Is the French legal approach to sexual harassment and sexism in the workplace so different from other countries?

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In its 2023 annual report, the High Council for Equality between Men and Women (**HCE**) notes that, five years after the #MeToo movement, French society "*remains very sexist in all aspects*", with women continuing to be treated unequally compared to men. 93% of women consider that they are treated differently in at least one area of society (at work, in public, at school, etc.). Inequality is particularly felt in the professional field since, according to the report, only 20% of the French population consider that women and men are equal in this respect. The HCE report also reveals that "*as many women as ever declare that they have personally experienced sexist situations*" with 80% of women under the impression of being treated less well because of their gender compared to 37% of men. 41% of women report they have experienced these situations in the workplace.

The HCE report recommends making training against sexism compulsory for employers or increasing sanctions against companies that do not put in place an effective system to fight against sexism.

It is the case that for a long time, the specific issue of sexual harassment was overshadowed by the protection given to victims of moral harassment in the workplace. particularly since French courts were very rarely concerned with complaints from victims of sexual harassment. But things have changed considerably, with sexual harassment and sexist behavior now being major concerns for companies, whose obligations to their employees in this area have greatly expanded over the years. French companies now fully appreciate the need to prevent and combat these situations.

In this respect, France now has a complete legal arsenal in the fight against sexual harassment and sexism in the workplace which is not so different from those in force in other countries.

What does French law say about sexual harassment in the workplace?

Sexual harassment is prohibited by article L. 1153-1 of the French Labor Code which provides that *"no employee shall be subject to either:*

1° sexual harassment, consisting of repeated remarks or behavior with a sexual or sexist connotation which either undermines his/her dignity because of their degrading or humiliating nature, or creates an intimidating, hostile or offensive situation against him/her;

Sexual harassment consists of:

a) When an employee is subjected to such comments or behavior from several people, in a concerted manner or at the instigation of one of them, even though each of these people has not acted repeatedly; or

b) When an employee is subjected to such remarks or behavior, successively, coming from several people who, even when they are not acting in concert, know that these remarks or behavior characterize repetitive conduct;

or;

2° conduct which is treated as sexual harassment, consisting of any form of serious pressure, even if not repeated, that is applied with the actual or apparent aim of obtaining an act of a sexual nature, whether this is sought for the benefit of the perpetrator or for the benefit of a third party."

French law accordingly distinguishes between two different types of sexual harassment: (i) unwanted and repeated comments or behavior with a sexual connotation that create an intimidating, offensive situation or (ii) serious pressure with the aim of obtaining an act of a sexual nature.

In the first category of sexual harassment ("*unwanted comments or behavior*"), the law does not require a minimum period to have passed between the acts or behavior complained of to establish repetition. The comments or behavior complained of must be unwanted. The absence of consent does not need to be explicit; it can be established by the silence of the victim, what he/she has told colleagues or from a request of a more senior employee to intervene. The comments may be obscene or comprise ribald jokes, remarks on the victim's physical appearance or clothing or behavior such as unsolicited gifts repeatedly delivered to the workplace, unwanted physical contact such as a hand on the shoulder or a strong hug or repeated requests for dates.

The second category ("*conduct treated as sexual harassment*") consists of an abuse of authority characterized by threats to a victim's working conditions or attempts to blackmail involving the victim's salary or promotions prospects or dismissal unless the victim agrees to perform sexual acts. A single event is enough, regardless of the actual intention of the perpetrator who may have no other aim than to simply humiliate the victim or to push him/her to resign.

Since 2018, sexual harassment also includes specific situations targeting on-line harassment where (i) acts are committed by several persons in a concerted manner, even if each these persons did not act repeatedly; (ii) acts are committed by several persons at the instigation of one of them; and (iii) even if they are not acting in concert acts are committed successively by several persons knowing that the comments or behavior will be repetition of similar comments or behavior.

How does sexual harassment differ from sexism?

