the victim and the organisational levels involved.

- ❖ Top-down harassment: pressure exerted by a person with hierarchical superiority on one or more employees.
- ❖ Bottom-up harassment: pressure exerted by one or more people on another person with hierarchical superiority.
- ❖ Horizontal harassment: pressure exerted by one or more people on another person on the same hierarchical level or in the same work group.

OBJECTIVES

The general objective of this protocol is to define a framework for action in response to instances of psychological harassment and other forms of discrimination in the workplace with the explicit aim of eradicating all such behaviour from public and private companies and organisations.

The specific objectives are:

- ❖ To inform, educate and raise the awareness of all personnel on sexual and gender-based harassment.
- ❖ To establish a response and support procedure for addressing and resolving these situations as quickly as possible within the time-frames established in the protocol.

- ❖ To create a working environment in which women and men show mutual respect for each other's integrity and dignity.
- ❖ To establish preventive measures to stop harassment from occurring.
- ❖ To ensure the right to fair treatment and confidentiality of all people involved in cases of harassment.

The implementation of this protocol in no way precludes the people involved, or the company itself, from pursuing legal action. If such action is taken, the provisions in current law will apply, as detailed in the Relevant Legislation section of this protocol.

This will not prevent any disciplinary proceedings from continuing until their conclusion and, if necessary, a penalty has been imposed or other disciplinary action taken. The procedures established in Spanish labour and criminal law must be followed and respected at all times.

SCOPE OF APPLICATION

This protocol applies to all situations arising from activities taking place in the workplace environment of the CENTRE FOR MATHEMATICAL RESEARCH. It applies to all employees of the CRM and to everyone working or providing services in the company employed or engaged by third parties, including seconded staff, students on work placements as part of their bachelor's degree final projects, as well as any others that may be affected.

PRINCIPLES AND GUARANTEES

Each stage in the procedure for action must guarantee:

Respect and protection

- ❖ All actions must be taken respectfully and with total discretion in order to protect the privacy and dignity of those concerned.
- ❖ All people involved in the procedure must be given support and advised by one or more people they trust within the company.

Confidentiality

- ❖ All information collected in the course of the proceedings is confidential.
- ❖ Health data are subject to special procedures and may only be incorporated into the corresponding file with the explicit consent of the person concerned.

Right to information

- ❖ All people involved have the right to information about the procedure, their rights and duties, the phase currently underway, and, depending on the nature of their involvement, the outcome of each phase.

Support by trained personnel

- ❖ The company HISER QUALIPREVEN provides professionally trained personnel for each phase in the procedure.

Diligence and expediency

- ❖ The procedure establishes deadlines for the completion of each phase in order to ensure rapid resolution of the complaint.

Fair treatment

- ❖ All parties involved are guaranteed an impartial hearing and fair treatment.
- ❖ Every person involved in the procedure must act in good faith in seeking to establish the truth of and to clarify the events disclosed in the complaint.

Protection from retaliation

- ❖ No person involved shall suffer retaliation for their involvement in the reporting of an instance of harassment.
- ❖ Only the outcomes of allegations that have been investigated and substantiated may be included in personal files.

Cooperation

- ❖ Each person summoned in the course of the procedure is obliged to participate and cooperate in the proceedings.

Precautionary measures

- ❖ If indications of harassment emerge during the procedure and prior to its conclusion, those responsible for the different phases of the proceedings may propose precautionary measures to the company's management staff (e.g., change of position, reorganisation of the work schedule, paid leave, etc.). Under no circumstances must these measures be detrimental to the victim's working conditions and/or lead to a decrease in salary decrease. The victim must expressly state their acceptance of any measures proposed.

Health surveillance

- ❖ People whose health is affected as a direct result of harassment may request care, guidance and the issue of a medical report confirming the circumstances of their condition through HISER QUALIPREVEN's Occupational Risk Prevention health surveillance service.
- ❖ If the situation results in adverse health effects requiring medical leave that can be confidently linked to the instance of harassment under investigation, the medical leave will be classified as the result of a workplace accident.

