

# Mopping up mobbing – legislate or negotiate?

*How can we counter violence and mobbing at work? An overview of the main regulatory approaches – and a closer look at Swedish laws and German collective agreements.*

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**M**obbing, harassment, workplace violence. Call it what you will, it is a growing threat to the health of workers and productivity alike. So how is it to be tackled? The long arm of the law? The strong arm of collective agreement? Codes of conduct?

The answer may depend on the country, but also on the type of offence. At least three different hostile acts may be involved, singly or in combination – moral harassment, discrimination (for example, on grounds of age, sex, race or migrant status) and physical violence. There are also three rather different types of harasser – bosses (managers, supervisors, owners); co-workers; and outsiders (usually “customers” in the broadest sense).

Efforts to counter workplace harassment and violence centre on three main approaches:

## Legislation

Four kinds of law may be involved:

- **Specific laws.** Legal remedies against employment discrimination and sexual harassment are becoming more common, but laws against other workplace mobbing and violence are still rare. Sweden has had such legislation since 1993 – see below. In Canada, the provinces of British Columbia and Saskatchewan have specific regulations for the prevention of workplace violence. In the United States, California passed a special law to combat violence in hospi-

tals. Washington and Florida have laws to protect retail workers against certain types of violence.<sup>1</sup>

- **Other industrial legislation that includes references to this problem.** These are often new or updated occupational health and safety laws. Recent examples are found in Austria, Belgium, Brazil (covering public service workers in the states of São Paulo and Rio de Janeiro), Finland, France, Norway and Uruguay.<sup>2</sup>
- **Other industrial law.** Employers may, for instance, have a “duty of care” or “general duty” towards their employees. This may be interpreted to include a legal duty to protect employees against harassment and violence.
- **Other general law (criminal or civil).** For example, some countries have outlawed deliberate harassment wherever it takes place. And, of course, a serious assault or a murder at work will involve the wider criminal law.

## Collective agreements

A number of anti-mobbing agreements are already in place in German workplaces – see below.

In 2001, the Danish Government announced plans to extend the powers of the Working Environment Authority, permitting it to intervene in case of serious psychological problems at the workplace,

## Signing against mobbing

What should go into a collective agreement against workplace harassment? Here, we translate the main points of a model text from the German Trade Union Federation (DGB).<sup>1</sup> Passages in square brackets are summaries.

### 2. Prohibition of harassment

Management and the works council/staff council agree that in (name of workplace/company/branch), no person may suffer disadvantage because of their descent, religion, nationality, origin, age, gender, sexual orientation, personal characteristics, political or trade union activity or views. (...)

All members of the enterprise are therefore urged to desist from measures that could hinder the free development of individuals' personalities or could be perceived as harassing and insulting.

In particular, it should be ensured that:

- nobody's ability to express themselves or to speak with their colleagues and superiors is restricted
- nobody's ability to maintain social relations is impaired
- nobody's social standing is damaged
- nobody is sexually harassed by word, gesture or deed
- nobody is discriminated against or humiliated through the work tasks assigned to them
- nobody is subjected to physical violence or unhealthy working conditions.

### 3. Sanctions

[Violations of paragraph 2 are to be regarded as a serious breach of the workplace peace.] Persons who, despite being reprimanded, engage in such conduct must expect to be transferred or dismissed.

### 4. Measures to improve the workplace climate

[Courses for managers and supervisors every three years. Works council/staff council has a say in course design and selection of trainers and has the right to take part in the sessions.]

### 5. Right to lodge a complaint

Every member of the enterprise who feels that he/she has been disadvantaged, unjustly treated or otherwise compromised by the employer or by employees of the enterprise has the right to lodge a complaint. No disadvantages shall accrue to him/her in consequence of this.

### 6. Stages of the grievance procedure

[First, a discussion with the other party to the conflict, in the presence of a neutral moderator – and of a works councillor/staff councillor if wished. If no settlement, then mediation by the immediate hierarchical superior. If this fails,

referral within two weeks to the workplace complaints committee, whose decisions are binding on both sides.]

### 7. Composition of the workplace complaints committee

The workplace complaints committee is a permanent body. It is composed of three members nominated by management and three members nominated by the staff council/works council. It is chaired by a neutral person (possibly from outside the enterprise). Its decisions are on the basis of unanimity.

The workplace complaints committee has the right to take measures to resolve the conflict. Management and the staff council/works council are obliged to implement the committee's decision.

If no agreement is reached, there shall be recourse to an external mediator, whose mediation proposal must be accepted.

