



# INTERNATIONAL LAWYERS NETWORK



## SEXUAL HARASSMENT IN THE WORKPLACE

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## SEXUAL HARASSMENT IN THE WORKPLACE: WHAT CZECH COMPANIES NEED TO KNOW



### What constitutes sexual harassment?

In the sense of Czech law, *sexual harassment* is a special type of harassment as a general term.

Act No. 198/2009 Coll., on Equal Treatment and Legal Protection Against Discrimination (the Anti-Discrimination Act) defines *sexual harassment* as any unwanted conduct of a sexual nature (i) taking place with the purpose or effect of diminishing the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment, or (ii) which could legitimately be perceived as a precondition for a decision affecting the exercise of rights and obligations following from legal relationships.

### What body of law governs sexual harassment in your jurisdiction?

Sexual harassment is namely the subject of civil law. Some definitions and general questions are governed by the Anti-Discrimination Act. Questions particularly related to labour law are further regulated by Act No. 262/2006 Coll., the Labour Code.

### What actions constitute sexual harassment?

Pursuant to the Anti-Discrimination Act: Sexual harassment can take many forms, including:

- Unwanted conduct of a sexual nature,
  - taking place with the purpose or effect of diminishing the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment, or
  - which could legitimately be perceived as a precondition for a decision affecting the exercise of rights and obligations following from legal relationships.

Examples of such conduct include:

- Repeated long-term aggressive, sexually coloured 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.

However, relationships at the workplace are not examples of sexual harassment. Sexual harassment must be undesirable. Not even flirting is considered sexual harassment, provided that it is accepted by the other party. If flirting is not accepted, it must be stopped immediately. It always depends on the actual circumstances.

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

Yes.

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

Pursuant to the Czech Labour Code, employers are obliged to inform employees on measures whereby the employer ensures equal treatment of male and female employees and prevents discrimination. In consequence, employers must prepare mechanisms that ensure equal treatment and the protection of their employees from sexual harassment. However, each employer ensures the equal treatment individually and there are no general rules on how to proceed provided by law.

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

Pursuant to the Labour Code, employers are obliged to ensure equal treatment and non-discrimination. If the employer fails to ensure such conditions, it may be fined up to CZK 1 million (i.e., circa EUR 40,000).

In the event of a violation of the rights and obligations following from the right to equal treatment or discrimination, the affected person has the right to claim before the courts, in particular, that the discrimination be refrained from, that the consequences of the discriminatory act be remedied and that (s)he be provided with appropriate compensation. If the remedy is not sufficient, the harmed person also has the right to monetary compensation for non-material damage.

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

Employees who believe that they have 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 Employer pursuant to the Code of Civil Procedure. This means that the defendant (Employer) will be required to prove that there has been no discriminatory conduct on its part and, if so that it was in compliance with the law.

In the event that 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. In such cases,

the harassment must fulfil the features of particular criminal offences such as extortion, restriction of personal freedom or even rape. In the case of a criminal offence, it is the harassing person who shall be sued (such law suit does not exclude potential claim for parallel responsibility of the Employer).

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

Czech law does not expressly distinguish between sexual harassment from a supervisor or a co-worker. However, it is more likely to fulfil the condition of unwanted action “which could be legitimately be perceived as a precondition for a decision affecting the exercise of rights and obligations following from legal relationship” when made by a supervisor.

### **What are the potential defenses employers have against sexual harassment claims?**

The employer has the obligation to ensure protection against sexual harassment. Thus, if the employer proves that it took all of the measures necessary to avoid sexual harassment, it cannot be found liable or can at least limit its responsibility.

### **Who qualifies as a supervisor?**

The Czech Labour Code defines a supervisor (or managerial employee) 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. The head of an organizational unit of the State is or is also deemed to be a managerial employee.

However, Czech labour law, and Czech labour law case law, do not distinguish between a supervisor and a regular co-worker for the purposes of sexual harassment.

### **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?**

Pregnancy might be a reason for discrimination under Czech law. Harassment because of pregnancy, however, is not directly considered as sexual harassment.

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

Yes. Czech law does not differentiate in regard to sexual orientation.

### **What is prohibited retaliation?**

Czech law does not foresee any possibility for the employer to take any adverse action against an employee for reporting an incident of sexual harassment or for participating in an investigation of a sexual harassment claim. Further, it is considered an offence if an employer affects or disadvantages an employee because he/she lawfully asserted his/her rights and claims arising from labour law relations, or if the employer did not negotiate upon the employee's

request a complaint concerning rights and obligations arising from the employment relationship (including any claimed sexual harassment).

### **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 Czech law. However, if there is any doubt, such relation is more likely to be “legitimately perceived as a precondition for a decision affecting the exercise of rights and obligations following from legal relationships” which might fulfill the features of sexual harassment.

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

Generally, 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, there is no case law in such sense.

### **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. This powerful movement has put sexual harassment in the spotlight, and has empowered survivors of sexual misconduct, especially workplace misconduct, to step forward and take action against perpetrators.

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

There is currently no direct impact of the #MeToo movement on Czech law. However, we cannot exclude any future impact following to the spread and development of the #MeToo movement.

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*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 Ms. Adela Krbcová ([krbcova@peterkapartners.cz](mailto:krbcova@peterkapartners.cz)).*

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