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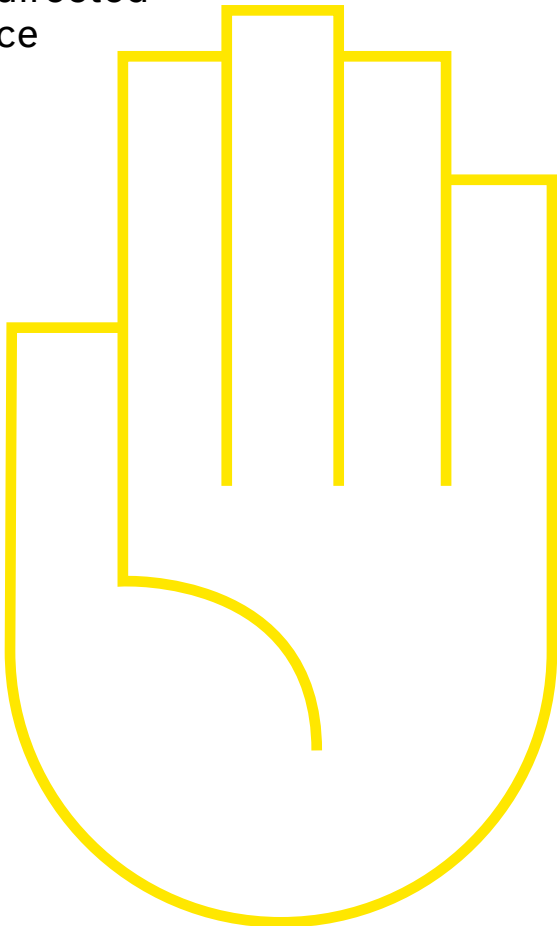
REPORTING AND PREVENTING WORKPLACE DISCRIMINATION OR SEXUAL AND GENDER-BASED VIOLENCE

— A HANDBOOK FOR FESTIVAL
D'AIX-EN-PROVENCE TEAMS



Since 2020, the Festival d’Aix-en-Provence has implemented an ambitious policy in favour of equality and diversity. The policy, structured around a protocol and measures that are re-assessed on a regular basis, has become an integral part of team operations. The Festival’s commitment to these values and the strong mobilisation of its teams have earned it two AFNOR certifications — ‘Gender Equality in the Workplace’ and ‘Diversity’ — in 2020 and 2021. The present guide, dedicated to combating sexual and gender-based violence and harassment, as well as workplace discrimination, is the result of ongoing efforts by the listening unit, carried out in consultation with the Festival’s teams. We sincerely thank all those involved in this process. Designed as a practical tool to help each of us identify and respond to situations involving sexual or gender-based violence and harassment (SGBV/H) and workplace discrimination, this guide is intended for victims and witnesses of such acts, providing them with essential information about the Festival’s established protocols. This guide — a reflection of our overall human resources policy, which strives to be fair and respectful — is directed towards all staff, and towards the artists and service providers who work with us. Please feel free to share it with others.

STÉPHANIE DEPORCQ
Executive Director



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DEALING WITH THE SITUATION

— WHAT ARE WE TALKING ABOUT?

SEXUAL AND GENDER-BASED VIOLENCE AND HARASSMENT (“SGBV/H”)

> HOW TO DISTINGUISH BETWEEN SEDUCTION AND SEXUAL HARASSMENT?

The difference resides in the type of relationship initiated (egalitarian relationship or not) and whether consent had been given or not. In a relationship based on seduction, feelings are positive and the consent of each person involved in the relationship is respected. If you feel humiliated and that the relationship is no longer egalitarian, you are no longer experiencing a relationship based on seduction, but a relationship based on power where the other party seeks to dominate by denying your consent.

> SEXUAL HARASSMENT

No employee should have to suffer the acts¹:

1° Of sexual harassment, consisting of **repeated sexual comments or conduct** that either **violate the person’s dignity because of their degrading or humiliating nature** or create an **intimidating, hostile or offensive situation against the person**;

2° Or assimilated to sexual harassment, consisting of **any form of serious pressure, even non-repeated**, exercised **for the real or apparent purpose of obtaining an act of a sexual nature**, whether it is sought for the benefit of the perpetrator or for the benefit of a third party.