RIGHTS AND OBLIGATIONS

A. Obligations of the company

1. To ensure the rights of workers not to be sexually discriminated against or discriminated against on the grounds of gender or sexual preference in their work relationships, and to guarantee the physical and psychological integrity of personnel, appropriate health and safety policies, and respect for the privacy and dignity of all employees.
2. To foster a working context and environment that prevents harassment from occurring.
3. To establish specific procedures for the prevention of harassment.

Failure by the company to perform its duties in this regard will result in administrative and judicial liability.

B. Obligations of supervisory personnel

All supervisory personnel have the obligation:

- ❖ To treat all people respectfully and courteously and to refrain from behaviour or attitudes that may be deemed offensive, harassing or discriminatory.
- ❖ To monitor and ensure compliance with the guidelines and principles set out in this protocol.

- ❖ To monitor for signs of moral and psychological harassment, sexual or gender-based harassment, or any other form of discrimination.
- ❖ To encourage employees to report any such situations using the channels and processes established for this purpose.
- ❖ To respond appropriately to anyone who reports a complaint.
- ❖ To report and investigate complaints and allegations in a serious manner.
- ❖ To follow up on the situation after the complaint.
- ❖ To maintain the confidentiality of complaints.

C. Obligations of employee representatives

Employee representatives are responsible for helping to prevent harassment in the workplace by raising awareness and informing the designated personnel of any conduct of which they become aware that may be conducive to harassment.

Without prejudice to the obligations and functions stipulated by law for employee representatives in matters of occupational risk prevention, mechanisms must be established to enable them to perform the following functions:

- ❖ To take part in drafting the protocol and monitoring the implementation of the measures therein.
- ❖ To help foster a culture and awareness of the issue by offering awareness raising actions and other similar actions.
- ❖ To propose and establish mechanisms and procedures to determine the scope of these behaviours and to contribute to the detection of situations of risk.
- ❖ To provide support to any employees who may be subjected to these situations.
- ❖ To ensure compliance with established procedures and obligations.
- ❖ To ensure that employees who are harassed or who take part in actions to combat sexual or gender-based harassment, psychological harassment, and other forms of discrimination do not become the victims of retaliation.

- ❖ To ensure the effective application of disciplinary actions.

D. Rights and obligations of employees

RIGHTS:

Employees have the right to a healthy working environment and to work freely of harassment of any kind.

All people should be protected from behaviour and actions that are offensive, humiliating, demeaning, degrading or disturbing.

OBLIGATIONS:

To treat others with respect.

Every employee of the CENTRE FOR MATHEMATICAL RESEARCH has an obligation and responsibility to treat colleagues, superiors, subordinates, the public, and external suppliers and employees with respect.

It is important to show respect and consideration to everyone with whom one interacts and to avoid any actions that may be offensive, discriminatory or abusive.

Employees must refrain from behaviour that may make other people feel uncomfortable, excluded or unequal (jokes, terms of address, etc.).

Ensuring that harassment is not overlooked

- ❖ If a person behaves in a way that is deemed by another person to be harassing or offensive, or if it seems that someone in the immediate working environment is being subjected to this type of behaviour, the circumstances must not be overlooked.

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- ❖ As soon as an employee becomes aware of a potential instance of harassment, it must be reported and the duty of confidentiality ensured.
- ❖ Harassment is a very serious issue, but people's privacy must be respected. Even after a case has been resolved, confidentiality and respect are critical.
- ❖ Employees must cooperate in the internal investigation process.
- ❖ All members of the organisation have the responsibility to cooperate in the investigation of complaints of sexual and gender-based harassment, psychological harassment, and any other form of discrimination.

RESPONSE PROCEDURE AND DIAGRAM

PHASE 1. Reporting and advising

Lodge a verbal or written complaint with the External Prevention Service HISER QUALIPREVEN, S.L. through the following channels:

Who should lodge the complaint:

- ❖ Perceived harassment: Victim
- ❖ Suspected harassment: Third party

Who to report it to:

- ❖ Designated specialist:
 - **Isabel Fernández**
 - Tel. (+34) 660 780 795
 - Email: isabel@hqp.cat
- ❖ Alternate specialist:
 - **Noemí Soto**
 - Tel. (+34) 674 385 154
 - Email: noemi@hqp.cat
- ❖ HISER administration
 - Telephone: (+34) 938 507 858
 - Email: info@hqp.cat

3 working days

Functions of the prevention service specialist:

- To report the issue, and to advise and provide support to the victim.
- To propose precautionary and/or preventive measures.
- To maintain custody of documents generated.

