

Approval of Convention 190 on the Elimination of Violence and Harassment in the World of Work

Mexico City, April 8, 2022

On April 6, 2022, the Decree approving Convention 190 of the International Labor Organization (ILO) on the Elimination of Violence and Harassment in the World of Work, adopted in Geneva on June 21, 2019 ("Convention 190"), was enacted in the Official Gazette of the Federation.

Convention 190 requires ILO member states that have ratified such international instrument, such as Mexico, to maintain a legislation that respects, promotes and ensures the right of every individual to a work-environment free of violence and harassment, obliging the employers to act appropriately to prevent and combat such behaviors. In this regard, amendments to the Mexican Federal Labor Law, the Organic Law of the Federal Center for Conciliation and Labor Registration and the Federal Penal Code are expected.

The approval of Convention 190 has both labor and ESG legal repercussions, since according to the Sustainable Development Goals ("SDG") adopted by the United Nations in 2015, violence and harassment are incompatible with decent work, sustainable economic growth and negatively affect the reputation of companies.

I. Definition of violence and harassment in the world of work

One of the most relevant aspects of Convention 190 is providing a definition of the term "violence and harassment in the world of work", which designates a set of unacceptable behaviors and practices, or threats of such behaviors and practices, whether they manifest once or repeatedly and that have as their goal or that cause or that are likely to cause, physical, psychological, sexual or economic harm, and includes violence and harassment based on gender, that is, activities that are directed against individuals because of their sex or gender, or that disproportionately affect individuals of a particular sex or gender, including sexual harassment.

The foregoing provides clarity in the face of multiple definitions contained in different Mexican laws, which resulted in a lack of homogeneity.

II. Scope

Convention 190 protects all working people, regardless of their contractual status, including people in training or instruction, such as interns and trainees, laid-off employees, volunteers, job seekers and applicants.

Likewise, the application of the Convention 190 is extended beyond the work place, including places where employees take a rest break or a meal, sanitary facilities and changing rooms, during business trips, training events or social or activities, when commuting to and from work, as well as through work-related communications, including those made through information technologies, under telework modality.

III. Employer's obligations

The following employer's obligations derived from the approval of Convention 190 stand out:

1. *Adopt and apply, in consultation with the employees and their representatives, a policy on violence and harassment*

Convention 190 gives employees a voice in the development and implementation of a policy regarding violence and harassment in the work center. It should be noted that, currently, labor legislation already establishes the obligation of employers to implement (i) a protocol to prevent discrimination based on gender and attend cases of violence and harassment or sexual harassment, as well as to eradicate forced labor and child labor, and (ii) the psychosocial risk prevention policy.

2. *Take into account violence and harassment, as well as the associated psychosocial risks in the management of occupational health and safety*

Through the Official Mexican Standard NOM-035-STPS-2018, related with Psychosocial Risk Factors at Work, Identification, Analysis and Prevention ("NOM-035") and the Federal Regulation on Safety and Health at Work, Mexican legislation recognizes the importance to assess the psychosocial risks of employees and the employer's obligation to promote a healthy organizational environment and prevention of workplace violence.

3. *Identify the dangers and assess the risks of violence and harassment, and adopt measures to prevent and control such dangers and risks*



NOM-035 already establishes the obligation of employers to identify and analyze psychosocial risk factors. Among the psychosocial risk factors is workplace violence, including bullying, harassment and/or mistreatment.

4. *Provide to the employees with information and training on the identified dangers and risks of violence and harassment, and implement the corresponding prevention and protection measures*

As in the previous paragraphs, the aforementioned NOM-035 includes information and distribution obligations; however, 190 Convention of ILO also includes awareness campaigns.

IV. Mechanisms and procedures for notices and conflict resolution

As part of evaluating the implementation of measures to prevent violence and harassment in the world of work, the establishment of complaint and investigation procedures and dispute resolution mechanisms inside and outside the workplace is considered. Victims of violence must count with a complaint hotline that comprises protection measures against victimization and retaliation and where the privacy of the individual involved is guaranteed.

The whistleblower protection protocol is essential so that those who testify feel in an environment of trust to do so. This protocol must be part of the companies' compliance program and must be known by all employees.

In case of harassment and/or violence complaints, those who denounce could continue to have contact with the reported person in the short term. Knowing that there is a protection mechanism helps to reduce, at least, the fear of making a complaint.

The complainant, as well as the accused, must be informed about their labor rights and the consequences of the investigation. The employer must acknowledge the difficulty of the situation and seek implementing protection measures to avoid damages that are difficult or impossible to repair for the alleged victim, including guaranteeing that the affected employee has the right to interrupt the employment relationship without suffering retaliation.

Additionally, the employer must be clear in communicating that no one can be discriminated against or fired as a result of having made a complaint and that it is expected that, if any situation of harassment or violence is observed, it should be reported to management or the corresponding committee.

Finally, the gender perspective should not be forgotten in the complaint hotline, that is, special attention must be paid so that the complainants know that they can have access to health services, legal support, etc., if required, as well as to remedies and protection outside the workplace, including judicial remedies in labor, civil or criminal instances.

V. Training and dissemination

All employees must be trained in relation to the protocols for the prevention of harassment and violence, as well as the operation of the complaint hotline. The first step is for staff to know and understand what violent and harassing behaviors consist of, that there is zero tolerance in this regard and that there are mechanisms for reporting and dealing with such cases.

Company policies and, in general, the compliance program that includes the protocols established by Convention 190, must be visible, comprehensible and available to everyone. The complaint hotline must be easy to access; the members of the company must know of its existence and that someone behind it can attend to their complaints.

VI. Entry into force

Convention 190 will enter into force twelve months after the date on which its ratification is registered before the General Director of the ILO.

It is important to note that, since Convention 190 is an international treaty ratified in terms of the Mexican Political Constitution, it will be mandatory and binding in our legal system, prevailing over any other right of equal or lesser status.

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