Sexism is a term that appeared in the 1960s in parallel with the rise of feminism, but it was only introduced into the French Labor C in 2015 in article L. 1142-2-1 which defines it as follows:

"No one should be subjected to sexist acts, defined as any act linked to a person's sex, having the purpose or effect of undermining their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment."

Sexism differs from sexual harassment as it is based on gender stereotypes and the social roles that society still persist in assigning to women and men such as complaining that too many women present in meetings results in a waste of time because "they are too talkative", or that man cannot participate in discussions whilst also taking notes because it is well known that "men can't do two things at the same time". Other examples of sexist behavior would include telling a pregnant woman that she was thought to be ambitious or that she should not consider taking a position involving a lot of pressure, or asking a woman to make coffee at a meeting because she does it so well.

From a legal point of view, the line between sexual harassment and sexism is not always easy to identify. However, in practice the point of distinction will often be the purpose of the perpetrator - whether that is to obtain an act of sexual nature in the case sexual harassment, or a wish to humiliate or offend in the case of sexism.

Is sexual harassment a criminal offence in France?

An offense of sexual harassment was introduced into French criminal law for the first time in 1992. At the time, the law was only concerned with limited situations, the primary objective being to penalize sexual harassers in the context of a hierarchical relationship at work. After successive reforms aimed at extending its application to a greater number of situations, the offense is now defined in article 222-33 of the Penal Code in terms that are very similar to those of the Labor Code. The perpetrator is punished by two years in prison and a fine of 30,000 euros, increased to three years in prison and a fine of 45,000 euros in certain circumstances.

However, unlike the labor law provision, proof of sexual harassment in criminal law requires that the harasser acted intentionally. Accordingly, even if the criminal judge dismisses the offense of sexual harassment in the absence of intentional element, the sexual harassment might nevertheless be recognized before the civil judge in an employment tribunal upon complaint of the victim employee.

How to identify a situation of sexual harassment?

In some cases, defining the point at which conduct in the context of a familiar relationship or attempts at seduction becomes sexual harassment is not always easy to determine. It is common for the harasser to explain his or her conduct as part of the "game of seduction" or ribald jokes with the aim of discounting or undermining the complaint of the victim. In these situations, it is important to remember that seduction implies mutual consent, while harassment results in the imposition of unwanted behavior on another who, in the workplace, is very often in a situation of legal subordination to the perpetrator.

An employee attempting to seduce a colleague can misinterpret his or her intentions without being guilty of sexual harassment, because the law has never prohibited conduct attempting to seduce, including in the workplace. On the other hand, engaging in conduct or making remarks with a sexual connotation, in a heavy and repeated way, does constitute harassment. Moreover, exerting pressure, even once, to compel an employee to perform a sexual act constitutes harassment.

French case law establishes that an employee will abuse his/her hierarchical power to obtain an act of a sexual nature amounting to sexual harassment at work even if the misconduct takes place away from the workplace or outside working hours. Similarly, sexual harassment at work can occur if an employee makes remarks of a sexual nature to female colleagues by sending text or social media messages, at social events held after working hours.

Is sexual harassment hard to prove?

Under French labor law, the employee victim is not required to provide direct proof of sexual harassment but only to set out the factual elements that are relevant to the complaint of such harassment such as statements from colleagues or witnesses, exchanges of emails or text messages, social media exchanges and if relevant, medical certificates, etc.

If the employer disputes the allegations, it is up to the employer to prove that the evidence provided is not conclusive, and that the behavior complained of does not constitute sexual harassment. However, a higher standard of proof applies in criminal proceedings.

In practice, the victim employee may find it difficult to provide evidence because situations of sexual harassment are most often hidden from public view. It may also be very difficult for victims to solicit testimony from colleagues who still employed in the same company.

If a victim decides to record his/her conversations with the harasser so as to provide evidence of sexual harassment, that evidence if obtained without the agreement of the other person will be considered as illicit as contrary to the principle of fairness of proof in labor law and cannot be considered by the employment tribunal. On the other hand, if the facts are serious and if the sexual harassment gave rise to a criminal complaint, the recordings may be considered before the criminal court.

