

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4,044 of 12th December, 2013

B. 24/13

BILL

FOR

AN ACT to prohibit bullying and victimisation in employment and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Employment (Bullying at Work) Act 2013 and comes into operation on the day appointed by the Minister by notice in the Gazette.

Interpretation.

2. In this Act, unless the context otherwise requires—

“bullying” has the meaning given in section 4;

“Bullying at Work Policy” means a code of practice which complies in all respect with the requirements of Schedule 1 of this Act;

“employment” means employment under—

- (a) a contract of service or of apprenticeship; or
- (b) a contract personally to do any work, and

related expressions (such as “employee” and “employer”) shall be construed accordingly;

“Minister” means the Minister with responsibility for Employment;

“Tribunal” means the Industrial Tribunal established under section 12 of the Employment Act;

“victimisation” has the meaning given in section 5.

Application.

3.(1) This Act shall apply to bullying and victimisation in employment.

(2) This Act is binding on the Crown.

Meaning of bullying.

4.(1) A person (“A”) subjects another person (“B”) to bullying where A engages in conduct which has the purpose or effect of causing B to be alarmed, distressed, humiliated or intimidated.

(2) In subsection (1) the reference to conduct includes–

- (a) persistent behaviour which is offensive, intimidating, abusive, malicious or insulting;
- (b) persistent unjustified criticism;
- (c) punishment imposed without justification;
- (d) changes in the duties or responsibilities of B to B’s detriment without reasonable justification.

(3) Bullying does not include reasonable action taken by an employer relating to the management and direction of the employee or the employee’s employment.

Meaning of victimisation.

5.(1) A person (“A”) victimises another person (“B”) if A treats B less favourably than A treats or would treat other persons in the same circumstances and does so by reason of the fact that, or by reason of A’s knowledge or suspicion that, B has–

- (a) brought or intended to bring, or intends to bring, proceedings under this Act;

- (b) given or intended to give, or intends to give, evidence or information in connection with proceedings under this Act;
- (c) otherwise done, intended to do, or intends to do, any other thing under or by reference to this Act;
- (d) has alleged or intended to allege, or intends to allege that A or any other person has contravened this Act.

(2) Subsection (1) does not apply to treatment of B by reason of any allegation made by him, or evidence or information given by him, if the allegation, evidence or information was false and not made (or, as the case may be, given) in good faith.

Bullying of employees.

6.(1) An employer (A) must not, in relation to employment by A, subject an employee (B) to bullying.

(2) The circumstances in which A is to be treated as having subjected B to bullying under subsection (1) include those where—

- (a) a third party bullies B in the course of B's employment; and
- (b) A failed to take such steps as would have been reasonably practicable to prevent the third party from doing so.

(3) Subsection (2) does not apply unless A knows that B has been bullied in the course of B's employment on at least two other occasions by a third party; and it does not matter whether the third party is the same or a different person on each occasion.

(4) A third party is a person other than—

- (a) A; or
- (b) an employee of A's.

(5) An employer will not be in contravention of subsection (1) in relation to a complaint of bullying where he can show—

- (a) that at the time of the act or acts complained of—

- (i) he had in force a Bullying at Work Policy in accordance with the Schedule; and
 - (ii) he has taken all reasonable steps to implement and enforce the Bullying at Work Policy; and
- (b) as soon as reasonably practicable, he takes all steps as are reasonably necessary to remedy any loss, damage or other detriment suffered by the complainant as a result of the act or acts of which he complains.

Victimisation of employees.

7. An employer (A) must not subject an employee of A's (B) to victimisation—

- (a) as to B's terms of employment;
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;
- (c) by dismissing B;
- (d) by subjecting B to any other detriment.

Remedies

Jurisdiction of the Industrial Tribunal.

8.(1) Without prejudice to his right to remedies for breach of contract and any other right of action, a complaint by an employee ("the complainant") that another person ("the respondent") has contravened this Act may be presented to the Tribunal.

(2) The Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal within the period of three months beginning when the act complained of is alleged to have been done.

(3) The Tribunal may nevertheless consider any such complaint or claim which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of this section any act extending over a period or any persistent or recurrent contravention of sections 6 or 7 shall be treated as done at the end of that period or at the date of the last such act.

Remedies.

9.(1) Where the Tribunal finds that a complaint presented to it under section 8 is well-founded, the Tribunal shall make such of the following as it considers just and equitable—

- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
- (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages (including damages for injury to feelings) he could have been ordered (by the Supreme Court) to pay to the complainant in a claim in tort for breach of statutory duty;
- I a recommendation that the respondent take within a specified period action appearing to the Tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate on the complainant or on any other person.

(2) When determining the amount of an award of compensation for injury to feelings under subsection (1)(b) the Tribunal shall take into account the seriousness, frequency and persistence of the employer's breach.

