Equality in the Workplace
An Employer’s Guide
2011

“Irish Small and Medium Enterprises Association

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Investing in your future

September 2011

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FOREWORD

All Irish companies, regardless of their size, need to be aware of and address the issue of equality in their company policies. Equality legislation requires that no person is discriminated or treated in a less favourable way than another person on any of the nine grounds mentioned in the equality legislation.

Equality issues, including discrimination, remain significant in the workplace and in the course of employment. Employers therefore should have proactive measures in place to inform and protect their employees and the company. An employer is responsible for all equality issues within the workplace and should deal with equality issues, including discrimination, by having in place effective policies and procedures.

This guide provides companies with the necessary information in order to prevent discrimination from taking place in their workplace, through helping them to prepare their own equality policies and procedures. A business, which has the necessary equality policies in place (equality and diversity policy, equal status policy and bullying and harassment policy), has made their employees aware of the correct behaviour and provided it adheres to these policies, has a first line of defence in case of a complaint against them.

In addition to the legal requirements, there is evidence that initiatives that promote workplace equality and foster diversity can bring significant benefits for both employees and employers. There is a positive relationship between the adoption of equality policies and employee performance outcomes, including reductions in absenteeism, labour turnover, improved employee relations and innovation and creativity. There are also positive outcomes for the employees, such as commitment, job satisfaction, life satisfaction, reduced stress, etc..

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John Ryan
Chairman
ISME
September 2011
SECTION A - EQUALITY IN THE WORKPLACE

This section will deal with issues regarding equality in the workplace. It will explain the meaning of equality, discrimination and harassment, how it can affect various groups of people in employment, what employers should be aware of and what preventive actions employers should implement to prevent discrimination taking place.

Under equality legislation there are nine grounds defined where discrimination is prohibited in employment, including access to employment, terms and conditions of employment, training or experience for, or in relation to, employment and promotion or the re-grading or re-classification of posts.

The equality legislation is governed by the Employment Equality Acts 1998-2008 and prohibits discrimination on the following grounds:

- **Gender** – being male or female (the European Court of Justice has held that discrimination against a transsexual person also constitutes discrimination on the grounds of gender).
- **Civil status** – being single, married, separated, divorced, widowed or in a civil partnership.
- **Family status** – being pregnant, or having the responsibility as a parent for a person under 18 years, or having a responsibility as a parent or the resident primary carer for an adult with a disability who needs care or support on a continuing, regular or frequent basis.
- **Sexual orientation** – being heterosexual, homosexual or bisexual.
- **Religion** – having religious beliefs or having none; the term ‘religious belief’ includes religious background or outlook.
- **Age** – generally, this applies to everybody over 18 (an exception concerns the provision of the protection of young persons and the provisions regarding minimum wage for a young person).
- **Disability** – the term ‘disability’ is broadly defined and covers a wide range of impairments and illnesses, including all physical, sensory, learning and intellectual disabilities and mental health difficulties.
- **Race** - including colour, nationality, ethnic or national origin.
- **Membership of the Traveller Community** – people, commonly called Travellers, who are identified by both Travellers and others as people with a shared history, culture and tradition, identified historically as having a nomadic way of life on the island of Ireland.
In the case of discrimination on the ground of gender discrimination, claims may be brought directly to the Circuit Court or to the Equality Tribunal, whereas claims on the other grounds must be initiated before the Equality Tribunal. Where a claimant chooses to bring a claim directly to the Circuit Court in a gender discrimination case there is no cap on the amount that may be awarded by way of compensation.

Equality legislation applies to:

- All employees, regardless of their length of service.
- Candidates or potential candidates for employment.
- Partners in a partnership.
- All policies and procedures, which affect employees such as recruitment, work conditions, pay, promotions, dismissals, redundancies and retirements.
- All steps leading up to the potential employment of, and the employment of, an individual.

Businesses need to have policies and procedures in place, which adhere to the equality legislation. For instance, during the recruitment process, employers are restricted from asking certain questions which may have a discriminatory impact and are related to the nine grounds of equality, such as:

- What age are you?
- Are you married?
- Do you have children?
- Are you planning to have children?

Similar questions are also not allowed in Job Application Forms.

In advertising the vacancy, employers cannot discriminate on the nine grounds and should not include in the advertisement discriminatory clauses, such as:

- Young and dynamic staff wanted.
- Only males need to apply.
- Only females need to apply.
- Only Irish need to apply.
**DISCRIMINATION**

Discrimination can be both direct and indirect:

- **Direct Discrimination** is the less favourable treatment of an individual on one or more of the nine grounds.
  
  Examples of direct discrimination are:
  
  - Paying men more than women for similar/equivalent work.
  - Not hiring pregnant women.
  - Hiring only non-Irish nationals.
  
  All these examples are not permitted as they are in direct violation of the equality legislation.

- **Indirect Discrimination** occurs when an apparently neutral provision puts persons of a particular group at a particular disadvantage, unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
  
  Examples of indirect discrimination include requiring:
  
  - Fluent excellent English language skills for manual jobs so that non-Irish nationals will not qualify for the vacancies.
  - That as part of the selection process for office jobs, candidates be able to perform a fitness test in order to avoid hiring people with disabilities.
  
  These examples are not permitted as they are in violation of the equality legislation.

**HARASSMENT**

**Harassment** is a form of discriminatory behaviour also prohibited by Equality Legislation. Harassment is defined as any form of unwanted conduct related to any of the nine discriminatory grounds. Harassment occurs where the conduct has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

**Sexual harassment** is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, which has the purpose and effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. Such conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Where an employee is harassed either in the workplace or otherwise in the course of his or her employment by a manager, a fellow employee or a client, a customer or other business contact of the employer, that harassment constitutes discrimination. If a case is taken against the company, the employer will need to show that he/she has taken all reasonable and practicable steps to prevent harassment and address any complaint of harassment brought to their attention.
Victimisation

Victimisation occurs where dismissal or other adverse treatment occurs as a reaction to, for example:

- A complaint of discrimination made by the employee to the employer.
- Any proceedings by a complainant.
- An employee having represented or otherwise supported a complainant.
- The work of an employee having been compared with that of another employee for the purposes of the Equality Legislation.
- An employee having opposed by lawful means an act which is unlawful under the Equality Legislation.
- An employee having given notice of an intention to take any of these actions.

Disability

People with disabilities are a diverse group. They may have a physical, sensory or intellectual disability or a mental health issue, and some may have a combination of these. Their disability may have little impact on their ability to work and take part in society, or it may have some impact, requiring a degree of support, or some kind of specific assistance.

An employer is not required to recruit, retrain, train or promote a person who is not fully competent to carry out the duties concerned. However, the employer, under equality legislation, has the obligation to provide reasonable accommodation to employees with a disability.

Reasonable accommodation is about taking appropriate measures by the employer to allow a person with a disability to perform their core duties on an equal footing with other employees. Appropriate measures should not impose a disproportionate burden on the employer and may include the adaptation of the work environment and equipment, patterns of working time, the distribution or sequence of tasks, the provision of training or integration resources. They do not include any treatment, facility or equipment that the person might ordinarily provide for themselves.

Not all employees who have a disability, or acquire it during the course of employment, will need reasonable accommodation.

Factors to determine whether or not there is a disproportionate burden on the employer are as follows:

- The financial and other costs.
- The scale and financial resources of the employer’s business.
- The possibility of public funding or other assistance.
**Pregnancy**

A large volume of equality case law concerns pregnancy. An employer, who refuses to engage or dismisses a woman, because she is pregnant, commits an act of direct discrimination as pregnancy can only affect women.

