



STATUTORY INSTRUMENT

S.I. No. 139 of 2004

INDUSTRIAL RELATIONS ACT 1990 (CODE OF PRACTICE ON VICTIMISATION) (DECLARATION) ORDER 2004

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**INDUSTRIAL RELATIONS ACT 1990 (CODE OF PRACTICE ON
VICTIMISATION) (DECLARATION) ORDER 2004**

WHEREAS the Labour Relations Commission has prepared under subsection (1) of section 42 of the Industrial Relations Act 1990 (No. 19 of 1990), a draft code of practice on victimisation arising from an employee's membership or activity on behalf of a trade union or a manager discharging his or her managerial functions, or other employees;

AND WHEREAS the Labour Relations Commission has complied with subsection (2) of that section and has submitted the draft code of practice to the Minister for Enterprise, Trade and Employment;

NOW THEREFORE, I, Frank Fahey, Minister of State at the Department of Enterprise, Trade and Employment, in exercise of the powers conferred on me by subsection (3) of that section, the Labour (Transfer of Departmental Administration and Ministerial Functions) Order 1993 (S.I. No. 18 of 1993), (as adapted by the Enterprise and Employment (Alteration of Name of Department and Title of Minister) Order 1997 (S.I. No. 305 of 1997)), and the Enterprise, Trade and Employment (Delegation of Ministerial Functions) Order 2003 (S.I. No. 156 of 2003), hereby order as follows:

1. This Order may be cited as the Industrial Relations Act 1990 (Code of Practice on Victimisation) (Declaration) Order 2004.
2. It is hereby declared that the code of practice set out in the Schedule to this Order shall be a code of practice for the purposes of the Industrial Relations Act 1990 (No. 19 of 1990).

SCHEDULE

1 - INTRODUCTION

1. Section 42 of the Industrial Relations Act, 1990 provides for the preparation of draft Codes of Practice by the Labour Relations Commission for submission to the Minister, and for the making, by him/her of an order declaring that a draft Code of Practice received by him/her under section 42 and scheduled to the order shall be a Code of Practice for the purposes of the said Act.
2. Paragraph 9.22 of Partnership 2000 for Inclusion, Employment and Competitiveness established a High Level Group on Trade Union Recognition. The High Level Group, involving the Departments of the Taoiseach, Finance and Enterprise, Trade and Employment, the Irish Congress of Trade Unions (ICTU), the Irish Business and Employers Confederation (IBEC) and IDA-Ireland, considered proposals submitted by the ICTU on the Recognition of Unions and the Right to Bargain and took account of European developments and the detailed position of IBEC on the impact of the ICTU proposals. As a result of these deliberations a set of procedures were put in place in the Code of Practice on Voluntary Dispute Resolution (S.I. No. 145 of 2000) and the Industrial Relations (Amendment) Act 2001.
3. Article 8.9 of Sustaining Progress Social Partnership Agreement 2003-2005 provides for the further development of employee representation. It was agreed by the trade union and employer organisations that there was a need to enhance the effectiveness of the existing procedures put in place in the Code of Practice on Voluntary Dispute Resolution and the Industrial Relations (Amendment) Act 2001.
4. Among the measures agreed for this purpose was the introduction of a new Code of Practice setting out the different types of practice which would constitute victimisation arising from an employee's

membership or activity on behalf of a trade union or a manager discharging his or her managerial functions, or other employees.

5. In April 2003 the Minister for Enterprise, Trade and Employment requested the Commission under section 42(1) of the Industrial Relations Act 1990 to prepare a draft Code of Practice on Victimisation pursuant to the provisions of Article 8.9 of Sustaining Progress Social Partnership Agreement 2003-2005.
6. When preparing and agreeing this Code of Practice, the Commission consulted with relevant organisations and took account of the views expressed to the maximum extent possible.
7. The major objective of the Code is the setting out of the different types of practice which would constitute victimisation arising from an employee's membership or activity on behalf of a trade union or a manager discharging his or her managerial functions, or other employees.

2. PURPOSE

1. The purpose of this Code of Practice is to outline, for the guidance of employers, employees and trade unions, the different types of practice which would constitute victimisation.
2. Victimisation in the context of this Code of Practice refers to victimisation arising from an employee's membership or non-membership, activity or non-activity on behalf of a trade union or an excepted body, or a manager discharging his or her managerial functions, or any other employee in situations where negotiating arrangements are not in place and where collective bargaining fails to take place (and where the procedures under the Code of Practice on Voluntary Dispute Resolution have been invoked or steps have been taken to invoke such procedures).

3. DEFINITIONS

1. For the purposes of this Code, victimisation is defined in general terms as any adverse or unfavourable treatment that cannot be justified on objective grounds (objective grounds do not include membership of, or activity on behalf of, a trade union) in the context referred to at Clause 2 above. It shall not include any act constituting a dismissal of the employee within the meaning of the Unfair Dismissals Act 1977 to 2001, where there is a separate recourse available. For the avoidance of doubt, “employee” in this Code includes any person in the employment concerned, the duties of whom consist of or include managing the business or activity to which the employment relates.

For the purposes of this Code none of the following –

- a) the employer,
- b) an employee, or
- c) a trade union or an excepted body,

shall victimise an employee or (as the case may be) another employee in the employment concerned on account of –

- i. the employee being or not being a member of a trade union or an excepted body, or
- ii. the employee engaging or not engaging in any activities on behalf of a trade union or an excepted body, or
- iii. the employee exercising his/her managerial duties, where applicable, to which the employment relates on behalf of the employer.

2. Examples of unfair or adverse treatment (whether acts of commission or omission) that cannot be justified on objective grounds may in the above contexts include an employee suffering any unfavourable change in his/her conditions of employment or acts that adversely affect the interest of the employee; action detrimental to the interest of an employee not wishing to engage in trade union activity or the impeding of a manager in the discharge of his/her managerial functions.
3. The legal definitions of employer, employee, contract of employment and trade unions shall be as set out in Part III of the Industrial Relations Act 1990. A trade union shall be taken to mean any authorised trade union as defined in the Trade Union Act 1941.

4. AVOIDANCE

1. Where there is a dispute in an employment where collective bargaining fails to take place and where negotiating arrangements are not in place, no person, be they union representative, individual employee or manager, should be victimised or suffer disadvantage as a consequence of their legitimate actions or affiliation arising from that dispute. The positions and views of all concerned should be respected and all parties should commit themselves to resolve issues in dispute expeditiously and without personal rancour.

5. PROCEDURE FOR ADDRESSING COMPLAINTS OF VICIMISATION

1. A procedure for addressing complaints of victimisation is set out in the Industrial Relations (Miscellaneous Provisions) Act 2004. Section 9 of the Act provides that a complaint may be presented to a Rights Commissioner.

GIVEN under my hand,

6th April 2004.

Frank Fahey

Minister of State at the Department of
Enterprise, Trade and Employment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The effect of this Order is to declare that the draft Code of Practice set out in the Schedule to this Order is a Code of Practice for the purposes of the Industrial Relations Act 1990.