

Protection Against Dismissal and Penalisation Under the Safety, Health and Welfare at Work Act 2005

Introduction

As we adapt to our new way of life with Covid-19, employees are now more than ever concerned with health and safety in the workplace. However, with huge unemployment levels in the country, employees are also worried that raising any health and safety issues in the workplace will have a negative impact on their employment.

Protection

The Safety, Health and Welfare at Work Act 2005 protects employees against dismissal and penalisation as a result of raising complaints regarding health and safety in the workplace.

Section 27 (1) defines penalisation as: -

“Any act or omission by an employer or a person acting on behalf of an employer that affects, to his or her detriment, an employee with respect to any term or condition of his or her employment.”

Section 27 (2) sets out that penalisation can include but is not limited to: -

“

- a) Suspension, layoff, or dismissal or the threat of same;
- b) Demotion or loss of opportunity for promotion;
- c) Transfer of duties, change of location of place of work, reduction in wages or change in working hours;
- d) Imposition of any discipline, reprimand or other penalty; and
- e) Coercion and intimidation.”

Section 27 (3) specifically provides that an employer shall not penalise or threaten penalisation against an employee for: -

“

- a) Acting in compliance with the relevant statutory provisions;
- b) Performing a duty or exercising a right under the relevant statutory provisions;
- c) Making a complaint/representation to a safety representative, employer, HSA relating to safety, health and welfare at work;

- d) Giving evidence in proceedings in respect of enforcing relevant statutory provisions;
- e) Being a safety representative or an employee performing functions under the relevant statutory provisions; and
- f) Refusing to return to the place of work in circumstances where the employee believed there to be a serious and imminent danger or for taking steps to avoid such danger.”

If an employee has his/her employment terminated as a result of raising health and safety complaints in the workplace, this dismissal will be deemed to be unfair. Section 27 (4) provides that the dismissal of an employee shall be deemed for the purposes of the Unfair Dismissals Act 1977 – 2001 to be an unfair dismissal if it results wholly or mainly from a penalisation. Section 27 (5) provides that the employee cannot recover under both the Unfair Dismissals Legislation and Safety, Health and Welfare at Work Act 2005 in the event of a successful outcome.