

GUIDELINES FOR DEALING WITH CONFLICTS, HARASSMENT OR OTHER IMPROPER CONDUCT

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1. PURPOSE

The main purpose of these guidelines is to:

- prevent, uncover and stop harassment or other improper conduct
- improve the way conflicts and incidents of harassment or other forms of improper conduct are dealt with
- lower the threshold for reporting harassment or other forms of improper conduct.

2. WHO DO THE GUIDELINES APPLY TO?

These guidelines apply to all employees in the Foreign Service, including locally employed staff at the missions. They apply regardless of whether employees are temporary or permanent, and whether they work full time or part time. They also apply to student trainees.

3. WHAT IS MEANT BY HARASSMENT OR OTHER IMPROPER CONDUCT?

The Working Environment Act states that employees are to have a working environment that is satisfactory in every way, and where no one is to be subjected to harassment or other improper conduct. In order to comply with these provisions, we need to have a clear understanding of what is meant by the terms ‘harassment’ and ‘improper conduct’.

Improper conduct means any action that causes undue psychological stress, triggers conflicts or causes any employee to feel bullied and/or harassed.

Conflict in this context means any disagreement between individuals or groups that develops into deep-seated antagonism.

The term *harassment* refers to all forms of harassment, including sexual harassment and bullying. According to the preparatory work for the Working Environment Act, harassment is undesirable behaviour with the purpose or effect of violating another person's dignity.

In order to establish whether harassment has taken place, both the intention behind the behaviour and the way it is perceived by the affected employee must be assessed.

The prevailing norms in society for morally and socially acceptable behaviour provide the framework for assessing whether harassment has occurred. Certain actions that are perceived as negative – or sometimes a failure to act that is perceived as unfortunate – must therefore be tolerated, because they are within the bounds of normal and reasonable behaviour.

The Norwegian Labour Inspection Authority defines harassment as when one or more individuals are subjected repeatedly and over time to negative actions (such as unwelcome sexual attention, pestering, ostracism, withdrawal of tasks, or hurtful joking and teasing) from one or more other individuals. According to the definition used by the Authority, in order for an action to be deemed to be harassment, there should also be an imbalance in the relative strength of the parties involved; the one being harassed must find it difficult to defend himself or herself. A situation where two individuals of roughly equal strength come into conflict is not considered to be a case of harassment, nor is a single episode of conflict.

4. THE RIGHT AND DUTY TO REPORT ISSUES OF CONCERN

The right to report issues of concern

Employees have the right to report unacceptable conditions or behaviour, or other issues of concern (referred to as 'censurable conditions' in the English version of the Working Environment Act) in the organisation, see section 2-4, subsection 1 of the Working Environment Act. Harassment and all other forms of improper conduct fall under this category, and employees thus have the right to report any incidents of unacceptable behaviour. Under Section 2-5 of the Working Environment Act, retaliation against an employee who reports issues of concern in accordance with the Act is prohibited. The main purpose of the rules on whistleblowing (referred to as 'notification' in the Working Environment Act) is to ensure that issues of concern are rectified, and to protect the whistleblower.

The employer may not set requirements concerning the way in which employees report issues of concern. A report is considered to have been made once the employee has passed on information about a matter of concern, whether in writing, verbally or anonymously.¹ The words ‘whistleblowing’, ‘report’ or ‘notification’ (or ‘varsling’ in Norwegian) do not have to be used.

Duty to report

All employees have a duty to ensure that the employer or HSE representative is informed as soon as they become aware of harassment or discrimination in the workplace; see section 2-3, subsection 2d of the Working Environment Act. The purpose of this duty to report is to prevent injuries or exclusion from working life due to harassment or discrimination.

What should be included in a report?

Reports should include: the name of the whistleblower (although he or she may choose to remain anonymous); the place of service of the whistleblower (unless he or she has chosen to remain anonymous); the date, the period during which the matter of concern was observed or experienced, and, if applicable, the date and time of the observation or experience; details of what was observed/experienced; the place where the matter in question took place; any witnesses; and any knowledge of previous incidents or relevant matters involving the same person/people.

5. WHISTLEBLOWING CHANNELS

Reports of unacceptable circumstances/conditions may be made to the following:

- The line manager. As a general rule, reports should be made to line managers, either to the immediate superior or to the manager at the next level.
- If the immediate line manager is a party to the conflict, the manager at the next level should be notified. If the head of mission is involved, the Director General of the Human and Financial Resources Department should be notified.
- The Central Control Unit.
- The Ministry’s external whistleblowing channel (a law firm).
- An employee representative, HSE representative or a colleague. The matter must then be reported to the employer through the channels set out above.
- The occupational health service.

6. REQUIREMENTS CONCERNING PREVENTIVE MEASURES

The Working Environment Act sets out that employees are not to be subjected to harassment or other improper conduct.² Line managers therefore have a duty to organise the work in their organisational unit in a way that ensures compliance with

¹ In cases of anonymous reports, it is important that all relevant details are included.

