

The purpose of this document is to give a general guidance to Line Managers about the legislation pertaining to people management.

It is not a complete or authoritative statement of the law and is not a legal interpretation.

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PEOPLE MANAGEMENT – THE LEGAL FRAMEWORK REFERENCE BOOK FOR LINE MANAGERS 2009 EDITION

# PEOPLE MANAGEMENT THE LEGAL FRAMEWORK REFERENCE BOOK FOR LINE MANAGERS 2009 EDITION



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive



#### INTERACTIVE DVD

This Interactive DVD is a standard DVD-Video that will play in all DVD players, PCs and Apple Macs with DVD drives and DVD playback software installed.

We recommend using Windows Media Player on PCs and Apple DVD Player on Apple Macs as these will give the best playback results.

The disc also contains PDFs of both the Reference Book and the Leader's Guide. These are contained in the "documents" folder on the disc.

#### TROUBLESHOOTING:

DVD won't play: Go to webpage [www.agtel.ie/legalframework](http://www.agtel.ie/legalframework) for instructions.

- » **The Intra-Company Transfer Permit**  
This scheme is designed to facilitate the transfer of employees of multinational corporations with branches in Ireland.
- » **Spousal and Dependant Permits**  
These allow the spouses and dependants of Employment Permit holders who are entitled to reside here to apply for work permits.

#### DISABILITY ACT 2005

The Disability Act 2005 is a positive action measure which is designed to advance and underpin participation by people with disabilities in everyday life. The Act obliges public service bodies to be proactive in the employment of people with disabilities and gives legal status to the 3% target for the employment of people with disabilities. It also provides:

- » the scope for each Minister to expand the range of positive actions which public bodies, within his or her area of responsibility, must take for the employment of people with disabilities
- » a special role to the National Disability Authority (NDA) in monitoring compliance and ensuring implementation.

#### EMPLOYEES (PROVISION OF INFORMATION AND CONSULTATION) ACT 2006

The purpose of this Act is to provide for the establishment of a general framework setting out minimum requirements for the right to information and consultation of employees in organizations with at least 50 employees. A separate purpose of the Act is to safeguard employees' rights in the event of transfers of undertakings.

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# INTRODUCTION

The Health Service currently employs over 100,000 people in a diverse range of occupations, who are deployed in numerous settings and who provide a wide range of health and social care services to the public. Approximately 10% of these employees are Line Managers with varying degrees of responsibility for service delivery.

It is essential that these managers have the skills to ensure that their employees perform to the standards necessary to successfully achieve service imperatives. People management must be formally recognised as an integral part of every Line Manager's job and they require the appropriate training and support to equip them to fulfil this role.

This People Management – The Legal Framework programme is an updated and enhanced training tool which was undertaken by the HSEA as an action under the APPM which identified the need to “initiate/enhance management programmes to target specific people management skills”. The objective of the programme is to provide relevant learning tools required by managers to strengthen the employee relations aspect of their people management role. A key imperative for this project derives from the large numbers of Line Managers in the Health Service and thus the requirement to deliver this learning in a cost effective and efficient manner.

The method chosen is to utilise employment legislation as the framework within which to develop the training programme. However, the programme is not intended as an education in the law itself, rather the focus is on HR policies and procedures that derive from the legislation. It is widely acknowledged that the proper operation of these policies not only ensures compliance with the law but also contributes significantly to good people management, motivation and morale.

## THE PROGRAMME AIMS TO:

- » Give a brief overview of the legal framework governing employer/ employee relations
- » Illustrate how the various employment statutes impact on the people role of the Line Manager, and
- » Demonstrate how the effective use of HR policies not only serves to comply with the legislative requirements but are also central to the motivation and commitment of staff to the organisation and high quality performance
- » It is intended to be highly interactive and illustrate scenarios which would resonate with the Line Manager's own experiences
- » Is designed so that it is capable of being delivered in-house by local trainers / HR managers or may be undertaken on a one-to-one basis.

## THE TRAINING PROGRAMME IS DIVIDED INTO SEVEN MODULES AS FOLLOWS:

1. Employee Performance
2. Managing Employee Grievances
3. Managing Attendance
4. Equal Opportunities
5. Dignity at Work
6. Trust in Care
7. The Management of Fixed-Term Employees

## THE STRUCTURE OF THE PROGRAMME IS AS FOLLOWS:

### **DVD**

The training programme is produced in DVD format. As a medium it can carry a wide and rich range of learning materials such as voice-overs, graphic simulations, animated charts and video. It is also the medium through which "one-to-one" e-learning can be achieved. The DVD will contain all of the course material as well as any documentation referred to in the programme and will be available for every participant on the training programme.

### **LEADER'S GUIDE**

This provides a "step-by-step" handbook for the trainer. This contains:

- » Presentation scripts and key points to cover and
- » Instructions for managing exercises, case studies and other instructional activities
- » Workshop delivery sequence
- » Checklists of necessary materials and equipment.

### **THE COURSE REFERENCE BOOK / LINE MANAGER'S REFERENCE BOOK**

This contains the learning referred to in each of the modules. It is aimed to provide useful guidance for Line Managers dealing with issues arising under the topic being covered.

# EMPLOYEE PERFORMANCE

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# MODULE 1

## EMPLOYEE PERFORMANCE

The delivery of a high quality Health Service is dependent on high performing and committed employees who adhere to the highest standards of performance and conduct. You as a Line Manager are responsible for making employees aware of the standards expected of them and for dealing with shortcomings promptly and fairly.

This module demonstrates the important role played by Human Resource tools such as induction, probation management and employee feedback in fostering high standards. It also demonstrates how performance deficiencies can be rectified on an informal basis through counselling and if counselling fails through the proper operation of the Disciplinary Procedure. The purpose of the Disciplinary Procedure is to help the employee to achieve the necessary improvements and to prevent any recurrence.

## LEARNING OBJECTIVES



### MANAGING PERFORMANCE HAS TWO DIMENSIONS:

- » Fostering good performance
- » Addressing shortcomings in performance

#### **FOSTERING GOOD PERFORMANCE:**

At the end of this section you will describe how the following HR policies contribute to the fostering of good performance amongst employees:

- » induction
- » probation management and
- » performance management
- » You will also understand the linkage between managing employee's performance and the Disciplinary Procedure.

#### **HOW TO ADDRESS SHORTCOMINGS IN PERFORMANCE AND CONDUCT:**

At the end of this section you will be able to describe:

- » Your role in employee counselling
- » The legal framework of the Disciplinary Procedure
- » The purpose of the Disciplinary Procedure
- » Be familiar with the stages of the Disciplinary Procedure
- » How the Disciplinary Procedure operates and your role in the procedure.

## LEGAL FRAMEWORK



### UNFAIR DISMISSALS ACTS 1977-2007

The Unfair Dismissals Acts 1977-2007 protects employees from unfair dismissal. All Health Service employees with 12 months service come within the scope of the Acts. To prove a dismissal is fair the employer must show:

- » Substantial grounds and
- » Procedural fairness.

A key aspect of fair dismissal is that employees know the standards of performance that are expected of them and that proper procedures will be applied if they fail to achieve those standards.

#### **SUBSTANTIAL GROUNDS FOR DISMISSAL INCLUDE:**

- » Capability, which includes the ability to attend for work and the physical ability to carry out the job
- » Competence which refers to the employee's ability to carry out the job to the required standards
- » Conduct, which includes serious breach of employer rules
- » Redundancy. This happens when there is no work or a reduction in the kind of work for which the employee was hired or the work is being carried out in a different manner
- » And finally, other substantial grounds, for example, where a professional body has struck a person off its register.

**PROCEDURAL FAIRNESS**

Employers must also follow fair procedures, i.e. follow the procedures as set out in the Disciplinary Procedure. In the event of disciplinary action being taken against an employee, it is important that you can demonstrate that the employee was:

- » Aware of the standards of performance expected
- » And warned of the consequences of failing to improve.

**FOSTERING HIGH STANDARDS OF PERFORMANCE**

It is your responsibility to ensure that your employees perform to a high level. Employee's performance includes their capability to do their job i.e. their attendance at work, their competence to carry out the duties of the job satisfactorily and their conduct in the workplace. The following set of HR policies can help you to foster and maintain high standards of employee performance:

1. Induction
2. Probation management and
3. Performance management

**1. INDUCTION**

The first step in fostering high standards of performance is best taken at the induction stage. New employees need to be informed about their job, conditions of employment and the standards of performance and conduct expected of them. Carrying out a thorough induction is also very important from the point of view of helping new employees settle into their new workplace. They are integrated into the organisation in a planned and systematic way. Some health care agencies conduct a formal course for new employees at regular intervals. While these induction courses are a useful way of imparting general information of relevance to all new employees, it is still important for you as a manager to draw up an induction checklist that focuses on your Department and the required standards.

The following are suggested topics for the induction programme or the induction checklist:

- » Job information
- » Organisational information
- » Health and safety requirements
- » HR policies
- » Protocols.

**JOB INFORMATION**

Outline the main duties of the job and the standards of conduct and performance expected. Provide any other information which the employee requires to carry out his / her job effectively, e.g.

- » Protocols to be observed when dealing with patients/clients and members of the public
- » Rostering arrangements and obligations to work on-call, overtime and unsocial hours
- » Reporting relationships
- » Procedures for obtaining stationery, equipment, medical supplies, maintenance, etc.
- » Dress code
- » Requirements for confidentiality
- » Use of agency facilities, i.e. is private use of phones, e-mail or internet permitted?

**ORGANISATIONAL INFORMATION**

Outline the physical layout and staffing structure within the organisation. Explain how the employee's job fits into the organisation as a whole and how his/her work relates to that of other departments. Ensure that the employee knows the location of facilities (e.g. canteen, carpark) and where to obtain relevant information (e.g. salaries department).

**ABSENCE FROM WORK**

- » Whom should the employee notify when they are absent
- » When should the employee give notice that s/he is unable to attend for work
- » When should medical certificates be submitted.

## HEALTH AND SAFETY REQUIREMENTS

Outline the potential hazards highlighted in the safety statement and the preventative measures designed to minimize the risks associated with the job. The issues to be covered may include:

- » Wearing of protective clothing
- » Prevention of needle-stick injuries
- » Smoking policy
- » Good housekeeping, e.g. to prevent “slips, trips and falls”
- » Manual handling
- » Fire procedures
- » First aid procedures

## HUMAN RESOURCE POLICIES

Outline the main provisions of various HR policies, e.g.

- » Grievance Procedure
- » Equal Opportunities/Diversity policy
- » Dignity at Work Policy
- » Internet/e-mail usage policy
- » Disciplinary Procedure
- » Trust in Care Policy.

You as a manager have an overall responsibility for ensuring that the induction programme is completed but you can assign induction activities to appropriate members of staff.

(For further information on induction please refer to the Induction Pack relating to your own organisation)

## 2. PROBATION MANAGEMENT

Another element of fostering good employee performance is managing employees’ probationary periods properly. New employees are required to serve a probationary period. The objective of probation is to allow you the opportunity to monitor new employees’ performance in the job and to establish if they are suitable for continued employment.

Although a probationary employee must clearly establish his / her suitability for the job, there is a corresponding obligation on you as their manager to ensure that the employee is given the necessary training and assistance to enable him / her to meet the required standards. It is not sufficient to decide that “I am going to let this employee go at the end of the probationary period”.

### MANAGING THE PROBATIONARY PROCESS

- » Advise the employee of the length of the probationary period. The probationary period should be of sufficient length to allow you to gauge an employee’s competency to carry out all aspects of the job
- » Conduct progress review with the employee at regular intervals
- » Keep a formal record of his / her assessment for the period under review
- » Document any follow up action that was agreed during the discussion.



“STEVE FOUND THAT A GOOD INDUCTION LED TO FEWER MISUNDERSTANDINGS AMONGST HIS EMPLOYEES”

- » Where a new employee persistently fails to achieve the required standards, you should advise the employee of his / her deficiencies. The objective at this stage should be to help the employee to improve whilst making it clear that a failure to do so will result in his / her employment being terminated
- » Carry out a final overall assessment shortly before the end of the probationary period and meet with the employee to advise him / her of the outcome
- » Where the employee has not established his / her suitability, s/he should be given notice that his / her employment will be terminated before the expiry of the probationary period.
- » Probationary periods should only be extended in exceptional circumstances, e.g. because of absences due to maternity leave or long-term sick leave.

It is very important for you to monitor the early performance of temporary employees' in the same manner as you would a permanent member of staff.

Consult with the HR department on the process if necessary.

## TEXT CASE STUDY

Breda is a manager of a number of clerical staff, six of whom are probationers. One of the probationers, Mary, is evidently unsuited to clerical work and is constantly boasting of her singing talents and her ambitions to audition for X Factor.

Breda is constantly saying that either Mary's performance improves or she won't pass her probationary period. One day, Breda is at the receiving end of a barrage of complaints due to mistakes that Mary made in organising an important meeting which caused considerable embarrassment for the Department. Breda decides "enough is enough" and she will have to let Mary go. To her dismay, she discovers that Mary's probationary period expired six weeks ago. Her reaction is "Why do I get stuck with so many square pegs?"

### Q. What did Breda do wrong?

- » She should have held regular meetings with Mary as part of her probationary process to discuss her progress and point out her shortcomings
- » She should have tried to establish whether or not Mary could achieve the necessary improvements before her probationary period expired
- » She should have notified the HR department that there was a problem

### Q. What are the consequences of her actions?

- » Breda does not feel that Mary is really cut out for the job and wishes she could get someone more suitable but it will be more difficult for her to terminate Mary's employment now that she has completed her probationary period
- » This situation could have been avoided if Breda had been more vigilant during the probationary period.

Managers should not regard probation as a mere formality and automatically certify new employees as suitable for permanent employment without having properly assessed their performance during this period. Performance feedback during the probationary period will be more intensive than at any other time in the normal employment relationship. You must ensure that you use the probationary period for what it was designed for. Failure to manage this period properly can result in a mismatch between an employee and the duties of the post to which they were recruited.

### 3. PERFORMANCE MANAGEMENT/ REVIEW

Another element in fostering good performances amongst your employees is carrying out performance management, which includes providing employees with performance feedback. Performance management allows you to ensure that each individual is working to achieve the goals set by your Department, which in turn should support the goals of your organization. It establishes a shared understanding about what is to be achieved and plays a key role in maintaining morale, motivation and commitment. Most employees are anxious to know if they are meeting the required standards and Performance Review Meetings give you the opportunity to give recognition for a job well done.

Performance management is a continuous process, not a once-off event. You should hold Performance Review Meetings with employees on a regular basis, ideally either twice a year or on a quarterly basis, to give feedback on their performance and discuss opportunities for career development.

#### **When conducting a Performance Review Meeting you should:**

Give the employee sufficient notice to allow him / her prepare

1. Review notes from previous meeting and any follow up action agreed
2. Give praise and recognition for work well done

3. Discuss any shortcomings in performance and possible solutions, including measures to help them develop the capacity to meet the standards expected of them
4. Set clear performance objectives for the employee to achieve. Outline how these indicators will be measured
5. Discuss the employee's career plans and developmental needs
6. Allow the employee to ask questions and give comments. Allow the employee the opportunity to discuss and contribute to individual and team aims and objectives
7. Keep a record of the review meeting and action agreed

Remember that the performance review meeting is not about alerting an employee about shortcomings for the first time. Any such concerns should be dealt with promptly at the time they come to your attention and appropriate action taken.

## ADDRESSING SHORTCOMINGS IN PERFORMANCE AND CONDUCT

### 1. EMPLOYEE COUNSELLING (PRE-DISCIPLINARY PROCEDURE)

You may be faced with situations whereby the work performances or conduct of some of your employees falls below the required standards expected. The first step in addressing these shortcomings is through employee counselling. The aim of employee counselling is to bring about the required improvement in employee performance without recourse to the formal Disciplinary Procedure. Where such performance issues arise you need to arrange a one-to-one meeting with your employee and inform them that the purpose of the meeting is to discuss areas of their work performance/ conduct which are falling below acceptable standards. At this meeting you need to outline exactly how they are falling short and make

them aware of the improvements required, the timescale for making the improvements and the consequences of failing to improve. You need to listen to what they have to say in response to your criticisms and take this into account, if appropriate. Very often problems can be nipped in the bud at this stage without having to invoke the Disciplinary Procedure.

It is important to note that counselling in this context does not mean attempting to resolve personal or health problems that require professional help. If it transpires that the employee is experiencing difficulties outside of the workplace that may be impacting upon their work, you should be supportive and encourage the employee to seek appropriate assistance, e.g. through the Employee Assistance Programme.

