

RECOGNIZE TO PREVENT HARASSMENT AND VIOLENCE IN THE WORKPLACE0



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FOREWORD

The phenomenon of violence and harassment is significant in Italy, including in the workplace.

The results of the first national survey on the specific topic of sexual violence and harassment, published by Istat in 2018¹, show that there are 8,816,000 women aged 14 to 65 who have experienced some form of sexual harassment in their lifetime. The problem is not only female, as 3,874,000 men reported experiencing at least one form of harassment.

In the workplace, 1,404,000 women between the ages of 15 and 65 reported experiencing physical harassment² by a co-worker or employer, or sexual blackmail in the workplace.

Sexual harassment and violence, however, is only one aspect of the problem, which covers a much larger caseload, including psychological and physical harassment.

The Covid-19 pandemic, which has forced many workers, including about 90 percent of central government employees and more than 70 percent of regional government employees, to work from home, has increased the risk of gender-based violence in the home, which is in addition to the risk in the workplace, which is not cancelled out by the *lockdown*, during which the risk of psychological harassment can be increased.

Therefore, it is now more important than ever to enhance communication on this issue by raising awareness among all workers.

The goal is to ensure a healthy work environment, free of factors of discrimination and any form of violence, physical or psychological, also with the aim of improving productivity and quality of performance, while reducing, at the same time, the risk of occupational injuries and illnesses. To this end, international and national standards provide a range of operational tools available to the Pa and the Single Guarantee Committees for Equal

¹ Istat, "Sexual harassment and blackmail at work. Years 2015-2016." February 13, 2018. ² Physical sexual harassment at work is detected from the age of 15 (work-active age) and refers to attempts by co-workers, superiors or other people in the workplace to touch, caress, kiss the woman against her will.

opportunities and the enhancement and well-being of those at work and against discrimination (Cug), now united in a network of 172 administrations.

Among its duties, the Cug also has the task of proposing actions to promote conditions of working well-being or interventions and projects, through codes of ethics and conduct, suitable for preventing or removing situations of discrimination or sexual, moral or psychological violence. Directive 2/2019² strengthens the role of the CUG, a sensor of malaise situations related to violence and discrimination, also promoting the establishment of organized listening nuclei within the administration.

The protocol, signed between the Ministry of Civil Service, the Ministry of Equal Opportunity and the National Network of CUGs, on combating gender-based violence,³ further defines the role of the committees as "antennas" for the perception of this phenomenon in administrations and provides for actions aimed at bringing out and receiving reports of gender-based violence.

In addition, following Italy's initiation of the ratification procedure with Law No. 4 of January 15, 2021, of ILO Convention No. 190 on the Elimination of Harassment and Violence in the Workplace, the regulatory framework on this issue is evolving.

The purpose of this booklet, without claiming to be exhaustive, is to provide information on how to recognize situations of violence and harassment in one's workplace, so that every worker, including by virtue of his or her role in the organization, becomes fully aware of the problem and takes action to recognize, counter and prevent these phenomena, knowing to whom to report them for help.

² Directive No. 2 of June 26, 2019 of the Presidency of the Council of Ministers Minister for Public Administration and Innovation and Deputy Undersecretary for Equal Opportunity, "Measures to promote equal opportunity and strengthen the role of Single Guarantee Committees in Public Administrations."

³ Memorandum of Understanding between Minister of Public Administration, Minister of Equal Opportunity and National Network of CUGs, on combating gender-based violence, dated November



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Definitions

Harassment at work: those undesirable behaviors, carried out for reasons including those related to sex and having the purpose or effect of violating the dignity of a female or male worker and creating an intimidating, hostile, degrading, humiliating or offensive climate (Legislative Decree 198/2006, Article 26, Paragraph 1). It is an aggravating circumstance if the sexual harassment is accompanied by implicit or explicit threats or blackmail by hierarchical superiors or persons who can otherwise influence the establishment, conduct and termination of the employment relationship.

Work-related violence: covers "incidents" in which staff are abused, threatened, or assaulted in work-related circumstances, including commuting to and from work, with explicit or implicit health, safety, and welfare consequences (World Health Organization).

Direct discrimination: occurs when a worker or an employee treated less favorably than another who is in a similar situation because of gender of nationality, ethnicity, language, age, disability, sexual, political, trade union and religious orientation, contract type as well as to flexible organizational arrangements of work performance. In particular, it is gender discrimination to use sexist criteria in interpersonal relations in work activities.

Indirect discrimination: means a situation in which a provision, a practice, a criterion, act, covenant or apparently neutral behavior places or may place the worker or employee in a situation of particular disadvantage, due to the gender of nationality, ethnicity, language, age, disability, sexual, political, trade union and religious orientation, contract type, as well as to flexible organizational arrangements of work performance.

Standards in the European context

Directive 2002/73/EC from which the concepts of

- **"Harassment"** means a situation in which unwanted behavior related to a person's sex occurs with the purpose or effect of violating his or her dignity and creating an intimidating, hostile, degrading humiliating or offensive climate;

- **"Sexual harassment"** means a situation in which unwanted behavior with sexual connotations, expressed in physical, verbal or nonverbal form, occurs, having the purpose or effect of violating the dignity of a person, in particular, creating an intimidating, hostile, degrading humiliating or offensive climate.

ILO Convention of 06/22/1981 No.155 on the health and safety of workers.

