

POLICY NO.8 Prevention and Resolution of Bullying at Work POLICY

REV: 03 DATE: 15.07.2022

INTRODUCTION

A new code of practice concerning the prevention and resolution of bullying at work has been made by way of a statutory instrument No. 674/2020 published on 5 January 2021. The order is cited under the Safety, Health and Welfare at Work Act 2005 and the Industrial Relations Act 1990.

The Statutory Instrument:

- defines harassment and bullying at work,
- sets out steps for the management of bullying at work and
- sets out the preventative measures and actions that should be taken,
- sets out the formal process which should be implemented, and
- describes the role of the Health and Safety Authority and Workplace Relations Commission.

DATE OF IMPLEMENTATION

This code of practice came into effect on 23rd December 2020.

It replaces the COP entitled “Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work” issued by the Health and Safety Authority (HSA) in 2007 in accordance with the Safety Health and Welfare at Work Act 2005 and the “Code of Practice Detailing Procedures for Addressing Bullying in the Workplace” issued by the then Labour Relations Commission (LRC) now the Workplace Relations Commission (WRC) in 2002 in accordance with Section 42 of the Industrial relations Act 1990.

HSA INVOLVEMENT Under Section 60 of the Safety, Health and Welfare at Work Act 2005 the HSA is empowered to publish Codes of Practice on any part of a code of practice with respect to safety, health and welfare and work for the purposes of providing practical guidance to employers and employees.

- This includes providing guidance for employers on identifying and preventing bullying at work arising from their duties under section 8 (2) (b) of the 2005 Act as regards ‘managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health and welfare at work of his or her employees at risk’.
- It also applies to employees in relation to their duties under section 13 (1) (e) of the 2005 Act to ‘not engage in improper conduct or behaviour that is likely to endanger his or her own safety, health and welfare at work or that of any other person’.

APPLICATION This Code applies to all employments in Ireland irrespective of whether employees work at a fixed location, at home or are mobile.

WHAT ARE THE DEFINITIONS? BULLYING V HARASSMENT

These are legally distinct concepts and so a behaviour can be deemed either bullying or harassment, not both.

Discrimination: Discrimination on the basis of the nine grounds specified in the Acts (Gender, Civil Status, Family Status, Sexual Orientation, Religion, Age, Disability, Race and Membership of the Traveller Community) comes under the remit of the Employment Equality Acts.

Harassment:

- Under the Employment Equality Acts, Harassment is any unwanted conduct related to any of the discriminatory grounds under the Employment Equality Acts.
- Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature.

Bullying:

- For the purpose of this code workplace bullying is defined as 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.
- Workplace bullying should meet the criteria of an on-going series of accumulation of seriously negative targeted behaviours against a person or persons to undermine their esteem and standing in a harmful, sustained way.
- Bullying behaviour is offensive, on-going, targeted and outside any reasonable ‘norm’.

- A pattern and trend are involved so that a reasonable person would regard such behaviour as clearly wrong, undermining and humiliating.
- It involves repeated incidents or a pattern of behaviour that is usually intended to intimidate, offend, degrade or humiliate a particular person or group of people - but the intention is not important in the identification process.

Bullying activities involve actions and behavioural patterns, directly or indirectly, spoken and/or written and could include the use of cyber or digital means for the goal of bullying.

Examples of bullying:

- Exclusion with negative consequences
- Verbal abuse/insults
- Being treated less favourably than colleagues in similar roles
- Belittling a person's opinion
- Disseminating malicious rumours, gossip or innuendo
- Socially excluding or isolating a person within the work sphere
- Intrusion - pestering, spying or stalking
- Intimidation/aggressive interactions
- Excessive monitoring of work
- Withholding information necessary for proper performance of a person's job
- Repeatedly manipulating a person's job content and targets
- Blaming a person for things beyond their control
- Use of aggressive and obscene language
- Other menacing behaviour

WHAT IS NOT BULLYING IN THE WORKPLACE?

Behaviour considered bullying by one person may be considered routine interaction by another, so the 'reasonableness' of behaviours over time must be considered.

- Disrespectful behaviour, whilst not ideal, is not of itself bullying.
- Conflicts and disagreements do not, of themselves, make for a bullying pattern either. There are various workplace behavioural issues and relationship breakdowns which are troubling, upsetting and unsettling but are not of an adequate level of destructiveness to meet the criteria required for a bullying case.
- Objective criticism and corrections that are intended to provide constructive feedback to an employee are not usually considered bullying, but rather are intended to assist the employee with their work.

