

Work harassment between workers and its lack of regulation in article 172 of the Labor Code

Acoso laboral entre trabajadores y su falta de regulación en el artículo 172 del Código de Trabajo

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ABSTRACT: The main goal of this article is to expand the definition of harassment between workers and its types from the perspective of labor law, studying the different doctrines that support the legal figures in question, to understand more precisely the, we proceed to expose the background and evolution throughout the history of harassment between workers and how this has not been incorporated doctrinally within the regulatory standard. The problem arises since Ecuador lacks the exercise of action toward the worker to confront labor harassment among peers. The different modalities of the labor harassment that affect and affect the worker will be described in the city of Guayaquil, Ecuador, which composes the necessity to visualize the increase of the labor harassment on the lack of exercise of action that does not have the harassed one where the lack of a procedure of approval is questioned to prevent and to diminish the labor harassment between workers.

KEYWORDS: Worker, work, harassment, risk prevention, labor law.

RESUMEN: El presente artículo tiene como meta principal poder ampliar la definición de acoso laboral entre trabajadores y sus tipos bajo la perspectiva del Derecho laboral, estudiando las diferentes doctrinas que sustenten las figuras jurídicas en mención, para poder entender con mayor precisión las antes mencionadas procedemos a exponer los antecedentes y la evolución a lo largo de la historia del acoso laboral entre trabajadores y como esta no ha sido incorporada de forma doctrinaria dentro de la norma regulatoria. La problemática surge debido a que Ecuador carece del ejercicio de acción hacia el trabajador para enfrentar el acoso laboral entre pares. Se describirá las diferentes modalidades del acoso laboral que inciden y que afectan al trabajador, por el aumento del acoso laboral en la ciudad de Guayaquil, Ecuador, La cual compone la necesidad de visualizar el aumento del acoso laboral sobre la falta de ejercicio de acción que no la tiene el acosado donde se cuestiona la falta de un procedimiento de visto bueno para prevenir y disminuir el acoso laboral entre trabajadores.

PALABRAS CLAVE: Trabajador, trabajo, acoso, prevención de riesgos, derecho laboral.

JEL CODE: J01, J16.

INTRODUCTION

The emergence of the regulation of harassment originated in the eighties and has been in force since 2017 in our Labour Code, however, its incorporation was very rapid without taking into consideration a clear definition of each of the types of harassment at work that favors the worker.

This research has three sections, the first of which deals with the approach, formulation of the problem,

systematisation, objectives, justification, hypotheses, and variables. Furthermore, it will analyse workplace bullying, its theoretical bases, foundations, and background, which will serve as a contribution to the objectives of the research, through scientific studies and referential bibliography.

When addressing the issue of *mobbing* in Ecuador, it should be mentioned that over time and up to the present day, workers have faced different social complications, being susceptible to numerous changes, threats, and intimidation, which affect them in one way or another (Cordero, 2016).

Workplace bullying is as old as work itself; it is one of the most worrying psychosocial risks because its symptoms do not disappear even when exposure has ceased for a long time. (Rodriguez, 2013, n. p.)

The scholar Brodsky (2019), a pioneer in the study of the problem of workplace bullying, states:

He is the first author to refer to the harassed worker, in a study prompted by the enactment of a new law on working conditions in Sweden in the same year. His book focused on the hardship of the rank-and-file worker's life in the context of work-related accidents, physical exhaustion, excessive working hours, monotonous tasks, and problems that are nowadays addressed in stress research. (p. 7)

These working conditions were the main reason why the worker felt exhausted, as there was no protection of his rights, which led to the violation of his rights, and these errors were understood to be the reason for the harassment of the worker at work.

1. HARASSMENT AT WORK

Workplace bullying is first studied in the field of interpersonal relationships. Leymann (2019), a Swedish scientist explains: “who from a clinical approach in psychology established the term *mobbing* as the official term for harassment at work” (p. 6).

Doctrinarian Leymann was one of the initiators, this definition is connected to what is currently happening in the city of Guayaquil, which corresponds to being the first psychology clinician to use the term *mobbing* worldwide. Using him as a target so that the other harassers in the group can also torment him. There is a real subjugation of the victim. Therefore, what it will produce in the worker are strong and uncontrollable disorders in his health, both physical and psychological.

1.1 Organisational climate

In this regard, Méndez (2006) gives us a definition indicating that “it refers to the working environment of the organisation” (p. 7) (quoted by García, 2009, s. p.). It should be understood that there are negative attitudes, which seek to attack the worker, who is the one who provides his services to the organisation and contributes his skills to the company, in such a way that can be frowned upon by the harasser and denigrating the performance of the worker within the working hours, whose strength makes him more competitive and maintains a total commitment to the work, therefore, this would cause *mobbing*.

1.2. Organisational Behaviour

Robbins (2012) states that: “It is a field of study that investigates the impact of individuals, groups, and structures on behaviour within organisations, with the purpose of applying the knowledge gained to improve the effectiveness of an organisation” (n. p.).

