Harassment and Discrimination
Issues in Latin America

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Discrimination Prohibited – Mexico

- **Mexican Political Constitution** prohibits all discrimination motivated by ethnic or national origin, gender, age, disabilities, social condition, health condition, religion, opinions, sexual preferences, civil status or any other that undermines human dignity and has the purpose of annulling or lessening the rights and freedom of individuals.

- Mexico has adhered to and ratified several international treaties on employment discrimination and discrimination of women and disabled people.
The **Mexican Federal Labor Law** prohibits discrimination among workers for reasons of race, gender, age, religious beliefs, political doctrine or social condition. It is expressly forbidden for employers to refuse to accept workers for reasons of age or gender. It is established that women workers shall enjoy the same rights and will have the same duties as men workers.
Discrimination Prohibited – Mexico

• The General Law of Disabled People establishes that disabled individuals are entitled to equal job opportunities and training and that under any circumstance disabilities shall not be a reason to deny employment.

• The Federal Law to Prevent and Eliminate Discrimination has as its purpose to prevent and eliminate all forms of discrimination against any individual, as well as to promote equal opportunities.
Discrimination Prohibited – Mexico

• The Federal Law defines “discrimination” as: any distinction, exclusion, or restriction that, based on the ethnic or national origin, gender, age, disability, social or economic conditions, health conditions, pregnancy, language, religion, opinions, sexual preferences, civil status or any other reason, has as a consequence thereof, to prevent or annul the acknowledgment or exercise of rights and equal opportunities.
Discrimination Prohibited – Mexico

- According to the Federal Law, conduct is considered discriminatory if it:
  - Forbids the free election of a job, or restricts the opportunity to access, remain, or be promoted in a job
  - Establishes differences in remuneration, benefits, and working conditions for equal jobs
  - Limits access to training programs
Discrimination Prohibited – Mexico

• The Criminal Code for the Federal District provides that discrimination by reason of age, gender, civil status, pregnancy, race, ethnic origin, language, religion, ideology, sexual orientation, skin color, nationality, social status, work or profession, economic condition, physical traits, disability or health condition, shall be deemed as a felony when it has the purpose of denying or restricting labor rights.
Discrimination Prohibited – Argentina

Law No. 23,592

- Discriminatory acts and/or omissions motivated by considerations such as race, religion, nationality, ideology, political or trade union status, gender, economic status, social or physical characteristics

- In case of discriminatory acts and/or omissions, employer must cease the act and repair the moral and material damages caused to the employee
Discrimination Prohibited – Argentina

• Argentina has also ratified several international conventions, and ILO Conventions (No. 111 on Discrimination, among others)

• National Constitution, Section 14 bis: guarantees protection, dignified and equitable work, fair payment, equal payment for equal work, protection against arbitrary dismissal, stability of public employees, union trade rights, etc.
Discrimination Prohibited – Argentina

- Labor Contract Law – Art. No. 17 prohibits any discrimination between workers on the basis of race, sex, nationality, religion etc.
- Art. No. 73 prevents the employer from requiring employees to express their political opinions, religion, and trade union affiliation
- Art. No. 81 provides equal treatment
- Art. No. 172 prohibits discrimination against women, etc.
Discrimination Prohibited – Argentina

- Trade Union Law No. 23,551 – Art. No. 52 provides special protection for union representatives who occupy office in a trade union body with legal personality
Discrimination Prohibited – Peru

• General Constitutional right to equal treatment: non-discrimination due to origin, race, gender, language, religion, opinion, economical condition, or others

• In employment relationships = equal opportunities without discrimination. Additional cases specified by law: affiliation to unions, pregnancy, AIDS, disability
Discrimination Prohibited – Chile

• Chilean Constitution and Labor Code forbid any discrimination not based on personal skills or capabilities

