



DIRECTIVE

On Staff Misconduct at the Workplace

TERRE DES HOMMES - LAUSANNE

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I. OBJECTIVES

Terre des hommes-Lausanne (Tdh-Lausanne) recognizes that, like all organization involving professional relationships, it may be affected by problems of violence and misconducts at the workplace. Like everywhere else, these violent actions at the workplace can not only cause serious damage to the persons targeted by this behavior, but deeply impact the organization.

For this reason, in order to guarantee a safe, respectful and healthy environment, improve the management of human resources and promote staff well-being, the Direction hoped, through the present Directive, to specify the framework of the management of cases of behavior abuses among members of the personnel.

Its objectives are the following:

- ➔ Describe the types of misconduct (mobbing, sexual harassment, discrimination) and specify legal bases as well as ethical principles used as references.
- ➔ List the responsibilities of the employer, management and staff regarding the protection of personality

This Directive doesn't deal with preventive measures (information to staff, capacity building measures); these elements will be specified in a separate document.

No single member of our staff should ever have to bear with an act of discrimination, mistreatment or harassment that could generate a negative impact on her or his working conditions, dignity, well-being, physical and/or mental health, or compromise her or his professional perspectives.

Likewise, no member of staff should have to undergo aggressions or violence, verbal or physical, in any circumstance surging at the workplace from one of her or his colleagues or managers.

Therefore, Tdh-Lausanne, as employer, commits to protecting the personality of all staff and to ensure at its best that the working environment will be free from discrimination, moral or sexual harassment or any other type of physical or symbolic violence.

Tdh-Lausanne commits to take all necessary measures in order to prevent such actions and, in case of failure to do so, commits to arrange for efficient internal remedies based on a survivor-centered approach (support) and against the perpetrator (sanctions).

IF YOU ARE A VICTIM, OR A WITNESS OF MISCONDUCT, PLEASE KNOW THAT YOU ARE NOT ALONE IN THIS DIFFICULT SITUATION.

TAKE ACTION AND COME AND TALK TO US. TDH-LAUSANNE WILL INTERVENE IN ORDER TO:

- GUARANTEE YOUR PROTECTION**
- ENSURE YOUR CASE IS HANDLED IN A CONFIDENTIAL**
- FIND SOLUTIONS TO MAKE THIS SITUATION STOP**

II. FRAMEWORK

A. Internal references: the Global Code of Conduct, the Staff Regulation and the Global Policy on “Duty of Care”.

The present directive stems directly from Tdh’s Global Code of Conduct, that summarizes Tdh’s institutional policies and rules and aims to provide staff with a professional framework that covers all forms of behavior or action.

It also refers to the Staff Regulation, that specifies rights and obligations of members of the staff, as well as potential sanctions they could be confronted to in case of grave breaches of their obligations or misconducts.

Finally, it is comprehended in the global policy on “Duty of Care”, that reaffirms the obligation and the commitment of Tdh-Lausanne to act responsibly towards members of its staff according to article 328 of the Swiss Code of Obligations: “Within the employment relationship, the employer must acknowledge and safeguard the employee’s personality rights, have due regard for his health and ensure that proper moral standards are maintained. In particular, he must ensure that employees are not sexually harassed and that any victim of sexual harassment suffers no further adverse consequences. In order to safeguard the personal safety, health and integrity of his employees he must take all measures that are shown by experience to be necessary, that are feasible using the latest technology and that are appropriate to the particular circumstances of the workplace or the household, provided such measures may equitably be expected of him in the light of each specific employment relationship and the nature of the work”¹.

¹ Article 328 of the Swiss Code of Obligations (SR 220) (2017), p. 101.

B. Swiss legislation

Tdh-Lausanne's headquarters is located in Switzerland, for this reason, this directive also refers to relevant legal provisions according to Swiss law. Please refer to **Annex 1** for further details.

As an employer of Swiss nationality, Tdh-Lausanne is bound to:

- ➔ Take all necessary and adequate measures in order to prevent and stop any damage to the personal integrity of a member of its staff,
- ➔ Create a work environment free from any type of harassment, where misconduct is not tolerated
- ➔ Propose concrete measures in order to support victims of acts of misconduct
- ➔ Take all necessary measures when a case does occur in order to make the misconduct stop.

C. Different legislations according to the country of residence of members of staff and contractual modalities

The provisions mentioned in the present directive and concerning internal remedies (formal and informal procedures) will apply to any Delegation of Tdh-Lausanne, in Switzerland and abroad.