**When carrying out a counselling meeting you should:**

1. Give the employee precise details of the aspects of his/her performance, attendance or conduct which have fallen below the required standards
2. Give the employee a chance to respond
3. Clearly outline the improvements that need to be made
4. Explain to the employee the consequences of failing to improve i.e., the matter may be dealt with under the Disciplinary Procedure
5. Identify any measures that can be taken to assist the employee e.g. extra training
6. Agree a timescale for improvement
7. Keep a record of the meeting and follow-up action agreed.
8. It is important to monitor the employee's progress after the counselling meeting and ensure that any additional training or other appropriate support is put in place. If the employee does not make the required improvements despite counselling and appropriate assistance then the matter should be progressed under the Disciplinary Procedure. If this occurs, it is important to have written documentation to show that a counselling meeting was held prior to invoking the Disciplinary Procedure and the outcome of the meeting.

## 2. THE DISCIPLINARY PROCEDURE

The aim of the Disciplinary Procedure is to help employees to make the necessary improvements, whilst making clear the consequences of failing to do so.

The following are some examples of conduct which may lead to disciplinary action under the Disciplinary Procedure:

- » Persistent poor timekeeping
- » Unsatisfactory attendance record
- » Poor work standards
- » Breach of health and safety rules
- » Bullying, harassment or sexual harassment
- » Breach of internet/e-mail policy
- » Refusal to obey reasonable instructions
- » Negligence.

## 3. STAGES OF THE DISCIPLINARY PROCEDURE

The stages of the Disciplinary Procedure are as follows:

### STAGE 1: ORAL WARNING

The oral warning should be recorded in writing and convey the following information:

- » Details of the unsatisfactory performance or conduct
- » The improvements required and
- » The timescale for improvement.

Advise the employee that the warning constitutes the first stage of the Disciplinary Procedure and failure to improve may result in further disciplinary action under Stage 2 of the Disciplinary Procedure.

A record of the warning should be kept on the employee's personnel file and copied to his/her representative. You may remove the warning after six months, subject to satisfactory improvement during this period.

**STAGE 2:  
WRITTEN WARNING**

If the employee fails to make the necessary improvements within the agreed timescale, e.g. 2 months, s/he will normally be issued with a formal written warning. The written warning should contain:

- » Details of the complaint
- » The improvements required and
- » The timescale for improvement.

Advise the employee that failure to improve may result in the issuing of a final written warning under Stage 3 of the Disciplinary Procedure.

You may remove the warning after 9 months from the employee's personnel file, subject to satisfactory improvement during this period.

**STAGE 3:  
FINAL WRITTEN WARNING**

If the employee fails to make the necessary improvements within the agreed timescale, s/he will normally be issued with a final written warning by the appropriate manager.

The warning should contain:

- » Details of the complaint
- » The improvements required and
- » The timescale for improvement.

Advise the employee that failure to improve may lead to dismissal or some other sanction short of dismissal under Stage 4 of the Disciplinary Procedure.

The warning may be removed from the employee's personnel file after a period of up to 12 months (this period may be extended in exceptional circumstances), subject to satisfactory improvement during this period.

**STAGE 4:  
DISMISSAL OR ACTION SHORT OF  
DISMISSAL**

If the employee does not make the necessary improvements following the issuing of a final written warning this may result in a decision to dismiss. Depending on the circumstances the manager may decide to impose a disciplinary sanction short of dismissal e.g. suspension without pay.

## 4. THE DISCIPLINARY HEARING

The purpose of the disciplinary hearing is to allow the employee to respond to the complaints before the manager decides whether or not to take disciplinary action. Ensuring that an employee has an opportunity to make a response to a complaint is an important legal principle. You must not pre-empt the outcome of the hearing, for example, entering the hearing with the warning already written up. The employee must be made aware that the outcome of the hearing may result in a disciplinary sanction so that they appreciate the seriousness of the meeting. However, the final decision can only be made when the employee has had the opportunity to state his/her case and plead any mitigating circumstances.

A Disciplinary Hearing is held before invoking each stage of the procedure.

**When conducting a Disciplinary Hearing you should ensure that the employee is informed of the following:**

- » The reason for the hearing, that is, outline the specific aspect of his or her unsatisfactory performance or conduct which is the subject of the hearing
- » The stage of the Disciplinary Procedure for example, Stage 2 written warning
- » The possible outcome of the hearing for example, the issue of a warning
- » The right to representation by a union representative or work colleague
- » The time and place of the hearing
- » The precise nature of the complaint and supporting evidence. The employee should be given sufficient notice of the hearing to enable him or her to arrange for representation and prepare for the hearing.

## CONDUCTING THE DISCIPLINARY HEARING

A disciplinary hearing should follow a structured format as follows:

- » Introduce those present
- » Confirm that this is a hearing under the formal Disciplinary Procedure. Specify the stage e.g. Stage 2, written warning
- » Outline the precise nature of the complaint and refer to any supporting evidence e.g. attendance record. (The employee should have been given a copy of any relevant documentation in advance – remember that you are not trying to spring any surprises)
- » Allow the employee to respond to the complaint and give an explanation
- » Invite representations on the employee's behalf
- » Close the hearing by summarising the key points emerging from the interview
- » Allow the employee and his/her representative to have a final say.

Adjourn the meeting – even for a short period – to allow for careful consideration of the facts and any explanations put forward by the employee or his/her representative. Remember that each case should be considered on its merits before deciding on what sanction if any to apply. You may decide on the following:

- i Issue a formal warning
  - ii Take no further action on the grounds that the employee has given a satisfactory explanation of events or there were strong mitigating circumstances
  - iii Take non-disciplinary action, e.g. arrange for the employee to receive coaching/training and set targets for improvement.
- » Reconvene the hearing and advise the employee of your decision

## FOLLOW-UP ACTION

The outcome of the hearing should be confirmed to the employee in writing and copied to his/her representative. A record of the hearing and the outcome should be retained on the employee's personnel file.

The employee's performance/conduct should be monitored during the review period and any support measures (e.g. coaching) should be put in place.



“PATRICK HOLDS A DISCIPLINARY HEARING TO DEAL WITH JANE'S POOR TIME-KEEPING RECORD”

**2**

**MANAGING  
EMPLOYEE GRIEVANCES**

## **MODULE 2**

# MANAGING EMPLOYEE GRIEVANCES

As a manager you must continually strive to maintain good employee relations and foster the commitment and motivation of your staff. It is important to promote a climate of open communication in your workplace so that employees can feel confident about raising issues they may have relating to an aspect of their work. At all times you should remain respectful of the employee's dignity and address their concern even though you may not ultimately be able to resolve the matter. However, in many cases you will find that the matter can be resolved in the course of the normal relationship between the employee and you as his/her Line Manager.

If attempts at informal resolution fail then the Grievance Procedure will come into play. The Grievance Procedure is a key HR tool which enables employees to formally raise their concerns and appeal the outcome to a higher level of management. You should ensure that all employees are aware of the existence of the Grievance Procedure and understand how it operates.

## LEARNING OBJECTIVES



This module is designed to help you understand that you are empowered to resolve employees' complaints informally. It also outlines the importance of promoting the Grievance Procedure in your area of responsibility and how the Procedure operates.

At the end of this module you will be able to:

- » Describe the legal framework
- » State what a grievance is
- » Describe the purpose of the Grievance Procedure
- » State your role in managing and responding to grievances
- » Outline the conduct of a Grievance Hearing.

## LEGAL FRAMEWORK



Employees' grievances/disputes can be adjudicated under the state's industrial relations machinery. The industrial relations machinery was established under the Industrial Relations Acts 1946 – 2001 and consists of the following:

- » The Rights Commissioner Service
- » The Labour Relations Commission
- » The Labour Court.

### RIGHTS COMMISSIONER SERVICE

Rights Commissioners adjudicate on individual grievances/disputes. They do not hear disputes concerning rates of pay, hours or times of work of an individual body of workers. The types of issues that would usually be referred to a Rights Commissioner include e.g. an entitlement to incremental credit or the non-grant of an allowance.

### LABOUR RELATIONS COMMISSION (LRC)

The LRC attempts to conciliate on disputes. If the dispute cannot be resolved at conciliation the matter can then be referred to the Labour Court.

### THE LABOUR COURT

The Labour Court mainly investigates collective grievances and disputes. It is viewed as a "court of last resort".

As a manager, you want to avoid employee complaints ending-up before a third party. However, there may be occasions when a referral is made, despite your best efforts to resolve the issue. In the event that an employee refers a dispute to a third party, you must fully co-operate with the process and respect the employee's right to seek redress.

## WHAT IS A GRIEVANCE?

A grievance may be defined as a complaint which an employee has concerning his or her terms and conditions of employment, working environment or working relationships.

Examples of areas where grievances can arise:

- » Allocation of work tasks
- » Granting of annual leave
- » Granting of overtime
- » Access to training
- » Health and safety issues
- » Acting-up or deputising arrangements
- » Granting of sick leave
- » Resource issues
- » Working relationships.

## RESOLVING GRIEVANCES INFORMALLY

The Grievance Procedure is the formal mechanism for progressing employee grievances. However, it is beneficial both for the employee and the organization if issues can be resolved informally. If informal resolution is reached or attempted the employee may not have to resort to utilizing the Grievance Procedure. You as a Line Manager should ensure that you attempt to resolve such grievances informally.

The first step to ensuring that employees' grievances are resolved informally is to promote a climate of open communication so that employees who feel that they have a grievance in respect of any matter regarding their employment will, in the first instance, raise it informally with you as their Line Manager. Most routine grievances are capable of being resolved on an informal basis without recourse to the formal Grievance Procedure. You need to:

- » Listen carefully to what the employee's grievance is
- » Make a genuine effort to resolve it
- » Don't be too hasty with your reply
- » Give serious consideration to their concerns.

Grievances can escalate because a grievance that the employee has raised is dismissed too easily. Even if your initial reaction is that there is nothing you can do, you must respect the employee's right to raise the matter and be open to making a positive response.



“CHRIS DISMISSED OONAGH’S COMPLAINTS REGARDING HER CRAMPED OFFICE”

## TEXT CASE STUDY

Margaret is employed as a staff nurse on a full-time basis and has a young child. She feels that her life would be less pressurised if she could avail of the Flexible Working Scheme and reduce her weekly working commitment from 39 hours to 30 hours. She therefore approaches the Assistant Director of Nursing, Gráinne, to discuss the possibility of reducing her working hours.

Gráinne immediately replies saying that two of her employees are already out on maternity leave and another one is going on parental leave next week. She declares that it would be impossible to accommodate Margaret as the unit is already short-staffed. She finishes the conversation by saying "God does no one want to work full-time any more". Margaret is very upset and feels that Gráinne is being unreasonable.

This is a very simple situation which often arises. However, have a think about the scenario. What are the possible consequences of Gráinne's reaction?

Margaret now has a grievance as Gráinne's reaction to her request was so negative.

The additional consequences which could potentially occur are as follows:

- » The matter remains unresolved
- » It may interfere with what were good working relationships between Gráinne and Margaret
- » The development of poor attitude to work
- » Her negativity may rub off on her colleagues.

If Gráinne had given some consideration to Margaret's request she may have been able to reach a compromise with Margaret, e.g. she could go on reduced hours when her colleague returned from parental leave. Her hasty reaction caused Margaret to now have a grievance.

**Dismissing an employee's concerns too easily can potentially cause long-term damage to your working relationship if negativity festers.**

It is important to bear the following points in mind when dealing with a grievance:

- » Deal promptly and fairly with any complaints
- » Respect the right of the employee to air his/her grievance
- » Listen patiently – do not trivialise the issue
- » See what you can do to resolve the issue
- » Explain the reasons for your decision.

Some grievances however fail to be resolved or are not capable of being resolved informally. These have to be addressed through the formal Grievance Procedure. Where this is the case you should advise the employee accordingly.

## THE GRIEVANCE PROCEDURE

The Grievance Procedure is a procedure for employees. Its purpose is to provide a framework for dealing promptly and fairly with individual employee grievances about their working environment, terms and conditions or workplace relationships which have not been or cannot be resolved through the normal working relationship. A national Grievance Procedure has been agreed for all employees working in the Health Service. It is a staged procedure which allows an employee to pursue resolution of their grievance up through the management structures.

To ensure that the Grievance Procedure is an effective tool in resolving employee grievances you must firstly ensure that employees are aware of its existence.

### CREATING AN AWARENESS OF THE GRIEVANCE PROCEDURE

Employees should:

- » Be made aware of the existence of the Grievance Procedure
- » Have the Procedure explained to them. For new employees this may be covered at their induction
- » Be encouraged to use the procedure where appropriate.



“IF BILLY HAD KNOWN ABOUT THE GRIEVANCE PROCEDURE HIS DRASTIC ACTION COULD HAVE BEEN AVOIDED”

## WORKING UNDER PROTEST

Where you issue a work instruction arising from an urgent service imperative which an employee objects to on the basis that it is outside their normal remit, the employee is obliged to carry out the instruction “under protest”. For example if a porter in Accident and Emergency is asked to go to Theatre due to staff shortages there and refuses to go as this is not his/her normal work location, s/he must carry out the disputed duty(ies) “under protest” and refer the matter under the Grievance Procedure. This provision was negotiated with their trade union at national level and should be enforced by you. In such instances a meeting with senior management\* will be held within 3 working days of the grievance being received to determine the appropriateness of the instruction(s) given by you.

\*Senior management refers to either senior line management or the Human Resources department. If the issue cannot be resolved at this stage, the matter may be referred to a third party.

## STAGES OF THE GRIEVANCE PROCEDURE

To commence the procedure the employee must write to his/her Line Manager giving brief details regarding the nature of their complaint and outlining that s/he wishes the matter to be progressed through the Grievance Procedure. Every effort should be made by both parties to resolve the matter as speedily as possible. The employee should also be given the chance to state his/her case fully without fear of repercussions or recriminations.

The stages of the Grievance Procedure are as follows:

### STAGE 1

The employee refers the complaint to Stage 1 of the Grievance Procedure.

### **STAGE 2**

If agreement cannot be reached at Stage 1, the matter may be referred to Stage 2 of the Procedure (referred to a more senior level of management).

### **STAGE 3**

If agreement cannot be reached at Stage 2 the matter may be referred to Stage 3 of the Procedure (referred to the Human Resources Department).

At each of the above stages the following arrangement should be in place:

- » A meeting will be arranged to discuss the matter not later than seven working days following receipt of the complaint
- » The employee will be advised of his/her right to be accompanied by a work colleague or union representative
- » Notes should be made of the meeting, a copy given to the employee and a copy held on the employee's file
- » Following this meeting, the decision will be conveyed in writing to the employee within seven working days.

### **STAGE 4**

If the issue remains unresolved after Stage 3, the matter may be referred to an appropriate third party, i.e.

- » Rights Commissioner
- » Labour Relations Commission (LRC)
- » Labour Court
- » Equality Tribunal.

## **YOUR INVOLVEMENT IN A GRIEVANCE HEARING**

Occasionally you may find yourself part of a Grievance Hearing, where the employee has a grievance about a decision that you have made. If this does occur you may have to testify why the matter was not capable of being resolved informally and explain why you came to your decision and stand over your actions. Therefore it would be useful to keep a personal note if employees do raise grievances informally so that you will be equipped to deal with the matter should the issue be referred to the formal procedure.

## **GUIDELINES FOR OPERATING THE GRIEVANCE PROCEDURE**

If a complaint is being processed through the Grievance Procedure you will need to prepare for the hearing, notify the employee and conduct the hearing in a fair and open-minded manner. The following points should be taken on board:

### **PREPARING FOR THE HEARING**

1. Ensure you comply with the required timescales set out in the Health Service Grievance Procedure
2. Establish all the facts pertaining to the complaint – check any policies or rules relevant to the matter. Talk to the employee's immediate supervisor and/or any other relevant person. You may need to consult with the HR department to find out if similar complaints have arisen before and how these were resolved
3. Arrange for a colleague to attend the Hearing to take notes
4. Set aside sufficient time for the Hearing and ensure that there will be no unnecessary interruptions.

### **NOTIFICATION REQUIREMENTS**

1. Advise the employee of the arrangements for the Hearing, i.e. date, time and venue for the Hearing
2. Advise the employee of his/her right to be accompanied by a union representative.

