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Protection from Violence and Harassment at the Workplace: An Intersectional Approach from a Labour Law Perspective

Maria Giovannone, Fabiola Lamberti *

Abstract: The essay aims to analyse the phenomenon of violence and harassment at work through an intersectional lens, integrating the prevention of this discriminatory phenomenon into general OHS measures. Proposing a discussion to guide research and legal practice through an integrated, intersectional and multidimensional regulatory model, it aims at overcoming the limitations of single-axis approaches and enhancing the synergy between anti-discrimination legislation, OSH protection, privacy law, and social policies. Particular consideration is given to the recent Italian regulatory framework, in the light of the ILO C. n. 190/2019, defining new strategies for the protection of workers in complex and diverse organisational contexts.

Keywords: *Violence and harassment; Discrimination at the workplace; Occupational psychosocial risks; OHS prevention strategies; Gender Equality Certification.*

1. An Intersectional Approach to Violence and Harassment at the Workplace: the Research Rationale

The evolution of the regulatory framework on violence and harassment in the workplace shows a progressive search for consistency between

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Occupational Health and Safety (OSH) regulations and anti-discrimination regulations, highlighting the phenomenological and conceptual complexities of phenomena beyond the traditional one-dimensional categories of discrimination. Over time, Italian labour law has recognised the need to integrate multiple levels of regulation - from civil law to OSH measures, from the European framework to international conventions - in order to address the overlapping forms of vulnerability that characterise contemporary workers¹.

Intersectional approaches pose a methodological and regulatory challenge to traditional EDI models, as they require us to move beyond single-axis approaches, historically focused on individual dimensions such as gender or race, to embrace a complex view of multi-level and articulated vulnerabilities. This enriches existing EDI models by making them more relevant to socio-organisational reality, but at the same time highlights the structural limitations of norms and policies that often only address part of the phenomenon of discrimination².

For this reason, within the disciplinary domain of labour law, an interdisciplinary approach that integrates elements of OSH law, anti-discrimination law and welfare policies efficiently can propose a structured discussion towards an integrated, intersectional and multidimensional model of prevention and protection from violence and harassment in the workplace, overcoming the limitations of single-axis approaches.

Indeed, labour law research highlights how adopting an intersectional approach to vulnerability is a prerequisite for the concrete extension and effective strengthening of protections, capable of avoiding fragmented and partial approaches and promoting work environments characterised by effective inclusion. Intersectionality is particularly evident in the protection against the risks of violence and harassment in the workplace, phenomena that often occur in contexts where discrimination overlaps, generating situations of accentuated marginalisation that escape traditional patterns of analysis and contrast.

¹ For a comparison within the EU 27 Member States, see European network of legal experts in gender equality and non-discrimination, *A comparative analysis of gender equality law in Europe 2025*, European Commission, Brussels, 2026.

² For a more extended reflection on this approach, see also M. Giovannone, F. Lamberti, *Prevention and Remedial Strategies to Tackle Violence and Harassment at Work: An Intersectional Perspective*, in D. Vujadinović, E. Kristoffersson, M. Evola (eds.), *Perspective Law and Gender from an Intersectionality and Diversity Perspective*, Springer Nature, 2026, p. 259 ff.

The limitations of single-axis approaches become clear when considering real situations of intersectional discrimination.

An approach focused solely on gender risks obscuring complex realities where gender, ethnicity, disability, nationality and other factors intersect, excluding individuals exposed to multiple considerations from effective protection mechanisms. Intersectional discrimination amplifies vulnerability in multiple dimensions: it can exacerbate power imbalances, hindering victims from reporting harassment for fear of occupational retaliation; it promotes complex forms of discrimination that combine multiple prejudices, such as gender-based violence intertwined with racial or homophobic epithets. Victims of intersectional discrimination frequently face barriers in reporting and accessing support, exacerbating the psychological and physical impact of harassment.

This contribution aims to analyse, from a systematic perspective and in terms of labour law, how the phenomenon of violence and harassment at work can be understood and managed through an intersectional lens, highlighting recent regulatory interventions, in particular ILO Convention No. 190/2019 ratified by Italy (Law 4/2021), gender equality certification (Law 162/2021 and UNI PdR 125/2022), and Decree Law 159/2025, which expressly integrated the prevention of violence and harassment into general measures for the protection of occupational health and safety.

The concept of harassment, as is well known, has undergone a significant conceptual evolution starting from anti-discrimination legislation. Legislative Decrees No. 215 and No. 216 of 2003, implementing European directives on equal treatment, initially limited the phenomenon to gender discrimination, identifying as harassment any unwanted conduct based on sex with the purpose or effect of violating the dignity of the worker and creating an intimidating, hostile, degrading, humiliating or offensive environment. This definition, combining objective and subjective factors, made it possible to intercept conduct that was formally neutral but determined by organisational dysfunctions. However, the objective scope remained limited to explicitly typified discriminatory factors, thus excluding a multitude of situations in which intersectional vulnerabilities could generate more complex and multidimensional forms of violence.

ILO Convention No. 190/2019 marked a significant conceptual break, providing for the first time at international level a definition of violence and harassment recognised as universally applicable, defining them as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes

gender-based violence and harassment”. This intentionally broad notion transcends the gender-centred perspective of Italian national legislation and opens up the conceptual space to recognise the complex interactions between multiple discriminatory factors, allowing us to understand how discrimination overlaps and amplifies, generating situations of heightened marginalisation that would otherwise be obscured by single-axis analysis.

Harassment and violence, in their many forms, are psychosocial risk factors that have a direct and indirect impact on workers’ physical and mental health, affecting their overall well-being and representing a prejudicial condition of harm that the legal system must recognise and prevent with integrated measures³.

The employer’s obligation to protect health and safety of workers, as provided for in Article 2087 of the Civil Code, historically oriented towards the protection of physical integrity, has gradually evolved towards a comprehensive concept that encompasses physical, mental and social health, in accordance with the definition of the World Health Organisation. Occupational health and safety legislation (Legislative Decree 81/2008) requires employers to assess all risks to the health and safety of workers, including psychosocial risks, and to adopt both named and unnamed prevention and protection measures. From this perspective, violence and harassment are not merely a matter of discrimination, but phenomena that directly affect health and well-being at work and need to be managed through organised primary OSH systems.

Decree Law 159/2025 reinforces this obligation by including in Article 15, paragraph 1, letter z-bis, an express provision concerning the planning of measures to prevent violent or harassing behaviour towards workers in the workplace. This regulatory innovation supplements general protection measures with specific programmes addressing the risk of violence and harassment, recognising the multidimensional nature of these phenomena. ILO Convention No. 190/2019 and subsequent technical standardisation instruments (UNI ISO 45003:2021, UNI ISO 30415:2022, UNI PdR 125/2022) promote an integrated and multi-sectoral approach that values risk assessment as a dynamic and circular tool, designed to identify and

³ For a comprehensive analysis of the ILO Convention n. 190/2019 and the integration between anti-discrimination and OHS law, see E. Ales, *Violence and Harassment Convention (No. 190)*, in E. Ales, M. Bell, O. Deinert, S. Robin Olivier (eds.), *International and European Labour Law. A Commentary*, Beck – Mart – NOMOS publishing, forthcoming, 2026.

intervene on all factors that expose workers to discrimination, harassment, violence or abuse, including intersectional components.

The most current risk management methodologies leverage tools such as Organisational Management Models (MOG), Occupational Safety Management Systems (SGSL), codes of conduct and protected reporting procedures. These are essential tools for effectively implementing the intersectional dimension of protection. Risk assessment thus moves away from a reductive model to become a holistic system that considers the combination of vulnerability factors, power relations, organisational conditions and individual characteristics, promoting respectful and inclusive work environments. The inclusion of systematic training on unconscious bias and anonymous and protected reporting mechanisms allows for the creation of an organisational culture based on respect and participation, which are fundamental to the success of EDI policies.

Gender equality certification, introduced on 1 January 2022, is a tool aimed at promoting, among other things, concrete and effective policies for the prevention of violence and harassment through inclusive organisational models and specific performance indicators. UNI PdR 125/2022, for example, requires organisations to carry out an extensive assessment of the risk of harassment throughout the entire working career, from recruitment to retirement, to adopt specific prevention and management plans, to provide training on zero tolerance at all levels and to establish protected reporting channels. However, the Italian gender equality certification system still has substantial gaps in the integration of intersectional discrimination within its regulatory framework, continuing to focus primarily on binary gender issues and marginalising other forms of discrimination.

An innovative approach therefore requires the reformulation of assessment criteria and certification procedures in an intersectional manner, through the introduction of indicators and methodologies capable of addressing complex situations where multiple vulnerabilities intersect. The collection and analysis of company data should necessarily consider other risk factors for discrimination such as age, disability, nationality and others; inclusion indicators should be structured to highlight multiple and intersectional forms of discrimination; training should focus not only on zero tolerance but also on awareness of intersectionality; reporting mechanisms should also ensure protection for those facing multiple forms of discrimination.

The prospective evolution appears to be hopefully oriented towards an expansion of both the objective and subjective scope of the discipline through the introduction of indicators and procedures that take into

account multiple and intersectional discrimination, in line with the most recent European directives and international best practices. Updating Key Performance Indicators, assessment and audit procedures, together with specific training on unconscious bias and intersectional discrimination at all organisational levels, could be a strategic lever for increasing the effectiveness of inclusion policies and ensuring comprehensive and effective protection for workers against all forms of discrimination, violence and harassment.

Anti-discrimination provisions are essential but insufficient tools, which must be supplemented by regulatory frameworks concerning privacy, occupational health and safety, immigration and welfare, combined with technical regulatory tools, including voluntary ones, to build a cohesive network of protections that responds to new forms of overlapping vulnerability.

In conclusion, the paper proposes a structured discussion to guide research and legal practice towards an integrated, intersectional and multidimensional model of prevention and protection from violence and harassment in the workplace, overcoming the limitations of single-axis approaches and enhancing the synergy between anti-discrimination legislation, OSH protection, privacy law, and migration and social policies, with particular consideration given to recent Italian legislation, with the aim of defining new effective strategies for the protection of workers in complex and diverse organisational contexts.

Harassment and violence, in their many forms, constitute psychosocial risk factors with direct and indirect impacts on workers' physical and mental health, affecting their overall well-being and creating a harmful situation that the legal system must recognise and prevent through integrated measures⁴.

2. An Overview on the Italian Regulatory Framework

Management of gender mainstreaming has become increasingly important for fulfilment of the employer's Occupational Health and Safety (OSH)

⁴ On the integration between OHS and gender equality within institutional and company policies see Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Gender Equality Strategy 2026-2030*, COM(2026) 113 final, Brussels, 05.03.2026.

obligation, as well as within the framework of anti-discrimination legislation⁵.

This trend is reflected in the development of legislation on violence and harassment in the workplace. However, anti-discrimination legislation refers to gender-based violence and harassment and does not support adoption of an intersectional approach to identifying and combating this phenomenon. In contrast, ILO Convention No. 190 promotes the adoption of a cross-sectoral and multi-factor approach. In Italy, as will be explained, there are several risk assessment tools that lead companies to adopt an intersectional approach because they focus on a procedurally-based management of multifactorial risk.

