

TOOLKIT

Preventing

- violence
- harassment
- gender-based and sexual misconduct

in the
workplace

▷ Who to contact in case of emergency?

▷ Understanding the legal and regulatory framework

▷ Tools and letter templates for victims and witnesses

▷ Poster and information sheet for work contracts

Tools for the application of title XVIII of the CCNEAC (National collective agreement of artistic and cultural enterprises)

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WHO TO CONTACT IN CASE OF EMERGENCY?

If your situation requires an **urgent intervention from the authorities, you can contact the police** (*commissariat* or *gendarmerie*).

By phone

In case of emergency, when a quick intervention is necessary, you can call the police emergency services. Dial **17**.

You can also dial **112** (emergency contact to use when calling from a country in Europe, or from a mobile phone, 24/7, free of charge).

You cannot make a phone call

114 is the emergency call relay service if you are unable to talk on the phone (deaf, hearing-impaired, ...) or if it might put you in danger. You can contact them **by text message**, free of charge, 24/7.

In addition, with the mobile app “Urgence 114” or the website www.urgence114.fr, you can have access to:

- **Video calling:** communicating in sign language.
- **Chatting:** communicating in writing, which allows you to talk with police staff. At any moment, the conversation history can be deleted from your computer, mobile phone, or tablet.
- **Voice/text reply:** speak and 114 replies in writing (or the other way around)

The website <https://www.service-public.fr/cmi> is dedicated to reporting sexual and gender-based violence and allows you to communicate with the police in a chat form. Any conversation on this website can be deleted in case of an emergency, to guarantee the secrecy of your report.

Right to withdraw labour

The right to withdraw labour consists of an employee **stopping work in any situation where they have reasonable cause to believe that it presents a serious and imminent danger for their life or their health**. In this case, the employee must immediately alert their employer of the danger justifying their withdrawal.

As a victim of sexual harassment or violence, you can exercise your right to withdraw labour. In case of a dispute, the judge will verify if the harassment situation really presented a “serious and imminent danger” to your health.

[L. 4131-1] *The employee shall immediately alert the employer of any work situation which they have reasonable cause to believe presents a serious and imminent danger for their life or their health, as well as to any deficiency they notice in the protection systems.*

They may withdraw from such a situation.

The employer may not require an employee who has exercised their right to withdraw labour to resume their activity in a work situation where serious and imminent danger persists, in particular when it results from a deficiency in the protection systems.

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DEFINITIONS

Sexual and gender-based misconduct and violence

Gender-based misconduct

[L.1142-2-1 of the Labour Code] *No one shall be subjected to gender-based misconduct, defined as any behaviours directed at a person because of their sex or gender, which is designed to, or leads to harming their dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.*

HERE ARE SOME EXAMPLES OF GENDER-BASED MISCONDUCT:

- **Sexist remarks and jokes** (e.g. regularly telling sexist jokes to a colleague and making them uncomfortable);
- **Gender-based incivility** (e.g. using degrading language, ignoring a colleague's legitimate requests, not allowing a colleague to speak or interrupting them, unreasonably questioning an employee's judgement on a matter within their professional competence, or addressing them in unprofessional terms);
- **Social gender codes policing** (e.g. criticizing a woman because she's not "feminine" or a man because he's not "manly");
- **Colloquialisms** (e.g. addressing a women with terms such as "sweetheart", "lovely", "beautiful", "darling");
- **False seduction** (e.g. making insisting comments on someone's outfit or hairstyle);
- **Benevolent sexism** ((e.g. valuing a manager only in terms of gender-stereotypical qualities such as her listening skills, her sensitivity, her attention to detail, etc.);
- **Sexist opinions on maternity and family responsibilities** (e.g. pointing out the unavailability of an employee in the evening because she has to take care of her children);

The perpetrator of gender-based misconduct at work is punished by a disciplinary sanction.

Sexual assault

[Art. 222-22] *Sexual aggression is any sexual assault committed with violence, constraint, threat or surprise or, in the cases provided for by law, committed on a minor by an adult.*

SEXUAL ASSAULT CAN BE, FOR EXAMPLE:

- Pushing an employee against a wall and touching their bottom;
- Touching an employee's breasts, thighs, genitalia, or kissing them on the mouth by surprise, threat, violence or constraint.

Sexual assault is more severely punished by criminal law than sexual harassment: the penalty is 5 years' imprisonment and a fine of €75,000, which can be increased to 10 years' imprisonment and a fine of €150,000 in case of aggravating circumstances **[Articles 222-27 and following in the Penal Code]**.

Rape

[Art. 222-23 of the Penal Code] *Any act of sexual penetration, whatever its nature, or any oral-genital act committed against another person with violence, constraint, threat, or surprise, is rape.*

Rape is punished by fifteen years' criminal imprisonment.

This punishment can go up to twenty years' criminal imprisonment when it is committed against a minor under the age of fifteen years, or when it is committed by a person misusing the authority conferred by their position (i.e. the authority of a superior, a professor to a student, a conductor to a musician, etc.).

Rape is considered as a crime, and as such is the most serious case of SGBVH.

Sexual harassment

Sexual harassment is described both in the Labour Code and in the Penal Code. It is an offence under the law.

Sexual harassment in the Penal Code

[Art. 222-33-2] *Harassing another person by repeated comments or behaviours which are designed to, or lead to a deterioration of their working conditions liable to harm their rights and their dignity, to damage their physical or mental health or compromise their career prospects is punished by two years' imprisonment and a fine of €30,000.*

*Harassing another person by repeated comments or behaviours which are designed to, or lead to a deterioration of their living conditions by altering their physical or mental health is **punished by one year's imprisonment and a fine of €15,000** when these acts have caused a total incapacity for work of less than or equal to eight days or have not resulted in any work incapacity.*

Harassment also occurs:

a) When those comments or behaviours are imposed to 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.

b) When those comments or behaviours are imposed to the same victim, successively from several persons who, even in the absence of concerted action, know that these comments or behaviours constitute a repetition.