Every organisation consists of a hierarchical system, where there are certain areas in which one area decides what is to be done, therefore those who oversee executing these decisions, and another area that will supervise the aforementioned. The exercise of power is inherent to the organisational structure, regardless of the size of the organisation, it is a fact that there will always be someone who seeks to obtain power and demonstrate that they have it.

1.3. Stages of workplace bullying

From an organisational point of view, there are four typical stages in the development of bullying that describe the emergence and evolution of most bullying processes. For Villa et al. (2019) they are:

1. *The occurrence of a critical incident*: Conflict is the trigger state for bullying. It develops in a very short time.
2. *Systematic persecution*: Actions are identified whose purpose is to cause harm, in a systematic way.
3. *The intervention of superiors*: When managers find out about this, they tend to take on prejudices against the victim and attribute the problem to her personal characteristics. As a solution, they try to get rid of her, persecute her, discredit her and blame her.
4. *Leaving work*: The victim tries to defend herself, and because of this and the after-effects of the harassment, her situation worsens. Finally, she leaves her job and seeks medical and psychological help. (p. 19)

1.4. Subjects involved in workplace bullying (acoso escolar)

1) Stalker

2) Victim

1.4.1. Stalker

In this regard, Méndez (2004) argues that: “He is an organisational psychopath who employs subtle attack techniques, manipulates his environment with the aim of destroying the dignity of the victim and his professional discrediting within the organisation” (cited by Vargas, 2018, p. 10).

The above-mentioned quote describes the anomaly of the harasser whose techniques are detrimental to the victim, making it impossible for him/her to carry out his/her duties and inhibiting him/her, resulting in professional discrediting within the organisation.

1.4.2. Victim

In this regard, Avila (2014) quotes Rodriguez (2013) who argues that: “the victim is singled out, made to feel guilty of something until he/she excludes him/herself, with the argument that he/she is not capable of performing his/her duties” (p. 6).

In an abstract way of thinking, it can be deduced that the prerequisites for harassment at work are that the victim feels self-excluded in the face of arguments that the activities he or she performs are insufficient.

1.5. Types of workplace bullying

According to the doctrine, the types of harassment at work are divided into:

- a) Horizontal mobbing is characterised by the fact that the bully and the victim are in the same hierarchical rank.
- b) Vertical *mobbing* is so-called because the bully is either on a higher hierarchical level than the victim or on a lower level than the victim.
- c) Upward *Mobbing*: Occurs when a senior employee is attacked by one or more subordinates.
- d) Top-down *mobbing*: Occurs when an employee at a lower hierarchical level receives psychological harassment from one or more employees who occupy higher positions in the company's hierarchy; strategic harassment: This is characterised by the fact that the *mobbing* is part of the company's strategy.
- e) Management *Mobbing*: This is carried out by the management of the organisation.
- f) Perverse *mobbing*: This refers to a type of *mobbing* that does not have a work-related objective. (Garcia, 2009)

From the above mentioned we have the different types of harassment at work, each one with its different legal criteria, which makes the interpretation clear and can be further improved in the labour area such as the labour code.

2. MODALITIES OF WORKPLACE HARASSMENT BETWEEN WORKERS

Professor Diazgranados (2015) states the following: "Any insulting or outrageous verbal expression that harms the moral integrity or the rights to privacy and good name of those involved in an employment relationship" (p. 30).

It is all conduct that goes against the victim and, above all, is based on the victim's righteousness and good name. When the victim is totally weakened and transmits insecurity, the perpetrator will see this as a bad thing, wanting to surround, besiege and block everything that the worker says or does.

Regarding the modalities of harassment at work, the author defines it as anything that physically and emotionally wears the worker down, which makes their behaviour very good in the eyes of others, but the harasser sees it as a breaking point to be able to torment the victim. A victim is usually an intelligent person, and this situation causes the affected person to have a decrease in intellectual development, concentration, and performance. The need to be able to have a job means that he or she must put up with daily aggravations: insults, isolation, assignment of tasks, and mockery in front of other colleagues.

2.1. Labour persecution

Professor Diazgranados (2015) on labour persecution indicates that it is:

Any conduct whose characteristics of reiteration or evident arbitrariness allow inferring the purpose of inducing the resignation of the employee or worker, through disqualification, excessive workload, and permanent changes of schedule that may produce demotivation at work. (p. 30)

The bully's behaviour is still very frequent and causes disaffection. Therefore, workers feel persecuted and pressured to the point of no longer socialising, even becoming asocial. The profile of the bully is that of a psychopath in the company, with mediocrity, envy, and narcissism being the most common traits.

The lawyer Diazgranados (2015) argues that: "Two aspects of this second type of workplace harassment stand out:

the first is that the persistence of the conduct is fundamental for its configuration and the second is that the purpose is to induce the resignation of the worker” (p. 30).

Persecution at work is all conduct that is imposed consecutively by the harasser, who, by being reiterative and constant in his actions, achieves what he wants, such as harassment at work in such a way that he panics and does not socialise with anyone in the company so that he does not carry out his activities in the best possible way. Such acts do not matter to the harasser, because he has the backing of his group. The violation of workers’ rights continues to occur in our city and the harasser’s aim is notorious: to mentally block the victim in order to invade his private life with inappropriate comments and prevent him from working.

