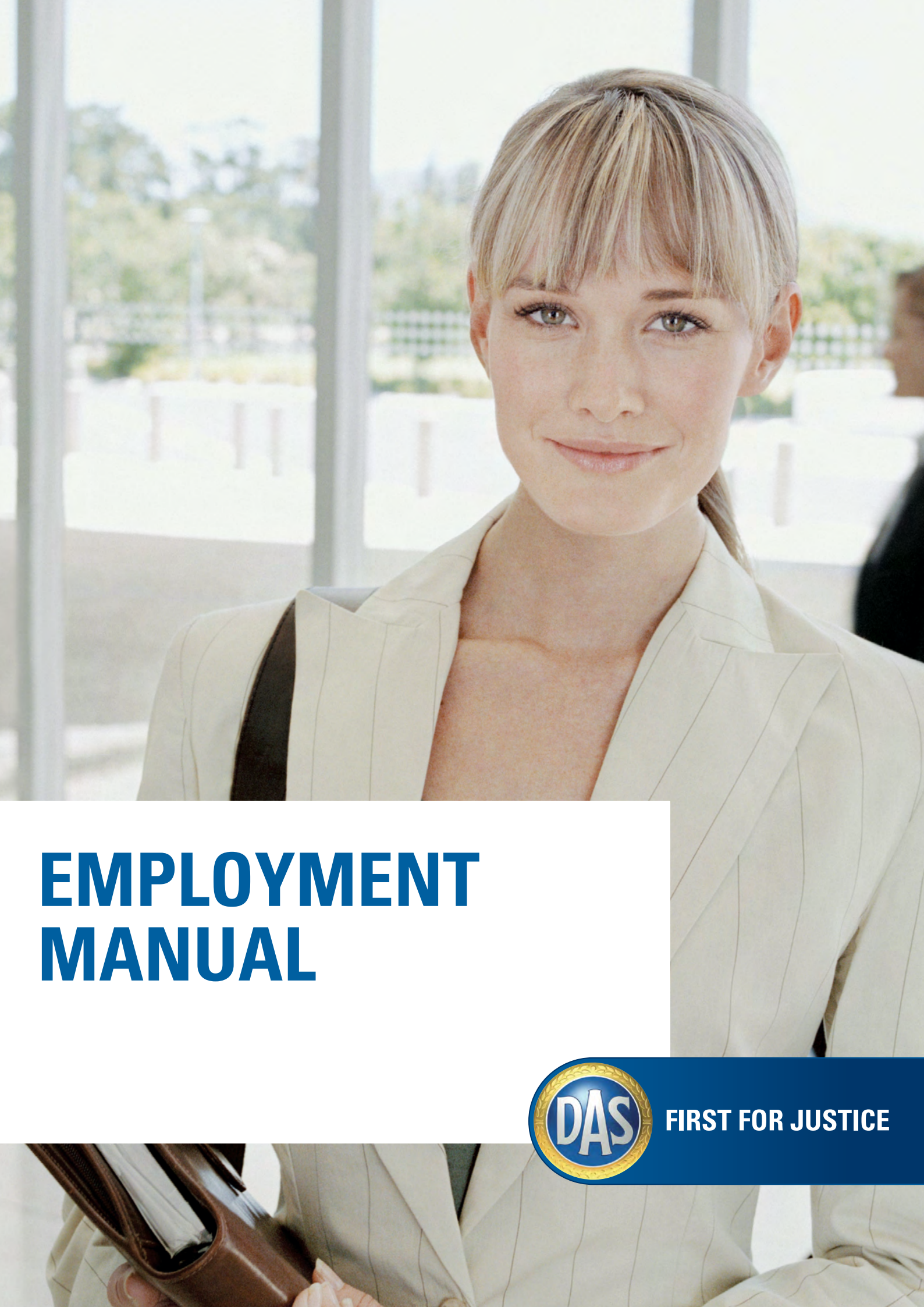

EMPLOYMENT MANUAL

FIRST FOR JUSTICE

APPENDICES

6.1 APPENDIX 1 – DATA PROTECTION

The Data Protection Acts, 1988 and **2003** govern the handling of personal information where the information is about living individuals who can be identified from such information. A data controller is the individual or the legal person for an organisation who controls and is responsible for the keeping, processing and use of personal information on computer or in structured manual files. A data controller carries serious legal responsibilities, so you should be quite clear if these responsibilities apply to you or your organisation. If you are in any doubt, or are unsure you should consult our legal advice helpline or seek the advice of the Data Protection Commissioner at **www.dataprotection.ie**

THE EIGHT RULES OF DATA PROTECTION

An employer should undertake to *ONLY* process data on the following basis:

1 Obtain and process information fairly

2 Keep it only for one or more specified, explicit and lawful purposes

3 Use and disclose it only in ways compatible with these purposes

4 Keep it safe and secure

5 Keep it accurate, complete and up-to-date

6 Ensure that it is adequate, relevant and not excessive

7 Retain it for no longer than is necessary for the purpose or purposes for which it was obtained

8 Give a copy of his/her personal data to the individual on request and shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

APPENDICES

6.1 APPENDIX 1 – DATA PROTECTION (CONTINUED)

THE EIGHT RULES OF DATA PROTECTION (CONTINUED)

1 Obtain and process information fairly

- To **fairly obtain data** the data subject must, at the time the personal data is being collected, be made aware of:
  - the identity of the data controller
  - the purpose in collecting the data, and
  - the persons or categories of persons to whom the data may be disclosed
  - any other information which is necessary so that processing may be fair.

- To **fairly process personal data** it must have been fairly obtained, and the data subject must have given consent to the processing or the processing must be necessary for one of the following reasons:
  - the performance of a contract to which the data subject is party
  - in order to take steps at the request of the data subject prior to entering into a Contract
  - to comply with a legal obligation, other than that imposed by contract
  - to prevent injury or other damage to the health of a data subject
  - to prevent serious loss or damage to property of the data subject
  - to protect the vital interests of the data subject where the seeking of the consent of the data subject is likely to result in those interests being damaged
  - for the administration of justice
  - for the performance of a function conferred on a person by or under an enactment
  - for the performance of a function of the Government or a Minister of the Government
  - for the performance of any other function of a public nature performed in the public interest by a person for the purpose of the legitimate interests pursued by a data controller except where the processing is unwarranted in any particular case by reason of prejudice to the fundamental rights and freedoms or legitimate interests of the data subject.

