

Procedure for the Protection, Detection and Treatment of Harassment Situations

Institut Català de Nanociència i Nanotecnologia

May 2023

CONTENTS

DECLARATION OF PRINCIPLES.....	3
SCOPE OF APPLICATION	3
REGULATORY REFERENCES	4
Guides and manuals.....	6
DEFINITIONS	7
Mobbing.....	7
Sexual harassment	7
Gender-based harassment.....	7
PROCEDURE.....	8
Principles of the procedure.....	8
Reporting a situation involving harassment	8
OUTLINE OF THE ACTION PROCEDURE TO BE FOLLOWED IN CASES OF HARASSMENT	10
Phase 1: Communication and Advice.....	11
Phase 2: Internal Complaint and Investigation	12
Phase 2.1 Internal Procedure.....	13
Phase 2.2 External Procedure	14
MONITORING AND ASSESSMENT.....	15
DISSEMINATION	16
ANNEXES	17

DECLARATION OF PRINCIPLES

The Catalan Institute of Nanoscience and Nanotechnology, ICN2, declares RESPECT FOR PEOPLE as a cornerstone that defines its culture, and an essential condition for individual and professional development within the institution.

This respect for people is most immediately reflected in the principles of “respect for the law” and “respect for human rights”, which must co-exist in relationships between people and in work relationships, with appropriate, respectful and decent behaviour being an essential requirement at the institution; behaviour that guarantees the employment rights of people, their personal privacy, equal opportunities and respect for cultural diversity.

Through these procedures, ICN2 undertakes to establish a methodology to deal with potential situations of mobbing, sexual harassment and sexist harassment in the workplace. This methodology is applied to prevent, through training, responsibility and by providing information, and to resolve complaints and claims made by victims. It also includes the appropriate guarantees and takes into consideration European, regional and employment legislation concerning the right of workers to enjoy a working environment that is free of gender-based abuse.

SCOPE OF APPLICATION

ICN2 must guarantee the health and safety at work of all the people who work at the centre, and ensure the existence of working environments that are free of risks to physical and psychological wellbeing. Consequently, these procedures shall be applied to all people who work at the institute, the personnel of contractors or subcontractors and self-employed workers connected to the centre.

ICN2 also assumes the obligation to inform external collaborators and suppliers about the policy of the institute in order to combat sexual harassment and sexist behaviour, and therefore about the existence of this protocol and mandatory compliance with the same.

REGULATORY REFERENCES

- The **Spanish Constitution, 1978**. This recognises the dignity of people and their inviolable rights as fundamental inherent rights, as well as the free expression of personality (Article 10.1), equality and non-discrimination based on gender in the broadest sense (Article 14), the right to life and to physical and psychological wellbeing, and not to be subjected to degrading treatment (Article 15), the right to honour, personal and family privacy and own image (Article 18.1). Article 35.1 of the Constitution establishes the right to non-discrimination on the grounds of gender within the scope of workplace relations.
- **Directive 2006/54/EC** by the European Parliament and Council of 5 July 2006 concerning the application of the principle of equal opportunities between men and women in matters of employment and occupation defines sexist behaviour and sexual harassment and establishes that said situations shall be considered as discriminatory and, therefore, shall be prohibited and penalised appropriately, proportionally and as a deterrent.
- **Organic Law 3/2007**, of 22 March, in Article 7 on the effective equality of men and women establishes that:
 1. Without prejudice to the provisions of the Criminal Code, for the purposes of this Law any behaviour, whether verbal or physical, of a sexual nature that has the intention or produces the effect of attacking the dignity of a person, particularly when this creates an intimidating, degrading or offensive environment, constitutes sexual harassment.
 2. Any behaviour based on the gender of a person, that has the intention or produces the effect of attacking their dignity and of creating an intimidating, degrading or offensive environment, constitutes gender-based harassment.
 3. Sexual harassment and gender-based harassment shall, without exception, be considered as discriminatory.
 4. The conditioning of a right or of an expectation right to the acceptance of a situation that constitutes sexual harassment or gender-based harassment shall also be considered as an act of gender-based discrimination.