### 8. Workplace contact persons

To prevent the escalation of conflicts, workplace contact persons shall be appointed who may be called in by complainants if they feel subject to harassment or disadvantage. The contact persons are nominated by the management and the works council, by mutual agreement and in the following numbers: one contact person per 1,000 employees, but with a minimum of two per branch/workplace/unit. These contact persons shall receive special training and shall have the following rights:

- to convoke and moderate discussions between two conflicting parties, where no complaint has yet been lodged under paragraph 6
- where so mandated by a complainant, to conduct negotiations with superiors and the personnel department in order to eliminate an abuse or to find a mutually agreeable solution
- to appear as expert witnesses before the workplace complaints committee and to propose solutions
- to veto decisions of the workplace complaints committee if the contact persons have good grounds for suspecting that the case concerns mobbing.

If a workplace contact person vetoes the decision of the workplace complaints committee, it must hear the views of an external expert concerning mobbing and must accept the expert's mediation proposal.

<sup>1</sup> The DGB's model agreement is online in German at [http://www.dgb.de/themen/mobbing/mobbing\\_07.htm](http://www.dgb.de/themen/mobbing/mobbing_07.htm). The IG Metall guide cited in footnote 14 will include detailed parameters for collective agreements.

including sexual harassment and bullying. The government move was opposed by the employers, who feared interference in their managerial prerogatives, but also by some trade unions. They saw it as a threat to the Danish model of tackling labour issues primarily through negotiation rather than legislation. In the end, unions and employers in Danish industry concluded their own collective agreement to deal with “psychological working environment” issues through existing procedures for dispute resolution, and the government plan was shelved.<sup>3</sup>

### Codes of conduct

Many guidelines and codes of conduct have been issued on this problem. Often, they are addressed to managers, and they tend to take a “best practice” approach.<sup>4</sup> They may also complement legislation or collective agreements. In countries that opt to tackle mobbing through special interpretations of existing law, it may be useful to publicize those interpretations in guidelines that have received tripartite backing. A clear recent example of this comes from the Australian state of Victoria, where a guide issued in 2003 points out that “The Occupational Health and Safety Act 1985 (OHS Act) imposes legal responsibilities on both employers and employees. These duties extend to the risks to health and safety from workplace bullying and occupational violence.” It goes on to list the duties. Issued by an official health and safety agency, the guide was endorsed by employers’ organizations and the unions.<sup>5</sup>

### Different approaches – but a lot in common

National approaches to workplace mobbing and violence differ widely. Here, we look in a little more detail at two apparently contrasting options – Sweden’s legislation and Germany’s collective agreements. As will be seen, they nonetheless have much in common, particularly as regards trade union concerns.

### Sweden: Mobbing outlawed

Victimization at work is outlawed under a special ordinance issued by the Swedish National Occupational Board of Occupational Health and Safety in 1993.<sup>6</sup> This defines victimization as “recurrent reprehensible or distinctly negative actions which are directed against individual employees in an offensive manner and can result in those employees being placed outside the workplace community”.

All the signs are that workplace mobbing has increased in Sweden over the past decade. Between 1998 and 2001, the number of reported cases rose by more than 60 per cent for men and almost 90 per cent for women, according to the Swedish Work Environment Authority.<sup>7</sup> Of the 26,500 cases of work-related illness reported in 2001, mobbing was a factor in 1,250. The majority of these (60 per cent) were in sectors involving direct contact with people and employing a high proportion of women, especially social services, health care and education.

Part of the increase may be due to better reporting, not least because of the ordinance. However, the Swedish union federation LO says that work stress often triggers mobbing. Calculations from official statistics show a rise in “stress and psychological strain at work within LO’s occupational sectors in recent years”.<sup>8</sup> As to mobbing itself, “the hidden figures, like those for other psychosocial problems at work, are probably very high”.

Unions are taking the problem of harassment seriously. In August 2003, when the white-collar union federation TCO presented Labour Minister Hans Karlsson with proposals for improving occupational health, the wish list included “efforts to ensure that active work against mobbing is carried out in all workplaces, e.g. by establishing a resource centre against mobbing”.<sup>9</sup>

The ordinance places employers under a duty to “plan and organize work so as to prevent victimization as far as possible” and to “make clear that victimization cannot be accepted in the activities”. Routines

must be in place for the early detection and rectification of “such unsatisfactory working conditions, problems of work organization or deficiencies of co-operation as can provide a basis for victimization”. There must also be special routines for giving rapid help to workers suffering victimization, and “counter-measures shall without delay be taken and followed up”. These are to include a “special investigation” to “ascertain whether the causes of shortcomings of cooperation are to be found in the way in which work is organized”.

