



## MOBBING IN THE WORKPLACE AS A WORK ACCIDENT

The moral harassment (or mobbing) in the workplace has gradually been qualified as a work accident either by scholars and in court.

Mobbing is an issue that became worrisome in the last few decades, even though it exists for quite a while now. Currently, its greater expression lies on ever demanding work hours, high stress levels, competitive workplaces and non-permanent jobs.

Basically, mobbing consists of the exposure of employees to humiliating and embarrassing events, that are uncalled for, lasting and repeating, causing disturbance in the workplace and often forcing employees' to quit from their jobs. It is a phenomenon that carries a great deal of consequences to employees' physical and mental health.

ILO Convention on Violence and Harassment states *"that violence and harassment in the world of work can constitute a human rights violation or abuse, and that violence and harassment is a threat to equal opportunities, is unacceptable and incompatible with decent work"*.

Accordingly, the question is whether harassment may be considered as a work accident under Portuguese law.

A work accident should not be mistaken with a work injury. An accident is the event causing directly or indirectly a physical or mental occupational injury, in consequence of which it occurs a loss of working capacity. Also, a work accident is limited to the damages it causes. Finally, the work accident does not necessarily have to be caused by a physical external event, as the cause for a work accident may be non-physical.

A few academic opinions consider that for an accident to be considered as such, it must be sudden. In other words, some find that the work accident should be ascertainable in a given period of time or, at least, it should have a determined and limited duration. Those who share this understanding find it a big obstacle to the qualification of moral harassment as a work accident.

The element of suddenness has been questioned, however. Notwithstanding the identification of a work accident with the occurrence of a sudden event, gray areas are those where there is a gradual evolution, just as in the case of developing illnesses in a work context. In 21 November 2001, the Supreme Court of Justice ruled that *"the element of suddenness of the event that is characteristic of the work accident should not be taken in absolute terms, constraining it to instantaneous facts and events, but it should rather be construed as a cause of an injury that occurred in a determined period of time, and that its effects may gradually evolve"*. Just so, it may be considered that certain behaviors may be grouped, causing a moral harassment phenomenon that has correspondence with the concept of a work accident.

By considering the moral harassment as a single occurrence, one may possibly qualify it as a work accident.

We disagree with this position. We believe that the moral harassment is a continuous, sequential chain of events causing serious injury to the employee, and that it cannot be considered as a single occurrence. The relevant characteristic is not the consequences of it or the seriousness of the phenomenon, but rather the continuity of it.



It is also our understanding that the characterization of moral harassment as a work accident lies in the extension of the concept. In fact, we believe that given the amplitude that the concept already has at the Law this should be an adequate solution.

Often, the situations qualified as work accidents are not intimately linked with the place and time of work strictly speaking.

This means that the qualification of moral harassment as a work accident and subject to the work accident regime is justified on the employer's risk that is inherent to the provision of work.

In a nutshell, moral harassment constitutes a type of non-physical violence exerted over the employee, that is characteristic for its repeated sequence of harming behavior towards the employee, causing psychological injury and affecting the provision of work, which ultimately may be qualified as a work accident.

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