The acts mentioned in paragraph I to IV are punished by two years' imprisonment and a fine of €30,000:

1. *where they have caused a total incapacity for work of more than eight days;*
2. *where they are committed against a minor under the age of fifteen years;*
3. *where they are committed against person whose particular vulnerability due to age, sickness, infirmity, to a physical or psychological disability or to pregnancy, is apparent or known to the perpetrator;*

4. where they are committed through the use of an online public communication service or by means of a digital or electronic medium.
5. where they are committed while a minor was present and attended;

Les faits mentionnés aux premier à quatrième alinéas sont punis de trois ans d'emprisonnement et de 45 000 € d'amende lorsqu'ils sont commis dans deux des circonstances mentionnées aux 1° à 5°.

Sexual harassment in the Labour Code

Labour Code, Article 1153

[1153-1] No employee shall be subjected to

1. Either sexual harassment, constituted by repeated sexual or sexist comments or behaviours which either harm their dignity because of their degrading or humiliating character, or create an intimidating, hostile or offensive situation.
2. Or acts assimilated to sexual harassment, constituting in **any form of serious pressure, whether a single occurrence or repeated, exercised with the real or apparent aim of obtaining an act of sexual nature**, whether it is sought for the benefit of the perpetrator or for a third party.

[1153-2] No employee, no trainee or intern, no candidate for recruitment to an internship or a training in a company may be sanctioned, dismissed or subjected to a direct or indirect discriminatory measure, in particular with regards to salary, training, redeployment, assignment, qualification, classification, professional promotion, transfer or renewal of contract, for having been subjected to or refused to be subjected to repeated acts of sexual harassment as defined in Article L. 1153-1, including in the case mentioned in 1° of the same Article, if the comments or behaviours have not been repeated.

[1153-3] No employee, no trainee or intern may be sanctioned, dismissed, or subjected to a discriminatory measure for having testified to acts of sexual harassment or for having reported them.

[L1155-2] Acts of discrimination committed as a result of moral or sexual harassment as defined in Articles L. 1152-2, L. 1153-2 and L. 1153-3 of this code are **punished by one year's imprisonment and a fine of €3,750.**

The court may also order, as an additional penalty, the publicising of the judgement at the expenses of the convicted person under the conditions set out in Article 131-35 of the Penal Code, and its publication, in full or partially, in the designated newspapers. These costs may not exceed the maximum amount of the fine incurred.

Exemples of harassment

The notion of **consent** is crucial to talk about harassment, the Labour Code indeed mentions being “subjected” to such acts. Thus, a relationship or innuendos of sexual or seductive nature are perfectly legal as long as they are consented to by both parties.

The two parties are not necessarily bound by a hierarchical relationship. Thus, colleagues, even if they are not superiors, persons with no contract because they are in a job interview, or other examples, can be targets for harassment.

SEXUAL HARASSMENT CAN BE EXPRESSED THROUGH VERBAL BEHAVIOURS:

- Insults, name-calling, with a sexual connotation
- Bawdy jokes
- Sexual comments (oral or written, in person, by phone, electronically, etc.),
- Jokes or comments about a person’s appearance, clothing, etc,
- Blackmail,
- Spreading sexual rumours about someone

BUT ALSO NON-VERBAL BEHAVIOURS:

- Non-consensual physical contact and unnecessary physical proximity
- Groping,
- Gestures or movements with sexual connotations in the presence of someone,
- Sharing images with sexual connotations,
- Giving objects with sexual connotations,
- Following someone.

Such behaviours are not necessarily directly aimed at the victim but can also take place in the victim’s environment, so as to make their workplace unbearable.

To be considered as harassment, such behaviours must take place:

- **repeatedly** so as to create an unbearable environment for the victim.
- **non repeatedly** if the acts are particularly serious: “any form of serious pressure, whether a single occurrence or repeated, exercised with the real or apparent aim of obtaining an act of sexual nature” constitute sexual harassment. This behaviour can be for the benefit of the perpetrator of the harassment or for a third party. The following are examples of sexual harassment:
 - ◇ Demanding a sexual relation or sexual acts in return for benefits such as a promotion or employment,
 - ◇ Applying pressure to demand no retaliation from the victims.

Events outside of the workplace can be included in the definitions and treated in the same way as those in the workplace.

ACCUSED

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What should you do if you are accused of sexual and gender-based harassment and/or violence?

Understanding what you are accused of

The section “[Definitions](#)” of this dossier is dedicated to defining sexual and gender-based violence and harassment (SGBVH) – you can refer to it to understand the content of the accusations made against you.

The procedure within the company

If SGBVH are reported to an employer, it is the responsibility of the company to carry out an internal investigation to understand the facts. This internal investigation includes interviews with interested parties and will result in an investigation report that will be delivered to the employer to decide on possible sanctions. As the party at fault, you will be at the heart of the procedure.

Your rights during the internal investigation

During the interview

In accordance with the CCNEAC (National collective agreement of artistic and cultural enterprises), if you are called for a “face-to-face” interview, and not to an online interview, your employer will reimburse the expenses incurred for travelling to the interview. It is the employer’s responsibility to give you reasonable notice of the interview.

You can ask your employer to interview any person you wish to testify. As part of their duty of impartiality, the employer must honour this request. In particular, the following persons can be interviewed: the occupational doctor, staff representatives, work colleagues, etc.