In Article 48 it establishes that: *businesses must create working conditions that avoid sexual harassment and gender-based harassment and establish specific procedures for their prevention and channel any complaints or claims that might be made by those who have been subject to it and must negotiate the actions to be taken with workers' representatives.*

- **Organic Law 10/2022**, of 6 September, on the comprehensive guarantee of sexual freedom that establish in article 13:
 - Public administrations, public bodies and constitutional bodies must promote

working conditions that prevent conduct that violates sexual freedom and moral integrity at work, with special emphasis on sexual harassment and harassment based on sex, including committed in the digital realm. Likewise, they must arbitrate specific procedures or protocols for their prevention, early detection, reporting and advice to those who have been victims of these conducts.

- The competent public administrations and their related or dependent bodies will promote information and awareness and will offer training for comprehensive protection against sexual violence to the personnel at their service, public authorities and elected public officials.
- **Law 4/2023**, of February 28, for the real and effective equality of trans people and for the guarantee of the rights of LGBTI people that state in article 14 and 15:
 - Promote the development of ethical codes and protocols in public administrations and in companies that include protection measures against all discrimination due to the causes provided for in this law.
 - Companies with more than fifty workers must have, within a period of twelve months from the entry into force of this law, a planned set of measures and resources to achieve real and effective equality for LGBTI people, which include an action protocol for dealing with harassment or violence against LGBTI people. For this, the measures will be agreed through collective bargaining and agreed with the legal representation of the workers. The content and scope of these measures will be developed by regulation.
- **The 5/2008 Act**, of 24 April, on the right of women to the eradication of gender-based abuse.
- **The 17/2015 Act** of 21 July on the effective equality of men and women.
- **The Spanish Criminal Code.**
- **The consolidated text of the Workers' Statute Act.**
- **Resolution of 28 July 2011, by the State Department for Public Administration**, which approves and publishes the Resolution of 27 July 2011 of the General Negotiation Board of the Civil Service concerning the procedures for sexual harassment and gender-based harassment in the scope of the Civil Service and of public organizations connected to it.
- **The 8/1988 Act** of 27 April, on Social Order Offences and Penalties (LISOS).
- **The 31/1995 Act** of 8 November, on Health and Safety at Work.
- **Organic Law 15/1999**, of 13 December, on the Protection of Personal Data.

Guides and manuals

[NTP 507: Acoso sexual en el trabajo](#), of the Spanish Institute of Safety and Hygiene at Work (INSHT).

[Guia per a l'eradicació de l'assetjament sexual, per raó de sexe i/o orientació sexual a la Generalitat de Catalunya.](#)

[Guia per al tractament i la prevenció de l'assetjament psicològic a la Generalitat de Catalunya.](#)

[Manual de referencia para la elaboración de procedimientos de actuación y prevención del acoso sexual y del acoso por razón de sexo en el trabajo.](#) Department for Health, Social Services and Equality.

DEFINITIONS

MOBBING¹

This is understood as any abusive behaviour or psychological aggression that is carried out over an extended period of time against a person in the workplace, expressed through repeated behaviour, acts, orders or words whose purpose is to discredit, degrade or isolate a person in order to force them out of their job by causing progressive and continual harm to their dignity or psychological wellbeing. If the person who carries out this harassment holds a position of hierarchical authority over the victim within the company, this shall be considered an aggravating factor.

SEXUAL HARASSMENT²

Sexual harassment is considered as a situation in which there is verbal, non-verbal or physical behaviour of a sexual nature the intention or effect of which is to attack the dignity of a person, particularly when it creates an intimidating, hostile, degrading, humiliating or offensive atmosphere.

GENDER-BASED HARASSMENT³

This is a situation in which there is behaviour related to gender stereotypes and which, through its repetition or systemisation, attacks the dignity and physical or psychological wellbeing of a person, degrading the working conditions of the victim, and which can also endanger their jobs, especially when these actions are related to situations of maternity, paternity or the acceptance of other family care duties.