- To **fairly process sensitive data** (see definitions) there are additional special conditions of which at least one of the following must be met:
  - the data subject has given explicit consent to the processing, i.e. the data subject has been clearly informed of the purpose/s in processing the data and has supplied his/her data with that understanding, or
  - the processing must be necessary for one of the following reasons:
    - for the purpose of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment
    - to prevent injury or other damage to the health of the data subject or another person, or serious loss in respect of, or damage to, property or otherwise to protect the vital interests of the data subject or of another person in a case where, consent cannot be given, or the data controller cannot reasonably be expected to obtain such consent
    - to prevent injury to, or damage to the health of, another person, or serious loss in respect of or damage to, the property of another person,
    - in a case where such consent has been unreasonably withheld
    - it is carried out by a not for profit organisation in respect of its members or other persons in regular contact with the organisation
    - the information being processed has been made public as a result of steps deliberately taken by the data subject
    - for the purpose of obtaining legal advice, or in connection with legal proceedings, or is necessary for the purposes of establishing, exercising or defending legal rights
    - for medical purposes
    - is carried out by political parties or candidates for election in the context of an election
    - for the purpose of the assessment or payment of a tax liability in relation to the administration of a Social Welfare scheme.

APPENDICES

6.1 APPENDIX 1 – DATA PROTECTION (CONTINUED)

THE EIGHT RULES OF DATA PROTECTION (CONTINUED)

2 Keep it only for one or more specified, explicit and lawful purposes

You may only keep data for a purpose/s that are specific, lawful and clearly stated and the data should only be processed in a manner compatible with the purpose. An individual has a right to question the purpose for which you hold his/her data and you must be able to identify that purpose.

To comply with this rule:

- in general the persons whose data you collect should know the reason(s) why you collect and keep it
- the purpose for which you collect and keep the data should be a lawful one
- you should be aware of the different sets of data which you keep and specific purpose of each.

3 Use and disclose it only in ways compatible with these purposes

Any use or disclosure must be necessary for the purpose/s or compatible with the purpose/s for which you collect and keep the data. You should ask whether the data subject would be surprised to learn that a particular use of or disclosure is taking place.

A key test of compatibility is:

- do you use the data only in ways consistent with the purpose/s for which they were obtained?
- do you disclose the data only in ways consistent with that purpose/s?

The rule, that disclosures of information must always be compatible with the purpose/s for which that information was obtained, is lifted in certain restricted cases by section 8 of the Act. Examples of such cases would include some obvious situations where disclosure of the information is required by law or is made to the individual himself/herself or with his/her consent.

APPENDICES

6.1 APPENDIX 1 – DATA PROTECTION (CONTINUED)

THE EIGHT RULES OF DATA PROTECTION (CONTINUED)

4 Keep it safe and secure

Appropriate security measures must be taken against unauthorised access to, or alteration, disclosure or destruction of, the data and against their accidental loss or destruction. The security of personal information is all-important, but the key word here is appropriate, in that it is more significant in some situations than in others, depending on such matters as confidentiality and sensitivity and the harm that might result from an unauthorised disclosure. High standards of security are, nevertheless, essential for all personal information. The nature of security used may take into account what is available, the cost of implementation and the sensitivity of the data in question.

A minimum standard of security would include the following:

- access to the information restricted to authorised staff on a "need-to-know" basis in accordance with a defined policy
- computer systems should be password protected
- information on computer screens and manual files should be kept hidden from callers to your offices
- back-up procedure in operation for computer held data, including off-site back-up
- all reasonable measures should be taken to ensure that your staff are made aware of the organisation's security measures, and comply with them
- all waste papers, printouts, etc. should be disposed of carefully
- a designated person should be responsible for security and there should be periodic reviews of the measures and practices in place
- premises should be secure when unoccupied
- a contract should be in place with any data processor which imposes
- equivalent security obligations on the data processor.

5 Keep it accurate, complete and up-to-date

(While this rule applies to all computer held data and any new manual records created from July 2003, it will only apply to existing manual records from October 2007.)

Apart from ensuring compliance with the Acts, this requirement has an additional importance in that you may be liable to an individual for damages if you fail to observe the duty of care provision in the Acts applying to the handling of personal data.

To comply with this rule you should ensure that:

- your clerical and computer procedures are adequate to ensure high levels of data accuracy
- the general requirement to keep personal data up-to-date has been fully examined
- appropriate procedures are in place, including periodic review and audit, to ensure that each data item is kept up-to-date.

NOTE: *The accuracy requirement does not apply to back-up data, that is, to data kept only for the specific and limited purpose of replacing other data in the event of their being lost, destroyed or damaged.*

APPENDICES

6.1 APPENDIX 1 – DATA PROTECTION (CONTINUED)

THE EIGHT RULES OF DATA PROTECTION (CONTINUED)

6 Ensure that it is adequate, relevant and not excessive

(While this rule applies to all computer held data and any new manual records created from July 2003 it will only apply to existing manual records from October 2007.)

You can fulfil this requirement if you make sure you are keeping only the minimum amount of personal data which you need to achieve your specified purpose/s. You should set down specific criteria to judge what is adequate, relevant, and not excessive and apply those criteria to each information item and the purpose/s for which it is held.

To comply with this rule you should ensure that the information held is:
- adequate in relation to the purpose/s for which you keep it
- relevant in relation to the purpose/s for which you keep it
- not excessive in relation to the purpose/s for which you keep it.

7 Retain it for no longer than is necessary for the purpose or purposes

(While this rule applies to all computer held data and any new manual records created from July 2003 it will only apply to existing manual records from October 2007.)

Nowadays information can be kept cheaply and effectively, particularly on computer. This requirement places a responsibility on data controllers to be clear about the length of time data will be kept and the reason why the information is being retained. You should assign specific responsibility for ensuring that files are regularly purged and that personal information is not retained any longer than necessary.

To comply with this rule you should have:
- a defined policy on retention periods for all items of personal data kept
- management, clerical and computer procedures in place to implement such a policy.

