

Appendix I

Types of Discrimination Identified by French Law

Law no. 83-634 and the **Conseil d'État's advisory opinion no. 217017 of May 3, 2000, on the rights and duties of civil servants** prohibit making "statements constituting proselytism or discrimination."

The different types of discrimination recognized by French law are set forth in **Article 225-1 of the version of the French Penal Code in force on April 10, 2020.**

Law no. 2008-496 of May 27, 2008, defines discrimination thus:

"Direct discrimination shall be deemed to occur in a situation where one person is treated less favorably than another is, has been or would be treated in a comparable situation.

Indirect discrimination shall be deemed to occur when an apparently neutral provision, criterion or practice would, for one of the reasons stated in the first paragraph, put some persons at a particular disadvantage compared to other persons, unless this provision, criterion or practice is objectively justified by a legitimate aim and the means for achieving that aim are necessary and appropriate."

On the basis of the grounds identified by law, the existing types of discrimination are defined in the booklet *Stop à la discrimination (End Discrimination)* (2020) written by Inalco:

Social discrimination is a process related to making a distinction regarding a person or social category, but differs from it in that it creates so-called discriminating boundaries—that is, it gives rise to a rejection aimed at social exclusion on grounds such as social or ethnic origin, religion, sex, intelligence, health, etc.

French law recognizes 25 grounds of discrimination.

Physical appearance

Discrimination based on **physical appearance** relates to an individual's visible characteristics that may or may not be changed, whether this pertains to the person's **physique** itself (height, weight, face, hair, skin color), or to clothing, tattoos, piercings or makeup.

Origin

Origin refers to national origins, the environment one comes from and one's place of residence. French nationals of foreign origin are often discriminated against in the hiring process.

Health

Health problems can be either short or long term. This type of discrimination applies mainly to a person's chronic problems that require him or her to be absent frequently. These problems may be physical or psychological. Consequently, the employer may be bothered by the employee's recurring absences. In addition, health problems entail accommodations such as rearranging the work schedule, finding a replacement for the employee, and providing assistance measures if required. Occurrences of health discrimination are common. They may even pertain to rarely reported illnesses, such as epilepsy.

Disability

Whether they have an intellectual disability, a disorder that impedes development, or a mental or physical disability, people with disabilities may suffer discrimination in a variety of everyday settings—school, restaurants, transportation, housing, recreation, etc.—and access to a job is one of the most common situations.

Sex

Sexism generally affects women who are paid less, promoted less often within an organization or have a harder time being hired for management positions. They may also be victims of harassment by a superior or, conversely, be scorned by a male subordinate who has difficulty taking orders from a woman. However, discrimination may also affect men working in "traditionally female" jobs such as nurse or schoolteacher.

Sexual orientation

Individuals may be victims of discrimination because they are homosexual, bisexual, transsexual or heterosexual. In most cases, discriminatory behavior on these grounds stems from the perpetrator's homophobic attitude.

Sexual preferences are private and do not need to be expressed in public. However, the increasing number of cases being brought to court and substantial anecdotal evidence show that this type of information may be disclosed in the workplace. Homophobic statements, harassment, mockery by colleagues and discrimination based on sexual orientation most often affect homosexuals or bisexuals.

Lifestyle

Can an organization refuse to hire a smoker? A former prisoner? A yoga instructor? Lifestyle refers to the "ways of life" of an individual that may clash with the political correctness of the working world. By extension, discrimination based on lifestyle also applies to the individual's sexual orientation. From a legal perspective, these ways of life are part of your personal life, and an employer may not discriminate against you because they do not approve of how you live.

Political opinions

For an employer, it would be ideal if the employees' points of view on general political issues or the organization's politics converged. This would reduce the risk of conflict and create "optimal" working conditions. However, there are situations where this does not happen in practice. All individuals have convictions and they may wish to express them through particular entities, such as a political party or an association. In this case, whether an employer disapproves of your ideas or fears a "negative climate" within the organization, they might try to fire you illegally.

Religious opinions

Religious discrimination is when one makes a measure conditional on affiliation or nonaffiliation with a religion. Beliefs pertain to the existence or nonexistence of a god or divinities.

Age

Because jobs change quickly, people of a certain age often have difficulty getting hired. Some recruiters believe that senior citizens have trouble fitting in with a young team. Senior citizens risk falling ill and being absent frequently. They are also criticized for costing more than recent graduates. As a result, despite their extensive experience, senior citizens looking for work encounter challenges. They are discriminated against in some job listings that illegally specify a preference for a candidate younger than 55 or even 45.

Conversely, young people are sometimes discriminated against in the hiring process due to their age.

Last name/First name

People should not suffer from discrimination if they have a foreign-sounding name or a name other people consider laughable.

Pregnancy

A commonly heard argument says that women present a risk for an organization because they may become pregnant at any time, which for an employer means that they will be absent for too long and will need to be replaced. Many women are discriminated against in the workplace because they become pregnant. Employers might try to dismiss them. However, women may also be discriminated against during the hiring process because they could get pregnant in the future. Employers then worry about the aftermath of a birth: the woman has new family responsibilities and may become less available for the organization.

