



INTERNATIONAL LAWYERS NETWORK



SEXUAL HARASSMENT IN THE WORKPLACE



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SEXUAL HARASSMENT IN THE WORKPLACE: WHAT SLOVAKIAN COMPANIES NEED TO KNOW

2019 Update: In 2018, PETERKA & PARTNERS drafted the following chapter on what Slovakian companies need to know about sexual harassment in the workplace. In 2019, the ILN asked firms to consider the response following #MeToo in various jurisdictions. For Slovakia, the update is the following:

Slovakia adopted its Antidiscrimination Act back in 2004 and from 2009, the act also clearly defines between harassment, sexual harassment, victimisation and other forms of discrimination and provides legal remedies in such cases. Slovak law also prohibits discrimination in other specific laws (Labour Code, Act on State Services, etc.).

Therefore, currently the Slovak government is not under pressure for a change in legislation.

On the other hand, #MeToo movement has frequently been mentioned in official and social media in the last year.

We include the 2018 chapter in its entirety for reference.



What constitutes sexual harassment?

According to the Slovak law, sexual harassment can be considered as a subtype of harassment as a general term. Both harassment and sexual harassment are considered as discriminatory action and thus constitute the breach of principle of equal treatment.

Slovak Act No. 365/2004 Coll., on Equal Treatment in Certain Areas and on Protection Against Discrimination (the Anti-Discrimination Act) defines sexual harassment as any verbal, non-verbal or physical conduct of sexual nature, the purpose or effect of which is or could be violating the dignity of a person and of creating a hostile, degrading or offensive environment.

What body of law governs sexual harassment in your jurisdiction?

In general, the sexual harassment is considered as the subject of Slovak civil law.

The general legal framework is governed by the Anti-Discrimination Act. Issues related to labour law and employment are further regulated by Act No. 311/2001 Coll., the Labour Code and Act. 5/2004 Coll., on Employment Services.

What actions constitute sexual harassment?

In accordance with the Anti-Discrimination Act sexual harassment can take any forms, including any verbal, non-verbal or physical conduct of sexual nature:

- of which purpose is or could be the violation of the dignity of a person and of creation of a hostile, degrading or offensive environment,



- of which effect is or could be the violation of the dignity of a person and of creation of a hostile, degrading or offensive environment.

Examples of such conduct could include:

- Repeated long-term aggressive, sexually themed remarks that are obviously unwanted by one person;
- Various non-verbal acts (such as pictures of nude women on walls in a predominantly male environment which may create a threatening atmosphere to colleagues in the same workplace);
- Repeated sending of jokes and images with a sexual subtext over the internet against the addressee's will;
- Unpleasant verbal sexual expression, offers, allusions;
- Physical contact (excessive hair stroking, attacks, etc.);
- Enforcing sexual contact, sexual extortion, in extreme cases even rape.

Can sexual harassment occur between two members of the same sex?

Yes.

Are employers required to provide sexual harassment training for their employees?

No, there is no specific obligation to provide sexual harassment training for employees. Pursuant to the Slovak Labour Code, employers are just obliged to inform newly hired employees about the general provisions of principle of equal treatment.

Each employer is obliged to ensure equal treatment at the workplace (which includes protection before sexual harassment). However, there is no obligation or general rule on how to proceed in this area.

What are the liabilities and damages for sexual harassment and where do they fall?

Under the Slovak Labour Code, employers are obliged to ensure the observance of the principle of equal treatment and non-discrimination. If the employer fails to ensure such conditions, it may be fined by Slovak Labour Inspectorate up to EUR 100,000.

Also, the person affected by sexual harassment has the right to claim before the courts that the discrimination (sexual harassment) be stopped, that the consequences of the discriminatory act be remedied and that he/she be provided with adequate satisfaction. In case such satisfaction is not sufficient, the victim also has the right to monetary compensation for non-pecuniary damage.

What does an employee who believes they've been sexually harassed have to prove for a successful claim?

Employees who believe that he/she has been sexually harassed must show that he or she was subject to unwelcome sexual harassment. If the court deduces the discriminatory behaviour of the defendant, the court will transfer the burden of proof to the defendant.



This means that the defendant (employer) will be required to prove that there has been no discriminatory conduct (sexual harassment) on its part.

If the sexual harassment has a more serious form, it can be considered a criminal offence committed by the harassing person and shall be investigated by the police.

Is it different if a supervisor or a co-worker is the perpetrator of the sexual harassment?

Slovak labour law does not expressly distinguish between sexual harassment from a supervisor or a co-worker.

What are the potential defences employers have against sexual harassment claims?

As discussed, the employers have the obligation to ensure protection against sexual harassment. Thus, if the employer proves that it took all the measures necessary to avoid sexual harassment, it could potentially be freed from sexual harassment claim or its responsibility could be at least limited.

Who qualifies as a supervisor?

The Slovak Labour Code defines a supervisor (or managing employees) as those employees who are authorized, at the individual management levels, to determine and impose working tasks on subordinate employees, organize, direct and control their work and give them binding instructions to this end.

As discussed, Slovak labour law does not expressly distinguish between sexual harassment from a supervisor or a co-worker.

How can employers protect themselves from sexual harassment claims?

An employer needs to have internal measures to avoid sexual harassment and should inform its employees about such measures and ensure they are followed.

Does sexual harassment cover harassment because of pregnancy?

Harassment because of pregnancy is not specifically considered as sexual harassment, but can still be considered as discriminatory under Slovak Anti-Discrimination Act, e.g. as harassment (general), direct discrimination, etc.

Does sexual harassment protect gay, lesbian, bi-sexual, and transgender persons?

Yes, both Slovak Anti-Discrimination Act and Labour Code specifically mention the protection based on sexual orientation.

What is prohibited retaliation?

Anti-Discrimination Act does not allow any any action or omission which has adverse consequences for a person and is directly connected with:

- seeking legal protection against discrimination for oneself or on behalf of another person, or
- testimony, providing an explanation or relates to other involvement of a person in a matter concerning the violation of the principle of equal treatment or,

- complaint/report of the breach of principle of equal treatment.

Can a consensual relationship between a supervisor and subordinate be considered sexual harassment?

A consensual relationship between a supervisor and subordinate is not prohibited by Slovak law.

Can an employer be liable for the actions of a third party (e.g. the public, clients, vendors)?

In general, no. However, the employer is always obliged to ensure measures to avoid sexual harassment. Thus, we cannot exclude that an employer would be held liable or co-liable for actions of third parties who are in business contact with its employees if it has not taken necessary and reasonable measures to avoid sexual harassment.

To date, we are not aware about such case law in Slovakia.

What is the #MeToo movement?

The #MeToo movement is a movement against sexual harassment and assault. Although the hashtag #MeToo had been created some years prior, immediately following the public allegations against Harvey Weinstein in October 2017, the hashtag #MeToo was picked up by celebrities and spread virally on social media platforms.

How is the #MeToo movement impacting the law in your jurisdiction?

We are not aware about any direct legal impact of the #MeToo movement on Slovak law. However, we cannot exclude any future impact following to the spread and development of the #MeToo movement.

This memorandum is for information purposes only.

Under no account can it be considered as either a legal opinion or advice on how to proceed in particular cases or on how to assess them. If you need any further information on the issues covered by this memorandum, please contact Mr Jan Makara (makara@peterkapartners.sk).

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