• Prohibited discrimination:
  – Because of financial records
  – Salaries based on employee’s gender
  – In general, any other kind of discrimination based on: race, sex, color, age, marital status, union membership, religion, political ideas, nationality or social origin
Discrimination Prohibited – Brazil

- It is prohibited by law to adopt any discriminatory and restraining practices for the purpose of limiting access to, or maintaining, the employment relationship, based on:
  - Gender
  - Origin
  - Color
  - Marital status
  - Family status
  - Age
Brazil law provides that the following acts against women are considered a crime:

- Requesting a test, exam, evaluation, report, certification, statement or any other proceeding regarding infertility or pregnancy
- Adopting any measure by the employer that constitutes induction or instigation of infertility or promotion of birth control
Discrimination Prohibited – Costa Rica

- International Labor Organization (ILO): no exclusion, distinction, or preference based on:
  - Race
  - Skin color
  - Religion
  - Political opinion
  - Nationality

- Political Constitution:
  - Nationals and foreigners have the same duties and rights
  - Every person is equal before the law
Discrimination Prohibited – Costa Rica

• Labor Code: no discrimination permitted based on:
  – Age
  – Race
  – Religion
  – Gender

• Article 13 of the Labor Code was abolished in 1999. It was considered discrimination against foreigners because it limited them to 10% in a company
Discrimination Prohibited – Honduras

• The Constitution declares as punishable all and “any discrimination for gender, race, class and any other injurious to human dignity.”

• The Labor Code prohibits discrimination for race, religion, political preferences and economic situation; it provides that, for equal work under the same circumstance, employees shall be paid the same salary, without discrimination.
Discrimination Prohibited – Honduras

• Also under the Labor Code, employers cannot establish differences in salaries for reason of age, gender, nationality, race, religion, political opinion or Union activities.

• Law for Equal Opportunities for Women: States will not allow any type of discrimination based on gender or age.
Discrimination Prohibited – Honduras

- The same law also prohibits employers from requesting a pregnancy test as a pre-employment condition.

- Law of Equity and Development for Persons with Disabilities prohibits and considers as discrimination treating a disabled person in a different and less favorable manner.
No specific concept for moral harassment in the Brazilian legislation

- ILO (International Labor Organization) rules recognize moral harassment as:
  - Unreasonable attacks by the employer or its representatives, persistent and negative, to personal or professional performance
  - Manipulation, by employer or its representatives, of someone’s personal or professional reputation through rumors and ridicule
Harassment Prohibited – Brazil

- ILO rules (cont’d)
  - Power abuse, by the employer or its representatives, through continuous disdain for someone’s work or through setting objectives with unmanageable deadlines, or unreasonable or impossible assignments
  - Excessive or inappropriate control of someone’s performance
Harassment Prohibited – Brazil

- Sexual harassment in Brazil is considered a crime, subject to detention from one to two years.
- Occurs only when the perpetrator of sexual harassment conduct is any direct or indirect hierarchical superior of the victim.
Harassment Prohibited – Costa Rica

Sexual harassment:
• Law Against Sexual Harassment at Work and in Education: The object of this law is to prevent, prohibit, and penalize the sexual harassment for women and men.

Labor harassment:
• Labor Code: The employer must respect the employees and avoid verbal and physical damage.
Labor harassment (cont’d):

- Political Constitution: Work must not have conditions that degrade the liberty and the dignity of the person.

- Universal Declaration of Human Rights: Every person must have equity in their work conditions and job protection.
Harassment Prohibited – Costa Rica

Signs of labor harassment:

• Verbal violence, psychological exhaustion.
• Stress, anxiety, depression, anger
• Between 1999 and 2007, only 35 cases were reported to the Labor Ministry, but many were not reported.
Harassment Prohibited – Mexico

- The Federal Labor Law does not specifically regulate harassment. In a general way, it prohibits any immoral actions.

