



# Enterprise and Regulatory Reform Act 2013

## 2013 CHAPTER 24

### PART 2

#### EMPLOYMENT

##### *Protected disclosures*

#### **17 Disclosures not protected unless believed to be made in the public interest**

In section 43B of the Employment Rights Act 1996 (disclosures qualifying for protection), in subsection (1), after “in the reasonable belief of the worker making the disclosure,” insert “ is made in the public interest and ”.

#### **18 Power to reduce compensation where disclosure not made in good faith**

- (1) Omit the words “in good faith” in the following provisions of Part 4A of the Employment Rights Act 1996 (protected disclosures)—
  - (a) subsection (1) of section 43C (disclosure to employer or other responsible person);
  - (b) paragraph (b) of section 43E (disclosure to Minister of the Crown);
  - (c) subsection (1)(a) of section 43F (disclosure to prescribed person).
- (2) In section 43G of that Act (disclosure in other cases), in subsection (1)—
  - (a) omit paragraph (a);
  - (b) in paragraph (b), for “he” substitute “ the worker ”.
- (3) In section 43H of that Act (disclosure of exceptionally serious failure), in subsection (1)—
  - (a) omit paragraph (a);
  - (b) in paragraph (b), for “he” substitute “ the worker ”.

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, Cross Heading: Protected disclosures. (See end of Document for details)*

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- (4) In section 49 of that Act (remedies for detriment suffered in employment), after subsection (6) insert—

“(6A) Where—

- (a) the complaint is made under section 48(1A), and
- (b) it appears to the tribunal that the protected disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the worker by no more than 25%.”

- (5) In section 123 of that Act (compensatory award for unfair dismissal), after subsection (6) insert—

“(6A) Where—

- (a) the reason (or principal reason) for the dismissal is that the complainant made a protected disclosure, and
- (b) it appears to the tribunal that the disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the complainant by no more than 25%.”

## **19 Worker subjected to detriment by co-worker or agent of employer**

- (1) In section 47B of the Employment Rights Act 1996 (protected disclosures), after subsection (1) insert—

“(1A) A worker (“W”) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

- (a) by another worker of W's employer in the course of that other worker's employment, or
  - (b) by an agent of W's employer with the employer's authority,
- on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

- (a) from doing that thing, or
- (b) from doing anything of that description.

(1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

- (a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and
- (b) it is reasonable for the worker or agent to rely on the statement.

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But this does not prevent the employer from being liable by reason of subsection (1B).”

- (2) In section 48 of that Act (complaints to employment tribunals), in subsection (5)—
- (a) for “includes, where” substitute “includes—
    - (a) where”;
  - (b) at the end insert—
    - “(b) in the case of proceedings against a worker or agent under section 47B(1A), the worker or agent.”

#### Commencement Information

**II** S. 19 in force at 25.6.2013 by S.I. 2013/1455, art. 2(a) (with art. 4(2))

## 20 Extension of meaning of “worker”

- (1) Section 43K of the Employment Rights Act 1996 (extension of meaning of “worker”) is amended as set out in subsections (2) to (7).
- (2) In subsection (1)(ba)—
- (a) for “section 84 or 100 of” substitute “ section 83(2), 84, 92, 100, 107, 115(4), 117 or 134 of, or Schedule 12 to, ”;
  - (b) for “section 42 or 57 of” substitute “ section 41(2)(b), 42, 50, 57, 64 or 92 of, or Schedule 7 to, ”;
  - (c) omit the words after “the National Health Service (Wales) Act 2006”.
- (3) In subsection (1)(bb), after “section 17J” insert “ or 17Q ”.
- (4) In subsection (1)(c)—
- (a) for the words before “in accordance with arrangements” substitute “ works or worked as a person providing services ”;
  - (b) in sub-paragraph (ii), after “section” insert “ 2C, 17AA, 17C, ”.
- (5) Omit subsection (1)(ca) and the preceding “or”.
- (6) Omit subsection (2)(ba).
- (7) After subsection (3) insert—
- “(4) The Secretary of State may by order make amendments to this section as to what individuals count as “workers” for the purposes of this Part (despite not being within the definition in section 230(3)).
  - (5) An order under subsection (4) may not make an amendment that has the effect of removing a category of individual unless the Secretary of State is satisfied that there are no longer any individuals in that category.”
- (8) In section 236(3) of that Act (orders etc subject to affirmative resolution procedure), after “shall be made under section” insert “ 43K(4), ”.
- (9) In consequence of the amendments made by subsections (5) and (6), omit paragraph 7(a)(ii) and (b) of the Schedule to the Smoking, Health and Social Care (Scotland)

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Act 2005 (Consequential Modifications) (England, Wales and Northern Ireland) Order 2006 (S.I. 2006/1056).

- (10) Until the coming into force of the repeal (made by Schedule 3 to the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13)) of sections 27 to 28 of the National Health Service (Scotland) Act 1978 (“the 1978 Act”), section 43K(1)(c)(ii) of the Employment Rights Act 1996 has effect as if it included a reference to section 27A of the 1978 Act.

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**Commencement Information**

- I2** [S. 20](#) wholly in force at 25.6.2013; [s. 20](#) in force for specified purposes at Royal Assent and otherwise in force at 25.6.2013, see [s. 103\(1\)\(i\)\(2\)\(b\)](#)

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