

The Do's and Don'ts of the New Code of Practice "Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work" *

This new Code has been prepared by the Workplace Relations Commission in conjunction with the Health and Safety Authority. It is a welcomed update on the issue of bullying at work.

This is an issue that can impact on any type of working environment, and due to bullying's subjective nature it can be an issue that arises quite often.

From the outset we set out the definition of bullying in the workplace:

"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 be reasonably 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"

One of the most significant points that the Code highlights is that bullying and harassment are two distinct legal concepts. In turn this Code does not deal with harassment, except to reinforce the point that it is distinct from bullying. Harassment is dealt with under a separate Code of Practice on Sexual Harassment and Harassment at Work published by the Irish Human Rights and Equality Commission.

This new Code serves as a guide to all parties in the employment relationship, to include employee Representatives, Union Officials, and, Employers.

We set out our "Ten Do's" in respect of using the code to aid with dealing with workplace bullying:

1. Employers put procedures in place for dealing with bullying
2. Appoint a Contact Person

3. Maintain a record of what actions are taken in dealing with complaints of bullying
4. Put in place an Anti-Bullying Policy (Appendix 1 of the code provides a template)
5. Have a Safety Statement in place
6. Employers are required to have a consultation with employees in respect of health and safety matters
7. Communicate all policies to all employees to include new employees when they start
8. Training should be given to ensure employees understand the policies that are put in place
9. Reviews should be done on an ongoing basis to ensure compliance with the policies in place
10. Get specialist legal advice to make sure you get it right.

The do nots to ensure compliance with the Code:

1. DO NOT CREATE A POLICY TO GATHER DUST

This is the most important piece of information that can be given, there is no point using resources in creating a policy that is simply going to gather dust in the workplace.

If an employer is going to spend money having a policy drafted, then have it communicated to all parties in the workplace.

It is vital that when new employees join the company, they should be made aware of the policy in place as part of their induction.

A good idea is to have it included in the Staff Handbook, and this will in turn make it easier to ensure new employees are aware of the policies from commencing employment.

If policies are updated, have the update notified to employees.

We will now set out in further detail our “Ten do’s” in respect of using the code to deal with workplace bullying.

1. Employers put procedures in place for dealing with bullying.

An employer that intends on adopting procedures to help with workplace bullying, should ensure that these procedures are actually followed. The reasoning behind this is an employer is under a duty to act reasonably to prevent workplace bullying patterns developing, and where a complaint does arise, an employer must act reasonably in addressing it. As a starting point, an employer should when planning to adopt procedures to prevent bullying in the workplace, have to the forefront that they want to ensure the workplace culture is one where bullying is not deemed to be acceptable behavior, and where it does occur it will be addressed in an appropriate manner.

To ensure that the workplace culture is not a breeding ground for bullying, it is important an employer makes clear that employees have a duty themselves to promote a positive workplace free from bullying behaviour. The Code gives guidance on setting out an informal and formal procedures for dealing with a workplace bullying complaint. The Code highlights the value of using the process of mediation as a way to resolve issues at an early stage.

2. Appoint a Contact Person:

This contact person is in place to be the first port of call, for a person in the workplace enquiring about a possible bullying case. This person could be any employee for example a supervisor, line manager, hr personnel, a trade union representative or a fellow work colleague. The aim of appointing such a person is to have a person act in a supportive, listening and informative role. This contact person should be carefully selected and trained; they will not partake in investigating any bullying complaints.

3. Maintain a record of what actions are taken in dealing with complaints of bullying

Once a complaint of bullying is made, it is important to keep a record of what has occurred. If an informal approach is the best course of action for dealing with a complaint a record of this should be kept, in line with relevant Data Protection Legislation. The record for example

should contain details on the matter, any agreed outcome, and dates. If the best course of action requires taking a formal approach, a record of the matter should be kept, again in line with Data Protection Legislation.

In addition, records such be kept of the training that has been given to employees in respect of bullying.

4. Put in place an Anti-Bullying Policy (Appendix 1 of the Code provides a template)

As set out above the Code has a sample Anti-Bullying Policy at Appendix 1.

It is important to note from the outset that an employer should consult with where relevant in the workplace employee representatives or a trade union, or if it is a small business, employees directly when implementing the policy.

The policy should be communicated to all parties within the employment sphere, this can encompass not simply employees but clients, customers, suppliers etc. In order to achieve this best practice is to display the policy on your website, or if the employer does not have a website a notice board is sufficient.

The policy once agreed and implemented should be signed and dated by a person at senior management level. Additionally, if any update is made to the policy it should be signed and dated again, and brought to the attention of everyone impacted by it.

5. Have a Safety Statement in place

An employer is obliged under Section 20 of the Safety, Health and Welfare at Work Act 2005 to prepare a written safety statement, which is to be based on identified hazards and a risk assessment carried out in the workplace.

6. Employers are required to have a consultation with employees in respect of health and safety matters

This point ties in with having a safety statement in place.

An employer should at least once a year bring to the attention of the employees its safety statement. If any amendments are made to the

safety statement, this should be brought to the attention of the employees.

In particular if there are tasks in a workplace that pose serious risk to the safety, health or welfare of employees, the employer shall bring to the attention of the specific employees impacted an extract of the safety statement setting out the relevant risk & the protective and preventative measures that have been incorporated in relation to the risk.

Section 25 and 26 of the Safety, Health and Welfare at Work Act, 2005 is in place to ensure compliance with the appointment of safety representatives and consultations and participation by employees & safety representatives.

7. Communicate all policies to all employees to include new employees when they start

This point is highlighted again, as it is simply to reiterate how important it is to communicate policies to all employees to include new employees. When new employees are recruited the Anti-Bullying Policy should be distributed as part of the induction process.

As Employment Solicitors we often see it arising in practice that employers expend time and money creating policies that are not communicated in an effective manner to employees.

As has been made clear communicating such policies is best practice but also it is needed to ensure compliance under Legislation.

8. Training should be given to ensure employees understand the policies that are put in place

Section 8 of the Safety, Health and Welfare at Work Act, 2005 sets out that employees are to be given appropriate training and instructions.

Section 13 places a duty on employers to attend such training, & if required undergo an assessment as may reasonably be required by an employer or as prescribed in relation to safety, health and welfare at work relating to the work at hand.

The policy in place should include a commitment to staff training and supervision as identified in the risk assessment on issues relating to bullying.

9. Reviews should be done on an ongoing basis to ensure compliance with the policies in place

This entails ensuring that were any amendments are made in respect of the policies that they are communicated to all employees.

The policy in place should include a commitment to monitoring and recording incidents of bullying in the workplace.

A review should be carried out where there has been an update in the law, or relevant case law or other developments which may impact on the policy in place at that time.

- 10.A Specialist Employment Law and Health and Safety Law Solicitor can assist you in getting it right.

***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 as a proportion or percentage of any award or settlement.**