APPENDICES

6.1 APPENDIX 1 – DATA PROTECTION (CONTINUED)

THE EIGHT RULES OF DATA PROTECTION (CONTINUED)

8 Give a copy of his/her personal data to that individual, on request

On making an access request any individual, about whom you keep personal data, is entitled to:

- a copy of the data you are keeping about him/her
- know your purpose/s for processing his/her data
- know the identity of those to whom you disclose the data
- know the source of the data, unless it is contrary to public interest
- know the logic involved in automated decisions
- a copy of any data held in the form of opinions, except where such opinions were given in confidence.

It is important that you have clear co-ordinated procedures in place to ensure that all relevant manual files and computers are checked for the data in respect of which the access request is being made.

To make an access request the **data subject must**:

- apply to you in writing
- give any details which might be needed to help you identify him/her and locate all the information you may keep about him/her e.g. previous addresses, customer account numbers
- pay you an access fee if you wish to charge one. You need not do so, but if you do it cannot exceed the prescribed amount.

Every individual about whom a data controller keeps personal information has a number of other rights under the Act in addition to the Right of Access.

These include:

- the right to have any inaccurate information rectified or erased,
- to have personal data taken off a direct marketing or direct mailing list and the right to complain to the Data Protection Commissioner.

In response to an access request **you must**:

- supply the information to the individual promptly and within 40 days of receiving the request
- provide the information in a form which will be clear to the ordinary person, e.g. any codes must be explained.

APPENDICES

6.1 APPENDIX 1 – DATA PROTECTION (CONTINUED)

THE EIGHT RULES OF DATA PROTECTION (CONTINUED)

If you do not keep any information about the individual making the request you should tell them so within the 40 days. You are not obliged to refund any fee you may have charged for dealing with the access request should you find you do not, in fact keep any data. However, the fee must be refunded if you do not comply with the request, or if you have to rectify, supplement or erase the personal data concerned.

There are a number of modifications to the general rule of Right to Access which include the following:

- Health and Social Work Data
  There are modifications to the right of access in the interest of the data subject or the public interest, designed to protect the individual from hearing anything about himself or herself which might cause serious harm to his or her physical or mental health or emotional well-being.

Transferring personal data abroad
An area of concern for many data controllers are the requirements necessary for the transfer of data abroad. There are special conditions that have to be met before transferring personal data outside the European Economic Area, where the importing country does not have an EU approved level of data protection law.

At least one of the following conditions must be met in that the transfer is:

- consented to by the data subject
- required or authorised under an enactment, convention or other instrument imposing an international obligation on this State necessary for the performance of a contract between the data controller and the data subject
- necessary for the taking of steps at the request of the data subject with a view to his or her entering into a contract with the data controller
- necessary for the conclusion of a contract between the data controller and a third party, that is entered into at the request of the data subject and is in the interests of the data subject, or for the performance of such a contract
- necessary for the purpose of obtaining legal advice
- necessary to urgently prevent injury or damage to the health of a data subject
- part of the personal data held on a public register
- authorised by the Data Protection Commissioner, which is normally the approval of a contract which is based on the EU model.

APPENDICES

6.2 APPENDIX 2 – HEALTH & SAFETY

The Safety, Health and Welfare at Work (General Application) Regulations 2007 came into force on the 1st November 2007 and apply to all employments and impose certain duties on the employer as follows:

- Work Place
- Use of Work Equipment
- Personal Protective Equipment
- Manual Handling Loads
- Display Screen Equipment
- Electricity
- Work at Height
- Control of Noise at Work
- Control of Vibration at Work
- First Aid
- Young Persons and Children
- Pregnant, post-natal and breast feeding employees
- Night Work and Shift Work
- Safety Signs and Places of Work
- Explosive Atmospheres

APPENDICES

6.2 APPENDIX 2 – HEALTH & SAFETY (CONTINUED)

The Safety, Health & Welfare at Work Act, 2005 - A Summary

1 Purpose/Aim of Legislation

- To secure the safety, health & welfare of persons at work and for enforcement of relevant statutory provisions
- To encourage improvements in the safety and health of workers at work
- To provide for the further regulation of work activities, to continue in being and confer additional functions on the national Health & Safety Authority

Sections 8, 9, 10, 11, 12, govern general duties of employer, and basically refer to the obligation on the employer to provide a safe workplace and safe work practices; instruction, training and supervision of employees in relation to the same; prevent emergencies, serious and imminent dangers, and what to do in the event of these occurring.

Sections 13 and 15 govern duties of employee, requiring them to take reasonable care to protect their safety, welfare and health, together with that of their fellow employees; ensure that they're not under intoxicating influence; undergo testing for same if required by employer; report any health/safety/welfare issues to employer.

Discussion

In addition to the above, the **The Safety, Health & Welfare at Work Act, 2005** repeals the former 1989 Act which imposed a duty of strict liability on employers. Now however, under the new legislation, the employee owes a strict duty to themselves to ensure their own safety, and protect that of their fellow workers (section 13 requires employees to comply with safety procedures, report breaches of same, prohibition of intoxicant use at work, etc).

APPENDICES

6.2 APPENDIX 2 – HEALTH & SAFETY (CONTINUED)

The Safety, Health & Welfare at Work Act, 2005 - A Summary (Continued)

2 Protective & Preventive Measures

Section 19 – Hazard Identification & Risk Assessment

- Section 19 states that every employer shall identify the hazards in the workplace, assess the risks presented by those hazards and be in possession of a written assessment (to be known as and referred to in the Act as a "Risk Assessment") of the risks to the safety, health and welfare at work of their employees.
- For the purposes of carrying out a risk assessment, 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.
- The risk assessment shall be reviewed by the employer where there:
  i there has been a significant change in the matters to which it relates, or
  ii 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.
- In relation to the most recent risk assessment carried out by an employer, they 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.

