

Official Journal

of the European Communities

ISSN 0378-6978

L 49

Volume 35

24 February 1992

English edition

Legislation

Contents

I *Acts whose publication is obligatory*

.....

II *Acts whose publication is not obligatory*

Commission

92/131/EEC:

★ **Commission recommendation of 27 November 1991 on the protection of the dignity of women and men at work..... 1**

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.
The titles of all other Acts are printed in bold type and preceded by an asterisk.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION RECOMMENDATION

of 27 November 1991

on the protection of the dignity of women and men at work

(92/131/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

information campaigns to create a proper awareness of the individual rights of all members of the labour force;

Having regard to the Treaty establishing the European Economic Community, and in particular the second indent of Article 155 thereof,

Whereas the Advisory Committee on Equal Opportunities for Women and Men, in its opinion of 20 June 1988, has unanimously recommended that there should be a recommendation and code of conduct on sexual harassment in the workplace covering harassment of both sexes;

Whereas unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work, including the conduct of superiors and colleagues, is unacceptable and may, in certain circumstances, be contrary to the principle of equal treatment within the meaning of Articles 3, 4 and 5 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions⁽¹⁾, a view supported by case-law in some Member States;

Whereas the Commission in its action programme relating to the implementation of the Community Charter of Basic Social Rights for Workers undertook to examine the protection of workers and their dignity at work, having regard to the reports and recommendations prepared on various aspects of implementation of Community law⁽²⁾;

Whereas, in accordance with the Council recommendation of 13 December 1984 on the promotion of positive action for women⁽³⁾, many Member States have carried out a variety of positive action measures and actions having a bearing, *inter alia*, on respect for the dignity of women at the workplace;

Whereas the Council, in its resolution of 29 May 1990 on the protection of the dignity of women and men at work⁽⁴⁾, affirms that conduct based on sex affecting the dignity of women and men at work, including conduct of superiors and colleagues, constitutes an intolerable violation of the dignity of workers or trainees, and calls on the Member States and the institutions and organs of the European Communities to develop positive measures designed to create a climate at work in which women and men respect one another's human integrity;

Whereas the European Parliament, in its resolution of 11 June 1986 on violence against women⁽⁵⁾, has called upon national governments, equal opportunities committees and trade unions to carry out concerted

⁽¹⁾ COM(89) 568 final, 29. 11. 1989. For example, 'The dignity of women at work: A report on the problem of sexual harassment in the Member States of the European Communities', October 1987, by Michael Rubenstein (ISBN 92-825-8764-9).

⁽²⁾ OJ No C 157, 27. 6. 1990, p. 3.

⁽¹⁾ OJ No L 39, 14. 2. 1976, p. 40.

⁽²⁾ OJ No L 331, 19. 12. 1984, p. 34.

⁽³⁾ OJ No C 176, 14. 7. 1986, p. 79.

Whereas the Commission, in its third action programme on equal opportunities for women and men, 1991 to 1995, and pursuant to paragraph 3 (2) of the said Council resolution of 29 May 1990, resolved to draw up a code of conduct on the protection of the dignity of women and men at work ⁽¹⁾, based on experience and best practice in the Member States, to provide guidance on initiating and pursuing positive measures designed to create a climate at work in which women and men respect one another's human integrity;

Whereas the European Parliament, on 22 October 1991, adopted a resolution on the protection of the dignity of women and men at work ⁽²⁾;

Whereas the Economic and Social Committee, on 30 October 1991, adopted an opinion on the protection of the dignity of women and men at work ⁽³⁾,

RECOMMENDS AS FOLLOWS:

Article 1

It is recommended that the Member States take action to promote awareness that conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work, including conduct of superiors and colleagues, is unacceptable if:

- (a) such conduct is unwanted, unreasonable and offensive to the recipient;
- (b) a person's rejection of, or submission to, such conduct on the part of employers or workers (including superiors or colleagues) is used explicitly or implicitly as a basis for a decision which affects that person's access to vocational training, access to employment, continued employment, promotion, salary or any other employment decisions;

and/or

- (c) such conduct creates an intimidating, hostile or humiliating work environment for the recipient;

and that such conduct may, in certain circumstances, be contrary to the principle of equal treatment within the meaning of Articles 3, 4 and 5 of Directive 76/207/EEC.