Recommendation 92/131/EEC of 11/27/1991, repeatedly referred to in our case law, which urges member states to work to promote awareness that any behavior with sexual connotations that offends the dignity of men and women at work is inadmissible; then urges them to review and, where appropriate, supplement existing legislation on combating bullying and harassment in the workplace; urges the social partners to develop strategies to combat bullying and violence in the workplace.

European Framework Agreement on Stress in the Workplace of 08/10/2004 recalled by Article 28 paragraph 1 of Legislative Decree 81/2008, notes that overwhelm and violence at work are "stressogenic" factors.

ILO Convention No.187 dated 15/06/2006 on the Promotional Framework for Occupational Health and Safety.

European Framework Agreement on Harassment and Violence in the Workplace of 04/26/2007, also implemented in Italy by interconfederal agreements, aimed at preventing and managing harassment and physical violence in the workplace and condemning all forms of harassment and violence with confirmation of the employer's duty to protect workers against such risks. It is inferred from this Agreement that different forms of harassment and violence can occur in the workplace that can:

- Be physical, psychological and/or sexual in nature
- constitute isolated episodes or more systematic behavior
- occur between colleagues, between superiors and subordinates or by third parties, (e.g., users, patients
..)
- Ranging from minor cases of disrespect to more serious acts that constitute crimes

To this end, the Agreement aims, among others, to provide employers, workers and their representatives with a framework of concrete actions to detect, prevent and manage situations of harassment and violence in the workplace.

Council of Europe Istanbul Convention of 11/05/2011 on Preventing and Combating Violence against Women and Domestic Violence, ratified by Italy with Law No. 77 of June 27, 2013; an instrument of the International Labor Organization that national policies should take into account when arranging for occupational health and safety with particular regard to violence and harassment at work.

ILO Convention of 21/06/2019 No. 190 - On the Elimination of Violence and Harassment in the Workplace: constitutes a strengthening of instruments, including legal ones, so that socio-cultural behaviors of both men and women change in order to eliminate prejudices, customs and practices based on stereotypical gender patterns.

The Convention will enter into force in June 2021, 12 months after ratification by at least two member states in June 2020.

The legally non-binding **ILO Recommendation No. 206 dated 06/21/2019** provides proposals and guidelines on the implementation of the above convention by supplementing it. In particular, it provides that:

- Member States should address violence and harassment at work in labor and employment, occupational health and safety, equality and non-discrimination legislation and, where appropriate, in criminal law; □ Member States should take appropriate measures in order to:
 - Promote Collective Bargaining at all levels as a way to prevent violence and harassment at work and, where possible, mitigate the impact of domestic violence in the world of work;
 - Support such collective bargaining with collection and dissemination of information of best practices in negotiation processes and in the - content of collective agreements;
 - factors that increase the likelihood of violence and harassment, including psychosocial hazards and risks, should be taken into account in the assessment of workplace risks (see Article 9 of the Convention);

- Member states should take appropriate measures for sectors or occupations or work arrangements that present greater potential for exposure to violence or harassment such as night work, work performed in isolation, the health care sector, social services, emergency services, domestic work, transportation, education or entertainment;
- Member States should "finance, develop, implement, and disseminate as appropriate:
 - programs that intervene on factors that increase the likelihood of violence and harassment in the workplace, including discrimination, abusive power relations and gender norms, cultural and social norms that foster violence and harassment;
 - guidelines and training programs that take into account the gender perspective and support judges, labor inspectors, police officers, prosecutors, and other public officials in fulfilling their mandates regarding violence and harassment in the world of work, as well as support public and private sector employers, workers, and their respective organizations in the prevention of and interventions related to violence and harassment in the world of work;
 - models of codes of conduct and risk assessment tools on violence and harassment in the world of work, of a general and sector-specific nature, taking into account the specific situations of workers and others belonging to the groups referred to in Article 6 of the Convention; **or** public awareness campaigns in the country's various languages, including those of resident migrant workers, that convey the message of the unacceptability of violence and harassment, particularly gender-based violence and harassment, address discriminatory attitudes, and prevent the stigmatization of victims, complainants, witnesses, and whistleblowers;
 - curricula and teaching materials on violence and harassment, including gender-based violence and harassment, taking into account the gender perspective, for all levels of education and vocational training, in accordance with national legislation and circumstances;

- materials for journalists and other media workers on gender-based violence and harassment, including root causes and risk factors, while fully respecting their independence and freedom of expression;
- public campaigns aimed at promoting safe, healthy harmonious, and violence- and harassment-free workplaces."

A specific chapter of this booklet is devoted to the Convention and its Recommendation, since for Italy ratification is in the process of implementation, following the publication of Law No. 4 of January 4, 2021, authorizing the President of the Republic to ratify the Convention.

Norma	Main contents
Recommendation 92/131/EEC of the 27/11/1991	Urges member states to work to promote awareness that any behavior with sexual connotations that offends the dignity of men and women at work is unacceptable
European Framework Agreement of 26/04/2007	Forms of harassment and violence at work that can: <ul style="list-style-type: none"> ° be physical, psychological and/or sexual in nature ° constitute isolated episodes or more systematic behaviors ° occur between colleagues, between superiors and subordinates or by third parties, (e.g., users, patients ...) ° range from minor cases of disrespect to more serious acts that constitute crimes. Provides employers, workers and their representatives with a framework of concrete actions to detect, prevent and manage situations of harassment and violence in the workplace.
Convention of the Istanbul Council of Europe of 11/05/2011.	On Preventing and Combating Violence Against Women and Domestic Violence, ratified by Italy by Law No. June 27, 2013. 77.