Bullying does not include:

- Expressing differences of opinion strongly
- Offering constructive feedback, guidance, or advice about work-related behaviour which is not of itself welcome
- Ordinary performance management
- Reasonable corrective action taken by an employer or supervisor relating to the management and direction of employees. Eg. managing a worker's performance, taking reasonable disciplinary actions, or assigning work
- Workplace conflict where people disagree or disregard the others' point of view.

MANAGEMENT OF BULLYING AT WORK

Every individual in the workplace has a role in promoting a positive workplace free from bullying behaviour.

EMPLOYER DUTIES

- Uphold the duty to manage and conduct work activities in such a way as to prevent any improper conduct or behaviour likely to put at risk an employee's safety, health or welfare at work.
- Act reasonably to prevent workplace bullying patterns developing and
- Where there are complaints, the employer must react reasonably, assess a complaint, record actions and put in place a suitable response based on each case arising.
- Prepare a Safety Statement under Section 20 of the 2005 Act, based on an identification of the hazards to safety, health and welfare at the place of work, an assessment of the risks involved and setting down the preventive measures necessary to protect safety,

health and welfare. Risk is the likelihood of a hazard causing harm and the extent of that harm

- Develop a proper workplace anti-bullying policy, in consultation with employees, to ensure a system is in place for dealing with complaints and that disciplinary action may follow where bullying is found to have occurred. Consultation with employees on health and safety matters is required under Section 26 of the 2005 Act, in addition to the requirements of Sections 8 and 9 of the Act.

EMPLOYEE DUTIES:

Employees have duties under the 2005 Act to conduct themselves properly in relation to others at work.

- Employees must create a co-operative relational climate within the workplace by their own behaviour. How they behave and how that behaviour is responded to feeds into a broader sense of what is acceptable.
- Promote positive behaviour to others, relating in clear, civil and respectful ways to everybody in the workplace.
- Comply with the relevant statutory provisions,
- Take reasonable care to protect his or her safety, health and welfare and the safety, health and welfare of any other person who may be affected by the employee's acts or omissions at work
- Co-operate with the employer or any other person so far as is necessary to enable his or her employer or the other person to comply with the relevant statutory provisions, as appropriate.
- Not engage in improper conduct or other behaviour that is likely to endanger a person's own safety, health and welfare at work or that of any other person at work or during the course of their employment.

PREVENTION OF WORKPLACE BULLYING

There are several ways to prevent or at least minimise the risk of bullying in the workplace such as the following:

Culture:

The culture of an organisation is an important factor in creating, establishing and maintaining a positive workplace environment free from bullying, intimidation or any on-going negative behaviour which might lay the foundation stone for a bullying culture.

There are several elements important to a positive workplace including good leadership (leading by example), a culture of involvement and a proper flow of communication, intolerance of inappropriate behaviour, training of staff on acceptable behaviour or conduct, an open and transparent pattern of relating based on mutual respect and dignity for all. A positive culture is one in which employees are comfortable raising issues of concern to them, especially of inappropriate behaviours and where there are supportive, effective and fair processes underpinning this in place.

Policies:

It's important to introduce clear anti-bullying policies, provide training on the policies to ensure awareness and most importantly to implement the policies if required.

Training and awareness:

Provide training for managers to encourage professional respectful behaviour and leading by example. Provide appropriate support and advisory services where appropriate.

Ongoing communication:

Provide a culture of promoting positive behaviours on an ongoing basis and ensuring those in senior roles lead by example and are actively involved in the communication.

INTERVENTION IN WORKPLACE BULLYING

Any complaint about, or awareness of, alleged bullying requires quick, calm and consistent attention.

EARLY INTERVENTION:

- As a general principle, it is worth emphasising that early intervention offers the best possible potential for a good outcome, particularly regarding restoring workplace relationships.
- However, this does not equate with a rushed approach.
- Each case should be treated on its own merit.
- A matter that is protracted, for whatever reason, becomes more difficult to resolve in a positive way.

MEDIATION:

Mediation is an important consideration for resolving issues at an early stage. It is an informal voluntary process where an impartial and competent third party enables individuals to work through conflict or disagreement, with a view to improving their relationship. It is a valuable tool at any stage in a procedure, but particularly beneficial at the earliest possible stage. It is established that the earlier a mediation process is used, the greater the potential for resolving the matter satisfactorily. It is important that suitably qualified mediators, whether internal or external, are used.

INFORMAL PROCESS

A prompt and informal problem-solving approach offers the best potential for addressing allegations of bullying effectively. This collaborative and non-adversarial approach is particularly important in situations where people must continue to work together into the future.