Hostile work environment sexual harassment:

“Sexual harassment may consist of environmental harassment [...] where, without being directly targeted, the victim is subjected to provocations and obscene or vulgar jokes which become unbearable for them”²

Sexual harassment is an offence punishable by 2 years’ imprisonment and a fine of €30,000. It can lead to dismissal for serious misconduct.

> HOW TO DISTINGUISH BETWEEN SEXIST CONDUCT AND HUMOUR?

Humour involves a certain respect of the other, it is exercised within an egalitarian, mutual relationship between two persons. A person who shows a sense of humour takes into account the effect their remarks may have on you. On the contrary, conduct referred to as sexist generates discomfort or annoyance.

“It relates to any conduct related to the sex of a person for the purpose or effect of violating their dignity or creating an intimidating, hostile, humiliating, or offensive environment”³.

> SEXISM?

Sexism is often based on **stereotypes** and can take many different forms: salacious comments/jokes, false seduction, attitudes which place the victims in a position of inferiority by belittling their abilities, their appearance. **Sexism can concern women as well as men who find themselves criticized for their appearance/attitude because they do not correspond to stereotypical, macho portrayals.** A sexist atmosphere in the workplace is fertile ground for sexual harassment situations to develop.

The perpetrator of such conduct may face a fine up to €1,500.



DISCRIMINATION

The law distinguishes two types of discrimination: **direct discrimination and indirect discrimination.**

> DIRECT DISCRIMINATION

Direct discrimination is defined as a situation in which one person is **treated less favourably than another is, has been, or would be treated in a comparable situation, on grounds that are prohibited by the law.** In the workplace, direct discrimination may occur in diverse situations, such as obtaining employment for a job applicant (during recruitment) or exercising one’s job once hired.

There are **26 criteria for discrimination that have been identified¹ and are prohibited:**

- | | |
|---|--------------------------|
| — Origins | — Social precarity |
| — Age | — Nationality |
| — Presumed race | — Last name/First name |
| — Religion | — Health |
| — Ethnicity | — Place of residence |
| — Physical appearance | — Marital status |
| — Lifestyle | — Disability |
| — Pregnancy | — Bank domiciliation |
| — Union activities | — Political opinions |
| — Sex | — Philosophical opinions |
| — Gender identity | — Loss of autonomy |
| — Genetic characteristics | — Whistleblowing |
| — Sexual orientation | |
| — Ability to speak a language other than French | |

Examples: Ruling out an individual’s application for employment due to their presumed origins; refusing to promote an employee due to their maternity or paternity leave.

> INDIRECT DISCRIMINATION

“A situation in which **a provision, criteria, or practice appears neutral but results, for one of the biases prohibited by law, in a specific disadvantage for persons, as compared to other persons.**” Art. 1 of law no. 2008-496 of 27 May 2008.

Example: Only full-time employees receive bonuses. This would be an example of indirect discrimination if the majority of the persons working part-time in the business in question belonged to a category with a distinguishing factor (e.g. age, sex, union activity, marital status).

> DISCRIMINATORY HARASSMENT

According to French law, discriminatory harassment is a form of harassment, and is defined as “Any act related to [a prohibited ground and] conducted towards a person with the purpose or effect of **offending the dignity of that person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.**” Art. 1 of law no. 2008-496 of 27 May 2008

Three elements must be present for there to be discriminatory harassment in the workplace. There must be:
— **an act directed at an employee or a job applicant**
— **related to a ground prohibited by law (see box on left) and**
— **whose purpose or effect is to offend the dignity of that person or create a degrading work environment.**

Discriminatory harassment must meet these specific criteria in order to qualify as such (professional stress or a dispute between an employee and their head of department for professional reasons cannot be qualified as discriminatory harassment if these three criteria are not met).