3. WHY MOBBING ARISES IN THE WORKPLACE

The one that is initiated by a bully or group of bullies in front of the victim or victims, because the bullied person is different from the bullies; this difference can come because the victim is brighter or better known in his or her professional field than the bully; envy of the bully that presents him or her in his or her dark side as an insecure person (Rojo and Cervera, 2006).

For the undersigned, this is also something fundamental that must be taken into account, and the behaviour of the perpetrator or also known as the harasser must always be seen, because from the moment that a worker within the organisation causes harm and is repetitive, the aim is to be able to progress with attrition until they achieve their objective, which is to isolate the victim in such a way that they feel harassed and make them feel insecure. The purpose of which is to be able to progress with wear and tear until he achieves his objective, which is to isolate the victim in such a way that he feels harassed and makes him feel insecure about himself.

4. ETHICAL BUSINESS CONFLICTS IN WORKPLACE BULLYING

Professor Valencia (2017) mentions that “ethical-business conflict is the one that arises when there are behaviours derived from the relations between employers and workers, which can be called Workplace Harassment” (n. p.).

Conflicts that are business ethics make it an obligatory circumstance for the company to work in a well-functioning way. At the same time, it is held in high esteem, including acting in the best possible way for its correct functioning. This allows it to remain a great motivator to do things in the best possible way and a guide for its process.

5. COMMON FORMS OF MOBBING

5.1. Active

Within the usual forms, the specialist Vidal (2017) testifies that they are:

Lies and slander about the victim; badmouthing the victim behind her back; hoaxes about the victim's private life; public disqualification, humiliation, and ridicule; exposing the victim to group criticism; referring to the victim using nicknames; veiled and malicious allusions; use of sarcasm, innuendo, insinuations, but not directly expressed. (p. 9)

The doctrine guides us in the direction of labour harassment and teaches us how *mobbing* is carried out, but what is still missing in the Labour Code is a deeper and clearer understanding of *mobbing* and its types. There is still a lack of clarity and a gap in the Labour Code as is seen among workers.

5.2. Passive

Passive forms of bullying are also common:

Looks of contempt; Intentional silences; Ignoring the victim; Not greeting her; Not sitting next to her; Not looking her in the face when talking to her; Hiding information from the victim; Not inviting her to meetings; Not assigning work to the victim; Not respecting her level of training or seniority in the job; Not inviting her to work parties or celebrations; Not giving her the floor in meetings. (Vidal, 2017, p. 9).

The passive methods are taken very abruptly by the harasser, who transmits fear to the victim and above all locks him/her in an imperfect world and belittles any type of activity he/she carries out within the company. This is done consecutively to make the victim feel inferior and with low self-esteem.

6. FORMS OF EXPRESSION

Among the forms of expression, Professor Leymann (n. d.) explains that during the study of mobbing.

It has described 45 hostile behaviours 49 which can be of different natures, usually falling into five groups, and relate to Harassment activities to reduce the victim's possibilities to communicate adequately with others, including the harasser himself; Harassment activities to prevent the victim from having the possibility to maintain social contacts; Harassment activities aimed at discrediting or preventing the victim from maintaining his personal or work reputation; Harassment activities aimed at reducing the victim's occupation and employability through professional discrediting; Harassment activities affecting the victim's physical or psychological health. (quoted by Vidal, 2017, p. 10).

Harassment behaviour is unworthy of dignity and, above all, detrimental to the working environment. It is not possible to continue to disadvantage the victim and devalue his or her work.

Vidal and Daza (2017) classify expressions as follow:

Actions against the reputation or personal dignity of the person concerned; by making insulting comments against him/her. Actions against the exercise of their work, by entrusting them with work that is excessive or difficult to perform when not unnecessary, monotonous, or repetitive, or even work for which the individual is not qualified, or which requires a lower qualification than that possessed by the victim *shunting*; or, on the other hand, depriving them of the performance of any type of work; confronting them with role conflict situations by denying or hiding the means to perform their work, asking them for contradictory or excluding demands, forcing them to perform tasks against their moral convictions, etc.); Many of the actions involve manipulation of communication or information with the person concerned involving a wide variety of situations. (p. 11)

It is understood that every action of the bully goes hand in hand with attrition and in turn causes a bad reputation in the eyes of other colleagues who may become the next victims.

6.1. Attacks on the victim's social relations with social isolation

For Villa et al. (2019) attacks on social relationships are:

Restricting peers from talking to a person; Refusing to communicate with a person by not communicating directly with him/her; Not speaking to a person;

Treating a person as if he/she did not exist. (p. 12)

The interest is in agreeing to every activity that does the job and clearly damaging their mental health and keeping them away from communication altogether because the recovery treatment of these people who are victims of bullying continues to increase.

