



HEALTH AND SAFETY
AUTHORITY

CODE OF PRACTICE
FOR EMPLOYERS AND EMPLOYEES
ON THE
PREVENTION AND RESOLUTION
OF
BULLYING AT WORK



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FOREWORD

The Health and Safety Authority, at the request of, and with the consent of, the Minister for Labour Affairs, Tony Killeen, T.D. and following public consultation, including with the social partners, publishes this Code of Practice entitled 'Code of Practice for Employers and Employees on the Prevention and Resolution of Workplace Bullying', in accordance with section 60 of the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005), called the "2005 Act" after this.

This Code of Practice provides practical 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'.

This Code of Practice comes into effect on 1st May 2007 and from that date it replaces the Code of Practice entitled "Code of Practice on the Prevention of Workplace Bullying" which was issued by the Authority in March 2002 in accordance with the Safety, Health and Welfare at Work Act 1989.

Notice of issue of this Code of Practice, and the withdrawal of the 2002 Code of Practice, was published in the Iris Oifigiúil of Friday, 30th March, 2007.

As regards the use of Codes of Practice in criminal proceedings, section 61 of the 2005 Act provides as follows-

"61. (1) Where in proceedings for an offence under this Act relating to an alleged contravention of any requirement or prohibition imposed by or under a relevant statutory provision being a provision for which a code of practice had been published or approved by the Authority under section 60 at the time of the alleged contravention, subsection (2) shall have effect with respect to that code of practice in relation to those proceedings.

(2) (a) Where a code of practice referred to in subsection (1) appears to the court to give practical guidance as to the observance of the requirement or prohibition alleged to have been contravened, the code of practice shall be admissible in evidence.

(2) (b) Where it is proved that any act or omission of the defendant alleged to constitute the contravention:

- (i) is a failure to observe a code of practice referred to in subsection (1), or
- (ii) is a compliance with that code of practice,

then such failure or compliance is admissible in evidence.

(3) A document bearing the seal of the Authority and purporting to be a code of practice or part of a code of practice published or approved of by the Authority under this section shall be admissible as evidence in any proceedings under this Act."

M. O'Halloran

Assistant Chief Executive and Secretary to the Board

1. INTRODUCTION

This Code of Practice, under the Safety, Health and Welfare at Work Act 2005, is aimed at preventing and dealing with bullying where it happens in Irish workplaces. It is a code for both employers and employees.

One in fourteen people reported having been bullied at work in a survey published in 2001 by the ESRI (O'Connell and Williams) for the Department of Enterprise, Trade and Employment. Survey Reports of Bullying Experiences in the Workplace (2007), conducted by the ESRI for the Department of Enterprise, Trade and Employment puts this incidence rate at almost one in thirteen with higher rates reported for female employees.

Bullying is a cost for both employers and employees. The cost can be both financial and human. If not sorted out internally, a serious case could bring an employer before a tribunal, the Labour Court and/or the civil courts. If destructive behaviour is tolerated and continues, it affects performance and general health and wellbeing of individuals and/or groups. The negative effects can last a long time.

Bullying can be carried out by supervisors, managers, subordinates, fellow employees, customers, business contacts or members of the public.

The Code explains what bullying means and deals with the responsibilities of employers and employees to prevent or resolve it. The Code reflects the legal requirement that employers carry out a risk assessment, and where bullying is identified as a hazard, they ensure that it is included in the safety statement.

The Code recommends dealing with cases internally through the following processes which are explained in the Code:

- informal resolution by a responsible person
- a formal complaints procedure.

Only if the internal processes fail, should it be necessary to get outside support.

Finally, the Code helps those involved to recognise the possible findings which result from the follow up and investigation of a bullying complaint where,

- the complaint is upheld as bullying behaviour
- the complaint is deemed to be unfounded as a bullying behaviour
- the complaint is deemed to be vexatious.

2. STATUS AND SCOPE OF THE CODE

This Code of Practice provides practical 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'.

Extracts from the 2005 Act which are relevant are set out in Appendix 1:

- section 8. General duties of employer
- section 9. Information for employees
- section 10. Instruction, training and supervision of employees
- section 13. Duties of employee
- section 14. Interference, misuse, etc
- section 19. Hazard identification and risk assessment
- section 20. Safety Statement
- section 60. Codes of practice
- section 61. Use of codes of practice in criminal proceedings
- Schedule 3. General Principles of Prevention.

This Code:

- outlines some of the more common behaviours associated with bullying at work
- identifies situations where bullying commonly occurs at work
- describes how to prepare a **Bullying Prevention Policy**
- sets out procedures for resolving bullying complaints at work.

Failure to follow this Code is not an offence but the Code is admissible in evidence in criminal proceedings under **section 61** of the **2005 Act**.

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

3. BULLYING AT WORK

3.1. What is Bullying at Work?

Bullying at work has been 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 reasonably be regarded as undermining the individual’s right to dignity at work’¹.

An isolated incident of the behaviour in this definition may be an affront to dignity but as a once-off incident is not considered to be bullying.

Bullying puts at risk the safety, health and welfare of people at work.

A pattern of the following behaviours are examples of types of bullying.

- Exclusion with negative consequences
- Verbal abuse/insults
- Physical abuse*
- Being treated less favourably than colleagues
- Intrusion – pestering, spying or stalking
- Menacing behaviour
- Intimidation
- Aggression
- Undermining behaviour
- Excessive monitoring of work
- Humiliation
- Withholding work-related information
- Repeatedly manipulating a person’s job content and targets
- Blame for things beyond the person’s control.

This list is not exhaustive.

**This Code does not aim to address physical assault at work. The Authority advises that where it may be a risk, employers have a dedicated policy on violence and assault with no tolerance of such behaviour.*

It is important to distinguish bullying from other inappropriate behaviours. For example, a once off incident of bullying behaviour may be an affront to dignity at work but is not considered to be bullying.

Harassment is closely related to bullying and whilst it is illegal and should not be tolerated in the workplace, it does not fit the definition. To assist in differentiating the two it is worth considering that harassment is governed by Equality legislation and is predicated on the person being a member of one of the nine categories specified within the anti-harassment legislation. Bullying is legally distinct from harassment as bullying behaviour is not predicated on membership of any distinct group.

Bullying at work does not include reasonable and essential discipline arising from the good management of the performance of an employee at work or actions taken which can be justified as regards the safety, health and welfare of the employees. For example, an employee whose performance is continuously signalled at a level below required targets may feel threatened and insecure in their work but this in itself does not indicate bullying.