² Section 4-3 (3) of the Working Environment Act.

these provisions. However, all employees, regardless of their level, have a duty to play their part.³ This means everyone has a duty to actively contribute to a good working environment and actively support measures that are implemented to create a good, safe working environment, including measures to prevent and manage conflicts, incidents of harassment, and other improper conduct.

Serious conflicts can be prevented or defused using the ‘traffic-light model’:⁴

- **Green Zone:** A working environment that meets all the standards for a working environment that is satisfactory in every way, and where everyone contributes actively to maintaining the good working environment. There is a culture of openness and a high level of tolerance when it comes to internal criticism. Criticism and disagreements are handled fairly and professionally. The employees seek to prevent new conflicts and the escalation of any existing disagreements. Awareness of working environment issues, guidelines and plans are an important factor.
- **Yellow zone:** Tensions and conflicts that have developed and have not been resolved. This is to be expected in a normal working environment, but gives cause for concern.
- **Red zone:** The conflict has escalated, the parties no longer respect each other, and improper conduct can easily occur. There is a tendency to focus on the people involved rather than the issue at hand. In such cases, there is an urgent need for the conflict to be dealt with in a professional and effective way by the employer.

7. HOW TO DEAL WITH CONFLICTS, HARASSMENT OR OTHER IMPROPER CONDUCT

- In the yellow zone

In the yellow zone, issues should be resolved at the lowest possible level. Violations of the Working Environment Act are not the problem here. The general rule is that the parties themselves are responsible for finding a solution. If they are unwilling or unable to do so, the most immediate superior who is not involved should be given the opportunity to find a solution through dialogue with the relevant employees. In the case of conflicts involving the head of mission at a mission abroad, the Ministry will assist. The focus in yellow-zone issues is to find a solution and not to apportion blame. Setting

³ Section 2-3, subsection 1 of the Working Environment Act.

⁴ The traffic-light model is described in the Norwegian-language guide *Forebygging og håndtering av konflikter på arbeidsplassen* (‘Prevention and management of conflicts in the workplace’), published in 2012 by the Work Research Institute, the National Institute of Occupational Health and the Norwegian Labour Inspection Authority.

in motion a formal process to deal with the matter, as would be appropriate in the red zone, should be avoided.

- In the red zone

Red-zone issues concern violations of the Working Environment Act, and such conflicts should always be managed in accordance with the guidelines below.

Roles

It is crucial that the various people dealing with a reported concern are aware of their respective roles and that these are made clear to the whistleblower and the parties involved in a conflict.

- Line manager

A line manager who becomes aware of a case of harassment or other improper conduct in his or her area of responsibility is responsible for resolving the issue or dealing with the matter in accordance with the guidelines. The line manager must consider on an ongoing basis whether he or she needs to seek advice or other assistance from the Human and Financial Resources Department in the Ministry. In serious and/or complex cases, the line manager must always seek assistance.

- The Human and Financial Resources Department

The Human and Financial Resources Department provides advice and assistance in connection with conflict management. It has formal expertise in labour law, organisational psychology and other relevant areas, in addition to broad experience and knowledge about the correct way to deal with matters of this kind.

- The Ministry's external provider of legal services

The Ministry's external provider of legal services can give advice and assistance. In certain cases it may be best for them to deal with the matter themselves. This will be decided by the Human and Financial Resources Department on a case-by-case basis.

- The occupational health service

The occupational health service assists the employer, the employees, the Working Environment Committee and the HSE representative in creating a healthy and safe workplace. The occupational health service remains independent when it comes to working environment issues. It can provide advice and medical assistance if an employee has become ill or been injured as a result of conditions at the workplace. In cases of harassment or other improper conduct, the occupational health service can provide neutral advice and act as an intermediary.

- **The HSE representative**

The HSE representative has an important control function in the organisation, and has a responsibility to ensure that management follows up on reports related to accidents or health hazards in a timely way.⁵ There is broad agreement that harassment and other improper conduct may cause accidents or health hazards. If an HSE representative becomes aware of harassment or discrimination in the workplace, he or she has a duty to take the matter up with the employer. This means that the HSE representative is obliged to notify the employer even if the aggrieved party is opposed to it. The HSE representative must also ensure that the employer handles the conflict in accordance with these guidelines. The HSE representative may be asked to act as the support person for a party in a conflict, but in such cases the representative should clarify his or her role with management, because the HSE representative's role is primarily to safeguard the employees' general interests in relation to the working environment.

- **Employee representatives**

An employee can seek advice from his or her union. Employee representatives often act as observers in conflicts and can provide important support for the employee concerned. Employee representatives are entitled to report cases of harassment or other improper conduct, but do not have a duty to do so.