But it is the case that most sexual harassment cases are brought before employment tribunals (which are civil courts) where the procedure is simpler and faster than criminal proceedings.

In addition to difficulties with evidence, employee victims (mostly women) often hesitate to take legal action preferring to simply terminate their employment contract.

Where an employer undertakes an internal investigation into an allegation of sexual harassment, the report of that investigation is perfectly admissible evidence before the French courts, as an employer does not have to obtain the consent of either the victim or alleged perpetrator to initiate an internal investigation.

What actions should employers take to meet their legal obligations in cases of alleged sexual harassment or sexism?

As is the case in many other jurisdictions, French labor law imposes a general obligation on employers to protect the health and safety of their employees. Article L. 1153-5 of the Labor Code provides that *"the employer shall take all necessary measures to prevent acts of sexual harassment, to put an end to it and to punish it".*

Thus, any breach by the employer of this obligation will entitle the employee to damages and allows him/her to terminate his/her employment contract.

In 2016, the French Supreme Court decided that the employer may be exonerated from this liability if the employer can establish it has taken all necessary preventive measures and that once informed of the allegation of harassment, it took immediate measures to end it.

In practice, this will require the employer to react quickly to an allegation of sexual harassment, because a two-month period is provided for imposition of sanctions on the perpetrator. Article L. 1332-4 of the Labor Code provides that no wrongful act can give rise to disciplinary proceedings beyond a period of two months from the date on which the employer became aware of the act, unless the act is the subject of criminal proceedings commenced in that period.

Carrying out an internal investigation is most often a prerequisite for a sanction. In that case, the two-month deadline for imposing a sanction commences on the date the investigation report is submitted to the employer and if the report concludes that there has been sexual harassment, but no sanction is taken against the perpetrator withing the next 2 months, the employer may then be exposed to civil liability.

The employer is free to decide on the sanction which seems to it to be the most appropriate. It may opt for a less severe sanction than a dismissal, such as a professional move or a demotion. In doing so, however, the employer takes the risk that the guilty employee may repeat the offensive conduct with other employees. In most cases dismissal for serious misconduct will most likely be the recommended sanction.

What tools do employers have to prevent sexual harassment or sexism?

Generally, employees in France consider that their employer takes the issue of harassment seriously but that the steps taken to prevent or discourage such conduct could be better implemented and information better communicated.

Employers have the means necessary to enable them to prevent or discourage sexual harassment or sexism.

The company should display in its premises the legal text outlawing sexual harassment in the workplace, the type of conduct that amounts to harassment, the penalties that will be incurred by the perpetrator, the criminal and civil remedies for the victim and the contact details of the person appointed internally to whom complaints should be made.

The company's internal regulations (compulsory in companies with 50 or more employees) must also include the provisions relating to moral and sexual harassment as well as sexist acts. These regulations must be disclosed within the company to all persons having access to the workplaces or premises where hiring takes place Employees who do not comply with internal regulations may be subject to the disciplinary procedures and sanctions. In practice a company's internal regulations (an important legal document in French employment law) are not always regularly updated or communicated to employees (e.g. on the employer's intranet).

As part of its safety obligation, the employer must assess the risks to which the employees are exposed in their working environment and prepare and keep updated a mandatory "single occupational risk assessment document" (DUER). This document must address the risks associated with sexism and sexual harassment.

Where a work environment is more exposed to the risk of harassment (for example in predominantly male occupational environments, or where there is a strong hierarchical dependence or unusual working hours), the DUER must anticipate these situations, define the actions to remedy them and justify their implementation. In companies with 50 employees or more, the DUER requires an annual program for the prevention of occupational risks and the improvement of working conditions. In companies with less than 50 employees, the results of the assessment must lead to the definition of risk prevention and employee protection actions. It is therefore strongly recommended that companies draw up and regularly update the DUER. The assistance of a specialist lawyer in the review of a DUER and its implementation may often be of benefit.