1. Report of the Task Force on the prevention of workplace bullying, 2001. Also used in the 2005 Report of the Expert Advisory Group on Workplace Bullying and in the Surveys conducted by the ESRI to determine the incidence of workplace bullying.

Bullying at work can involve people in many different work situations and at all levels:

- manager/supervisor to employee
- employee to supervisor/manager
- one employee to another (or group to group)
- customer or business contact to employee
- employee/supervisor/manager to customer/business contact.

Factors which are known to signal a risk of bullying at work are:

- **High turnover of staff, high absenteeism or poor morale**
- **Employment tenure** – a bully may regard new, casual or contract employees as easier targets than permanent employees;
- **Hierarchies** – hierarchies involving, for example, technical or non-professional employees working to professionally qualified employees which can sometimes present higher levels of bullying;
- **Changes in the workplace** – workplace changes which can increase the risk include change in ownership, new manager or supervisor, introduction of new work performance measures or of new technology or internal re-organisation;
- **Management of relationships in the workplace** – bullying may be more likely to happen in workplaces that do not have an effective management system which respects persons and monitors and supports work relationships;
- **Personality differences** – petty jealousies, personal biases, taking advantage of vulnerable or less 'street-wise' individuals can contribute to bullying;
- **Gender/age imbalance** – bullying may be more likely where there is an age or a gender imbalance in the workplace;
- **Other factors** include the composition of the workforce, interface with the public, history of tolerance of unacceptable behaviour, lack of or inadequate procedures or disregard of procedures for dealing with bullying.

3.2. Who bullies at work?

It is not possible to describe all bullies but persons who engage in bullying at work may have certain personal characteristics such as poor communication skills, difficulty in working with others, difficulty in delegating responsibility, poor organisational skills or low self-esteem. Good job design, training and supervision can help overcome these difficulties.

Bullying is recognised as being present in other walks of life such as in schools and in the home and bullying at work may be part of a wider cultural background.

3.3. Why deal with Bullying at Work?

Recent research suggests that almost one in every twelve people have reported being bullied at work. Bullying can have serious effects for both the person bullied and for the employer. Stress, ill health, loss of confidence and self esteem and career difficulties can result for a victim. For the employer, a dysfunctional workplace, reduced productivity, poor morale, lost time, industrial relations problems and litigation can follow.

3.4. Role of Employees - Prevention

Employees have rights and duties as regards safety, health and welfare at work under the **2005 Act**.

Employees have rights to be treated with dignity and respect at work and not to have their safety, health or welfare put at risk through bullying by the employer, by other employees or other persons. They have a right to complain to the employer if bullied and not to be victimised for so doing. They have a right under safety and health laws to be represented in raising this with the employer.

Employees have duties to behave and conduct themselves so as to respect the right of employers and other employees to dignity, courtesy and respect at work and the right not to be placed at risk as regards to their safety, health and welfare from bullying at work. Employees should also cooperate by providing any relevant information when an allegation of bullying at work is being looked into whether in an informal or formal stage.

3.5. Role of Employer - Prevention

Every employer has a duty to manage and conduct work activities in such a way as to prevent any improper conduct or behaviour likely to put at risk employee's safety, health or welfare at work. The prevention of bullying must therefore be part of the management system.

Employers must 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.

The employer must consider if bullying at work is likely to be a hazard, the extent of risk involved and what preventive measures are necessary.

3.6. How to identify if bullying is a hazard at work

The following will help the employer to identify if bullying is a hazard at work:

- If unacceptable conduct or behaviour has been observed - see the examples under 3.1 above - **What is bullying at work?**
- If substantiated complaints of bullying at work have been made by employees or on their behalf;
- If the human resources unit, the company doctor, nurse, welfare officer or similar person reports bullying at work;
- If, perhaps taken with the above, there is sick leave above the norm, particularly with work related stress certified.

3.7. How to assess the risk

The risk assessment should be based on:

- The factors listed above under 3.1- **What is bullying at work?** and any information from these factors which signal risks to safety, health and welfare if bullying exists;
- Information derived from organisational climate or work environment assessments or similar feedback mechanisms that may exist in the company;
- Views gathered from consulting with employees and their representatives.

3.8. What preventive measures are recommended?

Measures to prevent bullying at work include:

- Having in place a **Bullying Prevention Policy** which adequately addresses the risks that have been assessed. The policy should be clear in how it will measure implementation. (Where bullying has been identified as a risk, this policy must be referenced or included in the Safety Statement)
- Providing appropriate training and development at all levels but particularly for line manager roles;
- Ensuring clarity of individual and department goals, roles and accountabilities;
- Ensuring access to relevant competent and supportive structures both internal and external.

4. HOW TO PREPARE A BULLYING PREVENTION POLICY

Prevention is the best way to avoid the risk of bullying at work. An effective policy, and a strong commitment to implementing it is required. The purpose of an effective policy is not simply to prevent improper conduct and behaviour but also to encourage best practice and a safe and harmonious workplace where such behaviour is unlikely to occur.

Employers should therefore adopt, implement and monitor a comprehensive, effective and accessible policy on bullying at work.

4.1. Preparing the Policy

Strategies to create and maintain a working environment in which the dignity and respect of employees are appreciated and upheld are most likely to be effective when they are jointly agreed. In this way, employers and other parties to the employment relationship can create an anti-bullying culture and share a sense of responsibility for that culture. In very small businesses which may not have an employee representative structure, the policy and strategy should be advised to all employees.

The policy and complaints procedure should be adopted, where appropriate, in so far as is practicable with clients, customers and other business contacts after consultation or negotiation with trade union or employee representatives, on its content and implementation. Simple direct language should be used in the policy. Information given to employees should be in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned.

The policy document should be written, dated and signed by a responsible person at senior management level and updated when appropriate, for example following a change that might impact the validity of the original risk assessment.

As required under safety and health laws and in keeping with normal industrial relations practice, there should be prior consultation, and participation where appropriate, regarding the policy and its implementation, with employees or their representatives, including the **Safety Representative** or the **Safety Committee**.

The **policy** should set out a complaints procedure as recommended within this Code.

It is prudent to keep a record of consultation actions in case of future requirement.

