

## ANALYSIS OF THE NEW LEGAL ACTS ON MOBBING PROTECTION OF THE EMPLOYEES IN THE REPUBLIC OF MACEDONIA

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**Abstract:** Emotional abuse in the work place, psychological terror, social isolation, are terms well known to the Labor Union organizations. They all refer to harassment in the work place, which is actually mobbing. The word “mobbing” denotes a wide range of complex activities which represent harassment of the employees in their work places, in all social spheres. Therefore the consequences range from mild disturbances to disappointing repercussions to the employees. Those consequences mostly reflect badly on the family of the harassed employee, as well on the organization and the society in general.

For that reason, the subject of this article is to analyze the regulations of the Law on Labor Relations which refer to protection of employees from harassment in the work place and to analyze the new “Law on Harassment Protection in the work place” adopted recently, in order to increase the protection measures against harassment in the work place on a higher level. The efficiency of this law is to be comprehended through professional and scientific approach, where the research should emphasize the efficiency of the new legal acts. The purpose of this article is not only to analyze the abovementioned laws on harassment protection in the work place in the Republic of Macedonia, but also to present a critique of the eventual mistakes that might occur during implementation and to identify legal gaps as obstacles against mobbing evidence. The methodological approach of this article is directed towards implementation of the qualitative method-analyzing content founded on scientific and expert competence as well as on previously established real state of affairs by the adopted law regulations in order to present our own point of view.

The conclusion of this article refers to the fact that weaknesses in some of the legal acts on the Law on Labor Relations and the Law on Harassment Protection could be noticed. Those cracks might be misinterpreted by the people in charge, by the employees as well as during their enforcement in the Legal Procedure.

**Key words:** *mobbing, harassment in the work place, public and government administration, legal*

*regulation, application in practice, conclusion and improvement recommendations.*

### INTRODUCTION

The transition period in the Republic of Macedonia distinguished many negative repercussions on the fields of economy, social life and safety. It reflected on the working conditions, the rights from work relations and the respect of the worker as a person. Those conditions strongly influenced implementation of the Legal Acts concerning protecting the employees from mobbing in the work place. Suddenly those conditions were not on the top of the list any longer. This kind of approach enabled the employers in the private sector and the superiors in the state institutions to behave rather loose. The situation expanded into all organizations including the government administration of the RM.

Mobbing denotes a very complex widespread and mounting occurrence which reflects terribly on the human’s psychical and psychological health, his social surroundings in the work place and in the society. Mobbing is also present in the state institutions of the RM. Sometimes mobbing results with murder or suicide, despite the fact that we are not able to present figures or percentage since there is no record or evidence.

That is why the idea of this article is to make a small but professional contribution on employees’ protection when mobbing in the work place is concerned.

Having on mind some of the previous researches such as the Mobbing Program of the Union of Independent Self-government Labor Unions of the RM, prepared in corporation with labor Medicine Institute, according to which more than 77% of the employees in the RM are mobbing victims and even 60% of those are women<sup>1</sup>, it can be perceived that the mobbing phenomenon is present in the organizations in the RM. However there are no clear facts or evidence because of absence of Legal Procedures in order to prove mobbing. There are no clear indicators of actual Legal Procedures concerning mobbing, where the perpetrators have been sentenced. How many of the employees are able to identify mobbing in order to act accordingly is a totally different matter. Analyzing the regulations of the Law on Labor Relations and the Law on Harassment experts suggest that there is no clear way of identifying or recognizing mobbing by any of us. Regulations which should point out to training of employees how to recognize mobbing, regardless of their work position, are omitted in the law. Mobbing could experience even superiors at work and the colleagues in the office as well through different types of insults, humiliation and psychological and emotional abuse.

According to experts' opinion identifying repetitive mobbing, at least for six months period, represents a prerogative not clear enough. It could obstruct the courts in the hearing of evidence and decrease the obstacle for protecting the workers-mobbing victims. Paying attention to strategic mobbing, as another form of psychological harassment in the work place, is significant. The same is not included in the legal modification of the Law on Labor Relations.