**ILO Convention of
21/06/2019 No. 190**

On elimination of violence and harassment in the workplace: constitutes a strengthening of instruments, including legal ones, so that socio-cultural behaviors of both men and women change in order to eliminate prejudices, customs and practices based on stereotypical gender patterns.

**Recommendation
Of the ILO of 21/06/2019
No. 206**

Proposals and guidelines on the implementation of Convention 190/2019. Training programs, guidelines, public campaigns, adoption of codes of ethics and conduct, etc. aimed at preventing situations of violence, harassment and discrimination in the workplace.

Legislation in the national arena

Under the impetus of EU legislation, Italian legislation has begun to consider new risks in the world of work, including harassment and violence, even of a sexual nature. In case law, harassment and violence are considered to be a failure by the employer to comply with the general contractual obligation to ensure the physical and moral integrity of its employees imposed by Article 2087 of the Civil Code (Court of Cassation sect. labor no. 4774, 6.3.2006) so they are occupational risk factors.

Article 2087 of the Civil Code The 1942 Code provides "*a general duty of safety at work, requiring the contractor to take all necessary measures to protect not only the physical integrity but also the psychological well-being of the worker.*"

Legislative Decree of March 30, 2001 No. 165 - General rules on the organization of employment in public administrations - Article 30 paragraph 1a provides protection paths for female workers who are victims of gender-based violence or harassment.

Legislative Decree of April 11, 2006, No. 198 (so-called Code of Equal Opportunity between Men and Women): in Article 26 it establishes an equalization between sexual harassment and gender discrimination (Cass. civ. Sec. lavoro, Judgment Nov. 15, 2016, No.



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23286). Sexual harassment

are, in fact, identified as "discrimination or unwanted conduct with sexual connotations, expressed in physical, verbal or nonverbal form, having the purpose or effect of violating the dignity of a female or male worker and creating an intimidating, hostile, degrading, humiliating or offensive climate." This equalization means that the discipline and protection provided for discrimination is extended to harassment, specifically, in procedural, penalty and evidentiary matters. Article 40 of the Equal Opportunity Code, stipulates that if the plaintiff provides factual elements (also inferred from statistical data) suitable to substantiate the presumption of the existence of discriminatory acts, pacts or conduct, the burden of proof is on the defendant who must prove their non-existence." And according to case law (Supreme Court, Labor Sec., Judgment July 20-November 15, 2016, No. 23286), "in order to prove the employer's sexual harassment, the judge could also rely on the confirmations of other female workers who have suffered the same 'treatment,' deeming in that case that the proof has been reached."

Legislative Decree of April 9, 2008 No. 81 -Testo unico in materia di salute e sicurezza nei luoghi di lavoro: in Article 28, it absorbs and enhances the general obligation in Article 2087 of the Civil Code in that it places, among the occupational risks subject to the assessment that every employer is obliged to carry out, those "*concerning groups of workers exposed to particular risks, including (...) those related to gender differences.*" Also the article, 28 in paragraph 2, in providing that *the risk assessment must cover "all risks"* that loom, not necessarily due to the work activity, but rather "*during the work activity,*" such as harassment and violence, leads to agree with the interpretative line, of the interpellations by the Permanent Advisory Commission referred to in Article 6, that the risk assessment must also include the environmental and security situation also understood as "security." (interpellation of 25/10/2015 No. 11). The same Article 28 paragraph 2 provides that the risk assessment document (DVR), in addition to the analysis of harassment and violence risks, must contain the identification of prevention and protection measures taken against such risks.

Example of the latter is the corporate code (code of conduct or ethics) of the type envisaged by the European Agreement of 04/26/2007.

The choice of measures must be, in accordance with Article 15, oriented toward maximum technologically feasible security.

Law of April 23, 2009 No. 38 "Conversion into law, with amendments, of Decree-Law No. 11 of February 23, 2009, containing **urgent measures on public safety and combating sexual violence, as well as on the subject of persecutory acts.**" With this law, so-called "stalking" became part of the Italian legal system, which introduced the crime of "persecutory acts" in Article 612 bis of the Criminal Code. For the crime to exist, the behaviors of threats and harassment must determine in the offended person an "*enduring and serious state of anxiety or fear,*" that is, a well-founded fear for his or her own safety or that of people close to him or her, or force him or her to alter his or her life habits.

Law of Oct. 15, 2013 No. 119 Conversion into law, with amendments, of Decree-Law No. 93 of Aug. 14, 2013, containing, among other things, **urgent provisions on security and combating gender-based violence:** enriches the Criminal Code with new aggravating factors while expanding measures to protect victims of abuse and domestic violence.

Legislative Decree of June 15, 2015 No. 80-Measures for the reconciliation of care, life and work needs, implementing Article 1, paragraphs 8 and 9, of Law No. 183 of December 10, 2014- Article 24 contemplates paid leave for women victims of violence.

Framework Agreement on Harassment and Violence in the Workplace" initialed on 01/25/2016 transposing the Framework Agreement on Harassment and Violence in the Workplace reached in 2007 by the respective representations at the European level (BusinessEurope, Ceep, Ueapme and Etuc), states, among other things, that any act or behavior that amounts to harassment or violence in the workplace, according to the definitions of the Agreement, is unacceptable and that harassing behavior or violence experienced in the workplace should be reported.

