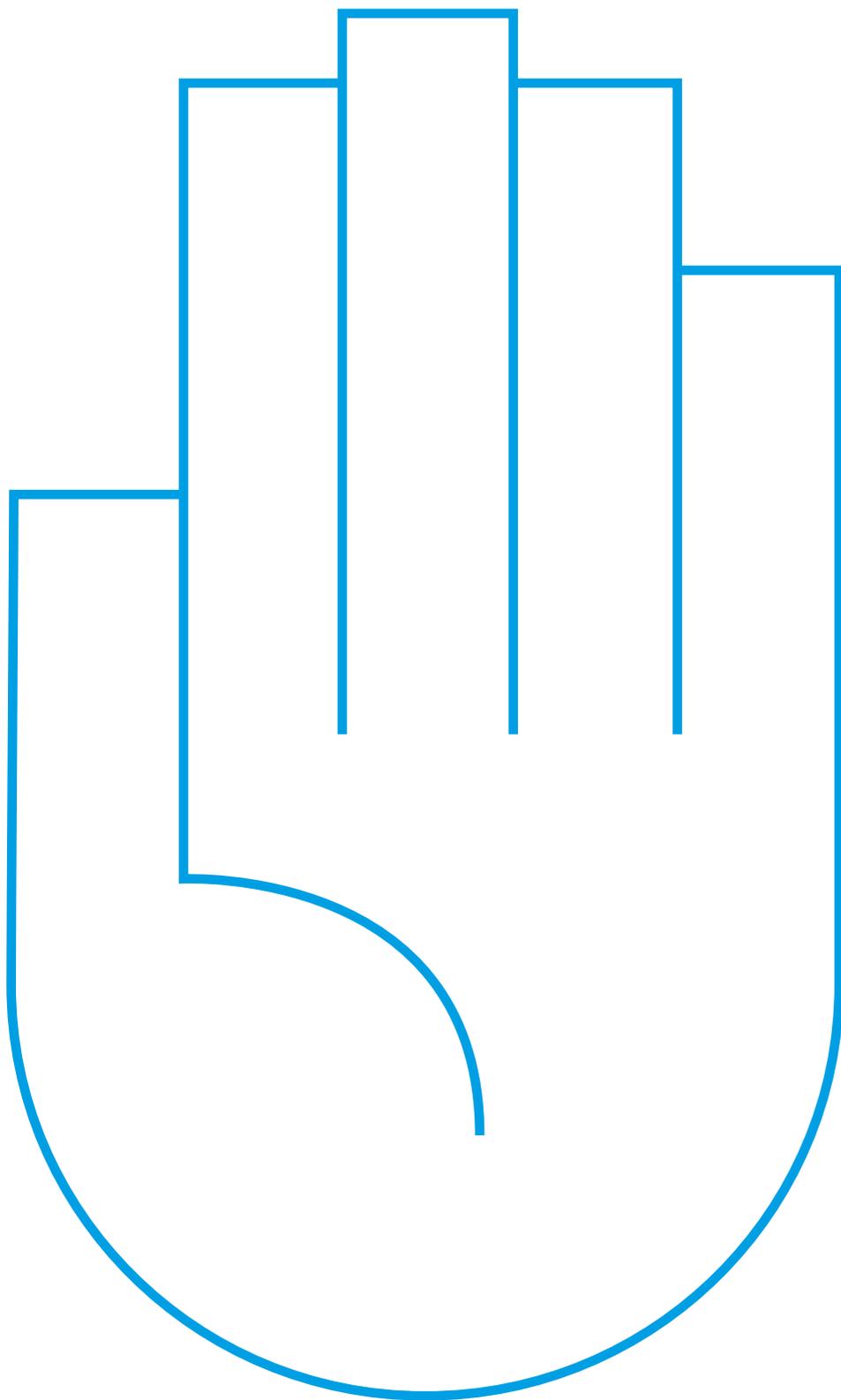




REPORTING SEXIST AND SEXUAL VIOLENCE IN THE WORKPLACE

— A HANDBOOK FOR FESTIVAL
D'AIX-EN-PROVENCE STAFF



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DEALING WITH THE SITUATION

— HOW TO DISTINGUISH BETWEEN SEDUCTION AND SEXUAL HARASSMENT?