Example 1: A racist text message is sent and presented as “merely a joke” by its author. If the comment is deliberately offensive, then it can be defined as an insult. The insult may be sexist, homophobic, racist or anti-Semitic, for example.

Example 2: “What you’re saying is gay.”
Note: Unlike so-called “classic” harassment situations, the actions need not be repeated for a situation to be qualified as discriminatory harassment: a single act may suffice.

— WHAT ARE THE EMPLOYER’S OBLIGATION FOR PREVENTING DISCRIMINATION OR SEXIST AND SEXUAL VIOLENCE?

The employer has a **duty to ensure the safety and protect the physical and mental health of their employees**⁴
In this respect, the employer must report the acts of discrimination and sexual harassment when the acts are brought to their notice by ensuring the protection of the person concerned and by initiating a serious and impartial investigation. The employer is required to

put an end to the discrimination or sexual harassment and to punish it through a disciplinary procedure, if the facts are proven. Sexual harassment in the workplace is considered as serious misconduct and the perpetrator may be dismissed for this reason⁵.

— HOW SHOULD YOU REACT IF YOU ARE A VICTIM?

✓ **VICTIME**
The employer is bound by an obligation towards the staff, but also, for example, towards external candidates applying to the Festival.
Therefore, **the “victims” may also be employed “outside” the Festival.**

✓ **REFUSE THE SITUATION CLEARLY**
If you believe that a line has been crossed or if you feel uncomfortable in a situation, it is vital to be aware of how you feel and not to feel responsible for this situation. You have the right to express this feeling and to refuse the conduct suffered as much as possible. It is important to say “no” clearly, even if this may be difficult. If the perpetrator of the violence does not change their attitude then they are transgressing your consent.

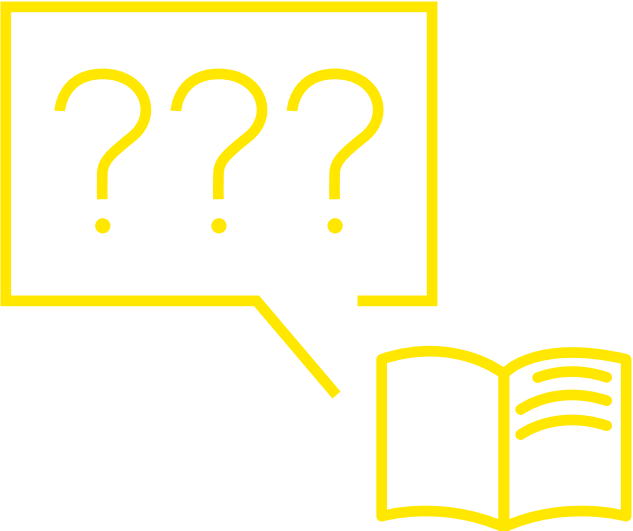
✓ **ASK FOR HELP AND PROTECT YOURSELF**
Protect yourself from risk as much as possible, do your best to cross the path of the perpetrator of the violence in public spaces only.
Do not hesitate to call on a colleague so that they will be with you whenever the perpetrator of the acts is present. Talk about what you are suffering/have suffered to your colleagues and loved ones including those external to the Festival.

✓ **COLLECT EVIDENCE**
Do your best to keep everything to compile a portfolio of evidence, even if you do not wish to initiate proceedings at this stage: keep all traces, especially written (emails, SMS, testimony from a doctor or psychologist).

✓ **NOTING DOWN EVERYTHING THAT HAS HAPPENED**
It can help you assess what you have suffered.

HOW?

- The account must be **chronological, coherent and context-based**: specify the dates for each act suffered if you know them (if not, it is better to specify a period whenever you are not sure of the exact date);
- The account must **describe the acts as precisely as possible**, i.e. write down the exact words and gestures;
- The account must **chart the consequences of these acts**, in particular on your health; and
- The account must **reproduce all formal and informal actions you have taken** (exchanges with loved ones, medical certificates and documents, written evidence, etc.).



— HOW SHOULD YOU REACT IF YOU ARE A WITNESS?