- Criminal codes refer solely to sexual harassment, establishing as a requirement to consider it a felony that the victim is subordinated to the aggressor.
Harassment Prohibited – Mexico

• There are no references on harassment by and between individuals at the same level or at a lower level, nor of “mobbing.”

• The Federal Criminal Code classifies sexual harassment as a felony when an individual, taking advantage of his job position, repeatedly harasses another, regardless of the individual’s gender, with lascivious purposes.
Harassment Prohibited – Peru

- Sexual harassment
- Any other type of harassment that affects the employee’s dignity/health
Harassment Prohibited – Honduras

- Not specifically regulated in Honduras in the Labor Code
- It falls under the figure of mental injury
- Is regulated by the Penal Code of Honduras
- International Conventions related to harassment can be applied, too
Harassment Prohibited – Honduras

• The Law of Equal Opportunities for Women provides that sexual harassment by the employer grants female employees the faculty to terminate the employment relation without pre-notice and responsibility on the employee’s side, keeping the right to be paid severance and legal indemnities as they correspond to unfair termination. When the harasser is an employee, he/she shall be dismissed immediately without responsibility for the employer.
Harassment Prohibited – Chile

• Only sexual harassment is expressly prohibited and sanctioned – concept

• Labor general harassment – general regulation and remedies
Harassment Prohibited – Argentina

• In Argentina there is provincial legislation and regulations on Public Administration that prevent “harassment”

• For the private sector, there is no specific legislation, but Courts ratify international precedents and recognize employees claims on:
  – Mobbing (including “bossing” or vertical mobbing)
Harassment Prohibited – Argentina

(Cont’d)

- Sexual harassment (initiated by another employee or a hierarchical superior)
- “Burn-out” syndrome (medical condition affecting employees under stressful labor environment)
Who Can Be Held Liable – Peru

• Employer: including employer’s directives
  – Employer is obligated to guarantee a healthy environment for the employees.
  – Additionally in case of sexual harassment the employer is obligated to train the employees in regards to sexual harassment rules and policies as well to repair the labor damages caused to the affected employee and to protect him/her against any retaliation.

• Employer recruiting personnel

• Co-workers: can be dismissed for cause
Who Can Be Held Liable – Honduras

Discrimination

• Employer can be held responsible
• Claims mostly will end in reinstatement (if termination is caused by discrimination issues)
• In most cases an applicant will never know he/she was discriminated in any way (e.g., at application for employment, the employer is not obliged to describe the causes for declining an application)
Who Can Be Held Liable – Honduras

Harassment

• Has to be denounced by the affected person
• Any person can be held liable if found guilty of harassment
• Labor Code establishes that a felony or crime can be a cause for employment termination only if the employee is condemned for it
Who Can Be Held Liable – Chile

Discrimination
• Employer: direct responsibility

Harassment
• Offender: direct responsibility
• Company: responsibility – lack of improper investigation procedure
Who Can Be Held Liable – Brazil

• The company may be held financially liable
• The employer (individual) may be held financially and criminally liable
• The harassing employee may be held criminally liable
• The Brazilian Civil Code: the civil liability has no connection with the criminal liability; however, the existence of the illegal fact cannot be questioned when the issue has already been resolved by the criminal courts
Who Can Be Held Liable – Argentina

Discrimination

- Law No. 23,592 prevents discriminatory acts or omissions
- If the employee files a judicial claim, the company will be held liable for fines and moral damages
- An employee who discriminates could be dismissed with cause; considered jointly liable for compensation, moral and psychological damage, disability, etc.
Who Can Be Held Liable – Argentina

Harassment

- As in discrimination cases, the company could be held liable for employees or hierarchical superiors who harass other employees
- An employee who harasses could be sanctioned by the company and held jointly liable, despite any criminal (crimes against sexual integrity) and civil actions against him/her.
Who Can Be Held Liable – Costa Rica

- Employers
- Co-workers
- This behavior can take place vertically or horizontally
Who Can Be Held Liable – Mexico

• Both employers and employees can be held liable of discrimination and harassment at the workplace.