In Italy, there are strong links between occupational OSH regulations and the promotion of gender equality,⁶ also in the field of violence and harassment in the workplace⁷. This matter was originally introduced by the 2003 anti-discrimination regulation⁸ and the “Equal Opportunities Code”⁹ and further fine-tuned by the European Framework Agreement of

⁵ On discrimination and equal opportunities in the private as in the public sector see M. Barbera, *Discriminazione e pari opportunità (diritto del lavoro)*, Enciclopedia del Diritto. VII, 2014, pp. 377-395; M. V. Ballestrero, S. Borelli, R. Santagata de Castro, I. Daniela, *Sesso, genere, discriminazioni: riflessioni a più voci (Parte I)*, in *LD*, 2022, 3, pp. 497-518; A. Zilli, *Che genere di autonomia?*, in *LDE*, 2021, 3, pp. 1-13; V. Fili, *Brevi riflessioni su differenziale di genere e discriminazioni indirette nel sistema italiano di sicurezza sociale*, in *Equal - Rivista di diritto antidiscriminatorio*, 2024, 1, pp. 45-60; M. Peruzzi, *La discriminazione algoritmica*, in *Equal - Rivista di diritto antidiscriminatorio*, 2024, 1, pp. 7-24; L. Valente, *Il lavoro delle donne, ieri ed oggi. Dall'accesso al mercato del lavoro alla direttiva Ue sulla trasparenza salariale*, in *Equal - Rivista di diritto antidiscriminatorio*, 2024, 1, pp. 61-70; S. Ciucciovino, *Il gender pay gap nella pubblica amministrazione, dalle regole all'innovazione organizzativa*, in *Equal - Rivista di Diritto Antidiscriminatorio*, 2024, 5, pp. 405-420; E. Ales, *Discriminazioni (di genere e lavoro)*, in T. Addabbo, T. Casadei, T. Fabbri, C. Mussi, C. Robustelli, C. Serra (eds.), *Promuovere la parità di genere nelle istituzioni pubbliche e private*, Mucchi Editore, 2024, pp. 27-55; E. Ales, *Parità di genere e lavoro*, in T. Addabbo, T. Casadei, T. Fabbri, C. Mussi, C. Robustelli, C. Serra (eds.), cit., pp. 55-63.

⁶ An historical sectoral function has been flanked by the corporate compliance function dictated by the technical standards applicable in voluntary certification paths relating to the protection of health and safety at work (UNI 45.000:2018) and gender equality (UNI/PdR Guidelines 125:2022).

⁷ For a comparison of the relevant legislative development in national legal systems, J. Heymann, G. Moreno, A. Raub, A. Sprague, *Progress Towards Ending Sexual Harassment at Work? A Comparison of Sexual Harassment Policy in 192 Countries*, in *Journal of Comparative Policy Analysis: Research and Practice*, 2023, 25, pp. 172-193.

⁸ Legislative Decrees No. 215/2003 and No. 216/2003.

⁹ Legislative Decree No. 198/2006.

April 26, 2007.¹⁰ Important signs of integration can also come from the Gender Equality Certification process¹¹.

Furthermore, the obligation to assess and manage harassment derives from the protection of the worker's "moral personality" referred to in Article 2087 of the Civil Code. This Article defines the primary obligation of the employer in matters of health and safety at work¹². Harassment is a psycho-social risk related to working conditions, work organisation and discriminatory phenomena¹³.

Completing the picture is Law No. 4 of January 15, 2021 ratifying ILO Convention No. 190 concerning the Elimination of Violence and Harassment in the World of Work.¹⁴ Recently, we are seeing the first

¹⁰ Transposed into Italian law by the "Framework Agreement on Harassment and Violence in the Workplace" signed by Confindustria, CGIL, CISL and UIL, 25 January 2016.

¹¹ UNI/PdR Guidelines 125:2022, point 6.3.2.6. See Art. 46-bis of Legislative Decree No. 198/2006 implementing Law No. 162/2021. On the instrument of gender equality certification, L. Casano, *Certificazione della parità di genere e trasparenza: riflessioni a margine della prima attuazione del sistema*, in *EQUAL - Rivista di Diritto Antidiscriminatorio*, 2024, 2, pp. 161-177; F. Lamberti, *I Key Performance Indicators della certificazione della parità di genere. Una lettura critica*, in *Federalismi - Focus LPT*, 2023, 9, pp. 212-241.

¹² It is important to highlight that the moral personality of the employee includes the dignity of the employee that may have been injured by the vexatious conduct. See M. Nicolosi, *Molestie e molestie sessuali sul lavoro: strumenti e tecniche di tutela e di prevenzione*, in *EQUAL - Rivista di Diritto Antidiscriminatorio*, 2024, 3-4, pp. 279-297; M. Giaconi, *Le molestie nei confronti delle lavoratrici*, in *Questione Giustizia*, 2022, 4, pp. 119-133; G. Santoro Passarelli, *Il diritto del lavoro a cinquanta anni dallo Statuto dei lavoratori*, in *RIDL*, 2020, 2, pp. 101-133; G. Santoro Passarelli, *Civiltà giuridica e trasformazioni sociali nel diritto del lavoro*, in *DRI*, 2019, 2, pp. 417-467. On the protection of personal dignity under Article 2087 of the Civil Code, P. Albi, *Adempimento dell'obbligo di sicurezza e tutela della persona*, Giuffrè, 2008.

¹³ As Recommendation No. 206, para. 8 points out. By contrast, work-related stress is often caused by psychological harassment. On this point, European Parliament Resolution of 15 December 2011 on the mid-term review of the European strategy 2007-2012 on health and safety at work (2011/2147 (INI)). Also, among the ten psychosocial risks, EU-OSHA lists violence, both physical and psychological, also qualified by phenomena such as bullying and harassment. On this point, M. Peruzzi, *La valutazione del rischio da stress lavoro-correlato*, in *I Working Papers di Olympus*, 2011, 2, pp. 1-46. Harassment is a clear risk factor for workers' mental health. See K. J. Blindow, E. Cedstrand, D.L. Elling, M. Hagland, T. Bodin, *Gender-based violence and harassment at work and health and occupational outcomes. A systematic review of prospective studies*, in *BMC Public Health*, 2024, 24, p. 1788.

¹⁴ On this see M. Giovannone, F. Lamberti, *Il rischio violenza e molestie nella disciplina prevenzionistica e nella certificazione della parità di genere*, in *DSL*, 2023, 2, pp. 1-35; G. Pistore G., *La considerazione del genere nella prospettiva prevenzionale*, in E. D'Avino, D. de Gennaro, L.

steps towards incorporating the Convention into national law within the 2025 State-Regions Agreement,¹⁵ which regulates OSH training in Italy. The Agreement provides for a training obligation for employers and managers on the prevention of violence and harassment, as regulated by Convention No. 190. It therefore appears that the new international standards are becoming more operational, at least in the OSH field¹⁶.

Harassment at work is a deep-rooted social phenomenon¹⁷. Consequently, it needs to be delimited on a substantive and remedial level. Furthermore, violence and harassment at work must be viewed not only as a gender issue. Other types of discrimination (race, ethnicity, disability, etc.) and non-typical discrimination (hierarchical position at work, maternity, etc.) may also play a role. These are factors that can contribute to altering power relations and leading to forms of abuse in the workplace¹⁸.

Actually, legislative intervention has been called for to concretely implement the ILO Convention¹⁹. This is also functional to introducing a delimitation of employer obligations in the face of phenomenologically “fluid” risks. In fact, psychosocial risks arise from poor design,

Inno, G. Vicentini (eds.), *Worklife balance e gender equality tra diritto e prassi. Quadro normativo, profili organizzativi e sfide applicative*, Caucci Editore, 2025, pp. 211-221.

¹⁵ Official Gazette of the Italian Republic No. 199 of May 24, 2025.

¹⁶ M. Giovannone, *Violenza e molestie sul lavoro nella regolazione multilivello: tra disciplina antidiscriminatoria e tutela prevenzionistica*, in S. Ciucciovino, M. Giovannone (eds.), *Dimensioni e questioni della disuguaglianza di genere. Studi multidisciplinari*, Roma Tre Press, 2025, pp. 309-332.

¹⁷ ILO, *Experiences of violence and harassment at work: A global first survey*, Geneva, 2022. At national level, Istat, *Le molestie e i ricatti sessuali sul lavoro. Anni 2015-2016*, 13 February 2018; Istat, *Le molestie: vittime e contesto. Anno 2022-2023*, 1 July 2024. See also C. Pagano, F. Deriu, *Analisi preliminare sulle molestie e la violenza di genere nel mondo del lavoro in Italia*, ILO, Ufficio per l'Italia e San Marino, 2018.

¹⁸ K. Crenshaw, *Demarginalizing the Intersection of Race and Sex. A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, in *University of Chicago Legal Forum*, 1989, 1, pp. 139-167. N. Y. Davis, *Intersectionality and Feminist Politics*, in *European Journal of Women Studies*, 2006, 13, 3, pp. 193-209. L. McCall, *The Complexity of Intersectionality*, in *Journal of Women in Culture and Society*, 2005, 3, pp. 1771-1800; A. Loretoni, *Un femminismo intersezionale e multidisciplinare*, in *Iride*, 2018, 2, pp. 307-317.

¹⁹ Opposed to the introduction of special offences, C. Alessi, *La Convenzione Ilo sulla violenza e le molestie sul lavoro*, in *LD*, 2023, 3, pp. 577-593. S. Scarponi, *La nozione di molestie nel diritto del lavoro: uno strumento di qualificazione anche nei confronti del mobbing*, in S. Scarponi (ed), *Il mobbing: analisi giuridica interdisciplinare*, Cedam, 2009, p. 29 ff., had already pointed out that the notion of “harassment”, contained in the anti-discrimination regulation, can be considered a specification of the prevention obligation under Article 2087 of the Civil Code.

organisation and management, as well as from an inadequate social work environment. For this reason, they are considered more challenging to manage than “traditional” OSH risks²⁰. This “fluidity” may condition exact fulfilment of the OSH obligations, which in Italy hinges on Article 2087 of the Civil Code and is precariously balanced between “named” and “unnamed” safety measures²¹. As mentioned before, the OSH provisions reinforce the employer’s obligation to assess and manage the risks of violence and harassment²². However, it is specified that the violence and harassment are considered by virtue of the concrete possibility of manifesting themselves in correlation with work²³ and by virtue of a necessary criterion of reasonableness²⁴.

It is important to highlight that OSH risk assessment must also take into account other factors of “vulnerability” that intersect with factors of discrimination: not only gender, but also disability and age, without neglecting the preventive measures provided for foreign workers²⁵. Therefore, it can be said that the OSH management system adopts an intersectional perspective that is familiar to anti-discrimination law²⁶. In turn, regulatory incorporation of the obligation to assess the risk of violence and harassment in the Risk Assessment Document (DVR) can support the company in fully implementing the prohibition of discrimination. The document must contain an assessment of risk factors linked to subjective vulnerabilities, which are also factors of discrimination, as well as a set of measures aimed at preventing them.