This behaviour can express itself in three ways:

- I. Downward, when the person who carries out the harassment occupies a more senior position than that of the alleged victim of the harassment.
- II. Horizontally, when it takes place between people on the same hierarchical level, with the person who carries out the harassment usually seeking to hinder the work of the person suffering the harassment in order to damage their professional image and even to take credit for the other person's work.
- III. Upward, when the person who carries out the harassment is someone who occupies a more junior position than that of the alleged victim.

¹ NTP 854, Instituto Nacional de Seguridad e Higiene en el Trabajo (INSHT)

² Art. 2.1-d of 54/2006 Directive of 5th July and Art. 7 of Organic Law 3/2007 of 21st March

³ Art. 43 of the 4/2005 Act of 18th February on Equality between Men and Women

All the people included within the scope of application of these procedures must respect the dignity of other people and avoid any behaviour that constitutes mobbing, sexual harassment or sexist behaviour. Any worker may submit a written or verbal report concerning sexual harassment or sexist behaviour in accordance with the procedure established below.

PROCEDURE

PRINCIPLES OF THE PROCEDURE

The procedure shall be governed by the following principles, which must be observed at all times:

- A guarantee of confidentiality and protection of the privacy and dignity of the people involved, guaranteeing the preservation of the identity and personal circumstances of the person making the complaint at all times.
- Priority and urgent processing. The procedure sets out the deadlines for issuing resolutions in each phase in order to reach a resolution as quickly as possible.
- An exhaustive investigation of the facts, which is objective and impartial, and led by specialised professionals if necessary.
- A guarantee of action, by taking the necessary measures, including, as appropriate, those of a disciplinary nature against the person or persons whose harassing behaviour has been proven, and also in relation to any person who maliciously makes a false allegation or complaint.
- Protection against reprisals, guaranteeing that there shall be no adverse treatment or negative effects for a person as a consequence of said person making a complaint or statement of any kind in order to stop a situation involving harassment and to initiate this procedure, (without prejudice to any disciplinary measures that may be established for situations of proven false complaints).
- A guarantee that the victim of the harassment can continue in their job under the same conditions if they so wish.

REPORTING A SITUATION INVOLVING HARASSMENT

Any person within the scope of application of this procedure who is considered a victim of mobbing or of sexual or sexist harassment, or any other person who is aware of harassment situations, must report this to the people appointed as **mediators** by using the procedure described below.

The procedure shall be initiated through the reporting of the mobbing, sexual or gender-based harassment situation, and may be carried out in the following ways:

1. Direct reporting by the affected person.
2. Reporting by any employee who suspects that there is a harassment situation.

The procedure set forth in this protocol will not apply to the following:

- Anonymous complaints.
- Complaints relating to matters pertaining to other types of claims not covered by this protocol.

