

**Silence
is
Violence**

LEGAL CHRONICLE

TAKING ACTION AGAINST

GENDER-BASED AND

SEXUAL VIOLENCE

AT WORK

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Taking action against gender-based and sexual violence at work

The numbers speak for themselves. In Belgium, one in five women has been a victim of rape (Amnesty International, 2019). Nine percent of female workers have been physically assaulted at work (Jump, 2016). One in three female workers is regularly subjected to inappropriate behavior in the workplace (CNE survey, 2021). What information (mainly legal, in the context of this article) can be given to a colleague who is a victim of violence related to his work environment (even if the events took place outside the workplace)?

First of all, the initial step is to take any colleague who reports being a victim of violence seriously. It is important to adopt a listening and trusting attitude, to acknowledge their “presumption of sincerity,” and to say “I believe you” rather than adopting an attitude of suspicion or judgment.

Possible procedures

Listening to the victim means, in particular (but not exclusively), informing them of the possible procedures :

- Use, possibly as a first step, the “informal” channel, by spontaneously and confidentially consulting the trusted person and/or the psychosocial prevention advisor (PPA¹).
- Use the “formal” channel, either immediately or at a later stage, by filing a substantiated complaint with the PPA. The consultation must be scheduled during working hours. If the working conditions make it impossible (e.g., night work), the victim may meet with the PPA or the trusted person outside of working hours, with travel expenses reimbursed by the employer. The PPA will inform the employer and then analyze the situation. They will then attempt to implement measures to eliminate or minimize the risk.

The victim benefits from specific protection against dismissal from the moment he files the complaint, as do any witnesses who intervened in the proceedings.

The regulations on health surveillance provide also a tool that may prove useful : the spontaneous consultation (Art. I.4-37 of the Belgian Welfare Code). Any worker may request a spontaneous consultation directly with the prevention advisor-occupational physician (PAOP²) for health-related complaints that he considers to be work-related. As soon as he receives the request, the PAOP notifies the employer, unless the worker doesn't agree (which will require the employer to meet with the CPMT outside working hours), and carries out a health assessment of the worker within 10 working days. Following the consultation, the PAOP may propose a temporary adjustment of the workstation or a temporary transfer to another workstation. Usually, the PAOP's decisions must be implemented by the employer in accordance with Article 5 of the Law of August 4, 1996, either immediately or with a certain «reaction time», depending on the type of decision.

The contact details of the PPA and the PAOP (of the External Service for Prevention and Protection at Work) must be included in the working rules, along with the description of the formal and informal psychosocial intervention procedures.

Employer obligations

All employers must take necessary preventive measures to prevent situations and acts that may lead to psychosocial risks at work, to prevent damages, or to limit them. When sexist and sexual violence occurs outside the workplace, many employers claim they're not capable of taking action, even if the victim has filed a police report. However, if the risk of an employee suffering physical and/or psychological harm is linked to interpersonal relationships at work, or if such violence may have consequences in the workplace, the employer has a responsibility. The employer must take into account the impact that private life can have on behavior at work.

Preventive measures

The first need expressed by the victims of sexual violence is that it won't happen again. The employer must make every effort to implement arrangements at work so that the alleged perpetrator can no longer get in touch with the victim in the workplace (or significantly reduce the likelihood).

It is better for the employer to find a solution that allows the victim to keep their job as it was before the problem (unless the victim wishes otherwise). As a victim, having to change your working environment, or even your job, is often experienced as a double punishment.

¹ Called Conseiller en Prévention Aspects Psychosociaux (CPAP) in French

² Called Conseiller en Prévention-Médecin du Travail (CPMT) in French

The employer can summon the alleged offender to offer the opportunity to change departments (or workplace, if the company has several sites). In the event of disagreement, the employer will assess the scope for imposing a unilateral change to this aspect of the working conditions, taking into account the opinion of the PPA (in the event of a formal complaint). If this is not possible, the employer should, at the very least, allow the victim to change departments (or workplace if the company has several sites).

If there is a Prevention and Protection Committee³ in the company, it can issue an opinion on the most appropriate measures in cases of violence or harassment, taking into account the specific circumstances of work organization and the workplace. It is also advisable for this committee to draw up an internal procedure to be followed when violence or harassment is reported (reception, advice, intervention, etc.), to be included in the work regulations.

Sanctioning offenders

The employer has disciplinary power within the company. He can apply a sanction, such as a warning, transfer, demotion or suspension of the employment contract, as long as the sanction is specified in the work regulations. Alternatively, the employer may decide that dismissal is the only option available to eliminate the risk of the worker being exposed to further aggression of any kind (or reduce this risk to a minimum).

Evidence must be gathered beforehand. When it comes to gender-based and sexual violence, it's not a case of "word for word"! The evidence the victim must provide is based on a body of corroborating evidence. The case file can include a written account (chronological, precise and detailed) of the violence ; medical reports and certificates (especially if they were issued immediately after the event) ; witness statements ; and any written record of steps taken by the victim. Not all these elements are necessary to make a complaint credible, but some are required.

Case law has established that certain facts (even in private life) can lead to immediate dismissal for serious misconduct when they run totally counter to contractual obligations or have an impact on the performance of the contract, and are of such a nature as to make it immediately impossible to continue working together. For example, various forms of behavior resulting from serious disagreements between two members of staff have been recognized as justifying dismissal for serious misconduct, when a worker's violent behavior towards his colleague jeopardizes his safety in the workplace (C. trav. Liège⁴, April 28, 2009).

In addition to disciplinary sanctions, there are also administrative and penal sanctions.

Article 119 of the Social Penal Code punishes with a level 4 sanction any person who comes into contact with workers during the course of their work and commits an act of violence or moral or sexual harassment at work.

What compensation is available in the event of work disability ?

Maintaining economic and financial autonomy is vital for victims of violence. In most cases, the victim receives the 30 days sick pay. In any event, it may be possible to obtain better compensation, by requesting recognition of sexual assault or rape as an accident caused by a colleague, either "in the course of and by reason of" work, or "as a result of" work. In this definition, the "reason of work" is to be understood, in the broadest sense, as any event made possible by the natural, technical or human environment of the contract. Such recognition requires proof of the event, of the physical or psychological injury caused by the event, and of the causal link between the acts of violence and the work (i.e. the fact that it was the work environment that made the assault or rape possible).

If the victim believes that these conditions are met and can produce sufficient evidence, nothing can prevent him from asking his employer to file a work-related accident report, providing a medical certificate describing the injuries observed and the consequences of the assault or rape.

Even if the employer has doubts that the circumstances and facts presented by the worker are constituting an accident caused by a third party in the course of work, it is up to the insurer to decide whether it is a work-related accident, not the employer. The insurer's decision may, of course, be appealed to the Labor Court.

Opposing the various forms of violence, intervening with colleagues or employers, supporting victims, promoting non-sexist behavior at company level and in our everyday behavior... The list of possible actions is long to ensure that sexist and sexual violence, both in society and at work, disappear.

³ Called Comité Prévention et Protection au Travail (CPPT) in French

⁴ Liège Labour Court