

Whistleblowing

Introduction

Rahman Lowe Solicitors have significant experience of advising both employees and employers on whistleblowing claims.

Under the Employment Rights Act 1996 ("ERA 1996"), a worker has the right not to be dismissed or disadvantaged for blowing the whistle at work (making a protected disclosure).

Whistleblowing claims raise two key issues. First, a Tribunal will assess whether the worker made a 'protected disclosure'? Second, if so, was the disclosure the cause of the worker's dismissal or detrimental treatment? An employer's action will only be unlawful if the action was done because the employee or worker had made a protected disclosure. This in effect, requires a test of causation to be satisfied.

What is whistleblowing?

Whistleblowing is the casual name for reporting a suspected wrongdoing at work. Officially this is called "making a disclosure in the public interest".

Pursuant to s.47(B) ERA 1996, "A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure".

A protected disclosure includes information which a worker reasonably believes tends to show one or more of the following:

- a criminal offence has been, is being or is likely to be committed;
- a person has failed, is failing or is likely to fail to comply with legal obligations;
- a miscarriage of justice has occurred, is occurring or is likely to occur;
- the health and safety of any individual has been or is likely to be endangered;
- information tending to show any of the above has been, is being or is likely to be concealed

"Blowing the whistle"

Examples of detrimental treatment include being subjected to disciplinary action for no apparent reason, being passed over for promotion, bullied or denied any other benefit at work. Detrimental treatment at the end of employment would also be covered.

Before blowing the whistle at work, it is important to check whether there is a whistleblowing procedure at the workplace.

The wrongdoing must be reported to the employer or another "responsible person". Further, the disclosure about the wrongdoing must be made in the "public interest". The facts disclosed, rather than mere allegations motivated by ulterior motives, need not be factually correct and protection will apply if the worker is reasonably mistaken.

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"Whistleblowing is an area that has rapidly assumed importance"

Dismissal

It is automatically unfair to dismiss an employee because s/he made a 'protected disclosure' of information. Employees also have the right not to be subjected to any detrimental/disadvantage at work other than dismissal. There is no qualifying period of service and there is virtually no limit to the amount of compensation that may be awarded for successful whistleblowing claims.

The 2013 Whistleblowing Reforms

The Enterprise and Regulatory Reform Act 2013 ("ERRA 2013") produced a multitude of amendments. These were brought in to remedy loopholes created by previous whistleblowing legislation and apply to any disclosures made after 25 June 2013.

Whistleblowing protection applies all "workers". S19 of ERRA 2013 amends the previous s47 (1B) of the Employment Rights Act 1996 stating that a worker has the right not to be victimised:

- a) By another worker of his employer in the course of that other worker's employment or;
- b) By an agent of his employer within the employer's authority

Therefore, employees can now be personally liable for victimising those that blow the whistle and employers can be held vicariously liable for the acts of their employees done in the course of their employment, unless it took all reasonable steps to prevent the victimisation.

Another significant change is found in Section 14 of the Act which introduces a new test for a qualifying disclosure to be made "...in the reasonable belief of the worker...in the public interest..."

"In the public interest" is not defined in the Act and it could take on a variety of meanings, including a disclosure being of apparent benefit to the public in general to attempts to rectify any wrongdoing at work. The gauge recommended in the explanatory notes of the ERRA 2013 is that anything "being of a personal rather than public interest" is excluded. It follows that whistleblowing disclosures regarding purely private matters, such as issues regarding individual employment contracts will not be covered under the Act.

In addition, all that is required of this test is that the worker holds a reasonable belief that the disclosure is in the public interest.

Legal Advice

Our expert whistleblowing lawyers are regularly instructed to advise on complex whistleblowing matters and we have invaluable insight of the financial services, retail, health and recruitment sectors. Due to the complexity of whistleblowing claims, it is important for both employees and employers to obtain expert legal advice from a specialist employment lawyer.

We have successfully pursued whistleblowing claims on behalf of senior executives and employees. We have also successfully defended whistleblowing claims issued against businesses. For business clients, we help minimise the risk of claims before they arise by drafting proper policies and advising on procedures. For employees, we help maximise your entitlements.

If you have been dismissed or subjected to disciplinary action for whistleblowing at work, or if you are an employer and are in the process of dealing with a whistleblowing allegation, please contact our expert employment lawyers in Canary Wharf, London today for a confidential and no obligation discussion on **020 7956 8699** or email info@rllaw.co.uk.

"We have both successfully pursued and defended whistleblowing claims"



"Our expert whistleblowing lawyers are regularly instructed to advise on complex whistleblowing matters"

About us

We are a niche firm of employment and discrimination lawyers based in Canary Wharf, London. We have practised successfully in the City and at some of the UK's largest employment law firms. We also have expertise of working in-house.

Rahman Lowe offers the same quality service and advice as large City law firms but unlike most of our peers in the City, we act for both companies and senior executives. This enables us to anticipate problems before they arise and to advise on tactics.

We work in partnership with our clients and our priority is to build long term trusted relationships. Our partner led teams are committed to ensuring that our legal advice consistently exceeds our clients' expectations.

Our employment lawyers are experts and they regularly conduct seminars and training on developments in Employment and Discrimination Law for our clients. We also conduct training for LexisNexis, a leading global professional information provider and the Chartered Institute of Personnel and Development (CIPD), Europe's largest network of HR professionals.



"We use our legal knowledge to provide creative solutions"

Bespoke employment law advice

Our specialist employment lawyers provide bespoke employment law advice, which is tailor-made to meet your specific requirements. We use our legal knowledge to provide creative solutions and our emphasis is on service and results. We have significant experience of the following:

- Settlement agreement advice
- Discrimination law (all types)
- Whistleblowing
- Unfair dismissal
- Redundancy
- Drafting and negotiating terms and conditions
- Equal pay
- Disciplinary and grievance
- Bonus disputes
- Breach of contract and wrongful dismissal claims
- FCA regulatory matters
- Nursing and Midwifery Council (NMC) representation.



Contact us

Please feel free to telephone us to discuss your own position and concerns.

Our employment law solicitors, based in Canary Wharf, London provide pragmatic advice on all aspects of employment law.

"Jahad provides us with pragmatic employment law advice. He is strategic, commercial and very client friendly. I would have no hesitation recommending him".

Marta Grande
Head of HR, Vivienne Westwood Ltd

"Jahad is an extremely knowledgeable employment lawyer. He exhibits a real can-do attitude. The team at Rahman Lowe provides an excellent service".

Peter To, Director
City Quays Ltd

"Jahad is commercially aware and he always gives excellent advice. He regularly speaks at seminars organised by the CIPD".

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