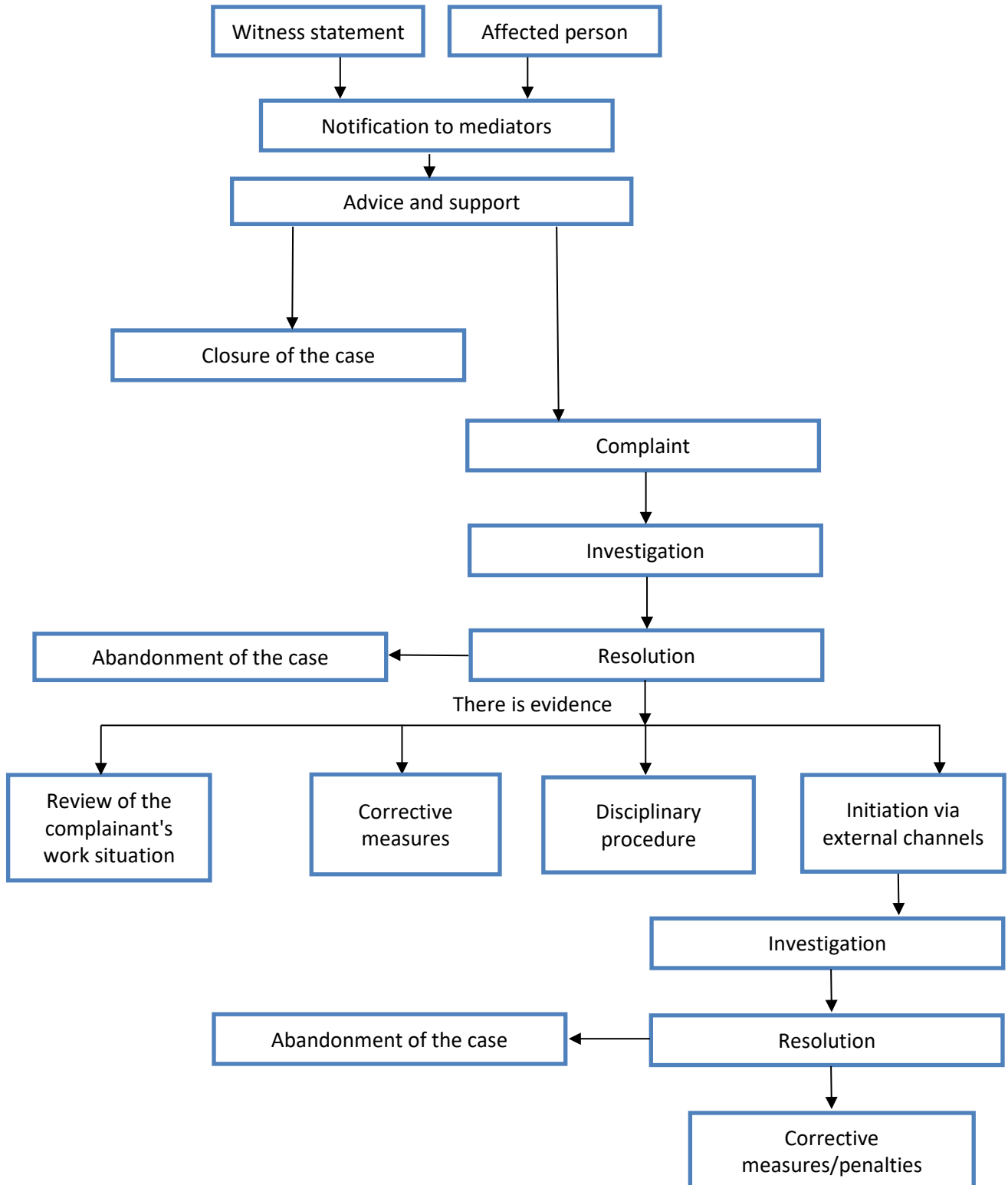
All the staff of the centre shall be informed of the identity of the *mediators* and of how they can contact them. At the time of drafting these procedures the people appointed as *mediators* at the institution are:

- **José Pérez** (Health & Safety Officer)
- **Nadía Vallvé** (Labour Relations Officer)

If either of these two people are replaced, the Human Resources Department must notify the workforce. The mediators shall keep a register of communications received in a system designed for this purpose.

Once a notification has been received, the harassment procedure described below shall apply.

OUTLINE OF THE ACTION PROCEDURE TO BE FOLLOWED IN CASES OF HARASSMENT



PHASE 1: COMMUNICATION AND ADVICE

The aim of this phase is to provide information, advice and support to the affected person and to prepare the internal complaint and investigation phase (phase 2) if applicable.

This phase, which takes three to five working days, starts with a report of perceived or suspected harassment. This triggers the notification and advice actions.

As stated above, the notification may be made by:

- The affected person.
- Any person(s) who become(s) aware of any harassing behaviour.

Moreover, through the information reported or received, the mediation team could consider taking actions necessary when signs of harassment are detected.

Once the mediators have received the notification, they must:

1. Inform and advise the affected person.
2. Support the affected person throughout the process.
3. Propose precautionary and/or preventive measures.