Discrimination on the grounds of gender shall be taken to occur where, on a ground related to her pregnancy or maternity leave, a female employee is treated, contrary to any statutory requirement, ‘less favourably than another employee is, has been or would be treated’.

**Maternity Entitlements**

As of September 2011, an employee is entitled to a minimum of twenty-six paid (by social welfare) consecutive weeks maternity leave. The employee may, if so desired, take an additional sixteen weeks leave immediately after the twenty-six weeks at her own expense. The employee must take at least two weeks before the end of the week which the baby is due and at least four weeks after the birth as part of their maternity leave.

**Return to work**

The employee must inform the company in writing at least four weeks before she intends to return to work.

Where an employee takes additional maternity leave, the company must be notified in writing by the employee or someone acting on her behalf, of her intention to do so. This notification must be received by the company no later than four weeks before the end of the maternity leave.

During maternity leave, and extended maternity leave, the employee’s rights, e.g. annual leave, seniority, etc. are preserved and continue to accrue as if she was not absent from work.

**Breastfeeding**

Upon return to work, a breastfeeding mother is entitled to, without loss of pay, at the option of her employer to take a break of one hour, where suitable facilities are provided in the workplace or a reduction of working hours (for up to six months after giving birth, to facilitate breastfeeding). The one hour break may be split into shorter periods of time totalling one hour.

**Parental Leave**

The Parental Leave Act 1998 (Amendment Act 2006) was introduced to allow working parents leave to look after their children. Each parent is entitled to fourteen weeks’ unpaid parental leave for each child up to eight years of age or sixteen years of age in the case of a child with a disability. Generally, the employee must have at
least one year’s continuous service with the employer before he/she is entitled to take parental leave.

A person acting in place of the parents, such as a guardian, is also entitled to parental leave.

Force majeure leave (covered under parental leave) allows limited paid leave to enable employees to deal with family emergencies resulting from the injury or illness of a family member up to a maximum of 3 days in any 12 consecutive months or 5 days in any 36 consecutive months.

An employee is entitled to force majeure leave with pay from his or her employer for urgent family reasons, owing to the injury or illness of any of the persons listed below:

- a child or adoptive child of the employee;
- the spouse of the employee or a person with whom the employee is living as husband or wife;
- a person to whom the employee is in loco parentis;
- a brother or sister of the employee;
- a parent or grandparent of the employee;
- persons in a relationship of domestic dependency, including same-sex partners.

**AGE DISCRIMINATION**

It is unlawful to advertise a job in such a way that the advertisement could reasonably be interpreted as indicating an intention to discriminate. It is discriminatory, for instance, to advertise for a ‘young and dynamic professional’. It was the view of the Equality Officer that the use of the word “young” as a requirement in employment advertisement constitutes discrimination on the age ground (Equality Authority v Ryanair DEC-E/2000/14).

Currently there is no national mandatory retirement age in Ireland. However, employers are permitted to set compulsory retirement ages for their employees under the Employment Equality Acts 1998-2008 (the “Acts”). The Acts also provide for a number of other permissible age limits including:

- A minimum age requirement (not exceeding 18 years) for recruitment to a post.
- Different retirement ages for employees or any class or description of employee.
- A maximum recruitment age to take account of the costs or time involved in training an employee to a standard at which they will be effective in the job, or if there is a need for there to be a reasonable period prior to retirement age during which they will be effective.

There is also a general exemption for different treatment on any of the nine grounds of discrimination in the Acts due to a “genuine occupational requirement”. In
theory, this could arise where age limits are required because of the nature of the post or the conditions in which the job is performed. For example, there is an earlier retirement age set for firemen as there is an occupational requirement for physical strengths and fitness, which people could find difficult to perform after a certain age and for safety reasons an age limit has been introduced.

It does not constitute discrimination on the grounds of age for an employer to set a retirement age.

**Vicarious Liability**

Employers are liable for anything done by an employee in the course of his or her employment, unless the employer can prove that he or she took reasonable practicable steps to prevent the discrimination. This is called vicarious liability and is an important responsibility for any employer.

An example of vicarious liability is where an employee discriminates against a foreign employee of the company by calling him names, referring to his country of origin. Whether this incident happened in the workplace or in a work related function outside the workplace, the employer is responsible.

If a company wants to protect itself, it will need to put in place measures to prevent discrimination, such as:

- An equality policy.
- A bullying and harassment policy.
- An equal status policy.
- Proof that employees received a copy of the policies or that employees had easy access to the policies and understand the policies.
- Proof that managers and supervisors were trained regarding equality.
- Proof that the policies were explained to employees and that they were made aware of and understand their responsibilities.

Please note that vicarious liability can also apply where contractors, self-employed people in the workplace and employees of companies who regularly visit the workplace act in a discriminatory manner, unless the company has given and explained the company equality policies to them.

Once the company becomes aware of potential issues, the person designated to deal with equality should speak to the individual concerned and establish what happened, what is necessary to resolve the issue and document the discussions.

If there are breaches of the equality policies, the employees, customer or visitor can bring a claim against the business through the Equality Tribunal in the first instance or to the Rights Commissioner, Labour Court or Circuit Court.
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Equality Tribunal
The Equality Tribunal provides a statutory framework whereby they mediate and/or investigate claims of unlawful discrimination in accordance with the provisions of the Equality Acts. The Equality Tribunal now has the unique responsibility for mediating and investigating complaints of unlawful discrimination.

The jurisdiction of the Tribunal is wide ranging and includes complaints in relation to employment, occupational benefits, e.g. pensions, and equal status, i.e. access to goods and provision of services, with two exceptions:

- Claims in relation to registered clubs and licensed premises are dealt with by the District Court under the Intoxicating Liquor Act 2003.
- Complaints in relation to employment discrimination on the grounds of gender have an option of seeking redress for unlawful discrimination from the Circuit Court.

Burden of Proof
In claims of discrimination on all nine grounds, including indirect discrimination, victimisation, harassment and sexual harassment, where facts are established by a complainant, the onus is on the employer to show that they took reasonable steps to prevent the discrimination. This can only be done by having a policy in place and being able to prove that the employee received a copy, the policy was explained to the employee and that the policy was implemented.

If a company is found not to have complied with equality legislation resulting in discrimination against employees, customers and/or contractors, the company may face litigation and may have to compensate victims of the discrimination with up to 2 years pay or, in the case of gender discrimination taken directly to the Circuit Court, no maximum cap.

In the following sections the guide outlines the different policies regarding equality, which are necessary for a company to have in order to protect itself. Not having these policies will make an employer liable for any equality and discrimination claim:

- Equality Policies – section B.
- Bullying and Harassment – section C.
- Equal Status Policy – section D.
SECTION B - EQUALITY POLICIES

In creating an equality policy, there are a number of issues which need to be taken into consideration. Firstly, there is no equality policy that fits all organisations. Each equality policy should be written in a way that reflects the culture of the organisation in question, uses that organisation’s language and terminology and is linked to other relevant policies within the organisation.

Secondly, remember that producing an equality policy means not only that employees will expect that the policy is adhered to but also that in case of legal proceedings, legal institutions such as the Equality Tribunal, Rights Commissioners Services, Employment Appeals Tribunal and the Labour Court will also look to see that the policy has been implemented. At a minimum, therefore, the policy needs to demonstrate clearly how the organisation complies with all relevant legislation.

Supporting questions
When drafting the policy, consider the following questions:

- Who needs to be involved in generating the policy (HR, senior managers, unions)?
- Is there a set structure for policies in the organisation?
- What is the purpose of the equality policy?
- How will the equality policy link to the organisation’s vision, mission, values, business plan, other policies?
- What rights do people have under the equality policy?
- What responsibilities do people have under the equality policy?
- What will the policy mean in practice? How will managers and other employees know what they need to do in order to be compliant with the policy? How will employees be made aware of their responsibilities under the policy?
- What specific activities will the organisation and employees have to do in order to adhere to the policy?
- How will people know where to find or how to access the policy? What sources of support are there around the policy?
- What consultation process needs to be undertaken, (e.g. employees, managers, HR personnel)?