The difference resides in the type of relationship initiated (egalitarian relationship or not) and whether consent had been given or not.

In a relationship based on seduction, feelings are positive and the consent of each person involved in the relationship is respected.

If you feel humiliated and that the relationship is no longer egalitarian, you are no longer experiencing a relationship based on seduction, but a relationship based on power where the other party seeks to dominate by denying your consent.

> SEXUAL HARASSMENT,

No employee should have to suffer the acts¹:

1° Of sexual harassment, consisting of **repeated sexual comments or conduct** that either **violate the person's dignity because of their degrading or humiliating nature** or create an **intimidating, hostile or offensive situation against the person**;

2° Or assimilated to sexual harassment, consisting of **any form of serious pressure, even non-repeated**, exercised **for the real or apparent purpose of obtaining an act of a sexual nature**, whether it is sought for the benefit of the perpetrator or for the benefit of a third party.

Hostile work environment sexual harassment:

"Sexual harassment may consist of environmental harassment [...] where, without being directly targeted, the victim is subjected to provocations and obscene or vulgar jokes which become unbearable for them"²

Sexual harassment is an offence punishable by 2 years' imprisonment and a fine of €30,000. It can lead to dismissal for serious misconduct.

— HOW TO DISTINGUISH BETWEEN SEXIST CONDUCT AND HUMOUR?

Humour involves a certain respect of the other, it is exercised within an egalitarian, mutual relationship between two persons. A person who shows a sense of humour takes into account the effect their remarks may have on you. On the contrary, conduct referred to as sexist generates discomfort or annoyance.

"It relates to any conduct related to the sex of a person for the purpose or effect of violating their dignity or creating an intimidating, hostile, humiliating, or offensive environment"³.

> SEXISM?

Sexism is often based on **stereotypes** and can take many different forms: salacious comments/jokes, false seduction, attitudes which place the victims in a position of inferiority by belittling their abilities, their appearance. **Sexism can concern women as well as men who find themselves criticized for their appearance/attitude because they do not correspond to stereotypical, macho portrayals.** A sexist atmosphere in the workplace is fertile ground for sexual harassment situations to develop.

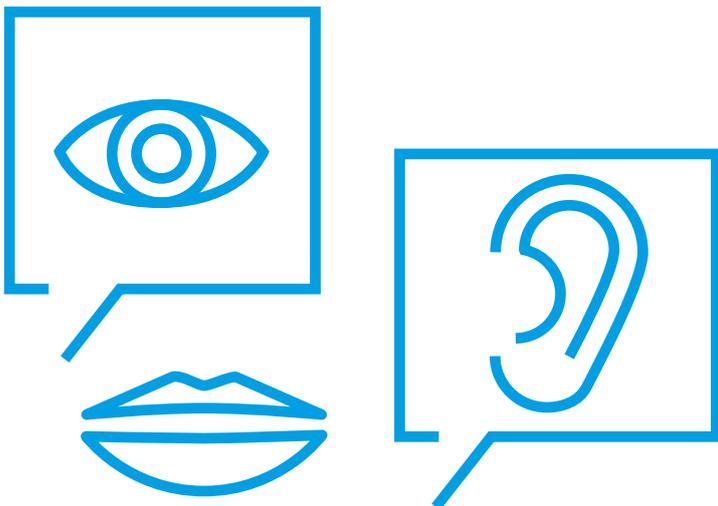
The perpetrator of such conduct may face a fine up to €1,500.

— EMPLOYER'S OBLIGATIONS

The employer has a duty to **ensure the safety and protect the physical and mental health of their employees⁴.**

In this respect, the employer must report the acts of sexual harassment when the acts are brought to their notice by ensuring the protection of the person concerned and by initiating a serious and impartial investigation. The employer is required to put an end to the sexual harassment and to punish it through a disciplinary procedure.

Sexual harassment in the workplace is considered as serious misconduct and the perpetrator may be dismissed for this reason⁵.