## CONDUCTING THE HEARING

1. You should begin by introducing those present and outlining the purpose of the Hearing.
2. The employee should be invited to state his/her case and how s/he would like to see the matter resolved. The employee may wish his/her representative to present the case on his/her behalf.
3. You should encourage an open discussion of the issue and where appropriate explore possible options for resolving the complaint.
4. Don't feel obliged to make a decision there and then. You should adjourn the Hearing to consider all the issues raised and undertake further enquiries if necessary before reaching a decision (agree a timescale for re-convening the Hearing). This will help to ensure a consistency of approach and avoid decisions that have repercussions for the rest of the organisation. You should seek advice from the HR department about how the issue might best be resolved and whether there is scope for compromise.
5. Reconvene the meeting to inform the employee of your decision. You should clearly explain the reasons for your decision and give the employee and his/her representative an opportunity to respond. If the employee is not satisfied with the outcome, s/he should be advised of his/her right to progress to the second stage of the procedure.
6. A letter should be issued to the employee within 7 working days (and copied to his/her representative) confirming the outcome of the Hearing, the reasons for the decision and what action, if any, will be taken.
7. A detailed and accurate record of the Hearing and its outcome should be written up and retained on the employee's personnel file. This documentation may be required as evidence in the event of an employee referring the matter to a third party.
8. Any action agreed must be implemented without undue delay.

## DISTINGUISH BETWEEN GRIEVANCES AND EMPLOYEE DISCIPLINE

Under no circumstances should the Grievance Hearing be used as an opportunity to address shortcomings in an employee's work performance or conduct which the manager was reluctant to confront previously. A key principle of the Grievance Procedure is that an employee has a right to pursue a grievance without fear of reprisal and this prohibits a manager from seeking to "turn the tables" by reprimanding the employee for alleged performance/conduct issues. If you wish to deal with an issue relating to a staff member's performance, make sure you take the initiative on this matter and deal with it as a separate process. Typically what can happen is that an employee comes with a complaint to a manager and the manager can respond by saying "now that you are here Johnny I have a complaint about your performance / conduct". Management issues about an employee's performance or conduct should be dealt with through informal counselling or the Disciplinary Procedure.

A Grievance Hearing is not your chance to air your complaints about the employees work performance. Any performance issues should be addressed immediately when you become aware of the problem.



"ALAN MISTAKENLY TOOK ADVANTAGE OF PETER'S GRIEVANCE MEETING TO RAISE HIS CONCERNS ABOUT PETER'S PERFORMANCE."

# MANAGING ATTENDANCE

3

## **MODULE 3**

# MANAGING ATTENDANCE

Regular attendance of employees is essential in order to deliver an efficient and high quality service to patients and clients. Absenteeism is expensive for the Health Service and is disruptive to service delivery. It undermines team morale if certain employees are regularly absent and others are required to cope with the extra workload. Employees can feel resentful if they perceive that high absenteeism among their colleagues is being tolerated. It is therefore important that as a manager you do everything possible to ensure high standards of attendance from your employees. This module gives guidance on how you can promote a culture of regular attendance and manage sickness absence effectively.

## LEARNING OBJECTIVES



On completion of this module you will be able to describe:

- » The relevant legal framework
- » How to promote attendance
- » Your role in managing attendance
- » The key elements in managing attendance effectively
- » How to carry out a return-to-work meeting.

## LEGAL FRAMEWORK



The following is relevant to you as a manager from the point of view of managing attendance:

- » The Safety, Health and Welfare at Work Act 2005
- » The Employment Equality Acts 1998 to 2008.

### (I) SAFETY, HEALTH AND WELFARE AT WORK ACT 2005

The Safety, Health and Welfare at Work Act 2005 aims to prevent accidents and ill health at work. It requires employers to produce a written safety statement which sets out the arrangements for safeguarding safety, health and welfare in the workplace. This safety statement is based on an identification of hazards and an assessment of risks and sets out the arrangement for eliminating or controlling risks.

### (II) EMPLOYMENT EQUALITY ACTS 1998 TO 2008

The Employment Equality Acts 1998 to 2008 requires employers to take “appropriate measures” to enable a person who has a disability to have access to employment. The definition of disability in these Acts is quite broad and can include a wide range of illnesses and impairments that employees may acquire during their working life. Where an employee is absent from work due to illness or injury there is a legal obligation to give due consideration to measures which may facilitate the employee’s return to work and to provide such reasonable accommodation where appropriate. Sometimes employees require some assistance to re-integrate back to work, for example:



“TONY MAKES IT A PRIORITY TO GO THROUGH THE SAFETY STATEMENT WITH ALL NEW EMPLOYEES AS PART OF THEIR INDUCTION”

- » Allow the employee to return to work on a part-time basis to ease the transition back to full-time work
- » Adjusting starting or finishing times
- » Reassigning certain tasks
- » Allowing time off for medical treatment or assessment
- » Relocating an employee with a physical injury to an office on the ground floor.

## PROMOTING ATTENDANCE

As a manager you are responsible for maintaining a high level of attendance in the workplace and for dealing with any shortfalls in a fair and consistent manner. It is your responsibility to monitor and manage sickness absence amongst your employees and there is much you can do as a manager to prevent absenteeism by promoting a culture of attendance in the workplace through the following measures:

- A. Communicating the importance of regular attendance
- B. Motivating employees
- C. Being responsive to employees' particular needs
- D. Managing health and safety in the workplace.

### (A) COMMUNICATING THE IMPORTANCE OF REGULAR ATTENDANCE

As part of the induction process and at regular intervals throughout their employment you should make employees aware of their obligations to render regular and efficient service. You should point out the impact of absences on the quality and cost of service delivery and the impact on work colleagues who have to deal with the extra workload. You should inform employees that poor attendance will not be tolerated and may be a disciplinary matter.

### (B) MOTIVATING EMPLOYEES

You can reduce absenteeism by creating a motivating work environment where:

- » The purpose of the Department is clear to all
- » Employees' roles and goals are clearly defined
- » Support is available
- » Employees perceive that there is equity
- » There is open communication
- » Employees feel valued
- » Good teamwork prevails.

### (C) BEING RESPONSIVE TO EMPLOYEE'S PARTICULAR NEEDS

Attendance is frequently affected by employees using sick leave for personal reasons, for example, to deal with a domestic crisis such as caring for a child or elderly relative. You can eliminate this practice by being responsive to the employee's particular needs and accommodating them, if practicable, having regard to service requirements. For example you may be able to allow the employee avail of a period of annual leave at short notice or vary their starting or finishing times for a temporary period.



“WHEN GERALDINE DISCOVERED THAT RONAN HAD RESORTED TO TAKING SICK LEAVE SO THAT HE COULD HELP HIS WIFE WHO WAS SUFFERING FROM POST-NATAL DEPRESSION, SHE PROPOSED THAT HE AVAIL OF HIS PARENTAL LEAVE ENTITLEMENT”

## (D) MANAGING HEALTH AND SAFETY IN THE WORKPLACE

As a manager you have responsibilities under the Safety, Health and Welfare at Work Act 2005 to maintain a safe and healthy working environment. This requires you to ensure that employees are familiar with the safety measures applicable to their work environment. This will help to prevent accidents at work and reduce absenteeism. You should encourage employees to be vigilant and make suggestions on how health and safety can be improved.

## MANAGING ABSENCES

When employees are absent from work you should maintain regular contact and do what you reasonably can to facilitate them to return to work as soon as possible. You must also monitor the attendance of employees and deal with employees whose attendance pattern is a cause for concern.

The key elements in managing absence are:

- A Monitoring and recording absences
- B Ensuring compliance with the sick leave procedure
- C Engaging with the employee during sick leave.
- D Managing the employee's return-to-work meeting
- E Managing frequent absences
- F Managing long-term absences.

### (A) MONITORING AND RECORDING ABSENCES

It is important to be aware of the level and frequency of absenteeism in your department. You must record and monitor all absences and identify problem areas. If employees are aware that their absence is noted and recorded they are less likely to be absent unnecessarily.

## (B) ENSURING COMPLIANCE WITH THE SICK LEAVE PROCEDURE

Employees should be informed that they must comply with the sick leave procedure. This requires them to contact you directly on the first day of illness and inform you of:

- » The nature of their illness and injury
- » The expected duration of their absence
- » Their scheduled work commitments.

Employees should know that they must speak to you (or your deputy) directly and cannot simply text you or leave a message with a work colleague.

Employees should be aware that the granting of sick pay is conditional on their complying with the sick leave procedure.

### (C) ENGAGING WITH THE EMPLOYEE DURING SICK LEAVE

Employees should also be aware that the onus is on them to contact you, as their manager, on a regular basis during sick leave to keep you informed of their progress and likely date of return to work. Except in cases of serious illness or injury employees should be reminded of the requirement to submit medical certificates on a weekly basis. It is important that employees maintain regular contact as it can assist you in:

- » Establishing that the employee is doing all that is necessary to achieve a full recovery and return to work
- » Identifying measures which may facilitate an early return to work.

### (D) MANAGING THE EMPLOYEE'S RETURN-TO-WORK

You should carry out a return-to-work meeting with employees after every spell of absence regardless of whether or not their absence is giving cause for concern. The return-to-work meeting is a very effective tool for reducing absenteeism as it demonstrates to employees that their absences are noticed. The return-to-work meeting does not have to be a time consuming process. In the main the return to work meeting will usually be a brief exchange to note the employee's return and enquire about their health.

## A RETURN-TO-WORK MEETING IS NORMALLY CONDUCTED AS FOLLOWS:

- » Acknowledge the employee's return to work e.g. "Good morning Deirdre, I'm glad you're back. How are you feeling?"
- » Refer to the reasons for the employee's absence e.g. "I'm glad you have got over that dose of streptococcal throat, it can be very painful. Let me know if there is anything we can do"
- » Give the employee an update of the current work situation e.g. "As you know, we have been extremely busy. There's a backlog in X section so I'll be assigning you to that area for the next few days"
- » Conclude the meeting e.g. "Make sure you look after yourself"
- » Make sure the employee's absence is recorded.

### NOTE:

This applies to meetings where the employee's attendance record is not giving cause for concern. Refer to the section on "Managing Frequent Absences" for guidance on conducting meetings with an employee whose attendance record is unsatisfactory.

### THE FOLLOWING ISSUES COULD ARISE AT THE RETURN-TO-WORK MEETING:

1. Sometimes an employee's attendance is related to **personal problems** which are outside of your remit as a manager. If however an employee discloses that they are experiencing such difficulties you should encourage them to seek appropriate assistance e.g. Employee Assistance Programme/counselling.
2. Sometimes you may be concerned about the **validity of the reasons** given by the employee for their absence. If this is the case you should convey your concerns to the employee and invite them to respond.



"NOTWITHSTANDING THE OUTCOME, IT IS IMPORTANT TO RAISE YOUR CONCERNS. YOU SHOULD HANDLE THE MEETING WITH CARE AND REMEMBER THE FOLLOWING POINTS:"

- » Don't make assumptions
- » Establish the facts
- » Where relevant, consider whether the activity the employee has engaged in is consistent with their achieving a full recovery.

## (E) MANAGING FREQUENT ABSENCES

Where an employee's attendance record gives you cause for concern you should arrange a meeting with the employee. The following is a checklist for conducting a counselling meeting in relation to an employee's unsatisfactory attendance:

- » Outline the details of the employee's attendance record, for example you may refer to their attendance record and say: "I have noted that you have been out 4 of the last 12 Mondays"
- » Explain how the employee's absence has affected the efficient running of the department e.g. you were obliged to re-organise staffing arrangements, cancel patient appointments
- » Point out the effect of the employee's absences on their work colleagues - e.g. they were required to carry out the employee's duties, you were unable to grant leave when requested
- » Allow the employee to respond
- » Remind the employee of their responsibility to look after their own health and welfare
- » Inform the employee that their attendance record has fallen below the required standards and the consequences of not improving
- » Keep a record of any meeting(s) and follow-up action agreed
- » Monitor the employee's progress.

There can be a false presumption that as long as an employee submits a medical certificate you cannot intervene. However, you have a responsibility to ensure good attendance in your Department and to deal with employees who have an unsatisfactory attendance record. Your focus is not about 'blaming' the employee for being sick but you must be explicit about the frequency of their absences and impress upon them that they are falling down on their obligation to render regular and efficient service. Sometimes it may be appropriate to refer an employee to the Occupational Health Service/medical practitioner.

If, following the informal counselling stage, there is still no improvement in the employee's attendance, the Disciplinary Procedure should be invoked to ensure that the employee is afforded due process. This will include all stages of the Disciplinary Procedure, up to and including dismissal.



"SEAN MET WITH ANNE TO DISCUSS HER POOR ATTENDANCE"

## REMEMBER:

- » Outline the details of the employee's attendance record
- » Remind the employee that they have a responsibility to take care of their own health and wellbeing
- » Where appropriate suggest to the employee that they seek medical advice on how to improve their health and wellbeing
- » Inform the employee that if there is no improvement the matter will be dealt with under the Disciplinary Procedure.

## (F) MANAGING LONG-TERM ABSENCES

Employees may be absent for an extended period due to an illness or injury. In such cases it is important for you as a manager to ensure that the employee maintains regular contact with you in order to keep you advised of their progress, the steps they are taking to achieve a full recovery and the expected duration of their absence. It is important that you emphasise the importance of maintaining regular contact as it also demonstrates that you are concerned about the employee's welfare and their contribution is valued and missed. Failure to follow up on employees who do not maintain regular contact could be perceived by them as a sign that there is no urgent need for them to return to work.

The **Occupational Health Service** provides specialist confidential advice to the employer and the employee on all matters relating to the effect of health on work and work on health. Where appropriate you should refer an employee who has been out on a long-term absence to the Occupational Health Service to assess his/her fitness to return to work and undertake his/her full range of duties and seek advice on measures which may facilitate the employee's return. The longer employees are absent from work, the harder it is for them to return. It has also been found that employees very often find it therapeutic to return to work.

While the Occupational Health Service may make recommendations to assist the employee's return, the decision to implement those recommendations rests with you as the manager. You should give careful consideration to any recommendations and if in doubt consult your HR department.

## REMEMBER:

- » Employees who are absent on long-term sick leave can often feel isolated and depressed and in many cases would appreciate an offer of assistance to facilitate an early return to work
- » By facilitating Ruth's return to work, Caroline is also discharging the employer's obligations under the Employment Equality Act.



"CAROLINE MADE ARRANGEMENTS TO ALLOW RUTH TO RETURN EARLY FROM SICK LEAVE"

**4**

**EQUAL  
OPPORTUNITIES**

# MODULE 4

## EQUAL OPPORTUNITIES

In the Health Service today we have a highly diverse workforce which includes large numbers of migrant workers, older people, people with disabilities, people of different ethnic origins, religions and sexual orientations and different family and marital status.

Equal opportunities in the workplace is about recognising the talents and skills of all employees and providing access to employment and promotional opportunities to the widest possible pool of employees and potential employees.

Accommodating diversity acknowledges differences and the different needs that employees have, depending on whether they are younger or older, male or female, have a disability, have family responsibilities or come from different ethnic backgrounds etc. A positive, open and accommodating workplace generates an atmosphere which fosters high morale for a diverse range of employees and maximises their opportunity to reach their potential and contribute to a high quality service delivery.

This module aims to provide you with guidance on how best to meet your obligations under the equality legislation - the Employment Equality Acts 1998 to 2008 and the Equal Status Acts 2000 to 2004. It also aims to give some practical examples of how diversity may be accommodated.

## LEARNING OBJECTIVES



At the end of this module you will:

- » Understand the legal framework governing equal opportunities
- » Know what discrimination is
- » Be able to discharge your role in promoting equal opportunities and accommodating diversity
- » Be able to implement equal opportunities and accommodate diversity.

## THE LEGAL FRAMEWORK



The following legislation governs equal opportunities:

The **Employment Equality Acts 1998 to 2008** promote equality in the workplace and prohibit discrimination across nine grounds. Sexual harassment and harassment based on these discriminatory grounds are also prohibited.

The **Equal Status Acts 2000 and 2004** prohibit discrimination against service users on the basis of the same nine equality grounds and covers:

- » Access to premises
- » Provision of services
- » Sexual harassment/harassment.

This module deals with the Employment Equality Acts 1998 to 2008.

## DISCRIMINATORY GROUNDS

The following are the nine discriminatory grounds:

- » Gender – A man or a woman. Specific protection is provided for pregnant employees
- » Marital Status – Single, married, separated, divorced or widowed
- » Family Status – A parent of a person under 18 years or the resident primary carer or a parent of a person with a disability
- » Sexual Orientation – Gay, lesbian, bisexual or heterosexual
- » Religion - Different religious belief, background, outlook or none
- » Age – where two people are of different ages
- » Disability – This is broadly defined and includes people with physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions
- » Race– A particular race, skin colour, nationality or ethnic origin
- » Traveller community – a member of the Traveller community.

## WHAT IS DISCRIMINATION?

Discrimination occurs where, because of any one of these grounds, a person is treated less favourably than another person is, has been or would be treated.

