

ALLEN & OVERY

A view from... *Luxembourg*

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

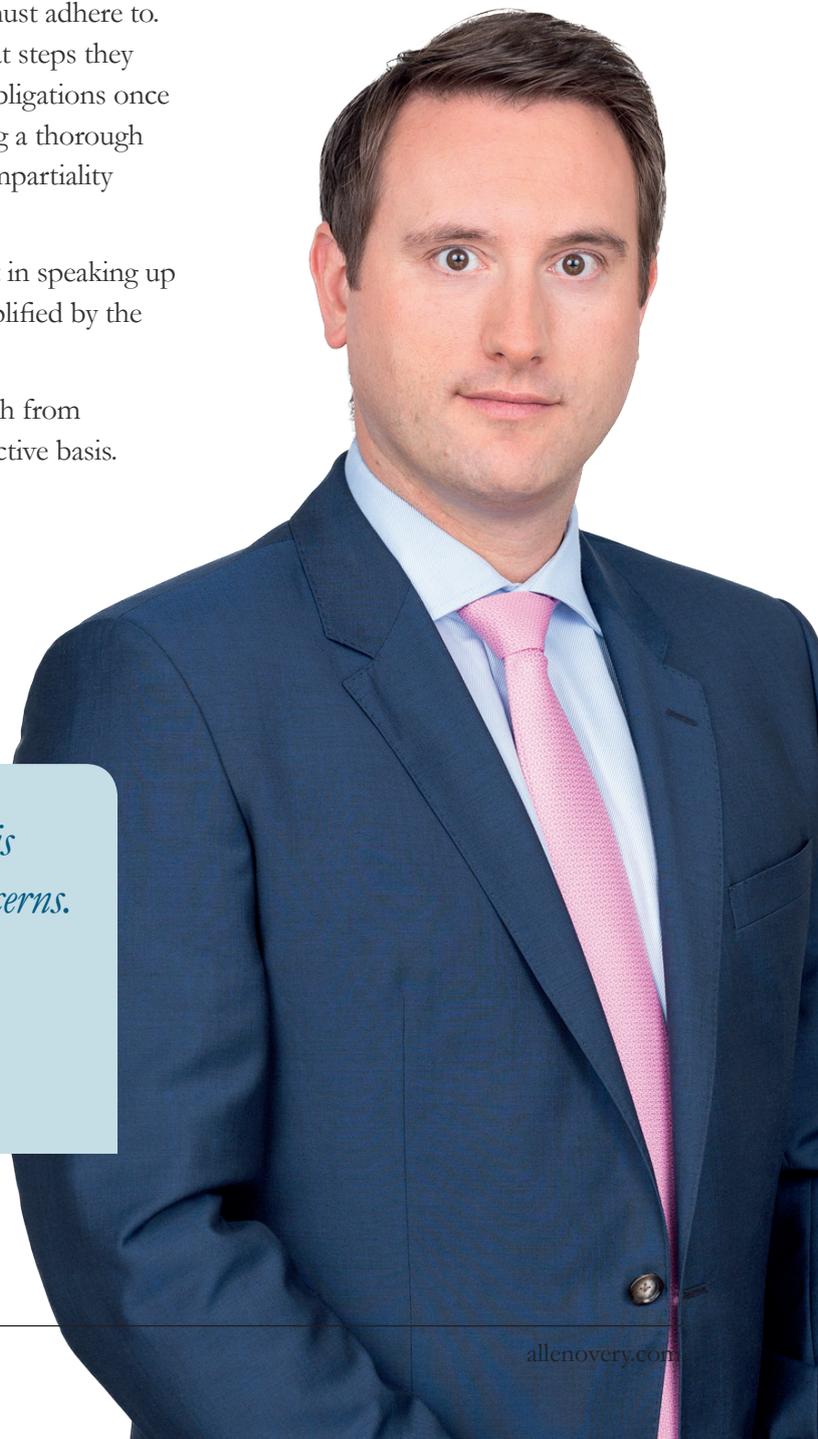
Yes, the way clients approach cultural issues, such as moral harassment or discrimination, has undergone significant change during the past decade in Luxembourg. The reasons for this change are the result of, to a large extent, a new regulation introduced in 2009 on moral harassment and violence in the workplace, which every employer must adhere to. Luxembourg employers are now obliged to set out what steps they will take to prevent moral harassment as well as their obligations once a claim has been raised, such as immediately conducting a thorough investigation and treating the harassment claims with impartiality and within a reasonable time frame.