— HOW SHOULD YOU REACT IF YOU ARE A VICTIM? WHAT SHOULD YOU DO?

✓ REFUSE THE SITUATION CLEARLY

If you believe that a line has been crossed or if you feel uncomfortable in a situation, it is vital to be aware of how you feel and not to feel responsible for this situation.

You have the right to express this feeling and to refuse the conduct suffered as much as possible. It is important to say “no” clearly, even if this may be difficult. If the perpetrator of the violence does not change their attitude then they are transgressing your consent.

✓ ASK FOR HELP AND PROTECT YOURSELF

Protect yourself from risk as much as possible, do your best to cross the path of the perpetrator of the violence in public spaces only.

Do not hesitate to call on a colleague so that they will be with you whenever the perpetrator of the acts is present. Talk about what you are suffering/have suffered to your colleagues and loved ones including those external to the Festival.

✓ COLLECT EVIDENCE

Do your best to keep everything to compile a portfolio of evidence, even if you do not wish to initiate proceedings at this stage: keep all traces, especially written (emails, SMS, etc.).

✓ NOTING DOWN EVERYTHING THAT HAPPENED can help you assess what you have suffered:

HOW?

- The account must be **chronological, coherent and context-based**: specify the dates for each act suffered if you know them (if not, it is better to specify a period whenever you are not sure of the exact date);
- The account must **describe the acts as precisely as possible**, i.e. write down the exact words and gestures;
- The account must **chart the consequences of these acts**, in particular on your health;
- Finally, the account must **reproduce all formal and informal actions you have taken** (exchanges with loved ones, medical certificates and documents, written evidence, etc.).

— HOW SHOULD YOU REACT IF YOU ARE A WITNESS?

N.B.: the witness may be the manager.

If you witness harassment directly or if these acts have been brought to your attention, you should **inform the parties in the company responsible for dealing with them of the situation** (see below). Remember, it concerns your colleague’s health.

As an in-house witness, you can:

- With the victim’s consent, inform those in charge of the prevention and elimination of sexual harassment and sexist conduct;
- **Make a signed and dated context-based account** of the acts which you witnessed and transmit it to the victim.

During your exchanges with the victim, provide a listening ear and show sympathy: it is actually often very hard to recount and explain what happened. Also, don’t hesitate to talk about the law to help the victim identify and describe the situation as one of sexual harassment¹.

This may also help the person consider themselves as a victim and, as such, take proactive action.

— VICTIM AND WITNESS PROTECTION

This protection applies to victims...:

as a victim you are expressly protected:

“no employee or candidate for recruitment, internship or in-company training may be sanctioned, dismissed or subjected to any direct or indirect discriminatory measure, [...] for having suffered or refused to suffer acts of sexual harassment”

(Article L. 1153-2 of the French Labour Code).

... as well as to witnesses of harassment: as a witness, you play a key role in helping resolve a situation of sexual harassment, **and, as such, benefit from special legal protection**⁷

The protection remains in place irrespective of the response to having reporting the act: even if the investigation undertaken by the employer did not establish proof of the harassment, the party who reported it (victim, witness) cannot be subjected to disciplinary action or dismissed, except in the case of bad faith on their part (i.e. whenever the employee, for example, is aware of the falseness of the acts they are denouncing).

¹ Article L1153-1 of the French Labour Code ² Orléans Court of Appeal, 7 February 2017 ³ Article L1142-2-1 of the French Labour Code ⁴ Article L. 4121-1 of the French Labour Code ⁵ Article L. 1153-6 of the French Labour Code “Any employee who has engaged in sexual harassment is liable to disciplinary action.” “Sexual harassment constitutes serious misconduct.” ⁶ Sexual harassment in the workplace - <https://www.service-public.fr/particuliers/vosdroits/F1043> ⁷ Articles L. 1153-3 and L. 1153-4 of the French Labour Code.

WHO SHOULD YOU TURN TO?

If you are a victim of sexual or sexist violence, there are people on hand to help you. Do not hesitate to turn to a trusted person among the people mentioned here below. All these people are able to collect reports and witness statements of sexual and sexist violence and to provide you with guidance. They must respect your expectations, in particular as regards anonymity. You may contact these people together or separately.