Key questions

- What is the organisation’s commitment to equality and diversity?
- What types of discrimination does the policy seek to protect against?
- Who is covered by the policy?
- What areas are covered?
CONTENT
When writing your policy, describe the organisation’s position on equality – for example, its commitment to equality, why the organisation has an equality policy and whom the policy affects. You should also include in this section what the policy means in practice, for example, providing equal access to training and development opportunities for all.

RESPONSIBILITY
In your policy, it is important to indicate to whom the policy applies and who is responsible for implementing the policy. This is where the employer should indicate that the organisation expects all employees to comply with the policy and whether particular employees, or groups of employees, have specific responsibilities to uphold the policy. The policy should also indicate what will happen if the policy is breached.

DEFINITIONS
The company may also want to link the equality policy to other related policies within the organisation, for example the harassment and bullying policy or grievance policy. In doing so, it is likely that you will make reference to a range of equality related terms. In order to make the policy user-friendly, you should also provide key definitions.

Vicarious Liability
Vicarious liability means that employers are liable for anything discriminatory done by an employee in the course of his or her employment, whether in the workplace or not, unless the employer can prove that he or she took reasonable practicable steps to prevent the discrimination. This puts an emphasis on any employer to, not only have the necessary policies in place but also to inform the employees and make them aware of the required behavioural aspects. The employer needs to able to prove that he/she did inform the employees.

TRANSLATION AND INTERPRETATION
If the employee is a non Irish national the employer needs to ensure that the employee completely understands the policies of the company and the terms and conditions of his/her employment. To ensure this, the employer might have to translate some of the company policies or the work contract into their native language. Some employers might decide to have information sessions with interpreters and to document such events. In a similar manner, alternative formats or a sign language interpreter may be needed for employees with disabilities, e.g. hearing impairment, vision impairments, etc.

IMPLEMENTATION
In this section the company can outline what steps the organisation takes to make sure this policy is implemented. Remember, this is the opportunity to record what the organisation actually does in reality, not what would be done in an ideal world.
It is important that the company appoints someone who is responsible for equality and all its company equality policies. This contact person could be a supervisor, manager or the owner manager, depending on the size of the company. In bigger companies this could be combined with an equality committee who will meet a number of times a year to review equality issues.

The designated person or equality officer should keep records of all complaints, be they informal or formal, from employees or clients or contractors. All the possible complaints need to be checked to see if a pattern emerges, e.g. a number of complaints in a certain department or a number of informal complaints regarding the same employee. It would then be wise to make that employee aware of the correct behaviour towards others.

The company will need to demonstrate what the organisation has done to ensure the policy is implemented – that it is understood by employees and managers and that is implemented through an action plan.

An example of an action plan could be:

- Appointing a contact person.................................................................August
- Setting up a bullying and harassment policy .......................................September
- Giving all employees a copy of the bullying and harassment policy.................................................................October
- Conducting a Q & A session with employees regarding bullying and harassment.................................................................October
- Giving the bullying and harassment policy to contractors...........October
- Training for all managers and supervisors regarding bullying and harassment.................................................................November
- Keeping notes on any informal or formal complaints..............Ongoing

If there are breaches of the equality policies the employee, customer or visitor can bring a claim against the company through the Equality Tribunal, Rights Commissioner, Labour Court or Circuit Court and seek redress.

**REDDRESS**

The redress available according to the Equal Status Act and Employment Equality Act in employment cases is one or more of the following, as appropriate:

- An order for equal treatment.
- An order for equal pay (plus arrears, up to a maximum of three years, where appropriate).
- An order for compensation of up to 2 years pay (up to €12,697 for someone who is not an employee of the respondent as of September 2011).
An order for a specified person/organization/company to take a specified action, e.g introduce equality policies, equality action plans, equality training, etc..

In equal status cases, the redress available is either, or both, of the following, as appropriate:

- An order for compensation of up to €6,349 (as of September 2011).
- An order for a specified person/organization/company to take a specified action e.g introduce equality policies, equality action plans, equality training, etc..

For sample Equality and Diversity Policy and Equal Status Policy see Appendices 1 and 3.

All decisions and recommendations by the Equality Tribunal are published on its website, www.equalitytribunal.ie
SECTION C - BULLYING AND HARASSMENT

Harassment is a specific form of discriminatory behaviour linked to any of the nine grounds of the equality legislation. Bullying, however, comes under health and safety legislation but is normally handled in the same policy as harassment. It is a behaviour that is not necessarily linked to the nine grounds.

The nine grounds of equality are gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller Community; these are explained on page 1 of this booklet.

HARASSMENT

Harassment of individuals related to their gender, civil status, family status, sexual orientation, religious belief, age, disability, race or membership of the Traveller Community is regarded as a form of discrimination and is therefore illegal. Harassment is defined as ‘unwanted conduct related to any of the grounds covered by the legislation, which takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment’.

Harassment is any act or conduct including spoken words, gestures or the production, display or circulation of written words, pictures or other material if the action or conduct is unwelcome to the employee and could reasonably be regarded as offensive, humiliating or intimidating.

Many forms of behaviour may constitute harassment, including:

- Verbal harassment - jokes, comments, ridicule or songs.
- Written harassment - including faxes, text messages, emails or notices.
- Physical harassment - jostling, shoving or any form of assault.
- Intimidating harassment - gestures, posturing or threatening poses.
- Visual displays such as posters, emblems or badges.
- Isolation or exclusion from social activities.
- Pressure to behave in a manner that the employee thinks is inappropriate, for example being required to dress in a manner unsuited to a person’s ethnic or religious background.

Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, which has the purpose and effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. Such conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.
Many forms of behaviour can constitute sexual harassment. It includes examples like those contained in the following list, although it must be emphasised that the list is illustrative rather than exhaustive. **A single incident may constitute sexual harassment.**

- **Physical conduct of a sexual nature** - This may include unwanted physical contact such as unnecessary touching, patting or pinching or brushing against another employee’s body, etc.

- **Verbal conduct of a sexual nature** - This includes unwelcome sexual advances, propositions or pressure for sexual activity, continued suggestions for social activity outside the work place after it has been made clear that such suggestions are unwelcome, unwanted or offensive flirtations, suggestive remarks, innuendos or lewd comments.

- **Non-verbal conduct of a sexual nature** - This may include the display of pornographic or sexually suggestive pictures, objects, written materials, emails, text-messages or faxes. It may also include leering, whistling or making sexually suggestive gestures.

- **Sex-based conduct** - This would include conduct that denigrates or ridicules or is intimidating or physically abusive of an employee because of his or her gender such as derogatory or degrading abuse or insults, which are gender-related.

It is important to note that the Tribunal and/or courts will take into consideration the impact of the harassment on the affected individual. While they consider the reasonableness of the behaviour of the alleged perpetrator, the intentions of the alleged perpetrator are irrelevant. For example, an individual may regard remarks made to a colleague about their skin colour, sexual orientation or gender as ‘harmless banter’, but if the colleague finds them offensive, then legally this may constitute harassment.

**BULLYING**

Bullying is a form of harassment and is defined as:

Repeated inappropriate behaviour, direct or indirect, 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, which could reasonably be regarded as undermining the individual's right to dignity at work.

