



Whistleblowing: HR guide

Description

Introduction

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 **whistleblowers** who are dismissed or subjected 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 qualifying disclosure):

- A criminal offence
- A 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.

Although sexual harassment complaints can already be deemed to be qualifying disclosures, as a breach of a legal obligation or health and safety obligation, provided the complaint satisfies the public interest test, the new employment legislation will, specifically, add sexual harassment to the list of qualifying disclosures.



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 ([FCA](#)) this could include, for example, disclosure to the FCA itself.

Guidance and code of practice

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 **whistleblower**, 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.

For employees bringing [unfair dismissal](#) claims there is no minimum period of service required (which is generally two years for unfair dismissal claims, which will be reduced to six months under the new employment legislation).

Furthermore, there is no restriction on the maximum unfair dismissal compensation award (which is, currently usually the lower of 52 weeks' pay or £118,223, though the 52 week and financial cap will be abolished under the new employment legislation).

Following a Court of Appeal [decision](#) individuals, as well as the employer, can be liable for their actions in relation to dismissing an employee (and subjecting the employee to other detriments).

A claim for unfair dismissal must usually be filed with the employment tribunal within three months (less a day) from when the employment ends and that is subject to the rules for extending time for early conciliation.

A claim for detriment must be filed with the employment tribunal within three months (less a day) before the end of the period of three months from the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last act/failure.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you need any advice on **whistleblowing** or have queries relating to other employment law issues please do not hesitate to [contact](#) me [020 3797 1264](tel:02037971264).

Do check mattgingell.com regularly for updated information.