

Workplace harassment: employers' responsibilities and dismissal options

12 February 2020 | Contributed by [Wistrand](#)

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Workplace harassment between employees raises questions regarding employers' responsibility to maintain a healthy and sustainable work environment and what actions can be taken against disruptive employees.

Employers' responsibilities

Pursuant to the Work Environment Act and mandatory provisions from the Work Environment Authority, employers are responsible for maintaining a positive work environment. Employers must systematically manage their work environment in order to prevent and remedy illness in the workplace (including both physical and mental conditions).

The Work Environment Authority has provided guidance that specifically addresses victimisation in the workplace. 'Victimisation' is defined as actions taken in an abusive manner towards one or more employee that may lead to illness or exclusion from the workplace community. Employers must assess, prevent and take measures against victimisation in the workplace, including with regard to sexual harassment and bullying.

The Work Environment Authority can issue orders, prohibitions or financial penalties against employers which fail to fulfil their workplace obligations (eg, to prevent and act against victimisation). This helps to ensure compliance with the law and other provisions.

Companies which breach the work environment rules, including through negligence, may face fines for a work environment offence. The amount of such a fine can vary from Skr5,000 to Skr10 million, depending on how severe the courts deem the crime to have been. If a work environment crime occurs, the individuals representing the company can also be subject to personal criminal liability if they were responsible for the work environment in which the circumstances constituting a crime occurred. Pursuant to the Penal Code, a 'work environment offence' occurs if an employer – either through intention or neglect of its duties under the Work Environment Act to prevent illness and accidents in the workplace – causes another person to face death, bodily injury, illness or danger.

Krokom

In *Krokom*, the courts ruled on employers' work environment responsibilities concerning mental health and alleged harassment and victimisation in the workplace (for further details please see "[Managers convicted for environmental offence following suicide](#)"). In the case, managers within a municipality's social department were prosecuted for a work environment crime after an employee committed suicide following workplace bullying. The employee's suicide occurred after he had received a notice of dismissal, which the courts later found had been made without sufficient legal grounds. In the first-instance court, the prosecuted managers were convicted of a work environment crime for causing the death of another.

However, the judgment was amended by the Court of Appeal. According to the Court of Appeal, there had been inadequacies in the work environment for which the prosecuted managers had been responsible; however, these inadequacies did not constitute negligence which had caused the death or illness of another. Even though the managers were eventually acquitted, and even though the case is now a few years old, *Krokom* still illustrates the personal and legal risks that an inadequate work environment can have with regard to psychosocial factors.

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Dismissal

Employees' misconduct towards other employees with regard to harassment or victimisation can justify their dismissal or termination due to personal reasons.

If an employee has acted in a potentially criminal manner (eg, committed sexual harassment) in the workplace towards a colleague, they can be summarily dismissed. Employers can make such a decision regarding dismissal without obtaining a decision or other statement from the legal authorities regarding the accused employee's guilt (or innocence).

Following an accusation that an employee has acted in a potentially criminal way, employers bear the burden of proof if they wish to summarily dismiss the employee or terminate their employment. Thus, employers must fulfil the same evidentiary requirement for the allegations as would have been required to do in a criminal case. The Labour Court has established this principle in several cases, including in Decision AD 2014 90 (delivered on 17 December 2014).

Therefore, employers must assess and evaluate accusations against employees and the circumstances at hand, which would also be required from a work environment perspective in order to prevent and remedy illness in the workplace (which will apply for both the accusing and the accused party and not only for allegations of criminal actions).

In AD 2014 90, an employee was summarily dismissed after being accused of having physically forced himself on a colleague against her will and threatening her to keep quiet about it. The accused employee denied all accusations made against him and claimed that there had been insufficient legal grounds for dismissal or termination due to personal reasons. The Labour Court found that the examination of several witnesses referred to from the employer's side supported the allegations made against the dismissed employee. The Labour Court concluded that the accused employee had seriously breached his obligations to his employer by acting in a manner which should not be tolerated in any legal relationship; thus, there had been sufficient legal grounds for dismissal.

Employers can also end an employee's employment through termination (with notice) due to their misconduct, including harassment and other types of misbehaviour. The Labour Court has emphasised that an assessment in this context must focus on what conclusions can be made regarding the employee's suitability for continuous employment based on the circumstances (whereas dismissal focuses on whether one or several past actions constitute a serious breach of the employment agreement, which is the case for criminal conduct). Employers have the burden of proof in such circumstances and must provide evidence to prove that termination was valid.

Employees should generally have been made aware by their employer about any issues with their behaviour and the potential consequences for termination to occur. In AD 2008 91, the Labour Court found that the investigation proved that an employee had acted inappropriately on several occasions – namely, through condescending comments regarding ethnic origin and of a sexual nature directed at colleagues and about clients. However, the Labour Court found that there were insufficient legal grounds for termination since the employer had taken no action to resolve the conflict and had not arranged any discussions with the concerned employee regarding the allegations made against him by his colleagues.

Comment

Employers and their representatives have an extensive responsibility to maintain a positive work environment, including assessing, preventing and acting against risk factors such as harassment. If an employee is accused of harassment, employers also have a duty to assess and analyse the allegations in order to take further action (eg, summary dismissal or termination).

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