4.2. Core Elements and Implementation Steps

Employer's declaration

The **Bullying Prevention Policy** should declare:

- the employer's commitment to ensuring that the place of work is free from bullying at work and that the work environment is aimed at providing a high quality product or service in an atmosphere of respect, collaboration, openness, safety and equality;
- that all employees have the right to be treated with dignity and respect at work;
- that the risk of bullying has been assessed and preventive measures included, where necessary, in the **Safety Statement**;

- that consultation with employees or their representatives, including the **Safety Representative** and the **Safety Committee**, as appropriate, has taken place as regards the risk of bullying at work and preventive measures;
- that employees also have responsibility in creating and contributing to the maintenance of a work environment free from bullying or from conduct likely to contribute to bullying;
- that complaints by employees of bullying at work will be treated with fairness, sensitivity, respect and confidentiality for all parties concerned;
- that a person or persons alleged to have bullied will be afforded natural justice and treated with fairness, sensitivity and respecting the need for confidentiality with all parties concerned;
- that bullying at work by the employer, by employees and by non-employees, such as clients, customers, sub contractors and business contacts, will not be tolerated and the appropriate employing organisation should deal with the complaint in line with these procedures, which could lead to disciplinary procedures being applied;
- that a complaint of bullying which is found, following investigation, to be vexatious will be dealt with through the disciplinary procedure;
- that human resource management policies and practices will strive to prevent bullying at work;
- that the policy will be updated to reflect the company's experiences in implementing it, relevant changes in the workplace and any external factors that are relevant.

Scope

The **policy** should

- describe what is meant by bullying at work as set out above under **What is bullying at work?**;
- include a non-exhaustive list of examples of bullying behavior relevant to the particular employment (see also **What is bullying at work?**);
- give the name or job title of the person who may be approached by a person wishing to complain of bullying at work;
- state that the protection extends to:
 - bullying at work by management, fellow employees, subordinates, clients, customers and other business contacts;
 - beyond the place of work to off site and to work-related social events;
- state that all complaints of bullying will be taken seriously and will be followed through to resolution;
- employees who make a complaint will not be victimised.

4.3. Allocation of responsibilities as regards prevention of bullying at work

The policy should state that management, others in positions of authority and workplace representatives have a particular responsibility to ensure that bullying at work does not occur and that complaints are addressed speedily. The policy should state that in particular, management should:

- provide good example by treating all in the place of work with courtesy and respect;
- promote awareness of the **policy** and complaints procedures;
- be vigilant for signs of bullying at work through observation and through seeking employee feedback and take action before a problem escalates;
- deal sensitively with employees involved in a bullying complaint whether as complainant or alleged bully;
- explain the procedures to be followed if a complaint of bullying at work is made;
- ensure that an employee making a complaint is not victimised for doing so;
- monitor and follow up the situation after a complaint is made so that the bullying at work does not recur.

Trade Unions

The policy should address the contribution to be made by the trade union/s, as appropriate, including as regards the prevention of bullying in the workplace through their participation in the development and implementation of policies and procedures, through their information and training services, and through the collective bargaining process. Trade unions may also play a role in providing information, advice and representation to employees who have been bullied at work, and to employees against whom allegations of bullying at work have been made.

Employees

The policy should indicate that employees can contribute to achieving a work environment which does not tolerate bullying at work. This could also include co-operating with preventive measures introduced by management, and also through trade union strategies to eliminate or avoid bullying at work. Employees should recognise that a finding of bullying at work will be dealt with through the disciplinary procedure. Equally a finding that the complaint was vexatious will be dealt with through the disciplinary procedure.

Non-Employees

The policy should indicate that bullying at work by non-employees such as clients, customers and business contacts is not tolerated and may lead to termination of contracts or suspension of services, or to exclusion from a premises or the imposition of other sanctions, as appropriate.

4.4 Communication of Policy

The policy should include a commitment to effective communication of the policy. It should be communicated effectively to all those potentially affected by it, including management, employees, customers, clients and other business contacts, such as those who supply and receive goods and services. Effective means of communicating a policy could include newsletters, training manuals, training courses, leaflets, websites, emails, toolbox talks and notice boards.

Communication to Employees

New employees, including those in management and all other positions of responsibility, should be made aware of the policy as part of any formal induction process to familiarise them with their job and their working environment and any rules and regulations that apply.

Where a staff handbook is distributed to employees as part of the induction process the **Bullying Prevention Policy** should be included.

Existing employees should receive updated and regular communication on the policy.

Communication to Non-Employees

A summary of the **Bullying Prevention Policy** should be prominently displayed where appropriate and as identified on the risk assessment, such as at places where members of the public, clients, and customers attend.

4.5 Monitoring

The policy should include a commitment to monitoring and recording incidents of bullying at work.

Statistics and information gathered from such monitoring should be recorded and used to assist the employer take corrective action or achieve continuous improvement in their bullying prevention policy and procedure.

4.6 Training and Supervision

Employees should be provided with such information, training, development and supervision as is necessary to ensure the prevention of employer bullying. This should include:

- making employees aware of the **Bullying Prevention Policy**;
- information on the appropriate behaviour to comply with the terms of the policy;
- training, if needed, in order to comply with the policy;
- assistance, if necessary, to overcome a bullying incident, as well as adequate and informed supervision of the work environment.

The policy should include commitments to staff training and supervision as identified in the risk assessment on issues related to bullying at work, including the provision of training for managers, supervisors and for all staff, at induction or through appropriate awareness raising initiatives. Such training should identify the factors which contribute to a working environment free of bullying and familiarise participants with their responsibilities under the policy and any problems they are likely to encounter.

Such training is especially important for those members of staff responsible for supervision and for implementing the **policy** and responding to complaints.

Best practice would ensure that records are kept by the employer of all such training.

4.7 Reviews

The policy should include a commitment to review on a regular basis in line with experience in the employment, changes in the law, relevant case law or other developments.

A responsible person should be named in the policy to ensure that monitoring, training and reviews take place.

5. OTHER PREVENTIVE MEASURES

5.1. Role Clarity

As a matter of good practice, employers should define each employee's role and accountability as clearly as possible. This may include a written description of main duties and responsibilities and a clear line of supervision. This should be reviewed in a collaborative manner on an on-going basis and any changes in job content should be communicated clearly to the individual and those working alongside him/her.

5.2. Acknowledging responsibility - managers, supervisors and employees

Managers, and supervisors, have a responsibility to manage in such a way as to protect the safety, health and welfare of employees. This means accepting responsibility for preventing bullying at work and for resolving alleged cases of bullying at work.

