

Employment

A Beginner's Guide to Whistleblowing - Part 1 - What is Whistleblowing?

Introduction

This two part guide sets out the basics of what you need to know about whistleblowing and the Public Interest Disclosure Act 1998 ('PIDA'). The first part deals with defining whistleblowing and the second part with the protection of whistleblowers.

Who is protected?

PIDA covers most individuals who are engaged to do work by an employer. As such, its application is much wider than just direct employees and will also extend to protect individuals such as agency workers and trainees. Indeed, tribunals are expected, in ambiguous cases, to adopt a wide interpretation and seek to apply PIDA in as many cases as possible.

When is the individual protected?

In order to be protected, an individual must make a protected disclosure. This is a term defined in PIDA and requires much more than an unsubstantiated allegation. The disclosure should include enough information so that the basis of the employer's failure can be understood.

The subject of the disclosure

As well as disclosing information about a failure, the particular disclosure must relate to a specific subject as set out in PIDA. Those failures include the commission of a criminal offence, a failure to comply with a legal obligation, a miscarriage of justice, endangering health and safety, or damage to the environment. Finally, the information can relate not only to a particular failure but also to the deliberate concealment of a failure.

It is worth bearing in mind that the disclosure does not have to be true in order to protect the individual. Provided the individual has a reasonable belief that the disclosure is true at the time they make it, that will be sufficient.

Public Interest

A disclosure must be in the public interest in order to be protected. Generally that will mean that more people than just the individual must be affected by the failure; however recent case law has cast some doubt on exactly what will constitute the public interest but it is possible for an entirely private matter to be considered public.

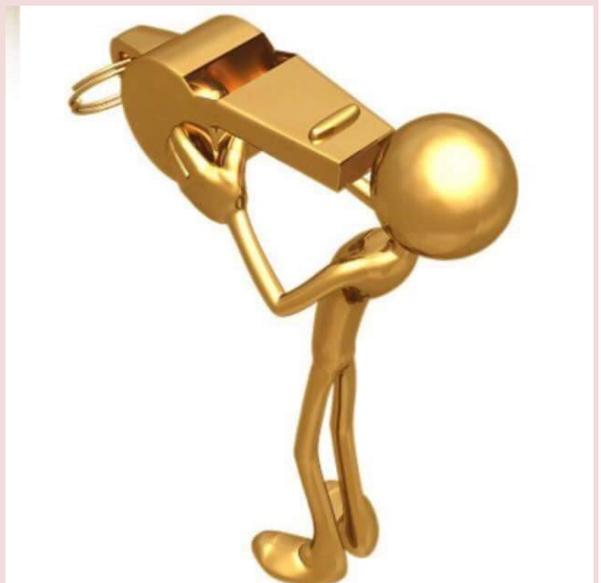
To whom must a disclosure be made?

The general rule is that an individual should make the disclosure to their employer before going public. However, if the individual has tried unsuccessfully to raise the matter, or if it is not possible to do so, then an individual may raise the concern with an external person such as their legal advisor or an appropriate public authority such as the Health and Safety Executive. They may even consider going to the media.

Clearly, a disclosure made directly to the public is likely to be very damaging to the perception and reputation of the employer and so it is highly advisable to put in place a professionally-drafted whistleblowing policy which sets out to whom a disclosure should be made and also confirms that the individual will not be targeted because they have made the disclosure.

If you have any queries about whistleblowing, or would like further information, please contact our Employment team.

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