Discussion

While the legislation above obliges/requires the employer to carry out a risk assessment, in practice the employer would be expected to engage a professional for this task, particularly given that different, specific hazards exist for different, specific industry types and workplaces. Nonetheless, for a small workplace, an employer may be able to use the following headings as a starting point for an assessment:

- **Section**
- **Workplace**
- **Assessor**
- **Activity**
- **Hazard Identification**: List hazard which you could expect to result in harm.
- **Risk Assessment**: What's the risk under normal conditions in your workplace?
- **Affects**: List groups of people who might be harmed.
- **Control Measures**: What, if any, existing control measures are in place?
  - List additional controls required
  - Responsible person to implement controls
  - Date to implement.

APPENDICES

6.2 APPENDIX 2 – HEALTH & SAFETY (CONTINUED)

The Safety, Health & Welfare at Work Act, 2005 - A Summary (Continued)

2 Protective & Preventive Measures (Continued)

Section 20 – Safety Statement

- 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 their employees shall be secured and managed.
- Every employer shall ensure that the safety statement specifies the following:
  - **i** the hazards identified and the risks assessed
  - **ii** the protective and preventive measures taken and the resources provided for protecting safety, health and welfare at the workplace
  - **iii** 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 section 8 (General Duties of Employer – to create and maintain safe workplace) and section 11 (procedures in respect of Emergencies and Serious and Imminent Dangers)
  - **iv** the duties of their employees regarding safety, health and welfare at work, including cooperation with the employer and any persons who have responsibility under the relevant statutory provisions (i.e. Inspectors, etc) in matters relating to safety, health and welfare at work
  - **v** the names, and where applicable, the job title or position held of each person responsible for performing tasks assigned to them pursuant to the safety statement, and
  - **vi** 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 and the members of the safety committee, if appointed.
- 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:
  - **i** their employees, at least annually and, at any other time, following its amendment in accordance with this section,
  - **ii** newly-recruited employees upon commencement of employment, and
  - **iii** other persons at the place of work who may be exposed to any specific risk to which the safety statement applies.
- 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:
  - **i** the risk identified,
  - **ii** the risk assessment, and
  - **iii** the protective and preventive measures taken in accordance with the relevant statutory provisions in relation to that risk.

APPENDICES

6.2 APPENDIX 2 – HEALTH & SAFETY (CONTINUED)

The Safety, Health & Welfare at Work Act, 2005 - A Summary (Continued)

2 Protective & Preventive Measures (Continued)

Section 20 – Safety Statement (Continued)

- Every employer shall, taking into account the risk assessment carried out under section 19, review the safety statement where:
  - **i** there has been a significant change in the matters to which it refers,
  - **ii** there is another reason to believe that the safety statement is no longer valid, or
  - **iii** 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.
- 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.
- 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.
- Every person to whom sections 12 or 15 applies shall prepare a safety statement in accordance with this section to the extent that their duties under those sections may apply to persons other than their employees.

Discussion

Section 20 above is self-explanatory. It obliges the employer to prepare a safety statement, based on the identification of the hazards and the risk assessment carried out under section 19. The safety statement is to include protective and preventive measures taken and the resources provided for protecting safety, health and welfare at the place of work. The employer is also bound to review the safety statement at least annually, and make a copy of the same available for inspection if requested; in practice, displaying the same in a prominent place would be a recommended approach.

APPENDICES

6.2 APPENDIX 2 – HEALTH & SAFETY (CONTINUED)

The Safety, Health & Welfare at Work Act, 2005 - A Summary (Continued)

3 Safety representatives

- Sections 25 and 26 permit the appointment of an employee designated as "the safety representative" to represent fellow employees in consultation with the employer over matters of safety, health and welfare in the workplace.
- Safety representatives have almost unfettered powers of inspection of workplace, subject to giving reasonable notice of same to employer, whether on their own initiative or in response to complaints, and can accompany/assist inspector during their investigations, subject to the inspector's discretion.
- Section 64 gives the Inspector far-reaching powers, based only on their "reasonable grounds/ reasonable cause" of a breach taking place, to inspect workplace and obtain any information in relation to same, and even if they suspect that a serious obstruction may occur, may be accompanied by Gardai during their inspection (s 64(8)). Severe penalties attach to employers for failing to comply with Inspector's request/obstructing their investigation.

4 Improvement and prohibition plans and notices

- Section 65 requires that if the Inspector is of the opinion that an activity is occurring, or is likely to occur, which endangers/risks the safety, health and welfare of employees, they may give a written direction to the employer requiring the employer to provide to the Inspector, an improvement plan.
- The written direction above shall identify the risky activity; require the submission to the inspector within one month, of an improvement plan specifying the remedial action proposed to be taken, and requiring the employer to implement the same. The Inspector provides a copy of the improvement plan to the safety representative.

i Within a further month of receipt of an improvement plan, an inspector, by way of written notice to the person who submitted the plan, shall confirm whether or not they're satisfied of the adequacy of the plan or may direct that the plan be revised as specified in the notice and resubmitted to the Inspector within a period specified in the notice.

ii Section 66 outlines what happens if the employer does not adhere to the improvement plan; namely that an improvement notice be furnished by the Inspector to the employer. If this is not adhered to by the employer, then under section 67, a prohibition notice may issue, requiring the employer to cease the risk activity/practice.

iii Section 72 outlines power to require information, and the obtaining and disclosure of the same. Authority can serve, by way of written notice (called "information notice") on employer, notice requiring information. Employer has 7 days in which to appeal same to District Court.

APPENDICES

6.2 APPENDIX 2 – HEALTH & SAFETY (CONTINUED)

The Safety, Health & Welfare at Work Act, 2005 - A Summary (Continued)

5 Offences and penalties

Sections 77 and 78 deal with offences and penalties. For present purposes, the most relevant offences in section 77 are breaches of the following provisions:

- obstructing an Inspector, including failure to comply with their requests or to provide them with information
- falsifying documents required to be kept under this Act
- not complying with improvement plans, improvement notices or prohibition notices.

Consistent with the strict, overarching duty of the employer under section 8 (they shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of their employees), severe penalties attach in the event of their non-compliance with the Act. Under section 78, these penalties are in the following ranges:

- on summary conviction to a fine not exceeding €3,000 or imprisonment for term not exceeding 6 months or both, or
- on conviction on indictment to a fine not exceeding €3,000,000 or imprisonment for a term not exceeding 2 years or both.