6.2. Attacks on the victim's private life

Villa, et al (2017) explain that they are:

Constant criticism of a person's private life; Telephone terror; Making a person look stupid; Implying that a person has psychological problems; Making fun of a person's disabilities; Imitating a person's gestures, and voices; Making fun of a person's private life. (p. 12)

7. TACIT PARTNERS IN MOBBING

Apaza (2017) states:

There is a group of collaborators of the gang, who are not as violently active but who help the bullying by spreading rumours and refusing to help the bullied. They are the so-called tacit collaborators of mobbing because with their actions they enhance the isolation of the victim and discredit him/her, they act as facilitators and cover-ups of the harassment. (p. 25)

For the undersigned, the collaborators are those colleagues in the organisation who help the perpetrator to continue harassing the victim, and who in turn need to cover up for all the acts that the harasser carries out until he achieves his objective, while he gets what he wants, the harasser and his group of collaborators expands as the harassment progresses, especially in long-term harassment, up to 15 people, all of them assisting in the harassment process.

8. MOTIVES OF THE WITNESS OF WORKPLACE HARASSMENT FOR NOT GIVING HELP TO THE VICTIM

Other participants in the bullying process are witnesses or bystanders, who for many reasons do not give help to the victims. Villa et al. (2019) express that they are: “They can be the following victims: They understand or have experienced bullying Psychological manipulation; Violence: Cowardice and fear; Lack of critical and analytical thinking skills; They do not dimension the consequences” (p. 17).

They are those who prefer to remain silent and not to be part of the harassment at work because they could be victims; out of fear and fear of the harasser, they prefer to ignore him/her. They leave their colleague aside and do not help in whatever is necessary to repel the attack that the bully carries out daily.

9. PSYCHOLOGICAL OR MORAL HARASSMENT

The jurist Pereiro (2016) indicates that psychological harassment is conduct that: “Attacks the dignity and moral integrity of the person and always involves psychological mistreatment and emotional abuse” (p. 5).

Psychological harassment is conducting those harms and can disqualify any type of activity carried out by the worker. The victim is put at risk and becomes psychologically and emotionally destabilized.

9.1. Difference between bullying, harassment, and burnout syndrome

Pérez Terry (2019) states that both: “If it occurs from superior to subordinate it is harassment, while harassment occurs between people with the same hierarchical level in the company” (n. p.).

Harassment should be understood as any form of endangering the worker and therefore this is voluntary so that there is no confusion about harassment at work. This is something that many people put up with in order not to lose their jobs.

According to Psicología Velázquez (2017) "Burnout syndrome can be confused with a situation of harassment for these reasons, poor management of the company and consequently work overload, as well as false expectations on the part of the worker" (n. p.).

It should be borne in mind that this figure is not related to harassment at work and therefore they are totally different.

9.2. Harassment in the workplace as a violation of human dignity

Rodriguez and Larenz (2015) argue that workplace bullying is an attack on human dignity:

It is the fundamental principle of law, from which all regulation stems, it is reciprocal respect, the recognition of the personal dignity of the other and, therefore, of the indemnity of the person of the other in all that concerns his or her external existence in the visible world, life, physical integrity, health, and in his or her existence as a person, freedom, prestige person. (p. 9)

Such is the case that the worker is in great danger and devaluing each one of his activities, thus undervaluing his potential, and can even more so harass the victim as a group, provoking psychological deficiencies and causing internal damage to his mental health by making him look bad in the eyes of others, being the victim of ridicule, etc. Ecuadorian jurisprudence does not give a clear answer on harassment at work, which is why it is necessary to continue to study this subject in greater depth.

On the other hand, in comparative law, there is a solution and a specific law, such as the Colombian law, which protects the rights of workers. Because they are the weaker party and there is greater job stability, which means that the rights and principles of the worker can be violated. It is necessary to take the doctrine as a reference, as I have already explained, and to issue rulings that serve as a precedent for harassment in the private sector.

9.3. Personality and self-esteem in victims of bullying

To Alcides et al. (2009): “Personality studies the determinants of personality and the agents that lead people to act as they do and establishes indicators to predict behavior” (p. 4).

9.4. Intent to cause harm

For Vidal et al. (n. d.) The intention to cause harm is:

A situation in which a person, or several persons, systematically and recurrently, over a prolonged period, use extreme psychological violence against another person or persons in the workplace with the aim of destroying their communication networks, destroying their reputation, disrupting the performance of their work and de-motivating them at work. (p. 2)

This is still seen as a form of malice, i.e., the active subject must have the knowledge and will to cause harm so that the passive subject leaves his or her job as a result. Therefore, it is misunderstood to speak of mobbing or harassment at work, as we would be dealing with other forms of harassment such as work-related stress. Above all, the harassed person must be discouraged from quitting his or her job.

10. THE RELATIONSHIP BETWEEN MOBBING OR HARASSMENT AT WORK WITH STRESS

For the doctrine of the relationship of mobbing to stress, Leymann (2009) considers that “German research on psychologically oriented stress, in particular, it can be argued that mobbing can be seen as a certain kind of far-reaching and dangerous social stress” (n. p.).