Every employee is responsible for safeguarding his/her own safety and welfare, and that of his/her colleagues who may be affected by his/her actions, or omissions, while at work. Therefore each employee has a duty not to place the safety, health and welfare of colleagues at risk by engaging in bullying or, where in a position of authority, to take the appropriate steps to stop bullying if or when it occurs.

5.3. Access to 'contact person' and to competent advisory services

As part of the **Bullying Prevention Policy** employers should name a 'contact person' who can listen and advise about complaints of bullying at work and explain the procedures in place to resolve it. These individuals should receive appropriate training.

The Contact Person role is a voluntary role of facilitation to act as the first point of contact for someone who believes that he or she is being treated in a bullying manner. The Contact Person is nominated, through agreement with the employer. He/she has a listening brief and is a reference point for the complainant, and he/she could, for instance, provide the complainant with a copy of the policy, outline the routes available and explain the roles of personnel involved. The Contact Person does not get involved in any other way in the complaints procedure and is not an advocate for either party.

In smaller organisations, this role may be provided by an outside agency, such as a representative body or an advisory body.

Employers have a duty under safety and health laws to obtain the services of a competent person where necessary to help comply with such laws. There may be situations as regards bullying at work where an employer could benefit from expert assistance. This could be provided within the undertaking or sourced from outside. It could involve seeking help from an employer or other representative body which provides such advice or from relevant public bodies such as the **Health and Safety Authority** or the **Labour Relations Commission**. It could involve seeking the services of persons particularly qualified in mediation or counselling or training in this area.

6. RESOLVING BULLYING AT WORK

The following procedures, both informal and formal, should be outlined within the **Bullying Prevention Policy** and followed and implemented should a complaint be made.

6.1. Informal process

A problem-solving approach is promoted to ensure that the behaviour complained of, if established in fact, is eliminated and that working relationships are restored. An informal process should:

- Aim to assess the allegation and address it;
- Use agreed procedures;
- Be consistent, systematic, transparent and unbiased;
- Ideally have an intervention addressing the issue in place within three weeks or an agreed, indicative time frame;*
- Promote the restoration of harmony over the medium to long term.

On receipt of a complaint of alleged bullying, or a complaint that a bullying atmosphere or bullying type behaviours are occurring, an employer should try to have the matter resolved informally with the consent of the parties involved. For general non-specific issues, a proactive, non-judgemental intervention approach such as information sessions, clarifying what is acceptable interaction for a workplace and monitoring should be used.

Informal resolution of a specific bullying allegation could include for example, clarification of what bullying is, agreement to alter verbal style, agreement by the person complained of, if they accept that their behaviour was inappropriate, that the conduct will not be repeated, or an explanation to the complainant about what occurred from the point of view of the person complained of which dispels the complaint.

The first step in any informal resolution of a complaint should be to get the facts of the complaint, the specific issues complained of, when they occurred and to judge whether or not they fall within the definition of bullying, and thereafter to establish whether or not they are representative of the events complained of.

Generally, the employer or the person heading up the organisation is advised not to try personally to informally resolve the complaint but should instead refer the dispute for resolution to another senior manager, or such other person as may be agreed. This is to prevent any bias or perceived bias on the part of the employer, should the issue be referred to him/her at a later stage in the process.

In small and micro organisations, where internal structures are limited, if the complaint is made by or against a senior person within the organisation, it may be necessary to use the expertise of an independent professional body to access mediation or conciliation. Such bodies may include the Mediation Services of the **Labour Relations Commission**. Even in larger organisations, external assistance may be required in order to initiate an effective early resolution. In other cases in small and micro organisations, where there is no conflict of interest, the employer or organisation leader may try to resolve the matter informally in some circumstances provided objectivity is not compromised.

** While it is crucially important for both the complainant and the person complained against that an effective process be put in place promptly upon a complaint being made, it is also very important that enough time be given to the process and to any mediation or monitoring that this involves. Therefore a time frame and speedy intervention is emphasised while not diminishing the fact that the intervention may carry on into the medium term in order to ensure it remedies the issues fully.*

KEY STEPS IN THE INFORMAL PROCESS ARE AS FOLLOWS:

6.1.a. A complainant alleges bullying

- Any employee who believes he or she is being bullied should, where possible, indicate directly to the person complained of that the behaviour in question is unacceptable. In circumstances where the complainant finds it difficult to approach the person complained of directly, he or she should seek help and advice, from a '**contact person**' nominated by the employer under the **Bullying Prevention Policy**, or another colleague or trade union / staff representative.
- A 'contact person' is a person given authority by the employer to act as an initial facilitator where bullying is being alleged. See section 5.3 above which defines the role.
- The employer should designate 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' and may be a supervisor/manager or someone in authority within the organisation. For each complaint that arises, a designated person should be assigned to deal with that specific case. This is a very important role and pivotal in altering bullying cultures and handling complaints effectively at informal stage. Effective guidance and training should 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 designated person and a copy given to the complainant.
- The designated person who is handling 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 bullying as defined and includes concrete examples of inappropriate behaviour, the person complained against should be presented with the complaint and his/her 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 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 should be kept informed, as appropriate, about the process in train.

6.1.b. Intervention

The first step in the informal approach is to ascertain the facts of the accusation, and present them to the person complained of, where they are assessed to be validly made.

In following the informal process, steps to stop the bullying behaviour, where it has been identified, and monitor the situation along specified lines should be agreed with both parties. This may involve a direct or indirect approach and possible resolution through a programme to change behaviour. It may involve mediation* by an agreed mediator who is practised in dealing with bullying at work.

** Mediation is a voluntary and confidential process for resolving disputes wherein the parties agree to attempt to resolve the issues of the dispute without recourse to the judgement of others with the aid of a professional mediator.*

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 should be agreed, signed and dated, preferably by both parties.

- The designated person should keep **a 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. Records should be kept in accordance with the Data Protection Act, specifically section 2 (1) governing Retention, within an agreed HR filing system and be available only to those directly involved and within the confines of the obligations and duties of the Data Protection Act, 2003.
- Information disclosed in the course of mediation must remain within the mediation process and must not be given by the mediator to anyone or to an investigator if there is a subsequent investigation at formal stage.
- Confidentiality is crucial for this stage to be effective and breaches of confidentiality, where exposed, should be met with sanctions highlighted in advance.

6.1.c. Closure

- To obtain closure after a resolution is found through informal procedures both parties should be given support or periodical reviews, insofar as is reasonable, which, if necessary, could include counselling or other appropriate interventions or support services;
- Where a complaint has been assessed as vexatious, the matter should be progressed through the disciplinary procedures;
- In many situations, with the co-operation of all parties, the matter can rest here.

