

12CP BARRISTERS EMPLOYMENT

FACT 9

WHISTLEBLOWING

Whistleblowing is always in the news and employee and employer alike need to know what is and is not protected.

In order to be protected there must be:

a disclosure of information so simply saying there are dangers is usually not enough.

the worker must have a reasonable belief of the truth of the disclosure although it does not have to be true.

Good faith is no longer a requirement but a lack of it can lead to compensation being reduced.

The protection only applies to treatment (detriment or dismissal) which flows from the disclosure. This is a question of legal causation. The treatment must be more than just related to the disclosure for a link to be established. It is not enough to establish that 'but for' the disclosure the employers act or omission causing the act of detriment would not have happened.

A Tribunal must consider the mental processes that caused the employer to act or fail to act to determine whether the disclosure actually caused the treatment.

To make things even more confusing it is a different 'causation test' for detriments than for 'dismissal'.

Perhaps the easiest way to avoid difficulties if you are an employer is to ask yourself why am I taking this action against the employee? If you think it could have something to do with the disclosure then seek advice.

Remember there is no service qualification for these rights as they are day one rights and compensation is not capped.

For more information on whistleblowing:

<https://www.gov.uk/whistleblowing>

<http://www.acas.org.uk/index.aspx?articleid=1919>