

# Thinking of whistleblowing?

## Here's what you need to know

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With World Whistleblowers Day on 23 June, Claire Dawson, BDBF Partner and Theo Nicou, BDBF Associate, provide some advice to

prospective whistleblowers.

### **What is whistleblowing?**

Whistleblowing is the act of a worker passing on information concerning malpractice or wrongdoing of some kind, usually witnessed in the course of their employment. The UK legislation refers to the disclosure of such information as a “protected disclosure.”

### **What protections do you have as a whistleblower?**

The Public Interest Disclosure Act 1998 (“the Act”) makes it unlawful for an employer to dismiss an employee if the reason or principal reason is that they have made a protected disclosure. It is also unlawful to subject any worker to a detriment on the grounds that they have made a protected disclosure.

Protection from dismissal under the Act arises from day one of employment. This means that you do not need to have been working at your employer for any minimum length of time to be protected.

### **What are the requirements for a protected disclosure under UK law?**

- The disclosure must be of information that tends to show past, present or likely future wrongdoing falling into one or more of the following categories:
  - criminal offences
  - failure to comply with a legal obligation
  - miscarriages of justice
  - endangering someone’s health or safety
  - damage to the environment
  - concealing wrongdoing in the above categories
- You must reasonably believe that that the information tends to show one of the above failures and that the disclosure is in the public interest. Personal

grievances are not usually covered by the Act.

- The Act encourages disclosure to your employer as the primary method of whistleblowing although there are some exceptions to this.
- A disclosure does not have to be made in good faith, but it may result in a reduction of up to 25% in any award of compensation if it is found not to be.

### **What steps should you take if you're planning to make a disclosure?**

It is advisable to:

- make your protected disclosure in writing, clearly setting out your concerns. Otherwise it can be hard to evidence that it was made.
- think carefully about who to make the disclosure to e.g. is your line manager in the first instance the most appropriate person?
- review your employer's whistleblowing policy (if they have one) before making the disclosure and follow the procedure it sets out.

### **What are some of the common pitfalls we see?**

Often prospective whistleblowers fail to:

- clearly communicate information to their employer when they make their disclosure meaning that the disclosure may not be protected and may be open to challenge by the employer;
- put the disclosure in writing – making it harder to evidence;
- make clear that they are making a protected disclosure and that they are concerned about one of the listed categories of wrongdoing. While this is not strictly necessary, it is helpful to be as clear as possible to increase your chances of protection;
- follow their employer's whistleblowing policy;

- act in a timely manner where they have suffered a detriment or even dismissal.

### **What detriments do we see whistleblowers suffer?**

Whistleblowers can be subjected to side-lining, performance management and in more severe cases, disciplinary procedures or even dismissal. Sometimes they are targeted and bullied by colleagues.

Establishing that the detrimental treatment you have received is due to the disclosure you have made is often the main challenge in whistleblowing cases.

Employers will often argue that an individual has been disciplined not because they blew the whistle, but because they have not been performing well, or have committed an act of misconduct. In short, they say it is for a reason other than your whistleblowing.

### **What time limits do you need to be aware of?**

- Most claims will need to be brought in the Employment Tribunal within three months less one day of the dismissal or the treatment you are complaining about.
- Time limits are strict and apply even where an internal grievance process or investigation is ongoing.
- If you are thinking about making an employment tribunal claim, you will first need to notify details of your claim to ACAS within the time limit.

**If you are thinking of whistleblowing, you may find it helpful to take specialist advice.**

**If you want to find out more about whistleblowing, please contact Claire Dawson ([ClaireDawson@bdbf.co.uk](mailto:ClaireDawson@bdbf.co.uk)) or Theo Nicou ([TheoNicou@bdbf.co.uk](mailto:TheoNicou@bdbf.co.uk)) on 020 3828 0350 or get in touch with your usual BDBF contact.**

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