

LAW

ON PREVENTION OF HARASSMENT AT WORK

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I BASIC PROVISIONS

Subject

Article 1

This law shall regulate: the prohibition of harassment at work and related to work; measures to prevent harassment and improve relations at work; procedure for protection of persons exposed to harassment at work and related to work and other issues of importance for the prevention and protection from harassment at work and related to work.

All terms used in this law in the masculine gender shall include the same terms in the feminine gender.

Implementation of the Law

Article 2

The provisions of this law shall apply to employers, employees in accordance with the law governing labor, the law governing the rights and obligations of civil servants and officials and the law governing the rights and obligations of employees in the units of territorial autonomy and local administration, as well as to persons hired outside the scope of employment, such as persons performing interim and temporary jobs or supplying services or performing other contracting jobs, persons providing supplementary work, persons executing the contract for vocational training and improvement with the employer without the establishment of employment, volunteers and any other person who at any basis shall participate in the work of the employer (hereinafter referred to as: employees).

Article 3

The provisions of this law shall also apply to cases of sexual harassment, in accordance with the law governing labor.

Creating a healthy and safe working environment

Article 4

The employer is obliged, in order to create the conditions necessary for a healthy and safe working environment, to organize work in a way that prevents the occurrence of harassment at work and related to work, and to provide the employees with conditions wherein they shall not be subjected to harassment at work and related to work by the employer or by an official or employees of the employer.

Prohibitions related to harassment

Article 5

Any form of violence at work and related to work (hereinafter referred to as: harassment) and abuse of the right to protection from harassment shall be prohibited.

The concept of harassment and perpetrator of harassment

Article 6

Harassment, under this law, shall be any active or passive behavior toward an employee or a group of employees of an employer that is repeated, which is aimed at or represents a violation of dignity, reputation, personal and professional integrity, health and status of an employee, which also causes fear or creates a hostile, humiliating or offensive environment, deteriorates conditions of work or leads an employee to isolate himself or to terminate the employment contract or other contract on its own initiative.

Harassment, according to this law shall also be encouraging or leading others to the conduct specified in paragraph 1 this Article.

An employer with the capacity of a natural person or an official of the employer with the capacity of a legal person, an employee or a group of employees of the employer who performs harassment shall be considered as a perpetrator of harassment from the Paragraphs 1 and 2 this Article.

II THE RIGHTS, OBLIGATIONS AND RESPONSIBILITIES OF AN EMPLOYER AND EMPLOYEES IN CONNECTION TO HARASSMENT

The rights, duties and responsibilities of employers

Article 7

The employer shall be obliged to inform the employee in writing, prior to beginning of employment, on the prohibition of harassment and the rights, duties and responsibilities of the employee and the employer regarding the prohibition of harassment, in accordance with this law.

The employer shall be obliged, for the purpose of identification, impeding and prevention of harassment, to implement measures for informing and training employees and their representatives to identify the causes, forms and consequences of carrying out harassment.

Article 8

The employer shall be obliged to protect the employee from harassment, in accordance with this law.

Article 9

The employer shall be responsible for any damage that the official or employee carrying out harassment causes to another employee employed by the same employer, in accordance with the law.

An employer who has compensated the damage caused by the official or employee shall be entitled to seek compensation from that official or employee.

The rights, duties and responsibilities of the employee

Article 10

The employee shall have the right to be informed in writing about the prohibition of carrying out harassment and the rights, duties and responsibilities of the employee and employer related to the prohibition of harassment.

The employees shall have the right to seek and gain protection at the workplace from a conduct that represents harassment.

Article 11

The employee shall be obliged to refrain from any conduct that represents harassment and any conduct that represents an abuse of the right to protection from harassment.

The employee who carries out harassment, as well as the employee who abuses the right to protection

from harassment shall be responsible for disrespect of labor discipline, or violation of labor duty.

The abuse of the right to protection from harassment, according to this law, shall be committed by the employee who is aware or should have been aware that there are no reasonable grounds to initiate proceedings for the protection from harassment, but starts or initiates the start of that procedure in order to acquire tangible or intangible benefit for himself or for somebody else or inflict damages to other person.

Article 12

An employee who becomes aware of the conduct, for which he reasonably believes that represents harassment, shall have the right to initiate proceedings for the protection from harassment by notifying the person authorized to submit the application for initiation of that proceeding, in accordance with this law.