Any person responsible for a breach of health and safety law can be prosecuted. Companies are the most common defendants in criminal prosecutions, but individuals, including the directors, officers or servants of companies, can also be prosecuted. Indeed, the latter, being human entities as distinct from legal ones could, in sufficiently serious cases, be imprisoned, whereas a company can only be fined.

Prosecutions can arise as a result of a failure to comply with a Notice issued by an Inspector, or as a result of an unsafe practice or other technical breach of the health and safety statutes. It's unusual to for the HSA to prosecute immediately where a breach is detected following a routine inspection because, more often than not, a Notice will achieve the desired remedial effect. However, where the breach is detected following an accident, particularly a fatal accident, a prosecution may well follow without the use of Notices.

APPENDICES

6.3 APPENDIX 3 – WORKPLACE THEFT

Actions upon discovering alleged theft by an employee
All employers in the retail trade should have a clear and defined policy on staff purchases, credit and discounts. Such policy should include the requirement that any staff purchase is not purchased unless authorisation has been sought in advance from a more senior member of staff. The policy should form part of the Terms & Conditions of an employee's contract. Such policy should be placed in a prominent position in the staff area to ensure all staff are fully appraised of their obligations. This policy should be applied and operated in a consistent manner by the employer.

One of an employer's worst nightmares is to discover that an employee has been engaging in theft, embezzlement, fraud, or some other offense against the company. Unfortunately, such events do occur, and an employer must be prepared to respond when an employee offence is uncovered. Appropriate employer response is important not only so that the employee may be prosecuted for his actions, but also so that the employer may determine, to the greatest degree possible, the full nature and extent of the damage caused to the company by the employee's actions. Although every situation will necessarily vary according to its facts, the following is a suggested checklist of steps the employer should consider taking when it first receives notice of possible wrongdoing by an employee.

In dismissals arising from an alleged theft, the value of the goods taken is immaterial because if the employer has reasonable belief that goods were taken at all, there is a clear breach of trust.

If there are criminal proceedings pending, an employer should nonetheless carry out a full investigation and not await the outcome of such legal proceedings. An employer can terminate employment on the reasonable belief that an employee committed the offence and does not decide the guilt of the employee. Of course, if an employee is acquitted by the Courts the employer may be in a difficult situation.

A recent case highlights these problems. In ***Sheehan -v- H. M. Keating & Son Ltd 1993 ELR 12***, the claimant was dismissed for allegedly stealing tyres which were the property of the company. It was submitted on behalf of the claimant that the dismissal had been delayed and the company stated that this was at the request of An Garda Siochana so that they could facilitate their investigation.

In fact the Garda investigation was not completed until November 1991, yet the employee was dismissed in July of that year and the company had concluded that in June there were grounds to justify dismissal by reason of gross misconduct, but as fair procedures were not applied it was deemed to be an unfair dismissal.

In ***Hestor -v- Dunnes Stores Ltd 1990 ELR 12***, on the other hand, the employer applied fair procedures and it was shown that if an employee cannot offer a reasonable explanation there may be a justifiable dismissal. Employees in the company were entitled to purchase goods subject to certain procedures and supervision from management. The claimant took a packet of ham, as well as packets of chips and burger buns from stock. The chips and buns were paid for, but the packet of ham was allegedly concealed under the claimant's arm. She was confronted by a security officer and presented the items that had been paid for, and then the ham fell to the floor. The claimant was questioned and she gave no reasonable explanation other than that she forgot about the ham. The Tribunal considered that it was a fair dismissal and this was upheld by Clarke, J. in the Circuit Court where he considered the issue was not whether or not she stole the ham, but whether it was reasonable or not to dismiss her having regard to her conduct.

APPENDICES

6.3 APPENDIX 3 – WORKPLACE THEFT (CONTINUED)

Actions upon discovering alleged theft by an employee (Continued)
Consequently, it is of paramount importance that an employer does the following:

1 **Act quickly but prudently – get all the facts**
Obviously if a crime is being committed against the employer, a rapid response is necessary. Failure to act may result in further harm to the company or in the loss of valuable evidence that is needed to prove the wrongdoing. At the same time, however, employers must balance the need to act quickly with an employee's legal rights. An employer that acts impetuously or rashly may find that it has taken action against an innocent employee and perhaps has exposed itself to numerous claims by the accused employee, including claims for defamation, unfair dismissal or bullying and harassment.

2 **Notify the legal advice helpline**
The legal ramifications of employee malfeasance are significant, both for the employer and the employee. Advice should be sought immediately when criminal activity is suspected.

3 **Confirm, to the extent possible, the misconduct**
Employers will serve themselves well by taking the necessary time to gather sufficient facts and to preserve evidence before acting against an employee. What may seem to be an egregious criminal offence at first glance may turn out to nothing more than a slight infraction of company policies. Confirmation of the misconduct is also important because the employer will need to produce evidence of the wrongdoing if, in fact, criminal misconduct is involved. Gathering and preserving evidence such as CCTV footage together with till receipts for the appropriate timeframe in cases involving the handing over of goods by an employee without seeking payment is critical.

4 **Keep information on a "need-to-know" basis**
The investigation and confirmation of the wrongdoing should be conducted using a minimal number of personnel. If employees learn that an investigation is underway, the employer may be further damaged in a couple of respects. Firstly, the employee who is suspected of engaging in the wrongdoing may get wind of the investigation and destroy valuable or necessary evidence of the wrongdoing. As a result the employer may be unable to prove the crime occurred, or may be unable to assess the severity of the criminal activity. Secondly, by allowing word of an investigation to seep out, the employer may subject itself to a defamation claim when the other employees learn that a co-worker is being investigated, especially if it transpires that such employee is innocent of any criminal activity. Employers thus should take precautions to maintain the confidentiality of the investigation.

APPENDICES

6.3 APPENDIX 3 – WORKPLACE THEFT (CONTINUED)

Actions upon discovering alleged theft by an employee (Continued)

5 Apply company policies in a consistent and non-discriminatory manner
Before acting on an employee's misconduct, be sure that the company is applying its policies in a manner that is consistent with natural justice and fair procedures. For example, if an employee has been caught giving a family member or friend free goods, an action that unquestionably both violates company policy and the law, the employer must also consider how it has treated previous violators, if any have existed. If the accused employee is a member of a protected class pursuant to **The Employment Equality Act, 1998**, as amended by **The Equality Act, 2004** and is treated more harshly than others in the past, the employer likely has exposed itself to civil liability, even if the employee actually engaged in the misconduct. If, for example, a company has previously merely reprimanded a male employee who was caught giving family members free goods and then subsequently dismisses a female employee who has engaged in the same conduct, the employer will not fare well in any ensuing discrimination action. Employers should apply company policy and practice consistently.