With regards to external remedies (judiciary), the options will depend on the statute of the persons involved in a case, therefore:

- ➔ Individuals with a national contract (swiss contract in Switzerland and local contract in a country of mission) or working without any formal contractual modality (incentives) fall under the legislation of the country of mission where they perform their professional activity
- ➔ Individuals who signed a contract under an expatriation modality with Tdh-Lausanne dispose of the following choices:
 - a. File a complaint in their country of residence
 - b. File a complaint in the country where they perform their professional activity
 - c. File a complaint in the country where Tdh-Lausanne Headquarters are located (Switzerland)
- ➔ When an act of misconduct implies two or more members of the staff with different contractual modalities, it is the plaintiff that will be able to choose whether he or she wants to file a complaint in the country of residency or where the act is taking place.

The following board presents possible options of for external remedies suggested by Tdh-Lausanne :

PLACE OF THE INCIDENT	TYPE OF CONTRACT VICTIM OR PERSON OF CONCERN A	TYPE OF CONTRACT VICTIM OR PERSON OF CONCERN B	WHAT LEGISLATION?
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Country of mission	Local	Local	Local
Switzerland or country of mission	Swiss	Swiss	Swiss
Country of mission or Switzerland	Expatriate	Expatriate	Swiss
Country of mission or Switzerland	Expatriate	Swiss	Swiss
Country of mission or Switzerland	Expatriate	Local	Local or Swiss, in accordance with the choice of the victim
Country of mission or Switzerland	Swiss	Local	Local or Swiss, in accordance with the choice of the victim

III. SCOPE

The following measures including in the present Directive apply:

- ➔ To the totality of Tdh-Lausanne's delegations, regardless of their localization, size, or number of human resources.
- ➔ to all persons under an employment contract with Tdh-Lausanne, regardless of their gender, age or position in the Organization,
- ➔ to trainees, apprentices and other quasi-salaried employees of Tdh-Lausanne,
- ➔ to people who work in an atypical form of employment with Tdh-Lausanne: seasonal workers, day laborers, people receiving a bonus or additional salary (refugees working in the camps, civil servants...), consultants, subcontractors, independent service providers,...
- ➔ to persons engaged in an unpaid employment relationship, such as volunteers, individuals performing their civilian service....,
- ➔ to candidates for employment with Tdh-Lausanne,
- ➔ to workers whose contracts are suspended,

It is understood that the scope of the "workplace" is not limited to the simple physical workplace, but extends to all places where pensions, teleworking, social events organized after work take place, but also the accommodation provided by Tdh-Lausanne and commuting.

IV. DEFINITIONS OF TYPES OF MISCONDUCTS

Discrimination² :

Are to be considered as discriminations all words and acts that seek to diminish or disfavor a person based on her or his social background.

Within the framework of the principle of Equality before the Law, the interdiction to discriminate stems from the Swiss Federal Constitution: "No person may be discriminated against, in particular on grounds of origin, race, gender, age, language, social position, way of life, religious, ideological, or political convictions, or because of a physical, mental or psychological disability"³.

There is a violation of the principle of equality when in the same situation, a person is not treated in an equal way in comparison with someone else, based on the ground of one of the criteria above-mentioned and that it leads to a form of humiliation and exclusion.

² Source: Mobbing et autres formes de harcèlement, SECO (2014)

³ Art. 3, al. 2, loi sur l'égalité.

In Swiss labor law, the prohibition of any type of discrimination applies, among other things, to the hiring process, the assignment of tasks, the planning of working conditions, remuneration, training and capacity building, promotion and to the termination of employment contracts.

Psychological harassment / Mobbing:

To this date, there is no standard, widely accepted definition at the international level. Specialists tend to define mobbing through the following criteria⁴:

- ✓ Acts that aim at bothering someone, hostile communication or a refusal to communicate with someone that constitute direct or indirect attacks towards one or several people.
- ✓ Hostile acts, of repeated nature, systematic and spread out throughout a long period of time. The form of the attacks may vary from one day to the other.
- ✓ Actions conducted by a colleague or a hierarchical supervisor.
- ✓ Actions experienced as hostile towards the person aimed at. It may happen that the victim doesn't distinguish any negative intention initially, but then realizes it only after some time.
- ✓ Actions that aim at impacting someone's reputation negatively, to exclude or isolate her or him.
- ✓ The person undergoing the attack finds her/himself in a position of inferiority due to the actions of mobbing.

To decide judicially and characterize the infraction of mobbing, the Federal Courts relies on the main criteria given in this description⁵.

Abuse of Power⁶ :

Abuse of authority is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his or her influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. Abuse of authority may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority.

