

The Role of Occupational Safety and Health Legislation in Hate Speech Regulation.

Employers' responsibility to prevent and respond to the risk of hate speech at work – the Finnish perspective

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Abstract: Occupational safety and health legislation plays an important role in regulating hate speech when the target is an employee. In the case of hate speech at work, there is a need for the employer to implement both preventive and responsive safety measures. The required safety measures can be categorized either as a procedural instruction or as a measure of support. In addition, there might be a need for working arrangements. The decision on which measures are needed is for employers to make since no specific requirements are set in the Finnish Occupational Safety and Health Act (738/2002, OSHA). The Finnish OSHA has its basis in EU law and is built on similar objectives and requirements to EU directives.

Keywords: hate speech, online hate, cyber hate, social media, occupational safety and health, work, risk, employer, responsibility, safety measure

Chapter 1. Introduction

Hate speech constitutes a new challenge not only for criminal law but for other fields of law as well. One of these fields facing new challenges is occupational safety and health legislation. In addition, hate speech is a challenge for each employer's occupational safety and health activities. Both regulation and workplace activities have historically been centred round the physical safety of employees.¹ However, the scope of occupational safety and health regulation is not limited only to the physical aspects of

1 See Tapio Kuikko, *Työturvallisuus ja sen valvonta*, 4th ed. (Helsinki: Talentum, 2006), 17; Kari Eklund and Asko Suikkanen, *Työväensuojelusta työsuojeluun: Työsuojelun ja työolojen kehitys Suomessa 1970-luvulla* (Helsinki: Tammi, 1982), 10.

safety and health: it also involves psychological and social dimensions.² The employer is first and foremost responsible for the safety and health of employees at work.³

Employees also require protection when it comes to the risk of hate speech at work. Hate speech can be encountered at work, for example in a situation where the employee is encouraged to be active in social media by the employer or the employee's expert status is otherwise such that he or she is in the public eye due to their work.⁴ Someone encountering hate speech can be caused mental load which can, while continuing and in excessive quantities, result in serious consequences and can eventually compromise the employee's health.⁵ The problem of increased online hate in the workplace should thus be taken seriously. The phenomenon is, however, quite new to workplaces and has not really, or at least not sufficiently, been addressed in public discussions concerning occupational safety and health.⁶ As a result, some ambiguities and lack of awareness still seem to remain in terms of the employer's responsibilities in the context of hate speech encountered at work.⁷

The aim of this study⁸ is to determine the actions required from the employer in case its employees are targeted with hate speech at work.

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- 2 According to the Finnish Occupational Safety and Health Act (738/2002, OSHA) section 1, the term 'health' as used in the Act covers both physical and mental health of employees. See also Government of Finland, *HE 59/2002 vp: Hallituksen esitys eduskunnalle työturvallisuuslaiksi ja eräiksi siihen liittyviksi laeiksi* (Helsinki: Government of Finland, 2002), 16, 23.
 - 3 See for example Berta Valdés de la Vega, "Occupational Health and Safety: An EU Law Perspective," in *Health and Safety at Work: European and Comparative Perspective*, ed. Edoardo Ales (The Netherlands: Kluwer Law International BV, 2013), 16.
 - 4 See Päivi Rauramo et al., "Sosiaalisen median työkäyttö: Työsuojauslunäkökulma," Työturvallisuuskeskus, last modified August 18, 2014, <https://tyoturvallisuuskeskus.mobiezine.fi/zine/8/cover>.
 - 5 See Rauramo et al., "Sosiaalisen median työkäyttö."
 - 6 See, however, "Häiritsevä palaute: Apua vihapuheeseen," Häiritsevä palaute, accessed October 16, 2020, <https://www.xn--hiritsevpalaute-0kbh.fi>.
 - 7 Kari Mäkinen, *Sanat ovat tekoja: Vihapuheen ja nettikiusaamisen vastaisten toimien tehostaminen* (Helsinki: Sisäministeriö, 2019), 69, <https://julkaisut.valtioneuvost.fi/handle/10024/161613>; Oikeusministeriö, *Against hate -hankkeen suosituksia viharikosten ja vihapuheen vastaiseen työhön* (Helsinki: Oikeusministeriö, 2019), 22, <https://yhdenvertaisuus.fi/documents/5232670/13949561/Against+Hate+-hankkeen+suositukset+-FI/58f4e479-001c-daed-0e8d-a60375886602/Against+Hate+-hankkeen+suositukset+-FI.pdf>.
 - 8 The study has been conducted at the University of Helsinki, Faculty of Law as a part of the Hate and public sphere -research project funded by the Helsingin Sanomat Foundation.

