

S.I. No. 17 of 2002

Industrial Relations Act 1990 (Code of Practice detailing Procedures for Addressing Bullying in the Workplace) (Declaration) Order 2002

WHEREAS the Labour Relations Commission has prepared, under subsection (1) of section 42 of the Industrial Relations Act 1990 (No. 19 of 1990), a draft code of practice detailing procedures for addressing bullying in the workplace;

AND WHEREAS the Labour Relations Commission has complied with subsection (2) of that section and has submitted the draft code of practice to the Minister for Enterprise, Trade and Employment;

NOW THEREFORE, I, Mary Harney, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by subsection (3) of that section, the Labour (Transfer of Departmental Administration and Ministerial Functions) Order 1993 (S. I. No. 18 of 1993), and the Enterprise and Employment (Alteration of Name of Department and Title of Minister) Order 1997 (S.I. No. 305 of 1997), hereby order as follows:

1. This Order may be cited as the Industrial Relations Act 1990 (Code of Practice detailing Procedures for Addressing Bullying in the Workplace) (Declaration) Order 2002.
2. It is hereby declared that the code of practice set out in the Schedule to this Order shall be a code of practice for the purposes of the Industrial Relations Act 1990 (No. 19 of 1990).

SCHEDULE

Code of Practice Detailing Procedures for Addressing Bullying in the Workplace

Introduction

1. Section 42 of the Industrial Relations Act 1990 provides, inter alia, for the preparation of draft Codes of Practice by the Labour Relations Commission for submission to the Minister and for the making by the Minister of an order declaring that the code received under Section 42 and scheduled to the order shall be a Code of Practice for the purposes of the said Act.
2. In September 1999, the Minister for Labour Affairs, Mr Tom Kitt T.D. established the Task Force on the Prevention of Workplace Bullying. In March 2001 the Task Force issued its report entitled “Dignity at Work – the Challenge of Workplace Bullying”. In line with a recommendation of the report the Labour Relations Commission has prepared this code of Practice on Workplace Bullying.
3. In accordance with the provisions of the legislation, when preparing this Code of Practice the Commission consulted with representative organisations including the Irish Congress of Trade Unions, the Irish Business and Employers Confederation, Equality Authority, Employment Appeals Tribunal, Labour Court, Health and Safety Authority and a number of Government Departments. The Commission has taken account of the views expressed by these organisations to the maximum extent possible. The Commission has also consulted with the Implementation Advisory Committee on the Prevention of Workplace Bullying.
4. Other relevant Codes of Practice have been made under the Safety, Health and Welfare at Work Act 1989 and under the Employment Equality Act 1998.

Definition

5. For the purpose of this Code of Practice the definition of workplace bullying is as follows:

“Workplace Bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual’s right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying.”¹

General Provisions

6. The main purpose of this Code of Practice is to set out, for the guidance of employers, employees and their representatives, effective procedures for addressing allegations of workplace bullying. The Code sets out both an informal and formal procedure.

Procedures

7. Informal Procedure

While in no way diminishing the issue or the effects on individuals, an informal approach can often resolve matters. As a general rule therefore, an attempt should be made to address an allegation of bullying as informally as possible by means of an agreed informal procedure. The objective of this approach is to resolve the difficulty with the minimum of conflict and stress for the individuals involved.

¹ Recommended by the Report by the Task Force on the Prevention of Workplace Bullying – published by the Stationery Office, March 2001

(a) Any employee who believes he or she is being bullied should explain clearly to the alleged perpetrator(s) that the behaviour in question is unacceptable. In circumstances where the complainant finds it difficult to approach the alleged perpetrator(s) directly, he or she should seek help and advice, on a strictly confidential basis, from a contact person. A contact person could, for example, be one of the following:

- a work colleague;
- a supervisor or line manager;
- any manager in the workplace;
- human resource/personnel officer;
- employee/trade union representative.

In this situation the contact person should listen patiently, be supportive and discuss the various options open to the employee concerned.

(b) Having consulted with the contact person, the complainant may request the assistance of the contact person in raising the issue with the alleged perpetrator(s). In this situation the approach of the contact person should be by way of a confidential, non-confrontational discussion with a view to resolving the issue in an informal low-key manner.

(c) A complainant may decide, for whatever reason, to bypass the informal procedure. Choosing not to use the informal procedure should not reflect negatively on a complainant in the formal procedure.

8. Formal Procedure

If an informal approach is inappropriate or if after the informal stage, the bullying persists, the following formal procedures should be invoked: -

- a. The complainant should make a formal complaint in writing to his/her immediate supervisor, or if preferred, any member of management. The complaint should be confined to precise details of actual incidents of bullying.

- b. The alleged perpetrator(s) should be notified in writing that an allegation of bullying has been made against them. They should be given a copy of the complainant's statement and advised that they shall be afforded a fair opportunity to respond to the allegation(s).
- c. The complaint should be subject to an initial examination by a designated member of management, who can be considered impartial, with a view to determining an appropriate course of action. An appropriate course of action at this stage, for example, could be exploring a mediated solution or a view that the issue can be resolved informally. Should either of these approaches be deemed inappropriate or inconclusive, a formal investigation of the complaint should take place with a view to determining the facts and the credibility or otherwise of the allegation(s).

Investigation

- d. The investigation should be conducted by either a designated member or members of management or, if deemed appropriate, an agreed third party. The investigation should be conducted thoroughly, objectively, with sensitivity, utmost confidentiality, and with due respect for the rights of both the complainant and the alleged perpetrator(s).
- e. The investigation should be governed by terms of reference, preferably agreed between the parties in advance.
- f. The investigator(s) should meet with the complainant and alleged perpetrator(s) and any witnesses or relevant persons on an individual confidential basis with a view to establishing the facts surrounding the allegation(s). Both the complainant and alleged perpetrator(s) may be accompanied by a work colleague or employee/trade union representative if so desired.

- g. Every effort should be made to carry out and complete the investigation as quickly as possible and preferably within an agreed timeframe. On completion of the investigation, the investigator(s) should submit a written report to management containing the findings of the investigation.
- h. Both parties should be given the opportunity to comment on the findings before any action is decided upon by management.
- i. The complainant and the alleged perpetrator(s) should be informed in writing of the findings of the investigation.

Outcome

- j. Should management decide that the complaint is well founded, the alleged perpetrator(s) should be given a formal interview to determine an appropriate course of action. Such action could, for example, involve counselling and/or monitoring or progressing the issue through the disciplinary and grievance procedure of the employment.²
- k. If either party is unhappy with the outcome of the investigation, the issue may be processed through the normal industrial relations mechanisms.

Confidentiality:

- 9. All individuals involved in the procedures referred to above should maintain absolute confidentiality on the subject.

² See the Labour Relations Commission's Codes of Practice on
- Grievance and Disciplinary Procedures and
- Voluntary Dispute Resolution.

Training/Awareness:

10. It is considered that all personnel who have a role in either the informal or formal procedure - e.g. designated members of management, worker representatives, union representatives etc – should be made aware of appropriate policies and procedures which should, if possible, include appropriate training.

GIVEN under my Official Seal

25 January 2002.

MARY HARNEY

Mary Harney

Minister for Enterprise, Trade
and Employment

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The effect of this Order is to declare that the code of practice set out in the Schedule to this Order is a code of practice for the purposes of the Industrial Relations Act, 1990.

Price €1.27

Pn. No. 11114