

# ALLEN & OVERY

## A view on culture from... *Belgium*

### HAVE YOU SEEN A CHANGE IN THE WAY CLIENTS ARE APPROACHING CULTURAL ISSUES WITHIN THEIR ORGANISATION? IF SO, WHAT ARE THEY DOING?

Yes, the way Belgian employers are approaching cultural issues has definitely changed over the last few years.

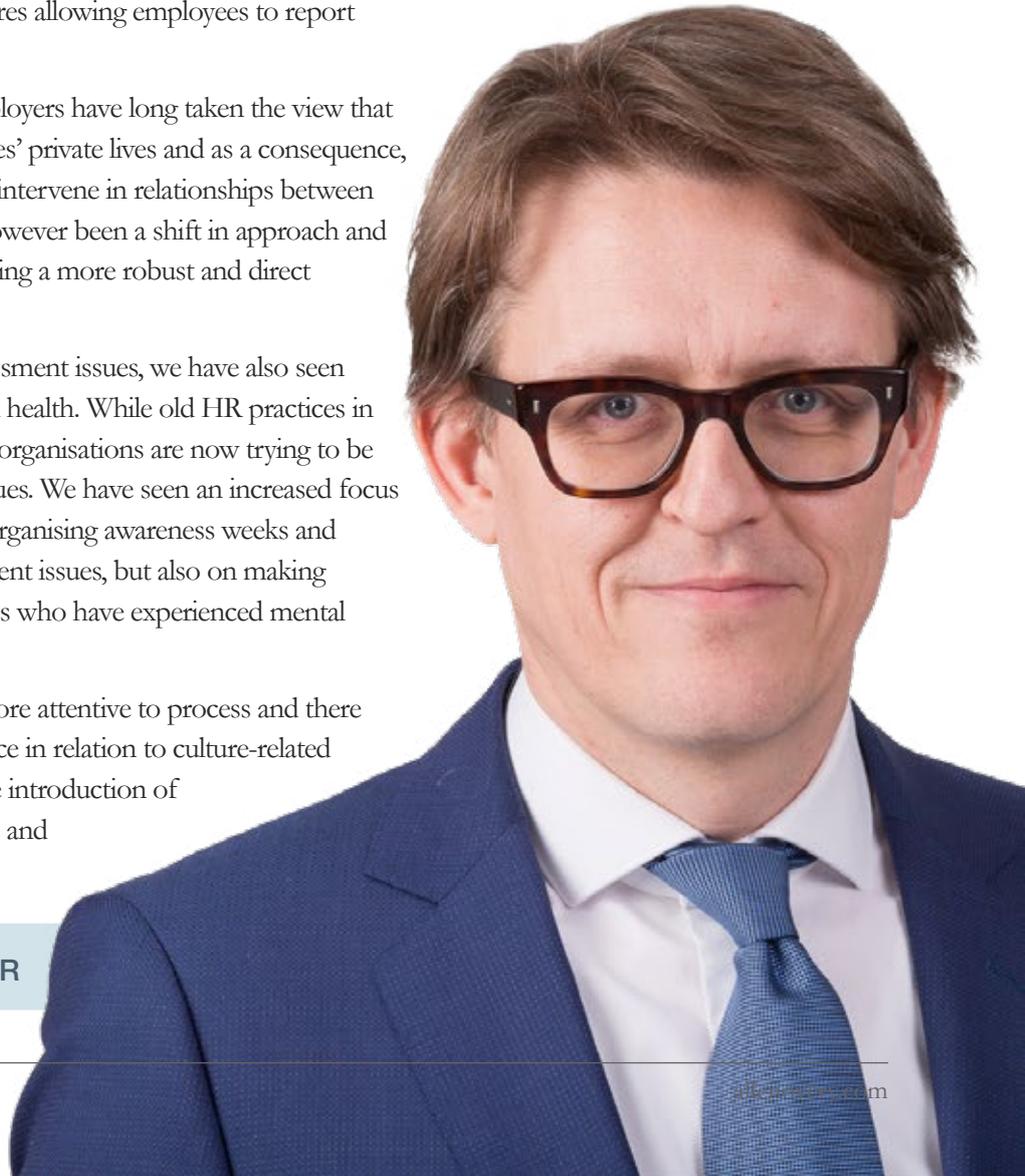
In contrast with other jurisdictions, Belgian organisations have long dealt with cultural issues in an informal “below-the-radar” manner. This is due to two main reasons. Firstly, legal protection associated with workplace culture such as gender pay parity, employee wellbeing, etc. has traditionally been strong in Belgium. Secondly, since 2002, Belgian law has facilitated a speak-up environment in relation to harassment or any other form of psycho-social issue. In particular, Belgian health and wellbeing law requires employers to appoint a specialised prevention advisor and implement internal (informal and formal) procedures allowing employees to report such issues at an early stage.

In parallel, however, many Belgian employers have long taken the view that they should not interfere with employees’ private lives and as a consequence, they have sometimes been reluctant to intervene in relationships between employees. In recent years, there has however been a shift in approach and we have seen many large employers taking a more robust and direct approach to harassment claims.

Aside from increased attention to harassment issues, we have also seen the spotlight shine on employee mental health. While old HR practices in relation to mental health were reactive, organisations are now trying to be more proactive in dealing with such issues. We have seen an increased focus on raising employee awareness (eg by organising awareness weeks and workshops) as a way of helping to prevent issues, but also on making adjustments in order to allow employees who have experienced mental health issues to return to work.