The perspective of the study is mainly that of Finland, and the study will concentrate on the requirements imposed on employers by the Finnish Occupational Safety and Health Act (738/2002, OSHA). The study is based on the provisions of the Finnish OSHA which are applicable in a situation where a risk of hate speech is present at work. The aim is to provide an overview of employer responsibilities, the safety measures required, and the role of occupational safety and health legislation as one part of hate speech regulation. Hence, the subject of study is defined in a way which does not enable profound, detailed, or exhaustive analysis of the responsibilities or their requirements.

The Finnish OSHA was reformed at the beginning of the 2000s on the basis of the requirements of EU law. Through the influence of the Directive on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC, framework directive) the Finnish OSHA also contains a more proactive and dynamic standpoint on occupational safety and health thinking and activities.⁹

According to the introductory phrases of the framework directive, its provisions apply to all kinds of risks in the working environment. As a directive covering all risks connected with safety and health in the workplace, the framework directive's aim has, according to its name, been to serve as a basis for more specific directives. At the same time, the scope of the directive can be interpreted in a way which is not limited only to the physical aspects of work, but in a wider understanding of the term 'working environment' and safety within that environment.¹⁰ The framework directive is based on the idea of prevention and improvement. Employers should, when acting accordingly, also keep themselves informed about the latest advances in technology and scientific findings concerning design of the workplace and the risks that work entails.¹¹ The approach is flexible and the responsibilities and requirements set for the employer concerning the safety and health of employees also apply when the world of work is rapidly changing.¹²

9 See for example Government of Finland, *HE 59/2002 vp*, 1.

10 See David Walters, "The Framework Directive," in *Regulating Health and Safety Management in the European Union: A study of the Dynamics of Change*, ed. David Walters (Brussels: P.I.E.-Peter Lang, 2002), 43.

11 See general obligations on employers under article 6 of the framework directive.

12 Walters, "The Framework Directive," 46.

Chapter 2. The case of the Finnish Occupational Safety and Health Act

2.1. Employers' general obligations and the aim of preventing the risk of hate speech at work

Like the framework directive, the Finnish OSHA is a kind of a framework law which is general in nature. That is also well-founded because of the Act's broad scope of application.¹³ This also means that there is room for consideration when employers make decisions on required safety and health measures or activities on different occasions in diverse workplaces.¹⁴ The Act contains two kinds of responsibilities set for the employer. The general responsibilities should be observed in every workplace regardless of the work done there or the risks that the work entails. In addition, the Act contains a few more specific responsibilities. These risk-specific responsibilities are, however, general in nature, as well.¹⁵

Since the Finnish OSHA was reformed in 2002, the risks caused by digitalization and the use of social media at work were not taken into consideration when drafting the law. Later some changes have been in the Act, but the newest kinds of risks caused by digitalization have not yet been specially considered. These are risks which are not regulated in inferior statutes either. In terms of the risk of hate speech at work, this means that the requirements set for the employer and its occupational safety and health activities are solely based on the Finnish OSHA and its more or less general provisions.¹⁶ Hate speech at work is, however, a risk to be taken into account, since the Finnish OSHA is based on similar thoughts and requirements concerning occupational safety and health in the workplace as the framework directive.¹⁷

As noted earlier, both general and risk-specific obligations are set for the employer in the Finnish OSHA. The starting point for the employer's occupational safety and health obligations is its general duty to exercise care.¹⁸ According to section 8 employers must take care of the safety and health of employees while at work by taking necessary measures. This is

13 See Government of Finland, *HE 59/2002 vp*, 29.

14 Pertti Siiki, *Työturvallisuuslainsäädäntö: Työnantajan ja työntekijän velvollisuudet ja oikeudet* (Helsinki: Edita Publishing Oy, 2002), 12.

