

EMPLOYMENT, PENSIONS &
INCENTIVES

New Codes of Practice on Equal Pay and Workplace Harassment published

On 9 March 2022, to mark the week of International Women's Day 2022, the Irish Human Rights and Equality Commission published two new codes of practice for employers in respect of workplace harassment and equal pay. We set out below the main points and key takeaways for employers in respect of both the [Code of Practice on Equal Pay \(the Equal Pay Code\)](#) and the [Code of Practice on Sexual Harassment and Harassment at Work \(the Harassment Code\)](#).

While many employers will already be familiar with aspects of both codes, they contain instructive guidance for employers who wish to ensure that their organisation's workplace practices remain fair, equitable and legally compliant.

5 MIN READ

The Equal Pay Code

The topic of pay equality is a hot topic in Irish employment law. With the imminent rollout of Gender Pay Gap Reporting for many businesses, as well as other existing regulatory ESG requirements for certain sectors such as financial services, the Equal Pay Code includes a welcome set of principles, guidelines and recommendations for employers to refer to when conducting remuneration reviews and implementing new structures.

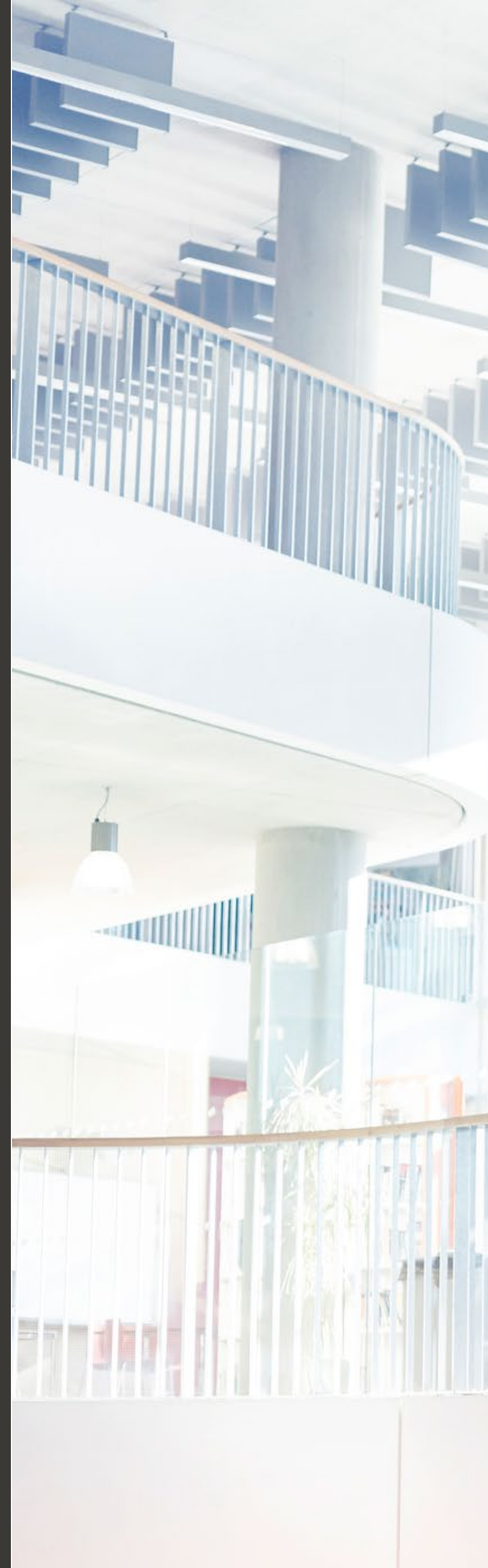


Key takeaways from the Equal Pay Code

- The Equal Pay Code reminds employers that while the phrase “*equal pay*” is most commonly used, it is important to note that the relevant obligations under the Employment Equality Acts 1998-2015 (the **EEA**) pertaining to equal pay refer to “*remuneration*” which is inherently broader than basic pay, and includes allowances, bonuses and other non-cash benefits.
- The Equal Pay Code recommends employers incorporate a job evaluation model as the most effective method of eliminating pay inequality. This typically involves undertaking a detailed audit and review of remuneration data and practices to ensure that any non-compliant or questionable practices are identified and that businesses remain transparent with staff.
- The Equal Pay Code encourages employers to incorporate elements of employee participation at all stages of any review or change to remuneration practices, and makes it clear that (particularly where businesses are large and well-resourced) such undertakings should not be limited to a small group of individuals. It also goes on to suggest that any actions be carried out with “*consensus*” rather than simple voting, but notes that this may not be possible in all circumstances.
- A detailed review process is set out in the Equal Pay Code, which includes steps such as collection of job data, analysis of jobs, analysis of pay data and implementing corrective measures where issues are identified.
- The Equal Pay Code reminds employers that a detailed process should be in place for employees to ventilate concerns regarding pay inequality and discrimination, including both informal and formal avenues of resolution. The Equal Pay Code also sets out a useful summary of the various avenues of redress available to employees who are the subject of pay discrimination and victimisation.
- Where a pay equality issue has been identified (e.g. following a successful claim), the Equal Pay Code sets out a number of recommended strategies and measures that can be introduced to combat future issues. This includes setting up a monitoring system with input from workers and trade unions (where applicable), adding transparency to all remuneration practices, ensuring benchmarking is free from bias, and reviewing recruitment and promotion practices to eliminate bias and stereotyping.

The Harassment Code

In an era of the “*me too*” movement and the growing recognition of the prevalence of harassment and sexual harassment in the workplace, the publication of Harassment Code is a very welcome reminder to employers and employees of their respective obligations and rights in this area.



Key takeaways from the Harassment Code

- The Harassment Code does not create new obligations for employers. However, it does provide a useful nutshell summary of the law relating to harassment and sexual harassment as well as best practice steps to combat such behaviour.