A dedicated sexual harassment point of contact must be appointed either by the employer alone or both the employer and the social and economic committee (**CSE**) depending on the size of the company's workforce. The appointed person is in charge of guiding, informing and supporting employees in matters of sexual harassment and sexist acts.

Employers must set up internal procedures for alerting, reporting, investigating and dealing with acts of sexual harassment. The CSE must be informed and consulted on these procedures prior to their implementation. And above all, employers must make these internal procedures known to the employees. In practice many employees are poorly informed of the existence of these procedures, which they are hesitant to use because they do not know enough about the terms and conditions and the consequences this may have for them.

Information and training for employees must be undertaken on what constitutes sexual harassment, the applicable legal provisions, as well as on the points of contact in the case of harassment at work. Specific trainings must also be organized for managers on how to deal with a situation of sexual harassment.

In practice, knowledge of sexual harassment situations by managers and their training on this issue often turns out to be insufficient and the consequences that these deficiencies can have for the company, including from a criminal point of view are often not appreciated. Therefore, adequate training of the management team in the fight against sexual harassment and sexism must be encouraged in companies involving specialized external trainers such as experienced lawyers on harassment issues in tandem with psychosocial risk experts.

Other professionals can be called upon to discourage sexual harassment, such as occupational physicians who may be able to advise employers, employees and their representatives on the measures necessary to prevent sexual harassment.

Employee representatives who comprise the CSE must also be involved in the implementation of measures to prevent sexual harassment. They often have information on the work environment and on the situation of employees or on the reputation of the alleged harasser. Finally, labor inspectors can be informed by employees of acts of sexual harassment. They may be required to carry out investigations in companies.

Generally, it is expected that in France employers will display and apply a zero-tolerance commitment to sexism and sexual harassment. Company policies must clearly state that such behaviors are unacceptable. Likewise, any report must be taken seriously and automatically give rise to at least an initial verification process to be followed, depending on the result, by a formal investigation.

When should a dedicated sexual harassment point of contact be established within the company?

Since January 1, 2019, in companies employing at least 250 employees, both the employer and the CSE must each appoint a dedicated point of contact for matters of sexual harassment. In companies whose workforce is between 11 and 250 employees, only the CSE must appoint a dedicated point of contact. There are no employee representatives in companies with less than 11 employees.

The person appointed by the company will act as an independent reference person known to all employees, he/she will alert the employer to situations of harassment and cooperate with the latter to deal with these situations, he/she can carry out awareness-raising work, he/she will provide a sympathetic ear for the victims. This person can be a member of human resources or the employee in charge of the prevention of psychosocial risks within the company. The role of the person appointed by the CSE is not defined by the Labor Code. But given his/her status as a member of the CSE, he/she should in particular alert the employer to any situation of sexual harassment brought to his/her attention and possibly collaborate in the investigation. He/she should also propose to the employer preventive actions or areas for improving the tools already in place.

What are the immediate measures that the employer should take with regard to the persons involved (the accuser and the alleged perpetrator)?

It may be necessary to protect the accuser from his/her alleged harasser in particular during the time of the investigation, by physically distancing them from each other in the workplace. A temporary change of place of employment can be offered to the accuser with his/her agreement as well as psychological care. In practice, it is recommended to be cautious in the implementation of such measures so that they are not as a punishment for the alleged perpetrator or considered as a disciplinary sanction or a discriminatory measure.

The temporary layoff of the alleged perpetrator is also possible. He/she cannot object to this decision and continue to come to work. This measure is not a sanction but a precautionary measure prior to a disciplinary sanction which most often will be dismissal for serious misconduct. In this case, the period of layoff is not remunerated.