15 Siiki, *Työturvallisuuslainsäädäntö*, 52.

16 See Siiki, *Työturvallisuuslainsäädäntö*, 52.

17 See Government of Finland, *HE 59/2002 vp*, 22.

18 See Government of Finland, *HE 59/2002 vp*, 22.

also the main objective of the obligations set for the employer: to protect employees' safety and health at work.¹⁹

Section 8 also contains other objectives set for the employer's occupational safety and health activities: the objective of continuous improvement and the objective of comprehensive safety management.²⁰ These objectives and the principles of risk prevention mentioned under section 8 are factors that raise the requirement level set for occupational safety and health activities in the workplace. However, there are also factors which lower the level of requirements. These include, for example, unforeseeability²¹ and the necessity requirement.²²

According to section 8, the employer is, in addition, responsible for continuously monitoring the working environment. Through continuous monitoring the employer can detect risks in the working environment, the state of the working community, and the safety of working practices. Another important obligation at the risk observation phase is analysis and assessment of risks at work.²³ This is covered by section 10, according to which the employer should systematically and adequately analyse and identify the hazards and risks caused by work. If risks detected cannot be eliminated, the employer should assess their consequences for employees' safety and health. Risks identified should primarily be eliminated, but if that is not possible they should at least be minimized. While reacting to detected risks, the employer should obey the principles of risk prevention mentioned in section 8 and, for example, adopt safety measures with a general impact before adopting any individual measures.

The obligation to provide instruction and guidance for employees, section 14, is one of the individual measures. According to section 14, employers should give their employees necessary information on workplace risks. Employers should also ensure that their employees are given instruction and guidance in order to eliminate risks of their work and to

19 See Enni Ala-Mikkula, *Työnantajan työsuojeluvastuu: Tutkimus työnantajan keskeisistä työsuojeluvollisuuksista sekä niissä työnantajan työsuojelutoiminnalle asetetusta vaatimustasosta* (Helsinki: Alma Talent, 2020), 75.

20 See Government of Finland, *HE 59/2002 vp*, 22; Jorma Saloheimo, *Työturvallisuus: Perusteet, vastuu ja oikeusturva*, 3rd ed. (Helsinki: Talentum Pro, 2016), 77-78, 80-81.

21 See OSHA section 8.2: "Such unusual and unforeseeable circumstances which are beyond the employer's control, and such exceptional events the consequences of which could not have been avoided despite the exercise of all due care, are taken into consideration as factors restricting the scope of the duty to exercise care."

22 See Ala-Mikkula, *Työnantajan työsuojeluvastuu*, 199-200, 203.

23 Ala-Mikkula, *Työnantajan työsuojeluvastuu*, 69-70.

avoid any risk from their work jeopardizing safety and health. As section 14 is part of an employer's general occupational safety and health responsibilities, it is an obligation of each employer to provide the necessary instruction and guidance for employees. As an individual safety measure, instruction and guidance provided supplements those measures which are more general by their impact, such as structural, technical, or organisational measures.²⁴

All in all, the employers' general obligations aim to prevent the hazards and risk factors of the working environment in advance. To be able to prevent creation of risk factors or to eliminate or minimize them, the employer must detect and recognize risks which concern the work and workplace in question. One of these might be the risk of hate speech at work. If this is the case, the risk of hate speech must also be assessed and proper measures taken in order to react and respond to the risk. The general obligations which employers should take into account in order to be appropriately prepared for the risk of hate speech at work are presented in table 1.

24 See Ala-Mikkula, *Työnantajan työsuojeluvastuu*, 159.

Table 1. The nature and requirements of employers' general obligations (OSHA chapter 2) of key importance when aiming at preventing the risk of hate speech at work.