III WORKPLACE PROCEDURE FOR PROTECTION FROM HARASSMENT

Initiation of Proceedings

Article 13

If the official of the legal entity, or the employer with the capacity of natural person, is not accused for harassment, the employee who considers that he is subjected to harassment shall submit directly to that person a reasoned application for initiation of proceedings for protection from harassment.

The application from Paragraph 1 of this Article may be submitted by the union representative, the person in charge of safety and health at work, the representative of employees for safety and health at work, or the committee for safety and health at work, with the written consent of the employee who considers himself subjected to harassment.

Cases when initiation of workplace proceedings for the protection from harassment is not mandatory

Article 14

If the official of the legal person, or employer with the capacity of natural person, is accused for harassment, the employee who considers himself subjected to harassment may submit directly to that person the application for mediation proceedings.

If the official of the legal person, or employer with the capacity of natural person, is accused for harassment, the employee who considers himself subjected to harassment may, until the expiry of statute of limitation for initiating the workplace proceedings for the protection from harassment prescribed by this law, and without application for initiation of mediation proceedings, initiate proceedings before the competent court.

The offer for mediation and determination or choice of the mediator

Article 15

The employer shall be obliged, upon receipt of application from the Article 13 of this law, to suggest within three days to the parties in the dispute the mediation as a resolution of the dispute.

The employer may accept the application for mediation from the Article 14 of this Law in the period of three days.

The employee who considers himself subjected to harassment, the employee who is accused of harassment and the representative of the employer (Article 13 of this law), or the employer and the employee who considers himself subjected to harassment (Article 14 of this law), shall consensually determine or choose a person to conduct mediation proceedings (hereinafter referred to as: the mediator), within three days after the receipt of the employer's suggestion.

Article 16

A person that enjoys trust from the disputed parties may be determined or chosen as the mediator.

The mediator may be chosen from a list of mediators that is kept by the employer - in accordance with the collective agreement, or by the body, organization or institutions for mediation - in accordance with the law.

The mediator may also be chosen from the list of mediators of the Socio-Economic Council created at the suggestion of the social partners, as well as from the list of citizens' associations whose goals are directed to the operations of mediation, or protection from harassment.

The mediator is a neutral person who shall mediate between the disputed parties in order to resolve their disputed relationship.

The mediator shall be obliged to act independently and impartially.

The implementation of the mediation proceedings

Article 17

Mediation proceedings shall be urgent.

Mediation proceedings shall be conducted in a way that a mediator shall help the parties in dispute to reach an agreement.

A representative of the trade union may participate in the process of mediation, at the demand of a party in dispute.

Mediation proceedings shall be closed to the public. Data collected during the mediation proceedings are secret and may be disclosed only to participants in the proceedings and to the competent state bodies in relation to the procedure for protection from harassment.

Article 18

Parties can agree on how to implement the mediation proceedings.

If the parties fail to reach agreement on how to implement the proceedings, the mediator shall implement the mediation proceedings in a way that he considers appropriate, given the circumstances of the disputed relationship and interests of the parties to the dispute, respecting the principle of urgency.

The mediator can conduct joint and separate interviews with the parties to the dispute, as well as to communicate and present the suggestions and views on certain issues of one side to another.

Mediator may make suggestions for the possible ways to resolve the dispute, but may not impose a solution to the disputed parties.

If the mediator shall assess that there is a risk of occurrence of irreparable damage to the employee who considers himself subjected to harassment, the mediator may submit to the employer a reasoned initiative to take measures from Article 24 of this Law - until the termination of the procedure for protection from harassment.

Termination of mediation proceedings

Article 19

The mediation proceedings shall terminate within eight working days after the date of the determination or choice of the mediator:

- 1) By execution of a written agreement between the disputed parties;
- 2) By a decision of the mediator, after consultation with the parties, to terminate the proceedings because further proceedings are not justified;
- 3) By a waiver statement of a disputed party from further proceedings.

Due to justified reasons, the deadline for the completion of the mediation process can be extended to a maximum of 30 days from the date of determination or choice of the mediator.

Cases when mediation failed

Article 20

It is believed that the mediation has failed if:

- 1) The parties to the dispute do not determine or choose the mediator in accordance with the Article 15, Paragraph 3 of this law;
- 2) The mediation terminated in the manner specified in the Article 19, items 2) and 3) of this law.

In the case referred to in paragraph 1 item 1) of this Article, the employer shall be obliged to the applicant from the Article 13 of this law and to the employee that considers himself subjected to harassment if he has not submitted the application, to serve the notice that the mediation failed.