This phase can lead to one of two different outcomes:

- a) The affected person may decide to file a complaint.
- b) The affected person may decide not to file a complaint, and the mediator may consider, based on the information received, that there is some evidence of harassment that affects a group of people. In this case, the mediation team can act of their own accord to activate the harassment protocol, informing the management, while respecting the confidentiality of the persons involved, so that ICN2 can take any preventive, awareness and/or training measures or any other actions that it may deem necessary to deal with the signs of harassment detected.

The mediators are in charge of the management and safekeeping of any documents during the notification and advice phase, ensuring the confidentiality of all the documents and information produced during this phase.

If the affected person decides not to continue with the action, they must have all the documents provided returned to them. If they decide to continue with the complaint, the documents must be attached to the investigation file that will be created.

PHASE 2: INTERNAL COMPLAINT AND INVESTIGATION

The aim of this phase is to carry out a thorough investigation of the facts in order to issue a binding report on whether or not there is a situation of harassment and to propose intervention measures.

The complaint must be made in writing using a form made available for that purpose and titled [“Harassment Communication Form”](#), which must be delivered to the mediators in person or sent to them by e-mail at mediation@icn2.cat, an address used solely for this purpose. Only the mediators have access to this account.

Responsibility for managing the procedure always lies with the people appointed at ICN2 as mediators, who shall be in charge of initiating the procedure and ensuring that the principles included in the action procedure are respected throughout.

The people who participate in this process are subject to the obligation of professional secrecy concerning any information to which they have access during the processing of the procedure. A breach of this obligation may be subject to penalisation. To this end, the persons involved must sign the document entitled [“Confidentiality Undertaking”](#).

During the processing of the case, the parties involved may be assisted and accompanied by a person of trust, who must maintain confidentiality concerning any information to which they have access. This person of trust may be present at any of the taking of statements and at any of the communications that the instructing party makes to the persons involved.

The following information must be provided in order to process the complaint:

- The identity details of the complainant and those of the alleged victim of the harassment if different from the complainant.
- A description of the facts, including dates and other relevant information.
- The identity details of the person(s) who is/are allegedly engaging in the harassment behaviour.

If the complaint relates to sexual harassment, the affected person may ask to explain the situation to a person in the investigating team who is of the same gender as them.

Once the complaint has been ratified, the investigating team:

- Shall obtain the affected person’s express written consent to access any information that may be necessary to investigate the case.
- Shall inform the affected person that the information to which the investigating team has access during the investigation and any reports of the investigation that may be

drawn up will be treated as secret and confidential unless they have to be used by ICN2 in court or administrative proceedings.

- May decide as early as this initial phase to order precautionary measures if this is warranted by the circumstances.
- Shall offer the affected person the opportunity to attempt to resolve the issue through mediation. The idea is to have an agile intervention where solutions can be suggested in a simple, confidential and discreet way.

False Allegations

False allegations are those in which an investigation of the facts reveals that both of the following two requirements are met:

- a) the complaint lacks any basis or evidence.
- b) the complaint was made in bad faith by the person making it or for the sole purpose of harming the person being accused (harassment against the employer) in accordance with the above definitions.

Phase 2.1 Internal Procedure

a) Opening the file

An internal mediation procedure aimed at resolving the issue immediately through information recording, personal interviews and/or dialogue between the parties shall begin automatically as soon as a situation of harassment has been reported and a formal notification has been made. If an analysis of the complaint leads to the conclusion that internal mediation will not be possible, an external procedure will be used.

b) Development and conclusion

In this stage of the procedure, the mediators shall interview the parties in order to clarify the facts and reach a solution that is accepted by both parties.

The mediators must record everything concerning the investigation (interviews, documents provided by the parties, etc.) on a report form.

Under no circumstances shall the internal procedure take more than 10 working days to resolve. However, the investigating team may extend this period in exceptional cases.

c) Resolution

A resolution on the case shall be issued based on the binding report drawn up during the investigation. The resolution shall be issued no later than 30 working days after the start of the

procedure, although this may be extended to 45 days.