	Occupational Safety and Health Act / Employers' general obligations (chapter 2)			
Provision	Section 8	Section 10	Section 13	Section 14
Subject	Employers' general duty to exercise care	Analysis and assessment of risks at work	Work design	Instruction and guidance to be provided for employees
The nature of the responsibility	Proactive, the objectives and limits of employers' occupational safety and health activities and safety measures which aim at detecting risks or which guide the process of choosing the right response measures	Proactive, aim at detecting risks	Proactive, aim at detecting risks especially during the process of design and change	Proactive, individual measure of response
Required measures	Preventing creation of risks, eliminating or minimizing risks, prioritizing measures which have a general impact, adjustment to technological developments, continuous monitoring	Systematic analysis and identification of risks, assessment if they cannot be eliminated	Designing and planning work according to the physical and mental capacities of employees	Necessary information on risks for employees, adequate orientation to working methods, instruction and guidance in order to avoid risks, completion of instruction and guidance
Objective of required measures	Protection of employees, continuous improvement, comprehensive safety management; necessity requirement and unforeseeability as limits	Understanding of risks and assessing their probability and gravity; eliminating risks or measures needed for minimizing risks	Avoiding or reducing risks to the safety and health of employees	Employees are also capable of eliminating and avoiding risks to safety and health
Factors to consider / source of potential risks	Work, working conditions and working environment, employees' personal capacities	Especially the risks mentioned in chapter 5, accidents and occupational diseases, employees' personal capacities, factors related to workload, potential risks to reproductive health	Workload factors	Work, working conditions, working methods and working equipment, changes in working tasks, adjustment, cleaning and repair work, disturbances and exceptional situations

Risks must also be assessed when designing and planning work. According to section 13, the physical and mental capacities of employees must be taken into account when designing and planning their work, in order to avoid or reduce risks from workload factors to the safety and health of employees. However, there is no need for individual assessment that considers the differences between each individual in stamina and tolerance to stress. Instead, the work should be designed in a way which enables an average person to perform it without being excessively loaded.²⁵ Overall, when assessing risks, the employer must, according to section 10, consider factors related to workload and also the employees' age, gender, occupa-

²⁵ Government of Finland, *HE 59/2002 vp*, 35.

tional skills and other personal features and abilities. Special attention must be paid to risks of work that are the basis for employers’ risk-specific responsibilities in the Finnish OSHA.

2.2. *Employers’ risk-specific responsibilities and responses to the risk of hate speech at work*

The Finnish OSHA does not include any risk-specific responsibilities set for the employer that would specifically address the risk of hate speech at work. However, there are responsibilities which concern not only the physical but also the mental and social aspects of employees’ safety and health. Those risk-specific responsibilities which may also apply to a situation where there is a need to respond to the risk of hate speech at work are presented in table 2.

Table 2. *The nature and requirements of employers’ risk-specific obligations (OSHA chapter 5) to be considered when responding to the risk of hate speech at work.*

	Occupational Safety and Health Act / Employers' risk-specific obligations (chapter 5)		
Provision	Section 25	Section 27	Section 28
Subject	Avoiding and reducing workloads	Threat of violence	Harassment
Nature of responsibility	Reactive, prerequisites: 1) noticed exposure, 2) compromise in health, 3) awareness	Proactive, prerequisites: 1) assessed, evident threat of violence	Reactive, prerequisites: 1) occurrence of harassment, 2) compromise in health, 3) awareness
Required measures	Available means	Appropriate safety arrangements and equipment, opportunity to summon help, procedural instructions	Available means
Objective of required measures	Analysis of workload factors, avoiding or reducing risk	Preventing the threat of violence and incidents of violence, controlling or restricting the effects of violent incidents	Remedying the situation
Source of potential risks	Work, insufficient control, working arrangements etc.	Especially clients, other outsiders	Internal conflicts, clients, other outsiders

One of these responsibilities is avoiding and reducing workloads, section 25, which has a more personal and reactive approach to workload than

that of section 13.²⁶ According to section 25, the employer is obliged to take available measures to analyse workload factors and to avoid or reduce the risk caused by those factors if it is noticed that an employee is exposed to workloads while at work in a manner that endangers their health. The obligation is realized when the employer has become aware of the matter.

The situation is similar in terms of section 28 and employer's obligations concerning harassment. If harassment or other inappropriate treatment of an employee at work occurs and this causes hazards or risks to the employee's health, the employer must, after becoming aware of the matter, take available measures to remedy the situation. The harassment provision is mainly targeted at situations where harassment occurs inside the organisation, but someone who treats employees inappropriately may also be a client or other outsider.²⁷ Harassment and inappropriate treatment can take different forms. One possible form is online harassment. This kind of harassment can also lead to workload which endangers an employee's health.