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

A pattern of the following behaviours are examples of types of bullying:

- Exclusion with negative consequences.
- Verbal abuse/insults.
- Physical abuse.
• Being treated less favourably than colleagues.
• Intrusion – pestering, spying or stalking.
• Menacing behaviour.
• Intimidation.
• Aggression.
• Undermining behaviour.
• Excessive monitoring of work.
• Humiliation.
• Withholding work-related information to undermine a colleague or affect her/his work performance.
• Repeatedly manipulating a person’s job content and targets.
• Blame for things beyond the person’s control.

This list is not exhaustive.

**CONSEQUENCES**
The consequences of bullying and harassment could be that employees feel uncomfortable at their workplace, which will have a detrimental effect on the company. For example:

• Affect the integrity of people at work.
• Adversely affect job performance.
• Make the recipients fearful of going to work.
• Cause recipients to leave their employment.
• Seriously affect recipients health by causing depression, stress and loss of self esteem.

All of this could affect production and services of the company and is a no win situation for employer and employees.

**Vicarious Liability**

Not having an equality policy in place, such as a bullying and harassment policy, could put the company at a serious risk through vicarious liability. Employers are liable for anything done by an employee in the course of his employment, unless the employer can prove that he took the reasonable practicable steps to prevent discrimination. The minimum requirement is to prove that the company has a bullying and harassment policy.

Because of vicarious liability the employer needs to be able to prove that employees received the bullying and harassment document and that they understood the policies. It is wise to have employees sign a form where they confirm receiving the bullying and harassment policy and that the policy was explained to them. This also
applies to contractors, or employees of contractors or visitors. The company needs to be able to prove that the policies have been read and understood by all parties affected.

It is important to consider that equality, harassment and bullying in the workplace extends beyond immediate working hours and premises to include work-related social events. This covers such events as Christmas parties, office parties and departmental drinks at the pub or visiting a conference on behalf of the company.

**TRANSLATION AND INTERPRETATION**

If the employee is a non-Irish national, the employer needs to ensure that the employee completely understands the bullying and harassment policy through a translation into their native language or an information session through an interpreter.

Alternative formats or a sign language interpreter may be needed for employees with disabilities, e.g. hearing impairment, vision impairments, etc..

**OUTSIDE ASSISTANCE**

It can be valuable for small companies, and those with complicated complaints, to get outside assistance to investigate the formal complaints. Especially in small companies, managers could be too close to the complainant and alleged harasser to make an independent assessment of what exactly happened. A qualified outside investigator could help to make an independent assessment of what happened, especially if the manager is mentioned in the complaint.

**CODES OF PRACTICE**

There are a number of Codes of Practice on sexual harassment, harassment and bullying which aim to give practical guidance to employers and employees on how to prevent sexual harassment and harassment and bullying at work and how to put procedures in place to deal with it. Invariably company policies introduced should be consistent with the requirements of the code.

The Code of Practice on Harassment and Sexual Harassment from the Equality Authority deals with harassment and should be used for harassment cases. There are two Codes of Practice on Bullying; one is from the Department of Jobs, Enterprise and Innovation and the other is from the Health and Safety Authority.

The Codes of Practice on Bullying, Harassment and Sexual Harassment aim to give practical guidance to employers, employers’ organisations, trade unions and employees on:
• What is meant by bullying in the workplace.
• What is meant by sexual harassment and harassment in the workplace.
• How it may be prevented.
• What steps to take if it does occur, to ensure that adequate procedures are readily available to deal with the problem and to prevent its recurrence.

**Status**

The codes thus seek to promote the development and implementation of policies and procedures which make working environments free of bullying, sexual harassment and harassment and in which the dignity of everyone is respected.

The provisions of these codes are admissible in evidence and if relevant may be taken into account in any criminal or other proceedings before a Court, proceedings before the Labour Court, the Labour Relations Commission, the Employment Appeals Tribunal, the Director of Equality Investigations and a Rights Commissioner.

If a complaint was brought against an employer, the employer needs to be able to prove that he/she followed the guidelines of the codes of practice.

Employers who take the steps that are set out in the code to prevent their employees from committing acts of unlawful sexual harassment or harassment or to reverse the effects of it and to prevent its recurrence, may avoid liability from such acts in any legal proceedings brought against them.

**Application and adaptation of the code**

The codes are intended to be applicable to all employments, employment agencies and trade unions, employer bodies and professional bodies that are covered by the Equality Acts. Employers are encouraged to follow the recommendations in a way which is appropriate to the size and structure of their organisation. It may be relevant for small and medium enterprises to adapt some of the practical steps to their specific needs. Any adaptations that are made, however, should be fully consistent with the code’s general intention.

It is essential that employers have in place accessible and effective policies and procedures to deal with bullying and sexual harassment and harassment. These measures should be agreed by the employers, their employees and the relevant trade union or employee representatives, if applicable. In so far as practicable, clients, customers and business contacts should also be consulted.
If an employee has been bullied or harassed the employee can seek redress and one or more of the following sanctions, as appropriate, can be imposed on the employer:

- An order for equal treatment.
- An order for equal pay (plus arrears, up to a maximum of three years, where appropriate).
- An order for compensation of up to 2 years pay (up to €12,697 for someone who is not an employee of the respondent as of September 2011).
- An order for a specified person/organization/company to take a specified action.

Information on the different codes of practice can be found on the following websites:

- Bullying

- Harassment and Sexual Harassment

See sample Bullying and Harassment Policy in Appendix 2.
SECTION D - EQUAL STATUS

In line with the Equal Status Acts, 2000-2008, employers are liable for discriminatory acts by them or of an employee with regard to access to goods and services provided, unless they can prove that they took reasonable steps to prevent the conduct. The Acts seek to:

- Promote equality.
- Prohibit certain kinds of discrimination.
- Prohibit sexual harassment and harassment.
- Prohibit victimisation.
- Require reasonable accommodation of people with disabilities.
- Allow a broad range of positive action measures.

It is therefore extremely important that relevant policies are introduced and that all employees, including senior management, are aware of their obligations under these policies.

Equal Status policies deal mostly with discrimination outside the employment context, including:

- Education.
- Provision of goods (free or bought).
- Provision of services (free or bought).
- Accommodation.

Services are defined broadly to include:

- Access to public places.
- Banking and insurance services.
- Entertainment.
- Hotels.
- Restaurants.
- Facilities for transport and refreshments.

Equal Status applies to people, companies and organisations who:

- Buy and sell a wide variety of goods.
- Use or provide a wide range of services.
- Obtain or dispose of accommodation.
- Attend at, or are in charge of, educational establishments.

This implies that the equality legislation applies also to customers, visitors, contractors and business relations and that they all need to be treated equally and not be discriminated against under the nine grounds of equality. The nine grounds of equality are gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller Community; these are explained on page 1 of this booklet.
DISABILITY - REASONABLE ACCOMMODATION

The following must do all that is reasonable to accommodate the needs of a person with a disability:

• A person selling goods or providing services.
• A person selling or letting accommodation or providing accommodation.
• Educational institutions.
• Clubs.

This involves providing special treatment or facilities in circumstances where, without these, it would be impossible or unduly difficult to avail of the goods, services, accommodation, etc.

However, the organization concerned is not obliged to provide special facilities or treatment when this costs more than what is called a nominal cost. What amounts to nominal cost will depend on the circumstances such as the size and resources of the body involved. If the State provides grants or aids for assisting in providing special treatment or facilities, there may be an onus on the service providers, etc. to avail of these grants.

EXEMPTIONS/Discrimination

The Equal Status Acts set out particular forms of discriminatory conduct that are prohibited in law. They do not provide protection for all forms of discrimination that may occur in the provision of goods, facilities or services, or for grounds other than the nine listed above. For example, a company needs to act reasonably regarding provisions for people with disabilities. If, for instance, the cost would be too high, then the company cannot be expected to address all issues regarding the disability and this would be seen as an exemption. Discrimination has a specific meaning in the Acts and there are different types of discrimination covered, including direct discrimination, indirect discrimination and discrimination by association.

