

# PROTOCOL

FOR THE PREVENTION AND  
ACTION AGAINST SEXUAL

HARASSMENT AND  
GENDER-BASED  
HARASSMENT

AT WORK

**M**ANUAL  
REFERENCE



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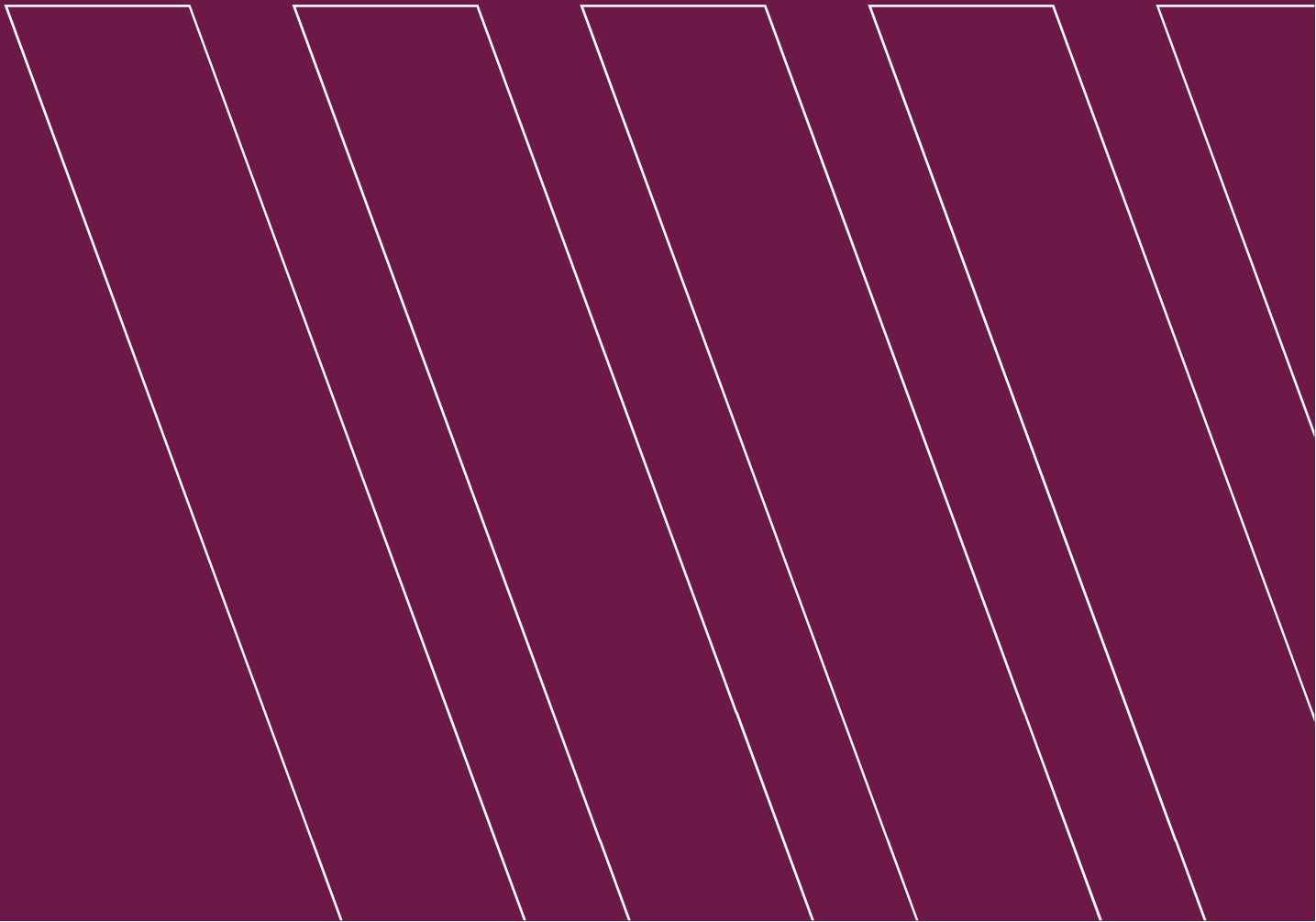
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# PART I





# 1 PREAMBLE: REASONS FOR HAVING A PROTOCOL FOR THE PREVENTION AND ACTION AGAINST SEXUAL HARASSMENT AND GENDER-BASED HARASSMENT

**Sexual and/or gender-based harassment** in the workplace is an expression of violence that violates several fundamental rights and has a **devastating effect on the physical, psychological and moral integrity of people, especially women**. Both are contrary to the principle of equal treatment between women and men and constitute discrimination on grounds of sex. They also pollute the working environment and have a significant impact on the working climate of the company or entity in which they occur.

The **protocol for the prevention and action against sexual harassment and harassment for reasons of sex** responds to the need to prevent, raise awareness and, where appropriate, tackle these forms of violence and discrimination in the workplace with all guarantees. It also complies with current legislation, especially with Article 48 of **Organic Law 3/2007**, of 22 March, for the effective equality of women and men and **Royal Decree 901/2020**, of 13 October, which regulates equality plans and their registration and amends Royal Decree 713/2010, of 28 May, on the registration and deposit of collective bargaining agreements, as well as Article 14 of **Law 31/1995**, of 8 November, on the prevention of occupational hazards.

From the integrated and systematic interpretation of these rules, it is clear that every company, regardless of the number of workers, is obliged to adopt, if necessary, after negotiation with the legal representatives of the workers, a procedure or protocol to prevent and act against sexual harassment and/or gender-based harassment. But in addition to being obligatory to adopt measures to prevent harassment and to establish procedures for its prevention and for dealing with complaints, the process of prevention and management of sexual and/or gender-based harassment has undoubted advantages for the parties.

The existence of a protocol against sexual harassment and gender-based harassment shows workers the company's commitment against these forms of violence, raises awareness among the workforce and clarifies preventive protection against harassment, while guaranteeing an internal, confidential and rapid means of resolution, eradication and reaction to sexual harassment or gender-based harassment that may occur in the company.

Implementing the protocol, informing and training staff, helps to prevent conduct that constitutes harassment and, accordingly, its appropriate treatment and facilitates its elimination in the company, as well as ensuring compliance with the standard.



An adequate protocol for the prevention and action against sexual and/or gender-based harassment raises staff awareness and facilitates the identification of situations in which harassment is or is not likely to occur. In the event of detecting conduct that could be considered sexual and/or gender-based harassment in the company, the harassment protocol allows for swift, confidential and guaranteed action to be proposed and taken to eradicate it, as well as to protect the alleged victim during the procedure. If harassment is proven, action will be taken with the forcefulness that such situations require. On those other occasions when what exists is rather inappropriate treatment, although not strictly speaking a situation of harassment, activating the protocol prevents the irregular conduct from continuing and from escalating into more serious situations; it allows the company to be aware of what is happening and to take the appropriate measures to warn the person who has behaved inappropriately so that this conduct ceases immediately. This will of course depend on the seriousness of the facts, which will be assessed by the committee or the person in charge of the protocol. It may be that on other occasions effective protection requires stronger sanctions, even dismissal, but whatever the case and whatever the sanction applied to the aggressor, what is clear is that the protocol, on most occasions, is the most suitable instrument for effective protection against harassment. It makes it possible to prevent and repair the damage suffered by the victim and to maintain their job in optimum conditions, which, in the end, means more effective protection than that traditionally misused, often leading to the compensated termination of the employment relationship.



# 2

## REGULATORY FRAMEWORK

In the study of sexual and/or gender-based harassment, **international, European and national regulations** must be taken into consideration.

At the **international** level, the ILO Convention No. 111 on Discrimination (Employment and Occupation), 1958; Convention No. 190 on Violence and Harassment, 2019, still pending ratification by Spain; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its general recommendations No. 19 and No. 35, and the Beijing Platform for Action, are of obligatory reference.

At the **European Union** level, and with regard to the regulatory framework on harassment and equal treatment and the prohibition of gender discrimination, in addition to the generic application of the Directives expressly referring to equal treatment and non-discrimination of gender, it is worth mentioning in this case in particular Directive 2002/73/EC, subsequently recast in Directive 2006/54/EC. Both of these establish that sexual harassment and gender-based harassment and harassment for reasons of gender constitute discriminatory manifestations which must be dealt with in the workplace. Also, Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services. It is also important to note the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), 2011.

At **state** level, in addition to the laws transposing the aforementioned directives into domestic law, namely Law 51/2003, of 2 December 2003, on equal opportunities, non-discrimination and universal accessibility for people with disabilities (current Royal Legislative Decree 1/2013, of 29 November, approving the Revised Text of the General Law on the Rights of Persons with Disabilities and their Social Inclusion) and Law 62/2003, of 30 December, on fiscal, administrative and social measures, both with a real impact on the concept of harassment by amending Article 54 of Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Law -hereinafter, WS - to expressly refer to it as an express cause for disciplinary dismissal, the Spanish Constitution -SC.-, the WS itself, Law 31/1995, on Occupational Risk Prevention -hereinafter, ORP -, as well as Organic Law 3/2007, of 22 March, for actual equality





of women and men -hereinafter, LOI-; Law 36/2011, of 10 October, regulating the social jurisdiction - hereinafter, LRJS- and Royal Legislative Decree 5/2000, of 4 August, approving the revised text of the Law on Infractions and Sanctions in the Social Order -hereinafter, LISOS-. All of this without prejudice, furthermore, to what may be established in collective agreements and equality plans that may be applicable and their possible compatibility with the provisions of Law 10/1995, of 23 November, of the Penal Code - PC-.

Harassment is in essence and by definition a plurioffensive act.

In addition to the violation of essential rights recognised in the Spanish Constitution, such as professional and personal dignity (Article 10 of the Spanish Constitution) and the guarantee of equality and prohibition of discrimination - sexual harassment and/or on grounds of sex - (Article 14 of the Spanish Constitution), many other legal rights can be affected in each of their manifestations: life and physical and moral integrity (Article 15 of the Spanish Constitution), privacy, honour and self-image (Article 18 of the Spanish Constitution), etc.

In the framework of ordinary legislation, it is worth mentioning the right to dignity, privacy, effective participation, non-discrimination and physical and moral integrity in accordance with Article 4.2. WS, referring to labour rights; the duties of workers in the framework of the employment relationship in Article 5 WS; the right to non-discrimination in labour relations in Article 17 WS, the inviolability of the worker in the terms of Article 18 WS, the voluntary and compensated termination of the contract in Article 50 WS. -and Article 54 WS, concerning disciplinary dismissal.