6 Depending on the offense - contact An Garda Siochana
For obvious reasons, as soon as evidence of criminal activity is confirmed, the Gardai should be informed. Employers should be aware of section 19 of the Criminal Justice Act, 2011 which makes it an offence to fail to disclose information which is believed or known to be of material assistance in preventing the commission of certain offences or in securing the apprehension, prosecution or conviction of any other person for certain offence. The range of offences stated in the act runs to approximately 130. The offences specified include theft and fraud offences. Advice should be sought form the legal advice helpline should this situation arise.

7 Confront the employee
Following the initial investigation, the employer should if satisfied that larceny has indeed taken place; suspend the employee on full pay pending the outcome of a full and detailed investigation. Once the evidence has been compiled same must be furnished to the employee in advance of an arranged Disciplinary Hearing. The evidence may include witness statements or perhaps video evidence. The employee should be advised of his/her right to have a representative present, i.e. friend, colleague or family member. The employee should be advised in writing in advance of such hearing of the full allegations against him or her and the right to Appeal such decision if available.

Legal Advice on this or any other issue should be sought from the Legal Advice Helpline on 1850 670 747 at the earliest opportunity.

APPENDICES

6.4 APPENDIX 4 – LIABILITY FOR WORK-RELATED STRESS

Liability of an employer for stress suffered by an employee
The unanimous decision of the English Court of Appeal in the case of ***Hatton -v- Sutherland*** laid down 16 propositions regarding how an employer may be become liable for work-related stress suffered by an employee. These propositions have recently been accepted in Ireland by Ms. Justice Laffoy in the case of ***McGrath -v- Trintech (August 2005)***:

1 There were no special control mechanisms applying to claims for psychiatric, or physical, illness or injury arising from the stress of doing work the employee was required to do. **The ordinary principle of employer's liability applied**.

2 The threshold question was whether this kind of harm to this particular employee was reasonably foreseeable. That had two components: **(a)** an injury to health, as distinct from emotional stress, which was **(b)** attributable to stress at work, as distinct from other factors.

3 **Foreseeability** depended upon what the employer knew, or ought reasonably to have known, about the individual employee. Because of the nature of mental disorder, it was harder to foresee than physical injury, but might be easier to foresee in a known individual than in the population at large. An employer was usually entitled to assume that the employee could withstand the normal pressures of the job unless he knew of some particular problem or vulnerability.

4 The **test was the same** whatever the employment: there were no occupations which should be regarded as intrinsically dangerous to mental health.

5 The **factors** likely to be relevant in answering the threshold question included:
(a) the nature and extent of the work done by the employee and

(b) signs from the employee of impending harm to health.

6 The **employer was generally entitled to take what he was told by his employee at face value**, unless he had good reason to think to the contrary. He did not generally have to make searching enquiries of the employee or seek permission to make further enquiries of his medical advisers.

7 To trigger a duty to take steps, the **indications of impending harm to health** arising from stress at work had to be plain enough for any reasonable employer to realise that he should do something about it.

8 The employer was only in breach of duty if he **failed to take the steps which were reasonable in the circumstances**, bearing in mind the magnitude of the risk of harm occurring, the gravity of the harm which might occur, the costs and practicability of preventing it, and the justifications for running the risk.

9 The **size and scope of the employer's operation**, its resources and the demands it faced were relevant in deciding what was reasonable; these included the interests of other employees and the need to treat them fairly, for example in any redistribution of duties.

10 An employer could only reasonably be expected to take steps which were likely to do some good; the court would be likely to need **expert evidence** on that.

APPENDICES

6.4 APPENDIX 4 – LIABILITY FOR WORK-RELATED STRESS (CONTINUED)

Liability of an employer for stress suffered by an employee (Continued)

11 An employer who offered a confidential advice service, with referral to appropriate counselling or **treatment services** was unlikely to be found in breach of duty.

12 If the only **reasonable and effective** step would have been to dismiss or demote the employee, the employer would not be in breach of duty in allowing a willing employee to continue in his job.

13 In all cases, therefore, it was necessary to **identify the steps** which the employer both could and should have taken before finding him in breach of his duty of care.

14 The **claimant had to show** that breach of duty had caused or materially contributed to the harm suffered. It was not enough to show that occupational stress had caused the harm.

15 Where the harm suffered had **more than one cause**, the employer should only pay for that proportion of the harm suffered which was attributable to his wrongdoing unless the harm was truly indivisible. It was for the defendant to raise the question of apportionment.

16 The **assessment of damages** would take account of any pre-existing disorder or vulnerability and the chance that the claimant would have succumbed to a stress related disorder in any event.

NOTE: *Employers should take into consideration the foregoing propositions when dealing with work-related stress claims or indeed when compiling a workplace policy on the subject.*

APPENDICES

6.5 APPENDIX 5 – STRESS REDUCTION

Reducing the risk of claims for work-related stress

The Management Standard Demands

Includes issues like workload, work patterns, and the work environment.

The standard is:
- Employees indicate that they are able to cope with the demands of their jobs; and
- Internal systems are in place to respond to an employee's concerns.

State to be achieved:
- The employer provides employees with adequate and achievable demands in relation to the agreed hours of work;
- People's skills and abilities are matched to the job demands;
- Jobs are designed to be within the capabilities of employees; and
- Employees' concerns about their work environment are addressed.

Control

How much say the person has in the way they do their work.

The standard is:
- Employees indicate that they are able to have a say about the way they do their work; and
- Internal systems/policies are in place to respond to an employee's concerns.

State to be achieved:
- Where possible, employees have control over their pace of work;
- Employees are encouraged to use their skills and initiative to do their work;
- Where possible, employees are encouraged to develop new skills to help them undertake new and challenging pieces of work;
- Employees are consulted over their work patterns.

