

Prevention of psychosocial risks at work (Law of 4 August 1996 and amended by the Laws of 28 March 2014 and 28 April 2014 and the Royal Decree of 10 April 2014)

(Sample memorandum for employment regulations)

COMPANY NAME is committed to developing an active prevention policy regarding psychosocial issues at work whereby we shall take measures designed to prevent psychosocial risks at work in order to prevent or minimise the damage caused by these risks.

Article 1: Scope of application of the law on psychosocial risks

Any persons who come into contact with employees while performing their work must refrain from committing any acts of violence, harassment or sexual harassment.

'Persons' are defined as the employer, the employees and persons external to the company having equivalent status (e.g. trainees, vendors, customers, persons enrolled in a vocational training/apprenticeship programme, etc.).

Article 2: Definitions

A. Psychosocial risks:

The probability that one or more employee(s) suffer(s) psychological damage, which may also be accompanied by physical harm, resulting from exposure to elements of the work organisation, job duties, employment conditions, working conditions and interpersonal relationships at work, over which the employer has influence and which objectively pose a danger.

B. Violence at work:

Any act whereby a person is psychologically or physically threatened or attacked while performing his/her work.

Violence at work is expressed mainly through acts committed at a specific time, such as threats, physical aggression (such as direct blows, but also threats made during an armed robbery, etc.) or verbal aggression (i.e. taunts, insults, teasing, etc.).

C. Harassment at work:

These are defined as being: a wrongful series of several similar or varied behaviours, outside or within the company or institution and taking place over a specific period of time, the goal or consequence of which is that the personality, dignity or physical or psychological integrity of a person is compromised while performing his/her work, that his/her position is placed at risk or that a threatening, hostile, insulting, demeaning or hurtful environment is created which manifests itself mainly in the form of words, threats, actions, gestures or one-sided communication. Such behaviour is frequently related to age, marital status, birth, wealth, religious or philosophical belief, political persuasion, attitude towards unions, language, current or future health status, a disability, physical or genetic trait, social origin, nationality, a supposed race, skin colour, family origin, national or ethnic origin, gender, sexual orientation, gender expression and gender identity.

Harassment at work can manifest itself in a variety of ways:

- Isolating the person by ignoring him/her, by forbidding colleagues to talk with him/her, by not inviting him/her to meetings, etc.
- Preventing the person from expressing him/herself by continually interrupting and systematically criticising him/her.

- Discrediting the person by not giving him/her any work, assigning him/her only pointless tasks or tasks which are impossible to perform, failing to give him/her the information needed to perform his/her job, overloading him/her with work, etc.
- Injure a person as an individual by belittling him/her, spreading rumours about him/her, being critical of his/her religious persuasion, origin, private life, etc.

D. Sexual harassment at work:

Any form of unwanted verbal, non-verbal or physical behaviour with a sexual connotation, the goal or consequence of which is to compromise a person's dignity or to create a threatening, hostile, insulting, demeaning or hurtful environment.

Sexual harassment at work can manifest itself in a variety of ways, both physical and verbal: This can involve ogling, lascivious looks, suggestive remarks or insinuations, the display of pornographic material (photos, text, videos, etc.), compromising propositions, etc. It can also involve touching, hitting and injuries, rape, etc.

Article 3: Measures designed to prevent psychosocial issues at work

The employer identifies situations which could lead to psychosocial risks at work and defines and evaluates these risks. The employer pays special attention to situations which could lead to stress at work, violence, harassment or sexual harassment at work.

The employer defines and evaluates the psychosocial risks at work while taking into account the dangers associated with the elements of the work organisation, the job duties, employment conditions, working conditions and interpersonal relationships at work.

If the employer has influence over the danger, he/she shall take material and organisational measures. These measures are evaluated at least once each year. These procedures are related to the reception of, advice to and reintegration of the employee, the rules according to which these persons may appeal to the confidential adviser and the safety officer for psychosocial issues and the impartial intervention by the latter two persons.

The committee for prevention and protection at work, the employee's chain of command and the employees receive information and (if needed) training concerning the prevention measures taken and the individual obligations that must be fulfilled by each party in order to implement these measures.

Article 4: Who to consult in the event of problems involving psychosocial issues: resources for the employee

There are several courses of action available to any employee who believes he/she has suffered psychological damage, which may also be accompanied by physical harm, resulting from psychosocial risks at work.

The first contact points for the employee remain the employer or his/her chain of command that is directly responsible for providing a solution to the problem that has been presented.