The temporary layoff should not be used systematically. Applying this measure implies that the employer may have serious evidence of the behavior of which the employee is accused. The conduct of an internal investigation may take a long time during which the alleged perpetrator will not receive any remuneration. If the results of the investigation do not support the allegations the employee wrongly accused as "harasser", may claim back pay for the period of the layoff, and damages for the harm suffered depending on the circumstances leading to the layoff. From a practical point of view, the reinstatement of the employee wrongly accused into his/her former position may be difficult.

Is it mandatory to conduct an investigation in the event of an allegation or suspicion of sexual harassment?

Unless the allegation is made by a member of the CSE the employer is not legally obliged to carry out an internal investigation. However, sexual harassment and sexist behavior at work are areas where an internal investigation is strongly recommended. French courts consider investigation reports are admissible in evidence and have also laid down a number of concrete rules concerning the procedures for internal investigations of particular interest to companies.

Entrusted to an experienced external lawyer familiar with the legal constraints in this area (especially in sensitive situations that may involve senior executives or employee representatives), it will allow the drafting of a report establishing the facts with objectivity and in compliance with the principles to which lawyers are subject, in particular attorney-client privilege.

Are there specific guidelines for employers?

A legal and practical guide against sexual harassment and sexism was published in 2019 by the Ministry of Labor. This guide is for the use of employers and employees, it specifies the rights and obligations of each on the subject.

It contains concrete answers to the many questions that accuser, victims, witnesses or employers may have when faced with these situations:

From the point of view of the employee these may include - is he/she the victim of harassment? How and to whom to report it? What protections do the victim and witnesses have?

From the point of view of the employer they may include- what actions should be taken to satisfy the obligation of prevention? How best to carry out an internal investigation? How best to ensure the continuation of working relationships during the investigation?

Is there any risk for employers who are informed of an allegation of sexual harassment if they do not respond?

Employers in France are legally responsible for acts of sexual harassment suffered by employees in the workplace. They have a general obligation to prevent sexual harassment, which means that they must prevent the occurrence of these acts. In this respect, according to French case law, employers have a “reinforced safety obligation” with regard to the employees. In addition, employers have the obligation to put an end to such acts and to sanction them. If an employer is informed of the situation that the

employee was enduring, but has failed to take effective measures, it exposes itself to a conviction for breach of the safety obligation due to its negligence to ensure the protection of the physical and mental health of the employee victim.

In practice, an employee who is the victim of sexual harassment has the option to bring an action before two jurisdictions: civil and criminal. Before the civil jurisdiction (employment tribunal), the action is brought against the employer (i.e. the company) and the statute of limitations is five years after the last act suffered. Before the criminal court, the action can be brought directly against the employee (rather than the employer) who is the perpetrator of the harassment within six years from the last act committed.

The employee who is the victim of sexual harassment or sexism can obtain damages on this basis but also on the basis of a breach of the employer's health and security obligation. Most often, employee victims will pursue their claims before the employment tribunal (rather than before criminal courts). It should be noted that between the date of the referral to the employment tribunal and the date of its decision a period of several months may elapse within the framework of the ordinary procedure (i.e. conciliation hearing followed by the judgment hearing), which is not compatible with the need to urgently put an end to the situation suffered by the employee who, during this time, is still on the job (unless he/she has been placed on sick leave).

As an alternative, the employee may decide to terminate the employment contract himself/herself in which case the termination may also be accompanied by a claim for damages. In this circumstance, conciliation is avoided the matter will proceed directly to a judgement hearing within one month.

The employee can also obtain a certificate for unfitness to work from the occupational physician, thus obliging the employer to dismiss him/her. The risk for the latter is that the employee challenges the merits of this dismissal in court, arguing that the unfitness to work is the direct consequence of the employer's failure to fulfill his obligations. The employee can request that the dismissal be declared null and void and to be reinstated in the company. In practice, however, requests for reinstatement are very rare, the termination of the employment contract by the employee will give rise to a claim for damages.

On what grounds can the harassing employee be dismissed and what is the procedure?