Direct discrimination is defined as the treatment of a person in a less favourable way than another person is, has been or would be treated, in a comparable situation on any of the nine grounds.

Examples of direct discrimination are:

• Customers stated that they went into a hotel to have a meal and a drink. They said that they ordered food but before it was served they were asked to leave. The customers believe that service was refused because they were recognised as Travellers. The Equality Tribunal agreed with this view (Mongans v The Waterside Hotel Donabate, DEC-S2003-008/014).
• A customer and their son, who suffers from autism and uses a guide dog, were in a shop for some groceries. At the checkout they were asked to leave the shop as the shop did not allow dogs. The Equality Tribunal agreed
with customer that the son was discriminated against on the grounds of his
disability (A Parent (on behalf of her Son) v a Supermarket, DEC-S2011-015).

**Indirect discrimination** happens where there is less favourable treatment by
impact or effect. It occurs where people are, for example, refused a service not
explicitly on account of a discriminatory reason, but because of a provision, practice
or requirement which they find hard to satisfy. Unless the provision is objectively
justified by a legitimate aim and the means of achieving that aim are appropriate
and necessary. Examples of indirect discrimination are:

- A person with a visual impairment uses a free travel pass on Irish Rail DART
  services to travel to and from work each day. He is required to queue for a
  travel ticket for each day of travel and is prohibited from acquiring a ticket
  in advance, for example the evening before, as other customers who do not
  avail of the free travel pass are allowed to do. This constitutes discrimination
  under the Acts and a failure to provide reasonable accommodation to a
  person with a disability. A case on indirect discrimination was established
  (Mr. Sean Thompson v Iarnrod Eireann, DEC-S2009-015).

- A practice by a bank of treating applicants for its credit card differently when
  they are not in permanent employment is indirectly discriminatory against
  people not in permanent employment. As women are more likely not to be
  in permanent employment this is “an apparently neutral provision” which
  would put women at a particular disadvantage compared to men (O’Keefe
  v Irish Life & Permanent t/a Permanent TSB, DEC-S2010-001).

**Discrimination by association** happens where a person associated with another
person is treated less favourably because of that association due to one or more of
the discriminatory grounds. Examples of discrimination by association are:

- Not serving a well known defender of gay rights in a hotel because of his
  association with gay people.

- When a person who is not a Traveller but who had defended Travellers in
court is asked to leave a pub.

**Sexual Harassment and Harassment**

Sexual harassment and harassment in the provision of goods and services,
accommodation and educational establishments is prohibited (see definitions page 1).

A person (‘the harasser’) shall not harass or sexually harass another person (‘the
victim’) in any of the following circumstances:

- The victim uses or seeks to use goods or services provided by the harasser.
- The victim obtains, or proposes to obtain, accommodation or related
  services from the harasser.
- The victim is a student at, or has applied for admission to, or seeks to
  avail of any services offered by an educational establishment at which the
  harasser is in a position of authority.
Equality in the Workplace
An Employer’s Guide

More information on sexual harassment and harassment is available on page 13.

Normally the manager or employer, will be liable for the sexual harassment or harassment unless he or she took reasonably practicable steps to prevent it.

COMPLAINTS
If there are breaches against the equal status policy, the customer or visitor can present a complaint to the management of the company or organisation. If the complaint cannot be resolved at this level, the customer or client has the right to bring a claim against the company through the Equality Tribunal or a relevant Ombudsman.

REDRESS AVAILABLE
In Equal Status cases, the redress available in the Equality Tribunal is either, or both, of the following, as appropriate:

- An order for compensation of up to €6,349 (as of September 2011).
- An order for a specified person/company/organisation to take a specified action.

Liability
An employer is liable for anything done by an employee in the course of his or her employment, unless the employer can prove that he or she took reasonable practicable steps to prevent the discrimination. This puts an emphasis on the employer to, not only have the necessary policies in place regarding Equal Status, but to inform the employees and make them aware of the required behavioural aspects. The employer needs to be able to prove that he/she did inform the employees. If there are breaches against the equality status policy the customer or visitor can bring a claim against the company through the Equality Tribunal or Circuit Court and seek redress.

Redress Available
In Equal Status cases, the redress available is either, or both, of the following, as appropriate:

- An order for compensation up to €6349 (as of September 2011).
- An order for a specified person to take a specified action.
APPENDIX 1 – SAMPLE EQUALITY AND DIVERSITY POLICY IN THE WORKPLACE

This a sample Equality and Diversity Policy which can be used for your company. You need to check that all the sections apply to your organisation. The equality policy needs to be distributed and explained to all employees, contractors and suppliers and they need to sign a document confirming that they have read the policy and that they understand the policy. This signed document needs to be kept in a safe place for future reference.

[NAME COMPANY] EQUALITY AND DIVERSITY POLICY

[Company name] (herein after referred to as “the company”) is committed to managing equality and diversity as an employer and a prospective employer in line with the requirements of the Employment Equality Acts, 1998 - 2008. In line with this commitment, our policy is to prevent all unlawful and unfair discrimination and to value the differences that an equal and diverse workforce brings to the organisation.

It is our policy to treat all partners, employees, prospective employees, contractors, and suppliers fairly and equally regardless of their gender, civil status, family status, sexual orientation, religious belief, age, disability, race, membership of the Traveller Community or any other irrelevant factor. Furthermore, the company will adhere to the legislation which provides equality in the case of maternity leave, part-time and flexible work arrangements.

This policy applies to recruitment and selection, terms and conditions of employment (including pay, promotion, work assignment, training and transfer), redundancy and every other aspect of employment.

The manager has overall responsibility for the application of the policy across the organisation. However, all employees have a legal duty not to discriminate against other staff members, potential employees and clients, and are expected to promote the spirit of the diversity and equal opportunities policy to the full.

We request that all employees of the company take individual responsibility to ensure they comply with this policy and fully support and promote the principles of diversity and inclusivity. Any breach or alleged breach of the policy will be taken seriously, investigated fully and may result in action under one or more of the organisation’s harassment, disciplinary or grievance procedures. In serious cases such behaviour may constitute gross misconduct and may result in dismissal.

The company will monitor and review the effectiveness of this policy and associated procedures. It will also develop and offer work arrangements that help to meet the needs of the diverse workforce in balancing family and work obligations.

This policy will be communicated at every level and site of our organisation and to all workers, free-lance workers, agents, suppliers and contracting agencies. All employees should be aware that the company is an Equal Opportunities Employer.
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Should employees feel that they have not been treated fairly with regard to employment equality, they may utilise the company’s grievance procedure or equality procedures. Employees will not be penalised, victimised or treated less favourably because of pursuing rights by way of taking action, supporting action or giving notice of intention to take support action under equality legislation.

Conditions of Employment
Terms and conditions of employment will be applied equally to all employees.

The organisation seeks to provide equal pay for like work.

The organisation endeavours to provide a work environment free from discrimination, harassment, sexual harassment and bullying.

Promotion and Progression
It is our policy to encourage selection, promotion and progression of staff within the company regardless of their gender, civil status, family status, religious beliefs, race, age, sexual orientation, disability or membership of the Traveller Community. The company is committed to monitoring the promotion process, where feasible, to assess equality of opportunity in this area.

• The company will provide equal opportunities for the training and development of all employees, and will ensure that, where possible and applicable, employees with disabilities are facilitated in making a full contribution through reasonable accommodation.

• The company will give equal access of opportunity to all employees for promotion in line with the company’s policy.

• Staff vacancy notices will invite applications for promotional vacancies in a non-discriminatory manner.

