

Case Update



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Whistleblowing – is it in the public interest?

To be protected as a whistleblower, a worker must make a "protected disclosure" – i.e. a disclosure of information which, in the worker's reasonable belief, tends to show a breach of a legal obligation and is in the public interest.

The worker in this case was an interpreter at a private hospital. He asked a member of senior management to investigate false rumours among patients and their families that he was responsible for breaching patient confidentiality. He followed up with an email saying that he needed to clear his name. The issue was referred to the hospital's HR team and the worker met with the Chief Human Resources Officer. He reiterated that he believed there were false rumours circulating about him and that he wanted to clear his name.

When the worker was later dismissed, he claimed that he had been dismissed for blowing the whistle, relying on the two complaints about false rumours.

The Employment Tribunal ruled that he was not a whistleblower because his complaints did not tend to show a breach of a legal obligation and were not made in the public interest. On appeal, the Employment Appeal Tribunal took a slightly different view. It ruled that the complaints did tend to show a breach of a legal obligation. The worker had complained about rumours of him breaching patient confidentiality, which he said were damaging and false. Although he did not use the term "defamation", this was essentially what he was complaining about. However, the EAT agreed that the disclosures were not in the public interest, as the worker was only concerned about the effect of the rumours on him and with clearing his own name. The worker was therefore not protected as a whistleblower.

On one hand, this case shows how wide the protection for whistleblowers potentially goes. A worker does not necessarily need to articulate the piece of law being breached to be protected. Nor does it matter if the worker is ultimately wrong, and there is in fact no breach, so long as the worker reasonably believed there was one.

However, the case also highlights that a worker must reasonably believe that what they are disclosing is in the public interest. If the worker is seeking to protect their own personal interests only, they are unlikely to be a whistleblower. A word of caution, though – the worker does not need to be motivated by the public interest. A worker would be protected as a whistleblower if their primary aim is to protect their own interests, but they believe what they are disclosing is also in the public interest.

This might be the case, for example, if the worker is alleging sexual harassment or that employees are being underpaid or overworked. It is, therefore, safer to assume that a worker making a disclosure of this nature is a whistleblower and is protected from any detriment or dismissal for having blown the whistle.

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