

Fact Sheet

Whistleblowing

Whistleblowing is the reporting of suspected wrongdoing or dangers in relation to an organisation's activities. This might include bribery, facilitation of tax evasion, fraud or other criminal activity, miscarriages of justice, health and safety risks, damage to the environment and any breach of legal or professional obligations.

The Public Interest Disclosure Act 1998 (PIDA) inserts sections 43A to 43L and 103A into the Employment Rights Act 1996 (ERA), thereby providing protection for workers, who report misdemeanours or malpractices by their employers, or third parties, against victimisation or dismissal.

There is no general legal duty on employees to disclose wrongdoing, although the courts have, in a number of cases, developed the implied term of "fidelity" (broadly speaking, the concept of faithfulness and loyalty), so as to impose a duty on employees with a managerial or supervisory status to report the wrongdoing of others.

PIDA creates two levels of protection for Whistleblowers: dismissal; and detriment. The dismissal of an employee or employee shareholder will be automatically unfair if the reason, or principal reason, for their dismissal is that they have made a "protected disclosure" i.e. they blew the whistle on an activity. There is no qualifying period for claiming unfair dismissal in these circumstances - it is a right from "day one" of employment. PIDA also protects workers from being subjected to any detriment on the ground that they have made a protected disclosure. The definition of a "worker" under PIDA is wider than that under ERA, and includes employees and employee shareholders as well as a wide range of other types of individual.

There is no financial cap on the compensation that could be applied by an Employment Tribunal in a whistleblowing claim and no requirement for the claimant to have a minimum period of service. The attraction of unlimited compensation may mean that, human nature being what it is, the link between a particular complaint and a protected disclosure may sometimes be tenuous.

Whether a Whistleblower qualifies for protection depends on the following tests being satisfied:

Have they made a qualifying disclosure?

There are a number of requirements for a qualifying disclosure (section 43B, ERA):



1. Disclosure of information

The worker must make a disclosure of information. Merely gathering evidence or threatening to make a disclosure is not sufficient.

2. Subject matter of disclosure

The information must relate to one of six types of "relevant failure":

- A criminal offence,
- The breach of a legal obligation,
- A miscarriage of justice,
- A danger to the health & safety of an individual,
- Damage to the environment,
- Deliberate attempt to conceal any of the above

3. Reasonable belief

The worker must have a reasonable belief that the information tends to show one of the relevant failures.

4. In the public interest

Further, the worker must have a reasonable belief that the disclosure is in the public interest.

Is it also a protected disclosure?

The disclosure must also qualify as a protected disclosure (sections 43C-43H, ERA), which broadly depends on:

The identity/status of the person to whom the disclosure is made. PIDA encourages disclosure to the worker's employer (internal disclosure) as the primary method of Whistleblowing.

Disclosure to third parties (external disclosure) may be protected if more stringent conditions are met. Disclosures to a "responsible" third party, or a "prescribed person" are likely to gain protection relatively easily. However, wider disclosures, such as to the police or to the media, will only secure protection in very limited cases.