Marital status

Your personal life is legally protected. Whether you are married, living with a partner you are not married to or divorced should be of no interest to your employer. As a general rule, this is information that has no impact on the skills required for a job. Nevertheless, in practice, it is hard for an employer not to take these factors into account. A person's marital status, the number of children he or she is responsible for, and the existence of a romantic relationship between colleagues may affect the work arrangements. The employer may consequently engage in discriminatory conduct.

Genetic characteristics (DNA)

It is often useful for an employer to know the health condition of their future employee. To avoid chronic absenteeism and procedures leading to a potential dismissal, the employer may try to use medical examinations to detect a candidate's genetic abnormalities. For the employer, determining whether the candidate is a carrier of a genetic disorder is a way to avoid many future problems. However, in 2002 the government decreed that employees' medical data is strictly confidential. Employers may not access it.

Gender identity

In sociology, gender identity, or sex identity, refers to the gender by which an individual is socially recognized—that is,

some people refer to themselves as men or women, or describe themselves in a less conventional way.

This identity is conferred at birth. However, the identity conferred and the identity felt may sometimes be different. In addition, someone may have a lack of identity or a dual identity. An individual could therefore be sexless or intersex.

There are individuals who believe that their gender identity does not correspond to their biological sex, including transgender people, transsexuals and many intersex people. They suffer when society imposes a gender expression on them—male or female—based on the biological sex they believe does not match their gender identity.

Union activities

You may be a neutral employee, a sympathizer or an activist. Employers may view any union activity as a threat that challenges their management policy for the organization. Employee representatives or any individuals acting within an employee representative body are often subject to discrimination, which may surface in questions upon hiring, delayed promotions or a layoff following a strike. Penalties may be direct, and could arise through **pressure or a threat** to your job security.

Nationality/belonging or not belonging to a nation

In the workplace, these forms of discrimination are generally interrelated. The French Labor Code prohibits workplace discrimination based on nationality.

Example: refusal to hire a person of a foreign nationality or one who is not a French national

Belonging or not belonging to an ethnic group

This is discrimination based on ethnic or national origin. Ethnic discrimination is often related to an individual's physical appearance or last name. It occurs in the workplace, housing and sometimes interactions with the police.

Belonging or not belonging to a race

Discrimination based on actual or assumed belonging to a race covers all discrimination based on birth.

Perpetrators of discrimination may be prosecuted as soon as they make a discriminatory decision against a person because they have reached a conclusion that the person belongs to a particular race, even when this conclusion is only based on an assumption.

Place of residence

No individual may be taken out of the running for a job, or deprived of access to an internship or a training period in an organization on this ground. No employee may be penalized or dismissed, or subject to a discriminatory measure regarding compensation, training, transfer, job promotion, etc., because of his or her place of residence (country, city, neighborhood, etc.).

Loss of autonomy

This ground protects dependent people, particularly people with disabilities who are aging and who, due to the increase in the retirement age, may find themselves in a challenging situation in organizations.

Loss of autonomy—that is, difficulty or inability to perform everyday essential tasks—may afflict people at any age, and can result from an accident or illness, or disabilities that form at birth, in childhood or in old age.

Aporophobia – Social precarity

This type of discrimination is defined as follows on the website of the rights defender: discrimination against a person due to his or her particular vulnerability resulting from an economic situation that is apparent or known by the perpetrator.

On a concrete level, this law aims to protect people experiencing significant poverty or social precarity from any negative perceptions related to their situation that may give rise to discriminatory behavior against them, particularly at the time of hiring.

Poverty is often viewed as a component of injustice, but the discrimination it causes is less well known. However, a lot of access to fundamental rights (housing, health care, employment, education) or other rights (culture, vacation) is denied out of fear of poor people or due to an assumption of unfitness.

Ability to speak a language other than French

For the first time in France, discrimination has been deemed to include making “any distinction between natural persons on the basis . . . of the ability to speak a language other than French.” This includes a foreign language and/or regional language.

Bank domiciliation

This measure aims to combat discrimination against people from overseas departments—mainly when it comes to access to housing—because they have bank accounts outside of France.

The normal exercise of the right to strike

This measure, which takes into account the extent of employee mobilization, based on departments, and its effects on the organization's operation, entails indirect discrimination on the grounds of the normal exercise of the right to strike and may not be justified by objective factors unrelated to any discrimination due to the strike insofar as the disruption to business results from consequences inherent to the collective work stoppage.

No employee may be penalized, dismissed or subject to a discriminatory measure due to the normal exercise of the right to strike.

The booklet *Halte au harcèlement (End Harassment)* (2020) put out by Inalco identifies six forms of harassment:

Harassment is defined as repetitive violence that may be verbal, physical or psychological. It aims to weaken the target of the harassment. This violence may be found in all types of settings, and may be perpetrated by one or more persons against one or more persons.