It is evident that the 'millennial' generation is confident in speaking up and voicing its concerns. This willingness has been amplified by the #MeToo movement.

Aware of this change, clients have shifted their approach from addressing cultural issues on a purely reactive to a proactive basis. The demand for training and interactive workshops, giving practical hints and tips on how best to prevent and efficiently and rapidly handle cases of moral harassment or discrimination, has never been greater.

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Gilles Dall'Agnol



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

Yes, particularly with moral harassment. Employees are less likely to hold back and now denounce more openly actions and/or behaviour which they personally perceive to constitute moral harassment. Moral harassment is a complex term and difficult to address because it is somewhat subjective and depends on the perception of the individual. For example, a harsh and abrupt style of communication may be perceived by one employee as robust management but by another as moral harassment. The lines are blurred and we predict that clients will face more and more claims of moral harassment.

ARE ANY PARTICULAR SECTORS MORE AFFECTED THAN OTHERS?

It is safe to say that poor cultural behaviour occurs everywhere and no sector, industry or type of organisation is completely immune. For a number of regretful reasons, including the absence of a culture to speak up and/or a higher job insecurity, the number of complaints in blue-collar sectors tends to be lower than in white-collar sectors.

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

In Luxembourg, awareness of cultural issues has been growing steadily as well as the need to take ownership of those that make or break a culture. This awareness has been further highlighted by the 'suicide affairs', involving some large corporations in our neighbouring

countries and has most recently been brought to the fore by the #MeToo movement which has prompted individuals to speak up and no longer conceal or secretly endure inappropriate conduct such as moral/sexual harassment and/or mobbing in a professional environment.

Moreover, it is undeniable that the millennial generation's presence in the job market has caused a change in the way companies approach cultural issues. This generation's ideals and principles – such as equal pay, gender equality and anti-discrimination and their underlying expectations and demands – have, without a doubt, contributed extensively to the change in the perception of cultural issues and the actions which need to be taken to prevent, address and solve cultural issues.

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?

Employers are proactive in addressing poor cultural behaviour and are aware that failing to react quickly and to take appropriate action to address the problem has a toxic effect on their employees such as a decline in working morale and productivity and, ultimately, on their business. Employers now want to stamp out poor conduct and discipline the perpetrators, irrespective of how senior they are. Awareness training has played a pivotal role in educating management, line managers and the employees themselves.



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Another innovative approach can be found in the Luxembourg Diversity Charter, which is a national commitment that any organisation in Luxembourg eager to support diversity through concrete actions can become a signatory to. This charter guides the signatory organisations in the implementation of practices aimed at promoting social equity and cohesion through networks, workshops and conferences and by collaborating with all the stakeholders and partners.

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

Dealing with the volume of moral harassment claims is challenging because the procedure on handling such issues and its practical implementation is still in its infancy. For example, thoroughly investigating a case of alleged harassment – including conducting interviews with the individual, the alleged harasser (separately) and any other witnesses – while also acting with discretion to protect each party’s dignity and private life often proves to be a difficult task in practice.

In addition, if allegations of harassment are substantiated, the question arises as to the appropriate measures to be taken to address this situation. Pragmatic solutions for the prevention of future harassment and/or discrimination (as opposed to simply disciplining the perpetrator which does not tackle cultural issues “at its roots”) are often hard to come by.

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

- 1 Take allegations/reports of poor cultural behaviour seriously and launch an objective and thorough investigation, while acting with the necessary discretion to protect each party’s dignity and private life. If the alleged acts of moral harassment are established and confirmed, take appropriate action relating both the perpetrator (discipline) and the victim (help and support).
- 2 “Lead by example” – often employees have the impression that senior management does not need to follow the rules, leaving employees with the feeling that these well-intended initiatives remain abstract and unapplied principles.
- 3 If an act of poor cultural behaviour such as moral harassment has occurred, undertake an internal re-assessment of the effectiveness of the established preventive measures (eg the harassment policy) and of the need for the implementation of new preventive measures.
- 4 Take a look at other jurisdictions which have already set up a sophisticated and established framework for preventing and coping with poor cultural behaviour. This should be used as a source of inspiration and as a blueprint to emulate.
- 5 “Be human and put yourself in the concerned party’s shoes” – mechanically following the internal procedures without taking into account the personal feelings and rights of the alleged perpetrator and victim, as well as the precise circumstances of the case, is not the right approach.