[DEALING WITH THE SITUATION]

If you witness discrimination or sexual and gender-based violence and harassment (SGBV/H) directly, you should **inform the parties in the company responsible for collecting information and dealing with such acts** (see below).

As an in-house witness, you can:
— **inform the contact persons** about the situation and identify the people involved, and
— make a signed and dated context-based **account of the acts you witnessed** and transmit that account to the victim.

If you have not witnessed the acts directly, but have been informed of facts that may constitute SGBV/H or discrimination, you are advised not to undertake any procedures without the consent of the victim or the direct witnesses, whom you should refer to the listening and alert unit. During your exchanges with the victim, provide a listening ear and show sympathy: it is actually often very hard to recount and explain instances of discrimination or SGBV/H. Also, don’t hesitate to talk about the law to help the victim identify and describe the situation as one of discrimination⁶ or SGBV/H. This may also help the person see themselves as a victim and, as such, take proactive action.

WHO SHOULD YOU TURN TO?

If you are a victim of discrimination or SGBV/H, there are people on hand to help you. Do not hesitate to turn to a **trusted person** among the people mentioned below. All of these people are able to collect reports and witnesses' statements of discriminatory or sexual and gender-based violent acts and to provide you with guidance. They must respect your expectations, in particular with regard to anonymity. You may contact these people together or separately.

— IN-HOUSE SUPPORT

> THE LISTENING AND ALERT UNIT

The listening and alert unit is made up of two contact persons who have been trained for this position and whose role is to:

— Receive

When receiving reports, the contacts share a mutual roadmap and are committed to providing a listening ear, showing empathy, remaining neutral and respecting confidentiality.

— Inform

They will inform a victim of their rights, of actions that may be taken, and of resources that may be mobilized.

— Provide guidance

Depending on the victim's expectations and/or needs, the contact persons will refer them to in-house and/or external support professionals. They will accompany the victim through any action the victim decides to take.

— Act

In certain cases, they can act directly to help resolve the situation.

CONTACTS

Isabelle Dumont, HR contact
isabelle.dumont@festival-aix.com
+33 (0)6 72 21 04 94

Marie-Laure Stephan, SEC contact
marie-laure.stephan@festival-aix.com
+33 (0)6 72 21 16 04

> OPERATIONAL CONTACTS OF THE LISTENING UNIT

Contacts of the listening unit, present at all venues and within all teams of the Festival during its period of operation, are trained to relay the reports they receive from the field by forwarding them to the listening unit. These contacts are bound by a commitment to neutrality and confidentiality. Under no circumstances may they take the place of the listening unit by initiating any independent action.

> SPECIAL EMAIL ADDRESS FOR REPORTING ACTS OF DISCRIMINATION OR SGBV/H

The Festival has also created a special email address for employees to express issues in writing. This system is designed to complement the reporting of information and alerts for acts of discrimination or SGBV/H. It is managed solely by the two contact persons mentioned above.

CONTACT

celluledecoute@festival-aix.com

> SOCIAL AND ECONOMIC COMMITTEE (SEC)

— Receive

The employee representatives can receive reports of acts of discrimination or SGBV/H and refer you to the contact persons.

— Alerte

In severe cases, the SEC can exercise its right to alert the employer if an employee's rights have been undermined through acts of discrimination or SGBV/H. It can request the advice of a legal expert and can initiate an investigation on psycho-social risks and damage to people's health.

CONTACT

dp-ce@festival-aix.com

The SEC's email account is managed by all employee representatives of the Festival.

> TRUSTED PERSONS IN YOUR PROFESSIONAL COMMUNITY

Trusted persons in your professional orbit have no specific prerogatives as regards to discrimination or SGBV/H, but can nevertheless provide a listening ear and guidance.

— EXTERNAL SUPPORT

> OCCUPATIONAL HEALTHCARE PROFESSIONAL

The victim can request a consultation with the occupational healthcare professional (visit initiated by the employee, organized directly with the doctor without advance notification from the employer). Based on the severity of the situation in question, the occupational healthcare professional can:

- propose / offer advice to the employee for possible "support" provided by external support professionals and bodies;
- propose measures to the employer for safeguarding the victim's health;
- declare an incapacity if keeping the employee on-the-job is seriously detrimental to their health.