Article 2

It is recommended that Member States take action, in the public sector, to implement the Commission's code of practice on the protection of the dignity of women and men at work, annexed hereto. The action of the Member States, in thus initiating and pursuing positive measures designed to create a climate at work in which women and men respect one another's human integrity, should serve as an example to the private sector.

Article 3

It is recommended that Member States encourage employers and employee representatives to develop measures to implement the Commission's code of practice on the protection of the dignity of women and men at work.

Article 4

Member States shall inform the Commission within three years of the date of this recommendation of the measures taken to give effect to it, in order to allow the Commission to draw up a report on all such measures. The Commission shall, within this period, ensure the widest possible circulation of the code of practice. The report should examine the degree of awareness of the Code, its perceived effectiveness, its degree of application and the extent of its use in collective bargaining between the social partners.

Article 5

This recommendation is addressed to the Member States.

Done at Brussels, 27 November 1991.

For the Commission
Vasso PAPANDREOU
Member of the Commission

⁽¹⁾ COM(90) 449 final, 6. 11. 1990.

⁽²⁾ OJ No C 305, 25. 11. 1991.

⁽³⁾ OJ No C 14, 20. 1. 1992.

ANNEX

PROTECTING THE DIGNITY OF WOMEN AND MEN AT WORK

A code of practice on measures to combat sexual harassment

1. INTRODUCTION

This code of practice is issued in accordance with the resolution of the Council of Ministers on the protection of the dignity of women and men at work ⁽¹⁾, and to accompany the Commission's recommendation on this issue.

Its purpose is to give practical guidance to employers, trade unions, and employees on the protection of the dignity of women and men at work. The code is intended to be applicable in both the public and the private sector and employers are encouraged to follow the recommendations contained in the code in a way which is appropriate to the size and structure of their organization. It may be particularly relevant for small and medium-sized enterprises to adapt some of the practical steps to their specific needs.

The aim is to ensure that sexual harassment does not occur and, if it does occur, to ensure that adequate procedures are readily available to deal with the problem and prevent its recurrence. The code thus seeks to encourage the development and implementation of policies and practices which establish working environments free of sexual harassment and in which women and men respect one another's human integrity.

The expert report carried out on behalf of the Commission found that sexual harassment is a serious problem for many working women in the European Community ⁽²⁾ and research in Member States has proven beyond doubt that sexual harassment at work is not an isolated phenomenon. On the contrary, it is clear that for millions of women in the European Community, sexual harassment is an unpleasant and unavoidable part of their working lives. Men too may suffer sexual harassment and should, of course, have the same rights as women to the protection of their dignity.

Some specific groups are particularly vulnerable to sexual harassment. Research in several Member States, which documents the link between the risk of sexual harassment and the recipient's perceived vulnerability, suggests that divorced and separated women, young women and new entrants to the labour market and those with irregular or precarious employment contracts, women in non-traditional jobs, women with disabilities, lesbians and women from racial minorities are disproportionately at risk. Gay men and young men are also vulnerable to harassment. It is undeniable that harassment on grounds of sexual orientation undermines the dignity at work of those affected and it is impossible to regard such harassment as appropriate workplace behaviour.

Sexual harassment pollutes the working environment and can have a devastating effect upon the health, confidence, morale and performance of those affected by it. The anxiety and stress produced by sexual harassment commonly leads to those subjected to it taking time off work due to sickness, being less efficient at work, or leaving their job to seek work elsewhere. Employees often suffer the adverse consequences of the harassment itself and short- and long-term damage to their employment prospects if they are forced to change jobs. Sexual harassment may also have a damaging impact on employees not themselves the object of unwanted behaviour but who are witness to it or have a knowledge of the unwanted behaviour.

