

**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](http://www.unattorney.com)  
e-mail: [lcfauth@unattorney.com](mailto: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

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**TIP OF THE MONTH**

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**Harassment: Breach of Duty to Provide Safe and Secure Work Environment**

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Last week I spoke before the WHO/HQ Staff Association in Geneva regarding the ILO Administrative Tribunal's consideration and decision-making of harassment-related claims. I relayed some basic principles and information which is useful for staff members who are subject to harassment and for staff representatives who are trying to assist staff members who come to them for support.

As an initial matter, as I mentioned in my April newsletter, international organizations have a duty to investigate reported allegations of harassment. In this regard, however, the Tribunal will not fault an administration for not investigating and taking positive steps to remedy a situation where the matter has not been brought to its attention in the first place through official channels. Accordingly, staff members subject to harassment should report the conduct to the appropriate office responsible for handling such grievances – see your staff regulations and rules. If there are none, the staff member should resort to the procedures for challenging administrative decisions.

In a perfect world, fear of retaliation should not deter the reporting of harassment. Since retaliation is sometimes a real possibility (which could make a bad situation much worse), whether to report harassment should be carefully weighed, especially since the ILOAT considers that many forms of conflict are merely a normal part of a bureaucratic environment and it is perfectly acceptable for example to transfer the victim to another post to resolve conflicts. Depending on the nature of the harassment and the nature of the adverse employment decision (i.e., termination of contract or non-extension or merely some negative comment on a performance appraisal), the staff member should consider carefully whether or not to report the harassment or seek some other means of relief, e.g., requesting a transfer, etc.

The ILOAT does not very often conclude that harassment has occurred since it considers harassment and mobbing as *extreme* examples of the breach of the organization's duties to provide a *safe, secure* and *adequate* workplace, and to ensure that its staff members are treated *fairly* and with *dignity*. The Tribunal considers it a breach of due process if the staff member is not treated fairly and with

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dignity, and its cases usually dwell at length on whether the staff member was provided due process, i.e., were the written procedures followed, did the staff member have the opportunity to present the case, did the staff member have the opportunity to answer criticisms, did the investigation panel and executive head reach reasonable conclusions drawn from the evidence, was there a reasonable or innocent explanation of the conduct of the alleged harasser, did the victim also act inappropriately, were reasonable steps taken to resolve the conflict.

Before beginning its analysis, the Tribunal will look to see if there are written rules defining conduct that constitutes harassment, so it is important as an initial step to review your organization's policies and procedures on harassment-related grievances (which may provide that a single act constitutes harassment). Make a list of conduct that you consider harassment and compare it to the definitions or examples provided in the regulations, rules or procedures for resolving harassment-related grievances. Then determine what evidence you have to show that the conduct in question took place, e.g. an e-mail, a memo, letter, or written statement signed by a witness. This is very important since the Tribunal places the burden on the staff member to prove the case and will not accept mere written allegations, and, to make things more difficult, the Tribunal will not force the organization to produce any written evidence that likely exists in your favour. Finally, although the Tribunal often disagrees that the conduct in question constituted harassment it may nonetheless find that the circumstances indicate that the staff member was not treated fairly and with dignity (a lesser breach than harassment or mobbing) and award moral damages.

In Judgment No. 2524, I represented a staff member who was isolated and humiliated by her supervisor following a meeting where she had criticised a new software program developed by her supervisor. Despite a good faith attempt to apologize for the misunderstanding by the staff member that followed soon thereafter, the supervisor, demonstrating open hostility, had written e-mails to her colleagues advising that she had been relieved of all duties and was not to have contact any longer with the "team", and recommended strongly against contract extension. In order to "heal" the team, in an e-mail he invited them to the bar for drinks after work. The internal panel reviewing the case had determined that these actions were an appropriate managerial decision to ensure that the work of the team was not disrupted. Presented with the same written evidence, the Tribunal found that the course followed by the supervisor was an "extravagant overreaction" to the criticism of the software. Coupled with other breaches of due process the Tribunal concluded that harassment flowed from the "absence of due process", and awarded 35,000 euros in moral damages. In this case, the staff member was able to provide written evidence, including the e-mails and other memoranda demonstrating the hostility from the supervisor. Absent this type of conclusive evidence, proving that you have been harassed to the Tribunal is very difficult.