PHASE 2. Formalising the internal complaint and investigation

- ❖ The prevention specialist is responsible for conducting the investigation.
- ❖ The written complaint is the first document in the investigation file.
- ❖ Investigation procedure:
 - Analysis of the complaint and supporting documentation.
 - Interview with the complainant.
 - Interview with the respondent.
 - Interview with any possible witnesses.
 - Assessment of need for precautionary measures.
 - Issue of a binding report with the conclusions reached, and proposal of any corrective measures deemed appropriate.

20 working days

PHASE 3. Issuing a decision

On the basis of the binding report, a company representative or delegate will issue a decision.

If there is sufficient substantiated evidence of harassment:

Disciplinary proceedings will be initiated and corrective measures adopted (of an organisational nature, such as a change of position or place of work). The offence and the extent of the disciplinary measures will be stated in the file.

5 working days

If there is insufficient substantiated evidence of harassment:

The file will be closed.

SPECIFICATIONS FOR EACH PHASE

Possible outcomes of Phase 1	A. The affected party decides to lodge an internal complaint. In this case, the company will initiate the protocol for responding to situations of harassment.
	B. The affected party decides not to lodge a complaint, and the designated specialist deems that the information received constitutes evidence of an instance of harassment. In this case, the designated specialist will report the case to the company, respecting the right to confidentiality of all parties involved, so that the company may adopt preventive, awareness-raising and/or training measures, or whatever other actions it deems necessary to address the perceived instance of harassment.
	C. The affected party decides not to lodge a complaint, and the designated specialist deems that the information received does not constitute evidence of an instance of harassment. In this case, the file will be closed and no further action will be taken. Any documentation provided up to this point will be returned.
Complaint and investigation	A. The external prevention service specialist will report regularly on the status of the investigation to the workers' committee.
	B. The complainant only has to provide evidence to substantiate the alleged harassment. The respondent must demonstrate that no such evidence exists, in accordance with the principle of reverse burden of proof.
	C. Complainants who decide to lodge a complaint directly will be informed of the procedure, possible courses of action, and the right to health surveillance. If the complainant does not provide a sufficiently thorough account of the alleged events, additional testimony will be requested.
	D. If the respondent is a member of the workers' committee, they will be excluded from the periodic reports. If necessary, the respondent will be removed from the workers' committee.
	E. The investigation must be exhaustive. All the relevant facts must be investigated in order to draft a binding report on whether an instance of harassment has occurred and to propose measures to address the situation.

Requirements for issuing a decision

- A. The personal details of the complainant and the respondent, the grounds of the complaint and the substantiated facts must be clearly stated in the decision.
- B. A copy of the decision will be sent to the complainant and the respondent.
- C. If during the investigation it is determined that another form of misconduct has been committed, as defined in the applicable regulations or agreements (for example, a false complaint, etc.), the appropriate disciplinary proceedings will be initiated. Regardless of whether the proceedings lead to disciplinary action, the complainant's working situation will be reviewed to ensure a satisfactory working environment.

Monitoring and assessment

- A. The health and safety committee will meet with the prevention specialist every year.
- B. The number of workplace memorandums on psychological harassment, sexual or gender-based harassment in the workplace will be recorded.
- C. The number of internal disciplinary procedures will be recorded.
- D. The number of awareness-raising and training campaigns conducted will be recorded.

Information for personnel

- A. Posters, signs, leaflets, copies of the harassment protocol, etc.
- B. Awareness-raising sessions, explanation of the harassment protocol.
- C. Communication to all personnel of the results of the annual meeting.
- D. Inclusion of information on the company's policy and position on harassment in the protocol for welcoming new employees.
- E. Guarantee of easy access to the harassment protocol.

