

OPERATIONAL CIRCULAR N° 9
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Applicable to :	Any person working at or on behalf of CERN
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Administrative Circular No. 32 entitled “*Principles and Procedures Governing Complaints of Harassment*” (February 2000) is cancelled and replaced by this Operational Circular.

In the interests of readability, this circular has been drafted using the masculine gender only. However, use of the masculine gender should be understood to refer to both sexes. The provisions of the circular therefore apply to both men and women, except where it is clear from the context that they concern one sex or the other exclusively.

**PRINCIPLES AND PROCEDURES GOVERNING
COMPLAINTS OF HARASSMENT**

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I. PURPOSE AND SCOPE

1. The purpose of this Circular is to state the definition of harassment and to set out harassment resolution processes.
2. Any person working at or on behalf of CERN is covered by this Circular.

II. DEFINITIONS AND RELATED CRITERIA

3. Harassment means unwelcome behaviour that has the effect of violating a person's dignity and/or creating a hostile work environment. Such behaviour is contrary to the principles of equal opportunity, non-discrimination and mutual respect. Moreover, it is detrimental to health and safety at the workplace and the good functioning of the Organization in general. For these reasons, the Organization does not tolerate harassment, which can result in administrative and/or disciplinary action.
4. Harassment includes both sexual and moral harassment.
 - 4.1 The term sexual harassment covers, inter alia:
 - 4.1.1 Sexually-oriented insults, offensive comments or jokes, suggestive remarks, gestures, attitudes or turns of phrase, innuendo or leering;
 - 4.1.2 the showing of obscene or offensive images, documents or objects;
 - 4.1.3 unwelcome sexual advances, propositions, or pressure such as persistent threatening or intimidation;
 - 4.1.4 unwelcome physical contact, ranging from excessive familiarity to outright aggression.
 - 4.2 The term moral harassment covers, inter alia:
 - 4.2.1 aggression and/or persistent threatening aimed at systematically demeaning, isolating, bullying or attacking a person;
 - 4.2.2 behaviour that casts doubt on a person's skills or efficiency, or undermines their self-confidence or integrity;
 - 4.2.3 behaviour that is denigratory, or ridicules or seeks to discredit a person;
 - 4.2.4 discriminatory or offensive comments or behaviour, in particular on the basis of sex, age, religion, beliefs, nationality, culture, ethnicity, race, sexual orientation, status at CERN, disability or family situation;
 - 4.2.5 abuse of authority, abuse of power or emotional abuse.

5. The following criteria shall be considered in the process of establishing whether behaviour constitutes harassment:
 - 5.1 **Form:** Harassment may take many forms, including but not limited to physical, verbal and non-verbal conduct.
 - 5.2 **Frequency:** Harassing behaviour is typically, but not necessarily, repetitive. If sufficiently grave, an isolated occurrence may constitute harassment.
 - 5.3 **Intention:** Whether particular behaviour constitutes harassment is determined not only by the intent but also by the effect of the behaviour on the alleged victim.
 - 5.4 **Location:** Harassment typically occurs in the workplace, but also in work-related settings (such as duty travel or social functions). Unwelcome behaviour that occurs in non-work-related settings can constitute harassment if it has an adverse affect on the work environment at CERN.
 - 5.5 **Work relationship:** Harassment is to be distinguished from a job conflict and is not to be confused with expression of disagreement, admonition or constructive criticism in respect of work performance or conduct. In particular, harassment is not to be confused with the assessment of a person's work in the framework of the approved appraisal procedures. However, such assessments shall not be used as a means to harass or as retaliation for reporting harassment.

III. HARASSMENT RESOLUTION PROCESSES

A. General principles

6. The Organization prohibits any form of retaliation against an alleged victim or any other person as a result of a person's participation in, or use of, the processes set out in this Circular. Any attempted or actual retaliation should be brought to the attention of the Head of the Human Resources Department and may result in disciplinary action.
7. A complaint of harassment which is made in bad faith may result in administrative and/or disciplinary action.
8. All persons involved in a case of harassment shall maintain confidentiality to the greatest extent possible, including after the case has been dealt with. Information shall be shared strictly on a need-to-know basis.
9. All persons who have knowledge of potential cases of harassment should inform their hierarchy or the Head of the Human Resources Department.
10. Persons in the hierarchy and the Head of the Human Resources Department are expected to take the necessary and appropriate action with respect to potential cases of harassment which come to their attention, keeping in mind the individual status and/or employment relationship of the person(s) involved.