Harassment online can also mean threatening someone's physical safety and health. If this is the case, section 27 can also be applied. Unlike sections 25 and 28, section 27 requires preventive measures from the employer in case there is an evident threat of violence in the workplace. Work and working conditions must be arranged so that the threat of violence and incidents of violence are prevented as far as possible. This means appropriate safety arrangements and equipment, and procedural instructions. In the instructions, controlling threatening situations should be considered in advance. In addition, practices for controlling or restricting the effects that violent incidents can have on employee safety should be presented. This is the most individualized and concrete safety measure required from the employer by the Finnish OSHA that also applies in situations where a risk of hate speech is present at work.

2.3. Concrete safety measures based on responsibilities

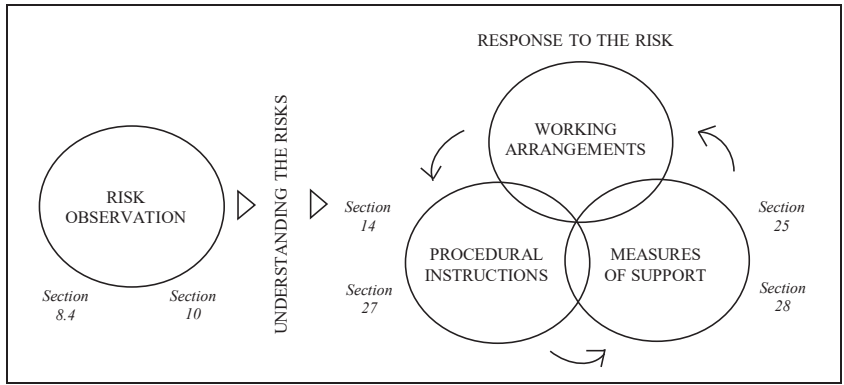
All in all, safety measures which can be expected from the employer in the case of hate speech at work aim either at preventing the risk of hate speech or at responding to the risk of hate speech and its consequences.

26 See Jenny Rintala, "Työn psykososiaaliset kuormitustekijät työturvallisuuslaissa," in *Työturvallisuuslaki*, Johanna Havula et al. (Helsinki: Edita, 2018), 158.

27 Government of Finland, *HE 59/2002 vp*, 43.

Safety measures can be categorized either as a procedural instruction or as a measure of support.²⁸ In addition, some measures concerning working arrangements are available, and the need for those measures and arrangements may be based either on assessment of risks and a high probability or gravity of the risk of hate speech or on discussions that the employer and employee have had after the employee has faced hate speech at work and responsive measures are being considered. These safety measures and the role of different responsibilities in preventing and responding to the risk of hate speech at work are presented in figure 1.

Figure 1. Safety measures required and aimed either at preventing the risk of hate speech at work or employed as a response to risk.



Procedural instructions can contain instructions for supervisors and employees on how to act and proceed in a case of online harassment or in the case of an evident threat of violence in the workplace. There may also be a need for instructions concerning information security, the use of social media at work in general, the moderation policy of the organization – just to name a few.²⁹ The rules of discussion and the principles of modera-

28 Rauramo et al., ”Sosiaalisen median työkäyttö.”
29 See ”Edilex Uutiset: Työpaikoilla tulisi olla yhteisesti sovitut periaatteet ja käytännöt somessa havaittuun tai koettuun epäasialliseen kohteluun puuttumiseksi,” Edilex, accessed October 20, 2020, <https://www.edilex.fi/uutiset/41223>; J. Nathan Matias, ”Posting Rules in Science Discussions Prevents Problems & Increases Participation,” CivilServant, last modified April 29, 2019, https://civilservant.io/moderation_experiment_r_science_rule_posting.html.

tion should be defined by the administrator of each platform.³⁰ If it is a question of the employer's own websites and social media channels, this should be attended to by the employer concerned. Employers should for their part aim at promoting a correct and respectful discussion culture on the platforms they administer.³¹

The need for different kinds of instructions is based on either section 14 in general or on section 27 in terms of an evident threat of violence. In addition, the employer may be obliged to offer special training for employees. However, these measures are always secondary in comparison to those measures which are general in impact.³² That is, the employer should try to eliminate the risk if possible, instead of just settling for the possibility of minimizing the risk by instructing employees. However, the risk of hate speech when it appears anonymously and in social media is of such a nature that it is hardly ever completely eliminable.