The internal procedure

In the event of a continued failure to involve these persons or if the employee does not wish to take this step, he/she may take advantage of a specific internal procedure consisting of **two different types** of interventions: the **informal** psychosocial intervention and the **formal** psychosocial intervention.

1. The informal psychosocial intervention

- When an employee believes that he/she has suffered psychological damage resulting from psychosocial risks at work, he/she may invoke an internal company procedure in accordance with the rules specified below.

- If a confidential adviser has been designated, the employee will turn to this person unless he/she prefers to approach the competent safety officer for psychosocial issues directly.
- The confidential adviser or the safety officer for psychosocial issues interviews the employee within a period of 10 calendar days after the initial contact is made and informs him/her regarding the feasibility of arriving at a solution via informal means.
- This could consist of *personal conversations*, an *intervention* involving another person at the company (employer, member of the employee's chain of command, etc.) or a *reconciliation* between the persons involved.
- The confidential adviser or the safety officer for psychosocial issues signs a document that specifies the type of informal psychosocial intervention chosen by the petitioner. This document is also dated and signed by the petitioner, who then receives a copy.
- The confidential adviser and the safety officer for psychosocial issues only take action with the consent of the employee in question. The reconciliation process requires the agreement of both parties.
- If the employee would prefer not to pursue a solution via informal means, if the employee would like to bring this procedure to an end, if the intervention fails to result in a solution or if the circumstances and/or psychosocial stress persist, the employee may submit a request for formal intervention to the safety officer for psychosocial issues.

2. Formal psychosocial intervention

- The employee can only submit a request for formal psychosocial intervention to the safety officer for psychosocial issues. A **personal interview** must take place first.
- Both the safety officer for psychosocial issues and the employee wishing to submit the request ensure that the personal interview takes place within a period of **ten calendar days** from the moment that the employee expresses the desire to submit the request.
- The request for formal psychosocial intervention is noted in a **document dated and signed** by the petitioner. This document contains a description of the problematic work situation and the request to the employer to take appropriate measures. This document is forwarded to the safety officer for psychosocial issues. He/she then signs a copy of the request and sends this to the petitioner. This copy serves as proof of receipt. If the request was sent by registered letter, it is deemed to have been received on the third working day following the date of posting.
- The safety officer for psychosocial issues has the power to **deny** the submission of a request when it is not related to psychosocial risks at work. Notification of this denial must be made within 10 calendar days following receipt of the request.

INTERVENTION REQUEST OF A COLLECTIVE NATURE

- If the request **relates mainly to risks of a collective nature, the safety officer for psychosocial issues is responsible for notifying the employer about this** and informing him/her that he/she must respond to this request within a period of three months.

The safety officer for psychosocial issues informs the petitioner that this involves a request of a collective nature whereby the employer must respond within a period of **three months**.

The employer is obliged to **consult** with the **Committee for prevention and protection at work or the union delegation**, after which he/she will make a decision concerning his/her compliance with the request.

- Depending on this decision, the safety officer for psychosocial issues, at the request of the employer, shall conduct a risk analysis of the petitioner's work situation within six months from the date the request was

submitted and provide the employer with recommendations that include the results of this analysis as well as proposals concerning the taking of collective and individual measures.

- If there is a serious threat to the health of the petitioner, the safety officer for psychosocial issues shall propose prevention measures of a protective nature while the employer is handling the request.
- If the problem of a psychosocial nature is resolved by the measures taken by the employer, the handling of the request on the part of the safety officer for psychosocial issues will come to an end.
- If the employer fails to comply with the request, if he/she decides not to take any measures, or if the petitioner believes that the prevention measures are not appropriate for his/her specific situation, the safety officer for psychosocial issues must still undertake the handling of the request providing that he/she was not involved in the handling of the request by the employer and subject to the employee's consent.