Similarly, during your interview, you are allowed to be accompanied if you wish. The person accompanying you cannot bear witness and must undertake not to intervene during the exchanges, in order to guarantee the impartiality of all interviews.

At the end of the interview, you should be able to check and sign the notes taken by the investigators to confirm their accuracy. If you refuse to sign the record of the interview, the investigators must attest to the refusal to sign, and to the proper conduct of the interview by those present.

Lastly, your exchanges with the investigators must remain confidential, and as such, a confidentiality agreement must be signed by all those present at the interview. This agreement is particularly important to ensure the reputation of all involved, including yourself, prior to the disciplinary decision. ▷ *An example of such an agreement can be found in **Appendix 1** of this dossier.*

About your work environment

Adjustments to your work environment may occur during the investigation to ensure the security of all.

As a reminder, you may be subjected to a suspension if you are accused of serious acts. A suspension is an emergency measure that allows an employee to be distanced from the company: it is not a disciplinary measure and cannot be considered as a sanction. In practice, your employer must respect the principle according to which a wrongful act cannot be subjected to several sanctions: this suspension must end as soon as possible after the decision of disciplinary sanctions against you.

If the disciplinary sanction decided upon is your dismissal, your suspension will not be paid. If you are reinstated in the company, you will have to be paid for your period away from the company

If the internal investigation reveals that the SBGV that you are accused of are not proved, it is also up to the employer to understand what could have led to such difficult relations within their company.

The sanctions that may be taken against you

Temporality of the sanctions

According to the Labour Code, *“no wrongful act may in itself lead to disciplinary proceedings beyond a period of two month from the day on which the employer became aware of it, unless this act has led to criminal proceedings within the same period.”* [Art. L.1332-4].

This two-month period starts from the moment the employer became exactly aware of the facts, i.e. according to the interpretation of the judges, from the moment the employer is informed of the facts, or from the moment the conclusions of the investigation are delivered, according to the elements communicated beforehand.

The sanctions applied

There is no legal list of sanctions that can be imposed by the employer, nor is there a specific sanction to impose according to the misconduct. However, in practice, a disciplinary sanction must be proportional to the misconduct. **In the case of sexual harassment, sexual assault and all the more so rape, dismissal for gross misconduct** is considered as an appropriate sanction by the judges. This type of dismissal leads to the immediate departure from the company (without notice, compensation or severance pay).

Other measures exist and can be considered depending on the seriousness of the acts, such as suspension, warnings, reminders, etc.

In case of dispute

The employment tribunal (*tribunal des prud'hommes*)

If your employer has taken disciplinary action following the internal investigation and you believe the measure taken against you is unjustified or disproportionate to the alleged misconduct, several options are available. You can appeal to a sanction, first by writing an appeal letter addressed to your employer. ▷ *An example of such a letter can be found in **Appendix 3** of this dossier.*

In case your employer refuses to change the sanction following this letter, you can also **take your case to the employment tribunal**. For example, you can take it to court if you have been punished following a biased disciplinary investigation.

You can find the contact details of the employment tribunal [here](#) which allows you to find the employment tribunal that is competent to hear your case. The competent tribunal is in the jurisdiction of the establishment where the work is carried out. If the work is carried out outside of any establishment, the referral is brought to the employment tribunal of the employee's place of residence.

▷ *You will find in **Appendix 4** the CERFA template of referral to the employment tribunal, as well as the official instruction related to this template.*

If the referral to the employment tribunal concerns a dispute between the employee and the employer arising from the termination of the employment contract, you can take the case to the employment tribunal **within 12 months**.

The time period set for the plaintiff to take the case to the employment tribunal is **3 years in the context of an action aimed at obtaining the payment of outstanding amounts**, in particular in case of unpaid salary (for example during an abusive unpaid suspension period).

Conciliation and orientation office (BCO)

The conciliation and orientation office is a unit of the employment tribunal whose **mission is to find an amicable settlement** as soon as one of the tribunal has been referred to by one of the two parties. A representant of the employer and a representant of the employee are to be present at the conciliation office. The modalities concerning these representatives can be found further down in this document. The conciliation and orientation office may hear each party separately and in confidentiality.

In principle, this conciliation phase is compulsory, and failure to reach a settlement leads to further proceedings before the judgement chamber. However, the case is directly brought to the judgement office without going through the conciliation and orientation office in the case of a request for requalification of an open-ended contract, or in the case of a request for qualification of the termination of the employment contract at the employee's initiative on account of the accusations made against the employer.

Please note that, regardless of the stage of the proceedings, the conciliation and orientation office or the judgement office may:

- After obtaining the agreement of all parties, appoint a mediator to hear them and confront their point of views in order to find a solution to the dispute between them. This judicial mediation may not exceed three months, renewable once for the same duration **[Articles 131-1 to 131-15 of the Code of Civil Procedure]**.
- Require all parties to meet a mediator who informs them on the purposes and progress of the proceedings.

If conciliation fails, the office may:

- Decide to refer the case to a restricted formation of the judgement office if the dispute concerns a dismissal or a request for termination of the employment contract.
- In other cases, it refers the employer and the employee to the **judgement office** in its usual formation (with 2 employers and 2 employee advisors). When the case justifies it or upon request of the parties, the conciliation and orientation office may decide that the judgement office be chaired by a professional judge.

Getting represented

[Art. L1453-1 A] *Notwithstanding the first paragraph or Article 4 of Law n°71-1130 of 31 December 1971 on the reform of certain judicial and legal professions, the parties may defend themselves or be assisted or represented before the employment tribunal, in addition to a lawyer, by:*

1. *The employers or employee belonging to the same sector;*
2. *Trade union defenders;*
3. *Their spouse, their partner in a civil solidarity pact or their cohabitant.*

The employer can also be assisted or represented by a member of the company or the establishment who is authorized or empowered to do so.