- If there is sufficiently proven evidence of harassment:
 - The disciplinary procedure is initiated on the grounds of a proven case of harassment; and
 - Corrective measures (of an organisational nature, such as a change of job, if applicable, or the start of a disciplinary procedure, indicating the offensive behaviour and the penalty level) are adopted.
- If there is not sufficiently proven evidence of harassment:
 - The complaint is abandoned.

If the investigation leads to the conclusion that a type of misconduct other than harassment defined in the current legislation or in the applicable collective agreement (such as, among others, false allegations) has been committed, an appropriate disciplinary procedure will be initiated. Similarly, whether or not the procedure results in a penalty, a follow-up/review of the complainant's work situation shall be carried out.

In summary, following the result of the procedure, the mediators will have the authority to:

- Close the internal procedure as a result of the resolution of the dispute, issuing a report that presents their conclusions and the commitments adopted by the parties.
- Begin an external procedure, if they consider that there is a harassment situation that has not been possible to resolve in the internal procedure.
- The *mediators* of the procedure may recommend and apply urgent precautionary measures until the procedure has been resolved. Under no circumstances shall these measures represent a detriment to the working conditions of the persons involved.

Phase 2.2 External Procedure

a) Development

The external procedure shall begin with delegating the management of the dispute to external consultants with accredited experience in the resolution of disputes in organisations.

ICN2 shall follow the external recommendations with regard to taking actions that are considered necessary for the clarification of the reported acts.

In the shortest possible time, and under no circumstances exceeding a time limit of 30 calendar days, the external consultants must draft a report that contains a description of the reported acts, the concurrent circumstances, their seriousness, the repetition of the behaviour, the degree of impact on the employment obligations and working environment of the alleged victim, their decision on whether the reported acts have been committed or not, and their definition of these as harassment or not, as well as their proposal concerning penalties and/or actions to be taken, as appropriate.

The report will be sent to the ICN2 mediators, who will inform the management of the centre. Moreover, the mediation team will develop a conclusions report containing the whole process evaluation.

b) Resolution and closure of the procedure

If it is determined that there is harassment

The institution, taking into account the external consultancy's report as well as the mediation team's conclusions report, will assess, within a maximum period of 15 calendar days, the corrective or penalty measures of application.

If the application of any actions or measures is necessary, both the mediation team and ICN2 management will have to reach an agreement on them.

If it is determined that there is no harassment

If it is determined that there is no harassment in any of its forms, the complaint will be closed. If there is evidence of malicious intent by the person who made the complaint, the relevant disciplinary measures shall be applied.

In either case

In any event, the mediators may contact the Human Resources Department concerning the application of alternative measures at the centre, such as the organisation of talks, etc., in order to raise awareness amongst the entire workforce in general and the parties in particular regarding the significance and implications of harassment situations.

This procedure shall be applied regardless of any legal actions that may be filed by the complainant before any courts or administrative bodies.

MONITORING AND ASSESSMENT

This Protocol will be periodically reviewed and assessed by Management committee, Mediation team and the Equality Plan committee.

DISSEMINATION

To fully guarantee awareness of this procedure among all staff it will be disseminated through different communication channels like ICN2 Intranet, posters, and training. The document includes the names of mediators, e-mail address for communications and harassment report form.

In addition, all the external collaborators and suppliers of the institute must be aware of and respect the centre's policy on this issue.

ANNEXES

EXAMPLES OF HARASSMENT

a) Types of sexual harassment⁴:

Verbal conduct

- ⇒ Offensive sexual jokes and comments about the physical appearance or sexual orientation of a worker.
- ⇒ Obscene sexual comments.
- ⇒ Questions, descriptions or comments about sexual fantasies, preferences and skills/abilities.
- ⇒ Degrading or obscene ways of addressing people.
- ⇒ The spreading of rumours about people's sex lives.
- ⇒ Communications (telephone calls, e-mails or through any means of the digital field) of sexual content or offensive nature
- ⇒ Behaviour that seeks to harass or humiliate a worker due to their sexual orientation.
- ⇒ Invitations or pressure to accept dates or sexual encounters.
- ⇒ Invitations, requests or demands for sexual favours when they are related, either directly or indirectly, to a worker's career, an improvement in working conditions or to job security.
- ⇒ Persistent invitations to participate in social or leisure activities, even though the person receiving them has made it clear that these are not welcome or are inappropriate.

