

Background

Since 1999 workers have been protected from dismissal or detriment when making protected disclosures ('whistleblowing'). However, for some time now it has been felt that whistleblowing legislation needed to be reformed as it failed to properly address the issues it was introduced to deal with.

In response to these concerns the government has, in the Enterprise and Regulatory Reform Act 2013 (Act), made a number of changes to the present 'whistleblowing' legislation.

Changes introduced from 25 June 2013 are set out below:

Disclosures must be in the 'public interest' but no longer in 'good faith'. Previously workers were able to pursue a 'whistleblowing' claim even if the disclosure relates to a breach of their own contract of employment. It has long been felt that this ran contrary to the primary purpose of 'whistleblowing' legislation and therefore, the Act now places a requirement that in order to gain protection, the disclosure must be made in the 'public interest'.

By removing the requirement that a disclosure must be made in 'good faith', the Act now requires that a whistleblower must hold a 'reasonable belief' that the complaint is true; that is, not just rumor or speculation.

Under the new regulations if an employer is able to show that the predominant reason for making a disclosure isn't one of the qualifying disclosures, then an Employment Tribunal will dismiss a worker's claim.

This change is intended to prevent workers seeking to pursue 'whistleblowing' claims where their motivation is for personal gain. However, the Act also provides that Employment Tribunals will have the power to dismiss the claim and or reduce any compensation awarded, where it finds that a worker has not held a reasonable belief.

Vicarious liability

Previously, the law only protects workers if they have been subjected to a detriment by their employer after making a disclosure. The Act now protects whistleblowers from any detriment, suffered at the hands of co-workers as well as their employer.

However, if an employer can show that it took reasonable steps to prevent the detrimental treatment then it will not be held liable for the actions of the co-workers.

Summary

The terminology has been updated to meet the new requirement of the Enterprise and Regulatory Reform Act 2013 but the process of raising concerns and or 'whistleblowing' remains unchanged.

Reference documentation

ACAS best practice guide

CIPD update on whistleblowing

Public concern at work (the whistleblowing charity -November 2013)

The Enterprise and Regulatory Reform Act 2013

Public Interest Disclosure Act 1999

The Human Rights Act; Specifically Articles 10,11 and 14