B. Informal resolution process

1. Early communication

11. Early communication can prevent unwelcome behaviour from becoming harassment. All persons are therefore encouraged to address issues that could lead to harassment at the outset through open communication and dialogue.
12. Persons who experience unwelcome behaviour should, wherever possible, communicate directly with the individual exhibiting this behaviour to explain that the conduct is unwelcome and to request that it ceases.
13. In addition, they can consult their hierarchy, a colleague or a third party (such as a Human Resources Advisor, the Medical Service, the Social Affairs Service or the Staff Association) to obtain assistance in such communication. They may also seek the advice of, or initiate an informal resolution process with, the Ombuds.

2. Ombuds

14. The Ombuds shall assist in the informal resolution of complaints of harassment. This process shall be initiated by an informal complaint to the Ombuds. The matter shall be dealt with in accordance with the Ombuds' Mandate.¹
15. Any person who has called on the services of the Ombuds may at any time withdraw the matter from the Ombuds.

C. Formal resolution process

16. Where persons who experience unwelcome behaviour find that direct communication and/or an informal resolution process is not possible or proves unsuccessful, or they do not wish to pursue same, they can commence a formal resolution process.
17. The formal resolution process comprises two stages:
 - 17.1 Firstly, the investigation process, the aim of which is to decide on the receivability of a formal harassment complaint and, in the event that a complaint is receivable, to investigate and establish the facts and issue an opinion to the Director-General as to whether or not harassment has occurred.
 - 17.2 Secondly, the Director-General's decision and, where appropriate, action on the matter.

¹ See document "*CERN Ombuds' Mandate*" (<http://cern.ch/ombuds/links/>)

18. The formal resolution process shall apply only to formal harassment complaints filed by or against a member of the personnel. In the event that neither the alleged victim nor the alleged harasser are members of the personnel, the alleged victim should communicate directly with his employer. The CERN contract manager may be requested to facilitate this communication.

1. Harassment Investigation Panel

19. A Harassment Investigation Panel is established to conduct the formal investigation process.
20. The Harassment Investigation Panel shall be composed of nine staff members designated jointly by the Director-General and the President of the Staff Association as follows:
 - 20.1 one Chairperson;
 - 20.2 six investigators, one of whom will be designated as alternate chairperson; and
 - 20.3 two legal officers serving as experts.
21. Members of senior management (Heads of Department and above), the Bureau of the Staff Association and members of the Joint Advisory Appeals Board and of the Joint Advisory Disciplinary Board shall not be eligible to serve on the Harassment Investigation Panel.
22. The members of the Harassment Investigation Panel shall serve for an initial three-year term and may be reappointed for two additional terms of two years.
23. The Harassment Investigation Panel may meet for purposes connected with its good functioning, including the adoption of rules and/or guidelines to supplement the procedures laid down in this Circular.
24. The Chairperson shall:
 - 24.1 chair the meetings of the Harassment Investigation Panel;
 - 24.2 review the reports made by an Investigating Subpanel, as referred to in § 49, for consistency;
 - 24.3 issue an annual report to the Director-General setting out an anonymised summary of the complaints considered in the formal resolution process and any observations deriving therefrom;
 - 24.4 be responsible for the keeping of records of the Harassment Investigation Panel;
 - 24.5 perform other duties as laid down in this Circular or as are necessary for the good functioning of the Harassment Investigation Panel.

The Chairperson shall not be a member of any Investigating Subpanel.

25. The Director-General shall ensure that the members of the Harassment Investigation Panel are granted the necessary time release and training for carrying out their duties.

