

Whistleblowing – Allegations Arising During Tribunal Claims

When someone believes they have been dismissed or suffered a detriment at work because they have made a protected disclosure under the Public Interest Disclosure Act (PIDA), they can bring a claim to the Employment Tribunal (ET). Last year, there were 1,700 claims involving PIDA allegations. Hitherto, the ET has taken no action regarding information arising from such allegations, which may relate to serious fraud, health and safety issues, financial irregularities etc. However, this is about to change with the introduction of a new system whereby this information can be passed to the appropriate regulator for investigation, without unsubstantiated allegations being released into the public domain.

When a claim is made under the PIDA, the Tribunals Service will, but only with the express permission of the claimant, be allowed to send a copy of the ET1 claim form, or selected extracts from it if this is necessary to comply with the Data Protection Act 1998, directly to the relevant regulator so that it can investigate if appropriate. The consent of the claimant will be obtained by them ticking a 'yes' box on an amended ET1 claim form. The form will be accompanied by guidance outlining what happens when a claimant ticks the consent box and explaining that a claimant can contact the regulator directly if they prefer. Where a claimant consents to the information they have provided being passed to a regulator, the Tribunals Service will write to both the claimant and the respondent confirming that a copy of the ET1 form, or extracts from it, have been sent to the regulator.

The relevant regulators for the purpose of sharing ET claim information would be those on the list of 'prescribed persons' under the PIDA legislation. However, a sampling exercise revealed that the majority of PIDA claims are likely to be the responsibility of only a handful of these, namely local authorities, the Health and Safety Executive, the Care Quality Commission, Companies Investigation Branch, the Financial Services Authority, HM Revenue and Customs and the Serious Fraud Office. A phased implementation of the new procedure was initially proposed, passing information to only these regulators initially. However, following a consultation exercise, the Government is exploring whether it is possible for the Tribunals Service to deal with all accepted PIDA claims from the outset.

The Government intends that the new system will apply to accepted PIDA claims that are received by the Tribunals Service on or after 6 April 2010.

*For more information contact PCB Solicitors on 01743 248148
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