• From an employment perspective, the employer’s liability could consist of payment of legal severance if the action is carried out by an employer’s representative.
Who Can Be Held Liable – Mexico

• Personally, employees’ discriminatory actions and any kind of harassment would be grounds for justified dismissal (i.e., no severance)

• Employer’s representatives and co-workers could also be criminally liable
Remedies and Penalties – Costa Rica

- **Sexual harassment**
  - Written reprimand
  - Suspension
  - Dismissal (with cause)
  - Moral damage

- **Labor harassment**
  - Moral damage
  - Written reprimand
  - Dismissal (with cause)
Discrimination

- **Labor Code:** Art. 624: Employers who dismiss employees due to their age, ethnic, gender, or religion must reinstate them in their employment and pay them the equivalent of 12 x the minimum salary for the employee’s position.
Remedies and Penalties – Costa Rica

• Remedies include:
  – Restitution at the work place
  – Relocation of the employee
  – Psychological assistance
  – Withdrawal of any firing, suspension, or removal against the affected worker
Discrimination

• “Procedimiento de Tutela” (protection procedure)

• Penalties/remedies:
  – Immediate termination of discriminatory actions/specific measures on a case-by-case basis.
  – During dismissal process: reincorporation to work or dismissal with a special indemnification
Remedies and Penalties – Chile

Harassment

• Measures to protect the victim
• Dismissal of the offender – eventual criminal liability
• Other sanctions, e.g., fines
Remedies and Penalties – Argentina

Discrimination

• The discriminatory act will be deemed void and its effects must be restored to its previous state. In case of dismissal, the employer must rehire the employee and pay accrued and unpaid salaries and compensation for moral damages caused.
Remedies and Penalties – Argentina

Harassment

- For mobbing or sexual harassment, the company should pay the employee compensation for damages. The harasser could be civilly and criminally liable for extortion, threats, crimes against sexual integrity, etc.
Remedies and Penalties – Honduras

**Discrimination**

- Employers accused of discrimination can be condemned to economic indemnities
- Indemnities not regulated in labor- and employment-related laws
- In consideration by a Judge
- Most likely, employee will be reinstated and entitled to back salaries
Remedies and Penalties – Honduras

Harassment

• Imprisonment
• Monetary indemnity
Remedies and Penalties – Brazil

Penalties

• Labor Courts: employee can file a labor claim asking for indirect termination of employment agreement and moral damages compensation

• Labor Prosecutor Officer:
  – Start a civil investigation to end harassment or discrimination in the company and impose the execution of a document called Conduct Adjustment Agreement (TAC)
Penalties (cont’d)

- Labor Prosecutor Officer (cont’d)
  - If the company does not agree to execute the TAC, the Labor Prosecutor will file a Public Civil Action seeking to preclude harassment or discrimination and obtain compensation for collective moral damages
Remedies and Penalties – Brazil

Remedies

- Order for job reinstatement in case of termination of employment contract as a result of discrimination
- Indirect termination of employment agreement in case of harassment
- Moral damages compensation
Remedies and Penalties – Mexico

• Employees can terminate their employment for causes attributable to the employer, without liability whatsoever, alleging lack of probity, violent acts, or abuse.

• If the cause for termination is demonstrated, an employee will be entitled to receive severance pay as per the Federal Labor Law as follows:
  – 90 days’ consolidated salary
  – 20 days’ consolidated salary for each year of service rendered
  – Seniority premium
Remedies and Penalties – Mexico

• Employers can rescind the employment with just cause to those employees who engage in lack of probity, violent acts, or abuse against the personnel, including co-workers if, as a result, the work environment is altered.

• Employers can rescind the employment if an employee engages in immoral acts at the work place.
Remedies and Penalties – Mexico

• Sexual harassment is only prosecuted at the request of the injured party. Sanctions include prison and fines.