Law No. 205 of Dec. 27, 2017 (State budget for the financial year 2018 and multi-year budget for the three-year period 2018-2020) amended Article 26 of the Equal Opportunities Code under Legislative Decree No. 198/2006 by inserting two new paragraphs:

Paragraph 3-bis which "*provides specific protection for those who take legal action for being subjected to sexual harassment or sexual harassment in the company. A worker or employee who takes legal action for discrimination, sexual harassment or sexual*



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harassment in the workplace may not be: sanctioned, demoted, dismissed, transferred or subjected to other measures

organizational having direct or indirect adverse effects on working conditions if such measure is the consequence of the complaint itself. Any retaliatory or discriminatory dismissal of the complainant worker or employee is null and void, and he or she is entitled not to compensation for damages but to reinstatement in the workplace. Likewise, the change of duties as well as any other retaliatory or discriminatory measures taken against the complainant are also null and void."

Protection that, on the other hand, is not guaranteed *"in cases where the criminal liability of the complainant for the crimes of slander or defamation, or the groundlessness of the complaint, is established, even by a judgment of first instance."* And with regard to the distinction between the hypotheses of "slander" and that of "groundlessness of the complaint," it is noted *"how slander is triggered only in cases of bad faith, that is, in cases in which the person who acts well knows the innocence of others; groundlessness, on the other hand, seems to refer to the hypotheses of the total absence of conditions that make the complaint itself credible."*

Paragraph 3-ter, which specifies that the employer's obligation, pursuant to the aforementioned Article 2087 of the Civil Code, is to ensure working conditions that guarantee the physical and moral integrity and dignity of workers, including by agreeing with workers' trade unions on the most appropriate initiatives, of an informative and training nature, in order to prevent the phenomenon of sexual harassment in the workplace. It adds, moreover, that businesses, trade unions, employers, and male and female workers undertake to ensure the maintenance in the workplace of a working environment in which everyone's dignity is respected and interpersonal relations are fostered, based on principles of equality and mutual fairness.

Norma	Main contents
Legislative Decree 198/2006	Enacts an equalization between sexual harassment and gender discrimination

<p>Legislative Decree 81/2008, as amended.</p>	<p>It places, among the work risks subject to the assessment that every employer is obliged to carry out, those "concerning groups of workers exposed to particular risks, including (...) those related to gender differences." The risk assessment must also include the environmental and safety situation also understood as "security."</p>
<p>Law of 4/23/2009 No. 38</p>	<p><i>Stalking</i> has become part of the Italian legal system, which introduced the crime of "persecutory acts" in Article 612 bis of the Penal Code. For the crime to exist, the behaviors of threats and harassment must result in a "persistent and serious state of anxiety or fear" in the offended person.</p>
<p>Legislative Decree 80/2015</p>	<p>Contemplates paid leave for women victims of violence.</p>
<p>Law 205/2017</p>	<p>Provides specific protection for those who take legal action for being subjected to sexual harassment or molestation in the company.</p> <p>Duty of the employer, to ensure working conditions that guarantee the physical and moral integrity and dignity of workers.</p> <p>Businesses, trade unions, employers and male and female workers are committed to ensuring the maintenance of a work environment in which everyone's dignity is respected and interpersonal relations are fostered, based on principles of equality and mutual fairness.</p>

ILO Convention 190 on the Elimination of Violence and harassment in the World of Work.

Convention No. 190 on the Elimination of Violence and Harassment in the World of Work is in the process of being ratified by Italy through Law No. 4 of January 15, 2021.

The convention and the related Recommendation of 21/06/2019 No. 206 enrich the International Labor Code and promote the strengthening of national legislation, policies and institutions to make the right to a world of work free from violence and harassment effective. It is recognized that violence and harassment in the world of work are unacceptable and incompatible with decent work (ILO).

Among the main new features of the Convention are the definition of violence and harassment in the world of work, the identification of protected subjects, the specification of work areas of application, and the identification of preventive and countermeasures to be taken, as well as the parties responsible for their implementation. (ILO)

The convention requires states to take an inclusive, integrated and gender-centered approach to the prevention and elimination of violence and harassment in the world of work, based on the different roles and functions played by governments, employers, workers and their respective organizations, taking into account the diversity of the nature and scope of their respective responsibilities.

The convention and recommendation are built on three main pillars:

1. protection and prevention;
2. enforcement review and mechanisms for appeal and redress;
3. orientation, training and outreach.

The current pandemic context is highlighting that the risk from violence and harassment can be exacerbated in times of crisis; the completion of the Convention's ratification process and the implementation of the policies and actions it provides can help to address and prevent this phenomenon, thereby contributing to recovery from the crisis and to better address new ways of organizing work such as agile work.

The following table shows how the Convention and Recommendation, if implemented, can effectively affect issues related to the changes in work organization introduced as a result of the Covid-19 pandemic.

