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France adopts a new law on sexual harassment

As mentioned in our [May 2012 e-newsletter](#), the French Constitutional Council, following an application for a preliminary ruling on the issue of constitutionality filed by André Soulier in relation to the application of Article 222-33 of the French Criminal Code that punishes sexual harassment, repealed said Article on May 4, 2012.

Specifically, the Constitutional Council held that this Article breached the cardinal principle *nulla poena sine lege* (literally “no penalty without a law”, meaning that one cannot be punished for doing something that is not prohibited by law) because the offense of sexual harassment was not defined in sufficiently clear and precise terms.

After three months of legal loophole, a new Law n° 2012-954 on sexual harassment (the “Law”) was enacted and became effective on August 8, 2012.

As early as on August 7, 2012, the French Ministry of Justice issued a circular commenting the main provisions of the Law.

The new legal provisions on sexual harassment:

Article 222-33 of the French Criminal Code is now drafted as follows:

“I. Sexual harassment means imposing on someone, **in a repeated way, words or actions that have a sexual connotation** and that either undermine his/her dignity by reason of their degrading or humiliating

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nature, or create an intimidating, hostile or offensive situation.

*II. Shall be assimilated to sexual harassment **the fact, even where there is no repetition, of using any form of serious pressure** with the real or apparent aim of obtaining an act of a sexual nature, whether for the benefit of the author of the action himself/herself or for that of a third party.*

*III. The facts mentioned in I and II above are punished by **two years of imprisonment and a fine of 30,000 Euros**. These sentences can be increased up to **three years of imprisonment and a fine of 45,000 Euros** when the facts are committed:*

- 1. by a person who abuses the authority vested upon him/her by virtue of his/her duties;*
- 2. against a person under 15 years of age;*
- 3. against a person whose particular vulnerability – due to age, illness, infirmity, physical or psychological disability or pregnancy – is apparent and known to the offender;*
- 4. against a person whose particular vulnerability or dependence resulting from a precarious economic or social situation is apparent or known to the offender;*
- 5. by a number of persons acting as offenders or accomplices.”*

This Article is completed by **Article 222-33-2** that lays down the sentences applicable in case of moral harassment – these sentences being aligned with those applicable in case of sexual harassment:

*“The fact of **harassing others** through repeated actions with the purpose or effect of leading to a deterioration of his/her working conditions likely to result in the infringement of his /her rights and dignity, of affecting his/her physical and mental health or of jeopardizing his/her career is punished by **two years of imprisonment and a fine of 30,000 Euros**.”*

Article L.1153-1 of the French Labor Code has been amended accordingly and is now drafted as follows:

“No employee should suffer:

- 1. Acts of sexual harassment, through repeated words or actions that have a sexual connotation and that either undermine his/her dignity by reason of their degrading or humiliating nature, or create an intimidating, hostile or offensive situation;*
- 2. Shall be assimilated to sexual harassment acts that consist in using, even where there is no repetition, any form of serious pressure with the real or apparent aim of obtaining an act of a sexual nature, whether for the benefit of the author of the actions himself/herself or for that of a third party.”*

The Law imposes on employers the obligation **to post** copy of Articles 222-33 and 222-33-2 of the French Criminal Code on a **notice board in the workplace** and Article 222-33 of said Code in the premises or on the door of the room where new employees are recruited.

2. The new definition of sexual harassment

Article 222-33 of the French Criminal Code provides for a two-fold definition of sexual harassment.

a) Sexual harassment through repeated words/actions

The offense of sexual harassment will be established if words or actions:

- have a sexual connotation: the relevant words/actions do not need to be explicitly and directly sexual in nature;
- are repeated: at least two times, without any minimum interval period required;
- are imposed: the non-consent of the victim does not need to be express and explicit. It shall be assessed by judges on a case-by-case basis, according to the context and relevant items of evidence. Non-consent can be inferred from a permanent silence against actions or from asking a colleague or manager to intervene;
- undermine the dignity of the victim by reason of their degrading or humiliating nature: this covers sexist, indecent or obscene language, actions, behaviors, provocations, abuses or defamations based on the victim's gender, sexual orientation or sexual identity;
- or create an intimidating, hostile or offensive situation: without undermining the dignity, the relevant words/actions make the victim's living, working or housing conditions unbearable.

b) Sexual harassment through a single action

The offence of sexual harassment can also be established through a single egregious act.

This is the case of sexual blackmail where pressure is put on the victim in return for a hiring, for the signature of a lease agreement or in order to avoid a threat of dismissal, transfer, rent increase, etc.

The relevant real or apparent act with a sexual connotation required for the offence to be established can be of a highly mixed nature. It can be a mere physical contact aimed at causing or stimulating desire.

The applicable sanctions

Compared with the previous provisions, sentences were doubled, to two years of imprisonment and a fine of 30,000 Euros.

Aggravating factors enumerated in Article 222-33 III of the French Criminal Code further increase the sentences, up to three years of imprisonment and a fine of 45,000 Euros.

The concept of economic vulnerability is introduced for the first time.

In addition, references to prohibited discrimination practices linked to sexual/moral harassment have been

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reintroduced in the French Labor Code.

The French Criminal Code has been completed by Article 225-1-1 according to which *“shall be considered as discrimination any distinction between persons because they have suffered or refused to endure acts of sexual harassment ... or have testified on matters.”*

Such discriminatory practices are punished by three years of imprisonment and a fine of 45,000 Euros.

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