²⁰ As shown by the results of the European Survey of Enterprises on New and Emerging Risks - ESENER (EU-OSHA). Link: <https://osha.europa.eu/en/facts-and-figures/esener>.

²¹ On the distinction between named and unnamed measures, Civil Cass., 21 July 2023, Order No. 21955.

²² Articles 17(1)(a) and 28(1) of Legislative Decree No 81/2008.

²³ Italian jurisprudence is consolidated on this point, with reference to the subject of risks from third-party activities. *Ex plurimis* Cass., 20 April 1998, No. 4012; Cass., 6 September 1988, No. 5048; Cass., 17 July 1999, No. 7768; Cass., 8 April 2013, No. 8486; Cass., 11 April 2013, No. 8855. In this sense, also the definition of “aggravated generic risks”. See Interpello 11/2016, Ministry of Labour - Interpelli Commission.

²⁴ On the subject A. Pizzoferrato, *Molestie sessuali sul lavoro. Fattispecie giuridica e tecniche di tutela*, Cedam, 2006.

²⁵ See Article 1 of Legislative Decree No 81/2008.

²⁶ On the importance of both subjects, D. Collier, *Protection from Sexual Harassment*, in G. Davidov, B. Langille, G. Lester (eds.), *The Oxford Handbook of the Law of Work*, Oxford University Press, 2024, pp. 575-588.

3. Harassment at Work: a Conceptual Evolutionary Perspective

Under the Italian legal framework, harassment at the workplace is an evolutionary concept first taking its cue from European anti-discrimination law²⁷. More specifically, Legislative Decrees No. 215 and No. 216 of 2003 equated harassment with discrimination²⁸. Moreover, a useful reference can be found in Article 26 of the Equal Opportunities Code²⁹.

According to Article 26, harassment is considered discrimination, i.e. unwanted conduct, carried out for reasons related to sex, with the purpose or effect of violating the dignity of a female or male worker and of creating an intimidating, hostile, degrading, humiliating or offensive climate³⁰. This definition encompasses unintentional conduct that has a discriminatory effect, combining objective and subjective factors that intercept even apparently neutral conduct in organisational contexts³¹. This notion places alongside the injury to dignity a concept of “environmental harassment”³² that takes into account the physical and

²⁷ Anti-discrimination law has often filled the gaps in sectoral disciplines, as F. Pollicino, *Maltrattamenti, mobbing o molestie? Il risarcimento del danno nel diritto antidiscriminatorio*, in *LDE*, 2022, 2, pp. 1-13 points out. Also, in ILO practice on gender equality see J. Aeberhard-Hodges, *Workplace gender equality as a human right: the ILO approach*, in J. R. Bellace, B. ter Haar (eds.), *Research Handbook on Labour, Business and Human Rights Law*, Edward Elgar, 2019, pp 274-293.

²⁸ On the notions of harassment and sexual harassment, L. Lazzeroni, *Molestie e molestie sessuali: nozioni, regole, confini*, in M. Barera (ed) *Il nuovo diritto antidiscriminatorio. Il quadro comunitario e nazionale*, Giuffrè, 2007, p. 379 ff.

²⁹ Legislative Decree No. 198 of April 11, 2006. The Equal Opportunities Code has transposed Directive 2002/73/EC, later replaced by Directive 2006/54/EC.

³⁰ The same article of the law, in paragraph section 2, indicates the sub-species of “sexual harassment”, which refers to unwanted conduct with sexual connotations in physical, verbal or non-verbal form. On the equation between harassment and discrimination, see G. De Simone, *La nozione di discriminazione diretta e indiretta*, in M. Barbera (ed.), *La riforma delle istituzioni e degli strumenti delle politiche di pari opportunità (D.Lgs. 23 maggio 2000, n. 196). Commentario sistematico al decreto legislativo 23 maggio 2000, n. 196*, *Leggi civ. comm.*, 2003, 3, p. 711.

³¹ S. Scarponi, *La nozione di molestie nel diritto del lavoro: uno strumento di qualificazione anche nei confronti del mobbing*, in S. Scarponi (ed.), *Il mobbing: analisi giuridica interdisciplinare*, Cedam, 2009, pp. 29 ff.; S. Scarponi, *La convenzione oil 190/2019 su violenza e molestie nel lavoro e i riflessi sul diritto interno*, in *Rivista giuridica del lavoro e della previdenza sociale*, 2021, 1, pp. 23-39.

³² L. Calafà, *Le violenze e le molestie nei luoghi di lavoro: il poliedrico approccio del diritto del lavoro gender oriented*, in M. Tremolada, A. Topo (eds.), *Le tutele del lavoro nelle trasformazioni dell'impresa*, Cacucci, 2019, pp 477-491.

psychological risks caused by the hostile and degrading working climate³³. It is important to highlight that the legislation has an explicit limitation, namely that harassment and violence are identified solely as gender discrimination linked to sex. As such, it does not support the adoption of an intersectional approach.

In addition, it should be noted that the definition generates uncertain interpretative and applicative implications arising from the effort to assess such “undesirable” behaviour, which is conditioned by individual perception of the facts. This is a subjective element which is not always clearly weighed by means of measurable evaluative parameters³⁴. Therefore, the judgment could focus to a lesser extent on the multiple factors of discrimination that have caused the conduct in question.

Italian jurisprudence has attempted to fill this gap by introducing symptomatic indices of an organisational nature to support the judgement on the existence of harassment in work contexts³⁵. In fact, apparently

³³ On the organisational dimension of the risk of violence and harassment, L. F. Fitzgerald, L. M. Cortina, *Sexual Harassment in Work Organizations: A View from the 21st Century*, in B. T. Cheryl, W. Jacquelyn (eds), *APA Handbook of the Psychology of Women: Perspectives on Women's Private and Public Lives*, APA Handbooks in Psychology, 2018, pp 215-234.

³⁴ This critical issue risks increasing the burden of proof on the plaintiff, who must express their disappointment with the behaviour of others. At the same time, the defendant must also provide an objective reconstruction of the facts, which is not always sufficient to assess whether the behaviour was “undesirable”. On this subject, L. Lazzeroni, *Molestie e molestie sessuali: nozioni, regole, confini*, cit., p. 379 ff. Some authors have pointed out that the establishment of unlawful conduct is independent of the subjective conditions and the victim's ability to react or succumb. See F. Amato, M. V. Casciano, L. Lazzeroni, A. Loffredo, *Il mobbing*, Giuffrè, 2002. Similarly, on the case of mobbing, the Supreme Court has highlighted the irrelevance of the existence of reciprocal conflict or of an attitude of succumbing to the vexatious behaviour. Cf. Civil cassation, sec. VI, October 6, 2022, No. 29059. L. Corazza, *Mobbing e discriminazioni*, in M. Pedrazzoli (ed.) *Vessazioni e angherie sul lavoro. Tutele, responsabilità e danni nel mobbing*, Zanichelli, 2007, p. 91 highlights the need to identify company-wide standards of behaviour to facilitate objective assessment of undesirable conduct.

³⁵ Consider, for example, the high turnover of female staff in a company (Cass. civ., 15 November 2016, No. 23286). On the easing of the burden of proof in anti-discrimination law, see S. Scarponi, *La parità di genere nel lavoro e le nuove frontiere dell'antidiscriminazione*, in Scarponi S. (ed.), *Diritto e genere. Temi e questioni*, Università degli Studi di Trento, 2020, pp 74 ff. This jurisprudential practice anticipated the organisational circumstances specified by the recent paragraph 2 *bis*, Article 25 of the Equal Opportunities Code, introduced by Law No. 162/2021. Under this provision, discrimination constitutes any treatment or change in the organisation of working conditions and times that determines a condition of disadvantage or limitation to working life.

neutral organisational decisions may place a worker at a particular disadvantage compared to other workers. Not only for reasons related to gender but also in relation to other factors of discrimination.

For its part, the 2007 Framework Agreement broadened the scope of the subject beyond anti-discrimination law. However, it refers to situations where “one or more workers or managers are repeatedly and deliberately abused, threatened and/or humiliated in circumstances relating to work.”³⁶ Thus, two elements are relevant: the intention to cause harm and the repetitive nature of the conduct.

The conceptual evolution of harassment at work found new life in the ILO Convention No. 190/2019³⁷. Therefore, the definition contained in the Convention is trans-typical because it encompasses both violence and harassment. This includes all cases of jurisprudential matrix scattered in the Italian legal system³⁸. In fact, over time Italian case law has identified several very similar types of offences (harassment, mobbing, bossing, straining, etc.) which are subject to different elements of proof³⁹.

According to the Convention, violence and harassment are “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”⁴⁰. The notion expands the objective and subjective scope as much as possible⁴¹. It covers occasional and systemic conduct, but also the mere threat of such conduct, and not only in (physical and digital) workplaces but also on the occasion of work, in

³⁶ European Framework Agreement on Harassment and Violence at Work, BUSINESSEUROPE, UEAPME, CEEP, ETUC, 2007. The Framework Agreement was transposed in Italy by Confindustria, CGIL, CISL and UIL on January 25, 2016.

³⁷ On the subject, G. Casale, *Il diritto ad un mondo del lavoro libero da violenze e molestie*, in *LDE*, 2023, 1, pp. 1-11.

³⁸ On the breadth of the notion, S. Scarponi, *Dopo la ratifica della Convenzione OIL n. 190/2019 su violenza e molestie nei luoghi di lavoro: un cantiere normativo ancora aperto*, in *Labour Law Community*, 2022. The Convention states that the conceptual distinction between violence and harassment is left to the discretion of national jurisdictions (Art. 1(2)).

³⁹ D. Tambasco, *Violenza e molestie nel mondo del lavoro. Un'analisi della giurisprudenza del lavoro italiana*, ILO, Ufficio per l'Italia e San Marino, 2022.

⁴⁰ Art. 1(1)(a). The introduction of a unifying notion of violence and harassment is positive.

⁴¹ M. Sahan, *The First International Standard on Violence and Harassment in the World of Work*, in *Business and Human Rights Journal*, 2020, 5, pp. 289-295; J. Pillinger, R. R. Runge, C. King, *Stopping Gender-Based Violence and Harassment at Work: Campaign for an ILO Convention*, Agenda Publishing Limited, 2022.

connection with work and in relation to harassment arising from work⁴². This concept opens up an intersectional perspective. It does not only cover phenomena linked to gender, as in Italian anti-discrimination law, but refers to all violence and harassment that may arise from multiple factors of discrimination.

The definition enjoys neutrality *ratione materiae*. The Convention and its Recommendation No. 206/2019 require Member States to address violence and harassment in the world of work in all relevant policies and legislation, in the fields of labour, employment, OSH, equality and non-discrimination at work, immigration and, where appropriate, in criminal law⁴³.

