Healthy Workplaces and the Law: Lessons from Regulatory Theory

URSULA CONNOLLY
SCHOOL OF LAW

PROMOTING HEALTH AND WELL-BEING IN THE WORKPLACE CONFERENCE
Responsive regulation: the regulatory pyramid

- Legislation
- Standards
- Co-regulation between government & industry, industry codes
- Self-regulation, voluntary compliance

Adapted from Ayres and Braithwaite (1992)
SELF-REGULATION AND VOLUNTARY COMPLIANCE
Responsive regulation: the regulatory pyramid

- Self-regulation, voluntary compliance
- Co-regulation between government & industry, industry codes
- Standards
- Legislation

Adapted from Ayres and Braithwaite (1992)
CO-REGULATION AND INDUSTRY CODES
Responsive regulation: the regulatory pyramid

- Self-regulation, voluntary compliance
- Co-regulation between government & industry, industry codes
- Standards
- Legislation

Adapted from Ayres and Braithwaite (1992)
Standards

Codes of Practice

- Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work 2007 (Health and Safety Authority)
- Code of Practice Procedures for Addressing Bullying in the Workplace 2002 (Labour Relations Commission)
Responsive regulation: the regulatory pyramid

Legislation

Standards

Co-regulation between government & industry, industry codes

Self-regulation, voluntary compliance

Adapted from Ayres and Braithwaite (1992)
## Legislation/Laws

<table>
<thead>
<tr>
<th>Criminal</th>
<th>Civil</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Negligence Principles</td>
<td>Industrial Relations mechanisms</td>
</tr>
</tbody>
</table>

### Limitations:
- No record of the Act being used for non-physical injuries
- No dedicated legislative provision on bullying or stress
- Necessity to show evidence of a medically recognised psychiatric injury
- Onus on employee to take risk of action
The law in action

Quigley v Complex Tooling and Moulding (2008) IESC (Supreme Court)
- Use of 2005 Act, negligence principles and 2002 LRC Code

Una Ruffley v Board of Management of St Anne’s School [2015] IECA 287 (Court of Civil Appeal)
Conclusions

- Regulatory pyramid argues that self-regulation and compliance is encouraged by the existence of a punitive legal provision.

- Current legal protection is arguably weak placing a high burden on employees.

- A more robust provision required to prompt employer action.