There are also adverse consequences arising from sexual harassment for employers. It has a direct impact on the profitability of the enterprise where staff take sick leave or resign their posts because of sexual harassment, and on the economic efficiency of the enterprise where employees' productivity is reduced by having to work in a climate in which individuals' integrity is not respected.

In general terms, sexual harassment is an obstacle to the proper integration of women into the labour market and the Commission is committed to encouraging the development of comprehensive measures to improve such integration ⁽³⁾.

⁽¹⁾ OJ No C 157, 27. 6. 1990, p. 3.

⁽²⁾ 'The dignity of women at work: A report on the problem of sexual harassment in the Member States of the European Communities', October 1987, by Michael Rubenstein (ISBN 92-825-8764-9).

⁽³⁾ Third action programme on equal opportunities for women and men, 1991 to 1995, COM(90) 449, 6. 11. 1990.

2. DEFINITION

Sexual harassment means unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work ⁽¹⁾. This can include unwelcome physical, verbal or non-verbal conduct.

Thus, a range of behaviour may be considered to constitute sexual harassment. It is unacceptable if such conduct is unwanted, unreasonable and offensive to the recipient; a person's rejection of or submission to such conduct on the part of employers or workers (including superiors or colleagues) is used explicitly or implicitly as a basis for a decision which affects that person's access to vocational training or to employment, continued employment, promotion, salary or any other employment decisions; and/or such conduct creates an intimidating, hostile or humiliating working environment for the recipient ⁽¹⁾.

The essential characteristic of sexual harassment is that it is unwanted by the recipient, that it is for each individual to determine what behaviour is acceptable to them and what they regard as offensive. Sexual attention becomes sexual harassment if it is persisted in once it has been made clear that it is regarded by the recipient as offensive, although one incident of harassment may constitute sexual harassment if sufficiently serious. It is the unwanted nature of the conduct which distinguishes sexual harassment from friendly behaviour, which is welcome and mutual.

3. THE LAW AND EMPLOYERS' RESPONSIBILITIES

Conduct of a sexual nature or other based on sex affecting the dignity of women and men at work may be contrary to the principle of equal treatment within the meaning of Articles 3, 4 and 5 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women

as regards access to employment, vocational training and promotion, and working conditions ⁽²⁾. This principle means that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status.

In certain circumstances, and depending upon national law, sexual harassment may also be a criminal offence or may contravene other obligations imposed by the law, such as health and safety duties, or a duty, contractual or otherwise, to be a good employer. Since sexual harassment is a form of employee misconduct, employers have a responsibility to deal with it as they do with any other form of employee misconduct as well as to refrain from harassing employees themselves. Since sexual harassment is a risk to health and safety, employers have a responsibility to take steps to minimize the risk as they do with other hazards. Since sexual harassment often entails an abuse of power, employers may have a responsibility for the misuse of the authority they delegate.

This code, however, focuses on sexual harassment as a problem of sex discrimination. Sexual harassment is sex discrimination because the gender of the recipient is the determining factor in who is harassed. Conduct of a sexual nature or other conduct based on sex affecting the dignity of women and men at work in some Member States already has been found to contravene national equal treatment laws and employers have a responsibility to seek to ensure that the work environment is free from such conduct ⁽³⁾.

As sexual harassment is often a function of women's status in the employment hierarchy, policies to deal with sexual harassment are likely to be most effective where they are linked to a broader policy to promote equal

⁽¹⁾ Council resolution on the protection of the dignity of women and men at work (OJ No C 157, 27. 6. 1990, p. 3, point 1).

⁽²⁾ OJ No L 39, 14. 2. 1976, p. 40.

⁽³⁾ Council resolution on the protection of the dignity of women and men at work (OJ No C 157, 27. 6. 1990, p. 3, point 2 (3) (a)).

opportunities and to improve the position of women. Advice on steps which can be taken generally to implement an equal opportunities policy is set out in the Commission's guide to positive action⁽¹⁾.