The following are some examples of what could constitute discrimination:

- » a young person is appointed to a position in preference to an older person simply because of a preference for young people
- » domestic tasks are assigned more frequently to female employees than to male employees
- » a person of one religion is provided with time off to attend worship during working hours and a person of another religion is denied a similar benefit
- » A woman is selected in preference to a man for a care assistant position because of an assumption that women make better carers
- » A female candidate is asked at interview how she would cope with the on-call requirements of the job
- » A non-national employee does not have his temporary contract renewed because an Irish person is available for this work.

## WHAT ASPECTS OF EMPLOYMENT DOES THE LAW COVER?

Equal opportunities covers all aspects of the employment relationship viz:

- » Access to employment
- » Conditions of employment
- » Training and work experience
- » Promotion or re-grading
- » Classification of posts
- » Dismissal
- » Remuneration

## ACCESS TO EMPLOYMENT

The Employment Equality Acts provide that all persons should have equal access to job opportunities. Access to employment covers all arrangements for filling a vacancy including placing the advertisement, shortlisting applicants and conducting interviews.

Thus an employer must not discriminate in any arrangements made for selecting an employee or specify entry requirements that could discriminate against potential applicants because of any of the nine grounds.

Equality of Opportunity with regard to access to employment can best be achieved by encouraging applications from the widest possible pool of candidates and assessing each person's suitability by reference to job related criteria without regard to their age, religion, family status or any of the other grounds covered by the Acts. Best practice at each stage of the recruitment and selection process helps to avoid unlawful discrimination as well as ensuring that the most suitable candidate is appointed to the job.

The recruitment and selection process normally consists of the following stages:

- » Job description
- » Person specification
- » Advertisement
- » Application Forms / Shortlisting
- » Interviews
- » Pre-employment medical assessment

The **job description** sets out the main duties and responsibilities of the job.

For example, some of the main duties of a Telephonist / Receptionist post may include:

- » to operate a busy switchboard and forward calls appropriately
- » to undertake general receptionist duties, such as ensuring that all visitors sign the visitors' book and are directed to the correct locations
- » to answer basic queries such as details regarding visiting hours and whether or not patients have been admitted.

The job description should be reviewed to ensure that it accurately reflects the requirements of the job. It is important to ensure that the manner in which the main duties and responsibilities of the job are described does not deter persons to whom any of the nine grounds apply from making an application.

The **person specification** sets out the essential qualifications, skills, experience and personal attributes for the job.

For example, some of the person specifications of a Telephonist/Receptionist post may include:

- » Good interpersonal skills
- » Experience of operating a busy switchboard
- » Distinct speaking voice.

You should take care to avoid including unnecessary requirements which may lead to claims of discrimination. For example, a requirement to be totally proficient in English could be potentially discriminatory for a position as a gardener if the job required only basic level English skills.

The job description and person specification should be updated/drawn up prior to advertising the job.

In response to an advertisement seeking a Domestic Attendant, Brenda phones the Domestic Supervisor, Angela to enquire about the position, She mentions that she has just finished raising her family and is anxious to get back into the workforce.

Angela replies "I'm not looking for grannies! I don't think you appreciate just how physically demanding this job is. I need people who are agile and can stay on their feet all day".

**Q. What do you think is the outcome of Angela's response?**

Angela may well have turned away a very suitable candidate and has also left her employer open to a complaint of discrimination.

## ADVERTISEMENT

The content of the advertisement should only specify the qualifications, skills and personal attributes relevant to the job as identified in the person specification. Care should be taken to ensure that the wording of the advertisement does not deter any potential applicants. For example, stating that applicants should be 'mature' could deter younger persons from applying and may leave the organisation open to a claim of discrimination.

When advertising jobs internally (including promotional or acting-up positions), it is important to ensure that the advertisement is widely circulated and brought to the attention of all potential candidates (including employees absent on maternity leave, parental leave or carer's leave).

The advertisement notice should be located in a prominent place which is accessible to all potential candidates. For example, it would be considered discriminatory to put an advertisement for a traditionally male-dominated job, such as maintenance staff, in the male locker room or other location which is not accessible to female employees.



**"WHEN ADVERTISING A VACANCY INTERNALLY, YOU SHOULD ENSURE THAT ALL POTENTIAL APPLICANTS ARE NOTIFIED"**

## APPLICATION FORMS/SHORTLISTING

Applicants may be required to complete a standard application form which may be used to shortlist candidates for interview. Application forms should only seek information that can be used to determine the suitability of the person to do the job. Questions regarding a person's marital status, age or other characteristics should be avoided unless they can be shown to be relevant to the job. It is important that all applicants are considered equally for the job and that selection criteria are based on the job description and person specification. The shortlisting criteria should be drawn up prior to receipt of application forms.

Where possible the application form and any documentation on the job should be available in different formats such as large print, tape, disk or e-mail so that they are accessible to persons with a disability. The application form may also invite applicants to specify whether any special provisions or facilities are required at the selection process, for example, use of a signer or interpreter or car parking within close proximity to the building.

## INTERVIEW

Claims of discriminatory treatment frequently arise in relation to the selection interview. If you are sitting on an interview board you should remember the following:

- » Review the job description and person specification in advance and ensure that the criteria for assessing candidates reflect the requirements of the job. Interview topics should be based on selection criteria and planned in advance to ensure consistency of treatment. This will help to avoid questions related, for example, to ethnic background, family responsibilities or other subject areas that could give rise to claims of discriminatory treatment
- » Be aware of the pitfalls of engaging in 'small talk' with candidates prior to the interview, e.g. commenting on a candidate's accent and asking where they are from. While such remarks may be intended to put candidates at

ease, an unsuccessful candidate may subsequently allege that they found such remarks off-putting and this affected their performance at interview

- » During the interview do not make any discriminatory assumptions about a candidate's suitability based on their membership of one of the grounds i.e. "she won't fit in here because she isn't Irish"
- » Be alert to the dangers of asking potentially discriminatory questions, for example:

Young persons applying for supervisory positions should not be asked questions about how they would cope with managing staff that are much older than them. This line of questioning might convey the impression that the interview panel is biased against younger candidates because older staff may resent taking instructions from them. This could result in an unsuccessful candidate alleging discrimination on the basis that an older candidate would not have been asked the same question. Similarly, older candidates should not be asked how they would feel about taking instructions from a younger supervisor.



"GEORGE ASSUMED THAT JOAN WOULD NOT BE SUITABLE FOR THE EMT JOB BECAUSE HER FAMILY COMMITMENTS WOULD INTERFERE WITH HER ABILITY TO DO ON-CALL"

## REMEMBER

Do not ask any questions which could be considered discriminatory or make discriminatory remarks. For example, female candidates should not be asked questions about their child-minding arrangements or how they would cope with working unsocial hours. It is up to the candidate to decide whether their personal circumstances will affect their ability to meet the requirements of the job.

You may wish to check the ability of candidates to fulfil certain job requirements such as attendance hours, on-call liability, travel, etc. This should be done without reference to a candidate's marital status, family commitments, disability or other characteristics. It is useful to specify these requirements in the job description so that prospective applicants are clear from the outset about the conditions of employment. The interview board may also outline the requirements of the job to all candidates (e.g. on-call liability, night duty, etc.) but should leave it to candidates themselves to decide whether their personal circumstances will affect their ability to meet these requirements.

It should be borne in mind that in order to prove that discrimination has occurred during the interview process, an applicant does not have to prove that s/he would have been successful in obtaining the job if s/he had not been asked the discriminatory question. Many complaints of discrimination have been upheld and compensation awarded as a result of the distress and injury suffered by reason of discriminatory questions asked or comments made by the interview board even though the claimant was not deemed to be the best candidate for the job.

## SELECTION CRITERIA AND MARKING SCHEMES

A formal marking system is an important defence against claims of discriminatory treatment. The marking system should be constructed before applications are received and the interview process begins and should be based on the requirements of the job. Once a marking system has been agreed it

is important that it is followed and applied fairly. Candidates should be assessed against each of the selection criteria and awarded an appropriate mark under each category. The marking sheet should also contain a section for comments in relation to each of the criteria.

## INTERVIEW NOTES

Notes or 'aide memoire' made during the course of the interview should be retained with the marking sheets as they form part of the record. While it is good employment practice to retain these notes, there must be an awareness that this information may be required if the selection decision is challenged. Care should be taken not to write comments which might have discriminatory connotations.

The practice of shredding interview notes and only retaining details of the candidates' overall marks can suggest a lack of transparency in the interview process. The Equality Tribunal and the Labour Court have on numerous occasions made reference to the fact that the absence of such notes can call into question the transparency and objectivity of the assessment process.

All application forms, interview notes, marking sheets and any other documentation pertaining to the competition should be kept on file for at least 3 years.

The **pre-employment medical** assesses prospective employee's medical fitness for the job. The medical practitioner conducting the pre-employment medical should be provided with an up to date job description and any relevant information regarding the job. It is important to remember that the pre-employment medical should not be used to "screen out" persons with a disability (see section on Employment of People with Disabilities).

**SUMMARY:**

During all stages of the recruitment and selection process **you should not make any presumptions about a potential candidate's suitability**. To avoid this you must always:

- » List the requirements of the job and the qualifications and skills required prior to advertising/shortlisting
- » Make sure that all potential candidates know about the vacancy
- » Avoid discriminatory questions

The Employment Equality Acts do not require an employer to recruit, retain, train or promote a person who will not, or is not available to carry out the duties of a position or who is not fully competent to carry out those duties.

**CONDITIONS OF EMPLOYMENT**

All employees employed in the same capacity, i.e. category and grade, must be offered:

- » The same terms of employment (including annual leave, dress code, hours of work, etc.)
- » The same working conditions (duties, assignments, tasks, etc.)
- » The same treatment in relation to overtime, shift work, short time, transfer, lay-offs, redundancies, dismissal and disciplinary measures.

Examples of discrimination include:

- » Overtime or shift work being offered in the first instance to male employees on the traditional assumption that they have greater financial liabilities
- » On-call not being offered to married women on the presumption that they are in a lesser position than their male colleagues to avail of this work
- » An unequal distribution of all tasks relating to the job – i.e. the younger employees being asked to carry out a lot of the more onerous tasks

- » Non-nationals being first in line for redundancy
- » Choice of Christmas leave being offered to married employees before single employees
- » Granting persons of a particular religion/denomination time off to attend religious services, while not allowing those employees of another religion the same benefit.

**TRAINING AND WORK EXPERIENCE**

All employees should be afforded the same opportunities to develop full and rewarding careers in the Health Service. You should therefore ensure that all employees are provided with equality of opportunity to acquire the range of training, skills and experience necessary for their career development. Some examples of discriminatory treatment in relation to access to training and work experience include:

- » Providing fewer training opportunities for people over a certain age, such as 55 years, on the basis that they are less likely to benefit from such training than younger workers could be found to discriminate on grounds of age
- » Not permitting an employee to participate on a training course because he/she had recently been absent on parental leave could be found to discriminate on grounds of family status
- » Rejecting an application from a non-national employee to undertake an approved part-time course based on the assumption that non-nationals are less likely to stay with the organisation could be found to discriminate on grounds of race.

## PROMOTION

All categories of employees should be encouraged to prepare, plan and consider themselves for promotion (or acting-up positions) and to gain experience in other departments.

Promotional opportunities can be enhanced by offering a broad range of experience in a variety of sections or job postings within the organisation. All employees should be made aware of, encouraged and facilitated to maximise their experience in the range of activities within their employment.

The stages within the promotional process are similar to those in the recruitment and selection process and the same pitfalls are to be avoided, such as making assumptions about a person's suitability because of gender, race, age or other characteristic.

### For example:

- » "They are a tough bunch of staff in that unit - a man would be better able to manage them than a woman"
- » "We need someone who has a great deal of experience working in this jurisdiction"
- » "She's far too young to be Director of Nursing."

It is important to ensure that the advertisement is widely circulated and brought to the notice of all potential candidates (including those on maternity leave, parental leave and carer's leave).

The same principles also apply to internal competitions for filling acting-up positions.

## CLASSIFICATION OF POSTS

The classification of posts on the basis of gender is no longer permitted under the Employment Equality Acts e.g. the title Ward Sister has been replaced by Clinical Nurse Manager.

## DISCRIMINATORY DISMISSAL

Where an employee has had their employment terminated or their fixed-term contract is not renewed they may claim discriminatory dismissal i.e. his/her dismissal was related to one of the nine grounds, for example:

- » "I was only let go because a younger person was available"
- » "I was let go because I'm Polish"

To prove a "fair dismissal", the employer must be able to demonstrate that there were substantial reasons (not connected with any of the nine grounds) justifying the dismissal (e.g. it was due to poor attendance, unsatisfactory work performance). The employer must also be able to demonstrate that fair procedures were followed i.e. the employee was clearly advised of their shortcomings and given an opportunity to improve. Vague complaints such as the following are not sufficient to counteract allegations of discrimination.

- » "His personality was not suited to our hospital"
- » "He never really fitted in"
- » "She always had an attitude problem"
- » "He had difficulty in making himself understood."

Where appropriate the Disciplinary Procedure should be invoked. You should keep records of any meetings held with the employee to discuss their performance issues so that you can demonstrate that due process was followed.

## TEXT CASE STUDY

Zoe is from Africa and is employed as a care assistant on a three-month contract. One day, the manager, Lorna, calls Zoe into her office and tells her that her three-month contract is due to expire the following week and she has no further work available for her. Zoe is shocked as there is still an ongoing requirement for temporary employees in the hospital and she expected her contract to be renewed.

She asks if there have been complaints about her work.

Lorna replies that while there have been no specific performance difficulties, there were now local people available for temporary work 'who are more accustomed to us and our way of doing things'.

The outcome is that Zoe takes a case for discriminatory dismissal to the Equality Tribunal. The Tribunal finds in Zoe's favour as Lorna's comments are suggestive that Zoe is not offered further work because of her nationality and preference is given to Irish workers.

## REMUNERATION

The Acts provide that all employees across the nine grounds are entitled to equal pay for like work. Like work is defined as work that is the same, similar or work of equal value.

## ACCOMMODATING DIVERSITY

You should be open to accommodating the special needs of employees which relate to any of the nine grounds. This means that you may need to be open to new ways of doing things. The induction process provides you with an opportunity to discuss with new employees any special needs which they may have arising from a disability, family status, race or any other characteristic covered by the nine grounds. Employees recruited from abroad may have special needs arising from cultural differences. For example, they may be accustomed to different methods of working or may have linguistic difficulties.

Some examples of accommodation include:

- » Having different dietary options in the canteen
- » Rostering an employee off on his/her birthday or other day of particular cultural or religious significance
- » Arranging English classes for non-national employees
- » Providing an interpreter
- » Varying working hours

- » Providing a prayer room
- » Providing access to a private place to take medication
- » Allocating accessible car parking spaces for employees with a disability.

It is important to remember that such accommodation should not interfere with service requirements or the employees' ability to carry out their full range of duties.



"MICK ASSUMED AN OLDER WORKER WOULDN'T NEED FLEXIBLE WORKING"

## REMEMBER:

- » Do not make presumptions about an employee's needs
- » Always give careful consideration to the employee's request having regard to the service needs
- » You are obliged to consider the request but you are not obliged to grant it.

## SEXUAL HARASSMENT AND HARASSMENT

The Employment Equality Act also prohibits sexual harassment and harassment on any of the nine grounds. This is covered in the Dignity at Work module.

## EMPLOYMENT OF PEOPLE WITH DISABILITIES

For most people of working age getting a job and gaining an opportunity to build a career and apply their skills and talents in the workplace is central to their independence and participation in society. Many people with disabilities in Ireland, however, have found themselves excluded from the labour market. Research has shown that people with disabilities are two and a half times less likely to have a job than those who do not have a disability.

Disability comes in many forms. Many people think of disability only in terms of a physical disability. However some disabilities are not readily apparent such as mental health problems or learning difficulties.

The equality legislation prohibits an employer from discriminating against a person because they have a disability, in relation to:

- » Recruitment
- » Working conditions
- » Retention of employees who acquire a disability.

The Employment Equality Acts provides that employers are required to take "appropriate measures" to enable a person who has a disability to carry out the full range of duties of the job. The following are some examples of "appropriate measures":

Where possible the application form and any documentation on the job should be available on request in different formats such as large print, Braille, tape, disk or e-mail so that they are accessible to people with disabilities. The application form may also invite applicants to specify whether any special provisions or facilities are required at the selection process, for example, use of a signer or interpreter or car parking within close proximity to the building.

