

FROM LAURENCE C. FAUTH, ESQ.

1629 K Street, Suite 300, Washington, D.C. 20006
Tel: 202-508-3380; Fax: 202-331-3759
Website: www.unattorney.com
e-mail: lcfauth@unattorney.com

c/o J.Fischbacher Ges.m.b.H
Linke Wienzeile 36/7b, Vienna, Austria 1060
Tel. (0043 1) 585 6318 10; Fax. (0043 1) 587 3386 23

TIP OF THE MONTH

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Breach of Duty of Care for Failure to Investigate Harassment Claim

International organizations are obligated by dint of their written regulations and rules (and according to general principles of law) to investigate allegations of harassment reported to the administration. According to the ILO Administrative Tribunal, the failure to investigate harassment charges constitutes a breach of good faith which deprives the staff member from proving the allegations. In Judgment No. 2654 (103rd session), the staff member's two-year contract was not extended following an extended period of sick leave. She challenged the decision as part of the moral harassment she suffered by the actions of her supervisor, which had not been investigated by the administration. The internal appeals board recommended an award of six months salary for failure to investigate the harassment charges. The Director General agreed to follow the recommendation. The ILO Administrative Tribunal awarded an additional 18 months of salary (for a total of 2 years) for the breach of good faith.

The United Nations recently announced that Secretary-General Ban Ki-moon approved the appointment of the first four (4) members of a new body (Internal Justice Council) that will advise on the overhaul of the United Nations' internal justice system. The five-member Council will consist of a staff representative, a management representative and two distinguished external jurists, one nominated by the staff and one by management, all of whom have been approved. The chair will be chosen by these four. The two members nominated by staff are Jenny Clift of Australia, a Vienna-based senior legal officer with the International Trade Law Division of the Office of Legal Affairs and Geoffrey Robertson of the United Kingdom and Australia, who served as the first President of the UN Special Court for Sierra Leone. The two members nominated by management are Maria Vicien-Milburn of Argentina, Director of the General Legal Division of the OLA, and Sinha Basnayake of Sri Lanka, who previously served in the same position and has since served the Organization in various advisory capacities on legal and administrative issues. These four will choose a distinguished juror to act as chair. The Council will advise the General Assembly on suitable candidates for the positions of judges on the future UN Dispute Tribunal and the UN Appeals Tribunal, draft a code of conduct for the judges, and provide its views on the implementation of the new system to the Assembly.

The ILO Administrative Tribunal will hold its 105th session from 28 April 2008 to 16 May 2008 where it will consider and decide some 50 appeals. It will make its decisions public on Wednesday 9 July 2008.

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