— IN-HOUSE SUPPORT

> THE TWO PERSONS IN CHARGE OF THE PREVENTION AND ELIMINATION OF SEXUAL HARASSMENT AND SEXIST CONDUCT

— Receiving

Their role is to receive reports of sexual harassment and sexist conduct. They share a mutual roadmap and are committed to providing a listening ear, showing sympathy and being neutral.

— Informing

They will inform you of actions which may be taken and resources which may be mobilized. They can, in particular, remind you of your rights.

— Providing guidance

Depending on your expectations and/or needs, they will refer you to in-house and/or external support professionals. They will accompany you through any action you decide to take.

CONTACTS

Isabelle Dumont, HR contact
isabelle.dumont@festival-aix.com
+33(0)6 72 21 04 94

Marie-Laure Stephan, union representative
anne-flavie.germain@festival-aix.com
+33(0)6 72 21 16 04

> SPECIAL EMAIL ADDRESS FOR REPORTING ACTS OF SEXUAL HARASSMENT AND SEXIST CONDUCT

In addition to this in-house support, the Festival has also created a special email address for employees to express issues in writing. This system is designed to complement harassment information and alert reporting. It is managed by the two aforementioned contact persons.

CONTACT

stop.sexisme@festival-aix.com

> SOCIAL AND ECONOMIC COMMITTEE (SEC)

— Receiving

The Committee can receive reports of sexual harassment and sexist conduct and refer you to the contact persons.

— Alerting

The SEC can exercise its right to alert the employer if an employee's rights have been undermined through acts of sexual harassment. It can request the advice of a legal expert and can initiate an investigation on psychosocial risks and damage to people's health.

CONTACT

dp-ce@festival-aix.com

> TRUSTED PERSONS AMONG COLLEAGUES AND MANAGERS

They have no specific prerogatives as regards sexual harassment and sexist conduct, but can nevertheless be a listening ear and provide guidance.

— EXTERNAL SUPPORT

> OCCUPATIONAL HEALTHCARE PROFESSIONAL

The victim can request a consultation with the occupational healthcare professional (visit initiated by the employee, organized directly with the doctor without advance notification from the employer). Based on the severity of the situation in question, the occupational healthcare professional can:

- propose / offer advice to the employee for possible "support" provided by external support professionals and bodies;
- propose measures to the employer for safeguarding the victim's health;
- declare an incapacity if keeping the employee on-the-job is seriously detrimental to their health.

CONTACTS

— Paris:
Doctor Claude David Markus
cd.markus@cmb.asso.fr
— Aix-en-Provence and Venelles:
Doctor Soler at +33(0)4 42 91 33 75
Françoise Lehucher (nurse) at +33(0)4 42 91 33 72

> AUDIENS: LISTENING CELL

Operated by audiens, the listening and alert unit is open to all permanent and intermittent employees in the performing arts, music, audiovisual and film sectors. It is competent to deal with cases of sexist and sexual violence and harassment that employees may be victims of or witnesses to and specializes also in «the grip», that is to say in situations of influences and dominations, common in the culture community.

CONTACTS

+33(0) 1 87 20 30 90

> EXTERNAL SUPPORT LINES

You also have the possibility of contacting external bodies, like the French Labour Inspectorate (Inspection du Travail) and the French Defender of Rights (Défenseur des Droits). Their contact details are mentioned on the bulletin boards on each site.

> SPECIALIZED ASSOCIATIONS

— Association européenne contre les violences faites aux femmes au travail (AVFT)

AVFT (European Association against Violence towards Women in the Workplace) is specialized in preventing and denouncing sexist and sexual violence in the workplace. It supports women who are victims of sexual harassment in the workplace and strives to ensure employers meet their obligations in preventing and eliminating sexual harassment.

CONTACTS

www.avft.org

contact@avft.org

— French Family Planning

The French Family Planning is a feminist, activist association which is part of a countrywide popular education movement. It works in particular towards eliminating sexist violence and proposes help desks for offering support and care to victims of sexist and sexual violence.