Article 14 ORP and the obligation to guarantee health and safety at work, the definition of harassment on grounds of sex and sexual harassment in Article 7 LOI, the need to address the protection of such harassment in equality plans -Article 46 LOI- and the company's obligation to articulate a procedure or protocol negotiated with workers' representatives in order to prevent, eradicate and avoid harassment in the company -Article 48 LOI- should also be considered. This obligation has recently been developed by Royal Decree 901/2020, of 13 October, Article 2.1 of which establishes that all companies covered by Article 1.2 of the Workers' Statute, regardless of the number of workers on their staff, "must promote working conditions that prevent sexual harassment and gender-based harassment and establish specific procedures for its prevention and for dealing with any complaints or claims that may be made by those who have been subjected to it".

The interrelation between the LOI and the ORP is clear in Technical Criteria 69/2009 of the Labour and Social Security Inspection Authorities, which supersedes Technical Criteria 34/2003 and reinforces the consideration of harassment as conduct to be sanctioned beyond the type referred to in Article 8.13 and Article

8.13.bis LISOS -sexual harassment and gender-based harassment, respectively-, as well as in the most recent Technical Criteria 104/2021 on actions of the Labour and Social Security Inspection Authorities on Psychosocial Risks.

In the field of social jurisdiction, Article 96 LRJS, concerning the proof of indications and Article 180.4 LRJS referring to precautionary measures are fundamental for the protection of harassment, and Article 183 LRJS in particular with regard to compensation for damages.



This is without prejudice to the possible impact of criminal law and in particular the concept of harassment in Article 172 of the PC and especially the criminalisation of sexual harassment in Article 184 PC.

Finally, it is worth mentioning the State Pact against Gender Violence, which enables progress to be made in complying with the Istanbul Convention in order to achieve the eradication of gender violence in all its forms.



# 3

## THE PROTOCOL FOR THE PREVENTION AND ACTION AGAINST SEXUAL HARASSMENT AND GENDER-BASED HARASSMENT IN THE COMPANY AS A COMPANY COMMITMENT

By adopting the protocol for the prevention and action against harassment, the company expresses its zero tolerance for the occurrence of conduct constituting harassment or harassment on grounds of sex or sexual orientation in its organisation or premises.

In other words, by adopting the protocol, the company underlines its commitment to the prevention and action against harassment within the organisation and in any of its manifestations, while complying with the requirements of articles 46 and 48 of Organic Law 3/2007, of 22 March, for the effective equality of women and men, as well as the provisions of Articles 7 and 8 of Royal Decree 901/2020 of 13 October, which regulates equality plans and their registration and amends Royal Decree 713/2010 of 28 May, on the registration and deposit of collective bargaining agreements and collective labour agreements and Article 14 of Law 31/1995 of 8 November, on the prevention of occupational hazards.

Indeed, by committing itself to the measures that make up a protocol such as those contained in this manual, the company manifests and publicises its express will to adopt a proactive attitude in the prevention of harassment - awareness-raising and information on conduct not tolerated by the company -, dissemination of good practices and implementation of all measures necessary to manage the complaints that may arise in this respect, as well as to resolve them as appropriate in each case.

This is, in short, the commitment that the company makes when it signs the responsible declaration in the templates as part of the harassment protocol.



# 4

## SCOPE OF APPLICATION OF THE PROTOCOL FOR THE PREVENTION AND ACTION AGAINST SEXUAL HARASSMENT AND GENDER-BASED HARASSMENT

The protocol for the eradication of harassment applies to **the entire workforce of the company**, irrespective of the number of workplaces, the professional category of the employees, the form and place of service provision and the form of employment contract, including persons on permanent contracts, fixed-term contracts and persons on stand-by contracts.

It also applies to persons who are **not in an employment relationship but who provide services or collaborate with the organisation**, such as trainees, trainees in non-work placements or volunteers.

The protocol shall apply to situations of sexual harassment or gender-based harassment that occur at work, in connection with work or as a result of work:

- a) in the workplace, including in public and private spaces when they are a workplace;
- b) in places where workers are paid, where they take their rest or meal breaks, or where they use sanitary or washing facilities and changing rooms;
- c) on work-related travel, trips, social or training events or activities;
- d) in the context of work-related communications, including communications by means of information and communication technologies (virtual harassment or cyber-bullying);
- e) in accommodation provided by the employer;
- f) on journeys between home and place of work.



# 5

## DURATION, MONITORING, EVALUATION AND REVISION OF THE PROTOCOL FOR THE PREVENTION AND ACTION AGAINST SEXUAL HARASSMENT AND GENDER-BASED HARASSMENT

The period of validity or duration of the protocol for the prevention and action against sexual harassment and gender-based harassment, as well as **the deadlines for its revision, shall be those determined in the equality plan** in which it is integrated, pursuant to Article 9 of RD 901/2020, of 13 October.

Likewise, the provisions of this same Article shall apply to the monitoring and evaluation of the protocol that forms part of the equality plan.

In the absence of an equality plan, the period of duration will be that agreed with the legal representation of the workers, if any, although it is recommended that it should not exceed four years and will be reviewed in the following cases:

1. At any time during its validity in order to reorient the fulfilment of its objectives of prevention and action against sexual harassment and gender-based harassment.
2. When their lack of compliance with legal and regulatory requirements or their inadequacy is revealed as a result of the Labour and Social Security Inspection Authorities' action.
3. In the event of a merger, takeover, transfer or modification of the legal status of the company and in the event of any incident that substantially modifies the company's workforce, its working methods or organisation.
4. When a court decision condemns the company for discrimination on grounds of sex or when it determines the lack of compliance of the equality plan with legal or regulatory requirements.

In the event that there is no equality plan, the monitoring and evaluation of the procedure and/or measures for awareness-raising, prevention, detection and action against sexual harassment and gender-based harassment shall be carried out periodically by a protocol monitoring committee created for this purpose, with the participation of the legal representatives of the workers (RLT) if there is one, with an intermediate and a final evaluation being carried out.



# 6

## REGISTER OR DEPOSIT OF THE PROTOCOL FOR THE PREVENTION AND ACTION AGAINST SEXUAL HARASSMENT AND GENDER- BASED HARASSMENT

**Where the company has an equality plan**, the protocol for the prevention and action against sexual harassment and gender-based harassment shall form part of it. The company must register the plan in accordance with the provisions of Article 11 of Royal Decree 901/2020, of 13 October, and Royal Decree 713/2010, of 28 May, on the registration and deposit of collective bargaining agreements. Together with the application for registration in the register, data relating to the protocol must be filled in on the official model *Annex 2.V Equality plan statistics sheet*, in the terms established by the aforementioned Royal Decree.

**If the company does not have an equality plan**, it may request that the agreement on the protocol for prevention and action in situations of sexual harassment and gender-based harassment be filed with the competent labour authority, in accordance with the provisions of Article 12 of Royal Decree 901/2020, of 13 October, and the second additional provision of Royal Decree 713/2010, of 28 May.



# 7

## OBJECTIVES OF THE PREVENTION AND ACTION PROTOCOL AGAINST SEXUAL HARASSMENT AND GENDER-BASED HARASSMENT

The main objective of implementing a protocol is to articulate the necessary measures to prevent and combat sexual and/or gender-based harassment, establishing a confidential, rapid and accessible channel for handling complaints or denunciations within the company.

What the protocol does is, first of all, to specify what is necessary to prevent sexual and/or gender-based harassment; to identify the harassment in the event that it occurs; to provide the victim, any worker or person working for the organisation, workers' representatives or any person with knowledge of the situation, access to the procedure for reporting harassment internally within the company, thus activating the investigation, prosecution and, if necessary, eradication through the punishment of such conduct within the company, as well as to avoid the re-victimisation of the harassed person due to malpractice during the investigation and reporting process.

Specifically, the objectives to be achieved with this protocol can be systematised, among others, as follows:

- a)** Promote a culture of prevention of sexual and/or gender-based harassment in all areas and levels of the organisation.
- b)** Express the company's zero tolerance towards situations of sexual and gender-based harassment that may be detected at any level of the organisation.
- c)** Facilitate the identification of conduct constituting harassment in its different forms of sexual and gender-based harassment.
- d)** Implement a simple, quick and accessible confidential complaint or reporting procedure that allows victims of harassment to make a report of the situation they are experiencing.



- e)** Investigate complaints of harassment internally, in an agile, rapid and confidential manner, in order to determine whether sexual and/or gender-based harassment has occurred in the company.
- f)** Sanction, where appropriate, the person who has committed harassment and compensate the victim who has suffered a situation of sexual and/or gender-based harassment.
- g)** Support the person who has suffered harassment to avoid secondary victimisation or re-victimisation and facilitate, where appropriate, access to the psychological and social support they need.





# 8

## GUIDING PRINCIPLES OF THE PROTOCOL FOR THE PREVENTION AND ACTION AGAINST SEXUAL HARASSMENT AND GENDER-BASED HARASSMENT

The protocol for the prevention and action against sexual and/or gender-based harassment shall, in all cases, include:

- 1)** Statement of principles, definition of sexual and gender-based harassment and identification of conduct that could constitute harassment.
- 2)** Procedure for dealing with harassment in order to deal with any complaints or reports that may arise and applicable precautionary and/or corrective measures.
- 3)** Identification of reactive measures against bullying and, where appropriate, the disciplinary regime.

In addition, the procedure shall be governed by the following principles, which must be observed at all times:

- a)** Prevention of sexual and gender-based harassment. Information and accessibility of procedures and measures.
- b)** Confidentiality and respect for the privacy and dignity of the persons concerned.
- c)** Respect for the principle of the presumption of innocence of the alleged harasser.
- d)** Prohibition of retaliation by the alleged victim or persons supporting the complaint or reporting allegations of sexual and/or gender-based harassment.
- e)** Diligence, speed, security, coordination and collaboration in the procedure.
- f)** Guarantee of victims' labour and social protection rights.
- g)** A thorough, confidential investigation of the facts, based on the principles of confidentiality and orality, shall be carried out after hearing the persons concerned and ensuring the impartiality of any proceedings.
- h)** Guarantee of action by adopting the necessary measures, including, where appropriate, disciplinary measures, against the person or persons whose harassing conduct has resulted in harassment.
- i)** Compensation to the harassed person and protection of his or her psychological and physical health.
- j)** Gender and human rights focus throughout the procedure.



# 9

## CONCEPT AND CONDUCT CONSTITUTING SEXUAL HARASSMENT AND HARASSMENT ON GROUNDS OF SEX

### 9.1. CONCEPT AND CONDUCT CONSTITUTING SEXUAL HARASSMENT

#### 9.1.a. Definition of sexual harassment

According to Article 7.1 of Organic Law 3/2007, of 22 March, for the effective equality of women and men, and without prejudice to the provisions of the Penal Code, for the purposes of a protocol, sexual harassment is any verbal or physical conduct of a sexual nature that has the purpose or effect of violating the dignity of a person, particularly when it creates an intimidating, degrading or offensive environment.