Similarly, a procedure to deal with complaints of sexual harassment should be regarded as only one component of a strategy to deal with the problem. The prime objective should be to change behaviour and attitudes, to seek to ensure the prevention of sexual harassment.

4. COLLECTIVE BARGAINING

The majority of the recommendations contained in this code are for action by employers, since employers have clear responsibilities to ensure the protection of the dignity of women and men at work.

Trade unions also have responsibilities to their members and they can and should play an important role in the prevention of sexual harassment in the workplace. It is recommended that the question of including appropriate clauses in agreements be examined in the context of the collective bargaining process, with the aim of achieving a work environment free from unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of women and men at work and free from victimization of a complainant or of a person wishing to give, or giving, evidence in the event of a complaint.

5. RECOMMENDATIONS TO EMPLOYERS

The policies and procedures recommended below should be adopted, where appropriate, after consultation or negotiation with trade unions or employee representatives. Experience suggests that strategies to create and maintain a working environment in which the dignity of employees is respected are most likely to be effective where they are jointly agreed.

It should be emphasized that a distinguishing characteristic of sexual harassment is that employees subjected to it often will be reluctant to complain. An absence of complaints about sexual harassment in a particular organization, therefore, does not necessarily mean an absence of sexual harassment. It may mean that the recipients of sexual harassment think that there is no

point in complaining because nothing will be done about it, or because it will be trivialized or the complainant subjected to ridicule, or because they fear reprisals. Implementing the preventative and procedural recommendations outlined below should facilitate the creation of a climate at work in which such concerns have no place.

A. Prevention

(i) Policy statements

As a first step in showing senior management's concern and their commitment to dealing with the problem of sexual harassment, employers should issue a policy statement which expressly states that all employees have a right to be treated with dignity, that sexual harassment at work will not be permitted or condoned and that employees have a right to complain about it should it occur.

It is recommended that the policy statement make clear what is considered inappropriate behaviour at work, and explain that such behaviour, in certain circumstances, may be unlawful. It is advisable for the statement to set out a positive duty on managers and supervisors to implement the policy and to take corrective action to ensure compliance with it. It should also place a positive duty on all employees to comply with the policy and to ensure that their colleagues are treated with respect and dignity.

In addition, it is recommended that the statement explain the procedure which should be followed by employees subjected to sexual harassment at work in order to obtain assistance and to whom they should complain; that it contain an undertaking that allegations of sexual harassment will be dealt with seriously, expeditiously and confidentially, and that employees will be protected against victimization or retaliation for bringing a complaint of sexual harassment. It should also specify that appropriate disciplinary measures will be taken against employees found guilty of sexual harassment.

(ii) Communicating the policy

Once the policy has been developed, it is important to ensure that it is communicated effectively to all employees, so that they are aware that they have a right to complain and to whom they should complain; that their complaint will be dealt with promptly and fairly; and that employees are made aware of the likely

⁽¹⁾ Positive action: Equal opportunities for women in employment — a guide, Office for Official Publications of the European Communities, 1988.

consequences of engaging in sexual harassment. Such communication will highlight management's commitment to eliminating sexual harassment, thus enhancing a climate in which it will not occur.

(iii) *Responsibility*

All employees have a responsibility to help to ensure a working environment in which the dignity of employees is respected and managers (including supervisors) have a particular duty to ensure that sexual harassment does not occur in work areas for which they are responsible. It is recommended that managers explain the organization's policy to their staff and take steps to positively promote the policy. Managers should also be responsive and supportive to any member of staff who complains about sexual harassment, provide full and clear advice on the procedure to be adopted, maintain confidentiality in any cases of sexual harassment and ensure that there is no further problem of sexual harassment or any victimization after a complaint has been resolved.

(iv) *Training*

An important means of ensuring that sexual harassment does not occur and that, if it does occur, the problem is resolved efficiently is through the provision of training for managers and supervisors. Such training should aim to identify the factors which contribute to a working environment free of sexual harassment and to familiarize participants with their responsibilities under the employer's policy and any problems they are likely to encounter.

