# **Protected Disclosures Act 2014**

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**Protected Disclosures Act 2014**

The objective of the Protected Disclosures Act is to enable workers to make disclosures about wrongdoing in the public interest without fear of suffering consequential detriment.

The Act provides that if an employee or former employee, becomes aware of a wrongdoing he/she may report the wrongdoing to his/her employer/former employer or, under certain circumstances, elsewhere. Once a wrongdoing is reported the employee has certain protections including protection against victimisation, most civil proceedings and his/her anonymity is protected with the exception of a number of specific cases.

# **Wrongdoings**

The Act includes a broad range of relevant wrongdoings to include criminal offences, breaches of legal obligations, threats to health and safety or the environment, miscarriages of justice, improper use of public funds and/or any attempt to conceal information in relation to such wrongdoings. The legislation encourages workers to make a disclosure to their employers in the first instance.

# **Protection for the worker**

The Act contains a number of statutory protections for disclosers, including a prohibition on penalising or dismissing workers who report wrongdoing. Compensation can be awarded to an employee who succeeds in claiming that he/she was penalised as a result of having made a disclosure. An employee who claims to have been dismissed in these circumstances may seek relief from the Circuit Court, including reinstatement or re-engagement pending the determination or settlement of the employee’s claim.

Disclosers will also be protected from resulting civil or criminal liability and will have a right of action in tort where the discloser, or some other person connected to him/her, suffers detriment as a result of his/her having made a disclosure. The protection afforded by the legislation will apply to workers who disclose relevant information that, in their “reasonable belief”, tends to show a “relevant wrongdoing.” The ordinary meaning of disclosing “information” is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible.

The Act obliges the person to whom the disclosure is made to take all reasonable steps to avoid revealing the disclosers identity.  However, this obligation is not absolute and that person’s identity may be revealed in specific circumstances.

# **What this means**

The Act places a requirement on every public body (which encompasses schools and ETB’s) to establish and maintain procedures for the making of protected disclosures by workers who are, or were employed, by the public body and for dealing with such disclosures.  Each school and ETB will therefore need to have appropriate arrangements in place to receive such disclosures from its workers.

The Department of Public Expenditure and Reform (DPER) have finalised Guidance for public bodies on the performance of their functions under the Protected Disclosures Act and this Guidance document is available on their website, via the following link: [www.per.gov.ie/en/protected-disclosures-act-2014](http://www.per.gov.ie/en/protected-disclosures-act-2014)

A comprehensive FAQ document on the Act is available at Appendix A.

# **Appendix A: Frequently Asked Questions**

# **What is a “protected disclosure”?**

A protected disclosure is a disclosure of information which, in the reasonable belief of the worker, tends to show one or more relevant wrongdoings; came to the attention of the worker in connection with the worker’s employment; and is disclosed in the manner prescribed in the Act.

A protected disclosure should contain “information” which tends to show wrongdoing. The ordinary meaning of disclosing “information” is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible.

# **What is the Protected Disclosures Act 2014 about?**

The purpose of the 2014 Act is to protect workers from being penalised for making a protected disclosure. The objective of the Act is to enable workers to make disclosures in the public interest without fear of suffering consequential detriment. The broader objective of the Act is to promote a culture of public accountability and openness and to improve Ireland’s reputation for transparency internationally.

The Act provides that if an employee or former employee, becomes aware of a wrongdoing he/she may report the wrongdoing to his/her employer/former employer or, under certain circumstances, elsewhere. Once a wrongdoing is reported the employee has certain protections including protection against victimisation, most civil proceedings and his/her anonymity is protected with the exception of a number of specific cases.

# **Who is protected?**

The Act protects a “worker”. A worker is defined as not only an employee or former employee but also anybody who is contracted to do work which is “substantially determined” by the person for whom the individual works or a third party.

# **Do the protections only cover disclosures made after the passing of the legislation?**

A disclosure made before the date of the passing of the legislation may still be a protected disclosure provided that penalisation, detriment or negative consequences for making the disclosure are suffered by the worker subsequent to the enactment of the legislation.

