



Everything you need to know about the Protected Disclosures (Amendment) Act 2022

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Introduction

In July 2022, the Protected Disclosures (Amendment) Act 2022 was signed into Irish law. This Act gives effect to Directive (EU) 2019/1937 of the European Parliament, regarding the protection of whistleblowers and serves to amend and extend the Protected Disclosures Act 2014. This Act has made several substantial changes to the laws relating to whistleblowing in Ireland, generally expanding both the protections available to whistleblowers and the responsibilities imposed on companies regarding whistleblowing.

These amendments are categorised as follows and further outlined in the following pages:

- ▶ **Changes to Whistleblowing**
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» Changes to Whistleblowing

What Can Be Subject to Whistleblowing?

The Amendment Act changes and expands on the definition of acts of wrongdoing which may be subject to a protected disclosure. This includes potential wrongdoing related to:

- Public procurement
- Financial services, products and markets, and prevention of money laundering and terrorist financing
- Product safety and compliance
- Transport safety
- Protection of the environment
- Radiation protection and nuclear safety
- Food and feed safety and animal health and welfare
- Public health
- Consumer protection
- Protection of privacy and personal data, and security of network and information systems
- Any act or omission which impacts on the financial interests of the European Union or which relate to the Union's internal market

Additionally, the Act also covers any attempts to conceal or destroy information tending to show acts of wrongdoing related to the above categories.

It should be noted that a provision in the 2014 Act which stated that disclosures must not be made for personal gain **has been removed**.

» Protection for Whistleblowers

The Amendment Act contains several changes which relate directly to whistleblowers. These include broadening out the range of individuals protected under the Act, defining the penalties or responses a whistleblower should be protected from in event of whistleblowing, altering the burden of proof regarding who is responsible for demonstrating that penalisation has occurred, and defining the relief available to whistleblowers. These changes are detailed below:

Expansion of Whistleblower Protections

The 2022 Amendment expands the range of individuals who can claim protection under the act in the event of whistleblowing. Individuals now protected under the act include:

- Current employees
- Former employees
- Contractor or agency workers
- Shareholders
- Volunteers or individuals receiving work experience
- Board members
- Job applicants
- Consultants
- Members (including non-executive) of administrative
- Management or supervisory body

It should be noted that, under these changes, the information which is subject to a protected disclosure only needs to have come to light in a work-related context.

Expansion of Protections to Whistleblowers

The 2022 Amendment Act provides an expansion of what it considers to be unfair penalization imposed on individuals who have engaged in whistleblowing. In addition to all penalties proscribed by the 2014 Act, the following acts are now considered to be unfair penalisation:

- Withholding of training
- Negative performance assessment or employment reference
- Failure to convert a temporary employment contract into a permanent one, where the

worker had a legitimate expectation that he or she would be offered permanent employment

- Failure to renew or early termination of a temporary employment contract
- Harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income
- Blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry
- Early termination or cancellation of a contract for goods or services
- Cancellation of a licence or permit
- Psychiatric or medical referrals

Additionally, the Amendment Act also states that, should an individual who has made a protected disclosure subsequently suffered any of these penalties, the burden of proof will lie with the employer to demonstrate that this was in no way connected with the employee having made a protected disclosure. For instance, the law now assumes that, should an individual who makes a protected disclosure subsequently have their employment terminated, this individual has been subject to unfair penalisation. The responsibility lies with the employer to prove that this is not the case.

Expansion of Supports Available to Whistleblowers

The Amendment Act now includes a provision stating that any employee who claims to have suffered penalisation related to having made a protected disclosure can apply to the Circuit Court for interim relief within 21 days immediately following the date of the last instance of penalisation. This 21 day period may be extended at the court's allowance.

» Obligations for Employers

The Amendment Act creates a range of new responsibilities for employers in relation to whistleblowing. These include an expansion of the number of bodies required to have internal whistleblowing procedures, new policies and procedures regarding reporting channels for whistleblowing, and changes to procedures which should be followed on receipt of a protected disclosure.

Policies and Procedures Required under the Act

The Amendment Act requires that all bodies covered by the Act (see below) facilitate employees in making protected disclosures by establishing internal reporting channels and procedures. These reporting channels should:

- Ensure the confidentiality of the individual making a protected disclosure
- Acknowledge the receipt of a protected disclosure within seven days
- Designate an impartial person with the capacity to perform follow up and diligent assessment (see below) of the initial protected disclosure
- Provision of feedback to the whistleblower within three months of the initial receipt of a protected disclosure
- Continued updates on a three-month basis if requested by the whistleblower
- Provision of clear information to all staff regarding these channels and procedures

In addition, the reporting channels and procedures should allow for the following:

- Making of reports, orally, in writing, or both
- Reports made through telephone or voice messaging services must, if requested by the whistleblower, be followed up with a physical meeting

The Amendment Act **does not** require employers to follow up on anonymous reports, although an employer may choose to do so. Should the identity of an individual who has made an anonymous report subsequently have their identity revealed and suffer penalisation, they will be covered under the full protections of the Amendment Act.

Organisations with Obligations under the Act

Under the Amendment Act, any organisation with 50 or more employees is obliged to develop internal reporting channels and procedures to facilitate whistleblowing for their staff. This includes private section organisations. In addition, the Act also allows for the passing of ministerial orders requiring certain types of organisations with fewer than 50 employees to be covered by these obligations.

The Amendment Act states that these obligations will not come into effect until December 2023 for employers with between 50 and 249 employees, excepting public bodies.

Response to Receipt of a Protected Disclosure

The Amendment Act requires that, should a report be received regarding potential wrongdoing, an impartial individual be appointed to assess the claim. This individual may be either internal or external to the organisation, but must have competency to perform a diligent follow up on the claim. This diligent follow up should include seeking further information from the reporting person if required, as to whether there is prima facie evidence that a relevant wrongdoing may have occurred.

Should this assessor conclude that there is no prima facie evidence that a relevant wrongdoing may have occurred, they must either close the procedure or refer the matter to relevant grievance procedures. Their decision should be communicated in writing to the whistleblower as soon as possible.

Protected Disclosures Commission

Under the Amendment Act, a new Office of the Protected Disclosures Commissioner (the Commissioner) has been established within the Office of the Ombudsman. The main purpose of this Office will be to provide guidance in determining the correct body a disclosure should be transmitted to, should this not be immediately clear. The Office will provide support and administrative assistance to the body which receives this disclosure, as required.

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