It is also important to ensure that the necessary practical arrangements are made prior to the interview e.g. availability of designated car parking spaces, accessibility of the interview location, rescheduling the time of an interview to allow a candidate to arrange for an interpreter.

Prior to making a job offer, candidates are normally required to undergo a pre-employment medical assessment. The purpose of the pre-employment medical is to assess the capability of the person to attend work and to perform the full range of duties of the job. It is not concerned with assessing "fitness" in general. It should be noted that the medical assessment relates specifically to the particular duties and responsibilities of the job and the current ability of the person to perform those duties (i.e. it does not attempt to predict any future deterioration in capability which may arise from a disability). The Occupational Health Department or medical practitioner engaged to carry out the medical should be given a copy of the up-to-date job description setting out the essential duties and details of the working conditions.

The pre-employment medical may reveal medical conditions which do not necessarily have any implications for the capability of the person to carry out the essential duties of the job. Where the person has an impairment or disability which may impact on his/her ability to do the job, the onus is on the employer to provide "appropriate measures" to facilitate that person. The provision of such measures must result in the person being fully competent and capable of performing the duties attached to the job, otherwise there is no obligation to recruit or retain the person in employment.

A candidate should not be refused employment on health grounds unless:

- » The Occupational Health Physician has carried out a medical assessment
- » The prospective employee has been advised of the outcome of the assessment and has had an opportunity to discuss the findings with the Occupational Health Physician
- » The relevant manager, in consultation with HR, has given careful consideration to any recommendations from the Occupational Health Service regarding appropriate measures, and can demonstrate that s/he explored the feasibility of implementing such recommendations.

### **WORKING CONDITIONS**

Examples of reasonable accommodation include:

- » Widening a doorway, providing a ramp or moving furniture for wheelchair user
- » Relocating light switches, door handles or shelves for someone who has difficulty in reaching
- » Providing an adapted keyboard, telephone or chair
- » Allocating accessible car parking spaces
- » Allowing absences during work hours for rehabilitation, assessment or treatment
- » Making changes to work hours
- » Making reasonable adjustments to the duties of the job
- » Providing a reader or interpreter.

### **The Employment Equality Acts do not require an employer to:**

- » Fundamentally alter the job or eliminate aspects of the job which are essential
- » Do anything that would result in a breach of any statutory obligations under health and safety legislation. It should be noted that people with disabilities are not necessarily more of a health and safety risk than people without disabilities. However, special protective measures may need to be incorporated into health and safety policies and procedures to accommodate the needs of employees with disabilities. For example, 'buddies' may be assigned to people who have reduced vision, mobility or hearing to assist them during an emergency evacuation
- » Provide personal use items if they are also needed off the job, e.g. eyeglasses and hearing aids
- » Accept lower standards of performance from a person with a disability.

### **RETENTION OF EMPLOYEES WHO ACQUIRE A DISABILITY**

Many people who have a disability acquire it during their working lives. Under the Employment Equality Acts 1998 and 2008 an employer has a legal obligation to give due consideration to whether there are "appropriate measures" which would facilitate an employee to return to work and carry out their full range of duties. "Appropriate measures" can include the following:

- » Part-time working to ease the transition back to full-time work
- » Adjusting starting or finishing times
- » Re-assigning certain tasks
- » Allowing time off for medical treatment or assessment
- » Changing the location of the work e.g. to an office on the ground floor.

The employee may be referred to the Occupational Health Service to assess his/her fitness to return to work and identify appropriate measures which may be taken to facilitate the employee.

**NOTE:**

There is no obligation to recruit or retain a person in employment unless she/he is the fully capable, having been provided with such accommodation, of performing the full range of duties attached to the job.

## TEXT CASE STUDY

Aisling is a staff nurse who works in a busy acute hospital. Aisling had surgery on her foot and went on sick leave. Four weeks later Aisling was certified fit to return to work provided that she didn't stand for too long. Aisling telephoned the Director of Nursing, Janet, to let her know that the doctor had said it was okay for her to come back to work provided she didn't stand for long periods. Janet was very stressed about the staffing in this ward as a number of employees were absent on different types of leave. She shouted at Aisling "It's all or nothing with me! I don't want someone hobbling about who can't do their job properly, you are no use to me until you are fully recovered. Can't you see how stressed I am already with half the department on flexible working hours!"

Half an hour later, Janet goes to the work station to get some information from the computer and remembers that she had to re-assign one of the staff from the station to the wards. It occurs to her that Aisling could do this work.

Meanwhile Aisling returned to her doctor and tells him: "Give me a cert for a month, as it is going to take me all that time to face that one again!"

**Q. Where did Janet go wrong?**

A. Instead of making a snap decision, Janet should have told Aisling that she would get back to her so that she could identify appropriate measures to facilitate Aisling to return to work and carry out her full range of duties.

**REMEMBER:**

- » It is important to avoid knee jerk reactions such as " I only want to know you when you are better", when an employee contacts you about returning to work from an illness or injury. You have an obligation to consider their request based on the particulars of the case and consider the options, if any, for reasonable accommodation before you give a response
- » You need to get details of the nature of the illness or impairment and how it impacts on the employee's ability to do their job
- » The next step is to identify if any measures can be taken to facilitate the employee's return to work.

## EMPLOYMENT AND RETENTION OF OLDER WORKERS

The abolition of the compulsory retirement age for "new entrants" under the Public Service Superannuation (Miscellaneous Provisions) Act 2004 has meant that the employment and retention of older workers has become an important issue for managers. Older workers bring many benefits to the workplace, including a wealth of experience and skills. Furthermore, it is now well established that work performance does not necessarily decline with age. Despite this evidence, stereotypical assumptions continue to exist about the capability of older workers. There can be a perception amongst managers that older workers are "less agile" or less able to learn new skills and adapt to new ways of working. These misconceptions may result in older workers being treated less favourably than their younger colleagues, for example being passed over for promotion or training opportunities. This can demotivate older workers and make them feel that their contribution is not valued.

All employees, including older workers, should be given feedback on whether they are meeting the required standards. Sometimes, however, managers are not inclined to address performance shortfalls with older workers who may be approaching retirement due to expectations that the

person will not be remaining in employment. Reluctance to deal with performance issues and provide constructive feedback, however, deprives the employee of the opportunity to make the necessary improvements and reach their potential.

If you have concerns about the work performance of an older worker, you should address this in the same manner as any other employee, i.e. through informal counselling and the provision of training or other appropriate support. If the employee fails to make the necessary improvements despite appropriate support and assistance, the Disciplinary Procedure should be invoked.

### REMEMBER:

- » Do not make assumptions about the capability or motivation of older workers
- » Ensure that all employees regardless of age keep their skills updated and undergo appropriate training
- » Be responsive to the particular needs of older workers.



“JOAN CHALLENGES SUSAN’S MISCONCEPTIONS ABOUT OLDER WORKERS”

**DIGNITY  
AT WORK**

**5**

## **MODULE 5**

# DIGNITY AT WORK

Central to the delivery of the highest possible quality Health Service is a working environment where the staff feel valued, recognised and safe. The promotion and maintenance of the dignity of all employees plays a key role in ensuring this environment. Bullying and harassment in the workplace can have potentially serious effects for employees subjected to this behaviour such as stress, ill health, loss of confidence and self esteem can result in increased levels of absenteeism, reduced productivity, poor morale, and high turnover.

All employees have a right to be treated with dignity and respect. The Dignity at Work Policy for the Health Service aims to ensure that the working environment is respectful of employees' dignity and employees know what to do if they feel that they are being subjected to inappropriate behaviour. The overall aim of this module is to enable you to discharge your responsibilities as a Line Manager under the Dignity at Work policy. This means communicating the policy to staff, preventing bullying or harassment occurring and resolving complaints at a local level where appropriate.

## LEARNING OBJECTIVES



At the end of this module you will be able to do the following:

- » Define bullying, harassment and sexual harassment
- » Describe your role as a manager under the policy
- » State how to communicate the policy on Dignity at Work
- » State how to respond promptly and sensitively to complaints
- » Describe how to resolve issues locally if possible.

## THE LEGAL FRAMEWORK



The Safety, Health and Welfare at Work Act 2005 obliges an employer to provide a safe working environment which is free from bullying and harassment.

The Employment Equality Acts 1998 to 2008 prohibits sexual harassment and harassment on the nine discriminatory grounds.

### DIGNITY AT WORK POLICY

A **Dignity at Work Policy for the Health Service** was agreed between Health Service employers and trade unions and covers:

- » Bullying
- » Harassment
- » Sexual Harassment

The Dignity at Work Policy is based on the following three Codes of Practice:

1. The Health and Safety Authority's **Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work**
2. The Labour Relations Commission's (LRC) **Code of Practice Detailing Procedures for Addressing Bullying in the Workplace**
3. The Equality Authority's **Code of Practice on Sexual Harassment at Work.**

### BULLYING

#### WORKPLACE BULLYING IS DEFINED AS:

“Repeated inappropriate behavior whether verbal, physical or otherwise, conducted by one or more persons against another or others at the place of work and/or in the course of employment.”

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



“DAVID WAS OVER-ZEALOUS IN HIS EFFORTS TO ACHIEVE HIGH PERFORMANCE STANDARDS FROM HIS EMPLOYEES”

Examples of bullying include:

- » Constant humiliation, ridicule, belittling efforts – often in front of others
- » Regular verbal abuse, including shouting, and use of obscene language
- » Persistently and inappropriately finding fault with a person's work and humiliating them rather than going about improving their performance.

Bullying undermines an employee's morale and makes them feel inadequate and disempowered. It can result in an employee going on sick leave due to stress or even resigning from their job.

Sometimes managers are reluctant to address performance issues with employees because of fears that they will be accused of being a bully. The following however do not constitute bullying:

- » Fair and constructive criticism of an employee's performance, conduct or attendance
- » Reasonable and essential discipline arising from the good management of the performance of an employee at work.

You are entitled as a manager to expect high standards of performance and conduct from your employees and to address performance issues if they arise. However, when dealing with performance issues you must respect the employee's dignity i.e. avoid personalised attacks and concentrate on the specific shortcomings in the employee's performance/conduct.

## HARASSMENT AND SEXUAL HARASSMENT

Harassment and Sexual Harassment are prohibited under the Employment Equality Acts 1998 to 2008.

### **HARASSMENT IS:**

Any form of unwanted conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

The unwanted conduct must be related to any of the nine discriminatory grounds outlined under the Employment Equality Acts 1998 to 2008 viz:

- » Gender
- » Marital Status
- » Family Status
- » Sexual Orientation
- » Religion
- » Age
- » Disability
- » Race
- » Membership of the Traveller community.

Harassment may include acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

The following are some examples of harassment:

- » Jokes, derogatory comments, ridicule or songs directed at the employee
- » Texts, emails, articles or posters which contain references to the employee's particular characteristics
- » Ostracising a person because of their particular characteristics.

### **HOW DOES HARASSMENT DIFFER FROM BULLYING?**

In essence harassment is where someone is treated or referred to in a derogatory way due to a particular characteristic based on one of the nine grounds outlined above, for example:

- » Calling a Muslim colleague "Osama"
- » Circulating by text or e-mail a joke about non-nationals
- » Mimicking a person with a stutter
- » Writing "Knackers are not welcome" on the Christmas party notice
- » Referring to an older female employee as "that auld wan".

## SEXUAL HARASSMENT

Sexual harassment is any form of unwanted conduct of a **sexual nature** and applies on grounds of gender.

Sexual harassment is defined as:

Any form of unwanted verbal, non-verbal or physical conduct of a **sexual nature** which has the purpose or effect of violating a person's dignity. The unwanted conduct may include acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

For both harassment and sexual harassment, conduct may consist of an isolated incident or repeated inappropriate behaviour. For example:

- » Unwanted physical contact such as unnecessary touching, patting or pinching
- » Offensive flirtations, suggestive remarks, innuendo or lewd comments of a sexual nature
- » The display of pornographic or sexually suggestive pictures, objects, written materials, emails, text-messages or faxes.
- » Leering and suggestive gestures of a sexual nature.



“PAULINE FOUND THE WORKING ENVIRONMENT IN THE MAINTENANCE DEPARTMENT INTIMIDATING AND HOSTILE”

## REMEMBER:

- » Engaging in banter which is unwelcome and offensive can amount to sexual harassment, even if the behaviour is not directed at the person.

### Q. Does this mean that all workplace banter is no longer acceptable?

No, it is perfectly acceptable for work colleagues to interact socially and engage in banter provided that this behaviour is welcome and does not cause offence. It is the unwanted nature of the conduct that distinguishes bullying and harassment from friendly behaviour which is welcome and mutual.

It is up to each employee to decide what behaviour is unwelcome, irrespective of the attitude of others to the behaviour. The fact that an individual has previously tolerated the behaviour does not stop him/her from deciding that it has now become unwelcome and objecting to the behaviour.

## EMPLOYER LIABILITY

It is important to note that in addition to occurring at work, bullying and harassment may also take place outside of the workplace and outside of normal working hours. For example, they may occur at work-related events such as a staff Christmas party, conference or training course held outside of the work premises. You have a duty to deal with complaints of bullying or harassment which are alleged to have occurred at work-related events.

You are also obliged to deal with complaints against non-employees e.g. visitors, contractors, suppliers or other persons with whom employees come into contact during the course of their work.

## ROLES AND RESPONSIBILITIES OF THE LINE MANAGER

As a manager you have specific responsibilities under the Dignity at Work Policy. Your role includes the following:

- » Communicate the Policy to employees
- » Set a good example
- » Be vigilant for signs of bullying/harassment and intervene
- » Respond promptly and with sensitivity to complaints.

### COMMUNICATE THE DIGNITY AT WORK POLICY TO EMPLOYEES

It is not sufficient to hand employees a copy of the Policy and tell them to read it. You must explain the Policy to them and ensure that they understand that they have a role in maintaining a work environment which respects the dignity of all employees.

You should explain what constitutes unacceptable behaviour.

You should encourage employees to talk to you if they have any concerns about the behaviour of colleagues or if they feel that they are being subjected to inappropriate behaviour by a colleague or a non-employee.

You should explain how the complaints procedure operates.



“AN INCIDENT AT THE STAFF CHRISTMAS PARTY RESULTED IN AN EMPLOYEE MAKING A COMPLAINT OF HARASSMENT”

### SET A GOOD EXAMPLE

As a manager you should set a good example by treating all persons with courtesy and respect.

### BE VIGILANT FOR SIGNS OF BULLYING/HARASSMENT AND INTERVENE

You are obliged to be vigilant for signs of bullying/harassment and to intervene if you observe inappropriate behaviour. Don't wait for the employee to make a complaint. This will also help to create a climate in the workplace where employees are willing to speak out against behaviour which they consider to be inappropriate and possibly discriminatory.

### RESPOND PROMPTLY AND WITH SENSITIVITY TO COMPLAINTS

You should deal with complaints of bullying/harassment promptly and with sensitivity and avoid comments that suggest you are trivialising the matter e.g. suggesting the behaviour was just harmless fun or no malice was intended.

### DEALING WITH COMPLAINTS OF BULLYING/HARASSMENT

As a manager you are empowered to resolve a complaint of bullying/harassment at local level without the need for a formal investigation. The first step is to **clarify the precise nature of the behaviour complained of** and the context in which it occurred. You can then make a judgment call as to the most appropriate action to take depending on the circumstances. Very often the person against whom the complaint is made is genuinely unaware of the effects of his/her behaviour and a successful resolution can be achieved through informal discussions.

It is important to keep a **detailed and accurate record** of the action you have taken to resolve the matter.

**Monitor the situation** to ensure that the behavior does not recur and the employee is not victimised, for example, by being subjected to hostile treatment by work colleagues.

If it is not possible for you to resolve the complaint locally, it should be referred to HR.

## MEDIATION

At any stage a complaint of bullying or harassment can be referred for mediation under the Dignity at Work Policy. The Policy places particular emphasis on mediation as the preferred method for the resolution of complaints of bullying and harassment. The objective of mediation is to resolve the matter speedily and confidentially without recourse to a formal investigation. Mediation requires the voluntary participation and co-operation of both parties in order to work effectively.

Both parties will be requested to consider the use of mediation and every effort will be made to secure their agreement. An appropriate person who is experienced or well versed in mediation will meet with each of the parties separately to explain the mediation process and its benefits. This person may be from management, the unions or the agreed list of Health Service mediators.

An assigned mediator will meet with both parties, usually separately to begin with, to discuss the alleged offending behaviour. The mediator will then bring both parties together to reach a common understanding and agreement on acceptable future behaviour. A mediated agreement seeks to reach an accommodation between the parties and thereby restore harmonious working relations. A mediated solution will not result in the issues being dealt with under the Disciplinary Procedure. Minimal paperwork and/or records will be generated by this process.



