

Моббинг как психологическое запугивание на рабочем месте. Проблемы судебной защиты в России.

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Моббинг на предприятии и борьба с ним — не урегулированные законом вопросы. Как правило последствием моббинга является дисциплинарное взыскание или незаконное увольнение. Однако в российской судебной практике доказательство моббинга является почти невозможным. Целью данного исследования являются: исследовать этапы, методов и последствий моббинга, анализ судебных решений касательно моббинга, выявление эффективной доказательственной базы моббинга, предложение способов предотвращения моббинга. Методологическая основа исследования включает совокупность общенаучных и частнонаучных методов исследования явлений и процессов, включающих: диалектический, формально-юридический, методы анализа и синтеза, метод правового моделирования.

Ключевые слова: моббинг, психологическое насилие, урегулирование конфликтов, правовая защита, незаконное увольнение, дисциплинарные взыскания.

Mobbing as psychological intimidation at workplace. Problems of legal defense in Russia.

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Mobbing in the company and the protection from it - issues are not regulated by law. As a rule, the effect of mobbing is a disciplinary penalty or unlawful dismissal. However, in Russian judicial practice proofing of mobbing is almost impossible. The purpose of this study is: to explore the stages, methods and effects of mobbing, the analysis of judicial decisions regarding mobbing, identifying an effective evidence base of mobbing, suggesting ways to prevent mobbing. The methodological basis of the research includes a set of general scientific and private scientific methods for the study of phenomena and processes, including: dialectical, formal legal, methods of analysis and synthesis, the method of legal modeling.

Keywords: mobbing, mental violence, conflict resolution, legal protection, unlawful dismissal, disciplinary penalties.

Every day hundreds of people are harassed by their colleagues not only in Russia, but all over the world. Based on the results of a study published by International Labor Organization (ILO) in 1998; in the previous year 2% of employees (3 million) has been exposed to sexual assault, 4% (6 millions) physical violence and 8% (12 millions) mobbing.[5] It is almost impossible to insure yourself against colleague's negative; each person can be a victim of aggression: from the weakest employees - outsiders, to the brightest, strong personalities. Such aggression has negative consequences for both the employee and the employer, because high performer retires and goes to another company. This psychological harassment of an employee in the scientific literature was called "mobbing". For Russia, the concept of this word is new, although the phenomenon of collective terror is familiar to our country. So, according to experts, almost every fifth Russian

worker faced mobbing. At the same time, the legal mechanisms for protecting oneself from mobbing are not developed in the legislation of the Russian Federation, and that creates a major problem: the complexity and almost impossibility of proving mobbing to court. So, Russian lawyers and scientists are aware of the need to work out such a protection mechanism, because at the moment, in an unstable socio-economic situation, growing unemployment, and as a result of fear of losing their job, the problem of mobbing becomes important in the practice of labour psychology.

The concept of mobbing was introduced in 1963 by K. Lorenz. He called mobbing the phenomenon of the group attack of several small animals on a larger enemy. In the early 80s of the 20th century, studies were conducted concerning the behavior of people in labour collective. H. Leymenn called this phenomenon “mobbing” and described it as “psychological terror”, which includes “systematically repeated hostile and unethical attitude of one or several people directed against another person, mostly one”. In Russia, mobbing began to attract the attention of scientists in the 2000s. It is relatively late compared to most developed countries. Perhaps this explains the weak mechanism of protection against psychological terror.

To date, researchers have identified a number of signs that allow to separate mobbing from a conflict, namely:

- length in time;
- mobbing is always directed at one person, not at a group;
- mobbing aims to humiliate and intimidate the victim, that is, acts are in the nature of moral pressure;
- the place of action is the workplace of the victim;
- the goal of any labour mobbing is to force a person to quit.

Traditionally, there are two types of mobbing:[4]

- 1) vertical - "bossing": when psychological terror against the employee comes from the boss. A kind of bossing can also be atypical “bottom-up” mobbing, when the team is engaged in the survival of the newly appointed leader, not accepting a person as the highest official with the appropriate powers.
- 2) horizontal mobbing - when psychological terror comes from colleagues.

A number of scientists also identify the third type of mobbing - “sandwich” mobbing, when the harassment is on both sides, that is, multi-layer harassment.