# **What are the wrongdoings that can be disclosed?**

The Act refers to “relevant wrongdoings” which include:

* Criminal offences;
* The failure to comply with a legal obligation;
* A miscarriage of justice;
* The endangerment of an individual’s health or safety;
* Environmental damage;
* The unlawful or improper use of public funds or resources;
* An oppressive, discriminatory, grossly negligent or grossly mismanaged act or omission by a public body; and
* The concealment or destruction of information evidencing any of the above matters or the likelihood of any of the above matters occurring.

**What details should be included in a disclosure?**

It is recommended that, at a minimum, disclosures should include the following details:

* That the disclosure is being made under the Act;
* The discloser’s name, position in the organisation, place of work and confidential contact details;
* The date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
* Whether or not the alleged wrongdoing is still ongoing;
* Whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
* Information in respect of the alleged wrongdoing (what is occurring / has occurred and how) and any supporting information;
* The name of any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to expose the wrongdoing disclosed); and
* Any other relevant information.

# **To whom can the worker report an alleged wrongdoing?**

Initially, the worker should give consideration to reporting the wrongdoing to his/her employer.

However, if the worker reasonably believes that:

* he/she will be subjected to penalisation by their employer;
* it is likely that evidence will be concealed or destroyed; or
* the wrongdoing is of an exceptionally serious nature

then the worker can disclose to someone else (see also next response).

# **In what circumstances can a worker make a disclosure to someone other than his/her employer?**

If the worker has reason to believe that he or she would be penalised or the evidence relating to the relevant wrongdoing would be concealed or destroyed in the event of an internal disclosure or the relevant wrongdoing is of an exceptionally serious nature. In such circumstances provided the worker:

1. Reasonably believes that the information disclosed and any allegation contained therein are substantially true; and
2. The disclosure is not made for personal gain and it is a reasonable disclosure to make;

the worker may make a disclosure to a person other than his/her employer.

# **Is there anyone else to whom a worker can make a disclosure?**

The Minister for Public Expenditure and Reform prescribed certain persons to whom disclosures may be made. These include the following:

* Health and Safety Authority,
* Environmental Protection Agency,
* Revenue Commissioners,
* Comptroller and Auditor General,
* Director of Corporate Enforcement,
* Data Protection Commissioner
* Pensions Authority,
* Registrar of Companies,
* Registrar of Friendly Societies,
* Competition Authority,
* Irish Takeover Panel,
* Irish Auditing and Accounting Supervisory Authority and
* Local Authorities.

The matters that can be disclosed to these individuals relate, in the main, to their functional responsibilities. An employee of a public body may make a disclosure to the Government Minister with the appropriate functional responsibility.

# **Can a worker make a disclosure to the media?**

There is nothing that prohibits disclosure to the media or any other party. However, in making a disclosure to the media it must be reasonable for the worker, in all the circumstances of the case, to make the disclosure.

In assessing reasonableness the matters to be looked at include:

* the seriousness of the wrongdoing;
* whether the wrongdoing is likely to occur in the future; and
* the identity of the person to whom the disclosure is made.

Finally, the disclosure cannot be for personal gain.

# **Is the worker obliged under the Act to report a wrongdoing?**

No, there is no legal obligation imposed by the Act on workers to disclose any wrongdoing. However, a worker must still comply with other legal obligations to disclose information, such as those imposed by criminal law. For example, section 19 of the Criminal Justice Act 2011 provides that it is an offence for a person not to report to Gardaí information which he or she knows or believes might be of material assistance in preventing the commission of certain offences or securing the conviction of any persons for those relevant offences (this includes offences relating to financial activities, company law, fraud, theft and corruption). Persons employed by certain designated bodies, such as financial institutions, are obliged to report suspicions of money laundering offences to the Garda Síochána. Employees also have a duty under health and safety legislation to report any defects in the place of work or equipment which might be a danger to health and safety.