• Applicants will be assessed solely on relevant qualifications, relevant knowledge, work experience and competencies.

• Selection criteria and procedures will be reviewed from time to time to ensure that employees are selected, promoted and treated on the basis of their relevant merits, abilities and job performance.

Recruitment

• All applicants will be assessed only on the basis of merit through job-related criteria such as skills, qualifications, competencies and work experience.

• The recruitment process will be carried out objectively and individuals judged on their merit and their ability to do the job.

• We will put a system in place to ensure that those involved in the recruitment process do not make assumptions about the capacity of individuals because of any of the nine grounds of the equality legislation and will not put those individuals at a disadvantage regarding the vacant position.
• All advertisement and recruitment literature will reflect the company’s commitment to employment equality. The company is an Equal Opportunities Employer.

• We will advise employment and recruitment agencies and agents of our organisation’s commitment and policy position on employment equality across the nine grounds of the equality legislation and our shared duties with regard to the equality legislation.

• We will conduct recruitment interviews on the basis of ability, so that all candidates of equal merit have an equal opportunity to compete.

• We will provide interviewers with detailed guidance in relation to non-discrimination and equal opportunity issues in relation to recruitment.

• There will be no assumptions that individuals because of any of the nine grounds of the equality legislation possess characteristics, which might put them at a disadvantage or advantage regarding the vacant position.

Development & Training
Development and training form an integral part of one’s career path and the company will endeavour to offer the same opportunities to all employees to seek and achieve high standards of performance.

• Training, information and briefings in relation to equality of opportunity will be provided to staff at all levels of the organisation on a phased basis. The training will be organised in a manner that is accessible to all employees.

• We will ensure that all training and work experience opportunities are open, available and accessible to full-time and part-time employees.

• Access to training will not be refused to employees because of current or future domestic responsibilities or career plans.

• Management will help identify training needs for improvements in job performance and experience and encourage all staff to undertake self-development.

Reasonable Accommodation
Reasonable accommodation shall be provided in order to facilitate a person with a disability to apply for positions with the company, to attend for interview, to engage in employment and to participate in training activities as applicable.

This commitment is subject to such reasonable accommodation not presenting a disproportionate burden on the organisation, unless otherwise deemed appropriate.

Dismissal and Redundancy
The company will keep redundancy and dismissal procedures under review to ensure that no direct or indirect discrimination on any of the nine grounds exist. This ongoing review will be carried out in consultation with employees and/or employee representatives.
Implementation

Senior management is responsible for implementing this policy. Line managers and others in positions of authority should seek to ensure that employees do not experience discrimination, that diversity is accommodated and that equality is promoted.

All staff should cooperate with the development and implementation of policies, procedures and practices to eliminate discrimination, accommodate diversity and promote equality. Employees who do not adhere to the Equality and Diversity Policy could be subject to the company disciplinary procedure up to and including dismissal.

Non-employees such as staff of companies conducting business with the organisations and customers should cooperate with policies, procedures and practices to eliminate discrimination and accommodate and promote equality. Business contracts will reflect this requirement.

A senior member of staff [Name] has responsibility for promoting the effective implementation of this policy. An equality action plan will be drafted in consultation with staff and managers.

The company is committed to the effective communication of this policy and will monitor the workplace for incidents of victimisation following a complaint.

Equality Infrastructure

Our objective is to endeavour to provide an equal and diverse work environment for all our employees and to meet our duties to contractors and members of the public who may be affected by our operations. The success of this policy will depend on your co-operation. It is therefore important that you read the document carefully and understand your role and the overall arrangements for equality and diversity at the company. Employees will be asked to sign an acknowledgement that he/she has read and that he/she understood the equality policy.

It is our intention to review this policy regularly and staff and others are encouraged to put forward suggestions for improvement to this policy.

The person responsible for equality and diversity on behalf of the management of the company is [Name Person Responsible].

Incidents Reports

Employees, contractors, visitors and consultants are encouraged to report incidents of bullying and harassment and allegations of discrimination, should they occur, to [Name Person Responsible] who will record those incidents. [Name person responsible] will report dates, people involved and the nature of the incident and will regularly review the documentation in order to see if there is a pattern of incidents which will be reported to the management team.

I have read and understand the contents of this policy.

Signed (Employee): ___________________________ Date: __________

Signed (Manager): ___________________________ Date: __________
APPENDIX 2 – SAMPLE BULLYING AND HARASSMENT POLICY

POLICY
This is a sample bullying and harassment policy, which can be used for your company. You need to check that all the sections apply to your organisation. The bullying and harassment policy needs to be distributed and explained to all employees, contractors and regular visitors and they need to sign a document confirming that they have read the policy and that they understand the policy. This signed document needs to be kept in a safe place for future reference.

[NAME COMPANY] BULLYING AND HARASSMENT POLICY
For the purpose of this policy the definitions of harassment, sexual harassment and workplace bullying are as follows:

Harassment of individuals is related to one or more of the nine grounds of the equality legislation: gender, civil status, family status, sexual orientation, religious belief, age, disability, race or membership of the Traveller Community and is regarded as a form of discrimination and is therefore illegal.

Harassment is defined as ‘Unwanted conduct related to any of the grounds covered by the legislation which takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, which has the purpose and effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. Such conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Workplace Bullying is repeated inappropriate behaviour direct or indirect 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, which could reasonably be regarded as undermining the individual’s right to dignity at work.

An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying. The exception is harassment and sexual harassment where no single incident is acceptable and any act is an offence.

It is the policy of [company name] (hereinafter referred to as “the company”) that the work environment gives all employees the freedom to do their work without having to suffer bullying, harassment or sexual harassment.

All employees must accept that this form of discrimination creates an intimidating and threatening work environment, which can:

- Affect the integrity of people at work.
- Adversely affect job performance.
- Make the recipients fearful of going to work.
• Cause recipients to leave their employment.
• Seriously affect recipients health by causing depression, stress, and loss of self esteem.

**Examples of some forms of harassment, bullying and sexual harassment:**

• Any aggressive behaviour by a manager /supervisor/ colleague/employee / customer / business partner.
• Any repeated verbal harassment.
• Any physical harassment.
• Any personal insults and name calling.
• Persistent criticism.
• Persistent "picking" on a person for the butt of jokes, horseplay, uncomplimentary remarks or other behaviour likely to cause offence.
• The maligning or ridiculing of a person directly to others.
• Unfair delegation of duties and responsibilities.
• Intimidation and threats in general.
• Any unwanted pressure for social contact.
• Sexually derogatory statements.
• The display of sexually suggestive or degrading objects, pictures or calendars in the workplace.

This list of bullying and harassment behaviour is not exhaustive.

All employees should be aware that bullying, harassment and sexual harassment is unacceptable, will be considered to be a serious disciplinary offence and will be subject to the company disciplinary sanctions. Therefore, all employees are encouraged to be vigilant to prevent this type of conduct and are required to comply with this policy.

All managers and supervisors are required to commit to the company's policy on harassment, bullying and sexual harassment, to implement the policy and to set appropriate standards of behaviour by their own example.

A designated person has been appointed to provide advice on the company's informal or formal procedures for resolving a discriminatory problem, and to offer advice on counselling. This person is [Name Person responsible].

Please be assured that all complaints received will be treated seriously, and will be attended to immediately. The complaint will be treated confidentially, as far as possible, with due sensitivity and will be discussed with the complainant in private. The complainant is assured that the complaint will be fully investigated by the company.

At no time will the company tolerate any victimisation of a complainant or a witness and will view any such attempts as serious misconduct.