Sexual harassment⁷:

Sexual harassment consists in a specific form of discrimination. The Federal Act on Gender Equality⁸ mentions explicitly the presence of "discriminatory behaviors", which comprehend

⁴ Source: Mobbing et autres formes de harcèlement, SECO (2014)

⁵ Source: Arrêt du Tribunal fédéral du 22.04.2005 (2A), citée dans Steiger-Sackmann (2013), p.117

⁶ Selon circulaire UN ST/SGB/2008/5

⁷ Source: Mobbing et autres formes de harcèlement, SECO (2014)

⁸ Selon Loi sur l'égalité, Art.4

“any inadequate behavior of sexual nature or any other type of behavior founded on the grounds of gender, that may generate a negative impact on the dignity of the person at the workplace, particularly when this involves threats, promising advantages, impose constraints or exercise pressures of any nature on a person in order to gain favors of any sexual nature”.

Harassment may take place at the workplace, or at the occasion of festive activities organized by the organization. It can be realized by members of staff, but also by persons who are external to the organization (providers, clients, etc) or staff from partner organizations.

It can materialize through words, gestures or acts, and may take different forms:

Il peut s'illustrer par des paroles, des gestes ou des actes, et revêt différentes formes :

- ✓ Sexual allusions or derogatory remarks on someone's physical appearance,
- ✓ Sexists remarks and jokes on somebody's sexual characteristics, behavior and sexual orientation,
- ✓ Presentation of pornographic material (shown, displayed or exhibited),
- ✓ Persisting invitations with sexual intentions,
- ✓ Unwanted physical contacts
- ✓ Unwelcome advances with the promise of advantages or threats of retaliation
- ✓ Surveillance of the person inside or outside the organization
- ✓ Fondling, forced sexual activities or rape,

Rape/Attempted Rape/Sexual constraints :

It consists in an unwanted, non-consented sexual relation. This may range from the intrusion of a sexual organ in any time of the body and/or the intrusion of an object or a body part in the private parts. Rape and attempted rape imply the use of strength, threats (of the use of force), and/or coercion. Any penetration is to be considered as rape or sexual constraints⁹. Efforts aiming at raping someone which don't result to a penetration are to be considered as attempted rape.

Physical assault:

Is to be considered as physical assault any form of physical violence not of sexual nature: hitting, slapping, smothering, cutting, pushing, burning, shooting someone or using any type of weapon against him or her, acid attacks, or any act that may provoke pain, discomfort or a wound.

Unauthorized Technical Surveillance :

⁹ Under discussion

Is to be considered as unauthorized technical surveillance, the use of technical device wrenched from their original purpose, which is to ensure the protection of our belongings, of any member of our staff and our infrastructures.

It is therefore not authorized, outside of a very specific framework (defined for security/safety purposes), to record the activities and the behaviors of our staff, by using, among other things:

- ✓ Video equipment with direct surveillance or recording;
- ✓ Microphones or interphones with a recording function;
- ✓ Localization systems (GPS, RFID, etc) with direct surveillance or recording;
- ✓ Informatic device with data recorder (URL, e-mail Spyware, log files, etc);
- ✓ Photocopiers, scanners, telecopiers with recording modalities.

Similarly, taking pictures without written consent of staff members is prohibited.

For the purpose of the present Directive, the following actions will be designed by the expression “**misconduct**”.

1. Discrimination, psychological harassment, abuse of power, sexual harassment, rape/attempted rape/sexual constraint and physical assault, as above-mentioned,
2. Any other type of behavior that may cause prejudice or pain of physical, psychological or sexual nature, or that may hinder the dignity or the personality of members of staff, or create a hostile environment.

V. ROLES AND RESPONSABILITES

Staff from the Human Resources Department, staff representatives, or persons of trust cannot bear the responsibility in terms of prevention and case management on their own. The role of the Direction and its executives is paramount in the efforts in raising awareness and implementing this directive by whole staff.

Furthermore, when dealing with complaints of misconduct, it is important that a clear segregation of duties exists between those responsible for advising the complainant and those responsible for managing and supervising the complaint handling process.

The responsibilities and tasks of each function are listed below:

The General Management and the Board of Directors of Tdh-Lausanne, as Employer, undertake to:

- ➔ cultivate a climate of understanding free from intimidation, hostility, vexation and any form of improper behavior
- ➔ protect any member of its staff who is the victim of harassment, discrimination or violence through an internal support and redress mechanism,
- ➔ ensure that confidentiality is maintained when dealing with cases of misconduct,
- ➔ do not dismiss persons who have made a complaint in good faith, or move them against their will,
- ➔ prevent any form of retaliation against complainants and witnesses,
- ➔ decide on the processing to be carried out following a complaint submission, in accordance with the organization's internal system,
- ➔ punish the perpetrator of sexual harassment according to the degree of seriousness of his act and the consequences suffered by the victim, up to and including immediate dismissal in the event of just cause,
- ➔ issue a written directive, ensure its dissemination and organize information/awareness sessions,
- ➔ ensure that the necessary human and financial resources are available to prevent and manage cases of misconduct,
- ➔ identify the person(s) who will be responsible for developing prevention and case management policies and their implementation; it also determines the level of authority to which they report,
- ➔ make available to staff the information and prevention leaflet published by the labor inspectorates and equality offices.