2. Formal harassment complaint

26. A formal harassment complaint may be filed by:
 - 26.1 a person claiming to be the victim of harassment; or
 - 26.2 the Head of the Human Resources Department, based on information received regarding a case of alleged harassment; wherever possible, the consent of the alleged victim shall be obtained.
27. The formal harassment complaint shall be filed with the Chairperson within:
 - 27.1 six months of the most recent act of alleged harassment; or
 - 27.2 60 calendar days of the end of the Ombuds' involvement in the matter, where informal resolution has been initiated with the Ombuds within the six-month period referred to in § 27.1.

In exceptional circumstances, the six-month period referred to in § 27.1 may be extended by the Chairperson.

28. A formal harassment complaint must be signed and dated and include the following:
 - 28.1 a detailed written statement of the facts, including persons, places, dates and a description of the acts of alleged harassment;
 - 28.2 the names of witnesses, if any, of the acts of alleged harassment and/or the impact thereof on the alleged victim; and
 - 28.3 all other relevant documentation (for example: e-mails, message recordings, photographs, letters, medical examinations).

3. Investigating Subpanel

29. Within 10 calendar days of receipt of a formal harassment complaint, the Chairperson shall appoint an Investigating Subpanel.
30. The Investigating Subpanel shall conduct the investigation process on behalf of the Harassment Investigation Panel.
31. The Investigating Subpanel shall be composed of two investigators and one legal officer.
32. No person with prior involvement or with any actual or perceived conflict of interest in a case can serve on an Investigating Subpanel. If the Chairperson has a conflict of interest, the alternate chairperson shall perform the duties of the Chairperson.

33. The Investigating Subpanel shall proceed by consensus. In the event of disagreement, the Investigating Subpanel shall seek the assistance of the Chairperson, who shall attempt to resolve the issue.

4. Investigation process

34. All persons taking part in the investigation process shall cooperate with the Investigating Subpanel. Failure to comply with this obligation may result in disciplinary action. In such cases, the Investigating Subpanel shall inform the Chairperson, who shall notify the Head of the Human Resources Department.
35. At any time, the alleged victim can request of the Chairperson:
 - 35.1 that an investigation into his complaint of harassment be suspended in order to pursue informal resolution with the assistance of the Ombuds; or
 - 35.2 that his complaint be withdrawn.

The alleged victim's request shall be weighed against the interests of the Organization in continuing the investigation process. In reaching a decision on this matter, the Chairperson shall consult the Head of the Human Resources Department.

36. The investigation process consists of an initial assessment phase followed, if necessary, by an investigation phase.
 - 36.1 In the initial assessment phase, the Investigating Subpanel decides whether a formal harassment complaint is receivable.
 - 36.2 In the investigation phase, the Investigating Subpanel establishes the facts and issues an opinion as to whether or not harassment has occurred.

a) Initial assessment phase

37. To be receivable, a formal harassment complaint shall:
 - 37.1 be submitted within the time limits referred to in § 27;
 - 37.2 satisfy the formal conditions set out in § 28;
 - 37.3 allege behaviour that meets the definitions of harassment as set out in §§ 3 to 5.
38. The initial assessment shall be limited to a review of the formal harassment complaint and an interview with the alleged victim. During the interview, the alleged victim may be accompanied by a member or former member of the personnel who is not a party to the process.
39. The Investigating Subpanel shall complete the initial assessment within 30 calendar days of its appointment. In exceptional circumstances, upon written notification to the Chairperson, the Investigating Subpanel may extend this deadline once for up to 30 calendar days. The Chairperson shall inform the alleged victim of this extension.