Measures of support aim at a situation where an employee who has encountered hate speech at work receives the amount of support needed in order to deal with what has happened.³³ Occupational health services should be in place and the employee should be provided with other discussion possibilities, too, with the supervisor and peer support if needed.³⁴ The employer should also provide the employee with help and support if it comes to possible proceedings involving the authorities.

If the risk of hate speech at work is considered high, stronger safety measures should be considered, too. These measures are aimed mainly at working arrangements or working methods and are such by nature that they normally strongly affect the nature of the work itself and the essence of expert work. That is why these measures, like de-identification of work outputs and changes in working assignments, may not be particularly desirable or even possible options. Of course, some technical measures,

30 Päivi Korpisaari, "Sananvapaus verkossa – yksilöön kohdistuva vihapuhe ja verkkoalustan ylläpitäjän vastuu," *Lakimies* 7-8 (December 2019): 951.

31 Mäkinen, *Sanat ovat tekoja*, 18.

32 See Kuikko, *Työturvallisuus ja sen valvonta*, 42; Saloheimo, *Työturvallisuus*, 91.

33 See Mika Illman, *Järjestelmällinen häirintä ja maalittaminen: Lainsäädännön arviointia* (Helsinki: Valtioneuvosto, 2020), 112, <https://julkaisut.valtioneuvosto.fi/handle/10024/162579>.

34 Rauramo et al., "Sosiaalisen median työkäyttö"; Saloheimo, *Työturvallisuus*, 112; Illman, *Järjestelmällinen häirintä*, 112.

too, such as automatic comment moderation and discussion facilitation, may – indeed should – be used, too, if possible.³⁵

These are all measures for which a need can be based on the obligations set for the employer by the Finnish OSHA. The decision on what measures are needed is for employers to make since no specific requirements are set in law.³⁶ Because the risk of hate speech at work or other risks caused by digitalization have not been mentioned or specially identified in the Finnish OSHA, the risk of hate speech at work does not seem to receive the attention it should in practice.³⁷ The need for assessing these kinds of risks should be emphasized, at least in the instructions given by the authorities to workplaces in the future.³⁸ Additionally, the reactive nature of obligations concerning harassment and workload and strong emphasis on the physical aspect of an evident threat of violence should be re-considered.³⁹ The employer should be explicitly obliged also to take preventive measures in terms of dealing with harassment and workload at work, and regulation should better embody the fact that employees can also end up in threatening situations in other circumstances than during face-to-face encounters. Digitalization has brought with it new risks with effects on the safety of the working environment, a situation that should be taken into account when considering amendments to the law.

35 See “Häiritsevä palaute”; “Online Harassment Field Manual: Best Practices for Employers,” PEN America, accessed October 20, 2020, <https://onlineharassmentfieldmanual.pen.org/best-practices-for-employers/>.

36 See Siiki, *Työturvallisuuslainsäädäntö*, 52.

37 See Aleksi Knuutila et al., *Viha vallassa: Vihapuheen vaikutukset yhteiskunnalliseen päätöksentekoon* (Helsinki: Valtioneuvosto, 2019), 10, <https://julkaisut.valtioneuvosto.fi/handle/10024/161812>.

38 See Suomen Lakimiesliitto, ”Lausunto maalittamista koskevaan selvitykseen” (Report, Helsinki, August 8, 2020), 2; Päivi Rauramo, *Työsuojelu ja työhyvinvointi asiantuntija- ja toimistotyössä* (Helsinki: Työturvallisuuskeskus, 2020), 76, 78. Cf. Sosiaali- ja terveysministeriö, *Riskien arviointi työpaikalla -työkirja* (Helsinki: Sosiaali- ja terveysministeriö, 2015), https://ttk.fi/tyoturvallisuus_ja_tyosuojelu/tyosuojelu_tyopaikalla/vastuut_ja_velvoitteet/tyon_vaarojen_selvittaminen_ja_arviointi.

39 See Tieteentekijöiden liitto, ”Lausuma koskien Valtioneuvoston kanslian ns. maalittamista koskevaa selvityspyyntöä” (Report, Helsinki, August 31, 2020), 4.