INTERVENTION REQUEST OF AN INDIVIDUAL NATURE

- If the request relates mainly to risks of an **individual nature**:
- The safety officer for psychosocial issues notifies the employer in writing as soon as possible and identifies the petitioner.
- The safety officer for psychosocial issues **conducts an impartial investigation** into the situation and interviews those persons he/she deems appropriate.
- The safety officer completes his/her investigation by issuing **recommendations to the employer**. This must be done within a **period of three months**. An extension of a maximum period of six months may be requested provided that written justification is given to the employer, the petitioner and any persons directly involved.
- Subject to the consent of the petitioner, the confidential adviser involved in the informal phase may receive a copy of the report.
- The safety officer for psychosocial issues provides a written notification to the petitioner and other persons directly involved concerning the date on which he/she submitted his/her recommendations to the employer, the prevention measures and a justification for the prevention measures.
- The safety officer for psychosocial issues sends the list of measures including their justification to the safety officer responsible for the internal service for prevention and protection at work.
- Within one month after receiving these measures, the employer - who is planning to take individual measures - notifies the petitioner in writing. If a change is to be made to the working conditions of the petitioner, the employer must interview the petitioner and provide him/her with a copy of the recommendations. The petitioner may be assisted by a person of his/her choice.
- Within two months after receiving these measures, the employer informs the safety officer for psychosocial issues, the petitioner, the persons directly involved and the internal prevention officer in writing regarding his/her compliance with the recommendations of the safety officer for psychosocial issues.

3. Formal psychosocial intervention for acts of violence, harassment or sexual harassment at work.

- When, in the opinion of the employee, the request for formal psychosocial intervention is related to acts of violence, harassment or sexual harassment at work, the same provisions which apply to a request for formal psychosocial intervention apply here as well, as do certain additional provisions:
 - The **dated** and **signed** document contains the following information:
 - An accurate description of the acts which, in the opinion of the employee, constitute violence, harassment or sexual harassment at work;

- the time and place at which each of these acts occurred;
 - the identity of the accused;
 - the request made to the employer to take appropriate measures to put an end to these acts.
- This request may be denied by the safety officer for psychosocial issues if it is clear that the situation described by the petitioner does not entail violence, harassment or sexual harassment at work. A notification of the denial or acceptance of the request occurs no later than ten calendar days following receipt of the request.
 - After receiving the request for formal psychosocial intervention for acts of violence, harassment or sexual harassment at work, the safety officer for psychosocial issues immediately notifies the employer of the fact that the employee who has submitted this request enjoys a protection against reprisals. This protection is only valid if the safety officer for psychosocial issues approves the request.
 - The safety officer for psychosocial issues informs the accused of the acts of which he/she has been accused as quickly as possible.
 - The safety officer for psychosocial issues interviews the persons, witnesses or any others whom he/she deems useful to the investigation.
 - The safety officer for psychosocial issues informs the employer that the direct witnesses enjoy a protection against reprisals and informs him/her of the identity of these witnesses.

After consulting and reaching agreement with the Committee for Prevention and Protection at work,

- NAME + TELEPHONE NUMBER
- NAME + TELEPHONE NUMBER

was/were appointed as confidential adviser(s).

Please use the following contact details to make an appointment with the safety officer for psychosocial issues who has been assigned to your organisation:

Mensura Psychosocial Department

Dutch-speaking

Tel.: 02/549 71 57

Info.edpb@mensura.be

French-speaking

Tel.: 02/549 71 48

Info.sepp@mensura.be

Confidential adviser

The confidential adviser is authorised to discuss all psychosocial risks at work which fall under the informal category.

The confidential adviser is bound by professional secrecy.

The main role of the confidential adviser is to offer emotional assistance, guidance and support to an employee making a request. The confidential adviser does nothing without the consent of the employee. The confidential adviser treats all information with which he/she comes into contact confidentially. An employee may consult the confidential adviser even in cases where he/she does not wish to submit a formal complaint. The person who has this responsibility is not authorised to take receipt of requests for formal psychosocial intervention.

Safety Officer for Psychosocial Issues

The safety officer for psychosocial issues is competent in respect of all psychosocial risks at work. In addition to his/her responsibility to assist the employer during the general risk analysis, the selection and evaluation of

general prevention measures and the analysis of a specific work situation, he/she may take action in both the informal and formal phases of the internal procedure.

In this context, the safety officer for psychosocial issues maintains a mainly advisory capacity.

Article 5: Penalties

Persons who are guilty of committing unacceptable behaviour at work as well as those who have made wrongful use of procedures may be punished. The punishments and the procedure that must be followed are those listed in the PENALTIES section of the applicable employment regulations.