40. Upon conclusion of the initial assessment, the Investigating Subpanel shall issue to the Chairperson a written report, stating its decision as to whether the formal harassment complaint is receivable and setting out the reasons for this decision.
41. In the event that the Investigating Subpanel decides that the formal harassment complaint is not receivable, the Chairperson shall notify the alleged victim in writing of this decision and its underlying reasons. This decision is an administrative decision in accordance with Article S VI 1.01 of the Staff Rules.
42. In the event that the Investigating Subpanel decides that the formal harassment complaint is receivable, the Investigating Subpanel shall so inform the Chairperson. If the alleged harasser:
 - 42.1 is a member of the personnel, the Investigating Subpanel shall proceed to the investigation phase. The Chairperson shall notify the alleged victim and the alleged harasser in writing, accordingly. The Chairperson shall provide the alleged harasser with a copy of the written statement included in the formal harassment complaint, as well of any other statements of the alleged victim accepted by the Investigating Subpanel.
 - 42.2 is not a member of the personnel, the Investigating Subpanel shall not proceed to the investigation phase. The Chairperson shall notify the CERN contract manager of the outcome of the initial assessment who in turn shall notify the employer of the alleged harasser with a request for appropriate action. The Chairperson shall notify the alleged victim in writing of these developments and of the action taken.
43. In case of disagreement at the end of the initial assessment phase, the issue as to whether the formal harassment complaint is receivable shall be decided by the Chairperson.

b) Investigation phase

44. Within 30 calendar days of notification of the initiation of the investigation phase, the alleged harasser shall submit a written statement on the matter, including the names of any witnesses, and all other relevant documentation. A copy of this statement, as well as any other statements of the alleged harasser accepted by the Investigating Subpanel, shall be given to the alleged victim.
45. The investigation of the formal harassment complaint shall include the following:
 - 45.1 review of the complaint and any additional statements of the alleged victim;
 - 45.2 review of the statement(s) of the alleged harasser;
 - 45.3 interviews with the alleged victim and the alleged harasser;
 - 45.4 interviews with witnesses, if any, deemed relevant to the investigation; and
 - 45.5 review of the documentation supplied by the alleged victim, the alleged harasser, and the witnesses.

46. The alleged victim and the alleged harasser may be accompanied during interviews by a member or former member of the personnel who is not a party to the process.
47. At its discretion, in the course of the investigation, the Investigating Subpanel may also:
 - 47.1 consult the personnel file(s) of the alleged victim and/or of the alleged harasser;
 - 47.2 request additional written statements and/or documentation;
 - 47.3 interview persons in the hierarchy of the alleged victim and/or the alleged harasser;
 - 47.4 obtain, upon the approval of the Chairperson, the advice of additional experts; and
 - 47.5 gather any additional information needed to perform its investigation.
48. The Investigating Subpanel shall complete its investigation within 60 calendar days of receipt of the initial statement submitted by the alleged harasser. The Investigating Subpanel may extend this deadline once for up to 60 calendar days, upon written notification to the Chairperson. Any further extensions may be granted by the Chairperson only in exceptional circumstances. The Chairperson shall inform the alleged victim and the alleged harasser of any extensions.
49. At the end of the investigation phase, the Investigating Subpanel shall issue a written investigation report which shall summarize:
 - 49.1 the statement of procedure;
 - 49.2 the persons interviewed (if deemed essential by the Investigating Subpanel, their identity may be made anonymous);
 - 49.3 the documentation and any additional information considered in the course of the investigation;
 - 49.4 the facts established in the course of the investigation;
 - 49.5 an opinion as to whether or not the facts established amount to harassment.
50. Within 15 calendar days of receipt of the investigation report, the Chairperson shall send it, with his comments if any, to the Director-General with a copy to the Head of the Human Resources Department. In case of disagreement at the end of the investigation phase, the differing opinions as to whether harassment has occurred will be presented in the investigation report.

5. *Procedures following conclusion of the investigation process*

51. Within 30 calendar days of receipt of the investigation report, the Director-General shall decide, on the basis of the report, whether harassment has occurred. He shall further decide whether to pursue disciplinary action under Chapter VI, Section 2 of the Staff Rules and Regulations and/or administrative action. If the Director-General decides to pursue disciplinary action, the matter shall be referred to the Head of the Human Resources Department.
52. Within five calendar days of his decision, the Director-General shall notify in writing the alleged victim, the alleged harasser, the Chairperson and, where the alleged harasser is an associated member of the personnel, his home institution, of his decision. Such notification shall indicate the facts established in the course of the investigation and the opinion(s) set out in the investigation report, as well as the Director-General's conclusions thereon.
53. The investigation report issued by the Investigating Subpanel shall form the basis for fact finding in disciplinary and/or settlement of dispute procedures under Chapter VI of the Staff Rules and Regulations.
