

What does the law

say about #MeToo?

Review of sexual harassment laws in the Nordic countries

In all Nordic countries, employers are required to prevent and respond appropriately to sexual harassment in the workplace. Nevertheless, the problem remains widespread, as has become increasingly clear in connection with the #MeToo campaign. In this review, we identify the laws that apply in the Nordic countries.

The #MeToo campaign swept across a large number of countries in the autumn of 2017, enabling women to share their experiences of sexual harassment and joining forces to draw attention to the problem. *Sexual harassment* refers to a behaviour of sexual nature that violates the dignity of another person. Examples include comments about somebody's breasts, a person sending sexually explicit pictures to a colleague without consent, somebody intentionally touching somebody else inappropriately and a supervisor asking a subordinate for sexual favours.

The large number of testimonies that have surfaced since the launch of the #MeToo campaign show that these types of violations – which target mainly women – are commonplace in Nordic workplaces. The many reports of mistreatment also indicate that perpetrators are rarely held accountable for their behaviour, despite the fact that sexual harassment is illegal in all Nordic countries. Against this background, Nordic Information on Gender (NIKK) has taken a close look at what the laws and legal protection in relation to sexual harassment in the workplace look like in the Nordic nations.

Multiple Laws in Effect

Sexual harassment is illegal in all Nordic countries, whether it occurs in the workplace or elsewhere in society. When it comes to sexual harassment in the workplace, each country has several relevant laws in place. All Nordic employers are legally required to create a work environment free from sexual harassment, and several of the countries also require employers to work actively against discrimination or to promote equal rights and equal opportunities in other ways. The applicable laws are based on EU directives, but most Nordic countries have in fact taken the legal protection a step further.

All Nordic countries have a law that defines sexual harassment and the responsibilities of employers. If an employer fails to act in response to a violation, it is possible to push the matter to a higher level.

It is also possible to report an offence directly to the police. However, NIKK's review shows that the national criminal codes apply mainly to more severe forms of sexual molestation. Verbal harassment is rarely dealt with in court.

Denmark

In Denmark, sexual harassment is considered a form of gender-based discrimination and is thus illegal in Danish workplaces. Unlike other Nordic countries, the Danish gender equality legislation does not require employers to actively prevent sexual harassment. However, the national occupational health and safety addresses the issue of sexual harassment by requiring employers to 'ensure that the work does not pose a risk of physical or mental ill-health due to bullying, including

sexual harassment'. The Danish supervisory authority for work environment issues can support employers who need assistance in this work or impose sanctions if the rules are not followed.

According to Denmark's equal treatment legislation, employers are required – as in other Nordic countries – to stop all occurrences of sexual harassment that they are or should reasonably be aware of. If the employer fails to act, a case can be taken to court and the employer be fined for noncompliance with the equal treatment legislation.

In the Danish criminal code, sexual harassment is dealt with in the section on violation of decency. Practice shows that an offence involving sexual harassment must be relatively serious for the perpetrator to be convicted. The penalty for this type of crime consists of a fine or imprisonment for 2-3 years. Digital flashing, popularly called *dick pics*, and sharing of nude pictures without consent can also fall under this heading.

Faroe Islands

In the Faroe Islands, gender-based discrimination is illegal at the workplace. The gender equality legislation does not require employers to actively prevent sexual harassment.

However, occupational health and safety covers sexual harassment. Every employer has the legal responsibility for maintaining reasonable working conditions that ensure that work does not pose a risk to physical or mental health - including sexual harassment. If the employer fails to comply with the law, the business may be fined or closed.

In addition, the agreement between the social partners includes a section on mental health and safety that requires employers to promote well-being in the workplace and prevent bullying.

In the criminal code, sexual harassment is dealt with in the section on violation of decency.

Finland

In Finland, sexual harassment is regulated in the gender equality act and the occupational health and safety act. Employers must ensure that employees are not subjected to sexual harassment in the workplace.

The law requires both public and private employers to promote gender equality and to have a gender equality plan in place. The plan should include a specification of how sexual harassment is to be prevented and dealt with. Employers are also required to take appropriate action in the event of sexual harassment. According to the law, persons who commit acts of sexual harassment may be penalised by means of a reprimand, a warning, reorganisation of work assignments or termination. An employer or other relevant superior who is aware of sexual harassment but does not take action is considered to commit an act of discrimination. In such cases, the victim of the sexual harassment can request compensation for discrimination in the district court. Sexual harassment is also prohibited in the criminal code. The classification of an offence depends on its nature. Most cases involving physical touch are classified as *sexual molestation*. Perpetrators of this crime may be sentenced to pay a fine or to imprisonment for up to six months. The law does not explicitly

protect people against verbal sexual harassment. However, calling a person *whore* could be classified as *defamation* and thus be punishable. Repeated sexual harassment, for example in the form of recurring text messages containing nude photos, can also be classified as *stalking*.

Greenland

Sexual harassment is prohibited in the workplace according to the Greenlandic gender equality act. In addition, the Danish criminal code applies in the area.

