Whistleblowing update

The Protected Disclosures Act 2014 (the “Act”) provides protection for workers (which includes employees, contractors and agency workers) who report a “relevant wrongdoing” in the workplace.

The definition of a “relevant wrongdoing” includes the following: criminal offences; failure to comply with legal obligations (this does not include disclosures of breaches relating to the worker’s own terms of employment); health and safety matters; unlawful or improper use of public money; and if information in relation to any of the above is concealed or destroyed. It is immaterial whether the relevant wrongdoing occurred in Ireland or another jurisdiction and whether the relevant law that has been breached is an Irish law or that of another jurisdiction.

The Act is intended to encourage employees to report disclosures internally initially, in that the employee is only required to have a “reasonable belief” that they are disclosing a relevant wrongdoing. Should the employee decide to report the wrongdoing externally, for example to a regulator, the burden of proof is higher, and the employee must be able to show that he/she believes the disclosure to be “substantially true”. The employee must also be able to demonstrate that they had good reason for not disclosing the information internally first.

By way of brief outline, the protections offered to employees include, but are not limited to:

» protection from penalisation, which includes dismissal and suspension, and threats to take such steps;

» should an employee succeed in a claim for unfair dismissal on foot of the making of a protected disclosure, they may be awarded up to a maximum compensation of five years’ gross remuneration;

» similarly, in the case of a claim of unfair dismissal, the Circuit Court may make an order for interim injunctive relief i.e. that the employee be re-instated until the case for unfair dismissal is determined; and

» confidentiality i.e. any of the information which identifies the disclosing employee will be kept confidential unless an exception under the Act applies e.g. the disclosure is essential to the effective investigation of the allegation.

A disclosure is not covered by the Act if it is the function of the individual making the disclosure (or the employing entity) to detect, investigate or prosecute the subject matter of the disclosure, so depending on the circumstances workers in compliance roles may not attract protection under the Act.

The Act has been amended by the European Union (Protection of Trade Secrets) Regulations 2018 (SI 188 of 2018) which provides that where the disclosure made concerns the unlawful acquisition, use or disclosure of a trade secret, the worker must have acted for the purpose of protecting the general public interest to be protected by the Act. How public interest will be interpreted has not yet been tested.

Although the penalties for failure to comply with the Act are onerous, the risk of exposure is low if complaints are carefully managed by following appropriate procedures. With the right procedures and training, litigation risk and the likelihood of wrongdoing occurring in your organisation is reduced.
Walkers can provide managers and whistleblowing officers with training on handling whistle-blowing complaints. We also advise on whistleblowing penalisation claims and how to resolve them.

Contacts
Please contact the author, below, or one of your other usual Walkers contacts if you would like further advice or information on this topic.

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