



## SEXUAL HARASSMENT

### **SEXUAL HARASSMENT UNDER COSTA RICA LABOR LAW - By: Rogelio Navas Rodríguez, Esq., Costa Rica Labor Law Attorney**

**WHAT IS SEXUAL HARASSMENT?** Sexual harassment is any conduct of sexual nature, unwanted by the person receiving it, that may cause harmful effects on the employment conditions, the victim's performance and his or her personal wellness. Sexual harassment is regulated and punished according to law 7476, commonly known as the Law Against Sexual Harassment, and depending on the seriousness of the conduct.

Sexual harassment may be displayed in many ways, such as requiring sexual favors, through the use of words or expressions of sexual nature and as physical approaches, among others. The type of harassment also depends on the positions that the victim and the stalker have within the workplace. For instance, harassment is considered ascendant when a subordinate harasses a higher-rank employee, and is descendant when harassment goes the opposite way.

**HOW TO PREVENT SEXUAL HARASSMENT?** To prevent sexual harassment, the employer must produce and implement internal policies and by-laws that guarantee respectful behavior and relationships between employees. Employers must also implement agile procedures for reporting and effectively punishing sexual harassment.

Within the obligations that all employers have to prevent sexual harassment, are the following:

- Advising all employees, verbally and in writing, about the existence of policies against sexual harassment and the consequences of incurring in this kind of behavior.
- Establishing internal procedures to be undertaken in case a report of sexual harassment is filed by an employee. These procedures must be effective in terms of guaranteeing confidentiality, protection for the victim and witnesses and compliance of due process.
- Keeping at all times personnel that is duly trained to detect, prevent and address sexual harassment situations, as well as to handle internal investigative and disciplinary proceedings related with sexual harassment cases.

**WHAT TO DO IN CASE A SEXUAL HARASSMENT REPORT IS FILED?** Once a claim for sexual harassment is received, the employer must report said situation to the Ombudsman



Office and to the Ministry of Labor. The Ombudsman Office is in charge of providing legal advice to the employer for the proper handling of the proceedings and the Ministry of Labor must act as a comptroller of legality.

Since the existence of this kind of controls over the employer has been provided, it is mandatory for all employers to produce and implement internal policies to regulate sexual harassment and all procedural aspects related with the handling of sexual harassment complaints.

**IS IT POSSIBLE TO TERMINATE AN EMPLOYEE THAT HAS FILED A SEXUAL HARASSMENT COMPLAINT?** Once an employee has filed a claim for sexual harassment, he or she can only be terminated under a terminable offense, such as those included in article 81 of the Labor Code. In such cases, the employer must file a request for authorization of termination before the Ministry of Labor. This authority will initiate a summarized process in which the employer must be able to prove that the employee incurred in the alleged terminable behavior.

**WHAT CAN A VICTIM OF SEXUAL HARASSMENT DO?** Victims of sexual harassment, besides reporting any unwanted situation to the employer, may also require assistance directly from the Ministry of Labor, or file a judicial complaint before the Labor Courts, especially when the employer does not have the necessary conditions to duly address this kind of situations, or when it is presumable that a complaint will not be handled properly, for instance, because the stalker is one of the highest authority within the company or the actual employer. Within the judicial procedures, the employer can request injunctive relief to prevent further harmful situations or to protect witnesses, as well as psychological counseling.

In the event you should require further information or counseling on sexual harassment matters, do not hesitate to contact us at <http://www.navaslegal.com/contactenos/>