Any sexual harassment shall be deemed to be discriminatory.

The conditioning of a right or an expectation of a right on the acceptance of a situation constituting sexual harassment or harassment on grounds of sex shall also be deemed to constitute discrimination on grounds of sex.

By way of example, and without being exclusive or limiting, the conduct described below could constitute sexual harassment.

#### 9.1.b. Conduct constituting sexual harassment: Examples

##### Verbal conduct:

Examples of verbal conduct constituting sexual harassment include, but are not limited to, on a case-by-case basis, alleged sexual advances, propositions or pressure for sexual activity; offensive flirtations; suggestive remarks, innuendoes or obscene comments; unwanted phone calls or social media contacts; jokes or comments about sexual appearance.



#### **Non-verbal conduct:**

Display of sexually suggestive or pornographic pictures, objects or writings, lewd looks, gestures; letters or emails or messages on social networks of an offensive nature and with clear sexual content.

#### **Physical conduct:**

Deliberate and unsolicited physical contact, unwanted hugs or kisses, excessive and unnecessary physical contact.

### **9.1.c. “Quid pro quo” sexual harassment or sexual blackmail**

Among the behaviours conduct constituting sexual harassment, a distinction can be made between "quid pro quo" sexual harassment or sexual blackmail, which **consists of forcing the victim to choose between submitting to sexual demands, or losing or being harmed by certain benefits or working conditions, affecting access to professional training, continued employment, promotion, remuneration or any other decision in this area.** To the extent that it involves an abuse of authority, its active subject will be anyone who has the power, either directly or indirectly, to provide or withdraw a benefit or condition of employment.

### **9.1.d. Environmental sexual harassment**

In this type of sexual harassment, the **harasser creates an intimidating, hostile, degrading, humiliating or offensive environment for the victim as a result of unwanted attitudes and conduct of a sexual nature.** It can be carried out by any member of the company, regardless of position or status, or by third parties located in some way in the work environment.



## 9.2. CONCEPT AND CONDUCT CONSTITUTING GENDER-BASED HARASSMENT

### 9.2.a. Definition of gender-based harassment

According to Article 7.2 of Organic Law 3/2007, of 22 March, **any conduct carried out on the basis of a person's sex with the purpose or effect of violating their dignity and creating an intimidating, degrading or offensive environment constitutes harassment on grounds of sex.**

Harassment on grounds of sex shall be deemed to be discriminatory.

In order to appreciate that a situation that can be classified as harassment on grounds of sex actually exists in a specific situation, a series of elements that form a common denominator must be present, among which the following stand out:

- a) Harassment, understood as any intimidating, degrading, humiliating and offensive conduct that originates externally and is perceived as such by the person who suffers it.
- b) Objective attack on the victim's dignity and subjectively perceived by the victim as such.
- c) Plurioffensive outcome. The attack on the dignity of the person who suffers harassment on grounds of sex does not prevent the concurrence of damage to other fundamental rights of the victim, such as the right not to suffer discrimination, an attack on the victim's mental and physical health, etc.
- d) That this is not an isolated event.
- e) The reason for this conduct must have to do with the fact that they are women or because of circumstances that biologically can only affect them (pregnancy, maternity, natural childbirth); or that have to do with reproductive and care functions that, as a result of social discrimination, are presumed to be inherent to them. In this sense, harassment on grounds of sex can also be suffered by men when they carry out functions, tasks or activities related to the role that has historically been attributed to women, for example, a male worker who is harassed for caring for minors or children.

It should be made clear that certain hostile actions that may occur occasionally at work may not, in themselves, constitute harassment on grounds of sex if they occur in isolation and without repetition. However, if such hostile actions are detected, the company must act decisively to stop them and prevent their possible repetition over time.

For these purposes, the concept of enforceable harassment in bullying is used to describe a situation in which a person, or a group of persons, exercises a set of behaviours characterised by extreme, abusive and unfair psychological violence, in a systematic and recurrent manner, over a prolonged period of time, on another worker in the workplace, discriminating against him/her and producing progressive and continuous damage to his or her dignity, with the aim of destroying the victim's social networks or



reputation, undermine his or her self-esteem, disrupt his or her work, deliberately undermine the victim's working conditions, in many cases leading to the victim finally leaving his or her job.

When the intimidating, degrading or offensive environment in the above terms is targeted at a woman solely because she is a woman or because of situations which, for biological reason, can only be experienced by women, such as pregnancy, maternity or breastfeeding, it should be referred to as harassment on grounds of sex.

When the motive for this conduct has to do with the reproductive and/or caring tasks that women have traditionally been presumed to perform as a result of the social discrimination they have historically suffered, the harassment, because it is sexist and based on social discrimination, will also constitute harassment on grounds of sex, regardless of whether the person being harassed is a man or a woman.

However, conduct such as that described above, which constitutes harassment on grounds of sex, although they may be related and have some elements in common, should not be confused with situations of stress, burn out, pressure or conflict at work. The latter situations either occur internally as a result of pressure or working conditions (stress, burn out), or they may be "ordinary" disagreements, as clashes, arguments and possible conflicts may occur at work (pressure or conflict at work). Harassment on grounds of sex is something different. It consists of a malicious, systematic and sustained attack on a person for the reasons stated above.

In addition, it can be carried out by hierarchical superiors, as well as by male or female colleagues or hierarchical superiors, is caused by gender stereotypes and is usually aimed at belittling people of one sex simply because they belong to the same sex, undervaluing their abilities, technical competences and skills.

## 9.2.b. Conducts constituting gender-based harassment

By way of example, and without exclusion or limitation, the following are a series of specific conducts which, **fulfilling the requirements set out in the previous point**, could constitute harassment on grounds of sex at work if they were to occur repeatedly.

### **Attacks with organisational measures:**

- 1) Judging the person's performance in an offensive way, hiding their efforts and abilities.
- 2) Questioning and overruling the person's decisions.
- 3) Not assigning any tasks or assigning meaningless or degrading ones.
- 4) Denying or concealing the means to carry out the work or providing incorrect data.



- 5) Assigning work that is much higher or much lower than the person's skills or qualifications, or that requires much lower qualifications than those possessed.
- 6) Orders that are contradictory or impossible to comply with.
- 7) Theft of belongings, documents, work tools, deleting files from the computer, tampering with work tools causing damage, etc.
- 8) Threats or pressure on people who support the person being harassed.
- 9) Manipulation, concealment, return of correspondence, calls, messages, etc., from the person.
- 10) Denial or difficulties in accessing permits, courses, activities, etc.

**Actions intended to isolate the target:**

- 1) Changing the person's location by separating him/her from his/her peers (isolation).
- 2) Ignoring the presence of the person.
- 3) Not addressing the person.
- 4) Restricting colleagues from talking to the person.
- 5) Not allowing the person to express him/herself.
- 6) Avoiding all eye contact with the person.
- 7) Eliminating or restricting the means of communication available to the person (telephone, email, etc.).

**Activities that affect the physical or psychological health of the victim:**

- 1) Threats and physical aggression.
- 2) Verbal or written threats.
- 3) Shouting and/or insults.
- 4) Frightening phone calls.
- 5) Provoking the person, forcing them to react emotionally.
- 6) Intentionally incurring expenses to the detriment of the person.
- 7) Damaging the workplace or their belongings.
- 8) Requiring the person to perform work that is dangerous or harmful to his or her health.

**Attacks on privacy and personal or professional reputation:**

- 1) Manipulating personal or professional reputation through rumour, denigration and ridicule.
- 2) Implying that the person has psychological problems, trying to get the person to undergo a psychiatric examination or diagnosis.
- 3) Making fun of gestures, voice, physical appearance, disabilities, name-calling, etc.
- 4) Criticising nationality, political or religious attitudes and beliefs, private life, etc.



## 9.3. POSSIBLE MANIFESTATIONS OF SEXUAL AND/OR GENDER-BASED HARASSMENT

Depending on the job position and the relationship of the victim to the aggressor, bullying can manifest itself horizontally or vertically.

**Horizontal harassment** occurs when **the victim and the aggressor are on the same hierarchical** level in the company.

**Vertical** harassment occurs when **the victim and the aggressor are at different hierarchical** levels in the company. **It can be top-down or bottom-up.**

**- Vertical-Descending:**

When the aggressor holds a higher position than the victim.

**- Vertical-Ascending:**

When the aggressor holds a lower position than the victim. Such bullying is usually collective, and it is difficult for upward bullying to be individual, although it may exceptionally occur.



# 10 PUBLICITY OF THE ADOPTED PROTOCOL

In order to prevent and avoid the situations of violence and harassment described so far, **the company must communicate the adoption of the protocol to all persons providing services in the organisation, by email, and also publish it on the website, the intranet, the notice board, in writing or by any other means** that serves to publicise both its existence and knowledge of it.

In this way, the company makes public its commitment not to tolerate any action in its organisation that could constitute sexual harassment or harassment on grounds of sex, and therefore, in the event of any conduct that could be understood as such, all appropriate measures will be taken.

The company will act on any formal complaint or report of harassment by activating the protocol immediately. A worker who considers that he or she has been or is being harassed, or who becomes aware of a situation of harassment, may activate the internal procedure set out in this protocol in order to prevent and eradicate any sexual or gender-based harassment that may occur in the company.

The company undertakes to guarantee and maintain the utmost confidentiality of all actions that take place in accordance with this procedure.

The initiation of these proceedings does not affect the right of the persons involved to request administrative or any other type of action deemed appropriate. Nor to his or her right to effective judicial protection under the terms of Article 24 of the Spanish Constitution.

The company shall also act when hostile actions are detected or reported, even if they do not strictly constitute sexual harassment or gender-based harassment, in order to deal with them and prevent their possible repetition and reiteration over time.





# 11 AWARENESS-RAISING, INFORMATION AND TRAINING MEASURES TO PREVENT AND ERADICATE SEXUAL AND GENDER-BASED HARASSMENT

The elimination of sexual harassment and gender-based harassment requires a change in the patterns of unequal power relations between women and men in society in general and in the workplace in particular.

To this end, in accordance with the provisions of Article 48 of Organic Law 3/2007, of 22 March, measures may be established which must be negotiated with the workers' representatives, such as the drawing up and dissemination of codes of good practice, or the implementation of information campaigns or training actions.

The actions that can be taken in this regard can be aimed, on the one hand, at preventing situations of sexual harassment and gender-based harassment in the working environment and/or in the work organisation and, on the other hand, at informing about the procedure for dealing with harassment, as well as the guarantees for dealing with complaints or grievances.