In addition, those playing an official role in any formal complaints procedure in respect of sexual harassment should receive specialist training, such as that outlined above.

It is also good practice to include information as to the organization's policy on sexual harassment and procedures for dealing with it as part of appropriate induction and training programmes.

B. Procedures

The development of clear and precise procedures to deal with sexual harassment once it has occurred is of great importance. The procedures should ensure the resolution of problems in an efficient and effective manner. Practical guidance for employees on how to deal with sexual harassment when it occurs and with its aftermath will make it more likely that it will be dealt with at an early stage. Such guidance should of course draw

attention to an employee's legal rights and to any time limits within which they must be exercised.

(i) *Resolving problems informally*

Most recipients of harassment simply want the harassment to stop. Both informal and formal methods of resolving problems should be available.

Employees should be advised that, if possible, they should attempt to resolve the problem informally in the first instance. In some cases, it may be possible and sufficient for the employee to explain clearly to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable, and that it interferes with their work.

In circumstances where it is too difficult or embarrassing for an individual to do this on their own behalf, an alternative approach would be to seek support from, or for an initial approach to be made by, a sympathetic friend or confidential counsellor.

If the conduct continues or if it is not appropriate to resolve the problem informally, it should be raised through the formal complaints procedure.

(ii) *Advice and assistance*

It is recommended that employers designate someone to provide advice and assistance to employees subjected to sexual harassment, where possible with responsibilities to assist in the resolution of any problems, whether through informal or formal means. It may be helpful if the officer is designated with the agreement of the trade unions or employees, as this is likely to enhance their acceptability. Such officers could be selected from personnel departments or equal opportunities departments for example. In some organizations they are designated as 'confidential counsellors' or 'sympathetic friends'. Often such a role may be played by someone from the employee's trade union or women's support groups.

Whatever the location of this responsibility in the organization, it is recommended that the designated officer receives appropriate training in the best means of resolving problems and in the detail of the organization's policy and procedures, so that they can perform their role effectively. It is also important that they are given adequate resources to carry out their function, and protection against victimization for assisting any recipient of sexual harassment.

(iii) Complaints procedure

It is recommended that, where the complainant regards attempts at informal resolution as inappropriate, where informal attempts at resolution have been refused, or where the outcome has been unsatisfactory, a formal procedure for resolving the complaint be provided. The procedure should give employees confidence that the organization will take allegations of sexual harassment seriously.

By its nature sexual harassment may make the normal channels of complaint difficult to use because of embarrassment, fears of not being taken seriously, fears of damage to reputation, fears of reprisal or the prospect of damaging the working environment. Therefore, a formal procedure should specify to whom the employee should bring a complaint, and it should also provide an alternative if in the particular circumstances the normal grievance procedure may not be suitable, for example because the alleged harasser is the employee's line manager. It is also advisable to make provision for employees to bring a complaint in the first instance to someone of their own sex, should they so choose.

It is good practice for employers to monitor and review complaints of sexual harassment and how they have been resolved, in order to ensure that their procedures are working effectively.

(iv) Investigations

It is important to ensure that internal investigations of any complaints are handled with sensitivity and with due respect for the rights of both the complainant and the alleged harasser. The investigation should be seen to be independent and objective. Those carrying out the investigation should not be connected with the allegation in any way, and every effort should be made to resolve complaints speedily — grievances should be handled promptly and the procedure should set a time limit within which complaints will be processed, with due regard for any time limits set by national legislation for initiating a complaint through the legal system.

It is recommended as good practice that both the complainant and the alleged harasser have the right to be accompanied and/or represented, perhaps by a representative of their trade union or a friend or colleague; that the alleged harasser be given full details of the nature of the complaint and the opportunity to respond, and that strict confidentiality be maintained throughout any investigation into an allegation. Where it is necessary to interview witnesses, the importance of confidentiality should be emphasized.

It must be recognized that recounting the experience of sexual harassment is difficult and can damage the employee's dignity. Therefore, a complainant should not be required repeatedly to recount the events complained of where this is unnecessary.

