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# Kluwer Mediation Blog

## Dealing with workplace conflicts: the Swiss hybrid approach

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Problems, disagreements, differences and conflicts encountered in the workplace, when left unresolved, may affect the health of Employees and impact the productivity of the Organization or Company.

For Employees, this may harm their health, have adverse consequences to their family and social life, provoke reactions of withdrawal and isolation, result in a depressive state expressed by sad mood, lack of interest in daily life and result in feelings of worthlessness that may lead to professional exclusion or marginalization.

These different states may affect the Organization or Company in the following manner: alteration of the communication and information retention, degradation of the working environment, absenteeism due to a lack of motivation or illness, recruitment and staff replacement costs.

If the use of internal mechanisms within the Organization or the Company (keeping dialogue, resorting to Hierarchy or Human Resources Department if any, for example) may solve many situations, some people will not have recourse thereto by fear of retaliation, shame or for lack of trust.

As such, the availability of processes within or outside the Organization or Company is a widely recognized solution, not only to respond to the diversity of situations but also to comply with the legal obligations of the Employer for the protection of the personality of Employees in Switzerland.

To be effective and applicable in the professional environment, these processes must necessarily be incorporated in a formal setting that meets the specific needs of the Organization or Company, its culture, field of activity, environment and be commensurate with its financial capacity.

In particular, these measures shall enable the Organization or the Company to distinguish various cases that may arise therein: interpersonal conflicts, stress, enmities, misunderstandings, difficult relationships, scapegoat, conspiracies, harassment and mobbing. They may also provide for adequate and differentiated support, depending on the circumstances. In addition, they may be subject to controls, be known to all and applied in reality.

For example, the Canton of Geneva has set up a confidential and external structure: the “*Groupe de Confiance*” which deals with complaint for violation of personality and psychological and sexual harassment (cf. [www.ge.ch/confiance/](http://www.ge.ch/confiance/) in French).

Contractual regulations dedicated to the protection of the personality of Employees typically includes, in Switzerland, the following processes:

### **Informal Process**

Such informal processes are materialised by direct and confidential means that are made available to Employees by the Company or the Organization in order to help them to overcome and resolve a difficulty encountered in the workplace.

#### *The external resource person*

The role of the external resource person is to offer to Employees within the Organization or Company a confidential and external space for listening, providing a neutral assessment of the situation.

In such situations – often sensitive –, the possibility to seek external and confidential assistance offers a fast and flexible alternative to internal mechanisms. Such a contact person is an effective way to prevent, manage or resolve a conflict or difficulties and avoids that the matter worsens and generates substantial human and/or financial costs.

In addition, the opportunity for Employees to call upon a neutral person outside the Organization or Company, reassures and is, in essence, a measure of prevention. Through this external mean, the employee feels very often relieved and, thus, able to look to the future under another and different angle.

#### *Mediation: direct negotiation assisted and facilitated by a mediator*

For interpersonal conflicts on the workplace, mediation provides an opportunity to the people concerned to initiate direct negotiations in relation to a conflict by using a third party neutral and impartial: the mediator.

Its role is to create an atmosphere of trust, to encourage dialogue that will enable the persons concerned to find a satisfactory solution to their problem.

The contact person may, insofar as its impartiality and neutrality are preserved, also intervene as mediator in the conflict at stake or may recommend mediation.

### **Formal process**

Formal processes are materialized by a non-confidential complaint that can be submitted in connection with information and/or request for protection of Employees for psychological/sexual harassment or misbehaviour.

#### *The complaint*

A conflict, if unresolved or not adequately handled, may lead to situations where one of the people involved may wish to “eliminate” his/her opponent. Such a dynamic may last in time and result in psychological harassment.

When the Employee feels being victim of mobbing, harassment or to live a workplace dispute that cannot proceed towards resolution, he or she must inform in writing, in a duly documented formal

complaint, the Employer of the situation, seeking his/her intervention.

#### *Audit or formal investigation*

When seized with a complain, the Employer must assess the situation, by taking the necessary protective measures and, if necessary, by stopping behaviours of a criminal nature, by means of recommendations, directives or other appropriate measures (warning, reprimand, dismissal, etc.).

In these situations, the audit allows, through independent experts, the determination of issues of law or liability, complex situations of conflict, harassment or dysfunction issues, and provides to the Organization of Company with the basis of an objective and reasoned decision.

The audit should be conducted so as to respect some of the fundamental Employees' rights and, thus, to be embodied in a set of rules such as Internal Rules for example.

#### **Conclusions**

The mere possibility for Employees to call upon an external neutral contact person has a not only a preventive and reassuring effect, but also meets the legal requirements in respect of the protection of the Employees' personality under the Swiss system.

The existence of an external, confidential and neutral support, once known, very often soothes and relieves Employees with the result that, in practice, such a scheme is usually very little called for.

By way of example, for a company of 1,000 employees, such an external service is operated, on average, four to six times a year. However once called upon, it has been proved necessary and enabled to settle differences that, if left unresolved, would have had averse consequences, both for the Employee and Employer.

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