However, it is worth noting that this definition is not without its critical aspects. First of all, on the one hand, the description of conduct as “unacceptable” – instead of “undesirable” – does not resolve, the problems relating to assessment of the subjective disliking of others’ conduct⁴⁴. In fact, the definition relies on a kind of social appreciation of conduct, which is anything but objective. Furthermore, the absence of any reference to subjective perception could lead national case law to downplay the victims’ point of view as a central element on which to base the judgment.

Then, on the other hand, it seems more useful to identify specific unacceptable conduct in advance. To this end, it is necessary to determine (and to the extent possible define) what conduct is or is not acceptable in order to better identify the conduct to be prevented and prosecuted in working contexts. In this regard, a prominent role could be played by collective agreements and codes of conduct, especially if negotiated⁴⁵. Not coincidentally, the Convention states that employers must identify risks in

⁴² Art. 3. Moreover, protection standards have a strong universal vocation because they cover everyone who comes into contact with a business for work purposes in the formal and informal economy (Art. 2).

⁴³ Art. 11(1), Convention No. 190; “Fundamental Principles”, section 2, Recommendation No. 206.

⁴⁴ On the objectionable prevalence of subjective factors over organisational ones that give rise to overall discriminatory patterns, V. Schultz, *The Sanitized Workplace Revisited*, in M. Albertson Fineman, J. E. Jackson, A.P. Romero (eds), *Feminism and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations*, Ashgate, 2009, pp 65-90.

⁴⁵ On this topic, E. Ales, in his speech entitled “Il quadro di sintesi sulla convenzione ILO su violenza e aggressioni”, in the seminar “Rischi psicosociali, innovazione digitale e aggressioni”, Festival Internazionale della Salute e Sicurezza sul Lavoro, June 22, 2023; Id., “L’attuazione della Convenzione ILO 190 in Italia dopo la legge di ratifica”, during the initiative “Violenza e molestie nel mondo del lavoro. Convenzione ILO 190, ruolo del sindacato e strategie di prevenzione”, UIL, Rome, July 19, 2023.

consultation with workers and their representatives⁴⁶. Involvement of workers and their representatives could effectively remedy the “information gap” on critical relational and organisational issues that can lead to discriminatory behaviour.

Also, an excessively person-centred approach emerges, since personal damages of a different nature are taken into account without any explicit reference to the environmental factors provided for by anti-discrimination law⁴⁷. This aspect is critical because assessment of organisational elements contributes to the emergence of multiple factors of discrimination, regardless of the actual damage caused.

In the national legal system, the Convention does not add much to the provisions of the OSH discipline, which already cover any type of risk, including those of an organisational and psycho-social nature⁴⁸. Therefore, the employer is obligated to assess and prepare the appointed and unnamed prevention and protection measures⁴⁹. Likewise, the concept of

⁴⁶ Artt. 8(b)-9(a). On trade union initiatives in this regard, most recently ILO, *Violence and harassment in the world of work. Trade union initiatives, strategies and negotiations since the adoption of the Convention on Violence and Harassment (No. 190) and its Recommendation (No. 206)*, 2019, Geneva, 2024. In doctrine, M. Sahan, *The First International Standard on Violence and Harassment in the World of Work*, cit., pp. 289-295.

⁴⁷ These factors go back to the preamble, where it is recognised that violence and harassment “impacts negatively on the organization of work, workplace relations, worker engagement, enterprise reputation, and productivity.”

⁴⁸ Art. 2(1)(q), Legislative Decree No 81/2008. See also Art. 15, Legislative Decree No 81/2008 and Art. 6, Directive 89/391/EEC. The extension of protections to a broad spatial and temporal dimension of work performance and to unlawful conduct perpetrated through the use of digital tools is also not new. S. Renzi, *Digitalizzazione del lavoro e rischi psicosociali*, in R. Del Punta, D. Gottardi, R. Nunin, M. Tiraboschi (eds), *Salute e benessere dei lavoratori: profili giuslavoristici e di relazioni industriali*, ADAPT University Press, 2020, pp 119-136.

⁴⁹ Article 2087 of the Civil Code and Article 28 of Legislative Decree No. 81/2008 (Occupational Health and Safety Consolidation Act). The Italian legal system embraces an integral notion of health that derives from the unitary concept of physical, mental and social well-being drawn up by the WHO. Cf. Article 2(o) of Legislative Decree No 81/2008. On this subject, B. Caruso, *L'Europa, il diritto alla salute e l'ambiente di lavoro*, in *DLRI*, 1997, 75, pp. 435-478. Recently, the European Parliament Resolution of July 5, 2022 on Mental Health in the Digital World of Work highlighted the need to adopt “a fresh and broader definition of health and safety at the workplace, which can no longer be separated from mental health” (lett. G).

The OSH obligation is dynamic, because it evolves according to the progressive development of working conditions and scientific research on occupational hazards. On this point, ECJ, *Commission v. Italian Republic* (C-49-00, November 15, 2010). The obligation to assess all risks to the safety and health of workers operates in implementation of the principle of universal health protection under Article 32 of the

violence and harassment contained in the Convention could positively influence anti-discrimination protection, because it is more open to a “multifactorial” assessment of the phenomenon, whereas European (and Italian) anti-discrimination law relegates violence and harassment to a gender issue.

4. Developing a Preventional Approach and Improving Remedial Strategies

The Convention clearly goes beyond anti-discrimination tools in favour of preventional ones. Indeed it urges people to work out protections starting from the employer’s duty to adopt an integrated primary prevention organisational strategy for prevention and anti-discrimination purposes⁵⁰. States must ensure that employers take preventive measures that are appropriate and proportionate to their level of control⁵¹. Furthermore, employers must include violence and harassment in their OSH management⁵².

Moreover, the Italian anti-discrimination regulations recall the employer’s duty to protect the health and safety of workers from the phenomena of (sexual) harassment at work⁵³. Along the same lines, the recent Directive (EU) 2024/1385 also imposes an employer’s obligation to inform supervisory staff “how to recognise, prevent and address sexual harassment at work”⁵⁴.

Constitution, in line with the objective scope promoted by international (e.g. ILO Convention No. 155/1981) and European (Directive 89/391/EEC) regulatory acts. On this point, O. Bonardi, *Oltre lo stress: i nuovi rischi e la loro valutazione globale*, in *LD*, 2012, 2, pp. 291-317. On the subject, see also P. Pascucci, *Dopo la legge n. 123 del 2007. Titolo I del d.lgs. 9 aprile 2008, n. 81 in materia di tutela della salute e della sicurezza nei luoghi di lavoro*, in *WP CS CSDLE “Massimo D’Antona”*, 2008, 73, 1-165.

⁵⁰ Indeed, violence and harassment are not a purely individual but a collective issue. Cf. L. Corazza, *Diritto antidiscriminatorio e oltre: il lavoro delle donne come questione redistributiva*, Relazione al XXI Congresso nazionale Aidlass, 2024, p. 30.

⁵¹ Also, Member States are called upon to adopt laws and regulations prohibiting violence and harassment at work and to introduce appropriate measures to prevent such unlawful conduct (Arts. 7 and 8.)

⁵² Art. 9.

⁵³ Art. 1, par. sec. 218, letter b), l. 27 December 2017, No. 205, amending art. 26, par. 3b, Equal Opportunities Code.

⁵⁴ Art. 36(6), Directive (EU) 2024/1385 of the European Parliament and of the Council of May 14, 2024 on combating violence against women and domestic violence (OJEU, 24.5.2024). However, while in the original proposal this information was also to cover specific risk assessment, this reference was removed in the final text. See Art. 37(3),

We are faced with hard-won multidisciplinary regulatory fragments that need an effort at rationalisation⁵⁵. In any case, their reconstruction shows that the OSH discipline is becoming an instrument of anti-discrimination law, especially from a gender perspective⁵⁶.

Looking at remedial perspectives, the Convention does not alter the competition between the respective instruments of protection⁵⁷. The ILO Convention takes a more open view of the recognition of so-called “non-pecuniary damage” than the Equal Opportunities Code⁵⁸. However, the demonstration of the correlation between socially “unacceptable” behaviour and the potential harmful effect on the victim is important, whereas the anti-discrimination discipline emphasises environmental factors.

Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence (COM(2022) 105 final, Strasbourg, 8.3.2022). Evidently, the inclusion of harassment in an enterprise risk assessment still meets with many diverging opinions. This is because, as already highlighted, these risks are difficult to identify in occupational health and safety management, since they are greatly influenced by organisational, relational and subjective factors that can lead to discriminatory behaviour and/or decisions that are harmful to workers’ health and safety.

⁵⁵ V. Pasquarella, *La violenza di genere attraverso la lente del giuslavorista. Azioni di tutela e strumenti a supporto della vittima*, in VTDL, 2020, pp. 1485-1511; D. Izzi, *La discriminazione di genere rivisitata e il puzzle da ricomporre*, in LD, 2022, 36, pp. 512-518.

⁵⁶ C. Lazzari, *Salute e lavoro: questioni di genere*, in RGL, 2021, 2, pp. 226-235.

⁵⁷ These instruments are grounded in the sectoral civil law provisions, alongside the (more widely used) criminal law instruments. On this trend, S. Capellari, M.D. Ferrera, *Contrasto alla violenza di genere e diritto ad un ambiente di lavoro salubre: riflessioni introduttive*, in S. Capellari, M.D. Ferrera (eds.), *Tutela della salute e contrasto alla violenza nei confronti delle donne: problemi aperti e strategie di intervento*, EUT, 2022, pp. 9-17. In Italy, reference is made, on the one hand, to civil law regulations on the subject of the employer’s contractual and extra-contractual liability (Articles 2087, 2043 and 2049 of the Civil Code). On employer’s liability and psychosocial risks see M. Giovannone, *Responsabilità datoriale e prospettive regolative della sicurezza sul lavoro. Una proposta di ricomposizione*, Giappichelli, 2024; M. Giovannone, *Safety at work, new risks, and employer liability: prospects for post-Covid-19 regulation in Italy*, in *Italian Labour Law e-Journal*, 2021, 1, pp. 123-146; M. Giovannone, *La responsabilità datoriale in materia prevenzionistica: emergenza Covid-19 e nuovi rischi*, in RDSS, 2021, 3, pp. 577-600. On the other hand, reference is made to the complex of injunctive, restorative (including extrajudicial) and compensatory actions that can be brought against discriminatory conduct (Articles 26, 36, 38, 40 and 41-bis, Equal Opportunities Code).

The criminal relevance of harassment will not be explored here. On the subject, M. Solinas, *Mobbing e maltrattamenti. Quali limiti ai possibili riverberi penalistici di un illecito civile multiforme*, in *Responsabilità civile e previdenza*, 2019, 84, pp. 528-555. In Italy, in most cases, harassment at work integrates the crime of sexual violence (Cass., March 27, 2014, No. 36704; Cass., September 26, 2013, No. 42871) or private violence (Cass., February 24, 2017, No. 29261).