This means that Anglo-Saxon research has focused more on what corresponds to the biological character of stress, because of confusion over the content of the terminology and it is not clear whether mobbing is the source of stress or the source of stress.

10.1. The relationship with mobbing

In Swedish research conducted in 1982, it is specified that mobbing should be considered an exaggerated conflict. Leymann (2009) states that:

Mobbing evolves from a conflict after a certain period, sometimes very quickly, sometimes after weeks or months, leading to the characteristics described. In social psychology, research on aggression and conflict is voluminous. (p. 8)

The doctrine teaches us that clarification is still being sought, but so far, they have not focused on the damage caused to the health of the victims, which is why the number of cases of harassment at work continues to increase and life endangerment is maintained without protection, which could even lead to the death of the victim as the perpetrator can no longer tolerate harassment at work in the company.

10.2. Key aspects of workplace bullying

For the jurist Villa (2019) one of the key aspects is that:

They can be very cunning, ingenious, and sometimes very subtle, to such an extent that other employees, although they witness the harassment, may not be able to identify it. What these techniques have in common is that they seek to harass, slander, and attack the victim's work, convictions, and private life by isolating, stigmatising, and threatening him or her. (s. p.)

The liveliness used by the bully is fully overwhelming, imposing, and perverse. The existence of the problem is what really attracts him to commit bad habits and the repudiatory contact he receives from his classmates, being the centre of attraction with shouting and physical aggression towards his classmates.

10.3. Causes of mobbing or harassment in the workplace

The various causes of workplace bullying and its major relevance are mentioned by Carvajal and Dávila (2019) as they mention that:

Depending on the personality of the victim and the bully; Depending on the inherent characteristics of human interactions in organisations, and Depending on the specific organisational climate and environment of an organisation. (p. 8)

From another point of view, Villa and Trujillo (2019) explain that:

Another cause of mobbing is to demonstrate the bully's power as a means of intimidating other staff in order to maintain and gain a foothold. (p. 12)

In this regard, Villa et al. (2019) stress that: “Jealousy and envy felt by bullies are the most frequent causes of mobbing” (p. 34).

This is the behaviour that the perpetrator uses to hook the victim and then reduce irrelevant information, because it is understood that he has already obtained his information and they always have the pretext of being able to slander the victim, causing the victim to withdraw into his world and finally decay.

This type of harassment is still totally negative for the working environment in private companies. As the writers explain, it is something that we must bear in mind that the affected party in the labour relationship is the worker. When providing his or her professional services to a company, the company should not allow this type of harassment by another colleague.

Therefore, reform of our labour code is necessary. Due protection and compliance with the labour principles of the worker. Finally, it is also the Machiavellianism, cowardice, and cynicism of the harasser that leads him to use the group for his attacks on the harassed and to hide behind it so that in case of being discovered, his responsibility is blurred.

10.4. Consequences of workplace bullying

The treatises. Carvajal and Dávila (2013) explain that:

Harmful effects of mobbing on individuals, organisations, and society have been demonstrated. Most of the studies investigate the individual and organisational consequences, with the most representative studies focusing on the effects on individuals. (p. 93)

A first outcome that triggers many illnesses is stress at work, which can occur as a cause or because of bullying. For the victim, the immediate manifestation will be reduced self-confidence, a tendency towards job abandonment, isolation, and absenteeism, whereby, if the person loses his or her job, he or she loses the will to look for a new one.

11. HARASSMENT AT WORK IN ECUADORIAN LEGISLATION

In November 2017, the Labour Code incorporated into the Labour Code the concept of labour harassment for the termination of the employment relationship as just cause for both the employer and the employee.

The typification of harassment in the legal body of labour law brings with it the technique of the benefit to identify and to a certain extent control the continuation of the illegal practice of discrimination against workers; although it is true that for a long time there has been economic-material reparation for dismissal, it is also true that from a human point of view the worker has never received justice (Carvajal, 2018).

When talking about harassment at work in Ecuadorian legislation, it is necessary to point out that it is already established, but there is still no extension of the definition of harassment at work, which is still a big problem for workers in private companies, and that in turn, it is possible to achieve due protection and reduce the number of cases of harassment at work. Because it is not necessary to provide the necessary legal means for the worker to assert his or her rights and not to let them go unpunished.

11.1. Employer's obligations

Within the employer's obligations, according to Ordóñez (2015): "The employer's obligations, like those of the worker, can be classified as economic, including the payment

of remuneration, profits, and additional remuneration; and ethical-psychological, we have the protection and assistance of the worker” (p. 51).

Of the obligations that the employer has, there are those that must undoubtedly be fulfilled, and that the employer must comply with because, as it is contemplated in the Labour Code, it should not be overlooked, which by law corresponds to the worker, because if the worker is harassed periodically, the employer also has the obligation to put a stop within the organisation and control harassment between colleagues.

11.2. Rules of Procedure

Figueroa (2017) “defines them as the binding normative provisions between employees and employers bound by an individual contract that regulate the role of the parties, especially the functions of the workers during the course of the employment contract” (n. p.).