# **Are the discloser’s motivations relevant?**

To make a disclosure the only requirement on the worker is that he/she reasonably believes that the information and the allegations are “substantially true”.

The motivation of a worker in making a disclosure is irrelevant to the question of whether a disclosure is a “protected disclosure”. However, where the employee is dismissed partly because he or she made a protected disclosure his or her motivation is relevant in assessing the amount of compensation due.

# **What if the disclosure turns out to be untrue?**

Even where it transpires that the information underlying the disclosure is baseless, the worker will be protected provided that he/she reasonably believed that the information disclosed or any allegation made was substantially true.

# **What if the discloser makes an anonymous disclosure?**

A worker who makes an anonymous disclosure is protected by the Act.

# **Can a discloser remain anonymous?**

The Act seeks to protect the identity of the discloser, focusing on the substance of the disclosure as opposed to the identity of the person who made the disclosure. Thus, there is an obligation on the person to whom the disclosure is made to take all reasonable steps to avoid revealing the identity of the discloser. The obligation ceases to apply where it is reasonably believed that the discloser has waived his or her anonymity or where it is necessary to reveal the identity of the worker for public interest reasons or is required by law.

# **What protection is provided to someone making a protected disclosure?**

Protections/rights include:

* A prohibition on penalising workers who make protected disclosures;
* Immunity from civil actions (other than defamation) for damages;
* A right of action against any person who causes detriment (includes coercion, intimidation, harassment, discrimination, disadvantage, adverse treatment in relation to employment or prospective employment, injury, damage or loss, or a threat or reprisal to a person because that person or a third party made a disclosure);
* In a prosecution for an offence of unlawfully disclosing information, it is a defence to show that at the time of the alleged offence, the disclosure was, or was reasonably believed to be a protected disclosure;
* A qualified right to anonymity;
* Presumption in favour of a disclosure being a protected disclosure; and
* Entitlement to protection even where it transpires no wrongdoing actually occurred, provided that the discloser had a reasonable belief that the wrongdoing occurred.

Employees (as opposed to workers which includes agency workers and independent contractors) may get up to five years’ remuneration in a case of unfair dismissal for making a protected disclosure.

In addition, an employee who is dismissed can apply for “interim relief” (essentially an injunction) from the Circuit Court and may be reinstated if an application is made to the Circuit Court within 21 days of dismissal (the Court has power to extend this period).

# **Can a discloser be liable for defamation?**

If the discloser has a legal, moral or social duty to communicate the information and the recipient to whom the information was disclosed had a similar duty to receive it then the person making the disclosure will be deemed to have made the disclosure in a circumstance of “qualified privilege” and as such would have a defence to any claim for defamation. However, the privilege will be lost if it can be established that the person making the disclosure did so out of malice. “Malice” means that the person did not honestly believe in, or was indifferent to, the truth of what was disclosed.

# **What can an employer do to protect itself?**

1. If an employee makes allegations or produces material to suggest that someone within the organisation has committed or is about to commit a “wrongdoing” the matter should be taken seriously and properly investigated to see if there is any substance to the allegations.
2. Have a policy setting out in clear language what a worker should do if any wrongdoing comes to their attention.
3. The employer should nominate a credible person to whom the employee can speak in confidence.

**Are public bodies required to have procedures for the making of protected disclosures?**

The Act places a requirement on every public body (which encompasses schools and ETB’s) to establish and maintain procedures for the making of protected disclosures by workers who are, or were employed, by the public body and for dealing with such disclosures. The Act provides that the public body must provide workers employed by the body with written information relating to the procedures.

**Where can I obtain more information about the requirements of the Protected Disclosures Act?**

The Department of Public Expenditure and Reform (DPER) have finalised Guidance for public bodies on the performance of their functions under the Protected Disclosures Act and this Guidance document is available on their website, via the following link: [www.per.gov.ie/en/protected-disclosures-act-2014](http://www.per.gov.ie/en/protected-disclosures-act-2014)