Non-verbal conduct

- ⇒ The use of graphic images, sketches, photographs or drawings with a sexually explicit or suggestive content.
- ⇒ Obscene gestures, whistles, lewd or obscene looks.
- ⇒ Letters, notes or e-mails with an offensive sexual content.
- ⇒ Behaviour that seeks to harass or humiliate a worker due to their sexual orientation.
- ⇒ Intimidation or harassment using digital instruments.

⁴ Reference manual for the drafting of action and preventive procedures concerning sexual harassment and gender-based harassment in the workplace, Department of Health, Social Services and Equality.

- ⇒ Send aggressive messages.
- ⇒ Share embarrassing photos of other people.

Physical behaviour

- ⇒ Deliberate, unrequested physical contact (pinches, touches, unwanted massages, etc.) or excessive or unnecessary physical closeness.
- ⇒ Cornering or deliberately seeking to be alone with a person unnecessarily.
- ⇒ Touching a person's sexual organs intentionally or "accidentally".

b) Type of gender-based harassment⁴

- ⇒ Use of discriminatory behaviour due to the fact of being a man or a woman.
- ⇒ Jokes and comments about people who assume tasks that have traditionally been performed by people of the other sex.
- ⇒ The use of degrading or offensive ways of addressing people of a certain gender.
- ⇒ The use of sexist humour.
- ⇒ Ridiculing and denigrating the abilities, skills and intellectual potential of women.
- ⇒ The above types of conduct with lesbian, gay, transgender, transsexual, bisexual and intersex people.
- ⇒ Denigrating the work of people unfairly and in a biased way, due to their gender or sexual orientation.
- ⇒ Assigning tasks or work that is below the professional ability or skills of a person.
- ⇒ Discriminatory treatment due to pregnancy or maternity.
- ⇒ Explicit or implicit types of conduct aimed at taking restrictive or limiting decisions concerning access to employment of a person or their continuity in a position, access to professional training, remunerations or any other matter related to working conditions.

c) Types of gender-based harassment due to pregnancy or maternity⁴

- ⇒ Assigning work with a responsibility that is below a person's ability or professional category.
- ⇒ Assigning meaningless tasks, or tasks that are impossible to achieve or have unreasonable deadlines.
- ⇒ Deliberately blocking access to the resources required to carry out work (information, documents, equipment, etc.).
- ⇒ Arbitrarily denying permits or licences that a person is entitled to.

d) Types of mobbing

- ⇒ Actions used to exclude or isolate a person from their professional activity.
- ⇒ Persistent, negative attacks in order to damage personal or professional performance.
- ⇒ Attacks on the social relationships of the victim through social isolation.
- ⇒ The manipulation of the personal or professional reputation of a person through rumours, slander, denigration or ridicule.
- ⇒ The abuse of power through the persistent denigration of a person's work, by setting objectives with unreasonable or unachievable deadlines, or the assignment of impossible tasks.
- ⇒ Discriminatory harassment motivated by political, union-related reasons and/or religious beliefs.
- ⇒ Attacks based on the origin, nationality, ethnicity, or race.
- ⇒ Discriminatory harassment of pregnant or lactating women, by reason of age, marital status, and disability.
- ⇒ The inexplicable and unfounded denial of licences and training opportunities.
- ⇒ The gradual erosion of the exercise of the duties inherent to a person's job.
- ⇒ The attempt to harm a person by imposing administrative actions that represent personal exclusion or detriment.
- ⇒ Continuous criticism of a person's work.
- ⇒ Attacks on the attitudes, political and/or religious beliefs of the victim.