The main activity of the internal work regulations is to enforce the established regulations and to enforce the functioning of the company or organisation because they are valid and must be complied with internally in the company, and the worker must fully comply with them so that there is order within the company.

11.3. Definition of mobbing

Unnumbered Art. - Any behaviour that violates the dignity of the person, exercised in a repeated and potentially harmful manner, committed in the workplace or at any time against one of the parties to the employment relationship or between workers, which results in the undermining, mistreatment, or humiliation of the person concerned, or which threatens or harms their employment situation. Harassment may be considered a discriminatory action when it is

motivated by one of the reasons listed in article 11.2 of the Constitution of the Republic, including union and trade union affiliation. (National Assembly of Ecuador, 2019, art. unnumbered).

Conduct reported as harassment at work shall be assessed by the labour authority, depending on the circumstances of the case and the seriousness of the conduct reported. The competent authority shall assess the circumstances according to the capacity of the circumstances to put a worker under pressure to marginalise, resign or leave his or her job.

The definition of harassment at work is understood in a general way and two elements of the definition are focused on a responsibility that is inconsistent for the employer since it does not allow the worker who is a victim of harassment at work to act and assert his or her rights. This does not benefit the worker who is harassed, but rather ends up harming him/her and confining him/her to a world of loneliness, depression, anxiety, and fear.

11.4. Approval

For Bósquez et al. (2021) the approval is:

The legal institution called “visto bueno” is nothing more than a conclusion, since it is a request that can be made by any of the parties involved in the employment relationship, i.e., employer or worker, historically it arose to stop the abuse committed by employers when they dismissed the worker without any reason and without any procedure other than imposition. (p. 9)

Since the legal emergence of this institution, the competent authority for its knowledge has been the Inspector, in such a way that they are the ones who carry out the procedures, in which the facts that they wish to make known are set out, as

well as the evidence that serves as a basis for the existence of the harassment of the worker, so that the authority investigates, analyses and resolves, admitting or denying the request.

	Argentina	Brazil	Chile	Uruguay	Paraguay	Bolivia	Colombia	Ecuador	México
General law	X	X	X	X	X	X	✓	X	X
Generic Law	✓	✓	✓	X	X	X	X	X	X
Job code	X	✓	X	X	✓	X	X	X	✓
Ref.									
Const/ C. T/ Jurisp	X	✓	X	✓	X	✓	✓	✓	X

Table 1: Comparative Law

Source: Gutiérrez (2020, n. p.)

According to the comparative table of Professor Gutiérrez, we realise that, at the level of labour law, the countries of Ibero-America have a big problem regarding harassment among peers. This leaves a big gap and a great lack of protection of workers' rights, and it is not only necessary to apply the Constitution of the Republic as the highest body. It is wrong that there is no clarification on the subject in the labour code and therefore it does not fully cover one of the basic principles such as the *indubio pro labore*.

In the Argentinean legislation, there is no specific regulation, there are only generic laws, such is the case in countries like Brazil, where there is no specific law either, and they do not give protection to the victim of harassment at work when it is perpetrated by his or her partner. This is the case only in Colombia, where there is a specific law that protects victims of harassment at work.

12. METHODOLOGICAL GUIDELINES AND RESULTS

The methodology used in this research is historical, analytical-synthetic, with a qualitative and quantitative approach, a mixed deductive and inductive method, using as research techniques the survey to collect information, as well as interviews with legal professionals specialised in domestic arbitration, and determine whether the hypothesis put forward to the researched problem is viable.

As for the universe of the research, it is in a single segment, which are the legal professionals who are accredited in the Forum of Lawyers of the Province of Guayas of the Republic of Ecuador.

Of the 375 lawyers surveyed in the city of Guayaquil, 35% strongly agree that bullying among peers continues to be a problem, 24% agree that bullying continues to be a problem in the city of Guayaquil, 24% agree, 20% disagree and 24% strongly disagree.

In question two in this regard, it is noted that 18% say they strongly agree that, since the incorporation of the Labour Code on harassment at work, it has achieved its purpose of reducing the incidence of cases, while 21% say they agree, 32% say they disagree and 28% strongly disagree.

Question three on this question shows that 27% of the respondents said that they fully agree with the workers and that they would be able to prevent the victim's rights from being further undermined.

In question five with respect to this result, 32% of respondents totally agreed that it was a mistake of the legislator to create a definition of mobbing in the Labour Code and not to specify its types, 27% agreed, and 21% disagreed, and 20% totally disagreed.

In question six, about this result, 40% totally agree that harassment at work harms the worker in their performance in their area of work, 38% agree, 13% disagree, and 9% totally disagree, from which it can be understood that harassment at work among peers is a major problem in private companies in Guayaquil.

In question seven, 53% strongly agreed, 25% agreed, 13% disagreed and the remaining 9% strongly disagreed. From this result, it can be interpreted that there is an acceptance of the need for a clearer definition of peer harassment at work in the Labour Code and that the victim should also have the right to take action to report it.