In the case referred to in Paragraph 1, Item 2) of this Article mediator shall be obliged, the latest within three days after the expiry of the deadline from Article 19 of this law, to deliver to the disputed parties and to the employer the decision on termination of the proceedings, or the notice that one of the parties waived further proceedings.

The content of the agreement on resolving of the disputed issue

Article 21

The agreement especially contains measures aimed at the cessation of behavior which constitutes harassment or exclusion of possibilities to continue with such behavior - harassment.

The effect of the agreement reached in the mediation process depends on the will of the disputed parties, if the agreement includes regulation of conduct in their mutual relationship.

The agreement may include recommendations to the employer in respect of elimination of possibilities for confirmation of harassment (transfer of the employee to another work environment and other measures concerning the status and rights of the disputed parties).

The employer may accept the recommendations from Paragraph 3 of this Article if they are compatible with the law and the employer's business policy.

Statute of limitations

Article 22

The right to apply for the workplace protection from harassment (Article 13 and Article 14, Paragraph 1 of this law) shall reach the statute of limitations within six months from the date that the harassment was committed.

The statute of limitations time period referred to in Paragraph 1 of this Article starts from the day when the behavior which represents harassment was performed the last time.

During the duration of the time period referred to in Paragraph 1 of this Article and during the procedure of mediation, the deadlines prescribed by law for determining the employee's responsibility for violations of labor discipline, or violation of labor duty, shall be suspended.

The procedure for establishing the responsibility of the employee

Article 23

The employer shall be obliged to, if mediation fails and there is a reasonable suspicion that harassment has been committed or that the right to protection from harassment has been abused, to initiate the procedure for determining the responsibility of the employee for violation of labor discipline, or violation of labor duty, in accordance with the law.

The employer may, in addition to the sanctions prescribed by law, impose one of the following measures to the employee who is responsible for

violation of labor discipline or violation of labor duty from Paragraph 1 of this Article:

- 1) Warning;
- 2) Measure of suspension from work from four to 30 working days without pay;
- 3) Measure of permanent transfer to another work environment - to perform the same or different jobs, or work position, in accordance with the law.

If the employee who was imposed to a measure from Paragraph 2 of this Article due to performing of harassment, within six months commits harassment again, the employer may terminate his contract of employment or impose a measure of termination of employment, in accordance with the law.

Measures to prevent harassment before termination of proceedings

Article 24

If the employee who considers himself subjected to harassment is in the opinion of the labor health service under direct threat to his health or life or is under danger of occurrence of irreparable damage, the employer is obliged to, until termination of the workplace proceedings for protection of the employee from harassment, to impose one of the following measures to the employee who is accused for harassment:

- 1) Transfer to another work environment - to perform the same or different jobs, or work position, in accordance with the law;
- 2) Suspending from work with pay, in accordance with the law.

Article 25

The provisions of relevant laws governing the rights, duties and responsibilities of employees in employment relation shall be correspondingly applied to the proceedings from the Articles 23 and 24 of this law.

The right to refuse to work

Article 26

The employee, who is in the opinion of the labor health service under a direct threat to his health or life, has the right to refuse to work if the employer fails to take measures from the Article 24 of this law.

In the case referred to in Paragraph 1 of this Article the employee shall be obliged, without delay, to inform the employer and the labor inspection about refusal to work.

During the refusal to work, the employee is entitled to compensation of salary in the amount of average salary he made in the last three months.

The employee who refused to work shall be obliged to return to work after the measures referred to in Article 24 of this law are imposed by the employer and the latest after termination of the workplace procedure of protection against harassment.

A measure of termination of employment may not be imposed or the labor contract may not be terminated to the employee who refused to work.

Protection of the parties to the proceedings

Article 27

The initiation of proceedings for protection from harassment, as well as participation in such proceedings shall may not be grounds for: placing the employee in an unfavorable position in terms of exercising the rights and obligations in employment, starting the procedure for determining disciplinary, financial or other responsibility of the employee, terminating the employment contract, or terminating labor or other contractual relationship based on work and declaring the employee as redundant, in accordance with the regulations governing labor.

The employee who points out to the relevant government authority the violation of public interest established by law, committed by the employer and has the reasonable suspicion that he shall be subjected to harassment, shall have the right to protection from Paragraph 1 of this Article.

The protection in terms of Paragraph 1 of this Article shall not be enjoyed by the employee, who has been determined, in accordance with the law, to have abused the right to protection from harassment.

Rules of conduct of employers and employees

Article 28

Rules of conduct of employers and employees regarding the prevention and protection from harassment at work are prescribed by the state Minister in charge labor issues.