APPENDICES

6.5 APPENDIX 5 – STRESS REDUCTION (CONTINUED)

Reducing the risk of claims for work-related stress (Continued)

Support

Includes the encouragement, sponsorship and resources provided by the organisation, line management and colleagues.

The standard is:
- Employees indicate that they receive adequate information and support from their colleagues and superiors; and
- Internal systems are in place to respond to an employee's concerns.

State to be achieved:
- The company has policies and procedures in place to provide support to employees;
- Systems/policies are in place to encourage and facilitate managers to support their staff;
- Systems are in place to enable and encourage employees to support their colleagues;
- Employees know what support is available and how and when to access it;
- Employees have the required resources to do their job; and
- Employees receive regular and constructive feedback.

Role

Whether people understand their role within the organisation and whether the organisation ensures that the person does not have conflicting roles.

The standard is:
- Employees indicate that they understand their role and responsibilities; and
- Internal systems are in place to respond to any employee's concerns.

State to be achieved:
- The employer ensures that, as far as practicable, the different requirements it places upon employees are compatible;
- The employer provides adequate information to enable employees to understand their role and responsibilities;
- The employer ensures that, as far as practicable, the requirements it places upon employees are clear and unambiguous; and

APPENDICES

6.5 APPENDIX 5 – STRESS REDUCTION (CONTINUED)

Reducing the risk of claims for work-related stress (Continued)

Change

How organisational change (large or small) is managed and communicated within the organisation.

The standard is that:

- Employees indicate that the employer engages them frequently when undergoing an employer change; and
- Internal systems are in place to respond to any employee's concerns.

State to be achieved:

- The employer provides employees with timely information to enable them to understand the reasons for proposed changes;
- The employer ensures adequate employee consultation on changes and provides opportunities for employees to influence proposals;
- Employees are aware of the probable impact of any changes to their jobs. If necessary, employees are given training to support any changes in their jobs.

APPENDICES

6.6 APPENDIX 6 – CODE OF PRACTICE ON VICTIMISATION

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.

APPENDICES

6.6 APPENDIX 6 – CODE OF PRACTICE ON VICTIMISATION (CONTINUED)

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 Acts, 1977 - 2007**, 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**.

APPENDICES

6.6 APPENDIX 6 – CODE OF PRACTICE ON VICTIMISATION (CONTINUED)

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 victimisation

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.

APPENDIX I

S.I. No. 139 of 2004
The 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 Innovation, 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)**.

GIVEN under my hand,
6 April 2004
Frank Fahey
Minister of State at the Department of Enterprise, Trade and Innovation.

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**.

APPENDICES

6.7 APPENDIX 7 – TRANSFER OF UNDERTAKINGS REGULATIONS

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) apply to any transfer of an undertaking, business or part of a business from one employer to another employer as a result of a legal transfer (including the assignment or forfeiture of a lease) or merger. The Regulations implement an EU Directive aimed at safeguarding the rights of employees in the event of a transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer or merger.

These Regulations apply to public and private undertakings engaged in economic activities whether or not they are operated for gain.

Transfer means the transfer of an economic entity from one person to another person or from business to business whereby the nature and identity of such business is retained.

In general, the Regulations apply to any person
- working under a contract of employment, including apprenticeship
- employed through an employment agency or
- holding office under, or in the service of, the State (including a civil servant within the meaning of **The Civil Service Regulation Act, 1956**), an officer or servant of a harbour authority, health board or vocational education committee, and a member of the Garda Siochana or of the Defence Forces.

In the case of agency workers, the party who is liable to pay the wages (employment agency or client company) is the employer for the purposes of these Regulations.

Protection of Employment
All the rights and obligations of an employer under a contract of employment (including terms and conditions inserted by collective agreements, JLCs or Employment Regulation Orders) other than pension rights, existing on the date of transfer, are transferred to the new employer on the transfer of the business or part thereof. It is imperative that an employee's terms and conditions are not affected by such transfer. In essence, the only change should be the name of the employer.

An employee **may not be** dismissed solely by reason of the transfer. However, dismissals **may take place** for economic, technical or organisational reasons involving changes in the work-force.

If an employment is terminated because a transfer involves a substantial deterioration in the working conditions of the employee, the employer concerned is regarded as having been responsible for the termination.

In this regard, it should be noted that an employee who is dismissed within the meaning of **The Unfair Dismissals Acts, 1977 - 2007** with:
- **less than one year's service** may refer a case to a Rights Commissioner under the Regulations;
- **more than one year's service** may refer a complaint to a Rights Commissioner under the Regulations or under **The Unfair Dismissals Acts, 1973 - 2001**.

APPENDICES

6.7 APPENDIX 7 – TRANSFER OF UNDERTAKINGS REGULATIONS (CONTINUED)

Information and Consultation
In a transfer situation, both the original employer and the new employer must inform the representatives of their employees affected by the transfer, of:

i the date or proposed date of the transfer;
ii the reasons for the transfer;
iii the legal implications of the transfer for the employees and a summary of any relevant economic and social implications of the transfer for them, and any measures envisaged in relation to the employees.

The **original employer** must give this information to the employees' representatives; where reasonably practicable, not later than **30 days** before the transfer and in any event, in good time before the transfer occurs.

The **new employer** must give the information to the employees' representatives, where reasonably practicable, not later than **30 days** before the transfer occurs and in any event, in good time before the employees are directly affected by the transfer as regards their conditions of work and employment.

However, if the employees are represented by a union then such union should be notified well in advance of the purported transfer. These obligations apply whether the decision resulting in the transfer is taken by the employer or another undertaking controlling the employer. The fact that the information concerned was not provided to the employer by the controlling undertaking will not release the employer from those obligations and an employer is liable to the employees for such a failure to notify the employees and/or their representatives within the prescribed timeframe.

NOTE: *You should contact the legal advice helpline in all circumstances relating to Transfers of Undertakings as this is a very complex area of employment law.*

APPENDICES

6.8 APPENDIX 8 – INJUNCTIONS RESTRAINING DISMISSAL

It is a well-established rule that the Courts will refuse to order the specific performance of a contract of employment as they do not see the mutual benefit in compelling an employer and an employee to continue to work together where the Courts would have to effectively supervise the relationship.