CONTACTS

— STP (for teams in Aix-en-provence and Venelles):
Dr. SOLER Charles / c.soler@stprovence.fr
His assistant:
assistante-dr-soler@stprovence.fr /
+33 (0)4 42 91 33 75

— CMB (for teams in Paris) Thalie santé:
Dr. RANIO MOLLEDA Maria / +33 (0)1 49 27 60 36
Her assistant:
a.jacquart@thalie-sante.org
+33 (0)1 53 63 10 36

> EXTERNAL SUPPORT LINES

You also have the possibility of contacting external bodies, such as:

— **the French Labour Inspectorate**
(*Inspection du Travail*) **and the French Defender of Rights** (*Défenseur des Droits*).

CONTACTS

www.antidiscriminations.fr
Online: IM / services for the deaf and hard of hearing
By telephone:
3928 (from France — price of a local call)
Monday–Friday, 9 am to 6 pm

— **Audiens - Psychological and legal support unit for cultural professionals**

CONTACTS

Phone: +33 1 87 20 30 90
violences-sexuelles-culture@audiens.org

[WHO SHOULD YOU TURN TO?]

> SPECIALIZED ASSOCIATIONS

— **Association européenne contre les violences faites aux femmes au travail (AVFT)**

AVFT (European Association against Violence towards Women in the Workplace) is specialized in preventing and denouncing sexist and sexual violence in the workplace. It supports women who are victims of sexual harassment in the workplace and strives to ensure employers meet their obligations in preventing and eliminating sexual harassment.

CONTACTS

www.avft.org
contact@avft.org

— **French Family Planning**

The French Family Planning is a feminist, activist association which is part of a countrywide popular education movement. It works in particular towards eliminating sexist violence and proposes help desks for offering support and care to victims of sexist and sexual violence.

CONTACTS

Aix branch: +33(0)4 42 33 56 85
Marseille branch: +33(0)4 91 91 09 39
Paris branch: +33(0)1 42 60 93 20
www.leplanning13.org

— **39 19 – Violence against women information hotline**

This is the French national hotline number for women who are victims of violence and for their family circle as well as for professionals concerned. This national support line is anonymous. It is 24/7 accessible and free of charge.



WHAT HAPPENS ONCE DISCRIMINATION OR SGBV HAS BEEN REPORTED?

— ALERT RECEIVED AND MANAGED BY THE CONTACT PERSONS

- A trusted person will have called on the contact persons with your consent
- Or you will have called on the contact persons directly

> A FIRST EXCHANGE WITH ONE OF THE TWO CONTACT PERSONS WILL BE ORGANIZED

The two contact persons will take the time to **receive** you and **listen** to you during an interview, whether in person, by phone, or via video conference, as you prefer. They share a mutual roadmap and are committed to providing a listening ear, showing empathy, remaining neutral and respecting confidentiality. They will **inform** you of actions which may be taken and resources which may be mobilized. They can inform you of your rights and remind you what is considered as sexual harassment, sexist conduct or discrimination. They can also **refer** you to

in-house and/or external support professionals (see above). Finally, they will be by your side to support you throughout any action you take.

> COMPLEMENTARY ENCOUNTERS MAY BE SET UP TO DEVELOP EVIDENCE OF THE ACTS

Based on the exchanges, the contact persons may **set up complementary encounters** with you, but also with the person against whom the allegations have been made and with managers.

> ALERTING MANAGEMENT

Based on the assessment of the situation, the contact persons may alert management in order to **take appropriate action**.

— EMPLOYER'S ACTION

> LEGAL SUPPORT AND IN-HOUSE INVESTIGATION

If the evidence gathered during the preliminary inquiry suggests that the facts may constitute sexist behavior or discriminatory acts, the employer initiates an **in-house investigation to develop evidence of the acts**. Beforehand, the person who raised the alert/reported the act and the victim (whenever it is not the same person) are informed of the responses to the alert and the details of the upcoming investigation.