If, following investigation, the complaint is substantiated, the company designated investigator will endeavour to arrange a satisfactory resolution of the complaint.
Be aware that bullying and harassment can take place also outside the workplace if it concerns, for example, an event organised by the company such as a Christmas party, social drinks event or visiting a conference on behalf of the company.

The main purpose of this company procedure is for guidance to employees and visitors on how to handle a bullying and/or (sexual) harassment complaint and how to act in those circumstances.

The policy will ensure that:

- The allegation will be assessed and addressed.
- The method and work practice of handling bullying and harassment are consistent, systematic, transparent and unbiased.
- An intervention addressing the issue is in place within three weeks or within an agreed indicative time frame.
- The restoration of harmony over the medium to long term is promoted.

Employees who believe they are being subjected to harassment, sexual harassment or bullying should report the problem as early as possible to their immediate superior. If, for any reason, this is not appropriate, the complaint may be made to [Name person responsible].

**Informal Procedure**

While in no way diminishing the issue or the effects on individuals, an informal approach can often resolve matters. As a general rule therefore, an attempt should be made to address an allegation as informally as possible by means of an agreed informal procedure. The objective of this approach is to resolve the difficulty with the minimum of conflict and stress for the individuals involved. The following guideline should be used in handling the informal procedure:

1. Any employee who believes he or she is being bullied or harassed should explain clearly to the alleged perpetrator(s) that the behaviour in question is unacceptable. In circumstances where the complainant finds it difficult to approach the alleged perpetrator directly, he or she should seek help and advice, on a strictly confidential basis, from a contact person. The company has nominated [name person responsible] as the contact person. He/she can involve the assistance of third parties to investigate and resolve matters. The role of the contact person is to listen, be supportive and discuss the various options open to the employee concerned.

2. Having consulted with a contact person, the complainant may request the assistance of the contact person in raising the issue with the alleged perpetrator(s). In this situation the policy of the company is by way of a confidential, non-confrontational discussion, with a view to resolve the issue in an informal low-key way.

3. A complainant may decide, for whatever reason, to bypass the informal procedure. Choosing not to use the informal procedure will not reflect negatively on the complainant in the formal procedure.
Formal Procedure

If an informal procedure is inappropriate or if after the informal stage, the alleged bullying and harassment persists, the following formal procedure should be invoked:

1. The designated person will keep a record of all stages, i.e. the complaint, the first meeting, actions agreed and signed records of the final meeting. The purpose of the records is to provide evidence of the complaint having been met with an organisational response and an attempt at finding a resolution.

2. The complainant can make a formal complaint in writing to the designated contact person. The complaint should be confined to precise details of actual incidents of bullying.

3. The alleged perpetrator(s) should be notified in writing that an allegation of bullying has been made against them. They should be given a copy of the complainant’s statement and advised that they shall be afforded a fair opportunity to respond to the allegation(s).

4. The complaint should be subject to an initial examination by a designated member of management, who is impartial, with the view to determining an appropriate course of action. An appropriate course of action at this stage, for example, could be exploring a mediated solution with a view to the issue being resolved informally. Should either of these approaches be deemed inappropriate or inconclusive, a formal investigation of the complaint will take place, with the view to determine the facts and the credibility or otherwise of the allegation(s).

Investigation

1. The investigation will be conducted by a designated member of management, or if deemed appropriate, third parties. The investigation will be conducted thoroughly, objectively, with sensitivity, confidentiality and with due respect for both the complainant and the alleged perpetrator(s).

2. The investigation will be governed by the terms of reference, preferably agreed between the parties in advance.

3. The investigator should meet with the complainant and alleged perpetrator(s) and any witnesses or relevant persons on an individual confidential basis with a view to establishing the facts surrounding the allegation(s). Both the complainant and alleged perpetrator(s) may be accompanied by a work colleague or trade union representative, if so desired.

4. Every effort should be made to carry out and complete the investigation as quickly as possible and preferably within an agreed timeframe. On completion of the investigation, the investigator should submit a written report to management containing the findings of the investigation.

5. Both parties should be given the opportunity to comment on the findings before any action is decided upon by management.

The complainants and alleged perpetrator(s) will be informed in writing of the findings of the investigation.
Outcome

Should management decide that the complaint is well founded the alleged perpetrator(s) should be given a formal interview to determine an appropriate course of action. Such action could involve counselling and/or monitoring or to progress the issue through the disciplinary procedure, including dismissal, or the grievance procedure of the company.

Confidentiality

All individuals involved in the procedure referred to above should be told to maintain absolute confidentiality on the subject. Deliberately breaking confidentiality during or after the procedure could lead to disciplinary action.

Malicious Complaints

Malicious complaints will be treated seriously and may result in disciplinary action. In this regard it should be noted that where a complaint is not upheld, this does not necessarily indicate that the complaint was malicious.

Appeals

There is an appeals procedure in place regarding the complaints and if one of the employees is not satisfied with the outcome of the findings. The first appeal is internal to the Managing Director who will review all findings and give a conclusion to his findings. The Managing Director can ask qualified persons to assist him in the appeals procedure. If the employee is still not satisfied, they can use the normal industrial relations mechanisms.

Terms of Reference

The investigations should be governed by the terms of reference of:

- The Code of Practice on Bullying, Department Enterprise, Trade and Employment, 2007
- The Code of Practice on Sexual Harassment at Work, Equality Authority

Policy Review

This policy will be reviewed from time to time.

I have read and understand the contents of this policy.

Signed (Employee): ___________________________ Date: __________

Signed (Manager): ___________________________ Date: __________
APPENDIX 3 – SAMPLE EQUAL STATUS POLICY

This is a sample equal status policy which can be used for your company. You need to check that all the sections apply to your organisation. The equal status policy needs to be distributed and explained to all employees, contractors and regular visitors who need to sign a document confirming that they have read the policy and that they understand the policy. This signed document needs to be kept in a safe place for future reference.

[COMPANY NAME] EQUAL STATUS POLICY

The policy applies to customers and potential users of the organisational service provided. The Equal Status Policy applies to any organisation that provides any of a wide range of services to the public and on the occasion where they allow the use of their premises for lodgings, meetings, gatherings and functions. Nothing in this policy overrules a person’s legal and statutory rights.

Commitment

[Company name](hereafter referred to as “the company”) is committed to creating and maintaining a business and working environment that encourages and supports the right to dignity and respect for all. Anyone who works in or deals with the organisation is expected to treat every individual with dignity and respect. Everyone will be treated equally and with respect for the individual’s diversity. It is our policy to treat all clients, customers, prospective clients, employees, partners, contractors and suppliers fairly and equally regardless of their gender, civil status, family status, sexual orientation, religious belief, age, disability, race or membership of the Traveller Community.

The company is committed to providing an excellent and equal service to all our customers. To this end, we are constantly seeking to provide all our staff with the knowledge and expertise to deal confidently with and be caring of our customers. Our goal is to have a well motivated workforce which takes pride in our work and the services we provide for our customers.

This equal status policy outlines the commitment of the organisation to meet our obligation under the Equal Status Acts, 2000 to 2008, to be proactive in the promotion of equality and to work towards the prevention of discrimination. To do this we will try to ensure that:

- The services or provision of goods are free from discrimination, harassment, sexual harassment and victimisation.
- All customers, service providers and employees are treated with respect and dignity.
- The services provided are accessible and relevant.
- Diversity is accommodated and the specific needs of particular groups of customers are catered for.

Discrimination, sexual harassment or harassment by the staff employed by the organisation will not be tolerated; and where such behaviour occurs, it is regarded
as contravening the values of the organisation and treated as a serious matter, which may lead to disciplinary action, up to and including dismissal.

Discrimination, sexual harassment or harassment by non-employees, such as customers, public representatives and business contacts will not be tolerated; and where any such behaviour occurs, it is regarded as contravening the values of the organisation and treated as a serious matter, which may lead to sanctions, such as the suspension of contract or services or exclusion from the premises.