“THE HOSPITAL MANAGER FAILED TO INTERVENE EVEN THOUGH HE WITNESSED ABDUL BEING SUBJECTED TO INAPPROPRIATE BEHAVIOUR AND HE MADE A FLIPPANT RESPONSE WHEN ABDUL EVENTUALLY MADE A COMPLAINT”

## FORMAL INVESTIGATION

If the matter is not resolved locally or through mediation, it may be referred for a formal investigation. At this stage the complainant must set out details of the alleged behaviour in writing including approximate dates and witnesses (if any) and the context in which the alleged behaviour occurred. As in some cases employees refer complaints of bullying/harassment but the behaviour complained of does not fall within the definition of bullying, harassment or sexual harassment, a preliminary screening of the complaint will be carried out prior to establishing a formal investigation. The purpose of the preliminary screening is to decide if the alleged behaviour falls within the definition of bullying, harassment or sexual harassment as outlined in pages 5 to 7 of the Dignity at Work Policy. The preliminary screening will be carried out<sup>1</sup> by a member of the HR department who will decide whether or not it is appropriate to progress the complaint under the Dignity at Work Policy. This assessment will be based exclusively on the written details of the complaint as set out by the complainant.

The employee will be notified in writing of the outcome of the preliminary screening within 7 working days.

If the complaint is deemed not to come within the scope of the Dignity at Work Policy, the employee will be so informed and advised on the appropriate procedure for dealing with the matter (e.g. Grievance Procedure).

If the complaint is deemed to come within the scope of the Dignity at Work Policy a formal investigation will be carried out in accordance with the procedure set out in the Policy.



“THE DIRECTOR OF NURSING TRIED TO DIFFUSE THE SITUATION BY MAKING LIGHT OF SUZANNE’S COMPLAINT. THE OUTCOME OF HIS RESPONSE HOWEVER WAS THAT SUZANNE FELT EVEN MORE AGGRIEVED AND TOOK HER CASE TO A THIRD PARTY”

<sup>1</sup> It is not intended that an investigation will be carried out in order to make this decision.

**TRUST  
IN CARE**

**6**

## MODULE 6

### TRUST IN CARE

Maintaining the dignity of patients and clients is of utmost importance for employees providing/delivering health and social services. People who are using the Health Service can be very vulnerable because of ill health, old age, a physical or intellectual disability or mental health difficulties. When we are responding to their particular needs we must ensure that we do not engage in any form of behaviour which violates their dignity.

Health Service employers and unions jointly developed a **Trust in Care Policy on Upholding the Dignity and Welfare of Patients/Clients and Managing Allegations of Abuse**. This Policy places a strong emphasis on the role of the Line Manager in promoting high standards of care and intervening promptly to address any form of behaviour that undermines the dignity of patients and clients.

The Trust in Care Policy outlines the role of HR tools such as induction, probation and performance management/review in maintaining high standards of care. The Policy also sets out your responsibilities as a manager for communicating the Policy to employees and making employees aware of their duty to be vigilant and to report any concerns regarding the welfare of patients/clients and managing complaints of abuse.

## LEARNING OBJECTIVES



This aim of this module is to help you understand your role in operating the Trust in Care Policy.

At the end of this module you will be able to:

- » Describe the legal framework in which Policy operates
- » Explain what is meant by 'abuse'
- » Utilise HR tools to prevent abuse
- » Communicate the Policy to your employees
- » Manage an allegation of abuse.

## LEGAL FRAMEWORK



In contrast to the other modules in this training programme, the Trust in Care Policy does not derive from a specific piece of employment legislation. The following legislation contains provisions which are relevant to the Policy:

**Mental Health Act, 2001** established the Mental Health Commission to promote, encourage and foster the establishment and maintenance of high standards and good practice in the delivery of mental health services and to protect the interests of those detained under this legislation.

**Part 14 of the Health Act 2007** provides statutory protection for Health Service employees from 'penalisation' in relation to any aspect of their terms and conditions of employment if they report concerns that patients or clients may be put at risk.

**Equal Status Act 2000 and 2004** prohibits discrimination and harassment of service users on any of the nine grounds e.g. making derogatory remarks to a patient or client about their race or age.

**Children First, National Guidelines for the Protection and Welfare of Children** is intended to assist people in identifying and reporting child abuse and to assist professionals and other persons who have contact with children and wish to deal with any concerns they may have in relation to their safety and wellbeing. It provides that all personnel involved in organisations working with children should be alert to the possibility of child abuse and should be informed of their obligations to convey any reasonable concerns or suspicions to the HSE.

## WHAT IS ABUSE?

The term “abuse” can be subject to wide interpretation. For the purpose of the Trust in Care Policy, abuse is considered to be any form of behaviour that violates the dignity of patients/clients. Abuse may consist of a single act or repeated acts. It may be physical, sexual or psychological/emotional. It may take the form of poor or unsatisfactory professional practice at one end of the spectrum through to pervasive ill treatment or gross misconduct at the other.

What may be perceived to be small things can be very undermining of a person’s dignity for example:

- » Calling a person by a nickname
- » Speaking in a “patronising” tone to an adult e.g. “you bold boy/girl”, “little chicken”
- » Threatening the patient/client e.g. “If you don’t eat your dinner your visitors won’t come today”
- » Persistently referring to patients/client using slightly derogatory adjectives e.g. “meanie”, “baldy”, “chubby”
- » Even phrases such as “love” and “pet” can be offensive depending on the patient.

Sometimes employees may have the best interests of the patients/clients at heart but not realise that their behaviour is having a negative impact.

## TEXT CASE STUDY

Tom is a manager in a mental health facility. A new resident, Liam, comes to the centre. During the settling in period, Liam is very down and is clearly pining for his family. To comfort him a few of the staff hug him and kiss him and sometimes they pretend to be different family members. His family see that this behaviour is making their father anxious and distressed so they raise the matter with Tom.

Tom meets with the employees concerned to discuss the matter with them. He tells them that there are other ways of comforting Liam and lifting his spirits without being overly physically demonstrative e.g. asking him if he would like a cup of tea, offering to bring him for a walk, having a chat with him. The employees appreciated being made aware of the impact of their behaviour.

At the other end of the spectrum abuse may include:

- » Sexual contact with a patient/client
- » Use or threat of physical force
- » Overuse of medication
- » Isolation
- » Misuse or misappropriation of property, possessions or benefits.

## COMMUNICATING THE POLICY

Employees should have access to the Trust in Care Policy and be given a copy of the Trust in Care leaflet which gives an overview of the salient provisions of the Policy and outlines the role and responsibilities of employees under the Policy.

You should inform employees that the safety and wellbeing of patients/clients must take priority over all other considerations, including loyalty to work colleagues. You should encourage employees to be vigilant and to report any changes in the behaviour of patients/clients which may indicate that something is wrong.

You should inform employees that if they receive a complaint, witness inappropriate behaviour or have concerns that a patient/client has been abused, is being abused or is at risk of abuse they must report the matter as soon as possible to you or another manager. You should explain to employees that they are not responsible for deciding whether or not abuse has occurred but they do have an obligation to report suspicions or allegations of abuse so that appropriate action can be taken.

Employees should be reassured that if they report concerns:

- » They will be taken seriously
- » They will be protected from the risk of reprisals or intimidation
- » They will be kept informed of action that has been taken and its outcome.

You should advise employees that if they feel inhibited for whatever reason from reporting their concerns to their own manager or if they feel that inappropriate or insufficient action has been taken, they should raise the matter outside of their own management structure.

You should inform employees that if they receive a complaint of abuse from a patient/client, they should establish as much detail as possible including dates, times and any witnesses to the alleged incident. You should make it clear to employees that they must focus on getting a factual account of what happened and avoid asking “leading questions” or “embellishing” the patient/client’s version of events.



“GRÁINNE DISCOVERED THAT JOHN HAD A REPUTATION FOR BEING ‘HEAVY HANDED’ BUT NONE OF HIS COLLEAGUES REPORTED THEIR CONCERNS TO HER”

## ABUSE PREVENTION

As a Line Manager you have a key role in abuse prevention through the active use of the following HR tools:

- » Induction
- » Probation
- » Performance management/review.

### INDUCTION

The induction process provides you with an opportunity to inform new employees of the standards of care and behaviour expected of them including any protocols relating to matters such as:

- » Personal and intimate care
- » Responding to challenging behaviour
- » Appropriate physical contact
- » Boundaries of social interaction with patients/clients
- » Handling of patient/clients' money and personal possessions
- » Conducting clinical examinations/assessments especially those of an intimate nature
- » Medication
- » Control and restraint.

### PROBATION

It is important that new employees establish their suitability during the probationary period. Most new employees work out very well and any problems can be sorted out with extra training or supervision. However, there may be some employees who are not suited to the job and it is important to establish this fact before the probationary period expires.

As a manager you must be satisfied that new employees have established their suitability for the job and demonstrated their ability to adhere to the required standards, including standards of care. If the employee does not demonstrate their suitability you should inform the HR department before the expiry of the employee's probationary period.

### PERFORMANCE MANAGEMENT/REVIEW

Employees should undergo regular performance management and review meetings to provide feedback on their performance and ensure that they are adhering to the required standards of care. This should include providing refresher training and updating them on the topics covered at induction to ensure they adhere to protocols relating to their work.

## TEXT CASE STUDY

Steve is a manager in a children's hospital and has been observing one of the doctors, Ciarán, during ward rounds. He has noticed that Ciarán has a habit of standing at the children's beds making jokes and tickling them until they plead with him to stop. Steve also notices that some of the patients are uncomfortable in Ciarán's presence and duck under the bed covers when they see him approaching.

He suspects that the children are too embarrassed to complain as they do not want to appear to be spoilsports or unduly cranky. Steve arranges a meeting with Ciarán to discuss his behaviour and its impact on the children. Ciarán is very taken aback and replies that he was only trying to be friendly and put the children at their ease. He assures Steve that from now on he will stop tickling them.

### VIGILANCE AND EARLY INTERVENTION

As a manager you have a duty to be vigilant and intervene if you observe any behaviour which is a cause for concern. You should bring the undesirable behaviour to the attention of the employee concerned and outline what is expected from them. You may wish to arrange for the employee to undergo appropriate training or refresher training. What may appear initially to be minor performance issues or breaches of standards may, if not addressed promptly, develop into more serious patterns of behaviour.

#### MANAGE AN ALLEGATION OF ABUSE

If you receive a complaint of abuse, you should ensure that arrangements are made to carry out a **preliminary screening**. The purpose of the preliminary screening is only to ascertain if it is possible that an abusive interaction could have occurred. It is not to establish whether or

not the alleged abuse actually occurred. The elements of the preliminary screening process are as follows:

- » Notify the employee against whom the complaint is made of the details of the complaint and advise him/her that a preliminary screening process is being undertaken. The employee must be advised in advance of his/her right to be accompanied at this meeting by a union representative or work colleague
- » Ensure that the details of the alleged or suspected abuse are documented
- » Where appropriate arrange for a physical or psychological assessment of the patient/client to be carried out
- » Consult with senior colleagues before making a final decision as to whether or not an abusive interaction could have occurred.

## OUTCOME OF PRELIMINARY SCREENING

If, following the preliminary screening of the allegation, it is decided that an abusive interaction **could not** have occurred then no further investigation is warranted. It is important however to put a record of the decision on the employee's personnel file in order to protect their reputation.

If the preliminary screening indicates that an abusive interaction could have occurred then the matter should be referred to senior management who will decide whether a formal investigation into the allegation is warranted.

The allegation will be investigated in accordance with the investigation procedure set out in the Trust in Care Policy.

## OUTCOME OF INVESTIGATION

### WHERE THE ALLEGATION OF ABUSE IS UPHELD:

- » The patient/client who has been the victim of the abuse and, where appropriate, his/her family should be provided with assistance and counselling to ensure their full recovery from the trauma suffered as a result of the incident
- » Where the abuse is found to have occurred, this can have an adverse effect on staff morale. Assistance should be made available to employees who have been affected by the allegation to help them to come to terms with what has happened and to restore a normal working environment.
- » The employee should be advised of what will happen next and his/her right to due process
- » A review of systems should be carried out where deficiencies have been identified.

### WHERE THE ALLEGATION OF ABUSE IS NOT UPHELD:

- » Where the complaint is not upheld, the employee concerned should be assured that his/her career prospects will not be adversely affected by reason of the complaint having been brought against him/her. The employee should be offered counselling and any other support necessary to restore his/her confidence and morale
- » If an employee made the complaint, s/he should be reassured that management appreciates that the complaint was made in good faith
- » A review of systems should be carried out where deficiencies have been identified
- » Where it is found that a report of abuse was brought maliciously, the employee who made the complaint should be dealt with under the Disciplinary Procedure.

# MANAGING FIXED-TERM EMPLOYEES

**7**

## MODULE 7

# MANAGING FIXED-TERM EMPLOYEES

In the Health Service we frequently employ fixed-term (temporary) employees to fill the gaps that arise due to permanent staff being absent on annual leave, sick leave, maternity leave, parental leave, etc. We also require employees to fill vacant posts on a temporary basis pending their permanent filling through open competition and to clear backlogs in particular services. Temporary employees are an invaluable resource to the Health Service and assist us to operate at an optimum level at all times.

All “non-permanent” employees in the Health Services fall within the scope of the **Protection of Employees (Fixed-Term Work) Act 2003**. This Act requires Health Service employers to bring about significant changes to the manner in which temporary employees are treated. Temporary employees are described in legal terms as “fixed-term” employees. The aim of the Act is to provide equal treatment to fixed-term employees and regulates the use of fixed-term contracts. The Act also determines how fixed-term employees acquire automatic permanency status.

It must also be borne in mind that fixed-term employees are doing the same work as permanent colleagues and should perform to the same level. It is therefore vital that the same approach is adopted to the management of all employees, regardless of whether they are permanent or fixed-term, so that they all perform to the same high standards.

Another point to remember is that many employees who commence work on a short-term or temporary basis can eventually become part of our permanent workforce.

## LEARNING OBJECTIVES



When you have completed this module you will be able to:

- » Describe the legal framework
- » State your role in managing fixed-term employees
- » Draw up and issue the correct contracts
- » State how a fixed-term contract becomes a contract of indefinite duration.

## THE LEGAL FRAMEWORK



### THE PROTECTION OF EMPLOYEES (FIXED-TERM WORK) ACT 2003

**The Protection of Employees (Fixed-Term Work) Act 2003 regulates the employment of fixed-term employees.** In this module we will look at the provisions of the Act in detail.

### UNFAIR DISMISSALS ACTS 1977-2007

**The Unfair Dismissals Acts 1977-2007 protects employees with at least 1 year's service from unfair dismissal.** Therefore temporary employees cannot be let go merely because of their temporary status and the termination must be in line with the provisions of the Unfair Dismissals Acts.

### WHAT ARE FIXED-TERM EMPLOYEES?

In legal terms employees are either employed on fixed-term contracts i.e. temporary, or are employed under contracts of indefinite duration i.e. permanent.

All contracts of employment issued to temporary employees should either have a specific termination date or state the specific event which will bring about their termination. In essence fixed-term employees are employed for a **limited period of time**, e.g. from the 01/01/ to the 31/12/ of a given year or a **specific purpose**, e.g. to work under a specific initiative or to fill a post pending its permanent holder returning from his/her career break/sick leave/maternity leave.

It is on this basis that they differ from permanent employees, whose employment in the normal course of events will only terminate upon retirement, or by them resigning from their post or by redundancy.

There are two aspects to the management of fixed-term employees:

- » Ensuring equality of treatment and performance of fixed-term employees
- » Managing the contracts of employment of fixed-term employees

## ENSURING EQUALITY OF TREATMENT AND PERFORMANCE OF FIXED-TERM EMPLOYEES

In the past employers sometimes paid less attention to the employment of fixed-term (temporary) employees than permanent employees due to the mistaken belief that fixed-term employees did not have the same legal entitlements as permanent employees. Attitudes such as those listed below could prevail:

- » S/he was only “temporary” so we did not feel that it was worth the effort;
- » S/he was only temporary so we knew that we could let him/her go when the right opportunity presented itself
- » S/he was only a relief employee so I decided that I would not recall him/her for further work
- » Everyone knew that s/he was not suitable for various reasons, but nobody felt that it was their responsibility to counsel/warn him/her.

