



French Labour Law: sexual harassment and sexist behaviours at work: the new rules after the laws of August 3rd and September 5th, 2018

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With effect from 1st January 2019, Law n° 2018-771 of 5th September 2018 comes into force, it introduces new obligations for companies in the fight against sexual harassment and sexist behaviours. The law n° 2018-703 of August 3rd, 2018, broadens the scope of the criminal offense of sexual harassment, taking into account sexist behaviours.

These laws have a common goal, to make companies and employees aware of the fight against sexual harassment and sexist behaviours.

The extension of the offenses of sexual harassment and moral harassment.

The law n° 2018-703 of 3rd August 2018 extended the definition of sexual harassment in the field of sexual violence and the definition of sexual harassment repeated acts of harassment.

1.1) the sexist outrage created by the law of 3rd August 2018 and specified by the circular of 3rd September 2018.

However, in order to widen the scope of the offenses, the law of 3rd August 2018 created a new offense, the sexist outrage (outrage sexiste) which corresponds to the fact of "imposing on a person sexual or sexist remarks that undermines his or her dignity" because of its degrading or humiliating character creating an intimidating, hostile or offensive situation".

Unlike the offense of sexual harassment, provided by the Labour Code, sexist outrage requires no repetition to be punished.

According to the application circular of September 3rd, 2018, can be characterized as sexist outrage : sexual proposals, but also non-verbal attitudes such as gestures imitating or suggesting a sexual act, whistling or obscene sound effects or having degradingly, degrading comments about the dress or physical appearance of the victim.

Sexist outrage, found in punish street harassment, finds application in private places as "a work space".

The proof of this offense can be reported by testimonies but also by the exploitation of means of video protection.

1.2) Cyber-harassment.

Sexual harassment requires the repetition of sexually or sexist acts. This notion has been clarified as the case where this repetition is the fact of several people.

It is henceforth possible that the crime of sexual harassment is also one of the following:

This extension of the notion of repetition is primarily intended for repressing the facts of "cyber-harassment", which is frequently committed by several people, but does not include "digital raid".

This extension of the concept of repetition has been provided for in Article 222-33-2-2 of the French Criminal Code for the offense of harassment.

It is precisely to improve these facts that have been added to a new aggravating circumstance of sexual harassment, bringing the penalties to three years of imprisonment and a fine of 45,000 euros when it was done through a digital or electronic media.

2) Posting in the company of the text on sexual harassment and means of contentious action.

As of 1st January 2019, employers will have to inform employees (salaries), trainees (stagiaires), as well as candidates for recruitment, training or work placement, of the text of the harassment by any means.

Article 222-33 of the French criminal Code (text defining sexual harassment) as well as civil and criminal contentious actions open in matters of sexual harassment and contact details of the competent authorities and services [2].

- Must be mentioned, address and phone number:
- from the work doctor,
- the competent labour inspectorate (inspecteur du travail) in the territory of the establishment,
- the rights defender,
- reference sexual harassment and sexist behaviour (company of more than 250 employees),
- Referent sexual harassment and sexist behaviour designated by the CSE (workers' council).

In practice, this information will be through a display that recalls the definition of sexual harassment as well as civil or criminal actions that are open in cases of sexual harassment.

This obligation applies in the workplace as well as in the premises or at the door of the premises where the hiring is taking place.

In companies with 20 or more employees, the rules of procedure must already refer to "the provisions relating to moral and sexual harassment and sexist conduct provided for by the Labour Code".

3) Designation of CSE referents and companies employing at least 250 employees.

3.1) CSE (social and economic council): a reference in the fight against sexual harassment and sexist behaviour.

As of 1st January 2019, the CSE must designate, from among its members, a referent for the fight against sexual harassment and sexist acts, in the form of a resolution adopted, for a period ending with that of the mandate elected members of the committee.

This referent will benefit from training in health, safety and working conditions.

The training is paid by the employer under the conditions defined by a decree to intervene.

3.2) A referent "sexual harassment and sexist behaviour" in companies employing at least 250 employees.

As of January 1st, 2019, in any company employing at least 250 employees, a referent is appointed to guide, inform and accompany employees in the fight against sexual harassment and sexist behaviour.

4) Sexual Harassment in the Branch level (negociation de branche).

Professional organizations will now have to negotiate at branch level on "the provision of tools to businesses to prevent and act against sexual harassment and sexist behaviour".

This negotiation must take place at least every 4 years.

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