

Employment and Employee Benefits Group

# Protected Disclosures Bill, 2013

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## Whistleblower protection

Recent cases involving the Gardai, the HSE and other organisations have focused media attention on the role of whistleblowers in highlighting shortcomings in corporate governance and regulation. While tribunals are already awarding significant sums of up to two years' pay to whistleblowers under unfair dismissal law, in order to encourage more workers to "speak up" this new legislation will allow for awards of up to five years' remuneration even where a worker has not been dismissed.

Currently in Ireland only employees in certain sectors and professions have whistleblower protection. The Protected Disclosures Bill 2013 proposes to be a single, comprehensive, overarching piece of legislation covering both the public and private sectors in Ireland and we have outlined below some key provisions.

## Next steps for employers

With potentially penal sanctions for employers for failure to protect whistleblowers there is an immediate need for employers to put effective internal mechanisms in place. These include having effective systems to investigate whistleblowing complaints and developing an organisational culture that supports such disclosures as a key element of corporate risk management. In anticipation of the enactment of the Bill, employers should consider:

- Putting in place internal structures to deal with protected disclosures;
- Drafting policies to deal with protected disclosures (public sector bodies will have a requirement to do so) and
- Rolling out training to workers and management, to ensure the objective of the legislation can be achieved.

## Who will be protected by the Bill?

Workers, including contractors, trainees, agency staff, former employees and home workers, will have protection.

## What is a "protected disclosure"?

A protected disclosure will be a disclosure of information made by a worker, which came to their attention in connection with their employment.

The worker must reasonably believe that the information is relating to:

- The commission of an offence
- Non-compliance with a legal obligation (other than one arising under the worker's contract with the employer)
- A miscarriage of justice
- Endangerment of health and safety
- Damage to the environment
- Misuse of public funds
- Mismanagement by a public body
- Concealing or destroying information relating to any of the above.

## Method of Disclosure

The Bill envisages a “stepped” disclosure system. Internal reporting is encouraged in the first instance and disclosures to other persons/bodies should only be made if certain conditions and evidential requirements are met.

### What protection will there be for workers?

A worker may bring a complaint to a Rights Commissioner if his employer has penalised him as a result of making a protected disclosure. The Bill also provides that an employer “may not permit any other person to penalise or threaten penalisation against an employee for having made a protected disclosure”.

Penalisation includes:

- Suspension, lay-off or dismissal;
- Demotion or loss of opportunity for promotion;
- Transfer of duties, change of location of place of work, reduction in wages or changing working hours;
- The imposition or the administration of any discipline, reprimand or other penalty;
- Coercion, intimidation or harassment;
- Discrimination, disadvantage or unfair treatment;
- Injury, damage or loss;
- Threat of reprisal.

## Redress

A Rights Commissioner may require an employer to pay compensation that is “just and equitable having regard to all the circumstances, but not exceeding five years’ remuneration.”

If the protected disclosure is found not to have been made in good faith, the amount of the award of compensation may be reduced by up to 50%.

The Bill also allows whistleblowers to take a civil action against any third party that has caused detriment to the whistleblower, or their family, for making a disclosure.

The Bill provides that the Unfair Dismissals Acts will be amended so that there will be no length of service threshold to bring a claim where a dismissal is wholly or mainly due to a protected disclosure. In such cases, up to five years’ remuneration may be awarded.

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