If the representative is not a lawyer, they must provide proof of a special power of attorney. Before the conciliation and referral office, this document must authorise the representative to conciliate in the name and on behalf of the principal and to take part in referral measures.

▷ You will find in **Appendix 5** a model of special power of attorney to send to your representatives, which must be presented to the conciliation and orientation office and/or the judgement office..

Criminal prosecution

SGBVH are listed in the penal code. It is therefore possible that you will be prosecuted if the alleged victim lodges a complaint.

In case of harassment, it is possible to lodge a criminal complaint within 6 years of the last harassing misconduct (gesture, comment, etc.). Justice will take into account all the elements constituting harassment even if they have taken place over several years.

In case of rape, it is possible to lodge a criminal complaint within 20 years of the date of the incident, if the victim was older than 18 at the time of the incident. This period extends to 38 years if the victim was a minor at the time of the incident.

It is possible for criminal proceedings to be initiated even if the alleged victim has not lodged a complaint. Indeed, it is possible for the alleged victim or third parties to **report an incident** (*déposer une main courante*) to the police. **Filing a report** is a procedure for notifying and recording the nature and date of certain events to the police. You will not be summoned to the police station or notified if a report has been filed against you.

In addition, if the incidents described in a report constitute a crime or an offence (harassment, rape), the police can immediately initiate legal proceedings by referring the case to the public prosecutor.

Finally, reports (filed by the alleged victim or by third parties) may, for example, support a sexual harassment case.

Finding a lawyer

To get the assistance of a lawyer, please refer to [the directory of lawyers in France](#).

WITNESSES

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What should you do if you witness sexual or gender-based harassment, misconduct, or violence?

If you witness sexual and/or gender-based harassment, sexual and/or gender-based violence or gender-based misconduct, first of all, you can report the events you have seen or become aware of.

Moral issues may arise, if you wonder whether it is your responsibility to take action “in the victim’s place”, whether you are close to the victim or not. It is not the purpose of this toolkit to make that choice for you, but to give you the information you need to report the events if you wish to do so.

Reporting

It is strongly recommended that reports of SGBVH be made in writing, in order to facilitate any legal follow-up (with the employment tribunal or with the courts). ▷ *A template of the letter you can send to your employer or to the person responsible for human resources in our company can be found in **Appendix 8** of this dossier.* Evidence you could add to your report may include:

- Testimonies from your colleagues, mentioning harassment,
- Medical certificates,
- Exchanges of emails or text messages.

You can also get in touch with the harassment contact person of the company’s Business and Social Council (CSE), or with your superior. It is the responsibility of the CSE harassment contact person to help you write a letter of complaint if you wish so. Their contact details should have been provided to you upon signature of your employment contract and should be displayed in your workplace.

If you are unable to write a report, an oral report to your employer or to the person responsible for human resources may suffice. It is then their responsibility to acknowledge receipt of your report *in writing*, and to have you countersign this acknowledgement of receipt to ensure its accuracy.

If you witness a situation in which the party at fault and the alleged victim are employed in two different companies, you can report the events to both employers, and in priority to your employer. It is their responsibility to coordinate the internal investigation to put an end to these behaviours. In practice, it will also be the responsibility of the employer of the party at fault to impose sanctions. You can also report events you have witnessed if the party at fault is not an employee (i.e. volunteer, public member, stage director, etc.). It will be the employer's responsibility to take into account your report to put an end to these problematic behaviours and to protect their employees adequately.

You can report problematic behaviours even if the perpetrator is no longer an employee. Your employer can still launch an internal investigation and conduct interviews with all the persons involved: the results of the internal investigation will mainly be aimed at reinforcing the prevention and security within the company, in order to identify SGBVH risks and to eliminate or avoid them since the employer can no longer sanction a person who is no longer an employee.

Your employer's responsibilities following your report

Once you have made your report, it is your employer's responsibility to launch an internal investigation to understand the reality of the situation. The exact procedure is detailed in the "employer responsibility" section of the French version of this dossier. In practice, the employer should appoint a commission of investigation and conduct detailed interviews with you, the victim, the party at fault, their respective superiors and any other witnesses or persons who wish to be heard.

It is following this internal investigation that the employer will or will not impose sanctions.

Your rights during the internal investigation

During the interview

In accordance with the CCNEAC (National collective agreement of artistic and cultural enterprises), if you are called for a "face-to-face" interview, and not to an online interview, your employer will reimburse the expenses incurred for travelling to the interview.

During your interview, you are allowed to be accompanied if you wish. The person accompanying you cannot bear witness and must undertake not to intervene during the exchanges, in order to guarantee the impartiality of all interviews.

At the end of the interview, you should be able to check and sign the notes taken by the investigators to confirm their accuracy.

Lastly, your exchanges with the investigator(s) must be kept confidential, and as such, a confidentiality agreement must be signed by all those present at the interview. ▷ *An example of such an agreement can be found in **Appendix 1** of this dossier.*

About your work environment

Adjustments to your work environment may occur during the investigation to ensure your safety, whether physical or psychological. This may include: changes of assignment for you if you agree, changes of assignment for the party at fault, modifications and supervision of your working relationships, or other suggestions from your employer.

[L. 1153-3] *No employee, no trainee or intern may be sanctioned, dismissed, or subjected to a discriminatory measure for having testified to acts of sexual harassment or for having reported them.*

As a witness of sexual harassment or violence, you can exercise your right to withdraw labour. In case of a dispute, the judge will verify if the harassment situation really presented a “serious and imminent danger” to your health. As a reminder, the right to withdraw labour consists of an employee **stopping work in any situation where they have reasonable cause to believe that it presents a serious and imminent danger for their life or their health**. In this case, the employee must immediately alert their employer of the danger justifying their withdrawal.