Victimization is “most often an effect of poor work organization and management”, insists an LO guide to psychosocial problems at work.<sup>10</sup> “Obviously, all safety representatives have a duty to intervene if it is suspected that offensive special treatment is taking place. Contacting the personnel department and the company’s safety officer are immediate steps that may be taken.” However, “bosses have the ultimate responsibility for taking a stand against mobbing. One approach may be for the work group and management to jointly draw up internal regulations on conduct and treatment in the workplace. Training and guidance for bosses and managers on human relations can be important.”

Another ordinance from 1993 tackles “violence and menaces in the working environment.”<sup>11</sup> In Sweden, work injuries due to threats and violence increased by 80 per cent between 1993 and 1999.<sup>12</sup> More than 3,000 cases are now reported per year. Seventy per cent of them concern women. The worst-affected groups are psychiatric nurses, warders, police officers, public transport employees, care workers and health staff.

The ordinance applies to “work where there may be a risk of violence or the threat of violence”. It obliges employers to investigate the risks and “take such measures as may be occasioned by the investigation”. Work and workplaces must be designed to minimize violence. Where risks exist, “special security routines” must be in place, and must be “known to all employees who can be affected by the risks”. Employees must have “the possibility of summoning prompt

assistance”, and the ordinance prescribes alarm equipment and other technical aids. Tasks that carry the risk of violence “may not be performed as solitary work”. Cash-in-transit operations “shall be organized and conducted in such a way as to afford adequate security for the employees”.

Given the sharp rise in workplace victimization and violence, are Sweden’s unions happy with the 1993 ordinances? “I think the main problem is that these issues have had too low a profile”, says LO health and safety ombudsman Stefan Wiberg. “We in the unions should be doing more to raise awareness of them and of the legal remedies available. Obviously, our safety representatives will have a key role in this.”

### Germany: Bargaining to the fore

Mobbing can also be tackled through collective agreements. In Germany, this approach is backed by the national trade union federation DGB, which has published a model text (see our inset *Signing Against Mobbing*). And since 1996, the German metal industries union IG Metall has concluded ten workplace agreements on “partnerly behaviour at work”, anti-discrimination and related issues.<sup>13</sup> Signatories include Ford, Opel, Volkswagen, Thyssen and Preussag.

Some of these agreements are quite detailed. For example, those with Volkswagen (dating from 1996) and Opel (2001) both name three types of harassment – mobbing, sexual harassment and discrimination. They list examples of each. The Opel text adds that, as a rule, conduct will be regarded as breaching the agreement “if the relevant action, toleration or omission is subjectively felt to be insulting, vexatious or otherwise demeaning and is recognizably rejected by the person concerned”.

Grievance procedures are set out in both agreements, and both mention penalties for persistent offenders, including reprimands and dismissals.

But that, of course, is the end of a road that nobody wants to go down. The agreements tend to emphasize prevention, and

they generally point out that poor working relationships are bad for a company's overall performance.

This reflects IG Metall's own outlook. "The consequences of psycho-terror at work are devastating for all concerned", warns the union's soon-to-be-published anti-mobbing guide.<sup>14</sup>

The reasons for mobbing are just as wide-ranging as its effects. "Rarely is just one trigger responsible. Whether an initial conflict will develop into mobbing depends on various factors and circumstances." The causes may lie with the organization of the workplace (including management failings), working conditions, the perpetrators, the victim, the work group and/or the overall social context – not least globalization, which lowers job security and raises job stress.

IG Metall's advice is correspondingly holistic. It emphasizes prevention, alertness to early warning signs, counselling, self-help groups, management training, awareness-raising within the workforce and appropriate design of work processes and workplaces.

But regulation certainly also has a part to play. The guide recommends a collective agreement between the employer and the works council on "fair behaviour in the workplace". This should, IG Metall says, "have regard to the following points:

- enterprise commitment to being a 'health-promoting enterprise'
- principles for fair behaviour
- elaboration of a code of conduct
- general proscription of discrimination, mobbing and sexual harassment at work
- definition of terms concerning conflict situations at work
- listing of fair forms of conflict resolution
- establishment of a qualified contact point (officer) for those affected by mobbing, with clearly delineated tasks and powers and a duty of confidentiality

- awareness raising and training of employees, including superiors
- transparency of workplace decision-making
- promotion of social management competence through qualifications
- conflict processing and employee qualification in problematic departments (on request)".