The aim of these actions is to raise awareness among workers of the importance of maintaining a working environment that respects the freedom and dignity of people and to promote values of equality between women and men.

A company that promotes zero tolerance of sexual and/or gender-based harassment should:

- a)** Inform its organisation's staff of the procedures in place for making complaints or allegations of harassment
- b)** Report on conduct that is considered sexual harassment and gender-based harassment and the penalties it entails within its organisation
- c)** Carry out regular training actions, conferences, awareness-raising campaigns, etc. among the staff of its organisation that include at least:
  - 1.** Statement of principles, definition of sexual and gender-based harassment and identification of conduct that could constitute harassment.
  - 2.** Effects of sexual harassment and gender-based harassment on the harassed person, the organisation and society.
  - 3.** Identification of reactive and disciplinary measures against sexual and gender-based harassment in the company.
  - 4.** Procedure for dealing with any complaints or denunciations that may arise, as provided for in the company protocol.



Workers' representatives shall actively participate in the training courses that are organised, as well as in the promotion of these courses among the organisation's staff.

Training actions in this area shall be carried out at least once a year and shall be addressed to the staff and especially to the people who form part of the investigating and monitoring committee, the management, middle management and legal representation of male and female workers.

Some examples of good practice are:

- Include the protocol for the prevention and action against sexual harassment and gender-based harassment in the Welcome Manual provided to all new staff joining the organisation.
- Create a space on the corporate intranet for the promotion of equal opportunities between women and men with information on sexual harassment and gender-based harassment.
- Incorporate content relating to equality between women and men at work, in staff induction training and occupational risk prevention training
- Conduct training and awareness-raising campaigns with the joint participation of the organisation and legal and/or trade union representation.
- Provide professional advice and support from the company's legal department and/or legal and/or trade union representation of workers and/or available public services.
- Informing and facilitating victims' access to psychosocial support services and/or comprehensive support for their recovery.

# PART II: MODELS OF PROTOCOLS



The following are two models of protocols for the prevention and action to be taken against sexual harassment and/or harassment on grounds of sex in order to serve as a reference for companies

Each protocol model, considered individually, is an effective and directly applicable instrument for the company to manage sexual harassment and gender-based harassment within its organisation. Therefore, depending on the characteristics of each company or entity and, in particular, the size and the obligation to draw up an equality plan, the model that best suits their needs can be used.

Both protocol models provide for three types of measures:

1. **Preventive measures**, including a statement of principles, definition of sexual harassment and gender-based harassment and identification of conduct that could constitute these types of harassment.
2. **Proactive or procedural measures** to deal with harassment in order to channel the complaints or allegations that may arise and applicable precautionary and/or corrective measures.
3. **Identification of reactive measures** against bullying and, where appropriate, the disciplinary regime.

The differences between one model and the other lie, on the one hand, in whether or not the protocol is integrated in the equality plan for the purposes of its negotiation, entry into force, implementation, monitoring, review and evaluation and, on the other hand, whether or not the harassment complaint or denunciation is investigated by a committee or a person, fundamentally affecting the procedural phase.

Finally, it should be noted that, in accordance with the provisions of Article 48 of Organic Law 3/2007, of 22 March, measures to prevent sexual harassment and gender-based harassment at work in the company must be negotiated with the legal representatives of the workers.

Likewise, in accordance with the provisions of Articles 46.2 of the aforementioned law and 7 of Royal Decree 901/2020 of 13 October, the protocol against sexual harassment and gender-based harassment shall form part of the negotiation of the equality plan.

Therefore, the models presented here, although they may be directly applicable, must be adapted to the reality of each company in view of the negotiations conducted with the legal representation of the workers or trade union representation, as appropriate, and with what is agreed in the applicable collective bargaining agreement.



**PROTOCOL MODEL FOR  
THE PREVENTION AND  
ACTION AGAINST SEXUAL  
HARASSMENT AND  
GENDER-BASED HARASSMENT  
COMPANIES DRAWING UP  
AN EQUALITY PLAN  
(COMPULSORY OR  
VOLUNTARY)**

**Download editable model:**

**<https://www.igualdadenlaempresa.es/asesoramiento/acoso-sexual/docs/ModProtEmpConPdl.docx>**





# Protocol for the prevention and action against sexual harassment and gender- based harassment in the Company (COMPANY NAME)<sup>1</sup>

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1. This protocol, which will be negotiated by the negotiating committee of the equality plan, complies with the requirements of Articles 46.2 and 48 LOI and RD 901/2020

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# 1 COMMITMENT OF (NAME OF COMPANY) TO THE MANAGEMENT OF SEXUAL HARASSMENT AND/OR

With this protocol, (COMPANY NAME) declares its zero tolerance for the occurrence throughout its organisation of conduct constituting sexual harassment or gender-based harassment.

By adopting this protocol, (COMPANY NAME) wishes to underline its commitment to the prevention and action against sexual harassment and gender-based harassment in any of its manifestations, informing of its application to all personnel providing services in its organisation, whether they are its own personnel or from other companies, including persons who, not having an employment relationship, provide services or collaborate with the organisation, such as trainees, those on non-work placements or those doing voluntary work.

Furthermore, (COMPANY NAME) undertakes to make known the existence of this protocol, indicating the need for strict compliance with it, to the companies to which its own personnel are seconded, as well as to the companies from which the personnel working at (COMPANY NAME) originate. Thus, the obligation to comply with the provisions of this Protocol shall be stated in the contracts concluded with other undertakings.

If the alleged harasser is outside the management of the company and therefore (COMPANY NAME) is unable to apply the procedure in its entirety, it shall contact the competent company in order to take the appropriate measures and, if necessary, sanction the person responsible, warning them that, if they fail to do so, the business relationship between the two companies may be terminated.

The protocol shall apply to situations of sexual harassment or gender-based harassment that occur at work, in connection with work or as a result of work:

- a) in the workplace, including in public and private spaces when they are a workplace;
- b) in places where workers are paid, where they take their rest or meal breaks, or where they use sanitary or washing facilities and changing rooms;
- c) on work-related travel, trips, social or training events or activities;
- d) in the context of work-related communications, including communications by means of information and communication technologies (virtual harassment or cyber-bullying);
- e) in accommodation provided by the employer;
- f) on journeys between home and place of work.





This protocol complies with the requirements of Articles 46.2 and 48 of Organic Law 3/2007, of 22 March, for the effective equality of women and men, as well as the provisions of Articles 7 and 8 of Royal Decree 901/2020, of 13 October, which regulates equality plans and their registration and amends Royal Decree 713/2010, of 28 May, on the registration and deposit of collective bargaining agreements and collective labour agreements and Article 14 of Law 31/1995, of 8 November, on the prevention of occupational hazards.

Indeed, (COMPANY NAME) by committing itself to the measures that make up such as those contained in this PROTOCOL, the company manifests and publicises its express will to adopt a proactive attitude in the prevention of harassment - awareness-raising and information on conduct not tolerated by the company) dissemination of good practices and implementation of all measures necessary to manage the complaints that may arise in this respect, as well as to resolve them as appropriate in each case.

(City and date)

(SIGNATURE OF THE COMPANY REPRESENTATIVE)



# 2

## FEATURES AND PHASES OF THE PROTOCOL FOR THE PREVENTION AND ACTION AGAINST SEXUAL HARASSMENT AND GENDER-BASED HARASSMENT

In order to comply with the commitment with which this protocol begins and in the terms set out so far, the company (COMPANY NAME) implements a procedure for prevention and action against sexual harassment and gender-based harassment, which has been negotiated and agreed by the negotiating committee of the equality plan, with the intention of establishing a mechanism to show people how to act in a comprehensive and effective manner in the event of any conduct that may constitute sexual harassment or gender-based harassment. To this end, this protocol combines three types of measures set out in section 7 of the Annex to Royal Decree 901/2020, of 13 October:

1. Preventive measures, including a statement of principles, definition of sexual harassment and gender-based harassment and identification of conduct that could constitute these types of harassment.
2. Procedure for dealing with harassment in order to deal with any complaints or reports that may arise and applicable precautionary and/or corrective measures-.
3. Identification of reactive measures against bullying and, where appropriate, the disciplinary regime.

### 2.1. PREVENTIVE PROTECTION AGAINST HARASSMENT

#### 2.1.1. Declaration of principles: Zero tolerance for conduct constituting sexual harassment and gender-based harassment.

The company (COMPANY NAME) formalises the following statement of principles, in the sense of underlining how the relations between the company's staff should be and the conduct that is not tolerable in the organisation.

This harassment protocol applies to any conduct constituting sexual or gender-based harassment that may occur in (COMPANY NAME).

(COMPANY NAME), by implementing this procedure, assumes its commitment to prevent, not tolerate, combat and prosecute any manifestation of sexual harassment or gender-based harassment, race, religion or sexual orientation in its organisation.



Harassment is, by definition, a multi-harmful act that affects several legal interests, including the dignity of the worker as a positivisation of the right to life and to physical, mental and moral integrity. The harm to dignity, however, does not prevent such an act from also causing harm to other legal interests such as equality and the prohibition of discrimination, honour, self-image, privacy, health, etc., but even so, it will always by definition be contrary to dignity. Sexual harassment and gender-based harassment always affect the dignity of the person who suffers it and constitute discrimination on grounds of sex.

Within (COMPANY NAME), conduct that may constitute sexual harassment or gender-based harassment in any of its manifestations will not be permitted or tolerated. The company will penalise both those who engage in offensive conduct and those who promote, encourage and/or tolerate it. All company personnel have the obligation to respect the fundamental rights of all those who make up (COMPANY NAME), as well as those who provide services in the company. In particular, they shall refrain from conduct that is contrary to dignity, privacy and the principle of equality and non-discrimination, always promoting respectful conduct.

Notwithstanding the above, if they believe that they are being harassed or become aware of a situation of sexual harassment or gender-based harassment, any employee may, by means of a complaint or report, activate this protocol as an internal, confidential and rapid procedure to eradicate this and remedy its effects.

Once the corresponding informative file has been opened, if the concurrence of sexual harassment or gender-based harassment is confirmed, (COMPANY NAME) will sanction whoever is responsible, undertaking to use all its management and sanctioning powers to guarantee a working environment free of violence, sexist and discriminatory conduct based on sex and appropriate to the principles of health and safety at work.

## 2.1.2 Concept and conduct constituting sexual harassment and gender-based harassment.

### 2.1.2.1.- Definition and conduct constituting sexual harassment

#### Definition of sexual harassment

According to Article 7.1 of Organic Law 3/2007, of 22 March, for the effective equality of women and men, and without prejudice to the provisions of the Penal Code, for the purposes of a protocol, sexual harassment is any verbal or physical conduct of a sexual nature that has the purpose or effect of violating the dignity of a person, particularly when it creates an intimidating, degrading or offensive environment.