<p style="text-align: center;">Convention No. 190 and Recommendation No. 106.</p> <p>The Convention is based on a concept Prevent and work" that holds of violence and harassment physical place of work as only carries out in a definition encompasses violence and The Covid-19 occur, in the travels of many people work, mo work and places where violence can occur vic</p>	<p style="text-align: center;">Impact on potential Problems caused by the new work organization</p> <p>address the broad expansion of "the world of the beyond account of the fact that today's work does not take physical place. Such traditionally understood.</p> <p>has changed the way harassment that is Ityptified at work, but also on the commute home- eversa and includes those made possible and harassment</p>
<p>At work. from information technology (Article 3)</p> <p>The Convention is based on the assumption Protegger be victimized by and others in the worl of the the context of Covid-19, many work. people (stu Protects workers, female workers a etc.) have me of contract, skills to cope and tirocin to the pandemic. duties and the responsibility of employer (Article 2).</p>	<p>.</p> <p>and workers that no one should voro. violence and harassment in the world of In the teeth, etirees, volunteers, sso available their regardless of the anti type, etc., and those who exercise authority, the respond</p>

The Convention and Recommendation are based on an **inclusive, integrated, gender-focused approach** and **consultation with representatives of employers' and workers' organizations**. This approach includes action in the legislative and labor policy fields on equality and nondiscrimination, occupational health and safety, criminal law, and collective bargaining. The Convention recognizes the roles and

functions of governments, employers, workers and their organizations, according to their respective responsibilities. (Article 4).

Countering violence and harassment with an approach integrated and inclusive. The crisis caused by Covid-19 has highlighted that policies and legislative measures adopted in various areas are needed to effectively address violence and harassment in the world of work.

The Convention contemplates specific measures to **counter gender-based violence and harassment**, which mainly affect women and girls. To end violence and harassment in the world of work, an approach from a gender perspective that addresses root causes and risk factors (stereotypes of gender, forms of multiple and interconnected discrimination and imbalances in power relations due to gender). (Convention Preamble and Articles 1, 4, 5 and 10; Recommendation paragraphs 16-18).

The Convention recognizes the **connection between domestic violence and the world of work**.

The Recommendation identifies some specific measures, such as leave for victims, flexible working arrangements, temporary protection from dismissal, inclusion of domestic violence in workplace risk assessment, and raising awareness of the effects of domestic violence. (Convention, Article 10(f); Recommendation, paragraph 18).

Preventing and countering the spread of gender-based violence and harassment.

Covid-19 has further exacerbated gender stereotypes, leading to an increase in unpaid care work for women. This, combined with increased financial insecurity and unemployment, has increased incidents of gender-based violence and harassment and, more specifically, domestic violence against women and girls.

Mitigating the impact of domestic violence on the world of work.

The containment and quarantine measures, adopted for Covid-19, have forced people to work from home whenever possible. For many, the home is now also the workplace, and this implies increased risks of violence and harassment. Since the beginning of the pandemic, there has been an increase in domestic violence, particularly against women and people with disabilities, but also against men. Domestic violence impacts the health, safety, and productivity of female workers, workers, and others affected, as well as their ability to enter, remain, and advance in the labor market.

The Convention also applies to cases of **cyberbullying**, extending protection against violence and harassment occurring in work done through the use of the information and communication technologies (Article 3).

**Prevent e counter
cyberbullying.**

Because of Covid-19, millions of people work using information technology, the use of which may pose a greater risk of violence. Proper regulation of work

agile can prevent and counteract this phenomenon.

The Convention requires **the adoption of company policies on violence and harassment** and the **assessment of all risk factors associated with occupational health and safety**.

Together with the Recommendation, it provides a tool and guidance for identifying hazards and assessing risks of violence and harassment in order to take effective measures that protect the safety, health and welfare of all workers.

(Convention, Article 9; Recommendation, paragraphs 8 and 18).

Adopt and implement company-wide violence and harassment prevention measures.

The pandemic has highlighted a number of factors that can increase the risk of violence and harassment (job poverty, stress, discrimination). In this regard, steps were taken to review the risk assessment and implement prevention and control measures to protect the safety and health of workers against Covid-19, including risks that could result in violence and harassment.

The Convention provides for the adoption and implementation of **redress, compensation and assistance mechanisms** as key components of a strategy to end violence and harassment. This includes in-house dispute resolution mechanisms and support and redress services for victims of gender-centered violence and harassment (Convention, Article 10; Recommendation, paragraphs 14-22).

Ensure effective appeal and redress mechanisms.

Covid-19 highlighted that support services and access to judicial mechanisms to respond to violence and harassment are essential and should function effectively even during confinement.

The Convention requires that **guidance measures, resources, training** or other tools on the issues of violence and harassment, including gender-based violence and harassment, in the world of work be made available to employers, female and male workers, and their respective organizations, and relevant authorities. The Recommendation suggests implementing and disseminating **guidelines and training programs that take into account the gender perspective model codes of conduct and assessment tools**

Promote a culture marked by respect for others and anti-discrimination in every living and working context, including agile work, which is more prevalent due to the pandemic.

Fostering behaviors that condemn violence and harassment, including gender-related violence and harassment.

of risk on violence and harassment in the workplace public awareness campaigns. (Convention, Article 11; Recommendation, paragraph 23)

Source: ILO, "ILO Convention on Violence and Harassment in the World of Work (No. 190), 2019 - 12 ways the Convention can support the COVID19 crisis response and recovery," May 2020. Restatement.

Criminal profiles

The Italian legal system does not provide an *ad hoc* case in regard to crimes as codified. At the jurisprudential level, harassment at work has been, depending on the severity and manner of the harassing behavior, subsumed under various offenses.