Finally, employers have also become more attentive to process and there has been an increased demand for advice in relation to culture-related policies (eg use of social media) and the introduction of new HR instruments such as Speak Up and Whistleblowing hotlines.

**CHRISTIAN BAYART, PARTNER**



## HAVE YOU SEEN AN INCREASE IN ANY PARTICULAR CULTURAL ISSUES? EG HARASSMENT, WHISTLEBLOWING OR MENTAL HEALTH ISSUES?

Yes, we have seen a significant increase in the number of mental health issues being reported. During 2014-2018, the number of employees who were absent from work for over a year due to mental health issues (including burnout and depression) increased by more than 35%. The importance of this trend is illustrated by the fact that burnout has recently been classified as a “work-related illness” and the launch by the Federal Agency for Professional Risks (Fedris) of a pilot project in the financial and medical industries offering guidance and counselling to up to 1,000 employees who are suffering from early stage burnout.

In terms of harassment, while we have not yet seen a significant increase in court cases, we do see an increasing number of employees using internal procedures to report incidents that may potentially amount to harassment.

*“We have also noted a decreasing acceptance on the part of employers, employees, authorities and the wider public of behaviour that may previously have been tolerated in practice (with a number of prominent historic cases now making national press).”*

We expect this trend will continue in the years to come and that, combined with an increased willingness of employees to speak up, this might result in more litigation.

## ARE ANY PARTICULAR SECTORS MORE AFFECTED THAN OTHERS?

Unfortunately, no particular sector or organisation is immune from poor cultural behaviour.

One particular sector that has been closely scrutinised recently is the entertainment sector, where there have been a number of widely reported cases of people in leadership positions being accused of sexually harassing members of staff. Against the background of these cases, the Flemish Regional Minister for Culture ordered an audit of the sector and subsequently proposed an action plan to tackle issues of harassment within the sector.

## WHAT WOULD YOU SAY HAS BEEN THE BIGGEST DRIVER FOR CHANGE OR HAD THE MOST IMPACT ON CULTURE IN RECENT YEARS?

Aside from #MeToo, as a result of Belgium being an outward-looking economy, many changes in workplace culture have generally followed developments in other countries. As an example, large organisations – and in particular listed companies, multinationals, and organisations active in regulated industries – have built an increasingly strong

compliance culture over the past decade. This has led to the introduction of ever more sophisticated policies on all types of topics, but also to an increasingly strict implementation and enforcement in practice of those policies.

*“Change has also been driven by younger generations who have different ideals and expectations about diversity, work-life balance, mental health, pay parity, etc, as well as an increased willingness to speak up.”*

This new generation in the workplace has undeniably had a significant impact on employers’ hiring and retention strategies and will likely continue to shape how Belgian organisations approach cultural issues in the future.



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## HAVE YOU SEEN ANY PARTICULARLY INNOVATIVE WAYS CLIENTS HAVE BEEN ADDRESSING CULTURAL ISSUES, WHETHER TO PROACTIVELY IMPROVE CULTURE OR TO ADDRESS SITUATIONS OF POOR CULTURAL BEHAVIOUR?

A particular trend that we have seen develop over the last couple of years is the introduction of flexible reward programmes that allow employees to tailor their remuneration package to suit their own needs. Aside from allowing freedom to choose from a menu of benefits, these programmes typically also allow employees to opt for more flexibility in terms of working time and/or vacation, allowing them to better balance their needs in relation to their private life.

Another innovative initiative that we have seen is the design and roll-out by a number of insurance companies, as a complement to occupational incapacity insurance products, of programmes that offer counselling and guidance to employees who have been confronted with mental health issues, notably including early-stage burnout.

## WHAT TRICKY ISSUES HAVE ARISEN IN YOUR JURISDICTION RELATING TO CULTURE?

One of the big concerns for Belgian employers is the rising number of long-term absences for mental health related issues and burnout in particular. While it is generally recognised that advancement in technology has its benefits, it also means that employees are expected to be constantly connected and the line between professional and personal lives has become increasingly blurred. It has been suggested that this may contribute to the rising numbers of employees who suffer from mental illness (including burnout).

Another particular tricky issue that Belgian companies (and the wider Belgian society) are struggling with is the integration of ethnic minorities. Due to a number of societal factors, ethnic minorities (in particular people born outside the EU) are under-represented in employment on the Belgian labour market.

## WHAT WOULD BE YOUR TOP FIVE TIPS FOR CLIENTS FACED WITH A COMPLAINT OF POOR CULTURAL BEHAVIOUR?

### 1 Always take complaints seriously

Ensure that a proper investigation into a complaint is undertaken. This should be done with respect for due process and without bias against either the complainant or the alleged perpetrator.

### 2 Act thoroughly, but swiftly

While it is important to conduct each investigation in a thorough manner, it is equally important that any investigation is also concluded as soon as reasonably possible. It is imperative to avoid any unnecessary distress for the complainant or the alleged perpetrator due to a lengthy process.

### 3 Be discrete

Investigations into complaints of alleged poor cultural behaviour are always sensitive. Against that background, it is important that any investigation is conducted discreetly (on a “need-to-know” basis), so as to avoid that the investigation would be biased by pressure from people who are not directly involved.

### 4 Always act in line with company culture

Set the example. How companies address complaints of poor cultural behaviour is often the best testament of their culture.

### 5 Take a “lessons learned” approach

Prevention is better than just remedying bad situations. It is important to learn lessons from complaints and try to see how the approach of cultural issues can be changed in order to prevent similar issues in the future.