

C01/2012



**Command Paper on a law to provide a right to
dignity at work for employees.**

**Presented to Parliament by
the Minister with responsibility for Employment.**

by Command of Her Majesty

JANUARY 2012

1. Draft Bill

2. Draft Explanatory Memorandum

DRAFT

BILL

FOR

AN Act to provide for a right to dignity at work for employees; and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title and commencement

1. This Act may be cited as the Right to Dignity at Work Act 2012 and comes into operation on the day appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless otherwise stated or the context otherwise requires –

“Dignity at Work Policy” means a code of practice issued by the Minister under section 5(2);

“employment” means employment under –

- a) a contract of service or of apprenticeship; or
- b) a contract personally to execute 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

Right to dignity at work

3.(1) Every employee shall have the right to be treated with dignity at work and any contract under which a person is employed will be deemed to include that right.

(2) Subject to section 5 of this Act, an employer commits a breach of the right to dignity at work of an employee if during the course and in execution of his employment that employee suffers bullying by virtue of any act, omission or conduct including but not limited to any of the following-

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

and which causes him to be alarmed, distressed or humiliated.

(3) An employer commits a breach of the right to dignity at work of an employee if he treats that employee less favourably than he would treat other employees and does so by reason that the employee has-

- (a) brought proceedings under this Act against the employer or any other person;
- (b) given evidence or information in connection with proceedings brought by any person under this Act against the employer or any other person;
- (c) otherwise done anything under or by reference to this Act in relation to the employer or any other person;
- (d) alleged that the employer or any other person has committed an act which (whether or not the allegation so states) would give rise to a claim under this Act

or by reason that the employer knows or suspects that the employee has done or intends to do any of those things.

Action on breach of right

Complaint to Industrial Tribunal

4.(1) A complaint by an employee that his employer has committed a breach of his right to dignity at work under 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 a period of three months beginning with the day on which the act complained of was alleged to have been done, unless in all the circumstances of the case the Tribunal considers that it is just and equitable to do so.

(3) For the purposes of this section any act extending over a period or any persistent or recurrent breach of section 3(2) shall be treated as done at the end of that period or at the date of the last such act.

Employer's defence

5.(1) In any proceedings before the Tribunal under section 4, an employer shall not be liable in respect of an act or acts described in section 3(2) if he can demonstrate that-

- (a) at the time of the act or acts complained of-
 - (i) the employer had in force a dignity at work policy which complies with any code of practice issued under subsection (2); and
 - (ii) the employer has taken all reasonable steps to implement and enforce the said policy; and
- (b) as soon as is reasonably practicable, the employer 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.

(2) The Minister shall issue a code of practice setting out the Dignity at Work Policy and such code of practice shall be published as a legal notice in the Gibraltar Gazette.

Remedies

6.(1) Where the Tribunal finds that a complaint presented to it under section 4 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;
- (b) an order requiring the respondent to pay to the complainant compensation assessed in like manner a claim in tort for breach of statutory duty, which may include an award for injury to feelings irrespective of compensation under any other head;
- (c) 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 breach of the right to dignity at work to which the complaint relates.

(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)(c), then, if it thinks it just and equitable to do so, the Tribunal may increase the amount of compensation to be paid to the complainant under subsection (1)(b) or, where no order under subsection (1)(b) was made, the Tribunal may make such an order.

EXPLANATORY MEMORANDUM

This Bill introduces the right to dignity at work for employees and provides remedies for a breach of that right.