6.2. Formal process

If the issue is not or cannot be resolved through an informal process, or, if after that informal process the bullying persists, a formal process should be invoked. The process includes a formal complaint, and a formal investigation. The purpose of an investigation is to determine the facts and the credibility or otherwise of a complaint of bullying. Where an investigation is to be carried out, the procedures below should be followed.

KEY STEPS IN THE FORMAL INVESTIGATION PROCESS ARE AS FOLLOWS:

6.2.a. Formal complaint

The complainant should make a formal complaint, ideally in written form and signed and dated.

The complaint should be confined to precise details of alleged incidents of bullying, including their dates, and names of witnesses, where possible.

**Where this is not possible, a written record should be taken of the complaint by the designated person and signed by the complainant.*

The complainant should be advised of the aims and objectives of the formal process, the procedures and time frame involved, and the possible outcomes. He/she should be assured of support as required throughout the process. He/she should again be given a copy of the **Bullying Prevention Policy**.

6.2.b. Information to the person complained against

The person complained against should be notified in writing that an allegation of bullying has been made against him/her. He or she should be assured of the organisation's presumption of his or her innocence of any wrongdoing at this juncture. He/she should be advised of the aims and objectives of the formal process and procedures and time frame involved and the possible outcomes. He/she should be assured of support as required throughout the process.

A meeting should be organised at which he/she is given a copy of the complaint in full and any relevant documents including the **Bullying Prevention Policy**.

6.2.c. Investigation

The investigation should be governed by terms of reference which should include the following:

- The investigation will be conducted in accordance with the employment's **Bullying Prevention Policy** which should reflect this Code of Practice.
- The likely time scale for its completion – an indicative time-frame should be outlined and agreed and its rationale explained.
- The scope of the investigation, indicating that the investigator will consider whether the complaint falls within the definition of bullying at work and whether the complaint has been upheld.

Statements from all parties 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 should be given to and agreed with those who make statements to the investigator.

All parties should continue to work normally, if possible during the investigation.

The objective of an investigation is to ascertain whether or not, on the balance of probabilities, the behaviours complained of occurred. Evidence and witness statements are relied on for this purpose.

The investigation should be conducted by either a designated member(s) of management (as outlined earlier in this Code) or, if necessary, (for example in the case of any possible conflict of interest) an agreed, external third party. In either case, the person nominated should have appropriate training and experience and be familiar with the procedures involved. The investigation should be conducted thoroughly, objectively, with sensitivity, utmost confidentiality, and with due respect for the rights of both the complainant and the person complained of.

The investigator should meet with the complainant and the person complained of and any witnesses or relevant persons on an individual confidential basis with a view to establishing the facts. A work colleague or employee/trade union representative may accompany the complainant and the person complained of, if so desired.

The investigation should be completed as quickly as possible, preferably within an agreed timeframe. The investigator should submit the report to the employer which should include his or her conclusions. The complainant and the person complained of should be given a copy of the report as soon as possible by the employer and given an opportunity to comment, within a set deadline, before the employer decides on any action to take.

The employer should decide in the light of the investigator's report and the comments made, if any, what action is to be taken arising from the report. The employer should then in writing inform the complainant and the person complained against of the next steps. At the end of the process the documentation should be kept by the employer in line with the Retention guidance within the Data Protection Act, 2003 (already referred to in this Code) and made available only in compliance with that Act.

6.2.d. Action where the complaint is upheld

Where a complaint has been upheld, bullying has been identified as a behaviour which is a hazard in that organisation/department. Bullying behaviour is recognised as having potentially damaging effects to the health of the person bullied and damaging consequences for the organisation. Eliminating the hazardous behaviour and controlling the risks of it re-occurring is a requirement of the employer as part of his/her duty of care under Health and Safety legislation. Action should be taken to eliminate the risk of the bullying behaviour continuing or being repeated at a later date. A record of the interventions used for this purpose should be kept.

If a complaint is upheld the matter is now a disciplinary issue and the employer should follow the appropriate disciplinary procedures. An employer who does not have such procedures in place could refer to the **Labour Relations Commission's Codes of Practice – Grievance and Disciplinary Procedures** and **Voluntary Dispute Resolution**.

An employer should decide what further action as regards the complaint is necessary, including specific remedies to eliminate exposure to the hazard in future and to reduce the effects of the prior exposure for the complainant. The employer should keep the situation under review. It may be appropriate in some cases to provide for counseling for the complainant and also for the person complained against, or to decide on other steps such as better training or supervision, re-assignment or re-organisation of work.

6.2.e. Action where complaint is not upheld

It is important that employers, managers and supervisors monitor the situation to ensure that there is no victimisation or appearance of victimisation of a complainant following an investigation. It is crucial that situations are treated sympathetically where complaints are made in good faith but not upheld, and it should be noted that there are instances where this will be the case.

Where a complaint is not upheld, the employer has a duty to the person complained against. It should be made clear to both parties that the complaint is not upheld, and no wrong doing has been found. Support and affirmation should be offered to the person against whom the complaint was made, and all efforts should be made to ensure that anyone with a prior knowledge of the complaint is made aware of the finding that it is not upheld.

Where, on the other hand, a complaint has been found to have been maliciously made, the employer's disciplinary procedure should apply.

6.3. Appeals

Within the formal system, an appeals process for both parties should be in place. The reason for the appeal should be outlined in writing to management if such an option is being taken. The appeal should be heard by another party, of at least the same level of seniority as - but preferably more senior than - the original investigator, and focus only on the aspect of the case cited by the appellant as being the subject of the appeal. The grounds of the appeal and any outcome and methodology employed should be appended to the investigation file.

Very small and micro organisations will need to consider at the outset of the formal process how they would manage a request for appeal and this may require outside independent support.

6.4. Closure and Next Steps

Both parties should be given appropriate support and periodical reviews, insofar as is reasonable, after a resolution is found so as to obtain closure. 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 would be advised to restore healthier working communication for the future. In many situations, with the cooperation of all parties, the matter can rest here.

7. IF INTERNAL PROCEDURES DO NOT RESOLVE A BULLYING COMPLAINT

If full utilisation of the range of available internal procedures has not resolved a bullying complaint, the services of a Rights Commissioner may be accessed directly by individuals involved.