Sexual harassment once established, is serious misconduct, and the employer can therefore decide on the heaviest sanction, i.e. dismissal.

The French Supreme Court clearly ruled in favor of a dismissal for serious misconduct in a case where the harasser had claimed that this measure was disproportionate. The employer therefore does not have to take into account the number of years of service of the employee in the company or the fact that his/her professional career has otherwise been exemplary. Sexual harassment constitutes serious misconduct, regardless of any other circumstances of the case.

The accused employee is first called to a pre-dismissal meeting during which the reasons for the envisaged dismissal are explained to him/her. During this meeting, the employee will be able to present his/her observations. The meeting cannot take place less than five working days after receipt of the convening letter by the employee. The employee can be assisted either by a member of the company's personnel, or by an external adviser appearing on a specific list available in town halls or from labor inspectorates. This outside adviser cannot be a lawyer, just as the employer cannot be assisted by a lawyer. It should be noted that at this stage the employer must above all not mention the dismissal (even if the employee asks the question) because it is not supposed to have made its decision. The dismissal cannot be notified to the employee less than two working days after the meeting.

The dismissal letter must be sent by registered mail with acknowledgment of receipt. This letter includes a statement of the reason invoked by the employer. It should be carefully drafted because in the event of a dispute by the employee, the employment tribunal will only consider the elements referred to in this letter to rule on the merits of the dismissal.

Does it make any difference if the accused and accuser are the same sex?

The law makes no difference. If, from a statistical point of view, the cases of sexual harassment of a woman by a man are the most frequent, the opposite can be observed. In the same way, sexual harassment can exist between two people of the same sex. The French Supreme Court confirmed in a judgment of March 2021 that the same legal provisions apply in situations where the two employees involved are of the same sex.

What about if the accused is the alleged victim's boss?

Sexual harassment committed by a hierarchical superior employee of the victim necessarily constitutes serious misconduct justifying dismissal. From a criminal point of view, this is an aggravating circumstance because the perpetrator abused the position of authority linked to his/her function. He/she faces up to three years in prison and a fine of 45,000 euros (instead of two years in prison and a fine of up to 30,000 euros).

Does the prior seductive or flirtatious behavior of the alleged victim towards the accused employee provide a defense to an allegation of sexual harassment by the accused?

The French Supreme Court ruled that ambiguous behavior of the alleged victim makes it possible to dismiss the charges of sexual harassment. In the case concerned, the court first noted that the employee had not expressly asked her manager to stop sending messages of a sexual nature. This is somewhat surprising insofar as the victim's refusal is not necessarily explicit and can result from his/her absence of reaction or silence.

But the court also noted that the employee had adopted a provocative behavior towards her manager by responding to text messages and thus entering into a game of reciprocal seduction. Consequently, dismissal by the employer could not be based on serious misconduct. For the court however, the dismissal remained justified insofar as the behavior of the manager made him lose the authority and the credibility necessary for the exercise of his managerial function, inconsistent with his responsibilities.

Is an employee found guilty of sexual harassment able to raise mitigating circumstances (e.g irreproachable previous professional behavior) to challenge the severity of the sanction (e.g dismissal) on?

Once sexual harassment is established, the French courts do not consider any mitigating circumstances. For example, the French supreme court ruled that the dismissal for serious misconduct was justified despite the employee's significant number of years of service in the company and the absence of remarks from the employer for twenty years on his previous professional behavior. Indeed, allowing an employee who is guilty of harassment to remain within the company is impossible. He/she will therefore be dismissed without notice period and without compensation.

In what circumstances does an employee who is wrongly accused have recourse to the employer for compensation?

An employee dismissed for sexual harassment and who considers that he/she has been wrongly accused can challenge his/her dismissal before the employment tribunal. He/she will ask that this dismissal be judged without real and serious cause with payment of damages. In addition, insofar as the dismissal pronounced for serious misconduct will have deprived him/her of the legal termination indemnities (i.e. severance indemnity, severance pay), the employee will request that the employer be ordered to pay these indemnities.