⁵⁸ Chapter V.

In the discriminatory logic, the victim of harassment can ask the judge for compensation for damages, including non-pecuniary damages linked to the injury suffered and, if the conduct has had repercussions on his or her state of health, it is also possible to compensate biological damage. Moreover, the victim benefits from partial reversal of the burden of proof⁵⁹.

In the OSH field, there is a broadening of the items of damage that can be compensated. The employer is held liable for failing to take all measures – named and unnamed – that are reasonably possible to prevent harassment⁶⁰.

Nevertheless, practice shows that the prevention instrument prevails over the anti-discrimination one, because it enjoys a broader capacity to satisfy the injured party⁶¹. The compensatory function of Article 2087 of the Civil Code has been reinforced by case law⁶².

Thus, the notion of violence and harassment developed by the Convention is intended to prevent the burden of proof on the employee

⁵⁹ Art. 40, Equal Opportunities Code.

⁶⁰ Following an accident at work or occupational disease, in the case of omission of the named measures, the employee has the burden of proving the fact constituting a breach and the causal link between the breach and the damage. However, the employee does not have to prove the fault of the other party, against which the legal presumption of culpability operates (Art. 1218 of the Civil Code). Conversely, in the case of failure to adopt innominate measures, the liberating proof is more onerous: the employer is required to prove the adoption of specific conduct suggested by experimental and technical knowledge. The burden is on the employee to prove the existence of the work injury, the harmfulness of the working environment, and the link between the two (Most recently, Cass. Civ., Sec. Lav, Order No. 21955 of July 21, 2023). Compensation for biological damage is therefore also possible in this area (Art. 10, Presidential Decree No. 1124/1965). On the scope of this primary obligation and the resulting employer liability issues, M. Giovannone, *Responsabilità datoriale e prospettive regolative della sicurezza sul lavoro. Una proposta di ricomposizione*, cit.

⁶¹ For a jurisprudential reconstruction, R. Guariniello, *Molestie e violenza anche di tipo sessuale nei luoghi di lavoro*, Wolters Kluwer Italia, 2018. On mobbing, C. Lazzari, *Le disfunzioni dell'organizzazione del lavoro: mobbing e dintorni*, in *DSL*, 2018, 2, pp. 1-14. See also L. Montuschi, *Diritto alla salute e organizzazione del lavoro*, Franco Angeli, 1989. Conversely, the a priori preventive function of Art. 2087 of the Civil Code is little valorised. On the subject, M. Giovannone, *Safety at work, new risks, and employer liability: prospects for post-Covid-19 regulation in Italy*, cit., pp. 123-146.

⁶² Case law has provided an extensive interpretation of Article 2087 of the Civil Code, constitutionally oriented to safeguarding essential and primary goods, such as health, human dignity and the inviolable rights of the individual (Articles 32, 42 and 2 of the Constitution). *Ex multis*, Cass. November 14, 2016, No. 3291; Cass. February 19, 2018, No. 3977; Cass. February 7, 2023, No. 3692. See N. De Marinis, *Rischio psichico e sicurezza del lavoro nel diritto vivente*, in *Ambientediritto*, 2023, 4, pp. 1-7.

from becoming too heavy. In addition to the objective element, the employee will not be required to prove any persecutory or harassing intent. Instead, unlawfulness is based on the employer's duty to take positive action to protect the employee's psychological and physical integrity⁶³. Therefore, the international notion seems to admit the attenuation of the ordinary evidentiary regime as laid down in anti-discrimination law, under which the plaintiff must provide the court with precise and concordant factual elements capable of founding the presumption of conduct constituting harassment (or, more generally, discrimination), and not also the subjective element⁶⁴.

This is because harassment consists of unlawful conduct that must be prosecuted irrespective of the establishment of a mobbing situation with vexatious or persecutory intent and of the systematic nature of the conduct⁶⁵.

5. Bridging OHS and Anti-discrimination Law through Work Organization and Preventive Procedures

The ILO Convention aims at developing an integrated primary prevention between OSH and anti-discrimination protection. This also means shifting the main focus from compensation to prevention⁶⁶.

The Convention thus intersects with the need to orient the prevention obligation towards being more precisely and realistically applied, within the (open) catalogue of measures that can be concretely implemented⁶⁷.

This way of understanding the subject has promoted the development of tools to proceduralise the prevention obligation. These are typified tools

⁶³ L. Paolucci, *Ancora sul mobbing. La volontà lesiva quale elemento costitutivo dell'illiceità datoriale: una corretta applicazione dell'art. 2087 c.c.?*, in RIDL, 2012, 2, pp. 58-63. On the subjective element, R. Nunin, *Configurabilità del mobbing e prova dell'intento persecutorio*, in LG, 2019, 4, pp. 380-385.

⁶⁴ In Italy, Article 40, Equal Opportunities Code.

⁶⁵ On this aspects, M. Brollo, *Ancora sulle proposte di legge sul mobbing in discussione alla Commissione Lavoro della Camera dei Deputati*, in DSL, 2019, 2, pp. 1-21.

⁶⁶ See sections IV and V of the Convention.

⁶⁷ G. Natullo, *Il quadro normativo dal Codice civile al Codice della sicurezza sul lavoro. Dalla Massima sicurezza (astrattamente) possibile alla Massima sicurezza ragionevolmente (concretamente) applicata?*, in *I Working Papers di Olympus*, 2014, 39, pp. 1-33; G. Natullo, *Principi generali della prevenzione e "confini" dell'obbligo di sicurezza*, in M. Rusciano, G. Natullo (eds.), *Ambiente e sicurezza del lavoro, Commentario di Diritto del lavoro*, vol. VIII, Utet, 2007. On the risk of indefinite extension of employer liability, M. Biasi, *Dalla prevenzione del mobbing alla promozione del benessere sul luogo di lavoro? Ragionando attorno ai "nuovi" perimetri degli obblighi e delle responsabilità datoriali in materia di sicurezza*, in *AmbienteDiritto*, 2024, 2, pp. 1-23.

(risk assessment, health surveillance, Organisation and Management Models - MOG, Safety at Work Management System - SGSL, etc.) or self-standardised tools (codes of conduct, ethical code, etc.). These operational tools accurately identify the multiple objective and subjective risk factors for purposes of assessment and adoption of preventive measures. These factors must be correlated with each other, assessing possible interactions and overlaps that generate “multifactorial” risks, such as psycho-social risks. These tools can lead corporate risk management towards an intersectional approach, because their implementation requires a holistic approach based on the multidimensional well-being of the individual, determined by a combination of subjective and objective risk factors.

Particularly important are codes of conduct or ethical codes. These are voluntary acts of self-regulation provided among the general measures for planning OSH measures⁶⁸. With regard to operational aspects, the ILO’s recommendation to disseminate codes of conduct that take into account vulnerable groups of people is to be welcomed⁶⁹. Secondly, the ILO recommends risk assessment with regard to third parties (customers, users, patients, etc.)⁷⁰: this places violence and harassment among the “aggravated generic risks” to be identified in the risk assessment document, where the potential exposure is high and related to the task⁷¹. Finally, codes of conduct often provide for remedial action through workplace dispute resolution mechanisms, provided for by the Convention itself⁷². If a violation is established, support measures for

⁶⁸ Art. 15(1)(t). They are atypical measures with which companies have attempted to make up for the absence of regulatory prescriptions on procedures for assessing the risk of violence and harassment, by introducing “organisational health” into the company strategy. See V. Pasquarella, *La disciplina dello stress lavoro correlato fra fonti europee e nazionali: limiti e criticità*, in *I Working Papers di Olympus*, 2012, 6, pp. 1-21, according to which organisational health is not merely a legal obligation, but a primary requirement of the company closely related to corporate strategy.

On the operational level, Inail (National Institute for Insurance against Accidents at Work) pointed out that company codes are effective when they include moral and psychological harassment and mobbing. Furthermore, they are more effective if they regulate positive actions to improve the working environment. See Inail, *Ri-conoscere per prevenire i fenomeni di molestia e violenza sul luogo di lavoro*, 2021.

⁶⁹ Recommendation No. 206, para. 23.

⁷⁰ *Ibid*, para. 8.

⁷¹ In Italian case law, Cass. 5 January 2016, No. 34; Cass. 13 April 2015, No. 7405. On the point, M. Giovannone, *Attività criminosa di terzi e obblighi prevenzionistici: i profili di responsabilità datoriale e il ruolo della security aziendale*, in *DRI*, 2013, 4, pp. 1150-1156.

⁷² Art. 10(i).

victims and the prompt adoption of sanctioning measures should be ensured⁷³.

Risk assessment and codes of conduct are therefore the main management tools for incorporating the intersectional perspective. On the one hand, risk assessment must take into account vulnerability factors, arising from discrimination factors, which compromise the mental and physical health of workers. On the other hand, codes of conduct should clearly identify discrimination factors, and their possible intersection, which underlie prohibited and sanctioned behaviour in the company.

Similarly, relevant are some tools provided for by Italian law: the Organisation and Management Model - MOG⁷⁴ and the Safety at Work Management System – SGSL⁷⁵. These tools are important for improving the management of prevention risks. Also, they corroborate the proof of fulfilment of the OSH obligation with an exempting effect from criminal liability.

Finally, of significant impact is the establishment of internal informal advice channels, suggested by the 2007 Framework Agreement, and the creation of the formal channels envisaged by the specific whistleblowing discipline⁷⁶. Again, in Italy, corporate OSH protocols can be a valuable support for the path to the certification of gender equality, as will be discussed below.

⁷³ The 2007 Framework Agreement states that support and assistance should be provided to victims. Furthermore, appropriate disciplinary measures, including dismissal, must be taken against those who have engaged in proven misconduct (para. 4).

⁷⁴ Art. 30, Legislative Decree No 81/2008. Cf. M. Giovannone, *Modelli organizzativi e sicurezza sui luoghi di lavoro alla prova del Covid-19 e a vent'anni dall'entrata in vigore del d.lgs. n. 231/2001*, in *DSL*, 2022, 1, pp. 94-113. On supplementary control of the asseveration, A. Delogu, *L'asseverazione dei modelli di organizzazione e di gestione della sicurezza sul lavoro di cui all'art. 30 del d.lgs. n. 81/2008: analisi e prospettive*, in *DSL*, 2018, 1, pp. 7-51; C. Lazzari, *Gli organismi paritetici nel decreto legislativo 9 aprile 2008, n. 81*, in *I Working Papers di Olympus*, 2013, 21, pp. 1-17.

⁷⁵ SGSLs are adopted (and certified) in application of the technical standard UNI ISO 45001-2018.