Iceland

Icelandic employers must implement measures to protect employees from sexual harassment in the workplace. According to the gender equality act, every workplace with more than 25 employees must establish a gender equality plan that addresses the issue of sexual harassment. The plan must furthermore specify the employer's response should it occur.

According to the occupational health and safety act, Icelandic employers must also establish an action plan specifying procedures for the handling of harassment, bullying or violence in the workplace. The plan shall primarily address psychosocial risks, bullying and sexual harassment. Each employer is legally responsible to maintain a reasonable work environment that is free from sexual harassment. Employers that do not comply with the law may be fined or have their operations shut down.

Sexual harassment, yet only relatively severe offences, is also regulated in the country's criminal code.

When it comes to sexual harassment committed online, offences such as provision of intrusive sexual invitations or pictures are prohibited in Icelandic law.

Norway

Sexual harassment in the workplace is prohibited under the country's occupational health and safety act and gender equality and non-discrimination act. According to the latter, employers must prevent sexual harassment. This can be accomplished for example through the development of guidelines and information material or the establishment of an internal reporting system. Employers should make clear that sexual harassment is not tolerated and disseminate information about its negative consequences for both the victims and the overall work environment.

Employers are also required to investigate what has happened and find a solution to the situation. Victims of sexual harassment can report employers who do not comply with the requirements to the office of Norway's *diskrimineringsnemnd*, which handles matters related to the responsibility of employers to prevent harassment. In purely legal terms, employers are required to work actively to prevent further sexual harassment, yet they do not have an obligation to be successful.

The Norwegian criminal code prohibits various forms of sexual misconduct. One problem, however, is that there is very little case law with regard to sexual harassment. *Sexual act without consent* is a crime category referring for example to sexual touching of another person's body. Another category is called *sexually offensive conduct in public without consent*, which includes for example crude innuendos and digital flashing.

Sweden

In a Nordic context, Swedish law has high demands regarding preventive efforts by employers. The Swedish Discrimination Act requires employers to actively implement measures to prevent discrimination and promote equal rights and opportunities. When planning and designing preventive measures, employers must take all grounds for discrimination into account.

Employers are also required to actively assess the existence of sexual harassment in the workplace, for example by paying attention to jargon and checking for the presence of offensive pictures. The results of the assessments must be analysed and appropriate measures taken. This work must be carried out in consultation with employee representatives. The law also requires employers to establish guidelines and procedures for prevention of sexual harassment. The procedures should specify how the employer is to act should sexual harassment occur.

In cases of sexual harassment, employers must promptly investigate what has happened and implement measures to end the behaviour. In a first step, perpetrators may be reprimanded or ordered to change their behaviour. In a second step, they may be issued a formal warning, reassigned or, as a last resort, terminated.

Sexual harassment is also prohibited under the Swedish Work Environment Act, and severe offences, as well as various types of sexual violence or coercion, may be actionable under the Swedish Penal Codes. Offences classified as *sexual molestation* occur when someone 'by word or deed molests a person in a way that is likely to violate that person's sexual integrity'. In practice, this refers mainly to physical touching of intimate nature. There is also a crime category called *sexual coercion*, which covers sexual touching involving the genitals.

Åland

People in Åland are subject to the Finnish gender equality legislation and criminal code.

Summary

Compared with other parts of the world, the Nordic countries have strong legislations against sexual harassment. Nevertheless, sexual harassment remains a major problem in Nordic workplaces. One explanation could be that the legal protection, despite the fact that it consists of several laws in each country, is not 100% effective. The #MeToo testimonies suggest that sexual harassment is particularly prevalent in sectors with low levels of job security, such as sectors characterised by high rates of short-term freelance contracts. Thus, sexual harassment seems to be most likely to occur in workplaces where workers are in particularly vulnerable positions and may not dare to hold colleagues and superiors accountable for violations.

People wishing to report sexual harassment can do so in several ways. Each respective gender equality, anti-discrimination or equal opportunities legislation clearly specifies what constitutes sexual harassment and that it is illegal. One way to address the issue is to involve the employer and the appropriate trade unions. A wide range of legal provisions apply in this regard, some assuming that employers have the necessary knowledge and take responsibility for the situation. In all Nordic countries, employers are legally required to immediately end any occurrences of harassment. If an employer fails its legal responsibilities, there are ways to

take a case to a different level. If the offences are committed by an employer, it can be reported as discrimination in several Nordic countries.

Another option is to report sexual violations to the police. However, the problem is that few police reports of this type lead to legal intervention. The criminal codes cover mainly more severe forms of sexual molestation and sexual violence, and few court cases lead to a conviction.

FACTS: SEXUAL HARASSMENT – WHAT IS IT?

Sexual harassment is an act or conduct of sexual nature that violates another person's dignity. The harassment may involve touching, groping, jokes, proposals, glances, jargon or images that are sexually charged and often degrading. Sexual harassment differs from a normal flirt in that it is unwelcome. It is the victim of harassment who decides whether or not a behaviour is offensive.

Source: Nationalencyklopedin, 2017

This review is produced by NIKK, Nordic Information on Gender, which is a Nordic cooperative body under the Nordic Council of Ministers. The review is based on both reports and interviews with researchers.

Text: Ida Måwe, 2018

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