Moreover, whilst the employee who reported acts of sexual harassment obviously cannot be dismissed for this reason, the situation is different if he/she did so in bad faith, i.e. knowing that the facts reported were inaccurate. In this case, the employer can sanction him/her and even dismiss him/her. The employer will have to establish that the employee knew at the time of his/her report of the falsehood of the acts. In practice, this proof is often difficult even if the employer can sometimes rely on any testimonials from employees refuting the existence of sexual harassment or indicating that they have observed or heard that the employee's prime motive was to destabilize the company. The absence of sanctions is probably not the best solution, especially from a managerial point of view. Indeed, the continuation of working relationships can be tricky insofar as the employee wrongly accused may express the wish to no longer work in contact with the employee who wrongly accused him of harassment.

On the other hand, no sanction can be applied by the employer when the facts of harassment have been reported in good faith even if it turns out, in particular at the end of the investigation, that on the basis of those facts there is no situation of harassment.

All of this ultimately highlights the importance of the internal investigation. Very often, only such an investigation, carried out with the greatest care, in an objective manner and in compliance with the principles that govern its conduct, will allow the employer to rely on the findings of fact in the report to justify the decision it makes regarding either the alleged perpetrator or the accuser who wrongly reported the harassment. The conclusion of the investigation report constitutes a solid basis for a dismissal.

How to deal with historic allegations where no complaint was made at the time?

This is a real issue which gives rise to recurring debates in France each time acts of sexual harassment that can no longer be legally prosecuted because they are time-barred are revealed in the press. The statute of limitations for sexual harassment is six years. after the last fact (a gesture, a remark...) of harassment. The courts will take into account all the elements constituting the harassment even if the facts took place over several years. Many nevertheless think that this period of six years is too short and some even consider that the prosecutions should not be time-barred which in my opinion doesn't seem appropriate. Indeed, the more time passes, the more difficult it is to find and rely on evidence that is already often tenuous at the outset. That said, it may be noted that in some recent cases involving well-known political or artistic personalities, even if no complaint had been filed the prosecution has decided to open a preliminary investigation to try to collect the testimony of other presumed victims for whom the facts would not be time-barred. Such investigations can make it possible to characterize acts of sexual harassment and give rise, if necessary, to criminal proceedings when the limitation period is not reached.

Are there any restrictions on confidentiality clauses if a settlement is reached with an employee who has complained of sexual harassment?

Confidentiality can be attained through the signing of settlement agreement with the employee victim of sexual harassment which includes a non-disclosure agreement and provides for the payment of compensation to the employee for his/her damage in return for which he/she undertakes to waive all proceedings against the employer and to remain silent about the harassment of which he/she was a victim and on the settlement agreement itself. Another clause is also almost systematically included in the settlement agreement. It provides for a ban on the employee testifying in any other trial for sexual harassment in which the company would be involved. It should be noted that the legality of this clause is disputed since it actually consists in buying the silence of a potential witness.

In conclusion, the actions that should guide companies established in France in the fight against sexual harassment and sexist behaviors can be summarized as follows:

- effectively communicate the company's internal rules and policies to prevent and discourage sexual harassment and sexism and its commitment to enforce these rules;
- create a process that facilitates the reporting of acts of sexual harassment or sexism and communicate regularly with employees on this process;
- regularly inform and train all employees to ensure they are fully aware of the company's policies and to answer any questions they may have;
- provide specific trainings for employee representatives and managers on what to do in the event of a report;
- react immediately to any suspicion of harassment or sexism through an internal investigation procedure to establish the facts and sanction without delay the perpetrators in the legal frame of the employer's disciplinary power;
- reassure victims and witnesses on the fact that the company undertakes to protect them against any measure of reprisal for having reported or testified on acts of sexual harassment or sexist behaviors.

Ultimately, these actions are not so different from those recommended in other jurisdictions.

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