Article 6: Appeal

- The option exists to file a claim with the labour court for a cessation of the acts and/or to obtain damages.
- For purposes of compensating the material and moral damage caused by violence, harassment or sexual harassment at work, the person committing the acts owes damages equal to: the actual damages suffered by the victim or a lump-sum amount corresponding to his/her gross wages for three months, which may be increased to six months in the case of discrimination, abuse of authority or very serious acts.
- If the acts of violence, harassment or sexual harassment at work persist after the measures are implemented, or if the employer fails to take the necessary measures, the safety officer for psychosocial issues shall, after obtaining the consent of the employee who submitted the request, consult with the officials responsible for monitoring this law.

Article 7: Protection of the petitioner and witnesses against reprisals

- From the moment that the employee submits a request for formal psychosocial intervention in violence, harassment or sexual harassment, he/she enjoys special protection. The employer is not permitted to dismiss the employee or to unilaterally amend one of the elements of the employment contract in response to the submission of the request within the company, to the submission of a complaint to the inspectorate or the police, to the taking of legal action or the provision of testimony. A unilateral amendment of the employment conditions of the employee taking these steps is only permissible in the event that the employer can justify such an amendment.
- The employee is entitled to request that he/she be reintegrated into his/her same job. If this is not complied with or if the employee is dismissed, a special lump-sum redundancy payment equal to six months of his/her gross wages applies above and beyond the standard severance pay (or the actual damage suffered).
- The burden of proof is furthermore reversed. This means that it is the employer (or other defendants) who must demonstrate that no acts of unwelcome behaviour have been committed at work. This reversal of the burden of proof does not apply to criminal liability. If someone is ordered to take measures or cease behaviour and this order is not complied with, this person may be subject to correctional punishment.
- The employees acting as direct witnesses are also protected against dismissal. Direct witnesses are defined as those persons who serve as witnesses within the framework of the internal procedure as well as those who are subpoenaed, regardless of whether they are acting as a witness for the petitioner or the accused. Witnesses who are subpoenaed must notify their employer themselves of the fact that they enjoy protection against dismissal.

Article 8 Register for acts committed by third parties

In businesses and institutions where employees come into contact with other persons in the workplace, the company must keep systematic record of those employees who believe themselves to be the object of acts of violence, harassment or sexual harassment at work committed by people who are external to COMPANY NAME. These statements are entered into a central register for acts committed by third parties. This register is an important mechanism that allows COMPANY NAME to develop suitable protective measures.

This register is maintained by the confidential adviser or the safety officer for psychosocial issues. It is maintained by the safety officer in charge of the internal service for prevention and protection at work if the competent safety officer works for an external service and no confidential adviser has been designated.

These statements include a description of the acts of violence, harassment or sexual harassment at work that were caused by other persons in the workplace and of which the employee believes he/she has been the object, as well as the dates these acts occurred. They do not reveal the identity of the employee unless he/she has agreed to this.

The only people who have access to this register are the employer, the competent safety officer for psychosocial issues, the safety officer in charge of the internal service for prevention and protection at work and the confidential adviser.

The register is kept at the disposal of the government official responsible for monitoring in this area. The employer retains the statements on the acts that have been entered into the register for five years, as from the date that the employee placed these statements on record.

Either the employee in question or management may file a complaint with the federal police against the perpetrator of these acts.

Article 9: Obligations of the employee

- In addition to the protection, employees must also comply with three obligations:
 1. Cooperate constructively with the prevention policy that has been put in place as part of the effort to protect employees from violence, harassment and sexual harassment at work as well as other psychosocial risks.
 2. Refrain from any act of violence, harassment or sexual harassment at work.
 3. Refrain from any abuse of the procedure.

Date on which the new addendum enters into force:

Mensura SEPP

SUMMARY LIST: REGISTER OF ACTS COMMITTED BY THIRD PARTIES			
No.	Date:	Description of the acts:	Identity of the employee (providing the person involved has given consent)
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

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(Optional) FORM FOR REPORTING ACTS COMMITTED BY THIRD PARTIES (to be completed by petitioner or his/her immediate supervisor)

Details of petitioner	
Name of petitioner	
Address	
Telephone	

Details of person(s) involved (complete all known information)	
Name of person(s) involved	
Address	
Telephone	
Capacity of person(s) involved	

Details of any witness(es) (complete all known information)	
Name of witness 1	
Address	
Telephone	
Capacity of witness	

Details of any witness(es) (complete all known information)	
Name of witness 2	
Address	
Telephone	
Capacity of witness	

Detailed account of the acts committed:

Date on which the acts occurred:

Actions and/or measures taken:

Do you feel that this incident could have been prevented? 0 Yes 0 No
 If YES, please specify why.
 Do you need an intake interview?

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