Any sexual harassment shall be deemed to be discriminatory.

The conditioning of a right or an expectation of a right on the acceptance of a situation constituting sexual harassment shall also be deemed to constitute discrimination on grounds of sex.

By way of example, and without being exclusive or limiting, the conduct described below could constitute sexual harassment:

**Verbal conduct:**

- Allegations of sexual advances, propositions or pressure for sexual activity.
- Offensive flirtations.
- Insinuating comments, hints or obscene remarks.
- Unwanted phone calls or social media contacts.
- Jokes or comments about sexual appearance.

**Non-verbal conduct:**

- Display of sexually suggestive or pornographic pictures, objects or writings, lewd looks, gestures.
- Letters or emails or social media messages of an offensive nature and with a clear sexual content.

**Physical conduct:**

Deliberate and unsolicited physical contact, unwanted hugs or kisses, excessive and unnecessary physical contact.

**“Quid pro quo” sexual harassment or sexual blackmail.**

In the conduct constituting sexual harassment, a distinction can be made between "quid pro quo" sexual harassment or sexual blackmail, which consists of forcing the victim to choose between submitting to sexual demands, or losing or being harmed by certain benefits or working conditions, affecting access to professional training, continued employment, promotion, remuneration or any other decision in this area. To the extent that it involves an abuse of authority, its active subject will be anyone who has the power, either directly or indirectly, to provide or withdraw a benefit or condition of employment.

**Environmental sexual harassment.**

In this type of sexual harassment, the harasser creates an intimidating, hostile, degrading, humiliating or offensive environment for the victim as a result of unwanted attitudes and conduct of a sexual nature. They can be carried out by any member of the company, regardless of position or status, or by third parties located in some way in the work environment.



## 2.1.2.2. Concept and conduct constituting gender-based harassment

### Definition of gender-based harassment

Gender-based harassment is any conduct carried out on grounds of sex with the purpose or effect of violating the dignity of a person and of creating an intimidating, degrading or offensive environment.

Gender-based harassment shall be deemed to be discriminatory.

In order to appreciate that a situation that can be classified as gender-based harassment actually exists in a specific situation, a series of elements that form a common denominator must be present, among which the following stand out:

- a) Harassment, understood as any intimidating, degrading, humiliating and offensive conduct that originates externally and is perceived as such by the person who suffers it.
- b) Objective attack on the victim's dignity and subjectively perceived by the victim as such.
- c) Plurioffensive outcome. The attack on the dignity of the person who suffers gender-based harassment does not prevent the concurrence of damage to other fundamental rights of the victim, such as the right not to suffer discrimination, an attack on the victim's mental and physical health, etc.
- d) That this is not an isolated event.
- e) The reason for this conduct must have to do with the fact that they are women or because of circumstances that biologically can only affect them (pregnancy, maternity, natural childbirth); or that have to do with reproductive and care functions that as a result of social discrimination are presumed to be inherent to them. In this sense, gender-based harassment can also be suffered by men when they carry out functions, tasks or activities related to the role that has historically been attributed to women, for example, a male worker who is harassed for caring for minors or children.

The conditioning of a right or an expectation of a right on the acceptance of a situation constituting sexual harassment or gender-based harassment shall also be deemed to constitute discrimination on grounds of sex.

### Conducts constituting gender-based harassment:

By way of example, and without exclusion or limitation, the following are examples of specific conduct which, **fulfilling the requirements set out in the previous point**, could constitute gender-based harassment at work if they were to occur repeatedly.



### **Attacks with organisational measures**

1. Judging the person's performance in an offensive way, hiding their efforts and abilities.
2. Questioning and overruling the person's decisions.
3. Not assigning any tasks or assigning meaningless or degrading ones.
4. Denying or concealing the means to carry out the work or providing incorrect data.
5. Assigning work that is much higher or much lower than the person's skills or qualifications, or that requires much lower qualifications than those possessed.
6. Contradictory or impossible to comply with orders.
7. Theft of belongings, documents, work tools, deletion of files from the computer, tampering with work tools causing injury, etc.
8. Threats or pressure on people who support the being harassed.
9. Manipulation, concealment, return of correspondence, calls, messages, etc., from the person.
10. Denial or difficulties in accessing permits, courses, activities, etc.

### **Actions intended to isolate the target.**

1. Changing the person's location by separating him/her from his/her peers (isolation).
2. Ignoring the presence of the person.
3. Not addressing the person.
4. Restricting colleagues from talking to the person.
5. Not allowing the person to express him/herself.
6. Avoiding all eye contact.
7. Eliminating or restricting the means of communication available to the person (telephone, email, etc.).

### **Activities that affect the physical or psychological health of the victim.**

1. Threats and physical aggression.
2. Verbal or written threats.
3. Shouting and/or insults.
4. Frightening phone calls.
5. Provoking the person, forcing them to react emotionally.
6. Intentionally incurring expenses to the detriment of the person.
7. Damaging the workplace or their belongings.
8. Requiring the person to perform work that is dangerous or harmful to his or her health.

### **Attacks on privacy and personal or professional reputation.**

1. Manipulating personal or professional reputation through rumour, denigration and ridicule.
2. Implying that the person has psychological problems, trying to get the person to undergo a psychiatric examination or diagnosis.
3. Making fun of gestures, voice, physical appearance, disabilities, name-calling, etc.
4. Criticising nationality, political or religious attitudes and beliefs, private life, etc.



## 2.2. ACTION PROCEDURE

Schematically, the maximum phases and deadlines for carrying out the action procedure are as follows:





## 2.2.1. Determination of the investigating committee for harassment cases.

An investigating and monitoring committee for cases of sexual harassment and gender-based harassment has been set up, consisting of three persons<sup>2</sup> :

[Name, surname and position]

[Name, surname and position]

[Name, surname and position]

In the event of absence due to holidays, illness or any other legal reason, he/she may act as a substitute for any of the incumbent members:

[Name, surname and position]

In order to ensure the utmost confidentiality of this procedure, the persons who are members of this committee shall be permanent.

The committee shall have a four-year term of office. The aforementioned persons who make up this investigating committee shall comply exhaustively with impartiality with respect to the parties concerned, so that in the event of any kind of kinship by blood or affinity with any or some of the persons affected by the investigation, intimate friendship, manifest enmity with the persons affected by the procedure or direct or indirect interest in the specific process, they shall abstain from acting. If, despite the existence of these grounds, abstention does not occur, any of the persons concerned by the proceedings may request the disqualification of such person or persons from the committee.

In addition, this committee, either by its own agreement or at the request of any of the persons concerned, may request the hiring of an external expert who may accompany them in the investigation of the procedure.

This committee shall meet no later than 3 working days from the date of receipt of a complaint, allegation or knowledge of inappropriate conduct, in accordance with the procedure set out in this protocol for its presentation.

The Committee shall immediately and thoroughly investigate any complaint, or report of conduct that could be considered sexual or gender-based harassment. Complaints, allegations and investigations will be treated in strict confidence, consistent with the need to investigate and take corrective action, bearing in mind that it may directly affect the privacy and honour of individuals.

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2. In order to preserve confidentiality, it is recommended that the investigating committee be made up of 3 people, with a maximum of 5 if necessary, and that its members include the company manager or human resources manager, workers' representative(s), an equality technician from the company and/or an occupational risk prevention technician. For their appointment, preference should be given to their training and/or experience in the field of equality between women and men and specifically in sexual and gender-based harassment, and it is also recommended that these persons are known to all staff of the company and/or the organisation. In companies where there is legal representation of the workers, the representatives of the company and of the workers shall participate on a parity basis in the investigating committee.





## 2.2.2. The initiation of the procedure: The complaint or denunciation

At (COMPANY NAME) [SPECIFY NAME AND SURNAME, POSITION] is the person in charge of the Committee shall be responsible for managing and processing any complaint or report<sup>3</sup> that, in accordance with this protocol, may be filed by persons providing services in this organisation.

Employees of (COMPANY NAME) should be aware that, except in cases of malice or bad faith, they will not be penalised for activating the protocol. If they do so, any claim will be presumed to be true and will be handled by the person referred to above.

Complaints shall be secret, but may not be anonymous, and (COMPANY NAME) will ensure the confidentiality of the parties concerned.

In order to guarantee the confidentiality of any complaint, denunciation or communication of a harassment situation, (COMPANY NAME) provides an email account (INDICATE) to which only the person in charge of processing the complaint and the members of the investigating committee will have access, and whose purpose is solely and exclusively the presentation of this type of denunciation or complaint. This is without prejudice to the possibility of also accepting complaints or denunciations that may be submitted secretly, but not anonymously, in writing and in a sealed envelope addressed to the person in charge of handling the complaint. In order to protect the confidentiality of the procedure, the person in charge of handling the complaint will give a code number to each of the parties concerned.

Upon receipt of a complaint in either of the two aforementioned ways, the person in charge of handling the complaint shall immediately bring it to the attention of the company management and the other members of the investigating committee.

The model contained in this protocol is made available to the company's employees for the formalisation of the report or complaint. The presentation by the victim of the situation of sexual or gender-based harassment, or by any worker who has knowledge of the same, of the corresponding form by email at the address provided for this purpose or by internal registry denouncing a situation of harassment, shall be necessary for the initiation of the procedure in the terms set out in the following section.

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3. This person shall be a member of the protocol's investigating committee.



## 2.2.3. The preliminary phase or informal procedure

This phase is optional for the parties and depends on the will of the victim. The aim of this preliminary phase is to resolve the harassment situation in an urgent and effective way in order to stop these situations and to reach a solution accepted by the parties.

Once the complaint or denunciation has been received, the investigating committee will interview the person affected, and may also interview the alleged aggressor or both parties, request the intervention of expert personnel, etc.

This informal procedure or preliminary phase shall have a maximum duration of seven working days from the receipt of the complaint or denunciation by the investigating committee. At that time, the investigating committee shall conclude this preliminary phase, assessing the consistency of the complaint, indicating whether or not the purpose of the procedure has been achieved and, where appropriate, proposing the actions it deems appropriate, including the opening of the informative file. The entire procedure shall be urgent and confidential, protecting the dignity and privacy of the persons concerned. The file shall be confidential and shall be accessible only to that committee.

Notwithstanding the above, the investigating committee, given the complexity of the case, may skip this preliminary phase and proceed directly to the processing of the information file, notifying the parties of this. Likewise, if the person being harassed is not satisfied with the solution proposed by the investigating committee, an informative file will be opened.

