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CHANGES TO WHISTLEBLOWING LAW

By Chris Fisher

Whistleblowing law was introduced to encourage employees to speak up and raise concerns about dangers or illegal practices at work without fear of reprisal. In recent years, however, it has become apparent that the law in this area is not providing the protection it should. Additionally, it is also being used for purposes not originally intended. As a result, the Government is proposing to introduce a number of important changes to whistleblowing law. Employers should be aware of these changes and amend their policies and procedures accordingly.

The first change, which will be introduced on 25 June 2013, is the introduction of a public interest test. This means that employees will have to be able to show a reasonable belief that their disclosure was made in the public interest. This is being introduced to stop employees from claiming to be a whistleblower where they complain about breaches of their own contracts of employment. Such claims were viewed as conflicting with the original aim of the legislation, which was to encourage whistleblowers to alert others to matters of general public concern, not matters which affected them as an individual.

The Government has also decided to remove the requirement that a disclosure be made in good faith. Instead, motive will be taken into account

at the remedy stage of a whistleblowing hearing, and tribunals will have the power to deduct a maximum of 25% from damages where bad faith is established. This change will also be introduced on 25 June 2013.

A final reform, which is expected to be introduced during the summer of 2013, is to extend whistleblowing protection to employees who have been bullied or harassed by others in the workplace. Currently, employees who blow the whistle are only protected from adverse treatment suffered at the hands of their employer. Going forward, employers will be liable in circumstances where whistleblowers are harassed or victimised by their fellow colleagues.

The Government will publish a call for evidence in the autumn in order to assess whether these changes have provided adequate protection and will also consider extending the protections to jobseekers.

Employers should take steps now to amend any relevant policies to reflect these changes. In particular, employers may want to explain that whistleblowing disclosures must be in the public interest. Amended policies should be communicated to employees so that they understand how the changes in legislation will affect them. Lastly, employers may want to consider providing training for line managers where relevant.



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