> DISCIPLINARY PROCEEDINGS

In the event that, at the end of the additional interviews or the inquiry, it clearly appears that the situation constitutes sexist behavior or discrimination, the perpetrator must, at least, **be given a warning**. Depending on the severity of facts, disciplinary action may also be envisaged. In the case of disciplinary proceedings, the employer has two months to initiate the action, from the date they became aware of the acts.

> RESOLVING THE DYSFUNCTION AND ACTION PLAN

In the event that, at the end of the additional interviews or the inquiry, it is clear that the alert/reporting reflects dysfunction in the work organization or its environment, the Human Resources Department and management **may engage in a reflection with managers** in order to address and resolve the dysfunction and/or to roll out an action plan.

— INVESTIGATION REPORT

> OPTION 1 - THE REPORT CONCLUDES THAT SEXUAL HARASSMENT OR DISCRIMINATION EXIST

The employer must:

- Impose sanctions on the perpetrator of offenses
- Accompany the victim

> OPTION 2 - THE REPORT CONCLUDES THERE IS NO EVIDENCE OF SEXUAL HARASSMENT OR DISCRIMINATION

Generally-speaking, the employer must ensure:

- The employee who raised the alert/reported the acts is protected
- The continuation of working relations

— REMEDIES

In the event that the employer fails to act or if there is a difference of opinion as to the reality of this violation, and if no solution is found with the employer, here are various remedies available:

> REMEDIES WITHIN THE COMPANY

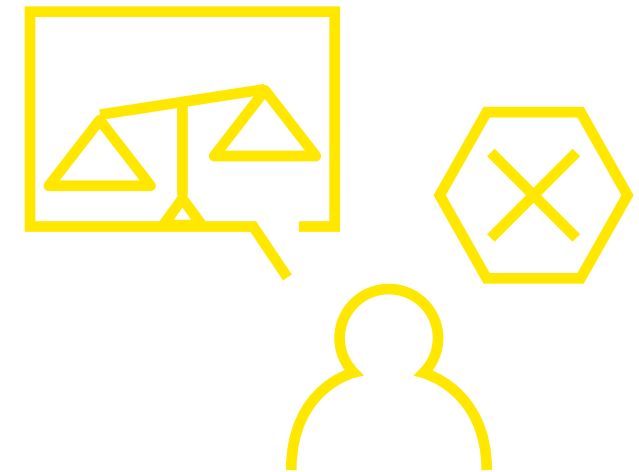
— Right of withdrawal

All employees have the right to withdraw from working (Article L4131-1 of the French Labour Code) in the event of “a work situation of which they have reasonable grounds to believe presents a serious and imminent danger to their life or health”. The employee must alert the employer of this danger and withdraw from the dangerous situation.

— The SEC's right to alert

The SEC may exercise its right to alert the employer in the event that an employee's rights have been violated. Consequently, the employer has a duty to initiate an investigation immediately.

[WHAT HAPPENS ONCE DISCRIMINATION OR SGBV HAS BEEN REPORTED?]



> LEGAL REMEDIES

— Taking legal action with the French Industrial Tribunal (Conseil de Prud'hommes - CPH)

- the defendant: the employer
- the proceedings: filing a motion at the Industrial Tribunal using a [CERFA](#).
- the sanctions: payment of damages
- statutory limitation: 5 years from the date the acts are revealed.
- the Industrial Tribunal is not obliged to follow the decision taken in criminal court (if legal action is taken at the same time in criminal court)
- duration of the proceedings: +/- 4 years

— Taking legal action in criminal court

- the proceedings: filing a complaint at the police station or gendarmerie or by letter to the public prosecutor
- the sanctions: fines up to €30,000 + 2 to 3 years' imprisonment
- statutory limitation: 6 years
- duration of the proceedings: +/- 4 years

Information about action to take:

<https://www.service-public.fr/particuliers/vosdroits/F1043>