In the event of not proceeding to the informative file, the solution adopted at this preliminary stage will be recorded and the management of the company will be informed.

Likewise, the legal representation of workers, the person responsible for occupational risk prevention and the monitoring committee of the equality plan shall be informed, and they shall keep the information to which they have access confidential. In any case, in order to ensure confidentiality, no personal data will be given and the numerical codes assigned to each of the parties involved in the file will be used.

## 2.2.4. The information dossier

If the preliminary phase is not activated or if the procedure cannot be resolved even though it has been activated, the informative file will be opened.

The investigating committee shall conduct an investigation<sup>4</sup>, in which it shall decide whether or not the harassment complained of has occurred, after hearing the persons concerned and any witnesses proposed, hold meetings or request any necessary documentation, without prejudice to the provisions on the protection of personal data and confidential documents.

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4. The investigation shall be prompt, confidential and based on the principles of contradiction and orality. Any complaint, allegation or claim raised shall be presumed to be true.



Persons so requested shall cooperate as diligently as possible.

During the processing of the case, at the proposal of the investigating committee, the management of (COMPANY NAME) shall adopt the necessary precautionary measures leading to the immediate cessation of the situation of harassment, without such measures entailing permanent and definitive damage to the working conditions of the persons involved. Apart from other precautionary measures, the management of (COMPANY NAME) shall separate the alleged harasser from the victim.

In the course of the procedure, the victim shall be heard first and then the person against whom the complaint has been lodged. Both parties involved may be assisted and accompanied by a person of their trust, whether or not he/she is a legal and/or trade union representative of the workers, who shall maintain confidentiality regarding the information to which he/she has access.

The investigating committee may, if it deems it appropriate, seek external advice on harassment and equality and non-discrimination during the investigation of the proceedings. This external expert is obliged to guarantee the utmost confidentiality with regard to everything that he/she may have knowledge of or access to as a member of the conflict resolution committee in question, and shall be subject to the same causes of abstention and disqualification as the members of the investigating committee.

At the end of the investigation, the committee shall draw up a report stating the facts, the testimonies, the evidence given and/or collected, concluding whether or not, in its opinion, there are indications of sexual harassment or gender-based harassment.

If from the evidence gathered it can be deduced that there are indications of harassment, in the conclusions of the report, the investigating committee will urge the company to adopt the appropriate sanctioning measures, including, in the case of very serious harassment, proposing the disciplinary dismissal of the aggressor.

If the test carried out does not reveal evidence of harassment, the committee shall state in the minutes that such test expressly carried out does not reveal the existence of sexual harassment or gender-based harassment.

If, even if there is no harassment, an inappropriate action or a situation of violence susceptible of being sanctioned is found, the harassment investigating committee shall also urge the management of (COMPANY NAME) to take the measures deemed appropriate in this respect.

Within the harassment investigation committee, decisions shall be taken by consensus whenever possible and, failing that, by majority vote.



The procedure shall be swift and efficient, and the privacy, confidentiality and dignity of the persons concerned shall be protected in all cases. Throughout the entire procedure, strict confidentiality shall be maintained and all internal investigations shall be carried out tactfully and with due respect, both for the complainant and/or the victim, who shall in no case be treated unfavourably for this reason, and for the accused, whose proof of guilt requires the concurrence of evidence in the terms provided for in the labour regulations in the case of violation of fundamental rights.

All persons involved in the process are under an obligation to act in strict confidence and to maintain confidentiality and professional secrecy with regard to all information to which they have access.

This formal development phase should take no more than ten working days. If there are reasons which, due to their complexity, require a longer period, the investigating committee may agree to extend this period, but in no case for more than three additional working days.

## 2.2.5. The resolution of the harassment case

The management of (COMPANY NAME), once it has received the conclusions of the instructional committee, will take the decisions it deems appropriate within 3 working days, being the only one empowered to decide on the matter. The decision taken shall be communicated in writing to the victim, the person complained of and the investigating committee, who shall keep confidential the information to which they have access.

Likewise, the decision finally adopted in the case will also be communicated to the equality plan monitoring committee and to the person responsible for occupational risk prevention. In these communications, in order to ensure confidentiality, no personal data will be given and the numerical codes assigned to each of the parties involved in the file will be used.

Based on these previous results, the management of (COMPANY NAME) will proceed to:

- a)** file the proceedings in the archives and draw up a report on the matter,
- b)** adopt any measures it deems appropriate on the basis of the suggestions made by the committee investigating the harassment procedure. By way of example, the following are some of the decisions that the company can take in this regard:
  - a.** physically separating the alleged aggressor from the victim, by changing position and/or shift or schedule. In no case shall the victim of harassment be forced to change position, working hours or location within the company.
  - b.** without prejudice to the provisions of the previous point, if appropriate, and depending on the results of the investigation, the aggressor shall be sanctioned by applying the table of offences and penalties provided for in the collective agreement applicable to the company or, where appropriate, in Article 54 of the WS (Employment Relationship Act).



Among the sanctions to be considered for application to the aggressor, the following will be taken into account:

1. transfer, displacement, change of post, working day or location
2. suspension from employment and pay
3. the time limitation for promotion
4. disciplinary dismissal

In the event that the offender's sanction is not termination of employment, the management of (COMPANY NAME) shall maintain active monitoring of the offender upon reinstatement (in the case of suspension), or in his/her new position in the case of a change of location. But always and in any case, compliance with the eradication of harassment will not end with the mere adoption of the measure of change of post or with the mere suspension, being necessary its subsequent monitoring and control by the company.

The management of (COMPANY NAME) shall take the necessary preventive measures to avoid a recurrence of the situation, reinforce training and awareness-raising actions and carry out actions to protect the health and safety of the victim, including, but not limited to, the following:

- Assessment of psychosocial risks in the company.
- Adoption of surveillance measures to protect the victim.
- Adoption of measures to avoid recidivism of sanctioned persons.
- Psychological and social support for the person being harassed.
- Modification of working conditions that, with the consent of the person who has been harassed, are deemed beneficial to their recovery.
- Training or retraining for the professional updating of the harassed person when he/she has been on IT for a prolonged period of time.
- Carrying out new training and awareness-raising actions for the prevention, detection and action in the face of sexual harassment and/or gender-based harassment, aimed at all persons providing their services in the company.

## 2.2.6. Monitoring

Once the file has been closed, and within a period of no more than thirty calendar days, the investigating committee shall be obliged to follow up on the agreements adopted, i.e. on their compliance and/or the result of the measures adopted. The result of this monitoring will be recorded in a report that will include the measures to be adopted in the event that the events causing the procedure continue to occur and will also analyse whether the proposed preventive and sanctioning measures have been implemented. The minutes shall be sent to the company's management, to the legal and/or trade union representatives of the employees, to the person responsible for occupational risk prevention and to the equality plan monitoring committee, with the safeguards indicated in the procedure regarding the confidentiality of the personal data of the parties concerned.



# 3

## DURATION, ENFORCEABILITY AND ENTRY INTO FORCE

The contents of this protocol must be complied with, entering into force on the date stipulated in the (COMPANY NAME) equality plan, on (INDICATE DATE) or, failing that, from the date it is communicated to the company's staff, through (INDICATE)<sup>5</sup>, remaining in force for (INDICATE).

Likewise, the protocol will be reviewed in the cases and within the deadlines determined in the equality plan in which it is integrated.

**The present procedure does not preclude the victim's right to complain, at any time, to the Labour and Social Security Inspection Authorities, as well as to the civil, labour or criminal courts.**

---

5. This may be by email, publication on the company's intranet, publication on the notice board or in writing or any other means serving this purpose.



# 4

## COMPANY COMPLAINT FORM (COMPANY NAME)

### 1. Person reporting the facts

☐ Person who has been harassed

☐ Other (Specify) \_\_\_\_\_

### 2. Details of the person who has been harassed

Name: \_\_\_\_\_

Appellation: \_\_\_\_\_

IDNI: \_\_\_\_\_

Position: \_\_\_\_\_

Contract type/Employment Relationship: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Additional identification purposes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### 3. Details of the aggressor

Name and surname: \_\_\_\_\_

Professional group/category or position: \_\_\_\_\_

Workplace: \_\_\_\_\_

Company name: \_\_\_\_\_



#### 4. Description of events

Include an account of the events reported, attaching as many numbered sheets as necessary, including dates on which the events took place whenever possible.

#### 5. Witnesses and/or evidence

If there are witnesses, please indicate name and surname:

Attach any means of proof you consider appropriate (please indicate which):

#### 6. Application

The complaint or report of harassment be deemed to have been filed (INDICATE WHETHER SEXUAL OR GENDER-BASED) against (IDENTIFY AGGRESSOR) and it will initiate the procedure provided for in the protocol

Location and date

Signature of the person

For the attention of the Committee for the investigation of complaints about sexual harassment and/or gender-based harassment in the company (ENTER COMPANY NAME)





**PROTOCOL MODEL FOR  
THE PREVENTION AND  
ACTION AGAINST SEXUAL  
HARASSMENT AND  
GENDER-BASED HARASSMENT  
FOR  
SMALLER COMPANIES  
WITHOUT AN EQUALITY PLAN**

**Download editable template:**

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# Protocol for the prevention and action against sexual harassment and gender- based harassment in the Company (COMPANY NAME)

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# 1

## COMMITMENT OF (COMPANY NAME) TO THE MANAGEMENT OF SEXUAL HARASSMENT AND/OR GENDER-BASED HARASSMENT

With this protocol, (COMPANY NAME) declares its zero tolerance for the occurrence throughout its organisation of conduct constituting sexual harassment or gender-based harassment.

By adopting this protocol, (COMPANY NAME) wishes to underline its commitment to the prevention and action against sexual harassment and gender-based harassment in any of its manifestations, informing of its application to all personnel providing services in its organisation, whether they are its own personnel or from other companies, including persons who, not having an employment relationship, provide services or collaborate with the organisation, such as trainees, those on non-work placements or those doing voluntary work.

Furthermore, (COMPANY NAME) undertakes to make known the existence of this protocol, indicating the need for strict compliance with it, to the companies to which its own personnel are seconded, as well as to the companies from which the personnel working at (COMPANY NAME). Thus, the obligation to comply with the provisions of this Protocol shall be stated in the contracts concluded with other undertakings.

If the alleged harasser is outside the management of the company and therefore (NAME OF COMPANY) is unable to apply the procedure in its entirety, it shall contact the competent company in order to solve the problem and, if necessary, sanction the person responsible, warning them that, if they fail to do so, the business relationship between the two companies may be terminated.