The investigation should focus on the facts of the complaint and it is advisable for the employer to keep a complete record of all meetings and investigations.

(v) Disciplinary offence

It is recommended that violations of the organization's policy protecting the dignity of employees at work should be treated as a disciplinary offence and the disciplinary rules should make clear what is regarded as inappropriate behaviour at work. It is also good practice to ensure that the range of penalties to which offenders will be liable for violating the rule is clearly stated and also to make it clear that it will be considered a disciplinary offence to victimize or retaliate against an employee for bringing a complaint of sexual harassment in good faith.

Where a complaint is upheld and it is determined that it is necessary to relocate or transfer one party, consideration should be given, wherever practicable, to allowing the complainant to choose whether he or she wishes to remain in their post or be transferred to another location. No element of penalty should be seen to attach to a complainant whose complaint is upheld and in addition, where a complaint is upheld, the employer should monitor the situation to ensure that the harassment has stopped.

Even where a complaint is not upheld, for example because the evidence is regarded as inconclusive, consideration should be given to transferring or re-scheduling the work of one of the employees concerned rather than requiring them to continue to work together against the wishes of either party.

6. RECOMMENDATIONS TO TRADE UNIONS

Sexual harassment is a trade union issue as well as an issue for employers. It is recommended as good practice that trade unions formulate and issue clear policy statements on sexual harassment and take steps to raise awareness of the problem of sexual harassment in the workplace, in order to help create a climate in which it is

neither condoned or ignored. For example, trade unions could aim to give all officers and representatives training on equality issues, including dealing with sexual harassment, and include such information in union-sponsored or approved training courses, as well as information on the union's policy. Trade unions should consider declaring that sexual harassment is inappropriate behaviour and educating members and officials about its consequences is recommended as good practice.

Trade unions should also raise the issue of sexual harassment with employers and encourage the adoption of adequate policies and procedures to protect the dignity of women and men at work in the organization. It is advisable for trade unions to inform members of their right not to be sexually harassed at work and provide members with clear guidance as to what to do if they are sexually harassed, including guidance on any relevant legal rights.

Where complaints arise, it is important for trade unions to treat them seriously and sympathetically and ensure that the complainant has an opportunity of representation if a complaint is to be pursued. It is important to create an environment in which members feel able to raise such complaints knowing they will receive a sympathetic and supportive response from local union representatives. Trade unions could consider designating specially trained officials to advise and counsel members with complaints of sexual harassment and act on their behalf if required. This will provide a focal point for support. It is also a good idea to ensure that there are sufficient female representatives to support women subjected to sexual harassment.

It is recommended too, where the trade union is representing both the complainant and the alleged harasser for the purpose of the complaints procedure, that it be made clear that the union is not condoning offensive

behaviour by providing representation. In any event, the same official should not represent both parties.

It is good practice to advise members that keeping a record of incidents by the harassed worker will assist in bringing any formal or informal action to a more effective conclusion, that the union wishes to be informed of any incident of sexual harassment and that such information will be kept confidential. It is also good practice for the union to monitor and review the union's record in responding to complaints and in representing alleged harassers and the harassed, in order to ensure its responses are effective.

7. EMPLOYEES' RESPONSIBILITIES

Employees have a clear role to play in helping to create a climate at work in which sexual harassment is unacceptable. They can contribute to preventing sexual harassment through an awareness and sensitivity towards the issue and by ensuring that standards of conduct for themselves and for colleagues do not cause offence.

Employees can do much to discourage sexual harassment by making it clear that they find such behaviour unacceptable and by supporting colleagues who suffer such treatment and are considering making a complaint.

Employees who are themselves recipients of harassment should, where practicable, tell the harasser that the behaviour is unwanted and unacceptable. Once the offender understands clearly that the behaviour is unwelcome, this may be enough to put an end to it. If the behaviour is persisted in, employees should inform management and/or their employee representative through the appropriate channels and request assistance in stopping the harassment, whether through informal or formal means.