The collective agreement approach certainly does not exclude legal back-up. Germany does not have specific anti-mobbing legislation, but case law has provided a clear definition – "systematic hostility, bullying or discrimination between employees or by superiors".<sup>15</sup> As both IG Metall and the DGB point out, industrial and general law can be brought to bear on this, in particular the recently updated health and safety legislation. Also, the Workplace Constitution Act and other laws give works councillors wide powers and duties to promote employee well-being. These are directly relevant to mobbing cases, as are the criminal and civil law. But going to court means giving evidence. IG Metall advises mobbing victims to keep a diary of incidents, and it provides a format.

So do the collective agreements work in practice?

"It's a bit early to say", replies Eva Zinke, the IG Metall executive board member responsible for health and safety. "Our first priority now is to get the new guide out to our works councillors and reps. We want to raise awareness of the problem and of the available remedies. The next step will be to assess the results of the agreements. One thing we do know, because it emerged from a recent phone-in organized by our magazine – mobbing is very much an issue for our members."

## Notes

<sup>1</sup> Information on Canada and the US from the Canadian Centre for Occupational Health and Safety at <http://www.ccohs.ca/oshanswers/psychosocial/violence.html>

<sup>2</sup> ILO. 2003. *Draft code of practice on violence and stress at work in services: A threat to productivity and decent work*. <http://www.ilo.org/public/english/dialogue/sector/techmeet/mevsws03/mevsws-cp.pdf>. For more on the French and Belgian legislation, see Anne Renaut's article on page 1 of this *Labour Education*.

<sup>3</sup> For details of the Danish case, see *Industry sector social partners reach agreement on psychological working environment*, European Industrial Relations Observatory, 2001, at <http://www.eiro.eurofound.eu.int/2001/07/feature/DK0107128F.html>

<sup>4</sup> A detailed international list of codes and guidelines is included in the ILO publication cited in footnote 2.

<sup>5</sup> *Prevention of Bullying and Violence at Work – Guidance Note*, WorkSafe Victoria, Melbourne, 2003, [http://www.workcover.vic.gov.au/vwa/publications/InterPubDocsA/4358646FBA071B82CA256CD40011DD09/\\$File/WorkSafe\\_bullying\\_GN\\_V2.pdf](http://www.workcover.vic.gov.au/vwa/publications/InterPubDocsA/4358646FBA071B82CA256CD40011DD09/$File/WorkSafe_bullying_GN_V2.pdf)

<sup>6</sup> Ordinance AFS 1993:17. Quotations are from the official English translation, online at: <http://www.av.se/english/legislation/afs/eng9317.pdf>. The Swedish original speaks of “offensive special treatment” (*kränkande särbehandling*), and this has become the official Swedish term for mobbing.

<sup>7</sup> *Mobbning och trakasserier*, Arbetsmiljöverket, Solna, 20 March 2003. <http://www.av.se/statistik/dok/0000198.pdf>

<sup>8</sup> *Psykiska och sociala hälsorisker i arbetsmiljön*, LO, Stockholm, 2002.

<sup>9</sup> *Skrivelse till statsrådet Hans Karlsson: Dags att gå från ohälsa till hälsa*, TCO, Stockholm, 15 August 2003. [http://web.tco.se/ArticlePages/200308/15/20030815111555\\_TCO459/20030815111555\\_TCO459.dbp.asp](http://web.tco.se/ArticlePages/200308/15/20030815111555_TCO459/20030815111555_TCO459.dbp.asp)

<sup>10</sup> *Hur är läget?* Börje Nenzén, LO, Stockholm, 2002.

<sup>11</sup> Ordinance AFS 1993:2. Quotations are from the official English translation, online at: <http://www.av.se/english/legislation/afs/eng9302.pdf>

<sup>12</sup> Nenzén, 2002, *op. cit.*

<sup>13</sup> The agreements are online in German at: <http://www.igmetall.de/betriebsraete/betriebsvereinbarungen/index.html>. Workplace agreements (*Betriebsvereinbarungen*) are the secondary tier of German collective bargaining. Core bargaining, on basic pay rates, etc., takes place regionally, sector by sector. Workplace agreements add detail for individual companies or workplaces. There are two types of labour representation within German workplaces – the union representatives and the works council (*Betriebsrat*). A staff council (*Personalrat*) is a white-collar equivalent of the *Betriebsrat*. Works councillors are elected by the workforce as a whole, unionized or not, and have wide-ranging legal rights to information, consultation and participation in decision-making. In practice, most works councillors are active trade unionists, and many have previously been union representatives in the same workplace.

<sup>14</sup> *Mobbing wirkungsvoll begegnen*, IG Metall, Frankfurt am Main. Scheduled for publication by the end of 2003. Quotations are from the final draft, with IG Metall's permission.

<sup>15</sup> Federal Labour Court judgement of 15 January 1997, ref. BAGE 85,56 (58).