

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.

Claiming for Penalisation/Dismissal

In order to make a claim for penalisation or dismissal arising out of a health and safety complaint, a complaint must be submitted to the Workplace Relations Commission within a period of six months of the date of penalisation/dismissal. A hearing date will be assigned and an adjudication officer of the Workplace Relations Commission will hear the complaint. The adjudication officer can then carry out one or more of the following options: -

1. Declare the complaint to be well founded or not well founded;
2. Require the employer to take a specific course of action; and
3. Require the employer to pay compensation to the employee.

If the parties are not satisfied with the decision of the adjudication officer, the case can be appealed to the Labour Court.

Previous cases for penalisation and dismissal arising from health and safety issues which have been before the Workplace Relations Commission and Labour Court have illustrated that such a claim will only be successful if the employee can prove the following: -

1. That he /she made a complaint to the employer regarding health and safety issues in the workplace. It is extremely helpful

if the complaint was made in writing and a copy can be produced.

2. That he/she suffered some sort of detriment as a result of making the complaint regarding health and safety issues in the workplace.
3. That he/she can prove that this detriment would not have been suffered if the complaint was not made.

Other Avenues of Redress

Depending on the circumstances of each employee's case, there may be more than one avenue to explore for redress. For example, Section 5 (3) (d) of the Protected Disclosures Act 2014 provides for the protected disclosure of relevant wrongdoings, including that "*the health and safety of any individual has been or is likely to be endangered*". As set out above, Section 27 (4) of the Safety Health and Welfare at Work Act 2005 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. An employment law solicitor can assist you with choosing the best avenue of redress for your case.

Conclusion

Safety, health and welfare at work is very much a top priority for organisations at the moment. However, there are, as always, a portion of employers that will have total disregard for health and safety at work. There are protections for the employees in these organisations. We are here to assist any employees who have been penalised or dismissed for raising health and safety complaints in the workplace.

If you require further information please phone us on 01 – 9695781 or e-mail us at info@grogansolicitors.ie. For further information you will find guides on our website www.grogansolicitors.ie.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**