

Home > Statutory Instruments > 2000 >

S.I. No. 146/2000 - Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order, 2000

S.I. No. 146/2000 - Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order, 2000

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 grievance and disciplinary procedures and which code is proposed to replace the code set out in the Schedule to the Industrial Relations Act, 1990 , Code of Practice on Disciplinary Procedures (Declaration) Order, 1996 (S.I. No 117 of 1996);

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, Mary Harney, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by subsections (3) and (6) of that section, the Labour (Transfer of Departmental Administration and Ministerial Functions) Order, 1993 (S.I. No. 18 of 1993), and the Enterprise and Employment (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 305 of 1997), and after consultation with the Commission, hereby order as follows:

1. This Order may be cited as the Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order, 2000.
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 code of practice set out in the Schedule to the Industrial Relations Act, 1990 , Code of Practice on Disciplinary Procedures (Declaration) Order, 1996 (S.I. No 117 of 1996), is revoked.

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 of an order declaring that a draft Code of Practice received by him under section 42 and scheduled to the order shall be a Code of Practice for the purposes of the said Act
2. In May 1999 the Minister for Enterprise, Trade and Employment requested the Commission under Section 42 of the Industrial Relations Act, 1990 to amend the Code of Practice on Disciplinary Procedures (S.I. No. 117 of 1996) to take account of the recommendations on Individual Representation contained in the Report of the 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, was established under paragraph 9.22 of *Partnership 2000 for Inclusion Employment and Competitiveness* to consider proposals submitted by ICTU on the Recognition of Unions and the Right to Bargain and to take account of European developments and the detailed position of IBEC on the impact of the ICTU proposals.
3. When preparing and agreeing this Code of Practice the Commission consulted with the Department of Enterprise, Trade and Employment, ICTU, IBEC, the Employment Appeals Tribunal and the Health and Safety Authority and took account of the views expressed to the maximum extent possible.
4. The main purpose of this Code of Practice is to provide guidance to employers, employees and their representatives on the general principles which apply in the operation of grievance and disciplinary procedures.

2. GENERAL

1. This Code of Practice contains general guidelines on the application of grievance and disciplinary procedures and the promotion of best practice in giving effect to such procedures. While the Code outlines the principles of fair procedures for employers and employees generally, it is of particular relevance to situations of individual representation.
2. While arrangements for handling discipline and grievance issues vary considerably from employment to employment depending on a wide variety of factors including the terms of contracts of employment, locally agreed procedures, industry agreements and whether trade unions are recognised for bargaining purposes, the principles and procedures of this Code of Practice should apply unless alternative agreed procedures exist in the workplace which conform to its general provisions for dealing with grievance and disciplinary issues.

3. IMPORTANCE OF PROCEDURES

1. Procedures are necessary to ensure both that while discipline is maintained in the workplace by applying disciplinary measures in a fair and consistent manner, grievances are handled in accordance with the principles of natural justice and fairness. Apart from considerations of equity and natural justice, the maintenance of a good industrial relations atmosphere in the workplace requires that acceptable fair procedures are in place and observed.
2. Such procedures serve a dual purpose in that they provide a framework which enables management to maintain satisfactory standards and employees to have access to procedures whereby alleged failures to comply with these standards may be fairly and sensitively addressed. It is important that procedures of this kind exist and that the purpose, function and terms of such procedures are clearly understood by all concerned.
3. In the interest of good industrial relations, grievance and disciplinary procedures should be in writing and presented in a format and language that is easily understood. Copies of the procedures should be given to all employees at the commencement of employment and should be included in employee programmes of induction and refresher training and, trade union programmes of employee representative training. All members of management, including supervisory personnel and all employee representatives should be fully aware of such procedures and adhere to their terms.

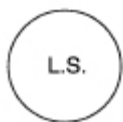
4. GENERAL PRINCIPLES

1. The essential elements of any procedure for dealing with grievance and disciplinary issues are that they be rational and fair, that the basis for disciplinary action is clear, that the range of penalties that can be imposed is well-defined and that an internal appeal mechanism is available.
2. Procedures should be reviewed and up-dated periodically so that they are consistent with changed circumstances in the workplace, developments in employment legislation and case law, and good practice generally.
3. Good practice entails a number of stages in discipline and grievance handling. These include raising the issue with the immediate manager in the first instance. If not resolved, matters are then progressed through a number of steps involving more senior management, HR/IR staff, employee representation, as appropriate, and referral to a third party, either internal or external, in accordance with any locally agreed arrangements.
4. For the purposes of this Code of Practice, "employee representative" includes a colleague of the employee's choice and a registered trade union but not any other person or body unconnected with the enterprise.

5. The basis of the representation of employees in matters affecting their rights has been addressed in legislation, including the Protection of Employment Act, 1977 ; the European Communities (Safeguarding of Employees Rights on Transfer of Undertakings) Regulations, 1980; Safety, Health and Welfare at Work Act, 1989 ; Transnational Information and Consultation of Employees Act, 1996 ; and the Organisation of Working Time Act, 1997 . Together with the case law derived from the legislation governing unfair dismissals and other aspects of employment protection, this corpus of law sets out the proper standards to be applied to the handling of grievances, discipline and matters detrimental to the rights of individual employees.
6. The procedures for dealing with such issues reflecting the varying circumstances of enterprises/organisations, must comply with the general principles of natural justice and fair procedures which include:
 - That employee grievances are fairly examined and processed;
 - That details of any allegations or complaints are put to the employee concerned;
 - That the employee concerned is given the opportunity to respond fully to any such allegations or complaints;
 - That the employee concerned is given the opportunity to avail of the right to be represented during the procedure;
 - That the employee concerned has the right to a fair and impartial determination of the issues concerned, taking into account any representations made by, or on behalf of, the employee and any other relevant or appropriate evidence, factors or circumstances.
7. These principles may require that the allegations or complaints be set out in writing, that the source of the allegations or complaint be given or that the employee concerned be allowed to confront or question witnesses.
8. As a general rule, an attempt should be made to resolve grievance and disciplinary issues between the employee concerned and his or her immediate manager or supervisor. This could be done on an informal or private basis.
9. The consequences of a departure from the rules and employment requirements of the enterprise/organisation should be clearly set out in procedures, particularly in respect of breaches of discipline which if proved would warrant suspension or dismissal.
10. Disciplinary action may include:
 - An oral warning

- A written warning
- A final written warning
- Suspension without pay
- Transfer to another task, or section of the enterprise
- Demotion
- Some other appropriate disciplinary action short of dismissal
- Dismissal

11. Generally, the steps in the procedure will be progressive, for example, an oral warning, a written warning, a final written warning, and dismissal. However, there may be instances where more serious action, including dismissal, is warranted at an earlier stage. In such instances the procedures set out at paragraph 6 hereof should be complied with.
12. An employee may be suspended on full pay pending the outcome of an investigation into an alleged breach of discipline.
13. Procedures should set out clearly the different levels in the enterprise or organisation at which the various stages of the procedures will be applied.
14. Warnings should be removed from an employee's record after a specified period and the employee advised accordingly.
15. The operation of a good grievance and disciplinary procedure requires the maintenance of adequate records. As already stated, it also requires that all members of management, including supervisory personnel and all employees and their representatives be familiar with and adhere to their terms.



Given under my Official Seal,

This 26th day of May 2000

Mary Harney

Minister for 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 .