[L. 4131-1] *The employee shall immediately alert the employer of any work situation which they have reasonable cause to believe presents a serious and imminent danger for their life or their health, as well as of any deficiency they notice in the protection systems*

They may withdraw from such a situation.

The employer may not require an employee who has exercised their right to withdraw labour to resume their activity in a work situation where serious and imminent danger persists, in particular when it results from a deficiency in the protection systems.

Getting support

As a witness, you may also wish or need support, whether psychological or legal. Upon arrival in a company, you should have received an information sheet, usually alongside your employment contract, which lists the contacts of the many persons and organisations that could be useful in this case. There should also be posters in your workplace.

As a witness, the resources available to you include the following:

Counselling unit: being redirected to psychological and legal support

The Ministry of Culture, the FESAC (Federation of live performance companies, music, audio-visual and cinema), five trade unions, the CNC, the CNM and Audiens, have created a counselling unit to fight against sexist and sexual violence in the cultural sector.

Whom is it for ? This unit is available to all professionals in the performing arts, cinema, audio-visual and video games sectors: artists, technicians, administrative and reception staff, etc.

What is it for ? To be referred to clinical psychologists and specialised legal consultations. A medical consultation is also available at the **Pôle Santé Bergère, the Audiens medical centre, located 7 rue Bergère – 75009 Paris.**

How ? You can contact this unit:

- By telephone at **01.87.20.30.90**, from Monday to Friday, from 9 am to 1 pm, and from 2 pm to 6 pm.
- By email, at violences-sexuelles-culture@audiens.org. Make sure to state your first name, last name, and phone number. You will be contacted within one working day of your request.

For more information, visit the [unit's website](#).

Labour Inspectorate

The labour inspectorate can assist you in establishing events of SGBVH in your company.

The contact details of your relevant labour inspectorate and of the inspector must be displayed in your company, as part of the mandatory displays. You can also find them [here](#): you can contact them for an intervention in your company.

For quick processing, it is advised not to write anonymously. In addition, your letter should include the following elements:

- Name or legal name of your company,
- Address of the company site,
- Information and evidence of the breach of employment law.

In your letter, you may request a global inspection, or an inspection limited to your situation. It should be noted that, according to the confidentiality of complaints and grievances, your employer will not be notified of your action.

The findings of the labour inspection officers can lead to:

- observations reminding the rules in force,
- formal notices to comply with the regulations,
- official reports for criminal offenses,
- a decision to temporarily cease part of the works, or the activity presenting a serious and imminent danger to an employee's life or health.

The abovementioned decision of the labour inspection officer to temporarily cease part of the works or the activity may not result in the termination or suspension of the employment contract, or in any financial prejudice to the employee(s) involved.

Mandatory duty to report to the authorities

In some cases, it is your criminal responsibility to report SGBVH to the police.

[Art. 434-1 of the Penal Code] *Any person who, having knowledge of a felony the effects of which it is still possible to prevent or limit, or the perpetrators of which are liable to commit new felonies that could be prevented, fails to inform the administrative or judicial authorities, shall be punished by three years' imprisonment and a fine of €45,000.*

Except where felonies committed against minors are concerned, the following are exempted from the provisions above:

1. *the relatives in a direct line and their spouses, and the brothers and sisters and their spouses of the perpetrator or accomplice to the felony;*
2. *the spouse of the offender or accomplice to the felony, or the person who openly cohabits with them.*

Also exempted from the provisions of the first paragraph are persons bound by an obligation of secrecy pursuant to the conditions laid down under Article 226-13.

In the context of the abovementioned article, the obligation to inform the judicial authorities only applies in the context of rape, since other acts of SGBVH are not crimes.

In addition:

[Art. 434-3 of the Penal Code] *Any person who, having knowledge of deprivations, maltreatment,, or sexual assaults inflicted upon a minor or upon a person incapable of self-protection due to age, sickness, infirmity, physical or psychological disability or pregnancy, fails to report it to the administrative or judicial authorities or continues to fail to inform these authorities until such time as these offences have ceased, shall be punished by three years' imprisonment and a fine of €45,000.*

Lastly, the mandatory duty to report crimes or offenses applies to civil servants:

[Art. 40 of the Criminal Procedure] *Every constituted authority, every public officer or civil servant who, in the performance of his duties, has gained knowledge of the existence of a crime or of an offence is obliged to notify forthwith the public prosecutor and to transmit to this magistrate any relevant information, official reports or documents pertaining to it.*

If the victim is not legally considered as a person incapable of self-protection, you cannot lodge a complaint in their stead. However, you can **file a report** (*déposer une main courante*) with the police. Filing a report is a procedure for notifying and recording the nature and date of certain events to the police. In most cases, filing a report does not lead to legal proceedings.

Filing a report can be useful for subsequent legal proceedings, as the information recorded in the report can be used in the legal proceedings: this procedure is particularly useful to report incidents that could amount to harassment if they are to be repeated in the future. For example, gender-based misconducts can be reported to the police.

The perpetrator will not be notified of your report and will not be summoned to the police station.

Warning: *if the incidents described in a report constitute a crime or an offence (harassment, rape), the police can immediately initiate legal proceedings by referring the case to the public prosecutor, even if you have not formally lodged a complaint. It is therefore important to initiate this procedure only if the victim has not formally objected to it.*

VICTIMS

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What should you do if you are a victim of sexual or gender-based harassment, misconducts, or violence?

These incidents fall within the scope of the Labour Code and are the responsibility of your employer if your aggressor is, in particular:

1. A colleague or another employee in your company,
2. Your employer,
3. A person who is no longer employed in the company but was at the time of the incident,
4. A person outside the company but whom you met in the course of your work (i.e. public, client, partner).