Rights Commissioners can assess how procedures were applied in bullying cases and thereafter intervene in a range of ways, including, where appropriate, carrying out a new investigation. Application for a Rights Commissioner hearing must be made directly by the appellant, citing the Industrial Relations Acts 1969 - 2001. Application forms for such hearings are available on-line (www.lrc.ie) or by request from the Labour Relations Commission. Findings of Rights Commissioners, which are delivered in the form of a recommendation, can be appealed to the Labour Court.

Certain categories of worker, including gardai, teachers and civil servants are not governed by these IR Acts. Access to the machinery of the Rights Commissioner/LRC and Labour Court is confined to those defined as 'workers' – for more information, see section 23 (1) of the Industrial Relations Act, 1990. This situation is not within the remit of this Code.

8. ROLE OF THE HEALTH AND SAFETY AUTHORITY

The role of the **Health and Safety Authority** in respect of bullying at work is to monitor if employers and employees are meeting their obligations and duty of care under the **2005 Act**.

Where complaints of bullying at work are made to the **Authority** it can direct that the procedures in this **Code** be observed.

The **Authority's** role is to promote and to ensure compliance with this **Code**. The **Authority** can provide advice and support where necessary and use its powers of enforcement if bullying is a serious hazard which is not controlled and the safety, health and welfare of employees is at risk.

Appendix 1

Extracts from the Safety, Health and Welfare at Work Act 2005.

Section 8: General Duties of Employer

8. (1) Every employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.

(2) Without prejudice to the generality of *subsection (1)*, the employer's duty extends, in particular, to the following:

- (a) managing and conducting work activities in such a way as to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees;
- (b) 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 or welfare at work of his or her employees at risk;
- (c) as regards the place of work concerned, ensuring, so far as is reasonably practicable:
 - (i) the design, provision and maintenance of it in a condition that is safe and without risk to health;
 - (ii) the design, provision and maintenance of safe means of access to and egress from it; and
 - (iii) the design, provision and maintenance of plant and machinery or any other articles that are safe and without risk to health;
- (d) ensuring, so far as it is reasonably practicable, the safety and the prevention of risk to health at work of his or her employees relating to the use of any article or substance or the exposure to noise, vibration or ionising or other radiations or any other physical agent;
- (e) providing systems of work that are planned, organised, performed, maintained and revised as appropriate so as to be, so far as is reasonably practicable, safe and without risk to health;
- (f) providing and maintaining facilities and arrangements for the welfare of his or her employees at work;
- (g) providing the information, instruction, training and supervision necessary to ensure, so far as is reasonably practicable, the safety, health, and welfare at work of his or her employees;
- (h) determining and implementing the safety, health and welfare measures necessary for the protection of the safety, health and welfare of his or her employees when identifying hazards and carrying out a risk assessment under *section 19* or when preparing a safety statement under *section 20* and ensuring that the measures take account of changing circumstances and the general principles of prevention specified in *Schedule 3*;
- (i) having regard to the general principles of prevention in *Schedule 3*, where risks cannot be eliminated or adequately controlled or in such circumstances as may be prescribed, providing and maintaining such suitable protective clothing and equipment as is necessary to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees;

- (j) preparing and revising, as appropriate, adequate plans and procedures to be followed and measures to be taken in the case of an emergency or serious and imminent danger;
- (k) reporting accidents and dangerous occurrences, as may be prescribed, to the Authority or to a person prescribed under *section 33*, as appropriate; and
- (l) obtaining, where necessary, the services of a competent person (whether under a contract of employment or otherwise) for the purpose of ensuring, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.

(3) Any duty imposed on an employer under the relevant statutory provisions in respect of any of his or her employees shall also apply in respect of the use by him or her of the services of a fixed term employee or a temporary employee.

(4) For the duration of the assignment of any fixed-term employee or temporary employee working in his or her undertaking, it shall be the duty of every employer to ensure that working conditions are such as will protect the safety, health and welfare at work of such an employee.

(5) Every employer shall ensure that any measures taken by him or her relating to safety, health and welfare at work do not involve financial cost to his or her employees.

Section 9: Information for employees

9. (1) Without prejudice to the generality of *section 8*, every employer shall, when providing information to his or her employees under that section on matters relating to their safety, health and welfare at work ensure that the information:

- (a) is given in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned, and
- (b) includes the following information:
 - (i) the hazards to safety, health and welfare at work and the risks identified by the risk assessment;
 - (ii) the protective and preventive measures to be taken concerning safety, health and welfare at work under the relevant statutory provisions in respect of the place of work and each specific task to be performed at the place of work; and
 - (iii) the names of persons designated under *section 11* and of safety representatives selected under *section 25*, if any.

(2) Where an employee of another undertaking is engaged in work activities in an employer's undertaking, that employer shall take measures to ensure that the employee's employer receives adequate information concerning the matters referred to in *subsection (1)*.

(3) Every employer shall ensure that employees appointed under *section 18* and safety representatives, if any, have access, for the purposes of performing their functions relating to the safety, health and welfare of employees, to:

- (a) the risk assessment carried out under *section 19*;
 - (b) information relating to accidents and dangerous occurrences required to be reported to the Authority or a person prescribed under *section 33* under the relevant statutory provisions; and
 - (c) any information arising from protective and preventive measures taken under the relevant statutory provisions or provided by the Authority, a person prescribed under *section 33*, or a person referred to in *section 34(2)*.
- (4) (a) Where an employer proposes to use the services of a fixed term employee or a temporary employee, the employer shall, prior to commencement of employment, give information to the employee relating to:
- (i) any potential risks to the safety, health and welfare of the employee at work;
 - (ii) health surveillance;
 - (iii) any special occupational qualifications or skills required in the place of work; and
 - (iv) any increased specific risks which the work may involve.
- (b) Where an employer proposes to use the services of a temporary employee, the employer shall:
- (i) specify to the temporary employment business concerned the occupational qualifications necessary for and the specific features of the work for which such an employee is required; and
 - (ii) ensure that the temporary employment business gives the information referred to in *paragraph (a)* to the employee.
- (5) The temporary employment business referred to in *subsection (4)(b)* shall give to the employee the information referred to in *subsection (4)(b)(i)*.

