

THE PUBLIC INTEREST DISCLOSURE ACT 1998

The Public Interest Disclosure Act 1998 ("the Act"), commonly referred to as "the Whistle-Blowers Act", finally came into force on 2 July 1999. As its name suggests, the Act is designed to encourage workers to make disclosures about matters relating to their employment or their employer that are deemed to be in the public interest. This is achieved by providing workers with protection from any "detriment" inflicted by an employer following such a disclosure. For example, in cases where the disclosure leads to the employer dismissing the worker, the dismissal will be regarded as automatically unfair. In addition, an employer could be liable to pay the worker an unlimited compensatory award.

The term "worker" has been given a broad definition in the Act. It covers not just those working under a contract of employment, but in certain cases contractors and those engaged in work experience pursuant to a training course or training programme. There is no minimum period of service required and it is no bar to protection that the worker is above the normal retirement age. The protection given by the Act cannot be waived by the worker in a contract of employment or other agreement. However, not every disclosure merits protection. The matter disclosed must be a "qualifying disclosure" which means that it must contain details relating to criminal offences, failures to comply with legal obligations, miscarriages of justice, endangering of the health or safety of individuals, environmental damage or the deliberate concealment of any information relating to any of these categories.

The worker only needs to have a reasonable belief that the disclosure shows a failure relating to one of the above categories. This means, for example, that the worker does not have to prove a criminal offence has been committed, merely that he/she held a reasonable belief to this effect at the time the disclosure was made. However, the protection of the Act will not apply if the worker commits a criminal offence by making the disclosure or where the information disclosed is subject to legal professional privilege.

Further, a "qualifying disclosure" will only become a "protected disclosure" if it is made in good faith to the employer, a third party (who the worker reasonably believes is responsible for the failure) or, in certain circumstances, to regulatory authorities. The Act makes it easier for disclosures to be made to these groups as workers are encouraged to approach those who have some form of direct responsibility for the failure. Where disclosures are made to those outside these groups, the Act imposes extra conditions which must be met before the worker will be protected (for example, the worker must have a reasonable belief that the information or allegation disclosed is substantially true and that it was reasonable for the worker to have made the disclosure).

The requirement for "good faith" disclosures means that workers who are motivated by malice or other ulterior motives would not be protected, albeit that there is no express provision in the Act to this effect.

On a more reassuring note, the Act encourages concerned workers to approach their employers first. This provides the employer with the opportunity to listen to the concerns raised, to act accordingly and possibly avert the need for any public disclosure.

This guide is for general information and interest only and should not be relied upon as providing specific legal advice. In relation to any particular matter, readers are advised to seek advice.

further information:

If you would like more information about any of Goodman Derrick's Employment Law services please telephone and ask to speak to a member of the Employment Group.

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