According to doctrine (Manzini): *"harassment is any activity that painfully or annoyingly alters the normal psycho-physical balance of a person."* This doctrinal definition of the concept of harassment has been taken up by case law (Cass., sect. I, Judgment March 24, 2005, No. 19718), according to which *"harassment is anything that wilfully, annoyingly and importunately alters the psychic state of a person, with lasting or momentary action; it is not necessary that such conduct integrates (also) a serious attack on the good of the moral integrity of the offended person."* Also in jurisprudence, it has been affirmed that *"among the cases of lesser seriousness referred to in the last paragraph of Article 609 bis, sexual harassment conduct consisting of conclusive acts may be included, while conduct that resolves itself, for example, in obsessive courtship or nagging proposals, where 'the sexual background' constitutes only a motive and not an element of the conduct, are to be considered excluded"* (Cass., sec. III, Judgment Nov. 15, 1996, No. 1040). In more serious cases of harassment, case law has found the crime of sexual assault under Article 609-bis of the Criminal Code to be integrated (Cass., sec. III, Judgment March 27, 2014, No. 36704; Cass., sec. III, Judgment Sept. 26, 2013, No. 42871).

In the case, then, where the harassment at work took the form of blackmailing the female employee, repeatedly confronting her with the choice between submitting to the advances and losing her job, the crime of "private violence" was found to be integrated.

According to jurisprudence, *"for the purposes of the configurability of the crime of private violence, a verbal or explicit threat is not required, being sufficient any behavior or attitude, either toward the passive subject, or toward others, suitable to instill fear and to arouse the concern of suffering an unjust damage, aimed at obtaining that, through such intimidation, the passive subject is induced to do, tolerate or omit something"* (Cass., sec. V, Judgment Feb. 24, 2017, No. 29261).

The employer *"may also be liable if the sexual harassment is committed by others such as the employee's immediate superiors. In such a case, however, his liability is only civil and limited to compensation for damages or to the*

aforementioned reinstatement in the workplace. If, on the other hand, the employer wilfully fails to take measures to protect the harassed employee, there is an appearance of complicity in the crime on his part and criminal liability is incurred."

While in the case where the perpetrator of the harassment is the employer himself, "the employer will not only be in breach of contractual obligations but also criminally liable and, therefore, will be required to compensate not only biological damage but also the moral damage suffered by the employee."

According to the Supreme Court, "the employee's renunciation of a safe job can be considered as conclusive behavior such as to confirm sexual harassment in the workplace."

How to recognize situations of harassment and violence

In what places can they occur?

- In the workplace, including public and private spaces where these are a workplace.
- In places where the worker receives pay, in places designated for break or lunch break, or in places of use of sanitary facilities or locker rooms.
- During travel or business trips, training, events or work-related social activities.
- As a result of business communications, including those made possible by information and communication technologies.
- During commuting to and from work.

Where does the compliment end and the sexual harassment begin?

First, it is necessary to point out that while some gestures or suggestions are clearly considered unacceptable, certain behaviors are sometimes not considered uniquely inappropriate. What may be considered a compliment or a joke to some, may be offensive to others; this is especially the case in workplaces where there are significant cultural, social or background differences or with high *turnover*, resulting in the lack of knowledge at the personal level.

However, each person in the work environment should feel free to say that he or she finds behavior offensive or inappropriate and expect others to respect it.

Behavior that unintentionally offends someone can be quickly corrected without causing harm.

The goal is to create a work culture where everyone feels heard and respected.

Sexual harassment, on the other hand, violates a person's dignity by creating an intimidating, hostile, degrading or humiliating environment in the workplace.

Sexual harassment often jeopardizes the health, career, etc., of a person who is vulnerable because of his or her position (due to gender, age, social status, disability, etc.).

They are facing sexual harassment when they occur:

- Annoying and unwanted physical contact;
- **Unwanted** appreciation, verbal or nonverbal;
- Inappropriate comments with references to the person's sexuality;
- writings and verbal expressions about a person's alleged inferiority because he or she belongs to a particular sex or denigrating because of diversity of expression of sexuality;
- Sexual gestures, proposals or "jokes."
- Intrusive questions about personal relationships;
- Sending inappropriate images or e-mails;
- a physical approach of a sexual nature, or a request for physical intercourse when the other person shows no interest;
- intimidation, threats and blackmail suffered for rejecting behavior aimed at sexual intercourse.

COME RICONOSCERE LA MOLESTIA SESSUALE

Può essere identificata dai seguenti comportamenti:



Source: EU-OSHA, infographic "Sexual harassment at work (2015). Edited and translated.

When does psychological harassment occur?

Psychological harassment must be distinguished from relational problems or personal conflicts between two people. Conflicts occur in every workplace and, within a certain limit, can also be constructive.

I am faced with psychological harassment when a coworker or a group of coworkers continuously engage in misconduct against another worker, a group of coworkers, a supervisor or a subordinate identified as a victim, humiliated, offended, threatened.

Some examples:

- scream;
- Use offensive or sarcastic language;
- offend;
- Continually criticizing the worker(s);
- Exclude the worker(s) from social events or coffee breaks;
- conceal important information;
- Assigning the worker(s) too many tasks, too difficult, degrading or too easy.

Harassment must never be tolerated.

How can I become aware of the risk of violence in my workplace?

An act of violence generally arises in situations characterized by high tension or pent-up tension or pressure, as well as where personal issues are at stake. Conflicts that have not been resolved in the appropriate way can escalate into acts of violence.