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<sup>1</sup> 2010y., Union of Independent Autonomous Syndicates of Macedonia and the Institute of Labor Medicine

## **ANALYSIS OF THE LAWS ON POSITIVE AND NEGATIVE SOLUTIONS CONCERNING PROTECTING EMPLOYEES FROM MOBBING**

In case of a Lawsuit, the legislator provided the dispute costs to be covered by the employer in order to ensure the right to mobbing protection. Article 11 of the Law on Labor Relations<sup>2</sup> determines that in a case of a Legal Procedure, if someone acts against Article 9-a<sup>3</sup>, the dispute costs are to be covered by the individual (or group) against whom the legal Proceeding for psychological harassment in the work place was submitted. This is unless it is proved that the particular behavior occurred because of certain situations provided in Article 8 of the Law on Labor Relations<sup>4</sup>. In order to protect the individual who decided to bring action against someone for legal protection from mobbing, as well as during testimonial in legal proceeding, the Law on Labor Relations<sup>5</sup> forbids the employee (mobbing victim) to be treated inappropriately, directly or indirectly, for example: getting worse working conditions, decreased salary, transfer to a different post, enabling promotions or vocational training.

The constitutional doctrine of equal approach to the work place for all citizens from the Law on Labor Relations<sup>6</sup>, is operational through regulating the employment procedure, where it is provided that the need for workers is ensured by public advertising in the press (announcing

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<sup>2</sup> Burden of proof incase of dispute (article 11), Law on Labor Relations (OfficialGazetteofthe RM no. 54/13dated 09.04.2013y. - revised text)

<sup>3</sup> Psychological harassment at work(article 9-a), Law on Labor Relations (OfficialGazetteofthe RM no. 54/13dated 09.04.2013y. - revised text)

<sup>4</sup> Exceptions in prohibition of discrimination (article 8), Law on Labor Relations (Official Gazette of the RM no.54/13dated 09.04.2013y. - revised text)

<sup>5</sup>Burden of proofincase of dispute (article 11 paragraph 3), LawonLaborRelations (OfficialGazetteofthe RM no.54/13 dated 09.04.2013y. - revisedtext)

<sup>6</sup>Method of providing the need of employees(article 22), LawonLaborRelations (OfficialGazetteofthe RM no.54/13 dated 09.04.2013y. - revisedtext)

the employment mediation service). Employer's responsibility during vacancy announcement is to state the conditions required for the advertised vacancy.

If we analyze the regulations of the Law on Labor Relations concerning the concept of annoyance and discrimination, Chapter 1 from the Law on Labor Relations<sup>7</sup>, to certain level even mobbing itself, we will realize that regulations are missing in this law (Official Gazette of the RM, dated 09.04.2013). Those are the regulations which should provide complete protection of the employees.

Protection of workers' rights from labor relation is ensured by a Legal Decision in order to prevent dismissal of employees based on groundless reasons<sup>8</sup> (Article 77 from the Law on the Labor Relations). Groundless reasons for terminating of employment contract are:

- The employee's membership in a labor union or taking part in union activities in accordance with the Law and collective contracts;
- Bringing charges against the employer, or participating in a legal procedure against him because of confirmation of previously agreed obligations of the labor relation, to arbitration, legal and administration bodies;
- Permission for leave due to illness or injuries, pregnancy, giving birth and parenthood, nursing a family member, using approved absence from work or summer vacation;
- Completing military service or military exercise and other cases of moratorium of employment contract.

The improve diversion of the law on Labor Relations<sup>9</sup> permitted legal

completion of the legal sanctions against discrimination in the work place and raised the rights that flow from workers' union as part of the collection of Human Rights in the RM. Thus almost all types of harassment over workers have been completed.<sup>10</sup>

RM accelerated the process of improving workers' rights in the last few years. The fact that the legislative power adopted the Law on harassment in the work place, or Law on mobbing protection<sup>11</sup>, Official Gazette of the RM dated 31.05.2013, at the request of Labor Unions in the RM, proves the abovementioned. Thus RM joined the countries that show regard about workers' rights and constantly improve legal regulations which generally helps in the struggle against such occurrence. The social dialogue is raised on a higher level a fact that stands out as a very positive result in general. The Harassment Law is adopted for the first time in the RM. It is to be implemented on employers, employees, employment applicants, individuals engaged by contracts. The situations of physical sexual harassment are set down in its regulations very clearly.

For the first time psychological harassment was defined as any other repeated negative behavior by a group or individual and represents a dignity, integrity, reputation and honor violation of the employee. It causes sense of fear or creates unpleasant\ feeling, obedience which might result in physical and mental state violation, incriminating the professional career of the employee, dismissal or resign .Defining precisely emotional abuse ideas covers all possible situations the employee might experience.

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<sup>7</sup> From article 6 to article 11, Law on Labor Relations (Official Gazette of the RM no.54/13 dated 09.04.2013y. – revised text)

<sup>8</sup> Unfounded reasons for firing (article 77), Law on Labor Relations (Official Gazette of the RM no.54/13 dated 09.04.2013y. – revised text)

<sup>9</sup> Law on Labor Relations (Official Gazette of the RM no.52 dated 23.04.2012y.)