(3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by the Tribunal under subsection (1)I, then, if it thinks it just and equitable to do so—

- (a) the Tribunal may increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under subsection (1)(b); or
- (b) if an order under subsection (1)(b) was not made, the Tribunal may make such an order.

(4) Where an amount of compensation falls to be awarded under subsection (1)(b), the Tribunal—

- (a) may include in the award interest subject to, and in accordance with, the provisions of 11 (interest on compensation); and
- (b) shall consider whether to do so, without the need for any application by the complainant.

Burden of proof.

10. Where, on the hearing of the complaint, the complainant proves facts from which the Tribunal could, apart from this section, conclude in the absence of an adequate explanation that the respondent has contravened this Act, the Tribunal shall uphold the complaint unless the respondent proves that he did not contravene this Act.

Interest on compensation.

11.(1) Interest shall be calculated as simple interest which accrues from day to day.

(2) Subject to subsection (3), the rate of interest to be applied shall be the rate of interest prescribed in respect of judgement debts in the Supreme Court by the order made under section 36 of the Supreme Court Act in force from time to time.

(3) Where the rate of interest in subsection (2) has varied during a period for which interest is to be calculated, the Tribunal may, if it so desires in the interests of simplicity, apply such median or average of those rates as seem to it appropriate.

(4) No interest shall be included in respect of any sum awarded for a loss or matter which will occur after the date of calculation, or in respect of any time before the contravention or act complained of.

(5) Subject to subsections (6) and (7)–

- (a) in the case of any sum for injury to feelings, interest shall be for the period beginning on the day of the contravention or act complained of and ending on the day of calculation;
- (b) in the case of all other sums of damages or compensation in the award (other than any sum referred to in subsection (4)), and all arrears of remuneration, interest shall be for the period

beginning on the mid-point date and ending on the day of calculation.

(6) Where any payment has been made before the day of calculation to the complainant by or on behalf of the respondent in respect of the subject matter of the award, interest in respect of that part of the award shall be calculated as if the references in subsection (5), and in the definition of “mid-point date” in subsection (9), to the day of calculation were to the date on which the payment was made

(7) Where the tribunal considers that in the circumstances, whether relating to the case as a whole or to a particular sum in an award, serious injustice would be caused if interest were to be awarded in respect of the period or periods referred in subsection (6) or (7), it may—

- (a) calculate interest, or as the case may be, interest on the particular sum, for such different period; or
- (b) calculate interest for such different periods in respect of various sums in the award,

as it considers appropriate in the circumstances, having regard to the provisions of this section.

(8) The Tribunal’s written statement of reasons for its decision shall—

- (a) contain a statement of the total amount of any interest awarded and, unless this amount has been agreed between the parties, either a table showing how it has been calculated or a description of the manner in which it has been calculated; or
- (b) include reasons for any decision not to award interest.

(9) In this section—

“day of calculation” means the day on which the amount of interest is calculated by the Tribunal;

“mid-point date” means the date half way through the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation,

or where the number of days in that period is even, the first day of the second half of the period.

SCHEDULE

BULLYING AT WORK POLICY

1. In order to comply with section 6 of this Act an employer's Bullying at Work Policy must comply with the provisions of this Schedule.

2. The Bullying at Work Policy must be in writing and distributed to every employee and must include the following:

- (a) an explanation of the statutory right of all employees not to be subjected to bullying and victimisation and a statement that bullying and victimisation will not be tolerated;
- (b) examples of the types of bullying behaviour at work and of conduct which may lead to disciplinary action;
- (c) a clear statement of the procedure for bringing complaints and the manner in which they will be dealt with which must include a commitment that complaints of bullying will be taken seriously, investigated objectively and dealt with in confidence and must allow the complainant to be represented by a representative of his choice at all stages;
- (d) designation of a competent person to whom complaints should be made;
- (e) a clear statement of the disciplinary procedure to be followed against employees who infringe the Policy;
- (f) details (including names and contact telephone numbers) of designated persons available to counsel, assist and advise individuals bringing complaints or those who are the subject of complaints;
- (g) arrangements to train all those occupying any position of managerial authority with the employer in the Policy and to inform all employees of the Policy;
- (h) annual monitoring of the operation of the Policy, to be reported to senior management and to include a summary of all complaints made under the Policy (with names of

complainants kept confidential unless the complainant agrees);
and

- (i) arrangements for consultation with trade union, safety representatives and or other stake holder/s on the operation of the Policy, its implementation and any revision of the Policy in the light of its operation in practice.

EXPLANATORY MEMORANDUM

This Act prohibits bullying and victimisation in employment. It provides for employers to have a Bullying at Work Policy and for complaints to be made to the Industrial Tribunal.

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