The protocol shall apply to situations of sexual harassment or gender-based harassment that occur at work, in connection with work or as a result of work:

- a) in the workplace, including in public and private spaces when they are a workplace;
- b) in places where workers are paid, where they take their rest or meal breaks, or where they use sanitary or washing facilities and changing rooms;
- c) on work-related travel, trips, social or training events or activities;



- d)** in the context of work-related communications, including communications by means of information and communication technologies (virtual harassment or cyber-bullying);
- e)** in accommodation provided by the employer;
- f)** on journeys between home and place of work.

This protocol complies with the requirements of Articles 46.2 and 48 of Organic Law 3/2007, of 22 March, for the effective equality of women and men, as well as the provisions of Articles 7 and 8 of Royal Decree 901/2020, of 13 October, which regulates equality plans and their registration and amends Royal Decree 713/2010, of 28 May, on the registration and deposit of collective bargaining agreements and collective labour agreements and Article 14 of Law 31/1995, of 8 November, on the prevention of occupational hazards.

Indeed, (COMPANY NAME) by committing itself to the measures that make up such as those contained in this PROTOCOL, the company manifests and publicises its express will to adopt a proactive attitude in the prevention of harassment - awareness-raising and information on conduct not tolerated by the company) dissemination of good practices and implementation of all measures necessary to manage the complaints that may arise in this respect, as well as to resolve them as appropriate in each case.

(City and date)

(SIGNATURE OF THE COMPANY REPRESENTATIVE)



# 2

## FEATURES AND PHASES OF THE PROTOCOL FOR THE PREVENTION AND ACTION AGAINST SEXUAL HARASSMENT AND/OR GENDER-BASED HARASSMENT

In order to comply with the commitment with which this protocol begins and in the terms set out so far, the company (COMPANY NAME) implements a procedure for the prevention and action against sexual harassment and gender-based harassment, which has been negotiated and agreed with the Legal Representation of Workers (include where appropriate), with the intention of establishing a mechanism that shows people how to act in a comprehensive and effective manner in the event of any conduct that may constitute sexual harassment or gender-based harassment. To this end, this protocol combines three types of measures set out in section 7 of the Annex to Royal Decree 901/2020, of 13 October:

1. Preventive measures, including a statement of principles, definition of sexual harassment and gender-based harassment and identification of conduct that could constitute harassment.
2. Procedure for dealing with harassment in order to deal with any complaints or reports that may arise and applicable precautionary and/or corrective measures-
3. Identification of reactive measures against bullying and, where appropriate, the disciplinary regime.

### 2.1. PREVENTIVE PROTECTION AGAINST HARASSMENT

#### 2.1.1. Declaration of principles: Zero tolerance for conduct constituting sexual and gender-based harassment.

The company (COMPANY NAME) formalises the following statement of principles, in the sense of underlining how the relations between the company's staff should be and the conduct that is not tolerable in the organisation.

This protocol applies to any conduct constituting sexual or gender-based harassment that may occur in (COMPANY NAME).

(COMPANY NAME), by implementing this procedure, assumes its commitment to prevent, not tolerate, combat and prosecute any manifestation of sexual harassment or gender-based harassment, race, religion or sexual orientation in its organisation.

Harassment is, by definition, a plurioffensive act that affects several legal interests including



the dignity of the worker as a positivisation of the right to life and to physical, mental and moral integrity. The harm to dignity, however, does not prevent such an act from also causing harm to other legal interests such as equality and the prohibition of discrimination, honour, self-image, privacy, health, etc., but even so, it will always by definition be contrary to dignity. Sexual harassment and gender-based harassment always affect the dignity of the person who suffers it and constitute discrimination on grounds of sex.

Within (COMPANY NAME), conduct that may constitute sexual harassment or gender-based harassment in any of its manifestations will not be permitted or tolerated. The company will penalise both those who engage in offensive conduct and those who promote, encourage and/or tolerate it. All company personnel have the obligation to respect the fundamental rights of all those who make up (COMPANY NAME), as well as those who provide services in the company; in particular, they will refrain from conduct that is contrary to dignity, privacy and the principle of equality and non-discrimination, always promoting respectful conduct.

Notwithstanding the above, if they believe that they are being harassed or become aware of a situation of sexual harassment or gender-based harassment, any employee may, by means of a complaint or report, activate this protocol as an internal, confidential and rapid procedure to eradicate it and remedy its effects.

Once the corresponding informative file has been opened, if the concurrence of sexual harassment or gender-based harassment is confirmed, (COMPANY NAME) will sanction whoever is responsible, undertaking to use all its management and sanctioning powers to guarantee a working environment free of violence, sexist and discriminatory conduct based on sex and appropriate to the principles of health and safety at work.

## 2.1.2 Concept and conduct constituting sexual harassment and gender-based harassment.

### 2.1.2.1. Concept and conduct constituting sexual harassment

#### Definition of sexual harassment

According to Article 7.1 of Organic Law 3/2007, of 22 March, for the effective equality of women and men, and without prejudice to the provisions of the Penal Code, for the purposes of a protocol, sexual harassment is any verbal or physical conduct of a sexual nature that has the purpose or effect of violating the dignity of a person, particularly when it creates an intimidating, degrading or offensive environment.

Any sexual harassment shall be deemed to be discriminatory.

The conditioning of a right or an expectation of a right on the acceptance of a situation constituting sexual harassment shall also be deemed to constitute discrimination on grounds of sex.



By way of example, and without exclusion or limitation, the conduct described below could constitute sexual harassment:

**Verbal conduct:**

- Allegations of sexual advances, propositions or pressure for sexual activity.
- Offensive flirtations.
- Insinuating comments, hints or obscene remarks.
- Unwanted phone calls or social media contacts.
- Jokes or comments about sexual appearance.

**Non-verbal conduct**

- Display of sexually suggestive or pornographic pictures, objects or writings, lewd looks, gestures.
- Letters or emails or social media messages of an offensive nature and with a clear sexual content.

**Physical conduct**

- Deliberate and unsolicited physical contact, unwanted hugs or kisses, excessive and unnecessary physical contact.

**“Quid pro quo” sexual harassment or sexual blackmail**

In the conduct constituting sexual harassment, a distinction can be made between "quid pro quo" sexual harassment or sexual blackmail, which consists of forcing the victim to choose between submitting to sexual demands, or losing or being harmed by certain benefits or working conditions, affecting access to professional training, continued employment, promotion, remuneration or any other decision in this area. To the extent that it involves an abuse of authority, its active subject will be anyone who has the power, either directly or indirectly, to provide or withdraw a benefit or condition of employment.

**Environmental sexual harassment**

In this type of sexual harassment, the harasser creates an intimidating, hostile, degrading, humiliating or offensive environment for the victim as a result of unwanted attitudes and conduct of a sexual nature. They can be carried out by any person of the company, regardless of position or status, or by third parties located in some way in the work environment.





## 2.1.2.2. Concept and conduct constituting gender-based harassment

### Definition of gender-based harassment

Gender-based harassment is any conduct carried out on the basis of sex with the purpose or effect of violating the dignity of a person and of creating an intimidating, degrading or offensive environment.

Gender-based harassment shall be deemed to be discriminatory.

In order to appreciate that a situation that can be classified as gender-based harassment actually exists in a specific situation, a series of elements that form a common denominator must be present, among which the following stand out:

- a) Harassment, understood as any intimidating, degrading, humiliating and offensive conduct that originates externally and is perceived as such by the person who suffers it.
- b) Objective attack on the victim's dignity and subjectively perceived by the victim as such.
- c) Plurioffensive outcome. The attack on the dignity of the person who suffers gender-based harassment does not prevent the concurrence of damage to other fundamental rights of the victim, such as the right not to suffer discrimination, an attack on the victim's mental and physical health, etc.
- d) That this is not an isolated event.
- e) The reason for this conduct must have to do with the fact that they are women or because of circumstances that biologically can only affect them (pregnancy, maternity, natural childbirth); or that have to do with reproductive and care functions that as a result of social discrimination are presumed to be inherent to them. In this sense, gender-based harassment can also be suffered by men when they carry out functions, tasks or activities related to the role that has historically been attributed to women, for example, a male worker who is harassed for caring for minors or children.

The conditioning of a right or an expectation of a right on the acceptance of a situation constituting sexual harassment or gender-based harassment shall also be deemed to constitute discrimination on grounds of sex.

### Conduct constituting gender-based harassment

By way of example, and without excluding or limiting, the following are examples of specific conduct which, **fulfilling the requirements set out in the previous point**, could constitute gender-based harassment at work if they were to occur repeatedly.

### Attacks with organisational measures

1. Judging the person's performance in an offensive way, hiding their efforts and abilities.
2. Questioning and overruling the person's decisions.
3. Not assigning any tasks or assigning meaningless or degrading ones.
4. Denying or concealing the means to carry out the work or providing incorrect data.
5. Assigning work that is much higher or much lower than the person's skills or qualifications, or that requires much lower qualifications than those possessed.



6. Questioning and overruling the person's decisions.
7. Not assigning any tasks or assigning meaningless or degrading ones.
8. Denying or concealing the means to carry out the work or providing incorrect data.
9. Assigning work that is much higher or much lower than the person's skills or qualifications, or that requires much lower qualifications than those possessed.
10. Orders that are contradictory or impossible to comply with.
11. Theft of belongings, documents, work tools, deleting files from the computer, tampering with work tools causing damage, etc.
12. Threats or pressure on people who support the being harassed.
13. Manipulation, concealment, return of correspondence, calls, messages, etc., from the person.
14. Denial or difficulties in accessing permits, courses, activities, etc.

#### **Actions intended to isolate the target**

1. Changing the person's location by separating him/her from his/her peers (isolation).
2. Ignoring the presence of the person.
3. Not addressing the person.
4. Restricting colleagues from talking to the person.
5. Not allowing the person to express him/herself.
6. Avoiding all eye contact.
7. Eliminating or restricting the means of communication available to the person (telephone, email, etc.).

#### **Activities that affect the physical or psychological health of the victim**

1. Threats and physical aggression.
2. Verbal or written threats.
3. Shouting and/or insults.
4. Frightening phone calls.
5. Provoking the person, forcing them to react emotionally.
6. Intentionally incurring expenses to the detriment of the person.
7. Damaging the workplace or their belongings.
8. Requiring the person to perform work that is dangerous or harmful to his or her health.

#### **Attacks on privacy and personal or professional reputation**

1. Manipulating personal or professional reputation through rumour, denigration and ridicule.
2. Implying that the person has psychological problems, trying to get the person to undergo a psychiatric examination or diagnosis.
3. Making fun of gestures, voice, physical appearance, disabilities, name-calling, etc.
4. Criticising nationality, political or religious attitudes and beliefs, private life, etc.



