

SIPTU Submission

**Irish Human Rights and
Equality Commission
Consultation on a Code of
Practice on the Nature and
Extent of an Employer's
Obligation to Provide Reasonable
Accommodation to Employees
with Disabilities**

July 2022





TEMPLATE RESPONSE FORM

Draft “Code of Practice on the Nature and Extent of an Employer’s Obligation to
Provide Reasonable Accommodation to Employees with Disabilities”

1. Name of organisation/representative group/company/individual

SIPTU Legal Rights Unit

2. Contact details of organisation/representative group/company/individual

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3. Is the information contained in the draft Code accurate? If there are inaccuracies,
please identify these by referencing a page and paragraph number.

- The Index is missing a reference to p.18.
- The heading of ‘Disputes’ on p.19 is missing from the Index.



4. The purpose of the Code is to reflect the relevant law and must use the definitions within the law. The Code explains the different definitions of “disability” within the relevant laws including the Employment Equality Acts and in European Union law. Do you have any comments on the explanation of the various definitions of “disability” in the draft Code?

- Footnote 9 of paragraph 21 on p.6 states that *‘Irish law is more encompassing than EU law which limits the definition to the impact of disability on a person’s employment’*. However, paragraphs 33 and 34 on pages 7 and 8 seem to state the opposite while also quoting the same EU case law.

SIPTU therefore recommends that this position is clarified in relation to the definition of disability at EU level and within the EEA.

- Paragraph 21 on p. 6 states that *‘Disability is considered in the broader context of a person’s health and the interaction of the disability with their day-to-day life.’* Paragraph 26 on p. 7 states that *‘this introduces additional social factors to consider in defining disability as opposed to medical matters alone’*. Paragraph 28 on p. 7 states that *‘this encompasses the social model of disability which requires consideration not only of an impairment in medical terms, but also the identification of barriers that interact with the person’s impairment in a manner that hinders their full participation in life’*. Paragraph 30 p.7 states that *‘therefore when an employer is considering whether an employee is a person who has a disability, they should consider not only any physical or intellectual impairment but also the extent to which barriers are hindering the person’s disability to fully participate in their working life’*. Paragraph 33 on p.8 states that *‘disability covers a limitation that results in particular physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life’*. And finally, paragraph 35 on p.8 states that *‘interpreting disability under the EEA requires not just the presence of an impairment but also an identification of any barriers that hinder the full participation of a person with a disability in working life on an equal basis with others’*.

As a result of the above underlined phrases in the above referenced paragraphs, SIPTU is concerned that the section reads as if this inclusion of the social model of disability set out in the UNCRPD by EU case law has created a two-step test for employers to follow with each step having to be satisfied for the definition of disability within the EEA to apply. SIPTU asserts that the inclusion of the social model of disability is for the purpose of broadening the definition of disability within EU member states and recommends that this section is clarified to reflect this position.



5. The purpose of the Code is to reflect the relevant law and must use the definitions within the law. The Code provides definitions of key concepts including “reasonable accommodation” and “appropriate measures”. Do you have any comments on these definitions in the draft Code?

- Paragraph 67 on page 13 states that *‘where some duties, tasks or functions are re-assigned and the employee performs more of their remaining tasks, that could in a particular case, equate to reasonable accommodation’*. SIPTU would appreciate an example of this to illustrate how this might operate and notes that there is no footnote reference for this paragraph.

SIPTU recommends that this paragraph is clarified and a reference to this assertion is provided.

- Paragraph 70 on page 14 states that the *‘provision of reasonable accommodation does not oblige the employer to create a new job that is different to the job the employee was contracted to do. Any such change would almost certainly give rise to a disproportionate burden on an employer’*. However, paragraph 74 on page 15 states that *‘an employer will not be able to rely on the defence that the measures required are a disproportionate burden unless it can be clearly demonstrated that the employer gave real consideration to both the measures and the cost involved in providing those measures.’*

As there may be circumstances where a new role does not create an additional cost or a significant additional cost to the employer, SIPTU is concerned that the last line of paragraph 70 on page 14 is misleading.



6. Are there aspects of access to reasonable accommodation which are not fully covered in the draft Code either in relation to accessing employment or while in employment? If so, please specify what extra information should be included.

- Paragraph 89 on p.19 states that *'should the employee not be satisfied with the outcome of this procedure they have the option of lodging a complaint with Workplace Relations Commission under the EEA'*.

SIPTU recommends that this paragraph should be amended to include *'Such a complaint should be referred to the Workplace Relations Commission within six months of a request for reasonable accommodation being refused. This time limit is important to note when engaging with the internal grievance procedures available and awaiting an outcome'*.

- While a complaint to the Workplace Relations Commission for the failure to provide reasonable accommodation is pursued as a claim for discrimination under s.77 of the EEA, from p. 19 paragraph 91 to p.26 of the draft Code of Practice there is no longer any reference to 'the failure to provide reasonable accommodation' and SIPTU is concerned that this may cause confusion for complainant's who are seeking redress specifically for a breach of s.16 of the EEA.
- Similarly, p.20 summarises 'Forms of Discrimination' and p.22 summarises 'Victimisation' under the EEA. SIPTU recommends that these sections are removed from the draft Code of Practice as these sections relate to a different breach of the EEA than the failure to provide reasonable accommodation under s.16 of the EEA and their inclusion in the final Code of Practice could cause confusion for complainants.

7. If approved by the Minister, the Code will be a legal document and we propose issuing guidance documents alongside the Code to ensure it is accessible. These documents will include a guidance note and FAQ document. Are there any other supporting documents or materials that you believe would be helpful?

- N/A



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