⁷⁶ Legislative Decree No. 24 of March 10, 2023, in implementation of Directive (EU) 2019/1937. On the topic, S.M. Corso, *L'obbligo di segnalare deficit della sicurezza in azienda a dieci anni dal d. lgs. 9 aprile 2008 n. 81*, in *DSL*, 2018, 2, pp. 15-36; P. Pizzuti, *Whistleblowing e rapporto di lavoro*, Giappichelli, 2019; A. Boscatti, *La disciplina del whistleblowing nel settore privato nella prospettiva dell'attuazione della direttiva comunitaria*, in *ADL*, 2020, 5, pp. 1056-1081; M. Vitaletti, *La disciplina europea in materia di whistleblowing. Effetti e ricadute sulla tutela della persona nel diritto del lavoro*, in *MGL*, 2020, 2, pp. 447-465. It is no coincidence that, in Italy, these channels must be mandatorily set up in companies adopting the MOG (Art. 24, Legislative Decree No. 24 of March 10, 2023).

6. From Procedural Compliance to Technical Standardisation in Equality Governance

In recent years, occupational health and safety governance has undergone a significant transformation, shifting from a purely procedural logic towards one that increasingly relies on technical standardisation and performance-based tools. This normative and organisational evolution reflects the consolidation of governance instruments that not only reinforce occupational health and safety frameworks but also embed gender equality and inclusion within organisational structures, thereby bridging regulatory compliance and broader corporate social responsibility.

Voluntary instruments developed by ISO and through Italian national practice serve to complement existing managerial models by integrating occupational health and safety with the promotion of gender equality and workplace inclusion, viewed also from an organizational and structural perspective.

Examining the phenomena from a labour law perspective is, as we have seen, very complex because it involves not only knowledge of legal issues of a preventive nature in the strict sense, but also organizational and management aspects⁷⁷. The risk of harassment and violence in the workplace intensifies when individuals face multiple vulnerabilities, as different aspects of identity intersect and amplify these risks. Intersectional discrimination complicates the experience, influencing the types of harassment, barriers to reporting and the overall impact on vulnerable workers. The provisions contained in Legislative Decree No. 198/2006, Legislative Decree No. 81/2008, in Law No. 4/2021 and in Law No. 162/2021 have been supported, indeed, by several other interventions. The reference is to the ISO International Standards⁷⁸, such as UNI ISO 45003:2021, concerning management of psycho-social risks and promotion of well-being at work, UNI ISO 30415:2022, regarding diversity and inclusion and, lastly, UNI ISO 53800:2024, aimed

⁷⁷ L. Calafà, *Le violenze e le molestie nei luoghi di lavoro: il poliedrico approccio del diritto del lavoro* gender oriented, cit., pp. 477-491; C. Alessi, *Lavoro e conciliazione nella legislazione recente*, in *DRI*, 2018, 3, pp. 804-821.

⁷⁸ The ISO *International Organisation of Standardisation* is an independent international organisation with 165 national standardisation bodies. It brings together experts and technicians with the aim of developing voluntary, consensus-based, market-relevant international standards that are instrumental in innovation and uniform solutions to global challenges.

at promoting gender equality and women's empowerment and the creation of an inclusive work environment that respects gender diversity.

ISO 53800 aligns with existing national frameworks, most notably with UNI/PdR 125:2022, published on March 16th, 2022, based on clearly defined Key Performance Indicators (KPIs).

Although these instruments are formally soft-law and non-binding, voluntary adherence amounts to a self-imposed commitment to detailed behavioural standards and highly structured procedural systems, often driven by reputational considerations and access to incentives.

Recognizing the correlation between harassment, violence, and discrimination, especially intersectional discrimination, necessitates a re-evaluation of prevention and intervention strategies under labour law. In fact, analyzing the contents of the aforementioned technical provisions, it is clear that, at a global level, we are moving towards a new regulatory season of the methods of human resources management, with the support of principles of transparency, monitoring and verification (and this constitutes the most innovative aspect)⁷⁹.

This technical standardization innovates through two core paradigms: structural-organizational design and rigorous quantitative measurement. Measurement, as a systematic approach to gathering objective data, enhances transparency and awareness and reduces information gaps in relationships with power dynamics. It supports ongoing progress with monitoring against set benchmarks, evaluating the impact of organizational decisions dynamically. This culture of measurement includes evaluation, self-assessment of decision efficacy and objective performance reporting.

It is noteworthy that, despite UNI/PdR 125:2022 being a voluntary measure linked to relatively modest incentives⁸⁰ and entailing a

⁷⁹ S. Ciucciavino, *La certificazione di parità di genere*, in *Annuario del lavoro*, 2023, pp. 243-248.

⁸⁰ It should be noted that private companies obtaining Gender Equality Certification are entitled to a reduction of 1% in employer social security contributions, up to a maximum of €50,000 per year for each beneficiary enterprise, pursuant to Article 5 of Law No. 162/2021, as confirmed by subsequent INPS circulars (Circular No. 137/2022 and INPS message No. 4479 of 30 December 2024). Furthermore, the new Public Contracts Code (Legislative Decree No. 36/2023, Article 108, paragraph 7) provides that contracting authorities shall award additional points to companies that demonstrate, through certification, the adoption of gender equality policies. In addition to this preferential scoring, possession of certification may also result in a reduction of the surety guarantees required for participation in public tenders. The certification may also constitute a preferential element in the allocation of National Recovery and Resilience Plan (PNRR)

considerable commitment in terms of both human and financial resources, three years after its introduction (at the time of writing this contribution) no fewer than 7,960 companies have obtained Gender Equality Certification, as reported by the website⁸¹ of the Italian Government's Department for Equal Opportunities. These quantitative data signal not only the rapid institutionalisation of gender equality certification within Italian industrial relations, but also the growing centrality of gender-sensitive governance in corporate strategies.

7. The Italian “Gender Equality Certification”

Within this emerging landscape of technical and organisational regulation, the Italian “gender equality certification” represents a particularly innovative instrument, situated at the intersection of labour law, public policy and corporate governance.

Certification of gender equality is a new instrument in the international landscape, linked to the Italian National Strategy on Gender Equality 2021- 2025⁸² and referred to in Mission 5 of the PNRR.

The “gender equality certification” was established in Italy as of January 1st, 2022, by Article 4 of Law No. 162/2021 and can be requested on a voluntary basis by any type of organization, public or private, of any size and legal form.

The tool of “equality certification” – which attests to the concrete policies and measures taken by employers to reduce the gender gap in relation to growth opportunities in the company, equal pay for equal tasks⁸³, gender diversity management policies and maternity protection⁸⁴ – is to bridge the gaps existing in the company between resources of

funds and European funds, where so provided by the relevant calls for proposals. Finally, it should be underlined that certification also generates reputational advantages and enhances the attractiveness of companies among stakeholders who are sensitive to issues of sustainability and inclusion.

⁸¹ The data are publicly available online on the official website of the Italian Department for Equal Opportunities (www.pariopportunita.gov.it), specifically at the section *Certificazione della parità di genere*.

⁸² Inspired by the *Gender Equality Strategy 2020-2025*.

⁸³ O. Bonardi, *Dal principio di “eguale salario per lavoro di eguale valore” alla “discriminazione come moving target”*. *Il contributo dell'OIL alla lotta contro le discriminazioni*, in *VTDL*, 2019, 3, pp. 799-822.

⁸⁴ T. Treu, *La legge sulla parità di genere*, in *Guida al lavoro*, 2021, 49, pp. 38-44; R. Nunin, *Contrasto al gender gap e sostegno all'occupazione femminile: le novità della legge n. 162/ 2021*, in *Famiglia e diritto*, 2022, 2, pp. 203-210.

different genders, combat harassment and gender stereotypes and incorporate the gender equality paradigm into the DNA of organizations⁸⁵. In this sense, equality certification operates both as an incentive-based regulatory technique and as a lever for cultural change within enterprises. The tool of gender equality certification is of great interest because it approaches the issue of the risk of harassment and violence at work as a *condicio sine qua non* for obtaining the certificate⁸⁶.

The ministerial decree of April 29th, 2022 which established the “Minimum parameters for achievement of gender equality certification for enterprises” implemented the UNI/PdR 125:2022 Reference Practice⁸⁷ containing “Guidelines on the management system for gender equality”. In particular, the Uni/PdR 125:2022 provides for the adoption of specific *KPIs* relating to gender equality policies in organizations and identifies the bodies competent to issue the certification, also establishing the onus on employers to provide an annual company report on gender equality to the Company Trade Union Representatives and the territorially competent Councilors⁸⁸.

The *leitmotif* of UNI/PdR 125:2022 – and thus of the entire equality certification system – is the explicit conviction that, in order to achieve a real paradigm shift on *gender equality*, it is essential that the principles of gender equality, respect for diversity and the fight against violence and harassment at work are integrated into the corporate objectives⁸⁹.

⁸⁵ M. Scofferi, A. *Consiglio, Parità di genere: i nuovi strumenti contro il gender pay gap*, in *Guida al lavoro*, 2022, 27, pp. 31- 37.

⁸⁶ L. Zappalà, *La parità di genere al tempo del PNRR: tra trasparenza, certificazione e misure premiali*, in *LDE*, 2022, 3, pp. 1-14; M.C. Cataudella, *La parità di genere: una priorità “trasversale” del Piano Nazionale di Ripresa e Resilienza*, in *LPO*, 2022, 1-2, pp. 1-18; P. Cerullo, *Recovery Plan, PNRR e Gender Gap*, in *LDE*, 2021, 2, pp. 1-7.

⁸⁷ The UNI/PdR 125:2022 is a document published by UNI - Ente Italiano di Normazione, created in order to define criteria, technical prescriptions and functional elements for certification of gender equality in enterprises. It is the result of an institutional working table, composed of the Department for Equal Opportunities, the Department for Family Policies, the Ministry of Economy and Finance, the Ministry of Labour and Social Policies, the Ministry of Economic Development and the National Equality Advisor, and provides for the measurement, reporting and evaluation of data on gender in organisations.

⁸⁸ Certification, which is valid for three years and subject to annual monitoring, is issued and monitored by certification bodies accredited by ACCREDIA, pursuant to EC Regulation 765/2008.

⁸⁹ L. Calafà, *Il dito, la luna e altri fraintendimenti in materia di parità tra donne e uomini*, *Italianequalitynetwork*, 2022, 1, pp. 1-5.

Organizations must equip themselves with tools to establish specific objectives for each phase of work for the least represented gender, measure progress in a standardized way and certify results through qualified, transparent processes. To achieve gender equality certification, organizations commit to principles of gender equality and combat harassment and violence across every stage of employees' careers from recruitment to retirement. This includes equal career opportunities, economic treatment, work-life balance tailored to various life stages and a discrimination-free environment. A robust labour law approach must integrate intersectional awareness into corporate policies, regulations and practices to ensure inclusivity and uphold the dignity and rights of all workers. By addressing power dynamics and vulnerabilities, organizations can foster safe, respectful and inclusive workplaces.

Gender equality certification hinges on addressing workplace harassment and violence as integral to achieving gender equality.

Consequently, the certification mechanism functions as a form of ex ante screening of corporate conduct, inasmuch as the emergence of serious episodes of harassment, violence or systemic discrimination may prevent certification or its renewal.

It is quite clear, even from these preliminary observations, that if past incidents of harassment or violence or discriminatory practices – whether related to remuneration or organizational aspects – were to emerge in an employment context, equality certification could never be achieved by that specific company.