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<sup>10</sup> Associations of workers and employers (article 184), Law on Labor Relations (Official Gazette of the RM no.54/13 dated 09.04.2013y. – revised text)

<sup>11</sup> Law on Protection from Harassment in the workplace (Official Gazette of the RM no.79 dated 31.05.2013y.)

In addition to the abovementioned the Law on Labor Relations<sup>12</sup> for the first time includes sexual harassment, defined as any other verbal or physical behaviors—sexual assault, which represents dignity violation of the employee or employment applicant. Sexual harassment causes feeling of fear and obedience, creates feeling of inconvenience. According to this law, harassment in the work place also includes provoking or misleading to a harassment behavior. The regulations of this law also indicate the time and place of harassment. It is very important for this legal act that the procedure for protection of rights is precisely established. The procedure anticipates suitable protection on many levels, possibilities for solving disputes by mutual consent as well as possibilities for legal actions against decision making during early phases of the procedure. The law provides possibilities for solving disputes by mutual consent, before starting the procedure for protection of rights. At the same time it is a condition to bring action in case of a negative result.

In case an individual considers to be exposed on harassment in the work place by another person, the harassment victim should address him in writing indicating that his behavior is unacceptable, unsuitable and undesirable. That person should be warned that if the annoyance doesn't stop at once, legal protection is to be asked for. The regulations of the law direct that the person considering himself a harassment victim by another employee, should submit a written request, addressed to the employer, for harassment in the work place protection before bringing charges with the competent court of law against the other employee. In case a person considers to be a victim of harassing behavior by the employer, either a legal entity or an individual, he could bring charges against

the employer after a warning in writing addressed to the harassment performer.<sup>13</sup>

The law provides penalties in order to ensure complete enforcement of the law, paying special attention to protection and promotion of rights, and implementation of adequate working environment.<sup>14</sup>

This Law on harassment protection in the work place, (Official Gazette of the RM dated 31.05.2013) is in the interest of the workers, the employers and the society in general. It provides strong promotion of the workers' rights and their protection as well as protection of democratic and universal principles and values. The law itself provides environment for efficient, effective and productive completion of assignments.

## CONCLUSION

As a conclusion and recommendation from this research, the following statements could be underlined. The modifications in the law on Labor Relations concerning mobbing are incomplete. They do not reflect the workers' real needs for protection from psychological pressure in the work place. These modifications do not include any other additional questions apart from defining "mobbing" and stating that mobbing is legally prohibited. In order to complete mobbing protection, among other it is necessary to include regulations referring to the measures that should be taken by the authorities responsible for mobbing prevention. Certain regulations that clearly point out employees' protection should be added in the law on Labor Relations, as well as possibilities for argumentation in a legal procedure and legal protection (protecting the victim of mobbing in case there is a legal procedure.

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<sup>12</sup> Harassment and sexual harassment (article 9), Law on Labor Relations (Official Gazette of the RM no.54/13 dated 09.04.2013y. - revisedtext)

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<sup>13</sup> Lawsuit (article 31), 32. Law on Protection from Harassment in the work place (Official Gazette of the RM no.79 dated 31.05.2013y.)

<sup>14</sup> Chapter 7, Article 36, Law on Protection from Harassment in the work place (Official Gazette of the RM no.79 dated 31.05.2013y.)

The person causing mobbing should be easily identified by the employees through clear regulations for proving mobbing. The Law on Labor Relations should be directed to education measures and staff training how to identify mobbing. The roles of the Labor Union and the representatives for health and safety, as leading figures in prevention and protection should be stressed in the Law on Labor Relations. This law should contain clear regulations where precise penalties for the ones causing mobbing must be proposed. Only people with strong personalities based on solid values and with the help and support from their families could survive such psychological terror without many damages, striving to continue their own battle for status and position.

When the Law on Harassment in the work place was adopted the first disputes and proceedings were started where finally the rights, the responsibilities and the obligations of the employers and the employees, concerning emotional and sexual harassment in the work place, were set up. The mobbing protection measures and acts, as well as other questions referring to harassment prevention were also included. The upcoming period is going to show the efficiency of this law, its enforcement and possibility to prevent and prove mobbing inside private and state companies in the RM. It is important to underline the fact that significant steps were made in terms of preventing and proving mobbing. Concerning encouragement and training of employees for taking actions for their own protection, there is a lot of work still to be done. All relevant factors should be included here as well as the appointed superiors, all employees, the Union and other NGOs which deal with Human Rights Protection.

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