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Making sense of employment law

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Whistleblowing: A guide for HR professionals

Whistleblowing, which is effectively reporting wrongdoing at work, should be encouraged by employers. It's important for bosses to be able to handle complaints properly and provide an open environment where employees are not afraid to speak out.

THE LAW

The law protects whistle blowers whose employer dismisses them or subjects them to any other detriment (i.e. disadvantage) on the ground that they have made a protected disclosure. The information disclosed must, in the reasonable belief of the worker, tend to show that one or more of the following has taken place, is taking place or is likely to take place:

- A criminal offence
- Breach of any legal obligation
- A miscarriage of justice
- Damage to the environment
- Danger of the health or safety of any individual
- The deliberate concealing of information about any of the above

And the worker must reasonably believe that the disclosure is in the public interest.

The relevant legislation, the Public Interest Disclosure Act 1998, encourages that the disclosure should be to the worker's employer but disclosures to certain other parties may be protected if more stringent conditions are met. In the case of activities regulated by the Financial Conduct Authority this could include, for example, disclosure to the Financial Conduct Authority itself.

GUIDANCE AND CODE OF PRACTICE

In 2015 the Department for Business, Energy and Industrial Strategy (BEIS) published helpful guidance, with a code of practice, on how businesses should

prepare for and handle whistleblowing. BEIS has recommended that employers should:

- Communicate a whistleblowing policy to their staff and make sure the policy is readily available
- Provide training to all workers on how to raise disclosures
- Provide training to managers on how to deal with disclosures
- Ensure that there is a transparent culture so that workers feel safe to make disclosures without repercussions
- Maintain confidentiality and protect the identity of the whistle blower, unless required by law to reveal
- Confirm that any clauses in settlement agreements do not prevent workers from making disclosures in the public interest

DEFENDING A CLAIM

Workers who have been dismissed or suffered any other detriment because of reporting wrongdoing may bring a claim in the employment tribunal.

There is no minimum period of service required (which is generally at least two years for unfair dismissal claims) and there is no restriction on the maximum unfair dismissal compensation award (which is usually the lower of 52 weeks' pay or £80,541).

**This guide is intended for *guidance* only and should not be relied upon for specific advice.
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For Employment Law Advice Contact