To resolve a potential complaint of bullying informally it's important that:

- Employees know they will be listened to
- The issue will be dealt with quickly
- Confidentiality will be respected by all parties
- A willingness to find a resolution to continue to work together

An informal approach may effectively address the unwanted behaviour without recourse to any other action. Sometimes the person who is alleged to be engaging in the behaviour is genuinely unaware that the behaviour being complained of is disrespectful or unwelcome or undermining and/or causing distress.

[A. Initial Informal Process:](#)

The recommended steps in the initial informal process are:

- The person raising the complaint may approach the person the complaint is about and have a conversation about it in a private setting but only if they feel comfortable doing so.
- If more suitable, the person raising the complaint may put their concerns in writing.
- When the complaint relates to a Manager the person raising the complaint may wish to discuss the matter informally with the deputy Manager and/or a director at a more senior level.

- The person raising the complaint may wish to avail of the support of a contact person, where applicable, for guidance and get a copy of the anti-bullying policy.

The purpose of the options above are to resolve the matter informally without recourse to any other step. It can alert the person concerned of their alleged behaviour and can lead to a better understanding and an agreement the behaviour will stop or be modified.

Furthermore, it may be that the behaviour is valid and reasonable and the reaction of the person raising the complaint may be the issue.

A brief written record of the matter and agreed outcomes including dates will be kept on the employees file, signed by the person responsible for managing the complaint.

Scamps & Scholars may involve an independent HR consultant in the informal process if deemed suitable to a favourable outcome.

B. Secondary Informal Process:

If the above initial informal process has been unsuccessful the following should apply.

- The employer may nominate a separate person who has had appropriate training and experience and who is familiar with the procedures involved to deal with the complaint on behalf of the organisation.
- This person should not be the Contact Person.
- They may be a supervisor/manager or someone in authority within the organisation.
- For each complaint that arises, such a person should be assigned to deal with that particular case.
- This is a very important role and pivotal in altering bullying cultures and handling complaints effectively at the informal stage.
- Effective guidance and training will be in place for those who are engaged at this level with the process.
- The complaint may be verbal or written.

If **verbal**, a written note of what is complained of should be taken by the nominated person and a copy given to the complainant.

- This nominated person managing the complaint, should then establish the facts, the context and then the next course of action in dealing with the matter under the informal procedure.
- If the complaint concerns alleged bullying as defined and includes concrete examples of inappropriate behaviour, the person complained against should be presented with the complaint and their response established.
- Thereafter a method should be agreed to progress the issue to resolution so that both parties can return to a harmonious working environment without bullying being a factor.
- If the behaviour complained of does not concern alleged bullying as defined, an alternative approach should be put in place and a rationale recorded. If there are no concrete examples given, it must be deemed that there is no complaint to be answered by the person complained of as they have no recourse to repudiating an accusation that doesn't give any specifics.
- Line managers/supervisors/Team Leaders should be kept informed, as appropriate, about the process in train.
- Steps to stop the bullying behaviour, where it has been partly or fully identified, and monitor the situation along specified lines should be implemented with both parties. This may involve a direct or indirect approach and possible resolution through a programme to change behaviour. It may also involve mediation by an agreed mediator who is practised in dealing with alleged bullying at work.
- Enough time needs to be allowed for the mediation or on-going monitoring process to be successful and behaviour change to be realistically achieved over the longer term. It may be necessary to consider if other working arrangements are required or feasible during this short - term phase. A proposal should be made, considered, and an action and time frame established, signed and dated, preferably by both parties.
- The nominated person who was responsible for managing the complaint should keep a nominal record of all stages; the complaint, the first meeting, action agreed and signed records of the final meeting. The purpose of the records, which do not include detail of discussions, is to provide evidence of the complaint having been met with an organisational response and attempt at resolution. The information must be stored in compliance with relevant data protection legislation.

Closure of informal Process:

The following steps should be used to close off the informal stage.

- Both parties should be given ongoing support with periodic reviews e.g., counselling or other supports
- Any complaint found to be vexatious should be dealt with via other relevant procedure e.g. disciplinary
- In general, with the willingness and cooperation of all parties there is no further action required.

Formal Process

Where possible all avenues contained within the informal process should be exhausted before invoking the formal process.