IV JUDICIAL PROTECTION

Initiation of Proceedings

Article 29

The employee who considers himself subjected to harassment by the employer with the capacity of natural person or by an official of a legal entity can file a complaint against the

employer before the competent court within the period specified in Article 14 Paragraph 2 this law.

The right to file a complaint against the employer for harassment at work or related to work shall also have the employee who is not satisfied with the outcome of the workplace proceedings of protection against harassment, within 15 days after receipt of notice or decision from Article 20, Paragraphs 2 and 3 and Article 23 this law.

The complaint referred to in Para. 1 and 2 of this Article cannot contest the legality of the individual act of the employer which regulated rights, obligations and responsibilities of the employee in employment relations. The employee is entitled to judicial protection against those acts - in line with a special law that prescribes court protection.

The dispute referred to in Para. 1 and 2 of this Article is a labor dispute.

If this law does not provide special rules, the provisions of the law that governs the litigation procedure shall be correspondingly applied to the disputes relating to achieving court protection due to harassment at work or related to work.

Contents of the complaint

Article 30

In the proceedings before the competent court the employee who considers himself subjected to harassment may demand:

- 1) Determination that he has been subjected to harassment;
- 2) Prohibition of conduct which constitutes harassment, prohibition of further performance of harassment or repeated harassment;
- 3) Enforcement of actions to remove the consequences of harassment;

4) Compensation tangible and intangible damages, in accordance with the law;

5) Publication of the judgment made in respect of the actions from Items 1 to 4 from this Article.

The burden of proof in court proceedings

Article 31

If during the proceedings, the plaintiff makes probable that the harassment referred to in Article 6 of this law was carried out, the burden of proof that there was no conduct which constitutes harassment is on the employer.

Urgency of procedure

Article 32

The procedure in litigations for implementation of protection from harassment is urgent.

The court will submit the claim with attachments to the defendant for the reply within 15 days of receipt of the complaint.

Injunctions

Article 33

During the proceedings the court may, upon proposal of a party or on its own initiative, issue an injunction to prevent violent actions or to eliminate irreparable damages.

The injunctions shall especially include approaching prohibition, as well as prohibition of access to the workplace area of an employee who makes probable that he is subjected to harassment.

The court shall issue a decision on injunction proposed by a party within eight days from the date of submission of the proposal.

Separate appeal against the decision on issuing injunction shall not be allowed.

V CONTROL

Article 34

The labor inspection and administrative inspection shall supervise the implementation of this law at the workplace.

During supervision, the inspection specified in the Paragraph 1 this Article shall comply with the law that governs its authority.

VI PENALTY PROVISIONS

Article 35

The fine ranging from 200,000 to 800,000 dinars shall be imposed on the employer with a capacity of legal person, if it:

- 1) Does not impose a measure to prevent harassment before the termination of the proceedings (Article 24);
- 2) Terminates the employment contract or imposes a measure of termination of employment contrary to the provisions of this law (Article 26, Paragraph 5);
- 3) Acts contrary to the provisions of this law regarding the protection of participants in the process of protection from harassment (Article 27).

The fine ranging between 100,000 to 400,000 dinars shall be imposed on an entrepreneur for the violation of Paragraph 1 of this Article.

The fine ranging between 10,000 to 40,000 dinars shall be imposed on the official of a legal person for the violation of Paragraph 1 of this Article.

Article 36

The fine ranging from 100,000 to 400,000 dinars shall be imposed on the employer with the capacity of a legal person for a violation, unless it informs the employee about the prohibition of harassment in accordance with the provisions of this Law (Article 7, paragraph 1 and Article 37).

The fine ranging from 10,000 to 40,000 dinars shall be imposed the entrepreneur for the violation of the Paragraph 1 of this Article.

The fine ranging from 5,000 to 30,000 dinars shall be imposed on the official of a legal entity for the violation of the Paragraph 1 of this Article.

VII TRANSITIONAL AND FINAL PROVISIONS

Article 37

The employer is obliged to fulfill the obligation under the Article 7, Paragraph 1 of this law towards the employees who were employed by him on the day of the beginning of application of this law,

within 30 days from the day of the beginning of application of this law.

Article 38

The state Minister shall render the bylaw referred to in the Article 28 of this law within 90 days from the day of entry into force of this Law.

Article 39

This law shall come into force on the eighth day following its publication in the "Official Herald of the Republic of Serbia" and shall apply after the expiry of 90 days from the day of its entry into force.