Injunctions are an equitable remedy and the case of ***American Cyanamid Co. -v- Ethicon Limited [1975]*** established principles upon which the Courts would grant or refuse injunctions. They are as follows:

- Whether there is a serious issue to be tried
- Where does the balance of convenience lie
- The adequacy of damages

The Irish Courts have developed a "wages injunction" in recent years, for employees claiming wrongful dismissal. It requires employers to pay an employee's salary where it would be unjust to leave them without pay pending the trial of their action before the courts. This prospect has represented a huge threat for employers and, consequently, has been an incentive to settle common law wrongful dismissal claims early. Two cases decided in 2004 will no doubt have the effect of discouraging employees from applying for injunctive relief, primarily owing to the financial risks involved and also the decreased likelihood of success.

In the case of ***Sheehy -v- Ryan and Moriarty***, Ms. Justice Carroll ordered that an employee who had obtained such an injunction repay her employer all salary received by her, and also the costs of the High Court action. In ***Orr -v- Zomax Limited*** Ms Justice Carroll has underlined this move away from granting such injunctions. The application was refused on a number of grounds, including:

- Mr Orr was not claiming wrongful dismissal but, rather, seeking a declaration that his redundancy was invalid. However, she held that an employer can at common law terminate employment for any reason, provided adequate notice is given. Therefore, an injunction should not be granted because there was no fair issue to be tried in that case. The correct forum to claim for unfair dismissal is not the Courts, but the Employment Appeals Tribunal.
- The employee had also not demonstrated on the balance of convenience that he should be paid his salary until the trial of the action. He never alleged irreparable loss and damage if deprived of salary. Therefore, it would constitute a serious injustice for the employer to pay Mr Orr's salary.

Ms Justice Carroll took the view that the most appropriate course would be to have a speedy trial. This decision may make it more difficult for employees to obtain injunctions restraining employers from terminating their employment.

NOTE: *It is imperative to seek legal advice where an injunction is threatened as the circumstances of each case determine the likelihood of success or failure of acquiring injunctive relief.*

APPENDICES

6.9 APPENDIX 9 – DESCRIPTION OF EMPLOYMENT FORUMS

The Workplace Relations Commission
There has been significant change in the structure with regard to the bodies established to deal with the employment disputes in recent times. On the 1st October 2015 the Workplace Relations Commission (WRC) was established under the provisions of the Workplace Relations Act, 2015.

This Act has had the effect of amalgamating the Equality Tribunal, The National Employment Rights Authority (NERA), the Labour Relations Commission (LRC) and the first instance Function of the Employment Appeals Tribunal (EAT), into the WRC, which now deals with all complaints made first instance.

The Workplace Relations Commission also has an enforcement role under certain employment rights legislation. Inspectors have the power to enter premises, inspect wage sheets and other employee records, interview both employers and employees, recover pay arrears and, if necessary, take civil/criminal proceedings. Enforcement is achieved either by way of voluntary compliance or through legal proceedings in the courts. See section 1.4 of this manual for further information. For convenience and reference, details of some of the bodies which the Workplace Relations Commission replaced are included below.

The Labour Court
The Labour Court was established under **The Industrial Relations Act, 1946** and provides a comprehensive service for the resolution of disputes about industrial relations, organisation of working time, national minimum wage, part-time work and fixed-term work matters. The Labour Court also establishes Joint Labour Committees and makes Employment Regulation Orders on foot of proposals received from relevant Committees.

The Labour Court consists of 9 full-time members:
- a Chairman
- 2 Deputy Chairmen
- 6 ordinary member representatives of employers (3) and workers (3).

The constitution and operation of the Labour Court are governed by **The Industrial Relations Act, 1946** (as amended in **1969**, **1976**, **1990** and **2001**).

APPENDICES

6.9 APPENDIX 9 – DESCRIPTION OF EMPLOYMENT FORUMS (CONTINUED)

Employment Appeals Tribunal
The Tribunal was an independent body bound to act judicially and was set up to provide a speedy, fair, inexpensive and informal means for individuals to seek remedies for alleged infringements of their statutory rights.

The Irish Human Rights and Equality Commission
The Irish Human Rights and Equality Commission is the Human Rights and Equality institution of Ireland. It is an independent public body that accounts to the Oireachtas. It has a mandate established under the Irish Human Rights and Equality Commission Act 2014 (IHREC Act 2014). The IHREC Act included and further enhanced the functions of the former Irish Human Rights Commission and the former Equality Authority. Their purpose is to protect and promote human rights and equality in Ireland and build a culture of respect for human rights, equality and intercultural understanding in the State.

The Equality Tribunal
Prior to the establishment of the Workplace Relations Commission, the Equality Tribunal provided an accessible and impartial forum to remedy unlawful discrimination. It was an independent statutory body whose principal role was the investigation and mediation of complaints of discrimination in relation to employment and in relation to access to goods and services, disposal of property and certain aspects of education.

APPENDICES

6.10 APPENDIX 10 – USEFUL ADDRESSES AND TELEPHONE NUMBERS

DAS LEGAL ADVICE HELPLINE
Tel: 1850 670 747

DAS Group
Europa House
Harcourt Centre
Harcourt Street
Dublin 2
www.das.ie

Details of the addresses and telephone numbers of the offices with responsibility for statutory employment rights and work permits matters are as follows:

The Workplace Relations Commission
Information and Customer Services
O'Brien Road
Carlow
Tel: (059) 9178990
www.workplacerelations.ie

The Labour Court
Landsdowne House
Landsdowne Road
Dublin 4
Tel: (01) 613 6666
www.workplacerelations.ie/en/WR_Bodies/labour_Court

Employment Permits
Department of Business, Enterprise and Innovation
Earlsfort Centre
Lower Hatch Street
Dublin 2
Tel: (01) 4175333
www.dbei.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits

Financial Services & Pensions Ombudsman's Bureau
Lincoln House
Lincoln Place
Dublin 2
Tel: (01) 5677000
www.fspo.ie

Irish Human Rights & Equality Commission
16-22 Greet Street
Dublin 7
Tel: (01) 8583000
info@ihrec.ie