



SEANAD ÉIREANN

AN BILLE UM NOCHTADH COSANTA, 2013 PROTECTED DISCLOSURES BILL 2013

LEASUITHE COISTE COMMITTEE AMENDMENTS

SEANAD ÉIREANN

AN BILLE UM NOCHTADH COSANTA, 2013 —AN COISTE

PROTECTED DISCLOSURES BILL 2013 —COMMITTEE STAGE

*Leasuithe
Amendments*

SECTION 5

1. In page 9, subsection (3), between lines 25 and 26, to insert the following:

“(h) that undue influence is being exercised by a public official including but not limited to the exercise of such influence in relation to the administration of justice and the proper functioning of state organs,”.

—*Senators Katherine Zappone, Jillian van Turnhout, Mary Ann O'Brien, Fiach Mac Conghail.*

SECTION 11

2. In page 12, before section 11, but in Part 3, to insert the following new section:

“Interim relief
pending
determination of
complaint of unfair
dismissal.

11.—(1) In this section—

“terms and conditions” means terms and conditions no less favourable than those that would have been applicable had the employee not been dismissed and include seniority, pension and other rights that the period prior to the dismissal should be regarded as continuous;

“reinstatement” has the same meaning as in the Unfair Dismissals Acts.

(2) An Interim Relief Order for continuation of the contract of employment shall include the amount which is to be paid to the employee in respect of each pay period falling between the date of dismissal and the final determination or settlement of the complaint.

(3) An employee, having made a protected disclosure, who is, or is about to be, unfairly dismissed, may apply for interim relief, including reinstatement pending their case being finally determined.

(4) An employee, or trade union on their behalf, who presents a complaint to the Rights Commissioners or the Employment Appeals Tribunal that he has been unfairly dismissed and—

(a) the reason for the dismissal relates wholly or mainly to their making a protected disclosure, or

(b) the reason relates wholly or mainly to their being a witness or giving evidence as part of an investigation on foot of a protected disclosure,

[SECTION 11]

may apply to the Circuit Court for Interim Relief.

(5) The application for Interim Relief must be made before the end of the seven days immediately following the effective date of the termination (whether before, on or after that date).

(6) (a) The Circuit Court on application of a request for Interim Relief may, if the unfair dismissal complaint has an arguable case, require the employer to do, or cease to do, as the case may be, anything that the Court considers necessary and shall ask the employer whether he is willing pending the final determination or settlement of the complaint by the Employment Appeals Tribunal, the Labour Court, or the final appeal to the Circuit Court under the Unfair Dismissals Acts whichever applies—

(i) to reinstate the employee (that is to treat him in all respects as if he had not been dismissed),

(ii) if not, to reinstate him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.

(b) If the employer states that he is willing to reinstate the employee, pending the final determination of the case the Circuit Court shall make an Order to that effect.

(c) If the employer states that he is willing to reinstate the employee in another job, and specifies the terms and conditions on which he is willing to do so the Circuit Court shall ask the employee whether he is willing to accept the reinstatement on those terms and conditions.

(d) If the employee is willing to accept the reinstatement on those conditions, the Circuit Court shall make an order to that effect.

(e) If the employee is not willing to accept the job on those terms and conditions—

(i) where the Circuit Court is of the opinion that the refusal is reasonable, the Circuit Court shall make an order for the continuation of the contract of employment until the case is finally determined,

(ii) otherwise the Circuit Court shall make no order.

(7) If on the hearing of an application for interim relief the employer—

(a) fails to attend,

(b) states he is unwilling to reinstate the employee in accordance with this section,

the Circuit Court shall make an Order for the continuation of the employee's contract pending the final determination of the case.

(8) At any time between the making of an order under this Act and the final determination or settlement of the complaint the employer or the employee can apply for the revocation of the Order on the ground of relevant change of circumstances since making the Order.

[SECTION 11]

(9) No costs shall be awarded to the parties in respect of the application for Interim Relief under this Act.