Due to these attitudes the employee may not have been made aware that they are not performing to the required standards. Fixed-term employees should, where practicable, undergo the full rigours of the recruitment process to ensure that a suitably qualified candidate is selected. In addition you as a Line Manager should ensure that you apply the same standards to the management of your fixed-term staff as you do to your permanent staff. Not only is this good practice for you as manager, and for the employee; the Protection of Employees (Fixed-Term Work) Act 2003 provides that fixed-term employees are entitled to be treated in the same manner as comparable permanent employees, unless the difference in treatment can be objectively justified.

Employees on fixed-term contracts are entitled to the same terms and conditions of employment as their permanent counterparts. The following are some examples of conditions of employment which should apply equally to fixed-term staff.

- » Fixed-term employees should be provided with an opportunity to undergo the organisation’s **induction programme**. This allows you as a Line Manager to clearly outline what you expect from the employee, both in terms of the organisations’ values and how they are expected to uphold them, e.g. performance standards. It also gives you an opportunity to explain your role to the employee and outline what the employee can expect from you. Where expectations have not been clearly communicated it can cause confusion, conflict, dissatisfaction and poor morale.



“MARGARET REALISED THAT IT IS NECESSARY TO AT LEAST OUTLINE THE ESSENTIAL INFORMATION AND PROTOCOLS TO ALL NEW EMPLOYEES, REGARDLESS OF THE CIRCUMSTANCES”

- » Fixed-term employees should have their **performance monitored** at the beginning of their employment in the same manner that permanent staff who are undergoing probationary periods. This allows you to establish the employee's suitability for the position and help you deal with any deficiencies that may arise.
- » All employees are entitled to the same amount of **annual leave regardless of whether they are on fixed-term or permanent contract**. If a fixed-term employee is employed for less than an annual leave year, they are entitled to the same annual leave on a *pro-rata* basis as their permanent counterpart. e.g. employees on a six-month fixed-term contract are entitled to half the annual leave entitlement of comparable permanent employees.
- » All fixed-term **service** must now be reckoned the same as permanent service for the purpose of access to permanent competitions.
- » All fixed-term employees on **maternity leave are entitled to receive maternity pay**, where it is paid to permanent employees. However should the fixed-term contract expire before the end of the maternity leave, maternity pay will not be paid beyond the expiry date of the contract.
- » While some of the benefits outlined above are standard contractual rights, other benefits serve to enhance the motivation, commitment and morale of employees and therefore assist in both engendering better performance levels and enable staff to achieve their career potential. These include **access to training, performance review, personal development planning or any other treatment which helps the employees to perform the job to the best of their ability**.

## TEXT CASE STUDY

Jane is employed as a temporary Clerical Officer in a busy Admissions Unit. She has been working there on a fixed-term contract replacing a permanent employee who is on a two-year career break. She enjoys her job and has gained a lot of experience from working in a busy department. Her Line Manager Anne has been very pleased with her work to date and finds her to be a very willing employee.

As part of the ongoing training and development of the employees in the department a two-day refresher computer training course was arranged. All employees in the department were asked for their availability to attend except for Jane. When Jane approached her Line Manager Anne to enquire why she was excluded she was told by Anne that as they only had a very limited training budget it was not the policy of the Department to invest money in training temporary staff who would not be around in the hospital in the long-term, as there would not be a sufficient return on the training investment.

(Had she been given the opportunity to attend the training course this would have helped her to improve her performance in her current job and would assist her compete for instance for a permanent job.)

**Q. Do you think that equal treatment should apply in this case?**

**Q. What are the consequences of the decision not to send her on the training course?**

Jane may feel:

- » Demotivated
- » De-valued
- » That although she worked as hard as any of the permanent employees this has not been recognised
- » Obviously her long-term future does not lie in the hospital.

An employer may be able to **objectively justify** different treatment of fixed-term staff. However the grounds for the different treatment must be based on considerations other than the fixed-term status of the employees.

**Statutory leaves** such as maternity leave, parental leave, adoptive leave, Force Majeure leave, annual leave and public holidays all have their own qualifying conditions. The rules governing these entitlements apply in the same manner to fixed-term employees. **(See HSE Terms and Conditions of Employment Document).**

**VACANCIES**

You are also required to formally notify all fixed-term employees of any permanent vacancies that arise in the employment. It is, therefore, particularly important fixed-term employees are informed when permanent posts are advertised. This can be done by way of placing an advertisement in a suitable public location. This obligation applies to promotional posts as well as posts at the same level as the fixed-term employee.

**ISSUING FIXED-TERM CONTRACTS**

Traditionally in the Health Service fixed-term employees were issued with “temporary contracts” which gave no consideration to the purpose or expected duration of their employment. These contracts were frequently renewed on a number of occasions and resulted in situations where employees were unaware of how long they would be kept in their employment. The fixed-term work legislation aims to eliminate the abuse associated with this type of practice, however it does not eliminate the use of fixed-term contracts. It is intended to prevent renewing or using successive fixed-term contracts merely because the employee is a temporary employee. Decisions under the Fixed-Term Work legislation have reinforced the importance of the correct administration of fixed-term contracts. The Act stipulates that very specific information must be communicated to employees in their contract of employment. This obligation extends to the initial contract and any subsequent renewals.

The information that must be stipulated is as follows:

**INITIAL FIXED-TERM CONTRACT**

The legislation now requires you to outline in a temporary employee’s contract what will bring about the termination of their employment. A temporary employee can be employed either for a fixed-term or for a specific purpose. A fixed-term is used where the length of time for which the employee is needed is known in advance. Where a fixed-term employee is employed for a purpose where the length of time for which they will be needed is not capable of being determined in advance of the initial appointment a specific purpose contract should be used. This contract should outline the specific purpose for which they are employed and the specific event which will bring about the contract’s termination. Examples are set out below:

A fixed-term contract will terminate upon reaching a specific time and date

**FIXED-TERM SCENARIO**

Your employment with the \_\_\_\_\_ (Employer) will commence on \_\_\_\_\_ (date).

Your employment is for a fixed-term and will terminate on \_\_\_\_\_ (date).

The Unfair Dismissals Act 1977-2001 shall not apply to your dismissal consisting only of the expiry of your contract on this date.

A specific purpose contract will terminate upon the completion of a specific task or the occurrence of a specific event.

### SPECIFIC PURPOSE SCENARIOS

#### Example 1:

You are employed as a temporary Audiologist pending the filling of the post on a permanent basis through open competition (or the Public Appointments Service). Your employment will terminate when the permanent employee takes up duty.

The Unfair Dismissals Acts, 1977-2001 shall not apply to your dismissal consisting only of the expiry of your contract on the cesser of the said purpose.

#### Example 2:

You are employed to cover the career break of Mr John Smith. Your employment will terminate upon Mr Smith returning to work at the termination of his career break.

The Unfair Dismissals Acts, 1977-2001 shall not apply to your dismissal consisting only of the expiry of your contract on the cesser of the said purpose.

**If the person's employment is terminated at the end of the purpose specified in the contract or on the expiry date of the initial fixed-term contract, i.e. there is no renewal, the employee has no further entitlements under this legislation and s/he will not qualify for a contract of indefinite duration.**

### RENEWING A FIXED-TERM OR SPECIFIED PURPOSE CONTRACT

Sometimes at the end of an employee's initial fixed-term contract there is a further need to retain them in employment as another need arises. Therefore their contracts of employment must be renewed. To renew the fixed-term contract the employer must specify the job and the grounds which will bring about the termination of the contract in writing.

In addition the employer must advise the employee in writing of the **objective reasons** for the renewal of the fixed-term contract, e.g. because another employee will be taking maternity leave, and the reason as to why s/he is not being offered a permanent contract. This information must be set out in writing to the employee no later than the date of the renewal. **Employers cannot retrospectively supply this information to the employee.**

#### EXAMPLE:

A person has been employed on a fixed-term basis to cover a member of staff's maternity leave. The permanent employee has now returned from maternity leave so the purpose for which the fixed-term employee was employed has been fulfilled. However another member of staff has gone on sick leave and you wish to retain the person on a fixed-term basis to cover the vacancy caused by the sick leave. The following detail must be inserted in the renewed contract:

**You are employed to cover for Ms Celia Murphy while she is on sick leave. Your employment with the HSE will terminate when Ms Murphy returns from sick leave. You are not being offered a contract of indefinite duration as Ms Murphy is the permanent holder of this post.**

You should not assume that an employee is aware of the circumstances surrounding the renewal on a fixed-term basis:

E.g. she knew that she was a temp and was only here until the post was filled through public competition.

**OR**

The NCHD knew that s/he was employed in a training post and their contract extension was to facilitate their re-sitting an exam which they had previously failed.

Therefore the practice of automatic renewal of the fixed-term contracts without real regard to the circumstances which give rise to the renewal is **not permitted**. Employers must examine the circumstances of all fixed-term employees when they are drawing up their contracts and clearly establish that it has no option but to renew the contract on a fixed-term basis.

It is frequently asked how the conversion takes place. The answer is that it happens automatically through the operation of the law. It cannot be made dependent on certain conditions by the employer, e.g. subject to satisfactory references or undergoing a medical assessment. It happens without regard to the employee's work performance or the level of qualification they hold. The Line Manager, in reality has no say in the conversion. This reinforces the requirement to monitor the performance of the fixed-term employee at the early stages of their employment, not after they have 4 year's service.

#### ACHIEVING PERMANENCY – AUTOMATIC CHANGE FROM FIXED- TERM TO PERMANENT STATUS

In essence the legislation provides that a fixed-term employee, **whose contract is renewed**, is entitled to a permanent contract once their employment exceeds 4-years.

**For example, an employee whose two year initial fixed-term contract is subsequently renewed will be automatically deemed to have a contract of indefinite duration when a four year aggregate has been exceeded.**

Therefore if a person is kept on, e.g. to cover a long-term sick leave, then covers a maternity leave, then covers a parental leave etc and their total employment exceeds 4 years they are likely to become a permanent employee. Thus when the 4 years have been exceeded the fixed-term designation has no status and the employment contract concerned is now legally a permanent contract.

# SALIENT PROVISIONS OF EMPLOYMENT LEGISLATION

## SALIENT PROVISIONS OF EMPLOYMENT LEGISLATION

### INDUSTRIAL RELATIONS ACTS, 1946-2001

The purpose of the Industrial Relations legislation is to promote harmonious relationships between workers and employers through the establishment of industrial relations machinery designed to help prevent and resolve disputes. Under the legislation employees who are dissatisfied with any aspect of their terms and conditions of employment can refer their dispute to a third party for adjudication.

The disputes resolution machinery established under the IR Acts are as follows:

- » Labour Court
- » Rights Commissioner Service
- » Labour Relations Commission (LRC).

#### RIGHTS COMMISSIONER SERVICE

Rights Commissioners deal mainly with disputes involving individual workers. They are not empowered to deal with disputes concerning rates of pay, hours or times of work or annual holidays of a body of workers. The recommendations of Rights Commissioners are not binding on the parties involved. If either party to a dispute is dissatisfied with the outcome, the decision may be appealed to the Labour Court (whose decision is then binding).

#### LABOUR RELATIONS COMMISSION (LRC)

The LRC has general responsibility for the

promotion of good industrial relations. It provides a Conciliation Service, which assists employers and workers in resolving disputes where direct negotiations have failed. Industrial disputes must normally first be referred to the LRC for conciliation. An Industrial Relations Officer is assigned to assist the parties involved in resolving the dispute.

The LRC is also responsible for issuing Codes of Practice to aid employers maintain good industrial relations practice in their organisations.

#### LABOUR COURT

The Labour Court is regarded as a “court of last resort”. This means that the Court normally investigates an industrial dispute only in situations where no further efforts on the part of the LRC will help resolve the dispute. The Court makes its recommendations setting out the merits of the dispute and the terms on which it should be settled. Except in certain cases (such as appeals against Rights Commissioners’ recommendations) the Court’s recommendations are not legally binding. The Court’s function is to give a considered opinion as to the terms on which the dispute should be settled but the responsibility for the settlement rests with the parties themselves.

### REDUNDANCY PAYMENTS ACTS, 1967-2007

The Redundancy Payments Acts, 1967-2007 impose a statutory obligation on employers to pay compensation to employees dismissed for reasons of redundancy. This arises where an employee’s job ceases to exist and s/he is

not replaced for such reasons as the financial position of the organisation, because there is not enough work, the organisation closes down altogether, or because of reorganisation.

The Acts apply to employees who have at least 104 weeks' continuous service and are over 16 years of age. The statutory lump sum is calculated as follows:

- » Two weeks' pay for each year of continuous employment between the ages of 16 and 66 years. In calculating a week's pay an upper limit (currently €600 per week) is applied; plus
- » An additional week's pay.

## MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973-2001

These Acts provides that employees are entitled to a minimum period of notice from their employer before their employment is terminated. The period of notice to which the employee is entitled will vary according to length of service as follows:

Length of Service	Minimum Notice
Thirteen weeks to two years	One week
Two years to five years	Two weeks
Five years to ten years	Four weeks
Ten years to fifteen years	Six weeks
More than fifteen years	Eight weeks

Employees are obliged to give their employer at least one week's notice of their intention to resign (unless their contract of employment provides for a longer notice period).

The employer or employee may waive the right to notice or accept payment in lieu of notice.

## JURIES ACT, 1976

The Juries Act provides that every citizen aged 18 years or upwards and under the age of 70 years who is entered in the register

of Dáil electors in a jury district shall be qualified and liable to serve as a juror unless disqualified, ineligible or excused.

An employee may be excused from jury service if s/he can show that (a) s/he has served in the three years up to the date that the summons was served, (b) a judge of any court has excused him/her from jury service for a period still current.

The following persons may also be excused if actually practising their profession and registered, enrolled or certified under the statutory provisions relating to that profession:

- » Medical Practitioners
- » Dentists
- » Nurses
- » Midwives
- » Pharmaceutical Chemists.

**An employer is obliged to release an employee for jury service unless it is not practicable because of the nature of the work or service demands. In these cases, an employer must write to the County Registrar requesting that the employee be excused.**

**The Act requires that an employee is paid by the employer for any period of jury service.**

## PROTECTION OF EMPLOYMENT ACTS 1977 – 2007

These Acts provide protection to employees in collective redundancy situations. Employers planning collective redundancies are obliged to supply the employees' representatives with specific information regarding the proposed redundancies and to consult with those representatives at least 30 days before the first notice of redundancy is given to see if the redundancies can be avoided or lessened or their effects mitigated. This consultation must also cover the basis on which it will be decided which particular employees will be made redundant. Employers must also give written notice of their intentions to the Minister for Enterprise, Trade and Employment at least 30 days before the first notice of redundancy is given. There are penalties for failure to comply with these provisions.

## PROTECTION OF YOUNG PERSONS (EMPLOYMENT) ACT, 1996

This Act applies to employees under the age of 18 years. It aims to protect the health of young workers and to ensure that work during the school years does not put a young person's education at risk. The Act provides for maximum working hours and rest periods and prohibits the employment of under-18s on late night work. It requires employers to keep specified records in relation to the employment of young persons.

## UNFAIR DISMISSALS ACTS, 1977-2007

The purpose of the Unfair Dismissals legislation is to provide protection for employees from being unfairly dismissed from their jobs. All Health Service employees who have at least 12 months' continuous service are covered by the Act.

All dismissals are presumed to be unfair unless an employer can demonstrate that there were "substantial" grounds for dismissing the employee and fair procedures were followed.

"Substantial grounds" include:

- » **Capability**  
capability-related dismissals usually centre on issues like lateness and absenteeism
- » **Competence**  
where the employee does not have the ability to carry out the job to the required standards
- » **Conduct**  
where an employee persistently breaches the organisation's rules or engages in a serious act of misconduct e.g. assault
- » **Redundancy**  
where there is no work or a reduction in the kind of work for which the employee was hired or the work is being carried out in a different manner.
- » **Other substantial grounds**  
e.g. where a professional body had struck a person off its register e.g. the Medical Council striking off a doctor.

In addition to substantial grounds, an employer must also follow fair procedures. In order to satisfy the requirement for procedural

fairness, an employer will generally be expected to show that the employee was counselled in relation to his/her shortcomings and given appropriate assistance to reach the required standards. The employer will also have to show that the progressive stages of the Disciplinary Procedure were followed and the employee was in no doubt that his/her continued employment was in jeopardy.

In cases of serious misconduct, an employer must show that it conducted a thorough investigation to establish the facts and afforded the employee an opportunity to respond before reaching a decision to dismiss.

## DATA PROTECTION ACT, 1988-2003

The Data Protection Act, 1988-2003 aims to protect personal information which is defined as any information (even minimum information such as a name, address or e-mail address) about a living individual held either electronically or in paper files. Under this legislation an employer can generally only process information for the purpose(s) known or explained to the person to which the information relates. The information cannot be used for other purposes without the person's consent.