## 2.2. ACTION PROCEDURE

Schematically, the maximum phases and deadlines for carrying out the action procedure are as follows:



The procedure below should be followed:



## 2.2.1 Presentation of the complaint, activation of the protocol and processing of the administrative file.

- 1) The company appoints (INDICATE NAME, SURNAME AND POSITION) as the person responsible for handling, investigating and following up on any complaint or report received regarding sexual and/or gender-based harassment at work. In the event of absence due to holidays, illness or any other legal reason, (INDICATE NAME, SURNAME AND POSITION) may act as a substitute for any of the incumbent members: All persons serving in the organisation shall be informed of this designation for this purpose and it shall be clearly and concisely stated how such complaints or allegations may be brought to their attention.
- 2) Complaints may not be anonymous and may be filed by the person who feels harassed or whoever has knowledge of the situation.
- 3) The email address to which complaints or reports of harassment, sexual and/or gender-based harassment can be submitted is (INDICATE EMAIL ADDRESS). Only the person designated to process the protocol shall have access to the emails sent for this purpose.
- 4) Complaints may also be submitted on paper and in a sealed envelope. For this purpose, the mailbox where such reports or complaints can be deposited will be located at (INDICATE).
- 5) Confidentiality must be guaranteed regardless of the way in which the complaints are handled. Upon receipt of a complaint, the person in charge of handling the complaint will give a code number to each of the parties concerned.
- 6) Once it has been received, within a maximum period of 2 working days, the procedure for its processing will be activated. Any complaint, allegation or claim raised shall be presumed to be true.
- 7) The person investigating the complaint or report of harassment (INDICATE NAME, SURNAME AND POSITION) will carry out a rapid and confidential investigation within 10 working days, in which he/she will hear the affected persons and witnesses and will request any necessary documentation, without prejudice to the provisions on the protection of personal data and confidential documentation. Persons so requested shall cooperate as diligently as possible.

In any case, the impartiality of their actions shall be guaranteed, so that if they are related by blood or affinity to one or more of the persons affected by the investigation, have a close friendship or manifest enmity towards the persons affected by the proceedings, or have a direct or indirect interest in the specific proceedings, their impartiality shall be guaranteed, they shall refrain from acting and shall inform the company so that they can be replaced. If, despite the existence of these grounds, abstention does not occur, any of the persons concerned by the proceedings may request the disqualification of such person or persons from the committee.



**8)** In the course of the procedure, the victim shall be heard first and then the person against whom the complaint has been lodged. Both parties involved may be assisted and accompanied by a person of their trust, whether or not he/she is a legal and/or trade union representative of the workers, who shall maintain confidentiality regarding the information to which he/she has access.

**9)** The procedure should be as swift and efficient as possible and should in all cases protect the privacy, confidentiality and dignity of the persons concerned as well as the right of the person against whom the complaint is lodged to be heard. Throughout the entire procedure, strict confidentiality shall be maintained and all internal investigations shall be conducted with tact and due respect both for the complainant, the victim, who shall in no case be treated unfavourably for this reason, and for the person complained of, whose guilt shall not be presumed. All persons involved in the process shall be under an obligation of confidentiality and secrecy with regard to all information to which they have access.

**10)** During the processing of the case, at the proposal of the person in charge of the investigation, the company's management shall adopt the necessary precautionary measures leading to the immediate cessation of the situation of harassment, without these measures entailing permanent and definitive damage to the working conditions of the persons involved. Apart from other precautionary measures, the management of (COMPANY NAME) shall separate the alleged harasser from the victim.

**11)** At the end of the investigation, the committee shall draw up a report stating the facts, the testimonies, the evidence given and/or collected, concluding whether or not, in its opinion, there are indications of sexual harassment or gender-based harassment.

If from the evidence gathered it can be deduced that there are indications of harassment, in the conclusions of the report, the investigating person will urge the company to adopt the appropriate sanctioning measures, and may even, in the case of a very serious offence, propose the disciplinary dismissal of the aggressor.

If the evidence does not reveal evidence of harassment, it shall state in the report that the evidence expressly given does not reveal the existence of sexual or gender-based harassment.

If, even if there is no harassment, it finds some inappropriate action or a situation of conflict, which, if it continues to be repeated over time, could end up in harassment, it shall also inform the management of the company, suggesting the adoption of all appropriate measures to put an end to this situation.

**12)** None of the proceedings shall prevent the persons involved from requesting any judicial, administrative or any other type of proceedings that may be appropriate.



## 2.2.2.- The resolution of the harassment case.

The management of (COMPANY NAME), once it has received the conclusions of the instructor, will take the decisions it deems appropriate within 3 working days, being the only one empowered to decide on the matter. The decision taken shall be communicated in writing to the victim, the person complained of and the investigating person.

Likewise, the decision finally adopted in the case will also be communicated to the person responsible for occupational risk prevention. In this communication, in order to ensure confidentiality, no personal data will be given and the numerical codes assigned to each of the parties involved in the file will be used.

In the light of the report of conclusions drawn up by the investigating person, the management of (COMPANY NAME) shall proceed to:

- a) file the proceedings in the archives and draw up a report on the matter.
- b) adopt any measures it deems appropriate on the basis of the suggestions made by the committee investigating the harassment procedure. By way of example, the following are some of the decisions that the company can take in this regard:

- a. physically separating the alleged aggressor from the victim, by changing position and/or shift or schedule. In no case shall the victim of harassment be forced to change position, working hours or location within the company.
- b. without prejudice to the provisions of the previous point, if appropriate, and depending on the results of the investigation, the aggressor shall be sanctioned by applying the table of offences and penalties provided for in the collective agreement applicable to the company or, where appropriate, in Article 54 of the WS (Employment Relationship Act).

Among the sanctions to be considered for application to the aggressor, the following will be taken into account:

- 1. transfer, displacement, change of post, working day or location
- 2. suspension from employment and pay
- 3. the time limitation for promotion
- 4. disciplinary dismissal

In the event that the offender's sanction is not termination of employment, the management of (COMPANY NAME) shall maintain active monitoring of the offender upon reinstatement (in the case of suspension), or in his/her new position in the case of a change of location. However, in all cases, compliance with the eradication of harassment will not end with the mere adoption of the measure of change of post or with the mere suspension, being necessary their subsequent monitoring and control by the company.



The management of (COMPANY NAME) shall take the necessary preventive measures to avoid a recurrence of the situation, reinforce training and awareness-raising actions and carry out actions to protect the health and safety of the victim, including, but not limited to, the following:

- Assessment of psychosocial risks in the company.
- Adoption of surveillance measures to protect the victim.
- Adoption of measures to avoid recidivism of sanctioned persons.
- Psychological and social support for the person being harassed.
- Modification of working conditions that, with the consent of the person who has been harassed, are deemed beneficial to their recovery.
- Training or retraining for the professional updating of the harassed person when he/she has been on IT for a prolonged period of time.
- Carrying out new training and awareness-raising actions for the prevention, detection and action in the face of sexual harassment and/or gender-based harassment, aimed at all persons providing their services in the company.

### 2.2.3.- Monitoring

Once the file has been closed, and within a period of no more than thirty calendar days, the person in charge of processing and investigating the complaint (INDICATE NAME) will be obliged to monitor the agreements adopted, i.e. on their compliance and/or the result of the measures adopted. The result of this monitoring shall be the subject of a report containing the proposal for measures to be adopted in the event that the events giving rise to the proceedings continue to occur, and an analysis shall also be made of whether the proposed preventive and punitive measures have been implemented, where appropriate. This report shall be sent to the management of the company so that it may adopt the necessary measures, as well as to the legal representatives of the workers, if any, and to the person responsible for occupational risk prevention, with the precautions indicated in the procedure with regard to the confidentiality of the personal data of the parties concerned.



# 3

## DURATION, ENFORCEABILITY AND ENTRY INTO FORCE

The contents of this protocol must be complied with, entering into force from the moment it is communicated to the company's workforce through (INDICATE MEANS)<sup>7</sup> and remaining in force until (INDICATE DATE).

However, a review and adaptation of the protocol will be necessary in the following cases.

- At any time during its validity in order to reorient the fulfilment of its objectives of prevention and action against sexual harassment and gender-based harassment.
- When its lack of compliance with legal and regulatory requirements or inadequacy is revealed as a result of the Labour and Social Security Inspection Authorities' action.
- In the event of a merger, takeover, transfer or modification of the legal status of the company and in the event of any incident that substantially modifies the company's workforce, its working methods or organisation.
- When a court decision condemns the company for discrimination on grounds of sex or when it determines the lack of compliance of the equality plan with legal or regulatory requirements.

**The present procedure does not preclude the victim's right to complain, at any time, to the Labour and Social Security Inspection Authorities, as well as to the civil, labour or criminal courts.**

---

7. This may be by email, publication on the company's intranet, publication on the notice board or in writing or any other means serving this purpose.





# 4

## MODEL OF COMPANY COMPLAINT FORM (COMPANY NAME)

### 1. Person reporting the facts

☐ Person who has been harassed

☐ Other (Specify) \_\_\_\_\_

### 2. Details of the person who has been harassed

Name: \_\_\_\_\_

Surname: \_\_\_\_\_

DNI: \_\_\_\_\_

Position: \_\_\_\_\_

Contract type/employment relationship: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Address for notification purposes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### 3. Details of the aggressor

Name and surname: \_\_\_\_\_

Professional group/category or position: \_\_\_\_\_

Workplace: \_\_\_\_\_

Company name: \_\_\_\_\_



#### 4. Description of events

Include an account of the events reported, attaching as many numbered sheets as necessary, including dates on which the events took place whenever possible.

#### 5. Witnesses and/or evidence

If there are witnesses, please indicate name and surname:

Attach any means of proof you consider appropriate (please indicate which):

#### 6. Application

The complaint or report of harassment be deemed to have been filed (INDICATE IF SEXUAL OR GENDER-BASED) against (IDENTIFY AGGRESSOR) and it will initiate the procedure provided for in the protocol

Location and date

Signature of the person

For the attention of the instructor for the investigation of complaints about sexual harassment and/or gender-based harassment in the company (ENTER COMPANY NAME)



# PROTOCOL

FOR THE PREVENTION AND ACTION AGAINST  
SEXUAL HARASSMENT AND GENDER-  
BASED HARASSMENT AT WORK



## SUSTAINABLE DEVELOPMENT GOALS.

As a public body, the Women's Institute is aligned with the Sustainable Development Goals (SDGs) set by the United Nations in its Agenda 2030, which aims to achieve true sustainable development globally and to combat climate change, inequality and poverty. Specifically, in this publication, the Women's Institute aims to contribute to the achievement of the objectives 5. Gender Equality and 8. Decent Work and Economic Growth.

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