Section 10: Instruction, training and supervision of employees

10. (1) Without prejudice to the generality of *section 8* and having regard to *sections 25* and *26*, every employer shall, when providing instruction, training and supervision to his or her employees in relation to their safety, health and welfare at work, ensure that:

- (a) instruction, training and supervision is provided in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employee concerned;
- (b) employees receive, during time off from their work, where appropriate, and without loss of remuneration, adequate safety, health and welfare training, including, in particular, information and instructions relating to the specific task to be performed by the employee and the measures to be taken in an emergency;
- (c) in relation to any specific task assigned to an employee, that his or her capabilities in relation to safety, health and welfare are taken into account;

- (d) in the case of:
 - (i) a class or classes of particularly sensitive employees to whom any of the relevant statutory provisions apply; or
 - (ii) any employee or group of employees exposed to risks expressly provided for under the relevant statutory provisions, the employees concerned are protected against the dangers that specifically affect them.

(2) Training under this section shall be adapted to take account of new or changed risks to safety, health and welfare at work and shall, as appropriate, be repeated periodically.

(3) Training under this section shall be provided to employees:

- (a) on recruitment;
- (b) in the event of the transfer of an employee or change of task assigned to an employee;
- (c) on the introduction of new work equipment, systems of work or changes in existing work equipment or systems of work; and
- (d) on the introduction of new technology.

(4) Where, in respect of any particular work, competency requirements are prescribed, the employer shall provide for the release of employees, during working hours, where appropriate, and without loss of remuneration, for the purpose of attending training in matters relating to safety, health and welfare at work as regards the particular work.

(5) Every employer shall ensure that persons at work in the place of work concerned who are employees of another employer receive instructions relating to any risks to their safety, health and welfare in that place of work as necessary or appropriate.

(6) Every employer who uses the services of a fixed-term employee or a temporary employee shall ensure that the employee receives the training appropriate to the work which he or she is required to carry out having regard to his or her qualifications and experience.

Section 13: General Duties of Employee and Persons in Control of Places of Work

13. (1) An employee shall, while at work:

- (a) comply with the relevant statutory provisions, as appropriate, and 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;
- (b) ensure that he or she is not under the influence of an intoxicant to the extent that he or she is in such a state as to endanger his or her own safety, health or welfare at work or that of any other person;

- (c) if reasonably required by his or her employer, submit to any appropriate, reasonable and proportionate tests for intoxicants by, or under the supervision of, a registered medical practitioner who is a competent person, as may be prescribed;
- (d) co-operate with his or her 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;
- (e) not engage in improper conduct or other behaviour that is likely to endanger his or her own safety, health and welfare at work or that of any other person;
- (f) attend such training and, as appropriate, undergo such assessment as may reasonably be required by his or her employer or as may be prescribed relating to safety, health and welfare at work or relating to the work carried out by the employee;
- (g) having regard to his or her training and the instructions given by his or her employer, make correct use of any article or substance provided for use by the employee at work or for the protection of his or her safety, health and welfare at work, including protective clothing or equipment;
- (h) report to his or her employer or to any other appropriate person, as soon as practicable:
 - (i) any work being carried on, or likely to be carried on, in a manner which may endanger the safety, health or welfare at work of the employee or that of any other person;
 - (ii) any defect in the place of work, the systems of work, any article or substance which might endanger the safety, health or welfare at work of the employee or that of any other person; or
 - (iii) any contravention of the relevant statutory provisions which may endanger the safety, health and welfare at work of the employee or that of any other person, of which he or she is aware.

(2) An employee shall not, on entering into a contract of employment, misrepresent himself or herself to an employer with regard to the level of training as may be prescribed under *subsection (1)(f)*.

Section 14: Interference, misuse etc.

14. A person shall not intentionally, recklessly or without reasonable cause:

- (a) interfere with, misuse or damage anything provided under the relevant statutory provisions or otherwise for securing the safety, health and welfare of persons at work; or
- (b) place at risk the safety, health or welfare of persons in connection with work activities.

Section 19: Hazard identification and risk assessment

19. (1) Every employer shall identify the hazards in the place of work under his or her control, assess the risks presented by those hazards and be in possession of a written assessment (to be known and referred to in this Act as a “risk assessment”) of the risks to the safety, health and welfare at work of his or her employees, including the safety, health and welfare of any single employee or group or groups of employees who may be exposed to any unusual or other risks under the relevant statutory provisions.

(2) For the purposes of carrying out a risk assessment under *subsection (1)*, the employer shall, taking account of the work being carried on at the place of work, have regard to the duties imposed by the relevant statutory provisions.

(3) The risk assessment shall be reviewed by the employer where—

- (a) there has been a significant change in the matters to which it relates; or
- (b) there is another reason to believe that it is no longer valid, and, following the review, the employer shall amend the risk assessment as appropriate.

(4) In relation to the most recent risk assessment carried out by an employer, he or she shall take steps to implement any improvement considered necessary relating to the safety, health and welfare at work of employees and to ensure that any such improvement is implemented in respect of all activities and levels of the place of work.

(5) Every person to whom *Sections 12 or 15* applies shall carry out a risk assessment in accordance with this section to the extent that his or her duties under those sections may apply to persons other than his or her employees.

Section 20: Safety statement

20. (1) Every employer shall prepare, or cause to be prepared, a written statement (to be known and referred to in this Act as a “safety statement”), based on the identification of the hazards and the risk assessment carried out under *section 19*, specifying the manner in which the safety, health and welfare at work of his or her employees shall be secured and managed.

(2) Without prejudice to the generality of *subsection (1)*, every employer shall ensure that the safety statement specifies:

- (a) the hazards identified and the risks assessed;
- (b) the protective and preventive measures taken and the resources provided for protecting safety, health and welfare at the place of work to which the safety statement relates;
- (c) the plans and procedures to be followed and the measures to be taken in the event of an emergency or serious and imminent danger, in compliance with *sections 8 and 11*;
- (d) the duties of his or her employees regarding safety, health and welfare at work, including co-operation with the employer and any persons who have responsibility under the relevant statutory provisions in matters relating to safety, health and welfare at work;
- (e) the names and, where applicable, the job title or position held of each person responsible for performing tasks assigned to him or her pursuant to the safety statement; and
- (f) the arrangements made regarding the appointment of safety representatives and consultation with, and participation by, employees and safety representatives, in compliance with *sections 25 and 26*, including the names of the safety representative and the members of the safety committee, if appointed.

(3) Every employer shall bring the safety statement, in a form, manner and, as appropriate, language that is reasonably likely to be understood, to the attention of:

- (a) his or her employees, at least annually and, at any other time, following its amendment in accordance with this section;
- (b) newly-recruited employees upon commencement of employment; and
- (b) other persons at the place of work who may be exposed to any specific risk to which the safety statement applies.