## PAYMENT OF WAGES ACT, 1991

The Payment of Wages Act, 1991 provides a range of rights for all employees relating to the payment of wages. Neither an employer nor an employee can "contract out" of the provisions of this Act. The key rights established under the Act are:

- » A right to a readily negotiable mode of wage payment (cheque, credit transfer, payable order or such other methods that may be added to the list from time to time)
- » A right to a written statement of wages, conditions and deductions, and
- » Protection against unlawful deductions from wages.

The Act defines the type of payments which constitutes "wages" for the purposes of the Act and imposes certain conditions in relation to deductions from wages.

The Act also provides that no deductions from an employee's salary can be made without his/her explicit consent. The employer must give employees an itemised pay statement explaining the nature of any deductions.

The Act allows employers to make the following deductions:

- » Statutory deductions e.g. PRSI
- » Agreed payments authorised by the employee's contract e.g. VHI
- » Deductions for overpayment of wages or expenses
- » Non-payment arising from involvement in a strike or industrial action.

### TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

This Act requires employers to provide employees who have at least one month's continuous service with a written statement setting out particulars of their terms of employment. This statement must be provided within two months of the date of commencement of employment and should include the following information:

- » Name and address of employer
- » Job title/nature of work
- » Place of work
- » Date of commencement
- » Nature of contract (i.e. fixed-term/ specified purpose or indefinite duration)
- » Rate of remuneration
- » Frequency and method of payment
- » Hours of attendance
- » Obligation to work overtime/unsocial hours
- » Sick pay scheme
- » Annual leave
- » Superannuation schemes
- » Periods of notice which the employee is entitled to receive and required to give.

### MATERNITY PROTECTION ACTS, 1994 AND 2004

The Maternity Protection Acts 1994 and 2004 provides protection to employees who are pregnant, have recently given birth or are breastfeeding. Its main provisions include the following:

- » Employees are entitled to 26 weeks' paid maternity leave and 16 weeks' additional (unpaid) maternity leave, subject to compliance with the following **notification requirements:**

Employees must give at least 4 weeks' notice in writing of:

- » Intention to take maternity leave (with medical certificate confirming pregnancy)
- » Intention to take additional maternity leave
- » Intention to return to work.
- » A pregnant employee can begin and end her maternity leave on any day she selects but must take a minimum of two weeks leave before the end of the expected week of confinement and at least 4 weeks' leave after the end of the expected week of confinement
- » Health and safety leave (this only arises if it was not feasible to adjust the employee's working conditions or hours for the duration of the pregnancy or find suitable alternative employment)
- » Paid time off work to attend ante-natal and post-natal medical visits
- » Paid time off for mothers to attend one complete set of ante-natal classes
- » Paid time off for fathers to attend the two ante-natal classes immediately prior to the birth
- » Entitlement to breastfeeding mothers who have given birth within the previous six months to either a reduction in working hours or, where breastfeeding facilities are provided by the employer, breastfeeding breaks without loss of pay

- » Where the child in connection with whom the maternity leave is taken is hospitalized after the expiry of 14 weeks of maternity leave, the employee may request her employer to postpone the maternity leave (both the remainder of the paid maternity leave and / or unpaid additional leave) until such time as the child is discharged from hospital. At that point the employee may take the remainder of her maternity leave
- » An employee in the last four weeks of her maternity leave who has notified the employer of her intention to take additional maternity leave or is already on additional maternity, may, if she becomes sick, request her employer to terminate the additional maternity leave. If the employer has a sick pay scheme the employee may be entitled to avail of the sick pay scheme. However the employee will not be entitled to resume her additional maternity leave following this period of sick leave
- » The right to return to work under the same terms and conditions of employment (this right is conditional on the employee giving written notification of her intention to return)
- » Protection of certain employment rights (excluding remuneration and superannuation) while on protective leave e.g. annual leave, public holidays, incremental credit, seniority.

### ADOPTIVE LEAVE ACTS, 1995 AND 2005

Adoptive leave may be granted to the following:

- » All adopting mothers under a contract of employment
- » All sole male adopters under a contract of employment
- » All adopting fathers under a contract of employment where the adopting mother has died before or during the period for adoptive leave or additional adoptive leave.

An employee is entitled to 24 weeks' adoptive leave and 16 weeks' unpaid leave subject to compliance with the following **notification requirements**:

- » Employees must give at least 4 weeks notice in writing of:
  - » Intention to take adoptive leave (with evidence of placement)
  - » Intention to return to work.

In the case of foreign adoption, some or all or the additional adoptive leave may be taken immediately before the date of placement.

Where the adopting mother dies before the date of placement, the adopting father is entitled to 20 weeks' paid adoptive leave.

The Act provides a number of entitlements to adopting parents including paid time off work to attend pre-adoption classes and meetings. Employees on adoptive leave are also entitled to accrue annual leave and public holidays during adoptive leave (paid and unpaid).

An employee may postpone adoptive leave/ additional adoptive leave in the event of the hospitalisation of the child, subject to the agreement of the employer.

An employee may terminate additional adoptive leave in the event of the employee becoming ill, subject to the employer's agreement.

### ORGANISATION OF WORKING TIME ACT, 1997

The Working Time Act sets out entitlements in respect of annual leave and public holidays and provides for minimum rest periods, a maximum 48 hour working week and other matters relating to working time.

The Act defines 'working time' as any time that the employee is at his/her place of work or at his/her employer's disposal, and carrying on or performing the activities of his/her work.

#### REST BREAKS

Under the Act an employee is entitled to rest periods as follows:

- » 15 minute break after working 4½ hours
- » 30 minute break after 6 hours (inclusive of the 15 minute break)

- » 11 consecutive hours rest in each 24 hour period
- » 24 hours consecutive rest per week, preceded by the daily 11 hours rest.

Employees who are directly involved in ensuring continuity of service e.g. hospital staff, EMTs, are exempt from the strict application of the rest provisions. However, this exemption is conditional on the employer making alternative compensatory rest arrangements for the employees concerned or providing equivalent protection.

### SUNDAY WORK

If an employee is required to work on Sunday, s/he must be compensated by a premium payment or paid time off in lieu or a combination of both.

### MAXIMUM WEEKLY WORKING HOURS

The Organisation of Working Time Act provides for a maximum average working week of 48 hours in a seven day period. The 48 hour week can be averaged over 6 months for Health Service employees.

### NIGHT WORK

Night workers are not permitted to work more than an average of 8 hours in a 24 hour period. The 8 hour limit may be averaged over 2 months. Where night work involves special hazards or heavy physical or mental strain, an employee on night work cannot exceed 8 hours in any 24 hour period.

The Act provides that employees must be given advance notice of their rosters, any changes in their rosters and any obligation to work overtime, i.e. they must have this information so they can plan their lives outside the workplace.

Employers are required to maintain records as proof that certain provisions of the Act are being complied with.

The Act also sets out the statutory annual leave entitlement to which employees are entitled and outlines three mechanisms for calculating annual leave. It provides that employees are entitled to whichever of the following is the greater:

- » 4 working weeks in a leave year in which the employee works at least 1,365 hours

(unless it is a leave year in which s/he changes employment)

#### OR

- » One third of a working week for each month in the leave year the employee works at least 117 hours

#### OR

- » 8% of the hours worked in the leave year, subject to a maximum of four working weeks.

(A "working week" refers to the employee's normal working week).

The legislation stipulates that the onus is on the employer to ensure that employees can avail of their annual leave entitlement in the leave year to which it relates. In exceptional circumstances, annual leave may be carried forward into the first six months of the next annual leave year, provided the employee agrees to defer his/her leave.

The time at which annual leave is taken is at the discretion of the employer, having regard to service requirements and subject to the employee's needs to reconcile work and family responsibilities, and his/her opportunities for rest and recreation. The employer must consult with the employee or his/her representative at least one month before leave is due to commence.

An employee who has worked eight or more months in a leave year is entitled to an unbroken period of two weeks' leave, which may include one or more public holidays.

### FREEDOM OF INFORMATION ACTS, 1997 AND 2003

The Freedom of Information Acts, 1997 and 2003 provide for the right of members of the public to obtain access to records held by public bodies to the greatest extent possible consistent with the public interest and the right to privacy. This legislation provides that each person has a legal right to:

- » access information held by public bodies
- » have official information relating to him/herself amended where it is incomplete, incorrect or misleading
- » obtain reasons for decisions affecting him/herself.

## PARENTAL LEAVE ACTS 1998 AND 2006

The Parental Leave Acts provide that an employee who is the natural or adoptive parent of a child or who are acting *in loco parentis* in respect of a child is entitled to a maximum of 14 weeks unpaid leave to enable him or her to take care of the child.

An employee must have at least one year's continuous service to be entitled to avail of parental leave.

The leave must be taken before the child reaches 8 years of age (16 years of age for a child with a disability).

Employees may take parental leave as one continuous block or in two separate blocks of a minimum of six weeks each. The employee may also avail of parental leave broken up over a period of time (e.g. reduced weekly working hours), subject to the employer's agreement.

An employee must give at least 6 weeks' notice of his/her intention to take leave.

A confirmation document must be prepared and signed no later than 4 weeks before the leave is due to commence. Once the confirmation document setting out the arrangements is signed, it can only be altered by mutual agreement.

Parental leave may be postponed where the granting of leave for the period requested would create operational difficulties owing to the unavailability of a person to carry out the employee's duties, the nature of those duties or the number of employees who are availing of leave during that period. Postponement of parental leave is subject to the employee being permitted to take the leave not later than 6 months after the date on which s/he had proposed to take leave. The employer must consult with the employee before postponing the leave. Parental leave in respect of a particular child may not be postponed more than once. It should be noted that an employer cannot postpone parental leave once the confirmation document has been signed by both parties. The provision requiring parental leave to be taken before the child exceeds the age limit is waived in the event that postponed parental leave would breach these restrictions.

The employee must receive written notification of the postponement at least 4 weeks before the date on which s/he had intended to commence leave. The notice should also specify the reasons for the postponement and the new date of commencement.

An employee on parental leave is entitled to be treated as if s/he had not been absent, so that all his/her employment rights, except the right to remuneration and superannuation benefits, will be unaffected during the leave.

The Act also provides for "force majeure" leave which allows employees to take immediate time off work without loss of pay in the event of an unforeseen injury to or an illness of a close family member where the presence of the employee is indispensable. The maximum force majeure leave that may be availed of is 3 working days in 12 consecutive months or 5 working days in 36 consecutive months.

## EMPLOYMENT EQUALITY ACTS, 1998 – 2008

The Employment Equality Acts prohibit discrimination in employment on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community. The Acts also prohibits sexual harassment and harassment based on these nine discriminatory grounds. In addition the legislation

- » prohibits victimisation
- » allows positive action measures to ensure full equality in practice across the nine grounds.

The following aspects of employment are covered under the legislation:

- » Remuneration
- » Access to employment
- » Conditions of employment
- » Training or experience for or in relation to employment
- » Promotion or re-grading or classification of posts.

An employer is obliged to take “appropriate measures” to enable a person who has a disability:

- » To have access to employment
- » To participate or advance in employment
- » To undertake training,

unless the measures would impose a disproportionate burden on the employer.

## EQUAL STATUS ACTS, 2000 – 2004

The purpose of the Equal Status Acts 2000 and 2004 is to promote equality and prohibit discrimination and harassment in relation to the provision of goods and services.

The grounds covered are the same as those in the Employment Equality Acts 1998 to 2008 viz. gender, marital status, family status, age, disability, sexual orientation, race, religion and membership of the Traveller community.

## CARER’S LEAVE ACT, 2001

The purpose of the Carer’s Leave Act, 2001 is to provide employees with an entitlement of 104 weeks’ unpaid leave from his/her employment to enable him/her to personally provide full-time care and attention for a person who is in need of such care (i.e. the ‘relevant person’). Applications are made to the Department of Social and Family Affairs to decide whether the person for whom the employee proposes to take carer’s leave is a ‘relevant person’. An employee may be eligible to claim carer’s benefit.

The Act applies to all employees who have completed at least 12 months’ continuous service with their employer.

The Act provides that the leave should be taken in either one continuous period of 104 weeks or in one or more periods, the total of which amounts to not more than 104 weeks.

A number of conditions apply where the employee wishes to take Carer’s Leave over a broken period.

An employer may refuse, on reasonable grounds, to permit an employee from taking a period shorter than 13 weeks. The reasons must be specified in writing.

During an absence on carer’s leave, an employee is regarded as still working for all purposes relating to his/her employment and all of his/her employment rights will be unaffected with the exception of rights to remuneration and superannuation benefits. Employees are entitled to accrue annual leave and public holiday entitlements **for the first thirteen weeks only**.

## PART-TIME WORKERS ACT, 2001

The purpose of the Part-Time Workers Act, 2001 is to ensure that part-time employees receive the same conditions of employment as their whole time equivalents on a *pro-rata* basis.

The Act stipulates that a part-time employee, in respect of their conditions of employment, cannot be treated in a less favourable manner than a comparable full-time employee, unless such treatment can be objectively justified. This applies to all benefits including voluntary benefits such as sick pay and VHI. Any non-financial benefits that exist are also covered, e.g. subsidised membership of sports facilities, car parking facilities etc.

Part-time employees are entitled to terms and conditions of employment which are pro-rated according to the number of hours they are contracted to work.

## PROTECTION OF EMPLOYEE (FIXED-TERM WORK) ACT 2003

This legislation provides for the improvement of the quality of fixed-term (temporary) work by ensuring the application of the principle of non-discrimination, i.e. fixed-term / temporary employees may not be treated less favourably than comparable permanent employees (unless such treatment can be objectively justified) and must be provided with the same terms and conditions of employment (other than tenure).

The Act provides that employees who are employed on fixed-term contracts must be informed by the employer of the circumstances which will bring about the termination of their contract, i.e.

- » Reaching a specific date
- » Completing a specific task or
- » The occurrence of a specific event.

These conditions must be specified in writing in the contract of employment, and in the case of a proposed renewal of such a contract the employee must be advised in writing by the employer of the objective reasons / grounds justifying the renewal and the reason for the failure to offer a contract of indefinite duration. This information must be given at the latest by the date of the renewal.

The Act also provides that where fixed-term employees are employed on two or more continuous temporary contracts, the total duration of these contracts may not exceed four years or the contract will be deemed to be permanent unless there is objective justification for the non-granting of indefinite duration status.

### PUBLIC SERVICE SUPERANNUATION (MISCELLANEOUS PROVISIONS) ACT 2004

The Act provides for:

- » The removal of compulsory retirement ages for new entrant public servants and
- » The increase in the minimum age at which pension is payable to 65 years for new entrant public servants.

A "new entrant" means a person who is not serving in a public service body on 31 March 2004 but becomes a public servant on or after 1 April 2004.

The Act stipulates that pension contributions will be payable up to retirement regardless of the age of retirement.

### SAFETY, HEALTH AND WELFARE AT WORK ACT 2005

The Safety, Health and Welfare at Work Act 2005 consolidates and updates the 1989 Act and provides for the health and safety of people in the workplace. This Act sets out the rights and obligations of both employers and employees and provides for substantial fines and penalties for breaches of the health and safety legislation.

Employers have a range of duties under the Act designed to prevent accidents and injuries

and promote employees' wellbeing in so far as is reasonably practicable. Integral to these are the provision of a safe place of work/ equipment/materials/clothing; the provision of any necessary training or instruction; and the prevention of improper conduct which may jeopardise health (including bullying). Employers are required to conduct a hazard identification and risk assessment, and set out in a Safety Statement how they will manage health and safety in the workplace.

The Act also specifies employees' duties which include the requirement to not be under the influence of drugs or alcohol at work; to behave safely and report any defect or unsafe behavior; and to cooperate with the employer in measures designed to promote health and safety (e.g. training, protective clothing, medical assessments).

The Safety, Health and Welfare at Work (General Application) Regulations 2007 detail health and safety requirements relevant to particular issues e.g. night and shift workers and pregnant workers.

### EMPLOYMENT PERMITS ACTS 2003 AND 2006

A non-EEA national generally requires an employment permit to take up employment in Ireland. The application can be made by either the employee or the employer. The type of permit applied for will depend on the occupation and salary. There are four types of employment permits:

- » **The Green Card Permit**  
The Green Card Permit scheme is aimed at highly specialised occupations above specified salary thresholds. A Green Card employment permit is issued for a period of two years. After two years working on a Green Card permit and maintaining lawful immigration status in Ireland, an individual may apply for residence to the Department of Justice, Equality and Law Reform
- » **The Work Permit**  
The work permit scheme applies to occupations not covered by the current list of occupations for which a skills shortage exists