Do I notice changes in the behavior of my colleague(s)?

The consequences for the individual can vary greatly:

- demotivation for work;
- stress (this also applies to those who are indirectly victims, those who witness the act or episode of violence);
- damage to physical or psychological health;
- Posttraumatic symptoms such as fears, phobias, and sleep disorders;
- seemingly unjustified increase in absences.

POTENZIALI CONSEGUENZE DELLA VIOLENZA SUL LAVORO



Per i lavoratori

- Paura, ansia, stress
- Disturbi del sonno e affaticamento
- Depressione
- Disturbo post traumatico da stress
- Lesioni fisiche



Per l'organizzazione

- Incremento dell'assenteismo
- Calo della motivazione
- Riduzione della produttività
- Deterioramento dei rapporti tra i lavoratori
- Incremento del turnover e difficoltà nelle assunzioni

Source: EU-OSHA, infographic "Third-party violence in the workplace" (2015). Edited and translated

What can I do in the immediate term, in base even my role in the organization?

To prevent further damage and limit negative consequences is important:

- collaborate in the establishment and consolidation of a work environment free of bias, respecting the professionalism of colleagues and third parties with whom one comes into contact in the performance of one's duties,
- not leave alone the worker(s) who has suffered or witnessed an act of violence in the hours following the incident;
- management staff's participation, solidarity and support for the victim;
- Provide support to the victim in the immediate and later stages in case of posttraumatic syndrome;
- Offer support to the victim in dealing with administrative and legal formalities (complaint, legal action, etc.);
- Inform other workers to prevent unfounded rumors from spreading;



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- Review the risk assessment to identify additional measures to be taken.

How to prevent situations of harassment and violence

From the Regulations on Inail's Code of Conduct and Provisions on Organizational Wellbeing (President's Determination of January 21, 2015 No. 15

Art. 27, c.2: Inail rejects any moral, psychological or physical violence that compromises the moral and professional dignity as well as the physical and psychological integrity of workers by depressing their self-esteem and motivation. It also undertakes to promote the analysis and elimination of all possible deficiencies, both organizational and informational that may contribute to the emergence of conflict situations, psychological distress and bullying, and to guarantee effective protection to every employee, manager and non-manager...who has been the recipient of any prejudicial or discriminatory act or behavior.

What can the employer do?

- Implement the provisions of Legislative Decree 81/2008, as amended, with particular reference to the assessment of all risks including those concerning groups of workers exposed to special risks, including those related to work-related stress;
- Train and inform workers on issues of legality, transparency, fairness, independence, dignity and respect in interpersonal relationships, and nonviolent communication, spreading awareness of the tools adopted by the Institute such as codes of conduct and ethics;
- Create a work culture based on mutual respect;
- Set a good example and demand respectful attitudes and behavior from workers;
- Addressing worker conflicts early on.
- with regard to psycho-social risks (in particular work-related stress), in the risk assessment provided for in accordance with Legislative Decree 81/2008, as amended and supplemented, these must be considered and analyzed for both men and women, and reported in the Risk Assessment Document in a disaggregated manner, also taking into account the factors provided for in Article 28 of the aforementioned decree: age, country of origin and type of contract. In addition, elements pertaining to work-life balance, working hours, career opportunities, possible incidents of harassment and violence, discrimination phenomena should be duly considered

In any case, it is important to provide the victim of assault, threat or violence with the opportunity to resort to reflective activity for the purpose of eliminating or alleviating the emotional consequences often generated by this type of experience.

Gibbs' cycle of reflexivity, outlined in the box in its most relevant parts (Sicora, 2013), can be a useful track to follow, even independently of the presence of a psychologist. It consists of a series of questions that serve to contextualize and reframe the incident, taking into consideration the impact of the traumatic event on the whole team.

Gibbs' cycle of reflexivity	
1)	DESCRIPTION: Where was I and why? What was I doing? Who else was present and what were they doing? What happened? What role did I play in what happened, and what role did others play? What was the outcome?
2)	SENSATIONS: What emotions did I feel about the event, from its beginning to its conclusion?
3)	ANALYSIS: What went well and what did I do well? What did others do well? What went wrong? How did I contribute to this and how did others contribute?
4)	ASSESSMENT: What was positive about the experience? What was negative about it?
5)	CONCLUSIONS: Awareness and understanding about how my behavior and the behavior of others contributed to the outcomes of the event. Could I have done anything else?
6)	CORRECTIVE PLAN: What to do differently if the situation arises again?

What to do and who to turn to if we experience or witness a incident of harassment or violence

People's reaction to acts of violence, whether they are victims or witnesses, may depend on their personality, individual experiences, experience-based coping mechanisms, physical characteristics of their environment, and organizational norms and rules. Their response may be passive (acceptance or flight) or active

(negotiation or self-defense on the physical level). Workplace violence is in fact a concrete risk factor for the safety and health of workers, is not an individual problem, must be addressed structurally within the prevention system, and requires the adoption of an organizational model that makes use of appropriate tools for the detection, monitoring and management of adverse events.

To prove effective, the organizational model must have a system that records even unconfirmed incidents of violence, encouraging, of course, the reporting of any overt acts, but also the reporting of devious, repeated, and less relevant facts or behavior that is nonetheless offensive to the dignity of the person.