Question eight shows that 27% of the respondents maintained their position of strongly agreeing that the offender's behaviour could decrease once article 172, paragraph 8 of the Labour Code is reformed, 25% agree, while 22% disagree. This is followed by 26% who strongly disagree with the idea that peer harassment in private companies could be reduced.

In question nine, according to the percentages obtained in this question, 30% said they totally agreed that there is no real protection for workers who suffer harassment at work from their colleagues, 24% said they agreed, 21% said they disagreed, and the remaining 25% said they totally disagreed.

46% of legal professionals say they strongly agree with the ratification of Convention 190 on violence and harassment, 19% agree, 18% disagree and the remaining 17% strongly disagree.

CONCLUSIONS

According to the interpretation of the doctrine on harassment at work, it is always provoked by a harasser, which in this case is the colleague who seeks to cruelly harass the harassed worker and belittle his work with insults, and aggressions to the point of diminishing his dignity and self-esteem, causing isolation within the work environment. There are different types of harassment at work, such as verbal harassment, which manifests itself when the harassed person is assaulted with foul language, physical harassment with blows, and psychological harassment, which makes the victim lose concentration and keeps him or her isolated. In conclusion, the doctrine is clear in detailing the different types of harassment at work and it is necessary to expand the different types of harassment in numeral 8 of article 172 of the Labour Code, in order to avoid the general form obstructs the best application to the different specific circumstances in which harassment at work occurs.

According to the percentages given by the Ministry of Labour, in the period 2017 12,057 complaints were received, in 2018 they amounted to 13,600, and in 2019 14,780 complaints about harassment at work and good bystanders, an alarming figure that since its incorporation into the Labour Code has been increasing. This way, in the last three years, harassment at work continues to be a major problem in the work environment in the city of Guayaquil.

According to the results of the surveys carried out with legal professionals, and specialists in labour law, it was possible to verify the hypothesis and the objectives of the research, the most affirmative results being that 37% of the professionals surveyed totally agree that the problem of harassment at work lies in the fact that the Labour Code is not clear. It has been verified that, although there is a procedure of approval with

the aim of preventing and reducing workplace harassment among workers, there is no action to be able to denounce to the Ministry of Labour by the victim worker against the harassing colleague, thus violating labour guarantees and principles.

78% of the legal professionals surveyed and 100% of the judges who specialised in labour matters interviewed support the need to reform numeral 8 of article 172 of the Labour Code, since the definition of labour harassment is very general, and for this reason, the types of labour harassment such as verbal, physical and/or psychological harassment are not specified either. This means that the worker's labour rights and principles are violated. We must also bear in mind that in our current regulations, the exercise of action is only available to the employer against the harassing worker, but it is necessary that the Labour Code also establishes that the harassed worker can go to the Ministry of Labour to file a complaint against his harassing colleague, prior to the relevant notifications to his employer and if he ignores these notifications.

Moreover, it is recommended that the Labour Code be reformed in its numeral 8 of article 172, replacing it with the current numeral and expanding the definition and its types, so that in this way the worker who is a victim of workplace harassment also has the right to act. According to the doctrine and the results of the surveys and interviews carried out, the law is not clear and precise in the way in which these rights should be considered in cases of harassment at work so that the rights of the victim are not violated.

It is necessary that law students, legal researchers, and legal professionals can continue to study this issue in order to promote criteria and positive changes that have waited more than 3 years the legislation governing workplace harassment in Ecuador, existing legal gaps despite its incorporation made in 2017 in the Labour Code.

For reforming the Code and to establish the extension of the definition of harassment at work between workers and that not only the employer has the right to bring an action for approval, but also the worker who is the victim of harassment at work by his or her colleague. This is relevant to guarantee respect for the rights established in the Constitution of the Republic of Ecuador and other rules governing labour law. Then, to propose regular awareness-raising talks to workers to reduce harassment at work. Finally, for designing a training plan that contributes to the prevention of workplace bullying in private companies.

REFERENCES

- Alcides, J. and Puentes, A. (2009). Rasgos de personalidad y autoestima en víctimas de acoso laboral. *Diversidad: Perspectiva Psicológica*, 6 (1), pp. 51-64. Retrieved from: <http://www.scielo.org.co/pdf/dpp/v6n1/v6n1a05.pdf>
- Apaza, M. (2017). *Penalización del mobbing o acoso laboral*. (Degree work). Universidad Mayor de San Andrés, Bolivia. Retrieved from: <https://repositorio.umsa.bo/bitstream/handle/123456789/11746/TD5106.pdf?sequence=1&isAllowed=y>
- Asamblea Constituyente del Ecuador. Constitución de la República del Ecuador. (2008). R. O. 449, October 20, 2008.
- Asamblea Nacional del Ecuador. Código del Trabajo. [Cod. 17]. (2019). R. O. 167, December 16, 2005.