- The decision to invoke the formal process should be evidence based from a management perspective once all aspects of the complaint have been reviewed.
- The reasons for the decision to invoke the formal process should be documented as an employer may need to justify the decision in the event if a case at a later stage.
- This process includes a formal complaint and a formal investigation.
- The purpose of an investigation is to set up a fact-finding approach and determine the facts and credibility or otherwise of a complaint of alleged bullying.
- It is a significant step and all parties should be aware of possible consequences.
- In particular, an investigation will make it more difficult to restore normal workplace relations and may not have the desired outcome for the parties concerned.
- The outcome of an investigation may eventually, separately lead to a disciplinary process being instigated in respect of the person complained of, but the investigation itself will be a fact-finding one with the focus on what occurred or did not occur.

The following steps are required for an investigation:

- All investigations should be carried out by a designated member of management or an independent third party.
- The Investigation manager should have appropriate training and experience and be familiar with the procedures involved.

- The complaint must be written, dated and signed by the complainant
- The complaint must contain precise details - times, dates, witness names etc.
- Both complainant & respondent will be advised of the objective of the formal process and a rationale for the expected timeline.
- Both parties will be offered support throughout the process
- A separate meeting must be held with each party starting with the complainant.
- A copy of the anti-bullying policy will be included with correspondence to both parties.
- The respondent will receive a full copy of the complaint Set out clear Terms of Reference to include the Anti-Bullying Policy
- The investigation will be conducted in line with the Anti-Bullying Policy which is updated to reflect this Code of Practice
- Set out the scope of the investigation and the fact find related to the complaint and a statement for the investigator to consider to help establish whether the behaviour has occurred or not.
- Confidentiality must be maintained by all parties throughout the process
- All parties have the responsibility to participate in the investigation without undue delay
- The investigator should not uphold or dismiss the allegations and/or suggest or impose sanctions
- All meetings should be clearly minuted and agreed by all parties attending the meeting.
- Statements from all parties, including witnesses should be recorded in writing as the use of written statements tends to make matters clearer from the outset and maintains clarity throughout the investigation
- Copies of the record of their statements will be given to those who make statements to the investigator
- Copies will also be provided to the complainant and the person complained of and should result in findings of fact only
- Where possible all parties should continue to work throughout the investigation.
- The investigation will be conducted in a fair and impartial manner.

- The investigation manager will meet individually with all parties and witnesses.
- All parties will be permitted to bring representation such as a work colleague or employee/trade union representative.
- The Investigation manager will consider all evidence and make a decision based on the balance of probability as to whether the complaint is valid.
- If the investigation finds that the complaint is valid they may recommend that the employer takes further disciplinary action.

Outcome of Formal Process

It must be accepted that investigations can result in very divisive relationships for individuals, teams and departments and some type of reconciliation or rehabilitative meetings, or team working session may be considered as appropriate to restore healthier working communication for the future. In many situations, with the co-operation of all parties, the matter can rest here.

- The employer should decide, in light of the investigator's report and the findings of fact therein, what action is to be taken arising from that report.
- The employer shall then, in writing, inform both the complainant and the person complained against, of the next steps.
- At the end of the formal process, documentation should be kept by the employer, in line with the relevant Data Protection Legislation.

Appeal Process All formal investigations in the workplace should include an appeal mechanism. A separate party should be appointed as appeal manager and this person should have at least the same level of seniority and where possible should be at a more senior level. This party should have had no involvement in the investigation. It's important to note the following points:

- The appeal manager will have had no involvement in the investigation
- The appeal will focus on the conduct of the investigation in terms of fair process and adherence to procedure.
- The appeal is not a re-hearing of the original issues.
- The outcome of the appeal is final insofar as the employer duties under Health & Safety legislation.

- Scamps & Scholars reserves the right to engage the services of a third party.

MALICIOUS COMPLAINTS

A malicious complaint can be described as an allegation being made without foundation, and with malicious intent, where a person knowingly or without regard to whether it is true or not, accuses another person of allegedly bullying them. This could also apply to where one person maliciously complains of someone allegedly bullying a third party, without fully exploring the veracity of the claim.

A malicious complaint of bullying can:

- Cause significant disruption to a person's life
- Seriously damage a person's reputation
- Can have a detrimental effect on a person's career

The investigation process will always demonstrate that it has been mindful of the context and situational aspects of the event and accept the different perspectives.

UNRESOLVED COMPLAINT

If full utilisation of the range of available internal procedures has not resolved a bullying complaint, the matter may be referred to a WRC Adjudicator under Section 13 of the Industrial Relations Act, 1969.

APPROVAL DATE: _____

IMPLEMENTATION DATE: _____

SIGNED: _____

(On behalf of the Board of Directors)