At the same time, for a deeper insight into the phenomenon of mobbing, it is necessary to attack the problem at the grass roots and comprehend how mobbing monotheists itself. Conflict of

positions, workload, job insecurity, level of earnings and status, envy, fear of competition, originality of the employee, favor from the authorities, internal stress in the team seem to be the most significant factor for intimidation in the workplace. All these reasons can be the basis for harassment. Leymann outlined five stages of the mobbing process: [6]

- disagreement stage: it occurs with a disagreement in a critical incident. It is not a mobbing yet, and if it's resolved, it can easily turn into mobbing.
- aggression stage: The disagreement has not been settled. At this stage, psychological attacks begin.
- institutional power stage: The person, who has been applying mobbing, tries to involve the management into the issue. The management is misdirected by that person and therefore the victim becomes obligated to cope with an organized and institutional power.
- description stage: In this stage the victim has been described and considered as 'ineffective', 'rebellious', 'difficult', 'other', 'opponent' or as a 'person with psychological problems'. With misjudgment and prejudiced manner of the management, this negative cycle accelerates.
- expulsion stage: This stage contains resignation, dismissal and enforcement to change the job. The concussion due to this trauma triggers the stress disorder. Emotional breakdown and later on psychosomatic diseases follow the dismissal. In this stage the victim lives the effects of this trauma not only in his/ her work life, but also in his/her personal life.

Mobbing implies the following methods:[7]

- isolation from informal personal contacts, this method can manifest itself in a situation where the victim is not invited to lunch, to parties, socially ignored.
- information blocking. Employees can intentionally hide or "forget" turn in information concerning the work, does not retell working news, forget to invite to a meeting;
- ignoring success. Employees ignore any achievements of the victim, do not pay attention to their contribution in joint activity. The company's management team systematically leaves the victim without remuneration and promotion;
- verbal aggression against the victim (loaded questions, false statement, evidence-free accusations, gush of anger);
- moving victim's workplace with the aim of moral oppression of the employee;
- taunting and mocking an employee.

All this gives consequences that negatively affect the victim of mobbing. Generally, it may cause physical and mental also behavioral disorders, social problems and economic loss. Sleep disorder, crying spell, loss of concentration, anger and stress, permanent sleep disorders, digestive system disorders, alcohol and drug abuse, treatment expenses, running away or staying away from

job, deep depression, panic attack, myocardial infarction or other serious problems, accidents, violence against third persons, suicide attempts are some of these possible outcomes followed by toxic public relations, resulting in inhibition of the development of both the organization and the government. The loss of labor as a result of psychological harassment in the workplace causes great damage to the country's economy.

Mobbing at the workplace is a wide spread phenomenon in this country. This assertion is proven by the results of the statistical study of mobbing phenomenon in Russia, conducted in 2011 by Eh.A.Ugnich and S.G.Zarzhevsky.[8] The survey was organized in March of 2011 on the Internet, at the "SuperJob" portal. Research participants: economically active population of Russia, older than 18, with work experience (sample size: 5000 respondents). According to the survey results, 45% of the respondents have suffered various mobbing-actions during the last 12 months. The most frequently reported mobbing-activities were as follows:

- unconstructive criticism from a superior (55%).
- reproaches for mistakes and inaccuracy (45%).
- pointless tasks (44%).
- tasks which go beyond the scope of competencies (43,5%)
- shouting, insults (36%).

This study confirms the real spread of mobbing throughout the country.

But the most obvious indicator of the existence of mobbing in Russia are judgments concerning appeals on disciplinary actions and unlawful dismissals. It is in such cases the plaintiffs are intent on proving the mobbing applied to them. Thus, in accordance with Art. 3 of the Labor Code of the Russian Federation[1] "*The persons considering themselves to be discriminated against in the sphere of labor shall be entitled to petition the federal labor inspectorate bodies and/or courts applying for restoration of their violated rights, compensation of the material loss and redress of the moral damage.*" At the same time, the process of proving mobbing in court becomes almost impossible.

