

## Whistleblowing

### **What is whistleblowing?**

Whistleblowing is when an employee raises concerns about ethically questionable, dangerous or illegal activities by their employer which affect others, whether that is customers, members of the public or their employer.

Whistleblowing is not 'snitching' or 'grassing'. It is an early warning system that can alert colleagues, employers or the public to danger or illegality before it is too late. In some circumstances it can save lives, jobs, money and reputations.

Whistleblowing is not the same as making a complaint. The person raising the concern is not usually directly or personally affected. It is different from a complaint, where an employee is saying that they have been badly treated in some fashion and must prove their case.

### **Am I protected if I raise a concern?**

In general employees should be able to make disclosures about wrongdoing to their employer so that the problem can be identified and resolved. Many employers have internal procedures for this purpose.

However, in reality, many people in this situation have concerns over how their news will be received. Will they be sacked for criticising their employer? Will it somehow harm their career?

The Public Interest Disclosure Act protects workers from being subjected to what the Act describes as a 'detriment' by their employer (for example denial of promotion or training) as a result of raising concerns.

Workers who blow the whistle on wrong doing in the workplace can complain to an employment tribunal if they are dismissed or victimised for doing so. The tribunal will find that an employee was unfairly dismissed if the reason for the dismissal was wholly or mainly for making a protected disclosure.

### **The Public Interest Disclosure Act**

There are six types of wrongdoing covered by the Act:

- a criminal offence;
- the breach of a legal obligation;
- a miscarriage of justice;
- a danger to the health or safety of any individual;
- damage to the environment; or
- deliberate covering up of information tending to show any of the above five matters.

As the worker, you must reasonably believe that the wrongdoing is either happening now, took place in the past, or is likely to happen in the future. The belief need not be

correct - it might be discovered subsequently that you were in fact wrong - but you must show that you held the belief, and that it was a reasonable belief in the circumstances at the time of disclosure.

To be covered by the Public Interest Disclosure Act you must follow the guidelines set out in the Act. As an overriding principle, you must act in good faith. Although the Act encourages workers to approach their employer first, it does not make this mandatory. It recognises that there could be legitimate reasons for the employee to first raise a concern outside the workplace.

If you reasonably believe that you would be subject to a detriment by your employer, or that speaking to your employer would result in the destruction or concealment of information about the wrongdoing, there are three other ways of raising your concern.

You can speak directly to the industry regulator; breaches of health and safety regulations can be brought to the attention of the Health and Safety Executive or appropriate local authority, or environmental dangers can be notified to the Environment Agency. If you work for a public body, including the NHS, you can approach the government office responsible for your sector, such as the Department for Health or Department for Environment, Food and Rural Affairs.

The final way to raise your concern is to go to an external source, which could be the police, an MP or the media. There are further requirements to satisfy if you do this. First, you must not make any financial gain from your allegations. In addition you need to show one of the following:

- You believe you will be treated unfairly if you go to your employer or the regulator
- There is no regulator for your issue and you believe that your employer will conceal the evidence if you tell them
- You have already raised your concern with your employer or the regulator and no action has been taken or you have not been informed of any action.

The Public Interest Disclosure Act covers you for breaking confidentiality clauses in the contract if it falls under one of the 6 types of public interest disclosures. However, the Act does not apply if your work is covered by the Official Secrets Act, if you are a member of the Armed Forces or Intelligence Services, if you are self employed or if you are a volunteer.

### **Employment Tribunal**

If as a result of raising your concern, you feel that you have suffered a detriment, you can take your employer to an employment tribunal. Any employment tribunal will look at whether you, as the worker, acted reasonably in all the circumstances, but in particular will take into account:

- The person to whom you made the disclosure (e.g. it might be considered more reasonable to disclose to a professional body that has responsibility for standards and conduct than to the media);
- the seriousness of the relevant failure;
- whether the relevant failure is continuing or is likely to occur again;
- whether the disclosure breaches the employer's duty of confidentiality to others (e.g. information that is made available by the worker may contain confidential details about a client);
- what action has or might reasonably be expected to have been taken if a disclosure was made previously to the employer; and

- whether the worker complied with any internal procedures approved by the employer if a disclosure was made previously to the employer.

As with many other claims to employment tribunals, the complaint should normally be made within three months of the dismissal or detriment. However, the tribunal can also consider complaints made outside this time limit if it believes that it wasn't reasonably practicable for the employee to have made the complaint within this time.

### **IET Connect legal helpline**

This information is intended as a guide only. For advice on your specific situation, please phone our helpline on 0845 685 0685. We will then put you in touch with our legal helpline which can provide individual advice on your particular situation.

### **Further information**

For further information, visit the Department for Business, Enterprise and Regulatory Reform's [online guidance](#).

If you are in the UK, Public Concern at Work offers a free, confidential [helpline](#) which can advise you on how to safely and effectively raise a concern. The helpline can be contacted on 020 7404 6609 or by e-mailing [helpline@pcaw.co.uk](mailto:helpline@pcaw.co.uk).

Last revised 2009/01