CONTACTS

Aix branch: +33(0)4 42 33 56 85

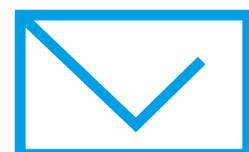
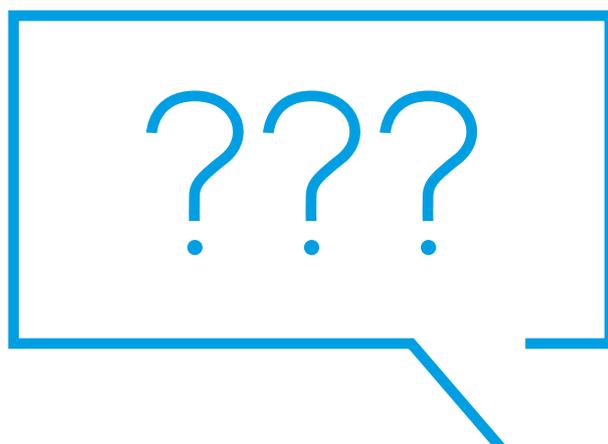
Marseille branch: +33(0)4 91 91 09 39

Paris branch: +33(0)1 42 60 93 20

www.leplanning13.org

— 39 19 - Violence against women information hotline

This is the French national hotline number for women who are victims of violence and for their family circle as well as for professionals concerned. This national support line is anonymous. It is 24/7 accessible and free of charge.



WHAT HAPPENS ONCE SEXUAL HARASSMENT OR SEXIST CONDUCT HAS BEEN REPORTED?

— ALERT RECEIVED AND MANAGED BY THE CONTACT PERSONS

- A trusted person will have called on the contact persons with your consent
- Or you will have called on the contact persons directly

> A FIRST EXCHANGE WITH ONE OF THE TWO CONTACT PERSONS WILL BE ORGANIZED

The two contact persons will take the time to **receive** you and **listen** to you during a face-to-face encounter. They share a mutual roadmap and are committed to providing a listening ear, showing sympathy and being neutral.

They will **inform** you of actions which may be taken and resources which may be mobilized. They can inform you of your rights and remind you what is considered as sexual harassment and sexist conduct. They can also **refer you** to in-house and/or external support professionals (see above). Finally, they will be by your side to support you throughout any action you take.

> COMPLEMENTARY ENCOUNTERS MAY BE SET UP TO DEVELOP EVIDENCE OF THE ACTS

Based on the exchanges, the contact persons **may set up complementary encounters with you**, but also with the person against whom the allegations have been made and with managers.

> ALERTING MANAGEMENT

Based on the assessment of the situation, the contact persons may alert management in order to **take appropriate action**.

— EMPLOYER'S ACTION

> LEGAL SUPPORT AND IN-HOUSE INVESTIGATION

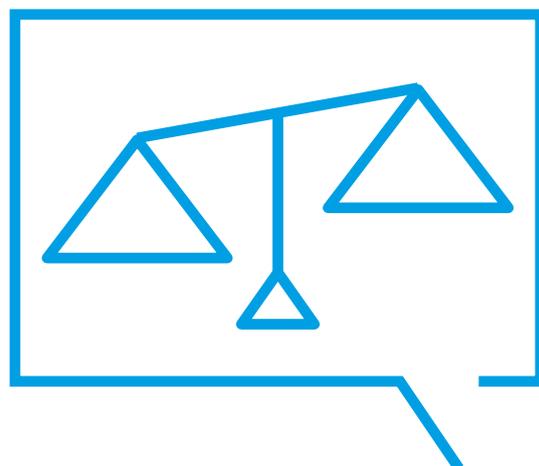
The theory of sexual harassment cannot be ruled out
The employer initiates **an in-house investigation to develop evidence of the acts**. Beforehand, the person who raised the alert/reported the act and the victim (whenever it is not the same person) are informed of the responses to the alert and the details of the upcoming investigation.