The employer has an increased responsibility to prevent and address harassment and violence, taking into account the complexities of intersectional dynamics. This requires proactive measures, fostering a culture of respect and inclusion and implementing effective complaint management procedures.

However, initial considerations suggest that the Italian Gender Equality Certification system, while innovative and ambitious, lacks a sufficient approach to addressing intersectional discrimination.

The current framework remains predominantly anchored to a binary conception of gender, thereby risking an underestimation of compounded vulnerabilities linked, inter alia, to race, ethnicity, disability, age or migration status.

8. Risk Assessment and Prevention of Workplace Violence and Harassment within the Certification Framework

A distinctive feature of the Italian gender equality certification scheme lies in the explicit and systematic connection it establishes between equality objectives and the assessment and management of the risk of violence and harassment at work.

UNI/PdR 125:2022 establishes a clear link between “gender equality certification” and prevention of workplace harassment. It mandates organizations to identify and mitigate all forms of harassment through comprehensive measures including risk assessment, prevention plans, regular training and workplace environment evaluations.

The assessment must be extended to the entire career path of female (or male) workers, from the moment of *recruiting* to retirement and aims to guarantee equal career opportunities up to the most important senior roles, equal pay, suitable *work-life balance* conditions⁹⁰ adapted to the different life stages and a working environment⁹¹ that rejects stereotypes and proposes a culture of diversity and inclusion, as already noted.

From a methodological perspective, this implies that risk assessment cannot be confined to isolated events, but must instead capture structural patterns in recruitment, career progression, pay structures and the organisational climate.

Data on workplace harassment and violence should be disaggregated by categories like gender, race, ethnicity, sexual orientation and disability for detailed analysis. Without a harassment risk assessment in the company’s DVR (Risk Assessment Document) and pending litigation related to gender and moral or sexual harassment (e.g., discriminatory dismissals or transfers), gender equality certification cannot be obtained.

The first step is to assess existing risks, including work conditions, diversity management, incidents of harassment or violence and relational dynamics. This assessment should integrate a gender perspective to address the specific characteristics of male and female workers. Following the risk assessment, prevention measures should be outlined in an operational plan covering organizational adjustments, training and communication. Ongoing analysis of reported incidents is crucial for updating risk assessments and intervention plans.

⁹⁰ A.R. Tinti, *Il lavoro agile e gli equivoci della conciliazione virtuale.*, in *Working Papers Massimo D’Antona*, 2020, 419, pp. 1- 58.

⁹¹ D. Gottardi, “Vuoti” e “pieni”: la retribuzione e la parità di trattamento nell’ordinamento dell’Unione europea (*Gender pay gap and minimum pay in EU*), in *LD*, 2011, 4, pp. 615-633.

This adopts a circular process perspective, which begins with an initial assessment of the risk of harassment, allowing for the preparation of an operational plan and subsequent monitoring of adverse events that, if not evaluated during the initial phase, necessitate an update of the initial risk assessment document. The DVR thus becomes a living instrument, subject to continuous revision in light of new information, judicial decisions or organisational changes, rather than a merely formal compliance document. This approach establishes a system that contains a precise and always up-to-date evaluation of the risk of workplace harassment, indicating which actions should be taken to mitigate it⁹².

9. The ‘Zero Tolerance’ Paradigm and the Implementation of ILO Convention No. 190

The operationalisation of ILO Convention No. 190/2019 within the Italian context has found one of its most tangible expressions in the so-called “zero tolerance” policy, which is progressively embedded in both regulatory frameworks and technical standards such as UNI/PdR 125:2022.

Reading the provisions of the Procedural Norm in conjunction with ILO Convention No. 190/2019, it is clear that the assessment aimed at evaluating the risk of harassment should be extended to every person working in the business environment regardless of contractual status, thus also including candidates for selection, or workers whose relationship has ended, including all subjects who exercise authority, duties or responsibilities typically associated with the employer’s role⁹³.

Furthermore, the directive and the ratifying law – also in the wake of established case law – have allowed for an expansion of the concept of the “workplace”⁹⁴ clarifying that violence can occur not only in the “traditional” workplace, but also in places used for breaks or lunch breaks, or in places where toilets or changing rooms are used, during business trips or journeys, training courses, events or work-related social activities, during journeys to and from work and during business

⁹² P. Lambertucci, *Sicurezza sul lavoro e rischi psicosociali: profili giuridici*, in *DLM*, 2010, 2, pp. 347-362; L. Calafà, *Il diritto del lavoro e il rischio psico-sociale (e organizzativo) in Italia*, in *LD*, 2012, 2, pp. 257-290.

⁹³ C. Alessi, *La Convenzione Ilo sulla violenza e le molestie sul lavoro*, cit., pp. 577-593.

⁹⁴ S. Scarponi, *Dopo la ratifica della Convenzione OIL n. 190/2019 su violenza e molestie nei luoghi di lavoro: un cantiere normativo ancora aperto*, cit.

communications, including technological ones⁹⁵. This extensive spatial-temporal perimeter reflects the recognition that contemporary work is increasingly delocalised and mediated by digital tools, which can themselves become vectors of harassment and abuse.

Moreover, the unwanted nature of harassing conduct⁹⁶, even if it does not result in actual physical aggression with a sexual content, is nevertheless capable of integrating the notion of harassment⁹⁷, since this and the consequent protection accorded are based on the objectivity of the conduct engaged in and the effect produced, with no relevance to the actual intention to cause offence⁹⁸. In this regard, the convergence between anti-discrimination case law and OSH principles reinforces an objective approach to unlawful conduct, thereby reducing the emphasis on subjective intent and focusing on the material impact on the worker's dignity and health.

UNI/PdR 125:2022 expands on established legal principles with clear definitions.

For example, it defines “discrimination” as unequal treatment due to judgment or classification (cf. para. 3.11), “harassment (including sexual harassment)” as behaviour creating an offensive work environment (cf. para. 3.19), and ‘gender stereotypes’ as rigid beliefs about behaviour based on gender affiliation (cf. para. 3.29).

10. Training, Awareness-Raising and Protected Reporting in Equality Governance

A central pillar of the “zero tolerance” architecture is the systematic investment in training and awareness-raising, particularly with regard to unconscious bias and the establishment of dedicated contact persons for reporting abuse.

The UNI/PdR 125:2022 also outlines specific actions to reduce the risk of harassment and violence in the workplace by focusing, on the one hand, on the training actions indicated as preparatory to the issuing of

⁹⁵ See Articles 2 and 3, ILO Convention No. 190/2019.

⁹⁶ V. Pasquarella, *La violenza di genere attraverso la lente del giuslavorista. Azioni di tutela e strumenti a supporto della vittima*, cit., pp. 1485-1511

⁹⁷ Cass. 31 July 2023, No. 23295.

⁹⁸ On the breadth of the notion see A. Pizzoferrato, *Violenza sessuale sui luoghi di lavoro: la Cassazione consolida la fattispecie ed apre nuovi scenari in ordine al danno risarcibile*, in *LG*, 2008, 10, pp. 1014-1018; A. Scarcella, *Violenza sessuale sul luogo di lavoro e legittimazione iure proprio del sindacato dell'iscritto a costituirsi parte civile*, in *Cassazione penale*, 2009, 4, pp. 1603-1617.

certification, to be organized at all levels, with defined frequency, on “zero tolerance” and, on the other hand, on how to report any abuse or discriminatory practices suffered because of gender. The action side is clearly the corporate side where the value dimension and hence responsible ethics must also be strengthened⁹⁹.

Workers, when informed, trained and sensitised, can effectively contribute to creating a more inclusive and safer work environment, one that is founded on serenity and the absence of any form of violence. In this light, cooperation transforms workers from mere recipients of safety (and, therefore, beneficiaries of protection) into mutual debtors of anti-harassment and anti-violence safety. Training, therefore, performs a dual function: it disseminates knowledge of rights and procedures, and at the same time reshapes workplace cultures by challenging normalised forms of discriminatory behaviour and micro-aggressions.

In the certification checklist for assessing compliance, certifiers require companies to conduct specific training on “zero tolerance” for all forms of employee violence, including sexual harassment. The guidelines mandate training courses on ethical principles and organizational methods to ensure the effectiveness of gender equality policies. These courses are mandatory for all employees, with tailored sessions for managers focusing on their specific responsibilities.

Moreover, the practice, starting from the assumption that language alone can betray the presence of prejudice and discrimination¹⁰⁰, provides (par. 6.3.2.6) that action should be taken on the linguistic terrain by suggesting the use of a language free of prejudicial components¹⁰¹, by emphasizing, for example, the use of the neutral gender, also in advertisements published for the selection of resources¹⁰².

The aim is to drive cultural and organizational change, enhancing the skills of all workers, particularly managers, in preventing and managing

⁹⁹ M. D’Onghia, M. Mc Britton, *La contrattazione decentrata in un’ottica di genere. Spunti di riflessione*, in V. Bavaro (ed.), *Indagine sulle Relazioni Industriali in Puglia*, Cacucci, 2016, pp. 101-119.

¹⁰⁰ S. Baldin, *Eguaglianza di genere e principio antisubordinazione. Il linguaggio non discriminatorio come caso di studio*, in *GenIUS*, 2016, 1, pp. 74-88.

¹⁰¹ N. Cardinale, *Troppi stereotipi di genere nella motivazione di una sentenza assolutoria per violenza sessuale di gruppo: la Corte EDU condanna l’Italia per violazione dell’art. 8. Sistemapenale.it, nota a Corte EDU, J.L. c. Italia*, in *Sistema penale*, 2021.

¹⁰² The Istanbul Convention on Preventing and Combating Violence (2011), ratified in Italy by Law No. 77/2013 designates gender-based violence as “any violence directed against women as such, or which disproportionately affects women”.

workplace incidents. The guidelines stress fostering a gender-equal, violence-free environment where reporting aggression is supported.

This involves designated contact persons and practices to protect against harassment and bullying, expanding beyond basic risk prevention to include roles like RSPP, Competent Doctor, and RLS, beyond those mandated by Act No. 81/2008.

This provision should then be read in conjunction with the one contained in the section devoted to the mandated activities for obtaining equality certification (par. 6.3.1.) where it imposes on the organization seeking the certification the obligation to provide a methodology for *anonymous reporting* of this type of occurrence¹⁰³. Anonymous and protected reporting channels, in turn, contribute to overcoming under-reporting, particularly in contexts where hierarchical asymmetries or precarious employment discourage open complaints.

The connection between this latter provision and the *whistleblowing* discipline is also evident¹⁰⁴.

11. Violence and Harassment Risks within the Gender Equality Certification Paradigm

Within this regulatory architecture, the Italian gender equality certification system can be read as both an opportunity and a critical testing ground for the integration of anti-discrimination and OSH logic into a coherent “equality governance” paradigm.

The Italian system of gender equality certification marks a new regulatory phase emphasizing equality and opportunities, driven by active corporate participation. Prevention of violence and harassment risks is now integral to “equality certification”, offering cultural and organizational growth opportunities.