Customer complaints will be handled fairly, sensitively and as confidentially as possible.

All staff should cooperate with the development and implementation of policies, procedures and practices to eliminate discrimination, accommodate diversity and promote equality for customers.

**Training**

In line with our commitment to provide staff with the knowledge and expertise to deal confidently with customers and be professional in their customer service, the organisation has provided equality awareness training for staff at all levels and customer care training.

Training and information on diversity and equality issues is included in all training programmes as far as possible.

**Reasonable Accommodation of People with Disabilities**

The company is obliged to provide reasonable accommodation for customers with disabilities. This will be done by providing, where appropriate and reasonable, special facilities for people to access services without undue difficulty to ensure that they are not excluded by physical, systems, communications and/or attitudinal barriers.

**Responsibility and Implementation**

The company will ensure that management at all levels actively supports, encourages, and implements equality in the provisions of services. Management will also review regularly their equality policies. Managers and supervisors have a specific responsibility to promote the provisions of this policy.

This policy will be circulated to all staff so that they are aware of their responsibilities in this area.

The company will communicate equal status commitments with their customers through their:

- Advertisement and marketing strategies.
- Direct contact with customers.
- Seeking customer feedback regarding their equal status policies.
A senior member of staff [name] has responsibility for promoting the effective implementation of this policy.

**Monitoring and Review**

All policies, practices and procedures will be monitored and reviewed on a regular basis by management to ensure that they contribute, as far as possible, to the promotion of equality of opportunity.

**Complaints**

The complaints procedure will be followed in dealing with complaints of breaches of this policy. This procedure will ensure that every complaint is investigated thoroughly and a report issued. All complaints will be taken seriously and investigated as a priority. All parties involved will be treated with respect.

Customers who are dissatisfied with the way their complaint has been dealt with and or the decision of the company in relation to their complaint, have the right to refer complaints to the Ombudsman or Equality Tribunal, as appropriate.

Complaints can be made to the following contact person, __________________________, or a member of management.

I have read and understand the contents of this policy.

Signed (Employee): ___________________________ Date: ________

Signed (Manager): ___________________________ Date: ________
APPENDIX 4 – CHECKLIST ON EQUALITY COMPLIANCE

This self-assessment questionnaire has been designed to provide you with a snapshot of your compliance on equality at the workplace. If you have answered “no” to any of the questions make sure to take the necessary actions to ensure your company is compliant by contacting ISME on 01 6622755.

Does the company have an equality policy in place?  
Yes □ No □

Does the company have a bullying and harassment policy in place?  
Yes □ No □

Does the company have an equal status policy in place?  
Yes □ No □

Have the employees been made aware of the equality policies?  
Yes □ No □

Have contractors, suppliers, consultants, visitors and customers been made aware of the equality policies?  
Yes □ No □

Can you prove that employees and contractors have received a copy of the equality policies?  
Yes □ No □

Are you satisfied that the employees understand the equality policies and adhere to them?  
Yes □ No □

Are staff members paid the same for doing similar or equivalent jobs?  
Yes □ No □

Have staff members the same benefits and entitlements for doing similar or equivalent jobs?  
Yes □ No □

Is the same recruitment process used consistently without discrimination for all recruitment candidates?  
Yes □ No □

Is a senior employee or manager specifically responsible for equality and bullying and harassment policies in the organisation?  
Yes □ No □

Has the person responsible received equality training?  
Yes □ No □

Have staff members attended equality awareness training?  
Yes □ No □

Is equality training mandatory for managers and supervisors?  
Yes □ No □

Does the organisation keep records regarding allegations of discrimination or harassment, including informal complaints?  
Yes □ No □

Does the management regularly review these records?  
Yes □ No □

Does the organisation have an equality action plan?  
Yes □ No □
APPENDIX 5 - RELEVANT AGENCIES INVOLVED WITH EQUALITY LEGISLATION

EQUALITY AUTHORITY
The Equality Authority is an independent body set up under the Employment Equality Act 1998. The Equality Authority seeks to achieve positive change in the situation and experience of those groups and individuals experiencing inequality by stimulating and supporting a commitment to equality:

- Within the systems and practices of key organisations and institutions.
- As part of the cultural values espoused by society.
- As a dimension to individual attitudes and actions.

Address:
Public Information Centre
The Equality Authority
Birchgrove House
Roscrea
Co. Tipperary
Lo Call 1890 245 545
Telephone 0505 22388
E-mail info@equality.ie
Web www.equality.ie

EQUALITY TRIBUNAL
The Equality Tribunal provides a statutory framework whereby the Tribunal mediates and/or investigates claims of unlawful discrimination in accordance with the provisions of the Equality Acts. The Equality Tribunal has a unique responsibility for mediating and investigating complaints of unlawful discrimination.

The Equality Tribunal jurisdiction is wide ranging and includes complaints in relation to employment, occupational benefits, e.g. pensions, and equal status, i.e. access to goods and provision of services, with two exceptions:

1. Claims in relation to registered clubs and licensed premises are dealt with by the District Court under the Intoxicating Liquor Act 2003;
2. Complaints in relation to employment discrimination on the grounds of gender have an option of seeking redress for unlawful discrimination from the Circuit Court.
Address:
Equality Tribunal
3 Clonmel Street
Dublin 2
Lo Call 1890 344424
Telephone 01 477 4100
E-mail info@equalitytribunal.ie
Web www.equalitytribunal.ie

**RIGHTS COMMISSIONERS**

The Minister for Jobs, Enterprise and Innovation appoints Rights Commissioners on the recommendation of the Labour Relations Commission (LRC). They operate as a service of the LRC and are independent in their functions. Rights Commissioners investigate disputes, grievances and claims that individuals or small groups of workers have referred under employment legislation.

Address:
Rights Commissioners Services
Tom Johnson House
Haddington Road
Dublin 4
Lo Call 1890 220 227 (outside 01 area)
Telephone 01 613 6700
Email rightscomm@lrc.ie
Website www.lrc.ie

**EMPLOYMENT APPEALS TRIBUNAL**

The Employment Appeals Tribunal (EAT) is an independent body that provides a more formal setting than the Rights Commissioners Service for disputes on employment rights under the various legislation that come within the Tribunal’s scope.

Address:
Employment Appeals Tribunal
Davitt House
65a Adelaide Road
Dublin 2
Lo call 1890 220 222
Telephone 01 631 3006
Email eat@deti.ie
Website www.eat tribunal.ie
LABOUR RELATIONS COMMISSION
The Labour Relations Commission is responsible for promoting good industrial relations in Ireland. The Commission provides a range of industrial relations advisory and mediation services to meet the particular demands of employers, employees and their representatives.

Address:
Labour Relations Commission
Tom Johnson House
Haddington Road
Dublin 4
Telephone 01 613 6700
Lo Call 1890 220 227
E-mail admin@lrc.ie
Web www.lrc.ie

LABOUR COURT
The Labour Court was established to provide a free, comprehensive service for the resolution of disputes about industrial relations, equality, organisation of working time, national minimum wage, part-time work, fixed-term work, safety, health and welfare at work, information and consultation matters. The Labour Court is not a court of law. It operates as an industrial relations tribunal hearing both sides in a case and then issuing a Recommendation (or Determination/Decision/Order, depending of the type of case) setting out its opinion on the dispute and the terms on which it should be settled. The Labour Court is a court of last resort – cases should only be referred to the Court when all other efforts to resolve a dispute have failed.

Address:
Labour Court
Tom Johnson House
Haddington Road
Dublin 4
Telephone 01 6136667
Web www.labourcourt.ie
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