> DISCIPLINARY PROCEEDINGS

It is clear that the situation constitutes sexist conduct
In the event that, at the end of these encounters, it is clear that the acts have been proven and that sexist conduct is characterized, the perpetrator must, at least, **be given a warning**: "this type of conduct is inappropriate in the company and its recurrence is liable to disciplinary action".
Depending on the severity and repetitive nature of the sexist conduct, disciplinary action may also be envisaged. In the case of disciplinary proceedings, the employer has two (2) months to initiate the action, from the date they became aware of the acts.

> RESOLVING THE DYSFUNCTION AND ACTION PLAN The situation reflects dysfunction in the work organization or its environment

In the event that, at the end of these complementary encounters, it is clear that the alert/reporting reflects dysfunction in the work organization or its environment, the Human Resources Department may **organize exchange sessions with managers** in order to address and resolve the dysfunction and/or to roll out an action plan.



— INVESTIGATION REPORT

> OPTION 1 - THE REPORT CONCLUDES THAT SEXUAL HARASSMENT EXISTS

The employer must:

- Impose sanctions on the perpetrator of sexual harassment
- Accompany the victim

> OPTION 2 - THE REPORT CONCLUDES THERE IS NO EVIDENCE OF SEXUAL HARASSMENT

Generally-speaking, the employer must ensure:

- The employee who raised the alert/reported the acts is protected
- The continuation of working relations

— REMEDIES

In the event that the employer fails to act or if there is a difference of opinion as to the reality of this violation, and if no solution is found with the employer, here are various remedies available:

> REMEDIES WITHIN THE COMPANY

— Right of withdrawal

All employees have the right to withdraw from working (Article L4131-1 of the French Labour Code) in the event of “a work situation of which they have reasonable grounds to believe presents a serious and imminent danger to their life or health”.

The employee must alert the employer of this danger and withdraw from the dangerous situation.

— The SEC's right to alert

The SEC may exercise its right to alert the employer in the event that an employee's rights have been violated as a result of sexual harassment (Articles L. 2312-5 and L. 2312-59 of the French Labour Code).

Consequently, the employer has a duty to initiate an investigation immediately.

> LEGAL REMEDIES

— Taking legal action with the French Industrial Tribunal (Conseil de Prud'hommes - CPH)

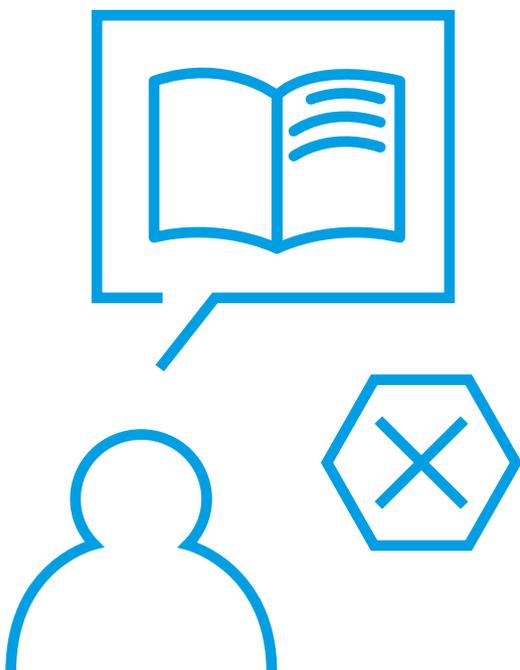
- the defendant: the employer
- the proceedings: filing a motion at the Industrial Tribunal using a [CERFA form](#).
- the sanctions: payment of damages
- statutory limitation: 5 years from the date the acts are revealed.
- lthe Industrial Tribunal is not obliged to follow the decision taken in criminal court (if legal action is taken at the same time in criminal court)
- duration of the proceedings: +/- 4 years

— Taking legal action in criminal court

- the defendant: the perpetrator of sexual harassment
- the proceedings: filing a complaint at the police station or gendarmerie or by letter to the public prosecutor
- the sanctions: fines up to €30,000 + 2 to 3 years' imprisonment
- statutory limitation: 6 years
- duration of the proceedings: +/- 4 years

Information about action to take:

