

WHISTLE-BLOWING – PROTECTED DISCLOSURES

A protected disclosure is a disclosure of information that the worker reasonably believes tends to show malpractice. It does not have to be true, as long as the worker reasonable believed it to be true.

Since 2 July 2009, “workers” (including employees) have the right not to “suffer detriment” through making a protected disclosure. Employees have a further right not to be dismissed where the reason is wholly or principally that they made a protected disclosure – such a dismissal is automatically unfair.

Hints and tips:

1. A worker can still be guilty of misconduct when they made a protected disclosure but making the disclosure itself can not be misconduct. In one case, an employee told his employer he believed their IT system was not secure – a protected disclosure. He then hacked into the system to prove it. This was not part and parcel of the disclosure and so the warning he received was not as a result of him making a protected disclosure but because he was guilty of misconduct (*Bolton School v Evans*);
2. The old rules on grievance and disciplinary procedures still apply in some cases, depending on when the detriment/dismissal took place. Make sure you know which rules apply;
3. There is no upper limit for compensation for unfair dismissal where the reason for the dismissal is making a protected disclosure. It is therefore critical that you understand how to comply with the legislation;
4. Remember that unlike most other claims for ‘ordinary’ unfair dismissal (where the employee needs one year’s service in order to bring a claim) there is no qualifying period in order to bring a claim of unfair dismissal in relation to making a protected disclosure;
5. Don’t forget that an employee who is dismissed as a result of making a protected disclosure (and makes a claim within 7 days of their dismissal date) is entitled to apply for special interim relief. This allows them to have their pay and conditions continue up until the date of the hearing;
6. Implement a Whistle-blowing policy- if workers do not follow it, they may fail to satisfy the criteria for a protected disclosure. It will also assist you in keeping abreast of any possible wrongdoing within your organisation. There is also the

- further benefit that the “whistle-blower” will be protected and will then find it much harder to bring a claim for unfair dismissal or victimization;
7. It is advisable to give the whistle-blower the right to be accompanied to meetings, even though it is not a statutory right;
 8. If your organisation is large enough think about setting up either an internal or external anonymous hotline for whistle-blowers.

Dates for your diary

The Government proposes to provide for claims relating to whistle-blowing to include a box to enable the worker to give consent for their disclosure to be passed on to the appropriate industry regulator. Responses are invited before 2 October 2009.

This note does not constitute legal advice and is intended as general guidance only. If you would like further information or would like to arrange a meeting please

[email hina@partnerslaw.co.uk](mailto:hina@partnerslaw.co.uk) or call 07809 694400



7a D'arblay Street London W1F 8DF
w: partnerslaw.co.uk