If the result of mobbing is the dismissal of an employee, the reasons for dismissal in this case are different: from voluntary redundancy to termination for cause. At the same time, the chief problem of the employee and the major asset of the employer in such disputes is to prove the fact of mobbing. Because the burden of proof lies with the employee in accordance with Article 56 of the Code of the Civil Procedure of the Russian Federation, as well as in accordance with Paragraph 22 of the Resolution of Plenum of the Supreme Court of the Russian Federation of March 17, 2004 No. 2 "On Application by Courts of the Russian Federation of the Labour Code of the Russian Federation"[2].

As part of this work, two judgments were analyzed. In the first case, the employee in his statement of claim appointed that his desire to write a letter of dismissal was not expression of his will, and the letter of dismissal was not written by his hand and in the prayer for relief the plaintiff requested reinstatement in work, recovery of wages, compensation for moral harm (Case No 2-914 / 2018 (Ulyanovsk))[9]. In the second case, the employee in his statement of claim indicated that disciplinary penalties were unreasonably applied, and the plaintiff demanded apology and compensation for moral harm and to repeal the order of disciplinary action (Case No. 2-5995 / 2015 Cheremushkinsky District Court (City of Moscow))[10]. However, in both cases the court dismissed the claim, because plaintiffs could not confirm their charges with evidence because of the difficulty to obtain them. As a result, the plaintiffs' arguments were for the court unconvincing.

Thus, it can be concluded that employee cannot furnish with proofs of harassment, and it turns out that the employer controls and prosecutes, within the law. Courts satisfy workers' demands only in case that employer has committed procedural violations.

To solve problems with mobbing in court, as it has already been clarified, it is necessary to form a reliable evidence base. As a rule, harassment at work is carried out openly. In this regard, the well-timed actions are important: voice recorder; video recording; paper documents the involvement of witnesses; collection of written evidence. All this can help to form a more reliable evidence base.

It is also necessary to grapple with mobbing before court trial. So, for example, when mobbing comes from colleagues, the head of an organization should help to resolve the conflict, perhaps the company's executive chief as a leader can take the mobbing victim for protection, by doing so support the employee and show negative attitude to everything that happens.

As legal arrangements of dealing with various methods of psychological pressure at work, it is possible to suggest inshrining ethical conduct provisions into bylaws or in collective company contracts. It is also possible to include standards of conduct into the terms and conditions of the employment agreement.

Thus, we can say that mobbing is an important issue that needs to be addressed. Since the consequences affect not only the person himself but also the organization, society, and the state. To neutralize all the negative consequences at the Federal level, it is necessary to introduce a mechanism for regulating mobbing and a mechanism for legal protection from mobbing in court. And to achieve the best result, it is necessary to prevent mobbing at its first stage, because despite the fact that mobbing may seem inoffensive compared to rape or other more violent manifestations of physical violence, the effect it produces on the victim is very strong, especially if it lasts for long time. Since it has had tremendous destructive power.

REFERENCES:

1. Labor Code of the Russian Federation of 31 December 2001 (Federal Law No. 197-FZ of 2001).
2. Resolution of Plenum of the Supreme Court of the Russian Federation of March "On Application by Courts of the Russian Federation of the Labour Code of the Russian Federation", 17 March 2004 No. 2 (Bulletin of the Supreme Court of the Russian Federation [Bulleten Verhovnogo Suda Rossiyskoy Federacii] No. March 2004).
3. Ambesh P (2016) Violence against doctors in the Indian subcontinent: a rising bane. *Indian Heart J* 68: 747-750.
4. Altukhova, G.A. Mobbing as an ethical issue // *Bibliotekovedenie*. 1998. N 2. S. 63–70.
5. Chappell D, Martino VD (2000) Violence at work, ILO Report, Paris.
6. Leymann H, ve Gustafsson A (1996) Mobbing at work and the development of post-traumatic stress disorders. *European Journal of Work and Organizational Psychology* 2: 251-275.
7. Skavitin A. Mobbing of personnel: the experience of foreign studies./ A. Skavitin// *Upravlenie personalom*, 2004, no 4.
8. Ugnich Eh.A., Zarzhevskij S.G. Mobbing in the working collective monograph. *Modern human resources management issues/ Eh. A. Ugnich, S.G. Zarzhevskij// Nizhny Novgorod*, 2011.
9. Case No 2-914 / 2018 (Ulyanovsk).
10. Case No. 2-5995 / 2015 Cheremushkinsky District Court (City of Moscow).