(4) Where there are specific tasks being performed at the place of work that pose a serious risk to safety, health or welfare, an employer shall bring to the attention of those affected by that risk relevant extracts of the safety statement setting out:

- (a) the risk identified;
- (b) the risk assessment; and
- (c) the protective and preventive measures taken in accordance with the relevant statutory provisions in relation to that risk.

(5) Every employer shall, taking into account the risk assessment carried out under *section 19*, review the safety statement where:

- (a) there has been a significant change in the matters to which it refers,;
- (b) there is another reason to believe that the safety statement is no longer valid; or
- (c) an inspector in the course of an inspection, investigation, examination, inquiry under *section 64* or otherwise directs that the safety statement be amended within 30 days of the giving of that direction;

and, following the review, the employer shall amend the safety statement as appropriate to co-operate.

(6) Every employer who is conducting activities, as may be prescribed in accordance with this subsection, who contracts with another employer for that employer to provide services to him or her shall require that that employer is in possession of an up-to-date safety statement as required under this section.

(7) A copy of a safety statement, or relevant extract of it, shall be kept available for inspection at or near every place of work to which it relates while work is being carried out there.

(8) It shall be sufficient compliance with this section by an employer employing 3 or less employees to observe the terms of a code of practice, if any, relating to safety statements which applies to the class of employment covering the type of work activity carried on by the employer.

(9) Every person to whom *section 12 or 15* applies shall prepare a safety statement in accordance with this section to the extent that his or her duties under those sections may apply to persons other than his or her employees.

Section 60: Codes of practice.

60. (1) For the purpose of providing practical guidance to employers, employees and any other persons to whom this Act applies with respect to safety, health and welfare at work, or the requirements or prohibitions of any of the relevant statutory provisions, the Authority:

- (a) may, and shall if so requested by the Minister, prepare and publish codes of practice; and
- (b) may approve of a code of practice or any part of a code of practice made or published by any other body.

(2) Before publishing or approving of a code of practice or any part of a code of practice under this section, the Authority:

- (a) shall obtain the consent of the Minister;
- (b) may publish in such manner as the Authority considers appropriate a draft of the code of practice or sections of a draft code of practice and shall give persons one month from the date of publication of the draft code or sections within which to make written representations to the Authority in relation to the draft code or sections of the draft code, or such further period, not exceeding 28 days, as the Authority in its absolute discretion thinks fit; and
- (c) following consultation and, where relevant, having considered the representations, if any, made, shall submit the draft code to the Minister for his or her consent to its publication or approval under this section, with or without modification.

(3) Where the Authority publishes or approves of a code of practice or approves of any part of a code of practice, it shall publish a notice of such publication or approval in *Iris Oifigiuil* and that notice shall:

- (a) identify the code;
- (b) specify the matters relating to safety, health and welfare at work or the relevant statutory provisions in respect of which the code is published or approved of; and
- (c) specify the date on which the code shall come into operation.

(4) The Authority may with the consent of the Minister and following consultation with any other person or body that the Authority considers appropriate or as the Minister directs:

- (a) amend or revoke any code of practice or part of any code of practice prepared and published by it under this section; or
- (b) withdraw its approval of any code of practice or part of any code of practice approved by it under this section.

(5) Where the Authority amends or revokes, or withdraws its approval of a code of practice or any part of a code of practice published or approved under this section, it shall publish notice of the amendment, revocation or withdrawal, as the case may be, in *Iris Oifigiuil*.

(6) The Authority shall make available for public inspection without charge at its principal office during normal working hours:

- (a) a copy of each code of practice published or approved by it; and
- (b) where a code of practice has been amended, a copy of the code as so amended.

(7) Notwithstanding the repeal of the Act of 1989 by *section 4*, a code of practice in operation immediately before the commencement of that section continues to be a code of practice as if prepared and published under this section.

Section 61: Use of codes of practice in criminal proceedings.

61. (1) Where in proceedings for an offence under this Act relating to an alleged contravention of any requirement or prohibition imposed by or under a relevant statutory provision being a provision for which a code of practice had been published or approved by the Authority under *section 60* at the time of the alleged contravention, *subsection (2)* shall have effect with respect to that code of practice in relation to those proceedings.

- (2) (a) Where a code of practice referred to in *subsection (1)* appears to the court to give practical guidance as to the observance of the requirement or prohibition alleged to have been contravened, the code of practice shall be admissible in evidence.
- (b) Where it is proved that any act or omission of the defendant alleged to constitute the contravention:
 - (i) is a failure to observe a code of practice referred to in *subsection (1)*; or
 - (ii) is a compliance with that code of practice,then such failure or compliance is admissible in evidence.

(3) A document bearing the seal of the Authority and purporting to be a code of practice or part of a code of practice published or approved of by the Authority under this section shall be admissible as evidence in any proceedings under this Act.

Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005)

SCHEDULE 3

Section 8

General Principles of Prevention

1. The avoidance of risks.
2. The evaluation of unavoidable risks.
3. The combating of risks at source.
4. The adaptation of work to the individual, especially as regards the design of places of work, the choice of work equipment and the choice of systems of work, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate and to reducing the effect of this work on health.
5. The adaptation of the place of work to technical progress.
6. The replacement of dangerous articles, substances or systems of work by safe or less dangerous articles, substances or systems of work.
7. The giving of priority to collective protective measures over individual protective measures.
8. The development of an adequate prevention policy in relation to safety, health and welfare at work, which takes account of technology, organisation of work, working conditions, social factors and the influence of factors related to the working environment.
9. The giving of appropriate training and instructions to employees.

Appendix 2

Some relevant Organisations and Publications

Health and Safety Authority (website: www.hsa.ie)

Guidelines on Risk Assessment and Safety Statements

Workplace Safety and Health Management

Labour Relations Commission (website: www.lrc.ie)

Procedures for Addressing Bullying in the Workplace

Grievance and Disciplinary Procedures

Voluntary Dispute Resolution SI 76 of 2004

Equality Authority (website: www.equality.ie)

Code of Practice on Sexual Harassment and Harassment at Work

Department of Enterprise, Trade and Employment (website: www.entemp.ie)

Bullying in the Workplace, Survey Reports, 2007

**Code of Practice for
Employers and Employees
on the Prevention and
Resolution of Bullying at Work.**

*Achieving a
Healthy
and Safe
Working Life
-Together*

**HEALTH AND SAFETY
AUTHORITY**

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