- It reiterates that the intention of the perpetrator sexual harassment or harassment is irrelevant. The effect of the behaviour on the employee is what is determinative.
- A key theme of the Harassment Code is the development and implementation by employers of policies and procedures which establish working environments free of harassment. In this respect, it recommends that employers implement a policy which encourages employees to challenge harassment and sexual harassment in the workplace and provides for a staged approach to the resolution of complaints. Welcome news for employers, however, is that most fit for purpose Dignity at Work policies will already substantially deal with the matters recommended by the Code.
- The Harassment Code encourages the publication and communication of relevant policies and procedures in an accessible and user-friendly format to accommodate persons with disabilities and people whose first language may not be English. It also encourages employers to implement training for managers, supervisors and all staff on strategies to prevent harassment and recommends that this should happen during staff induction or through appropriate awareness-raising initiatives.
- The Harassment Code highlights that persons with disabilities, those with precarious employment contracts, new workers and immigrant workers, are particularly vulnerable to sexual harassment and harassment. Additional measures may be required to ensure a safe place of work for employees belonging to these categories.

What's new for employers in these Codes?

As regards the Equal Pay Code, the obligation to ensure that employees of different genders are paid equally for the same or similar work is not new, and has long been a feature of Irish law under the EEA. However, with increased focus on gender equality as a hot topic, it has become clear that issues of discrimination and inequality still persist in many businesses and industries in Ireland. While the Equal Pay Code does not make any substantive change to the law in this area, the recommendations contained in the Equal Pay Code include a welcome collection of guidelines for employers to follow when revising their remuneration practices and policies. Something which many employers will be doing in anticipation of the imminent rollout of Gender Pay Gap Reporting.

The same can be said for the Harassment Code, which does not make any substantive changes to the law but rather outlines best practice steps which may be taken in order to establish working environments free of harassment. It does however introduce

a new concept of a “*champion*” - who is a senior level employee that would be outside the HR structure and tasked with being an independent voice advocating for a diverse workplace culture free from harassment where all employees feel respected. It also provides examples of how employers should monitor policies to track their effectiveness, such as by conducting staff surveys, anonymised questionnaires and discussion at training courses.

Are these Codes legally binding?

While the Codes themselves are not legally binding, employers who choose to ignore the codes will do so at their own peril. The codes are admissible in evidence in proceedings before a court or in proceedings under the EEA and in proceedings before the Workplace Relations Commission (**WRC**) or the Labour Court.

It is therefore highly likely that where claims related to pay equality and/or harassment come before bodies such as the WRC, the contents of the Equal Pay Code and/or the Harassment Code will be referred to in

support of related claims, and may be used as a benchmark against which employers will be judged.

Failure to properly implement good equality practices in the workplace can lead to significant adverse consequences for employers, including the incurrance of legal costs in defending claims, as well as the reputational harm that comes with such outcomes both in terms of media coverage and employee relations generally. It is therefore incumbent on employers to take notice of these codes, and ensure that their existing policies and structures are compliant.

For further information relating to this topic, please contact [Kevin Slattery, Associate](#), [Joe Mahon, Solicitor](#), or any member of [ALG's Employment team](#).



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