The current regulatory framework for occupational health and safety protection, consisting of Legislative Decree 81/2008 as amended, has specifically identified work-related stress (SLC) as one of the risks subject to mandatory assessment by the Employer and the result of the collaboration of prevention actors:

- Physician-in-Charge,
- Prevention and Protection Service Manager
- Workers' safety representative.

In the SLC assessment method promoted by Inail, moral and/or sexual harassment, are among those critical indicators called "sentinel events."

In cases of physical violence, the facts are easy to ascertain, while it is more difficult to predict how the potential victim will react to repeated acts of harassment and/or psychological violence, which are also more difficult to recognize by any witnesses.

Many victims (men and women) often do not talk about their experiences of harassment they have received, out of shame, lack of trust in the interlocutor, or fear of judgment.

The key thing is to trust and rely on: no to silence! The

reference figures to whom you can turn are:

- The Trust Advisor(s) (if any).
- the Executive

- the Physician in Charge
- the Workers' Safety Representative
- the RSU and the RSA
- Anti-violence and stalking hotline 1522 (free of charge, active H24). Promoted by the Presidency of the Council of Ministers.

1522

Since 2006, the Department of Equal Opportunity has developed, through the activation of the **public utility number 1522**, a wide-ranging system action for **the emergence and combating of the phenomenon of intra- and extra-family violence against women**. In 2009, the Number also began a support action for **victims of stalking**.

1522 is active h 24 every day of the year and is accessible from the entire country free of charge, both from landlines and mobile phones, with reception available in Italian, English, French, Spanish and Arabic.

The telephone operators provide an **initial response to the needs of victims of gender-based violence and stalking**, offering useful information and guidance to public and private social-health services in the country.

The service represents the operational hub of the activities to combat gender-based violence and stalking by placing itself at the basis of the methodology of "network" work, assumes the role of an **operational technical tool to support the actions carried out by local anti-violence networks**, which are called upon to combat the phenomenon of gender-based violence, while ensuring the necessary links between the Central Administrations responsible for the judicial, social, health, security and order

The service through the telephone approach supports the emergence of the demand for help, allowing a **gradual approach to services by victims with the absolute guarantee of anonymity**, and cases of violence that are of an emergency nature are received with a specific technical-operational procedure shared with law enforcement.

Tools to incentivize good practices to prevent harassment and violence at work: corporate codes

Effective measures to prevent harassment and violence in the workplace can result from the effective adoption of corporate codes, whether they are codes of ethics or codes of conduct, understood in any case as acts of self-regulation within an entity or company, whether public or private.

The European Community has encouraged them since the early 1990s, to repress and punish sexual harassment, later expanding their subject matter to include discrimination and bullying. These instruments fit into the hierarchy of sources in a subsidiary position, since they supplement, flank and support the rules contained in collective agreements and laws, especially in the civil service, in internal regulations (circulars, regulations (etc.)).

The existing Codes of Ethics and/or Conduct that exist today in Public Administrations, as in many large private companies, have been drafted since the 1990s and have undergone a profound evolution over time in terms of areas of protection, competencies and effective prevention.

The Codes of the turn of the last century primarily, if not exclusively, addressed protection against sexual harassment and gender discrimination, particularly against discrimination on grounds of sex, race, ethnicity, religion, disability, and sexual orientation. Regulatory and jurisprudential developments have led to "second-generation codes" which, starting from a more general concept of protection of human dignity, provide for the extension of the protection of male and female workers also against moral and psychological harassment and bullying.

To be effective, however, codes must be the result of true reflection and definition of the norms recognized as essential and proper by the community that adopts them; they should not be drafted to fulfill formal obligations, perhaps copied from standard models.

The effective operation of the codes depends on the ability to go beyond abstract case histories, transcending from the merely repressive and negative aspect (prohibition of operating actions such as harassment, discrimination or mobbing) to instead regulate positive actions aimed at achieving, as much as possible, a favorable climate with respect to the dignity of female workers.

The most modern codes of ethics and/or conduct take into consideration all cases of possible disruption of working life and promote ways in which to seek out and correct situations that negatively affect the business climate, constituting a normative support for the company that seeks the psychosocial well-being of the employee. Implicit in these codes is the inclusion, with targeted intervention procedures, of the most critical cases such as, precisely, sexual harassment or bullying.

Codes of ethics or codes of conduct normally also provide tools for the implementation of the prevention or repression of violence or harassment: in many cases, the Codes expressly refer to individuals with specific skills such as the Trusted Adviser(s), a figure provided for by European legislation and in particular by European Parliament Resolution A3/0043/94. This figure was created in the context of protection from sexual harassment and gender discrimination, as a "trusted professional of the company" (public or private) called upon to implement the Code of Conduct with the aim of eliminating negative factors and promoting a favorable climate in the workplace, according to precise procedures (mainly through an informal procedure, directed at preventing, mediating and resolving conflicts).

The TU for security also identifies codes of ethics and conduct among the prevention tools art 15 c1 lett h "the planning of measures deemed appropriate to ensure the improvement of safety levels over time, including through the adoption of codes of conduct and good practices.

In fact, codes of conduct, codes of behavior and good practices can prevent the risks of occupational accidents and diseases also in view of the fact that they have become one of the tools to be enhanced by the Permanent Advisory Commission at the Ministry of Labor under Art.

6 of Legislative Decree 81/2008.

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Single guarantee committee for equal opportunities, enhancement of the welfare of those who work and anti-discrimination (*Cug*)