- Ávila, D. (2014). *Propuesta de Reforma para Establecer el Acoso Laboral en el Código de Trabajo*. (Degree work). Universidad Central del Ecuador, Quito. Retrieved from: <http://www.dspace.uce.edu.ec:8080/bitstream/25000/3995/1/T-UCE-0013-Ab-259.pdf>
- Bósquez, J., Campaña, L. and Chica, L. (2021). El visto bueno, sus causales y las normas técnicas que regulan su procedimiento según el Ministerio de Trabajo. *Dilemas contemporáneos: educación, política y valores*, 9. <https://doi.org/10.46377/dilemas.v9i.2999>
- Brodsky, C. M. (2019). *The harassed worker*. Toronto: Lexington Books; DC Heath and Company.
- Cabanellas, G. (1998). *Diccionario Juridico Elemental*. Heliasta.
- Carvajal, J. and Dávila, C. (2019). Mobbing o acoso laboral. Revisión del tema en Colombia. *Cuadernos de Administración*, 29 (49).
- Carvajal, M. (2018). *El despido por acoso laboral de un trabajador de una empresa de seguridad privada de la ciudad de Guayaquil en el primer semestre del 2017*. (Degree work). Universidad de Guayaquil, Guayaquil. Retrieved from: <http://repositorio.ug.edu.ec/bitstream/redug/28864/1/Carvajal%20S%C3%A1nchez%20Marcia%20029.pdf>
- Cordero Ríos, A. G. (2016). *El Acoso Laboral o Mobbing en la legislación laboral ecuatoriana*. (Degree work). Universidad del Azuay, Azuay. Retrieved from: <http://dspace.uazuay.edu.ec/bitstream/datos/6760/1/12755.pdf>
- Diazgranados Quimbaya, L. A. (2015). *El acoso laboral: Análisis conceptual y comparado*. Colombia: Colección Jus Laboral.

- Figueroa, E. (2017). *Protección jurídica de los derechos en la relación laboral de los empleadores a través del reglamento interno de trabajo legalmente aprobado*. (Degree work). Pontificia Universidad Católica del Ecuador, Quito. Retrieved from: <https://repositorio.pucesa.edu.ec/bitstream/123456789/2147/1/76570.pdf>
- García Solarte, M. (2009). Clima Organizacional y su Diagnóstico: Una aproximación Conceptual. *Cuadernos de Administración (Universidad del Valle)*, (42), pp. 43-65. Retrieved from: http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0120-46452009000200004&lng=en&tlng=es.
- General Assembly of the United Nations. (December 16, 1966). *International Covenant on Economic, Social, and Cultural Rights*. Retrieved from: <https://www.ohchr.org/SP/ProfessionalInterest/Pages/CESCR.aspx>
- Leymann, H. (1996). *Mobbing*. Paris: Seuil.
- Leymann, H. (2009). *El contenido y desarrollo del mobbing en el trabajo*. Universidad de Umea, Suecia. Retrieved from: <https://www.kwesthues.com/e-LeymannEJWOP1996.pdf>
- Ministerio de Trabajo. Normativa erradicacion de la discriminacion en el ambito laboral. [Acuerdo Ministerial No. 2017-0082]. (June 16, 2017). R. O. 16, June 16, 2017. Retrieved from: <http://www.trabajo.gob.ec/wp-content/uploads/2012/10/AM-82.-NORMATIVA-ERRADICACION-DE-LA-DISCRIMINACION-EN-EL-AMBITO-LABORAL.pdf>
- Ordoñez, G. (2015). *Incongruencia jurídica respecto al tiempo para la sanción. Obligaciones del empleador*. (Degree work). Universidad Nacional de Loja.

- Psicología Velázquez. (2017). El mobbing versus síndrome de burnout. *Psicología Velázquez*. Retrieved from: <https://psicologiavelazquez.com/el-mobbing-versus-sindrome-deburnout/>
- Robbins, S. (2012). *Comportamiento Organizacional. Teoría y práctica*, 10th ed. México: Pearson Educación de México. S. A. Prentice-Hall INC.
- Rodríguez, N. (2013). Del mobbing al burnout. En E. Sanz (ed.), *Cómo sobrevivir a las tensiones del trabajo en tiempos de crisis*. Barcelona: Grupo Océano.
- Rojo, J. V. and Cervera A.M. (2006). *Mobbing o acoso laboral*. Madrid: Ed. Tebar.
- Valencia, L. (September 27, 2017). El acoso laboral: un análisis desde una perspectiva ético-empresarial. *E-labor*. Retrieved from: <http://www.e-labor.co/node/147>
- Vidal, M. and Leymann, H. (s. f.). El mobbing en el trabajo. *bioeticacs.org*. Retrieved from: https://www.bioeticacs.org/iceb/investigacion/EL_MOBBING_EN_EL_TRABAJO.pdf
- Villa, B. (2019). *Diplomado En Acoso Laboral (Mobbing). Etapas del Mobbing*. Bogotá: Politécnico de Colombia.
- Wilches, M. and Leymann, B. (2019). *El acoso laboral: Un concepto reciente dentro del marco normativo*. (Degree work). Pontificia Universidad Católica de Colombia.

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