However, the Italian regulation has yet to fully integrate intersectional discrimination into its framework or provide specific indicators capturing complex situations where multiple vulnerabilities intersect. While EU

¹⁰³ C. Zoli, *Il mobbing: brevi osservazioni in tema di fattispecie ed effetti*, in *LG*, 2003, 4, pp. 337-340.

¹⁰⁴ On this topic see G. Proia, *La relazione “offuscata” tra diritti e doveri (nel “diritto del lavoro per una ripresa sostenibile”, ma non solo)*, in *MGL*, 2021, 4, pp. 923-943; M. Vitaletti, *La disciplina europea in materia di whistleblowing. Effetti e ricadute sulla tutela della persona nel diritto del lavoro*, cit., pp. 447-465; M. Vitaletti, *Il lavoratore “segnalante” nell’impresa privata. Il perimetro della tutela del “whistleblower”*, in *DRI*, 2019, 2, pp. 492-512; M. Martone, *La repressione della corruzione e la tutela del whistleblower alla luce della l. 30 novembre 2017, n. 179*, in *ADL*, 2018, 1, pp. 61-78.

Directive 2003/90 recognizes intersectional discrimination, it remains unaddressed in Italian law, which primarily focuses on gender binary issues, sidelining other forms of discrimination.

The Italian Gender Equality Certification system has made strides in anti-discrimination and prevention frameworks, yet it lacks integration of intersectional discrimination. This gap results in a disconnect between certification objectives and comprehensive protection.

Intersectional discrimination amplifies vulnerability in multiple dimensions. It can exacerbate power imbalances, hindering victims from reporting harassment or violence due to fear of job loss or retaliation. Moreover, it fosters complex forms of discrimination that combine prejudices, such as gender-based violence intertwined with racial or homophobic slurs.

Victims facing intersectional discrimination often encounter barriers in reporting and accessing support, compounding the psychophysical impact of harassment. Current regulations focus on binary gender issues, overlooking the nuanced dynamics of compound discrimination.

Contemporary anti-discrimination law acknowledges that intersectional discrimination creates unique challenges not addressed by traditional frameworks. While the Italian system addresses sexual harassment prevention, it falls short in addressing compound and intersectional discrimination effectively.

From this angle, gender equality certification risks crystallising a partial view of equality, in which the gender dimension is isolated from other protected grounds, thereby limiting the transformative potential of the instrument.

A different approach to values and an innovative industrial relations system must be developed, aimed at achieving truly sustainable and inclusive economic, social and cultural growth.

12. Concluding Remarks: Integrating OSH, Anti-Discrimination Law and Certification

The analysis conducted so far shows that the Italian legal system has progressively constructed a multi-layered framework for the prevention and combating of violence and harassment at work, situated at the crossroads of anti-discrimination law, occupational health and safety regulation and technical standardisation.

In the Italian legal system, prevention and combating of violence and harassment at work are governed by several sectoral regulations, in particular anti-discrimination laws and OSH discipline.

The Equal Opportunities Code has the merit of having introduced anti-discrimination protection against violence and harassment, but exclusively from a gender perspective. On this point, OSH legislation requires employers to adopt a holistic approach that is essential for preventing multifactorial risks such as psycho-social risks, which include violence and harassment.

From this standpoint, the progressive interaction between anti-discrimination provisions, occupational safety obligations and technical standardisation reveals an emerging model of integrated regulatory governance, in which protection is no longer confined to ex post remedies but is increasingly centred on ex ante organisational prevention.

Particularly emblematic are OSH operational tools for establishing a risk management system based on assessment and organisational procedures that enable systematic identification of all factors that lead to discriminatory consequences (including harassment and violence) that compromise the physical and mental integrity of workers.

This methodological approach is in line with ILO Convention No. 190, which requires states to combat such phenomena through the contribution of multiple disciplines, including anti-discrimination law and OSH.

At the crossroads between these sectoral disciplines, Gender Equality Certification was introduced in Italy a few years ago. However, this tool's primary objective is to promote equality exclusively from a gender perspective. Its regulatory significance nevertheless extends beyond its formal remit, since the certification framework operates as a mechanism for systematising prevention through measurable objectives, documentary verification and periodic monitoring.

It seems necessary to move beyond the binary male/female logic by means of an intersectional evaluation approach.

In this perspective, the evolution of anti-discrimination law and workplace inclusion policies requires a reconsideration of certification frameworks and their associated KPIs, so as to ensure their capacity to detect and prevent forms of discrimination arising from the intersection of multiple protected characteristics, in accordance with European legal developments and international best practices.

More specifically, an updated certification architecture should include indicators capable of capturing compound vulnerabilities by correlating gender with other relevant factors, such as age, disability, nationality, migration status, sexual orientation or contractual precariousness. In parallel, the audit function should not be limited to formal verification of policy adoption, but should also examine the consistency between

declared organisational commitments, actual workplace practices and the lived experience of workers.

The adoption of an intersectional approach, one that acknowledges the specificity of disadvantage and the irreducibility of individual experiences to rigid, predefined categories, appears indispensable to promote genuinely inclusive working environments, free from all forms of violence, harassment, and discrimination.

Collection and analysis of company data should take into account other risk factors for discrimination (age, disability, nationality, etc.). Inclusion indicators should also be structured to highlight multiple forms of discrimination.

In technical terms, this implies the refinement of both assessment and audit procedures through mixed methodologies, combining quantitative indicators, qualitative surveys, internal reporting data, organisational climate analysis and periodic review of the Risk Assessment Document (DVR). Such a methodological expansion would make it possible to verify not only whether preventive measures formally exist, but also whether they are materially effective in intercepting latent or under-reported forms of harassment and violence.

These “corrective measures” are essential to promote comprehensive equality practices in companies that can dismantle structural discrimination that is invisible to a gender-only perspective.

From an evolutionary perspective, it appears desirable to broaden both the objective and subjective scope of Gender Equality Certification through the introduction of indicators and procedures that take account of multiple and intersectional discrimination, in line with the most recent European directives and international best practices.

Updating KPIs and assessment procedures, together with the provision of specific training at all organizational levels, could represent a strategic lever for enhancing the effectiveness of inclusion policies and ensuring comprehensive and effective protection of workers against all forms of discrimination, violence and harassment.

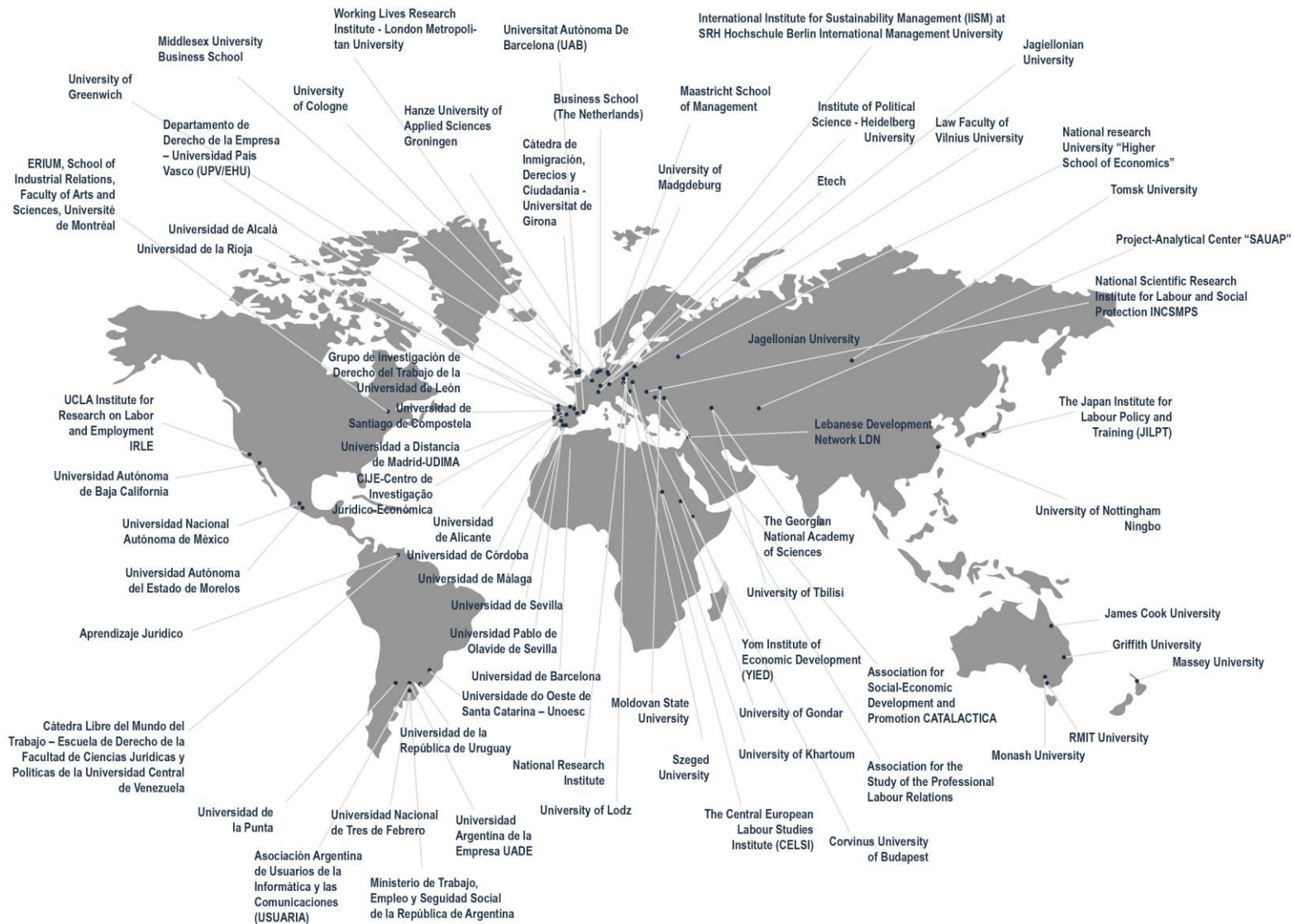
Equally, greater integration should be encouraged between certification mechanisms, organisational and management models (MOG), occupational safety management systems (SGSL), codes of conduct and protected reporting channels, so that equality governance may develop as a coherent compliance ecosystem rather than as a set of fragmented obligations. In this broader perspective, certification could evolve into a laboratory for testing advanced forms of preventive governance, capable of aligning Article 2087 of the Civil Code, anti-discrimination law and

technical standards within a genuinely intersectional framework of labour protection.

Integration of the intersectional dimension into Gender Equality Certification systems thus represents a challenge for contemporary labour law, which is increasingly called upon to respond to the growing complexity of social and occupational dynamics.

Accordingly, the future effectiveness of the Italian model will depend not only on the formal expansion of protected grounds, but also on the capacity of institutions, certifying bodies and employers to translate intersectionality into measurable criteria, verifiable procedures and organisational accountability mechanisms.

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