Appendix I:

Zero tolerance poster: Company statement of intent and information for personnel

ZERO TOLERANCE

of harassment in the workplace

THIS COMPANY:

1. Is committed to the effective equality of women and men.
2. Adopts measures to prevent all types of sexual or gender-based discrimination in its labour relationships.
3. Does not tolerate behaviour contrary to the freedom, dignity, physical and psychological integrity of employees, customers, suppliers, and any other stakeholder linked to the company in any way.
4. Strives to ensure the quality of its working environment and safeguard the health of its employees.
5. Applies with the necessary diligence a prevention and intervention policy to protect its personnel from sexual and gender based harassment.
6. Operates an anti-harassment protocol to ensure safe and respectful working environments for everyone.
7. Provides information and training to personnel and management staff on issues related to undesired conduct of this nature.
8. Implements specific procedures to process reports and complaints of sexual or gender-based harassment.
9. Applies strict disciplinary measures in the event of substantiated instances of harassment.
10. Provides internal complaint forms to anyone who needs them, guaranteeing the confidentiality, data security and expediency of the investigation procedure.

A JOINT RESPONSIBILITY



Appendix 2:

Internal complaint form



Internal complaint

Internal complaint form Harassment protocol

File number: _____

Details of respondent (alleged perpetrator)

Name and surname(s) _____

DNI/NIE/Id. document Age Sex (M/F) _____ Workplace _____ position _____

Contact telephone Email address _____

Details of complainant (person affected)

Name and surname(s) _____

DNI/NIE/Id. document Age Sex (M/F) _____ Workplace _____ position _____

Contact telephone Email address _____

Description of circumstances (state the grounds for the complaint, attaching supporting documents if possible).

Document for internal use. Not for public disclosure or distribution.

Witnesses (name, surname(s), telephone number and email address)

2. _____

3. _____

Has a previous report or complaint been submitted on the same grounds? Yes No

Receipt of complaint Name _____

Complainant

and surname(s) _____

Name and _____

surname(s) _____

_____, 20____

Document for internal use. Not for public disclosure or distribution.

RELEVANT LEGISLATION

1. Catalan legislation

- ❖ Articles 15.2, 25.3 and 40.8 of the Statute of Autonomy of Catalonia.
- ❖ Articles 92(h), 115(b) and 116 of Legislative Decree 1/1997, of 31 October, approving the consolidated version of legal texts in force in Catalonia on public service.

2. Spanish legislation

- ❖ Articles 1.1, 9.2, 14, 18.1, 35.1 and 53.2 of the Spanish Constitution.
- ❖ Law 30/1992, of 26 November, on the Legal System for Public Administrations and Common Administrative Procedure.
- ❖ Articles 173 and 316-318 of Organic Law 10/1995, of 23 November, of the Criminal Code.
- ❖ Preamble XI and Article 38 of Organic Law 5/2010, of 22 June, amending Organic Law 10/1995, of 23 November, of the Criminal Code.
- ❖ Law 31/1995, of 8 November, on occupational risk prevention.
- ❖ Royal Decree 39/1997, of 17 January, approving the regulations on prevention services.
- ❖ Articles 28 and 37 of Law 62/2003, of 30 December, on fiscal, administrative and social measures.
- ❖ Law 7/2007, of 12 April, on the Basic Statute of Public Employees.
- ❖ Articles 115, 116 and 117 of Royal Legislative Decree 1/1994, of 20 June, approving the consolidated text of the General Law on Social Security.
- ❖ Articles 4.2(c) and (e) of Royal Legislative Decree 1/1995, of 24 March, approving the consolidated text of the General Law on the Workers' Statute.
- ❖ Article 8.11 of Royal Legislative Decree 5/2000, of 4 August, approving the consolidated text of the of the Law on Infringements and Penalties in the Social Order.

- ❖ Royal Decree 171/2004, of 30 January, implementing Article 24 of Law 31/1995, of 8 November, on the prevention of occupational risks in the coordination of business activities.

3. European legislation

- ❖ European Parliament resolution on harassment at the workplace (2001/2339(INI)).
- ❖ European Union Commission (2001) 'Violence at Work'. Minutes of the meeting of 3 March 2001. Doc. 0978/01 ES.
- ❖ European Parliament resolution on moral harassment at the workplace (C77E of 28/3/02).
- ❖ European Social Charter of 3 May 1996.
- ❖ Other:
 - Number 23, on psychological harassment at the workplace of the *Information Sheets. Monographs of the Ministry of Business and Labour of the Government of Catalonia*.