<https://www.service-public.fr/particuliers/vosdroits/F1043>



AND, FOR MORE INFORMATION

— **Violences sexistes et sexuelles au travail**

Combattre nos idées reçues

(Sexist and sexual violence in the workplace – overcoming stereotypes)

[Web link](#)

— **Guide** – Réagir face au harcèlement sexuel et aux agissements sexistes au travail

(Guide – reacting when faced with sexual harassment and sexist conduct in the workplace)

[Web link](#)

— Podcast :

Sexisme en milieu tempéré – Un podcast à soi

(Everyday sexism in a tempered environment – A podcast per se)

[Web link](#)

— Podcast :

Qui sont les harceleurs au travail ? – Les couilles sur la table

(Who are the workplace harassers? – Balls on the table)

[Web link](#)

— Vidéo :

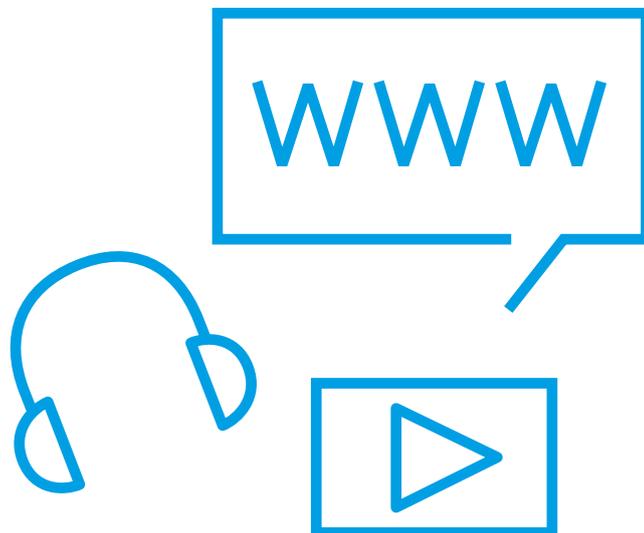
Understand the consent thanks to the Tea Metaphor

[Web link](#)

— Vidéo :

Understand everyday sexism

[Web link](#)



> SEXIST CONDUCT

Article L 1142-2-1 of the French Labour Code

No one shall suffer sexist conduct defined as any conduct related to the sex of a person for the purpose or effect of violating their dignity or creating an intimidating, hostile, humiliating, or offensive environment.

> SEXUAL HARASSMENT

— Under the French Labour Code

Article L1153-1CT of the French Labour Code

REPEATED ACTS

Repeated sexual comments or conduct that either violate a person's dignity because of their degrading or humiliating nature or create an intimidating, hostile or offensive situation against the person.

SINGLE ACT

Any form of serious pressure, even non-repeated, exercised for the real or apparent purpose of obtaining an act of a sexual nature, whether it is sought for the benefit of the perpetrator or for the benefit of a third party.

— Under the French Criminal Code

Article 222-33 of the French Criminal Code since 6 August 2018

SINGLE ACT

Is assimilated to sexual harassment, any form of serious pressure, even non-repeated, exercised for the real or apparent purpose of obtaining an act of a sexual nature, whether it is sought for the benefit of the perpetrator or for the benefit of a third party.

REPEATED ACTS

Sexual harassment, means imposing on someone, in a repeated way, sexual or sexist comments or conduct that either violate a person's dignity because of their degrading or humiliating nature or create an intimidating, hostile or offensive situation against the person.

The offence is also committed:

1° When these comments or conduct are imposed on the same victim by several persons, in a concerted manner or at the instigation of one of them, even though each of these persons has not acted repeatedly;

2° When these comments or conduct are imposed on the same victim, successively, by several people who, even in the absence of consultation, know that these comments or conduct characterize repetition.

> SEXUAL ASSAULT

Article 222-22 of the French Criminal Code

Sexual assault is any type of sexual act committed with violence, coercion, threat or surprise.

N.B.: Sexual assault includes fondling and touching of the sex, breasts, buttocks and thighs as well as forced kissing.

> RAPE

Article 222-223 of the French Criminal Code

Any act of sexual penetration, of any nature whatsoever, inflicted on another person through the use of violence, coercion, threat or surprise.