(10) The existence of an Interim Relief Order under this Act does not prevent a complaint of unfair dismissal being heard under the Unfair Dismissals Acts.”.

—*Senators Kathryn Reilly, David Cullinane, Trevor Ó Clochartaigh.*

[*Acceptance of this amendment involves the deletion of section 11 of the Bill.*]

3. In page 13, lines 5 to 16, to delete paragraph (e).

—*Senators Katherine Zappone, Jillian van Turnhout, Mary Ann O'Brien, Fiach Mac Conghail.*

SECTION 16

4. In page 15, lines 15 to 19, to delete subsection (1) and substitute the following:

“(1) A person to whom a protected disclosure is made, and any person to whom a protected disclosure is referred in the performance of that person’s duties, shall take reasonable and available measures to ensure that they do not disclose any information that might identify the person by whom the protected disclosure was made.”.

—*Senators Katherine Zappone, Jillian van Turnhout, Mary Ann O'Brien, Fiach Mac Conghail.*

5. In page 15, subsection (2), lines 21 to 24, to delete paragraph (a).

—*Senators Katherine Zappone, Jillian van Turnhout, Mary Ann O'Brien, Fiach Mac Conghail.*

6. In page 15, lines 38 to 40, to delete subsection (3) and substitute the following:

“(3) The intentional disclosure of information identifying the person who has made the protected disclosure shall be an offence punishable by a fine of up to €50,000.”.

—*Senators Katherine Zappone, Jillian van Turnhout, Mary Ann O'Brien, Fiach Mac Conghail.*

SECTION 21

7. In page 19, between lines 44 and 45, to insert the following subsections:

“(3) Every public body shall adopt guidelines pursuant to the operation of this Act and ensure that they are provided to all workers employed by the public body and shall ensure that all workers are aware of this Act.

(4) The Minister shall prepare and publish, within twelve months of the commencement of this Act a Code of Practice, employer and worker guidelines and information on the operation of this Act, setting out the aims and principles of the Act, and shall provide such guidelines to every public body, following consultation with the Standards in Public Office Commission.”.

—*Senators Katherine Zappone, Jillian van Turnhout, Mary Ann O'Brien, Fiach Mac Conghail.*

[SECTION 23]

SECTION 23

8. In page 20, before section 23, to insert the following new section:

“23.—(1) Not less than one year and every twelve months thereafter following the commencement of this Act, all public bodies shall prepare and submit a report to the Standards in Public Office Commission detailing the documents and activities undertaken pursuant to this Act, including, but not limited to—

- (a) any and all relevant guidelines developed,
- (b) any and all information and awareness conducted with employees,
- (c) any and all disclosures made to the public body pursuant to this legislation and the action taken,
- (d) any other matters as shall be requested by the Standards in Public Office Commission.

(2) Not more than eighteen months following the commencement of this Act and every twelve months thereafter, the Standards in Public Office Commission shall prepare a report for the Oireachtas that contains, *inter alia*—

- (a) detailed information on the reports made to it under *subsection (1)*,
- (b) its assessment of any systemic issues identified as arising from these reports, bearing in mind the aims and principles,
- (c) its assessment of the quality of and implementation of guidelines and awareness raising in relation to the Act,
- (d) its proposals for any necessary amendments to the legislation or requirements for further regulations, if any.

(3) No information prepared and published in connection with this section shall contain information capable of identifying the person who made the protected disclosure.”.

—*Senators Katherine Zappone, Jillian van Turnhout, Mary Ann O'Brien, Fiach Mac Conghail.*

TITLE

9. In page 5, line 6, after “THE” where it firstly occurs to insert the following:

“PROMOTION OF TRANSPARENCY AND ACCOUNTABILITY AND PREVENTION OF CORRUPTION THROUGH THE”.

—*Senators Katherine Zappone, Jillian van Turnhout, Mary Ann O'Brien, Fiach Mac Conghail.*