▷ In order to help you characterize more precisely the incidents you have been a victim of, you can refer to section "[Definitions](#)".

Reporting abuse within the company

If you are a victim of sexist and/or sexual violence and/or harassment (SGBVH), the first step on your part is to report the incidents so that your employer can put an end to the harmful conduct.

Unless the report is deliberately false, the employer does not have the right to sanction you if you report conducts that are later found not to be sexual harassment or sexual or gender-based misconduct/violence. It is therefore always in your interest to report to your employer a situation that you find problematic.

[Art. L1552-2 of the Labour Code] *No employee, no trainee or intern may be sanctioned, dismissed or subjected to a direct or indirect discriminatory measure, in particular with regards to salary, training, redeployment, assignment, qualification, classification, professional promotion, transfer or renewal of contract, for having been subjected to or refused to be subjected to repeated acts of psychological harassment or for having witnessed such acts or having reported them.*

Therefore, you cannot be subjected to disciplinary sanctions or any other discriminatory measure because of your report, even if the harassment you describe is not proven by the results of the investigation.

You can report problematic behaviour, even if the person you accuse is not or is no longer an employee of your company.

- If the person is no longer an employee, your employer can still launch an internal investigation and conduct interviews with all the persons involved: the results of the internal investigation will mainly be aimed at reinforcing the prevention and security within the company, in order to identify SGBVH risks and to eliminate or avoid them since the employer can no longer sanction a person who is no longer an employee.
- If the person is an employee of another company you work with, a specific handling plan will be set up by both employers. The procedure is described in detail below (section “coactivity”).
- If the person is not an employee (i.e., a member of the public, a volunteer, a stage director, etc.), your employer can also launch an investigation and will have to take the necessary measures to keep you safe.

Reporting procedure

It is strongly recommended that reports of SGBVH be made in writing, in order to facilitate any legal follow-up. ▷ *A template of the letter you can send to your employer or to the person responsible for human resources in our company can be found in **Appendix 8** of this dossier.* Evidence you may add to your report may include:

- Testimonies from your colleagues, mentioning SGBVH,
- Medical certificates,
- Exchanges of emails or text messages

You can also get in touch with the harassment contact person of the company’s Business and Social Council (CSE), or with your superior. It is the responsibility of the CSE harassment contact person to help you write a letter of complaint if you wish so.

If you are unable to write a report, an oral report to your employer or to the person responsible for human resources may suffice. It is then their responsibility to acknowledge receipt of your report *in writing*, and to have you countersign this acknowledgement of receipt to ensure its accuracy.

Your employer's responsibilities following your report

Once you have made your report, it is your employer's responsibility to launch an internal investigation to understand the reality of the situation. The exact procedure is detailed in the "*employer responsibility*" section of the French version of this dossier. In practice, the employer should appoint a commission of investigation and conduct detailed interviews with you, the victim, the party at fault, their respective superiors and any other witnesses or persons who wish to be heard.

If you are a minor, or you are legally "*unable to protect [yourself] due to age, sickness, infirmity, to a physical or psychological disability or to pregnancy*" [**Art. 434-3 of the Penal Code**], any person to whom you report a crime or offence against you (harassment, rape) is legally obliged to report the situation to the courts. Your employer will therefore have to make this report to the courts.

Your rights during the internal investigation

During the interview

Your exchanges with the investigator(s) must be kept confidential, and as such, a confidentiality agreement must be signed by all those present at the interview.

▷ An example of such an agreement can be found in **Appendix 1** of this dossier.

In accordance with the CCNEAC (National collective agreement of artistic and cultural enterprises), if you are called for a "face-to-face" interview, and not to an online interview, your employer will reimburse the expenses incurred for travelling to the interview.

Similarly, during your interview, you are allowed to be accompanied if you wish. The person accompanying you cannot bear witness and must undertake not to intervene during the exchanges, in order to guarantee the impartiality of all interviews.

Lastly, at the end of the interview, you should be able to check and sign the notes taken by the investigators to confirm their accuracy. If you refuse to sign the record of the interview, the investigators must attest to the refusal to sign, and to the proper conduct of the interview by those present.

About your work environment

Adjustments to your work environment may occur during the investigation to ensure your safety, whether physical or psychological. This may include: changes of assignment for you if you agree, changes of assignment for the party at fault, modifications and supervision of your working relationships, or other suggestions from your employer.

As a victim of sexual harassment or violence, you can exercise your right to withdraw labour. In case of a dispute, the judge will verify if the harassment situation really presented a “serious and imminent danger” to your health. As a reminder, the right to withdraw labour consists of an employee **stopping work in any situation where they have reasonable cause to believe that it presents a serious and imminent danger for their life or their health**. In this case, the employee must immediately alert their employer of the danger justifying their withdrawal.

[Art. L. 4131-1] *The employee shall immediately alert the employer of any work situation which they have reasonable cause to believe presents a serious and imminent danger for their life or their health, as well as of any deficiency they notice in the protection systems*

They may withdraw from such a situation.

The employer may not require an employee who has exercised their right to withdraw labour to resume their activity in a work situation where serious and imminent danger persists, in particular when it results from a deficiency in the protection systems.

The outcome of the internal investigation

Following this internal investigation, it is the employer’s responsibility to impose any appropriate sanction to the party at fault. You will be kept informed of the outcome of the investigation.

Coactivity

If the person you accuse belongs to a different company than yours, the proceedings might differ. You will still make your report to your employer, it will then be their responsibility to coordinate the internal investigation with the employer of the party at fault. It will be up to the employer of the party at fault to impose any appropriate sanction.