Chapter 3. Conclusion

As online hate is a phenomenon related to social media and can be practised through anonymous comments, it is typically beyond the individual employer's sphere of influence. When the perpetrator is not a part of the employer's organisation but a client or other outsider, the employer's means of preventing or responding to online harassment targeting its employees are limited. Outsiders do not operate under the employer's direction⁴⁰ and the employer lacks supervisory measures. Therefore, online hate constitutes a work-related risk which cannot be totally prevented in advance. The risk of hate speech at work should, however, be recognized and understood by both employers and their employees,⁴¹ and guidelines and instructions should be prepared in case the risk later materialises. This is a requirement which should be fulfilled in order to limit the effects that facing hate speech at work can have on an employee's health.⁴²

Since the employer's possibilities to prevent hate speech targeting employees are limited, some other kind of legislation and regulation aiming at restraining hate speech should also be in place. This is a question of the combined effect which different laws can have together.⁴³ Hate speech is a complex problem and there is no simple solution. Instead, there is a need for broad legislative measures concerning, for example, criminal and procedural law, and other activities regarding, for example, occupational safety and health, too.⁴⁴ In short, a combination of diverse measures should be utilized when trying to control the increase in open expressions of hate in the context of social media.⁴⁵

40 See the Finnish Employment Contracts Act (55/2001) chapter 1, section 1: "This Act applies to contracts (employment contracts) entered into by an employee, or jointly by several employees as a team, agreeing personally to perform work for an employer under the employer's direction and supervision in return for pay or some other remuneration."

41 See for example Rauramo, *Työsuojelu ja työhyvinvointi*, 76, 78.

42 Illman, *Järjestelmällinen häirintä*, 111.

43 Aluehallintovirasto, "Lausunto maalittamista ja vihapuhetta koskevaan selvitystyöhön" (Report, Helsinki, August 31, 2020), 4.

44 Poliisihallitus, "Lausunto maalittamista koskevaan selvitykseen" (Report, Helsinki, July 24, 2020), 6-7.

45 See Teo Keipi et al., *Online Hate and Harmful Content: CrossNational perspectives* (London and New York: Routledge, 2017), 1-2, OAPEN Free.

The Finnish Government conducted a review on legislation concerning targeting,⁴⁶ with different interest groups, such as employer and employee organisations, stating in their reports that measures should be multiple when dealing with a multidimensional problem such as targeting. Some criminal legislation should be in place in order to tackle the problem through regulatory effect. However, criminal legislation alone is not an answer as criminal processes are often slow and heavy. In addition, the question of freedom of expression arises. This is a fundamental right which should not be restrained excessively by criminal legislation. Therefore, the crime threshold in terms of hate speech and targeting should be set quite high. Since hate speech and targeting can be considered as challenges for criminal law, there is a need for other measures to counteract the consequences of hate speech, too, as the consequences may prove to be seriously damaging and harmful.⁴⁷ One aspect to be considered is the occupational safety and health viewpoint and employers' responsibilities which have been under scrutiny in this study. The safety measures required from the employer have an important role to play when the target of hate speech is an employee and the employee's work duties or position is the reason behind hate speech.⁴⁸

The right to work in peace and safety at work is a fundamental right, as is freedom of expression; indeed, it should be a guarantee for each employee. On the one hand society and on the other hand individual employers are obliged to ensure that employees are free to do their job in a safe and sound environment.⁴⁹ Each employer has a general duty of care set by the Finnish OSHA in terms of the safety and health of its employees at work. Employer responsibilities in the context of occupational safety and health are based on the employer's general duty of care throughout the EU,⁵⁰ and in general it covers all kinds of different risks and hazards caused by

46 Targeting can be understood as "a complex of hateful expressions in which someone sparks off a hate campaign against another, usually on social media". Päivi Korpisaari and Kristiina Koivukari, "Hate speech and targeting individuals online – a new challenge for criminal law" (Concept note for Hate Speech & Platform Regulation, international online-workshop, October 17, 2020), 1.