- **Norwegian Labour Inspection Authority**

If it is difficult to raise a matter of concern within the organisation, it is possible to contact the Norwegian Labour Inspection Authority. The Authority's role will then be to ensure that the Ministry fulfils its responsibility as employer. The Authority's role does not include resolving conflicts or acting as representative of any of the parties.

All reports of issues of concern are to be taken seriously and must be dealt with straight away

Anyone reporting an issue of concern is to be taken seriously and must be given the opportunity to raise the issue. The person who receives a report of a concern must consider whether a formal case needs to be established on the basis of the report. If so the case must be registered in accordance with the current document management routines and the Archives Act and appurtenant regulations.

The way in which the report is made has no bearing on the processing of the case

These guidelines apply regardless of the way in which a report is made or the whistleblowing channel used. The word 'report', 'whistleblowing' or the Norwegian

⁵ Section 6-2, subsection 3 of the Working Environment Act.

term 'varsling' need not be used. Moreover, the employer may not ignore an anonymous report.

The facts must be examined

The employer must ensure that sufficient information has been obtained about the matter before a decision is taken, see section 17 of the Public Administration Act. The employer must examine the facts and the assertions made in the report as quickly as possible. The usual way to proceed is for the line manager and/or a representative of the Unit for Personnel and Legal Matters in the Ministry to talk to the aggrieved party to clarify the details of the case. If the aggrieved party is not the person who reported the matter, the line manager and/or a representative of the personnel section should first talk to the person who made the report. They must also talk to the other party to ensure that they hear both sides of the case. The need for further enquiries to ensure that sufficient information has been obtained must be considered. For example, it may be necessary to interview relevant witnesses, colleagues, etc.

Confidential treatment

Out of consideration for all involved, and to prevent doubts being cast on innocent people, all documents and information relating to a whistleblowing report are to be treated as confidential. The identity of the whistleblower and the facts of the case are only to be made known on a need-to-know basis in connection with the processing of the case.

Documentation

The employer is to document what is done in writing.

- Minutes are to be taken of all meetings, and are to be presented to the parties for review. Any disagreements are to be included in attachments to the minutes.
- A verbal whistleblowing report is to be documented in writing, including the name of the whistleblower (unless he or she has chosen to remain anonymous), the period during which the matter of concern was observed or experienced, the date and time of the observation or experience, details of what was observed/experienced, the place where the matter in question took place, and any witnesses. The person making the report is to certify that a proper account of the matter has been given.

Information to the parties

If the employer decides to pursue a report, the person reported is to be informed of this fact and of the information contained in the report. This ensures that the person reported has the opportunity to present their side of the case and to defend themselves.

The parties must be kept up-to-date about the progress of the case, including when the process is expected to be completed and the end result.

When the case has been processed, the whistleblower is to be informed immediately. This applies even if the conclusion is that nothing unacceptable has taken place.

Consideration for both parties

Both the person making the report and the person reported may find the process extremely stressful. The employer has a duty to show consideration for both parties regardless of their position in the organisation. It is important to ensure that this does not affect the processing of the case or give the parties the impression that the matter has been decided one way or the other before the matter has been properly examined and the process concluded.

Retaliation is against the law

It must be possible to report matters of concern without fearing the consequences. Retaliation against an employee who reports harassment or other improper conduct, or who makes it known that he or she is considering or planning to report such a matter is against the law. This is set out in section 2-5 of the Working Environment Act.

The employer is responsible for ensuring that the whistleblower does not meet negative reactions either from managers or from colleagues. These could include withdrawal of responsibilities and opportunities for professional development and pay increases, bullying and harassment.

Redress

If it is concluded that harassment or other improper conduct has taken place, it is important that amends are made to the affected party, and that the employer takes steps to prevent similar incidents in the future. In many cases, the simplest and best form of redress is a direct apology. In some cases this is not possible or sufficient, and it may then be appropriate for an apology to be made by the manager. Furthermore, any negative career-, work-, or pay-related consequences for the person who was subjected to harassment or other improper conduct must be rectified.

Measures to be taken by the personnel section

The personnel section in the Ministry is responsible for follow-up measures vis-à-vis the person responsible for the issue of concern in the usual way, in accordance with the provisions of the Civil Service Act.

8. FOLLOW-UP

It will often be necessary to take steps to improve the working environment in the affected parts of the organisation following a case of harassment or other improper conduct. It is important to understand the causes of the problem, and to implement measures to prevent similar incidents in the future.

9. LEGISLATION, GUIDELINES AND OTHER RELEVANT DOCUMENTS

- The Working Environment Act
- Guidelines for Whistleblowing in the Foreign Service (whistleblowing poster)
- [Ethical Guidelines for the Public Service](#)
- Strategy 2017
- Foreign Service Personnel Policy Document
- Code of Ethics and Conduct for the Foreign Service

10. APPROVAL

These guidelines were approved by the Working Environment Committee (AMU) on 19 December 2014.