Getting support

There are many bodies that can provide you with legal, psychological, or medical support. Upon arrival in a company, you should have received an information sheet, usually alongside your employment contract, which lists the contacts of the many persons and organisations that could be useful in this case. There should also be posters in your workplace.

The resources available to you include the following:

Counselling unit: being redirected to psychological and legal support

The Ministry of Culture, the FESAC (Federation of live performance companies, music, audio-visual and cinema), five trade unions, the CNC, the CNM and Audiens, have created a counselling unit to fight against sexist and sexual violence in the cultural sector.

Whom is it for ? This unit is available to all professionals in the performing arts, cinema, audio-visual and video games sectors: artists, technicians, administrative and reception staff, etc.

What is it for ? To be referred to clinical psychologists and specialised legal consultations. A medical consultation is also available at the **Pôle Santé Bergère, the Audiens medical centre, located 7 rue Bergère – 75009 Paris.**

How ? You can contact this unit:

- By telephone at **01.87.20.30.90**, from Monday to Friday, from 9 am to 1 pm, and from 2 pm to 6 pm.
- By email, at violences-sexuelles-culture@audiens.org. Make sure to state your first name, last name, and phone number. You will be contacted within one working day of your request.

For more information, visit the [unit's website](#)

Occupational health and prevention services

If you are confronted to SGBVH, you can request an urgent visit to the occupational physician. You can also address this topic during any regulatory visit. The occupational physician and other health professionals are independent in their mission, and everything related to an interview with an employee is covered by medical confidentiality.

As part of their duties, the occupational physician may:

- Declare that you are unfit for work if remaining in our position is seriously detrimental to your health, and propose a possible transfer or change of assignment within the company or the group within the scope of the indications relating to redeployment
- Propose to your employer measures to preserve your health.

The employer must take into account the recommendations of the occupational physician.

[Art. L.4624-9] I.- *When the occupational physician finds there is a risk to the employee's health, they shall propose, in a detailed and reasoned written statement, measures to preserve it.*

The employer shall take these proposals into consideration, and, in case of refusal, they shall state in writing the reasons not to pursue them.

II.- *When the occupational physician is approached by an employer on a matter relating to the tasks assigned to them in accordance with Article L. 4622-3, they shall make their recommendations known in writing.*

III.- *The proposals and recommendations of the occupational physician and the employer's response, as provided for in I and II of the present article, are to be forwarded to the Business and Social Council (CSE), to the labour inspection officer mentioned in Article L. 8112-1, to the labour inspection physician or to the officers of the prevention departments for social security organisations and the organisations mentioned in Article L. 4643-1.*

Contact details of Thalie Santé, the occupational health and prevention service for the cultural and creative industries:

Thalie Santé (ex-CMB – Centre Médical de la Bourse)

7 rue Bergère - 75009 Paris

Tel. 01 49 27 60 00

Defender of Rights (*Défenseur des Droits*)

The services of the Defender of Rights are competent in assisting victims of harassment or discrimination and can:

1. investigate (written request for information, hearing, on-site verification)
2. mediate, find an amicable settlement, penal or civil transaction,
3. make recommendations,
4. present observations before the seized courts

To contact the Defender of Rights: www.defenseurdesdroits.fr/fr/saisir.

Labour Inspectorate

The labour inspectorate can assist you in establishing events of SGBVH in your company.

The contact details of your relevant labour inspectorate and of the inspector must be displayed in your company, as part of the mandatory displays. You can also find them [here](#): you can contact them for an intervention in your company.

For quick processing, it is advised not to write anonymously. In addition, your letter should include the following elements:

- Name or legal name of your company,
- Address of the company site,
- Information and evidence of the breach of employment law.

In your letter, you may request a global inspection, or an inspection limited to your situation. It should be noted that, according to the confidentiality of complaints and grievances, your employer will not be notified of your action.

The findings of the labour inspection officers can lead to:

- observations reminding the rules in force,
- formal notices to comply with the regulations,
- official reports for criminal offenses,
- a decision to temporarily cease part of the works, or the activity presenting a serious and imminent danger to an employee's life or health.

The abovementioned decision of the labour inspection officer to temporarily cease part of the works or the activity may not result in the termination or suspension of the employment contract, or in any financial prejudice to the employee(s) involved.

In case of a dispute with the employer: the employment tribunal (*le conseil des prud'hommes*)

REFERRING TO THE EMPLOYMENT TRIBUNAL

You can take action against your employer in several cases if you have been a victim of SGBVH at work:

- To obtain compensation in case of failure of your employer to fulfil its prevention obligations and to respond immediately to your report,
- To overturn any unfavourable measure (including your dismissal) taken against you in relation to your report of SGBVH,
- To obtain a termination of your employment contract with full liability to your employer.

You can find the contact details of the employment tribunal [here](#) which allows you to find the employment tribunal that is competent to hear your case. The competent tribunal is in the jurisdiction of the establishment where the work is carried out. If the work is carried out outside of any establishment, the referral is brought to the employment tribunal of the employee's place of residence.

▸ You will find in **Appendix 4** the CERFA template of referral to the employment tribunal, as well as the official instruction related to this template.

The **limitation period** to refer to the employment tribunal in the context of SGBVH is **5 years**.

CONCILIATION AND ORIENTATION OFFICE (BCO)

The conciliation and orientation office is a unit of the employment tribunal whose **mission is to find an amicable settlement** as soon as one of the tribunal has been referred to by one of the two parties. A representant of the employer and a representant of the employee are to be present at the conciliation office. The modalities concerning these representatives can be found further down in this document. The conciliation and orientation office may hear each party separately and in confidentiality.

