



Abogados & Notarios

## EMPLOYEE HARASSMENT

**EMPLOYEE HARASSMENT (MOBBING) UNDER COSTA RICAN LAW - EMPLOYMENT AND LABOR LAW COSTA RICA - LABOR LAW ATTORNEYS COSTA RICA - COSTA RICA CORPORATE LABOR LAW - By: Rogelio Navas Rodríguez, Esq., Labor Law Attorney Costa Rica** - It was not until a few years ago that employee harassment or “mobbing” was legally acknowledged and regulated in Costa Rica by the Supreme Court. Employee harassment has been defined by our case law as “... *any behavior (gesture, word, behavior, attitude...) that, due to its reiteration and systematization, attempts against a person’s dignity or his or her physical or mental integrity, risking his or her employment or degrading the working environment.*”<sup>1</sup> In 2003, the International Labor Organization (ILO) stated that “mobbing” is any “...*systematic, repeated and persistent verbal or psychological action by means of which, at the workplace or in connection with work, a group of people hurts, humiliates, offends or intimidates a victim.*”<sup>2</sup> Nowadays, it is considered that there is employee harassment when there is “... *a series of behaviors over time with the objective of producing harmful results in the victim.*”

It is important to keep in mind that “*although our legal system has not expressly regulated employee harassment, it does not mean that the employee does not have the right to file a claim and to the corresponding indemnity...*”<sup>3</sup>. In that sense, “mobbing” can lead to justified termination of the employment relationship by the employee and the obligation of the employer to indemnify the harassed employee. These risks increase considerably when the employer did not implement the necessary measures to prevent and correct employee-harassment situations.<sup>4</sup>

**WHAT IS NOT MOBBING:** As important as understanding what “mobbing” is, it is to understand what it is not. Employee harassment is usually confused with many circumstances that can take place within any employment relationship, which may lead to inappropriate application of penalties or sanctions. The Second Chamber of the Supreme Court of Costa Rica has stated that employee harassment can be confused with professional stress, which is the result of an excessive workload or inadequate working conditions. These circumstances lead to employee to exhaustion and even illness.

Mobbing may also be confused with a conflict situation at work in which reproaches go back and forth from one party to the other. Different from “mobbing” situations, in which there is a dominant party and a dominated one, conflict situations are much more

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<sup>1</sup> Ruling number 2010-000197 from the Second Chamber of the Supreme Court of Costa Rica, pronounced at 9:50 hours of February 10th, 2010.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Concerning employee harassment or “mobbing”, ruling number 2004-00692 from the Second Chamber of the Supreme Court of Costa Rica, pronounced at 9:20 hours of August 27th, 2004, can also be consulted.



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symmetric. In mobbing situations, one party tries to dominate and humiliate the other.

An isolated event of verbal violence may also be wrongfully confused with employee harassment. There is mobbing when, over certain period of time, an individual or group of individuals systematically make reiterated reproaches and constantly humiliate another individual. A one-time-only event cannot be considered harassment.

Finally, the faculty or power to give orders that the employer has must not be confused with employee harassment either. In an employment relationship the employee is subordinated to the employer; therefore, the employer has the right to give orders to the employee and the later must obey such orders. This subordination relationship and the exercise of authority by the employer cannot be considered as harassment.

If you should need further information or assistance with in identifying, correcting and preventing possible situations of employee harassment, contact us at: [navas@costarica-law.com](mailto:navas@costarica-law.com).