Harassment is an **aggressive, disruptive behavior** that causes anguish and distress in the victim. This is persistent behavior arising from an imbalance of power between the people involved—harasser and target—and it may have serious physical and psychological consequences for the victim.

To classify a behavior as harassment, two factors must be taken into account:

- **Repetition:** the behavior engaged in by the harasser is repeated more than once and is likely to continue.
- **Imbalance:** the harasser uses his or her power (physical, psychological, social, etc.) to exercise control or commit a series of actions that harm the target.

There are several types of behavior that are legally considered to be harassment. Note that these different types of harassment may converge or overlap because the harassers will extend their control over the victim in many areas.

Thus physical harassment may become sexual, school harassment may be spread on social networks, and psychological harassment may also be workplace harassment.

Psychological harassment or moral harassment

This consists of **abusive behavior** that harms the target's dignity and moral integrity, with the aim of destabilizing him or her psychologically. In most instances, the behavior may be so subtle that even the victim is not aware of it. The harasser exerts a negative influence on the victim by lying, defaming and twisting reality.

At first, harassment gives rise to a feeling of instability in the victim, who ultimately loses self-confidence and confidence in other people. This spurs a feeling of powerlessness and anxiety that could lead to depression and even suicide.

Moral harassment may occur in all settings: in the workplace, at school or a university, within a couple or in any type of relationship.

Sexist and sexual harassment

This includes any **intimidating or coercive behavior of a sexual nature**. These acts of aggression may be physical, verbal or nonverbal:

- Acts of physical violence, touching or nonconsensual relations
- Comments or exhortations related to the physical appearance or personal life of the target, nonconsensual flirting and alleged compliments
- Gestures of a sexual nature, whistling, winking, etc.

All this behavior may range from not being very irritating for the target to being serious breaches that may lead to possible sexual violence.

Physical harassment

This means pursuing the victim constantly and invasively to establish contact with him or her against his or her wishes. This type of harassment originates in an **obsession** that the harasser develops toward the other person, with behavior such as:

- Spying on the victim
- Following the victim
- Phoning and/or trying to enter into contact with the victim in an intrusive manner
- Threatening the victim
- Violent behavior

Cyberbullying

Although this is also known as virtual harassment, it is entirely real. This is the most modern type of harassment—in this case, the harasser or group of harassers uses digital communication tools or social networks to perpetrate a series of personal attacks:

- Spreading of false rumors
- Attacks on public networks against the person (mass insults)
- Sending of private messages to the person's contacts
- "Revenge porn": circulation of intimate images of the person without his or her consent
- Creation of fake profiles usurping the target's identity in order to denigrate him or her

The cyberbully's main motivation is to cause distress and psychological and emotional anguish in the victim.

Street harassment

Street harassment is a specific behavior in public and semipublic spaces consisting in calling out to strangers through disrespectful, intimidating, insulting or threatening comments or messages. This harassment is based on sex or sexual orientation discrimination.

- Whistling, catcalling
- Sexist comments
- Insults
- Touching

Born of a sexist upbringing and environment, **street harassment** is mainly committed by a majority group in public spaces—typically men, who are not necessarily aware of this, against women and LGBT (lesbian, gay, bisexual and transgender) people. Long considered a common and everyday occurrence for thousands of people, in recent years it has become a more frequent topic of discussion, to the point that it has finally become illegal.

The accumulation and/or violence of street harassment creates a hostile environment and harms people's dignity and liberty, potentially causing them to fear going into public spaces. Often seen as flirtation by those committing it, street harassment is actually the exact opposite: while flirting is mutual, street harassment is the responsibility of a single person who consciously disregards the other person's lack of consent.

Workplace harassment

This is a **form of abuse** within the work environment. This harassment, which may be committed by one or more people, occurs especially on the psychological level and involves threats, mocking, false rumors and isolation of the victim from the rest of the group. Harassment may also be transformed into violent behavior, thus becoming a case of harassment with assault.

The work environment becomes a source of stress for the victim, and if this stress becomes chronic, it may develop into **post-traumatic stress disorder**.

School bullying

This is the most widespread type of harassment, or at least one that has been discussed in the last several years because there has finally been recognition that it is not mere child's play. **School bullying** consists of any type of mistreatment or psychological, verbal or physical assault committed within the school but not necessarily in the classroom. For this conduct to be considered school bullying, there is an assumption that both parties share the same school space, even though the harassment may extend to other spaces.

This type of school mistreatment is distinctive because the harasser repeatedly intimidates the victim, entailing an abuse of power, whether the harassment is committed by one person or a group, even though the strength of the group mentality is sometimes only perceived by the victim. This conduct can have physical and psychological effects on the victim, such as:

- School phobia
- Anxiety, neurasthenia
- Depression
- Isolation
- Suicide

Contrary to common preconceptions, school bullying has no particular basis. Children or adolescents who are victims are perceived differently from their peers, but nothing predisposes them to this.