

# Code of Practice on Victimisation

S.I. No. 463 of 2015

## INDUSTRIAL RELATIONS ACT 1990 (CODE OF PRACTICE ON VICTIMISATION) (DECLARATION) ORDER 2015

WHEREAS the Workplace 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 Workplace Relations Commission has complied with subsection (2) of that section and has submitted the draft code of practice to the Minister for Jobs, Enterprise and Innovation;

NOW THEREFORE, I, Gerald Nash, Minister of State at the Department of Jobs, Enterprise 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), the Enterprise and Employment (Alteration of Name of Department and Title of Minister) Order 1997 (S.I. No. 305 of 1997) and the Jobs, Enterprise and Innovation (Delegation of Ministerial Functions) Order 2015 (S.I. No. 426 of 2015), hereby order as follows:

1. This Order may be cited as the Industrial Relations Act 1990 (Code of Practice on Victimisation) (Declaration) Order 2015.
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).
3. The Industrial Relations Act 1990 (Code of Practice on Victimisation) (Declaration) Order 2004 (S.I. No. 139 of 2004) is revoked.

*Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 30th October, 2015.*

## SCHEDULE

### 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 Workplace 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. A High Level Group on Trade Union Recognition established in 2000, 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. 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 an updated draft Code of Practice on Victimisation to provide for the further development of employee representation, and measures 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. These measures were put in place in the Code of Practice on Victimisation (Declaration) Order (S.I. No. 139 of 2004).
4. In 2015, the Minister of State at the Department of Jobs, Enterprise and Innovation, in accordance with section 42(6) of the Industrial Relations Act 1990, after consulting with the Workplace Relations Commission further amended the Code to make explicit that any adverse effect arising from an employee refusing an inducement (financial or otherwise) designed specifically to have the employee forego collective representation by a trade union is a form of victimisation under the Code.
5. 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 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 2015, 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,

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
- ii. the employee engaging or not engaging in any activities on behalf of a trade union, 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 (including any adverse effect arising from the employee refusing an inducement (financial or otherwise) designed specifically to have the employee forego collective representation by a trade union); 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.

#### **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 the Workplace Relations Commission.

GIVEN under my hand

28 October 2015.

GERALD NASH,

Minister of State at the Department of Jobs, Enterprise and Innovation.