In principle, this conciliation phase is compulsory, and failure to reach a settlement leads to further proceedings before the judgement chamber. However, the case is directly brought to the judgement office without going through the conciliation and orientation office in the case of a request for requalification of an open-ended contract, or in the case of a request for qualification of the termination of the employment contract at the employee's initiative on account of the accusations made against the employer.

Please note that, regardless of the stage of the proceedings, the conciliation and orientation office or the judgement office may:

- After obtaining the agreement of all parties, appoint a mediator to hear them and confront their point of views in order to find a solution to the dispute between them. This judicial mediation may not exceed three months, renewable once for the same duration [**Articles 131-1 to 131-15 of the Code of Civil Procedure**].
- Require all parties to meet a mediator who informs them on the purposes and progress of the proceedings.

If conciliation fails, the office may:

- Decide to refer the case to a restricted formation of the judgement office if the dispute concerns a dismissal or a request for termination of the employment contract.
- In other cases, it refers the employer and the employee to the **judgement office** in its usual formation (with 2 employers and 2 employee advisors). When the case justifies it or upon request of the parties, the conciliation and orientation office may decide that the judgement office be chaired by a professional judge.

JUDGMENT OFFICE

[Art. L1154-1] *When a dispute arises relating to the application of Articles L. 1152-1 à L. 1152-3 and L. 1153-1 to L. 1153-4, the candidate to a job, an internship or an in-company training period or the employee presents factual elements suggesting the existence of harassment.*

In view of these elements, it is the responding party's responsibility to prove that these behaviours do not constitute harassment and that their decision is justified by objective elements unrelated to any harassment.

The judge shall form their opinion after ordering, if needed, any measure of inquiry they deem necessary.

This article means that when you initiate proceedings with the judgement office, you must provide **prima facie evidence** that can include:

- Testimonies from your colleagues, mentioning SGBVH,
- Medical certificates,
- Exchanges of emails or text messages
- The letter of dismissal stating harassment was reported.

Rumours or hearsay are not sufficient as such. It is then the employer's responsibility to defend themselves against the evidence you provide.

Getting represented

[Art. L1453-1 A] *Notwithstanding the first paragraph or Article 4 of Law n°71-1130 of 31 December 1971 on the reform of certain judicial and legal professions, the parties may defend themselves or be assisted or represented before the employment tribunal, in addition to a lawyer, by:*

1. *The employers or employee belonging to the same sector;*
2. *Trade union defenders*
3. *Their spouse, their partner in a civil solidarity pact or their cohabitant.*

The employer can also be assisted or represented by a member of the company or the establishment who is authorized or empowered to do so.

If the representative is not a lawyer, they must provide proof of a special power of attorney. Before the conciliation and referral office, this document must authorise the representative to conciliate in the name and on behalf of the principal and to take part in referral measures

▷ You will find in **Appendix 5** a model of special power of attorney to send to your representatives, which must be presented to the BCO and/or the judgement office.

Initiating criminal proceedings against the perpetrator

Lodging a complaint (*porter plainte*)

SGBVH are listed in the Penal Code. It is therefore possible and recommended to take legal action so that an investigation is carried out and the alleged perpetrator is prosecuted.

In case of harassment, it is possible to lodge a criminal complaint within 6 years of the last harassing behaviour (gesture, comment, etc.). Justice will take into account all the elements constituting harassment even if they have taken place over several years.

In case of rape, it is possible to lodge a criminal complaint within 20 years of the date of the incident, if the victim was older than 18 at the time of the incident. This period extends to 38 years if the victim was a minor at the time of the incident.

You can lodge a complaint by **going to the police station** (*commissariat* or *gendarmerie*): they cannot refuse to lodge a complaint. Your complaint will be forwarded by the police station to the public prosecutor.

If you wish to **lodge a complaint by post**, you can write directly to the public prosecutor. You must send a letter on plain paper to the legal tribunal of the place of the offence, or of the place of residence of the perpetrator of the offence.

The letter should include the following:

- Civil status and full personal data of the complainant
- Detailed account of the facts, dates, and place of the offence
- Name of the alleged perpetrator if known (otherwise, the complaint will be lodged against X)
- Names and addresses of any witnesses of the offense, if applicable
- Description and preliminary or final estimation of the damage
- Documents of proof: medical certificates, sick leave notes, various invoices, reports, etc.
- Willingness to institute civil proceedings

The official model of complaint can be consulted [here](#).

Filing a report (*déposer une main courante*)

If you do not wish to lodge a complaint, you may **file a report** with the police. Filing a report is a procedure for notifying and recording the nature and date of certain events to the police. In most cases, filing a report does not lead to legal proceedings.

Filing a report can be useful for subsequent legal proceedings, as the information recorded in the report can be used in the legal proceedings: this procedure is particularly useful to report incidents that could amount to harassment if they are to be repeated in the future. For example, gender-based misconducts can be reported to the police.

The perpetrator will not be notified of your report and will not be summoned to the police station.

Warning: *if the incidents described in a report constitute a crime or an offence (harassment, rape), the police can immediately initiate legal proceedings by referring the case to the public prosecutor, even if you have not formally lodged a complaint.*

Finding a lawyer

There are many options available to a victim. It is important to note that the counselling unit on sexist and sexual violence in performing and recorded arts also provides referral to specialised legal advice.

To get the assistance of a lawyer, please refer to [the directory of lawyers in France](#).

This toolkit was created by the social partners of the CCNEAC (National collective agreement of artistic and cultural enterprises) and is part of an initiative to prevent and punish sexual violence and gender-based misconduct in the workplace in accordance with the Agreement signed on 27 September 2022, which came into effect on 1 November 2022.



Syndicat professionnel des Producteurs, Festivals, Ensembles, Diffuseurs Indépendant de Musique

