

The Protected Disclosures Act 2014:

An employer's guide to being "whistleblower" ready



Legislation seeks to provide protection against penalisation for employees who report wrongdoing. While this legislation is aimed at protecting employees, encouraging whistleblowers to make disclosures can also be of benefit to employers. Whistleblowers can assist in uncovering wrongdoing within the organisation. This can help prevent accidents, financial scandals, criminal offences and regulatory breaches. Below we summarise the key features of the Act and highlight the steps employers must take to comply with this new legislation.

Key provisions

The Act protects workers in all sectors. "Worker" is broadly defined and includes employees (public and private), contractors, consultants, agency staff, former employees, temporary employees and interns/trainees. The identity of the worker making the disclosure is given a level of protection under the Act.

A worker's disclosure is protected by the legislation when it relates to a "relevant wrongdoing". "Relevant wrongdoing" includes criminal offences; failure to comply with legal obligations (this does not include disclosures of breaches relating to the worker's own terms of employment); miscarriages of justice; health and safety matters; environmental damage; unlawful or improper use of public money; an act or omission by a public body that is oppressive, discriminatory, grossly negligent or constitutes gross mismanagement; and if information in relation to any of the above is concealed or destroyed.

A stepped disclosure regime in the Act encourages workers to make disclosures internally first to either their employer or other responsible person. This is the least onerous channel for workers as they merely have to have a "reasonable belief" that they are disclosing a relevant wrongdoing which they discovered through work. In order for disclosures to external parties to be protected, for example, disclosures to the media, the worker must be able to show he had good reason not to make the disclosure internally. This may arise, for example, where the employee had previously made the disclosure internally and it had not been dealt with appropriately.

There are comprehensive protections for workers who make disclosures in accordance with the Act:

- The Act provides workers who make disclosures with **protection from penalisation**. This includes but is not limited to, suspension, dismissal, demotion, and unfair treatment. An employer is held vicariously liable if they cause or allow another person to penalise or to threaten penalisation against an employee for having made a protected disclosure.
- In a case for **unfair dismissal, compensation of up to a maximum of five years' remuneration** may be awarded to an employee who was dismissed for having made a protected disclosure.
- Workers under the Act who are dismissed for having made protected disclosures also have the option of applying for **interim relief** before the Circuit Court. If the employer and employee agree, the Court may order that the employee is re-instated or re-engaged in another position on no less favourable terms and conditions.
- Workers and third parties also have a **cause of action in tort** against a person who causes detriment to them because they, or another person, has made a protected disclosure.
- There is **civil and criminal immunity** for employees who make disclosures.

While the Act offers extensive protection to workers, employers can take comfort from the fact that false disclosures which are made deliberately are not protected by the Act. This shields employers from malicious allegations.

Steps towards compliance

Employers should be aware of their obligations under the Act and take the following steps to be whistleblower ready.

Policy and training:

- Implement a whistleblowing policy. This should make it clear that the organisation takes malpractice seriously. Internal reporting should be encouraged as it allows the employer to deal with allegations swiftly and effectively, and to prevent or limit potential damage. Employees should also be made aware of their options to make disclosures outside of the organisation.
- State as part of this policy that the organisation will respect the identity and confidentiality of the whistleblower.
- Communicate this policy to employees so that there is firm-wide awareness and understanding of whistleblowing procedures. To limit the risk of vicarious liability, whistleblowing training should be provided to employees, especially those at a managerial level, who are likely to be recipients of such disclosures.

Investigations and taking action:

- Consider appointing a dedicated whistleblowing officer. The appointee should be someone who is seen as approachable by workers.
- Thoroughly investigate the concerns raised by the worker and keep him or her informed of the progress of the investigation where possible.
- Regularly review the policy and after hearing an allegation, consider whether new practices need to be put in place to deal with the concerns raised by the whistleblower.

Employment contracts and employee claims:

- Do not rely on clauses in employment contracts which prevent the worker from making the disclosure externally. These clauses are unenforceable under the Act.
- Considering the high levels of compensation under the Act, beware of potential whistleblowing claims in the context of other employment disputes. When in doubt, seek legal advice on this.
- If a whistleblower is to be the subject of disciplinary action/dismissal for another reason, proceed cautiously. Ensure that there is sufficient evidence against the individual and that any investigation and subsequent outcome comply with fair procedures.



Key contacts

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