All managers and hierarchical superiors of the Organization (including Country Representatives):

- ➔ set an example by their irreproachable behavior ("lead by example"),
to which they report,

- ➔ participate in training sessions on the subject of violence at work organized by Tdh-Lausanne,
- ➔ shall ensure the implementation of this Directive within the department/service or on the missions for which they are responsible, as well as compliance with its provisions by managers and other persons in charge,
- ➔ ensure that validated prevention measures are known, disseminated and applied,
- ➔ encourage employees to report any reprehensible behavior of which they are victims or witnesses,
- ➔ have a duty to support any person who complains of being the victim of reprehensible behavior in their actions,
- ➔ ensure that all complaints of misconduct are dealt with in a diligent, fair and impartial manner,
- ➔ take all necessary measures, if necessary, to maintain or restore a favorable working environment free from all forms of violence.

All employees undertake to:

- ➔ respect the people with whom they interact, both within and outside the context of their work,
- ➔ not to engage in or tolerate improper conduct towards colleagues, hierarchical superiors, subordinates and any other person in the service of Tdh-Lausanne,
- ➔ know and comply with this Directive, the Tdh-Lausanne Global Code of Conduct and participate in the information sessions organised by the Organisation,
- ➔ report any reprehensible behaviour he may witness,
- ➔ cooperate with the team of investigators.

The Human Resources Department is responsible for:

- ➔ ensuring that the necessary guides and procedures for the prevention and management of abuse cases are in place,
- ➔ advising and training managers in workplace abuse case management,
- ➔ training employees who act as mediators, investigators or investigators as part of the continuous training plan,
- ➔ mobilizing specialized resources for support upon request,
- ➔ advising management and managers on disciplinary matters,
- ➔ mobilizes all the resources necessary to preserve the health of its employees.

Staff representatives:

- ➔ are attentive to internal conflicts and transmit them to the HR department within the established framework,
- ➔ can be called upon when developing prevention and awareness policies,
- ➔ ensure that this directive is applied by all employees,

The Focal Point and the Risks Management Sector are in charge of:

- ➔ ensuring that any received complaint is handled within a reasonable timeframe and that the plaintiff is informed throughout the process,
- ➔ Receiving and/or centralizing queries for intervention or complaints on behalf of Tdh,
- ➔ Informing members of staff on Tdh's policy in relation to harassment and misconduct,
- ➔ Raising awareness among staff with regards to their individual responsibilities in ensuring Tdh is a workplace free from any kind of violence,
- ➔ Direct staff towards specialized resources for additional support
- ➔ Offer, following a query for intervention or a complaint, the most adequate mean of resolution for the victim/survivor and the organization,
- ➔ Act as the Complaint Manager when an administrative investigation is ordered and coordinate its smooth execution,
- ➔ Coordinate the Concertation Committee implemented for the management of a case,
- ➔ Appoint the person(s) in charge of mediation or the investigation.
- ➔ Ensure the timely follow-up of decisions made following the investigation.

The trusted person has the task:

- ➔ To intervene informally to resolve conflict situations,
- ➔ to listen to the person who consults him or her, to inform him or her about Tdh-Lausanne's policy and legal provisions, to advise him or her and to inform him or her of the means available to stop the harassment,
- ➔ to take steps, with the agreement of the person concerned, (e. g. to have an interview with the person concerned, to inform the personnel department and/or the line managers,...),
- ➔ To inform the Focal Point in case of suspicion of serious misconduct (physical violence, sexual violence, sexual harassment),

Persons who investigate a complaint (investigators):

- ➔ listen to the person who filed the complaint, the person charged and any witnesses,
- ➔ draw up minutes of the hearings,
- ➔ prepare an investigation report in which they present their findings,
- ➔ determinate responsibilities (e.g., harasser, manager),
- ➔ make proposals regarding sanctions, reparation measures and other possible measures.

VI. PROCEDURE DE PREPARATION, DE VALIDATION ET D'APPLICATION

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Distribution	
In charge of monitoring and review	<i>HR</i>
Responsible for implementation	Risks Management Sector

VII. LIST OF ANNEXES

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- Annex 2:** Glossary
- Annex 3:** Relevant provisions of Swiss Law.
- Annex 4:** Useful contacts in Switzerland
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