• Discrimination (only considered felony under the Criminal Code for the Federal District) entails imprisonment or community work and fine. This felony is only prosecuted at the request of the injured party.
Remedies and Penalties – Mexico

• In accordance with the Federal Law to Prevent and Eliminate Discrimination, the injured party may file a complaint before the National Council to Prevent Discrimination (CONAPRED for its acronym in Spanish). This law provides a voluntary conciliatory procedure between the injured party and the defendant, but has been extensively criticized since it is not enforceable.
Non-discrimination

• Administrative fines and corrective measures imposed by Labor Authority. Maximum amount: S/.73,000.00 (approx. USD $27,038)

• Criminal penalty. Maximum penalty: 3 years in jail.

• Employee’s reinstatement
Remedies and Penalties – Peru

Sexual harassment

• Administrative fines and corrective measures imposed by Labor Authority. Maximum amount: USD $27038
• It could be deemed a crime against an individual’s honour.
• In both cases: employee may claim indemnity
Meeting the Challenges of Managing a Global Workforce

- What is a Code of Conduct?
- Ensuring global employment law compliance
Meeting the Challenges of Managing a Global Workforce

• Conducting an employment law audit
• Understanding the role of local culture
• Achieving a balance between global laws and corporate policies
Practical Tips – Argentina

- Clear policies, known by all employees
- Training courses
- Hotline for complaints
- An internal and complete investigation if any kind of abuse or discrimination is reported
- Confidentiality regarding the reported matter
Practical Tips – Argentina

• Following the internal investigation, the employee or hierarchical superior who discriminated or harassed could be dismissed with cause, or removed from his/her current location.

• If the employee victim of discrimination or harassment initiates a judicial claim, the company must have all the documents involved in the internal investigation in order to file them before the Court as substantial evidence.
Practical Tips – Peru

• Non-discrimination and non-harassment as part of the employer’s culture
• Clear policies physically delivered to all employees
• Different treatment is allowed based on objective causes = always keep evidence to support the objective cause
• Mandatory: have a proceeding for sexual harassment claims
Practical Tips – Honduras

- Have internal policies regulating discrimination and harassment, such as a code of conduct or code of ethics
- Include admonitions to be applied
- Consequences of applied admonitions
- Employees must sign any and all internal policies of the company
- Establish internal procedures to denounce harassment and discrimination conduct
Practical Tips – Mexico

- Mexican culture is a bit more tolerant with respect to discrimination and harassment.
- What could be deemed by a judge as discriminatory conduct or harassment in one country may not be the same in Mexico.
- Establish a “code of conduct” or “code of ethics” that includes specific policies on discrimination and harassment, and which must be signed by the employees.
Practical Tips – Mexico

• Establish internal procedures/mechanisms to report discriminatory conduct and/or harassment, such as hotlines, etc.

• Legislation remains to be developed since it lacks enforceability on the side of the government.
Practical Tips – Chile

Discrimination
• Clear company policy
• Discrimination is a sensitive matter
• Examples

Harassment
• Sexual harassment: internal rule – procedure/sanctions
• Company’s policy
Practical Tips – Brazil

- Develop a code of conduct
- Ensure that employees are aware of what is included in the code of conduct, including what is expected of them in terms of their behavior and conduct at the workplace
- Keep a hotline for anonymous accusations and investigate all accusations made on a confidential basis inside the company
- Apply penalties to employees responsible for any harassment or discrimination
Practical Tips – Costa Rica

- Submitting to what the law says about the labor shift and treatment of employees
- Not being a biased contractor, but base hiring on the labor qualities of each applicant
- Promoting internal rules based on equality, respect, and warm labor relations
Practical Tips – Costa Rica

- Obtaining authority, not with mobbing and fear, but through respect and excellence
- Promoting seminars about ethics and morals
- Having a good work relationship with subordinates
- Observing how employees interact with their co-workers in specific situations
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