47 Suomen Journalistiliitto, "Lausunto maalittamista koskevaan selvitykseen" (Report, Helsinki, August 24, 2020), 1.

48 Illman, *Järjestelmällinen häirintä*, 105.

49 Suomen Syyttäjähdistys ry, "Lausuma maalittamista koskevassa asiassa" (Report, Helsinki, August 6, 2020), 5.

50 See article 6.1, framework directive: "Within the context of his responsibilities, the employer shall take the measures necessary for the safety and health protection of workers –". See also Walters, "The Framework Directive," 46.

work, the working environment, or working conditions. The general duty of care requires protective measures from the employer, but the choice of safety measures necessary rests ultimately with each employer and is dependent on the work involved and on the risks it entails. At the same time the employer's occupational safety and health responsibilities are an example of a legislative structure through which the responsibilities of social media enterprises on discussions and expressions of hate presented via their platforms could also be regulated.⁵¹

As for criminal sanctions, an amendment to the Criminal Code of Finland (39/1889) is under consideration. The proposed amendment would enable a public prosecutor to bring charges for menace⁵² not only when the injured party reports the offence for bringing charges, but also in other circumstances when a person has been threatened due to their working duties and the offender does not belong to the personnel of the workplace.⁵³ If these kinds of hate crimes were under public prosecution, the employer's possibilities to take care of its responsibility to protect its employees' health and safety at work could also be enhanced and improved.⁵⁴ In the case of actionable offences, legal proceedings may seem more personified and the risk of increased threats and continued harassment due to legal proceedings may decrease employee willingness to report offences.⁵⁵

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- 51 Lorna Woods and William Perrin, *Online harm reduction: a statutory duty of care and regulator* (Dunfermline: Carnegie UK Trust, 2019), 5, <https://www.carnegieuktrust.org.uk/publications/online-harm-reduction-a-statutory-duty-of-care-and-regulator/> in which they propose a similar kind of statutory duty of care to regulate social media enterprises when it comes to reducing harm in social media.
- 52 See the Criminal Code of Finland chapter 25, section 7: "A person who raises a weapon at another or otherwise threatens another with an offence under such circumstances that the person so threatened has justified reason to believe that his or her personal safety or property or that of someone else is in serious danger shall, unless a more severe penalty has been provided elsewhere in law for the act, be sentenced for menace to a fine or to imprisonment for at most two years."
- 53 See Government of Finland, HE 226/2020 vp: *Hallituksen esitys eduskunnalle laiksi rikoslain 25 luvun 9 §:n muuttamisesta* (Helsinki: Government of Finland, 2020), 1.
- 54 See Jani Hannonen, *Luonnos hallituksen esitykseksi laiksi rikoslain 25 luvun 9 §:n muuttamisesta: Lausuntotivistelmä* (Helsinki: Oikeusministeriö, 2020), 13-15, <https://julkaisut.valtioneuvosto.fi/handle/10024/162439>; Suomen Lakimiesliitto, "Lausunto maalittamista koskevaan selvitykseen," 1-2.
- 55 See Suomen tuomariliitto, "Lausuma maalittamista koskevassa asiassa" (Report, Tampere, August 14, 2020), 3-4; Yhdenvertaisuusvaltuutettu, "Lausunto maalittamista koskevaan selvitykseen" (Report, Helsinki, September 2, 2020), 2. – This is something that has recently been pointed out by the European Commission, as well. See "February infringements package: key decisions," European Commis-

Criminal sanctions should, however, be utilized as a last resort to restrict hate speech.⁵⁶ This is also in line with the objectives of occupational safety and health legislation which aims first and foremost at preventing risks, including the risk of hate speech, at work in advance, instead of settling for responsive measures after employees have already been targeted with hate speech and there is a need for remedies. It is ultimately quite rare that perceived online hate would result in criminal responsibility or liability for damages which would provide legal protection for the victim. Hence, the protection and support provided by the employer and its occupational safety and health activities is of great importance in cases where hate speech is work-related.⁵⁷ Employer support and occupational safety and health measures are always needed in the case of work-related harassment which may potentially harm employees' health – in those cases where harassment experienced does not constitute an offence as well.⁵⁸

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56 See Judit Bayer and Petra Bárd, *Hate speech and hate crime in the EU and the evaluation of online content regulation approaches* (Brussels: European Union, 2020), 14, <https://doi.org/10.2861/28047>.

57 Atte Oksanen and Päivi Korpisaari, "Viha ja julkisuus: Päätöksentekoon vaikuttamaan pyrkivä vihapuhe yhteiskunnallisesta ja oikeudellisesta näkökulmasta" (Research plan, October 2019), 5.

58 Illman, *Järjestelmällinen häirintä*, 139.

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