

# Employment Law Dos & Don'ts

## Whistleblowing

### DO

- Do have a whistleblowing policy in place which designates a specific person/department/role to whom disclosures should be made. This will help avoid a disclosure being made to someone and a claim arising without you realising.
- Do take all complaints seriously. It can be tempting to ignore a grievance from an employee with less than two years' service but consider whether there could be whistleblowing issues raised. If so and the worker is subsequently dismissed, there could be a claim.
- Do read the BEIS Whistleblowing: Guidance for Employers and Code of Practice. It sets out employer's responsibilities & best practice for how to deal with whistleblowers.
- Do provide training to staff and encourage an environment where workers feel they can make disclosures without fear of reprisal.
- Do bear in mind that the confidentiality provisions in employment contracts and settlement agreements do not apply to whistleblowing

### DON'T

- Don't worry too much: not every grievance raised has the potential to be classed as whistleblowing, but do read carefully – if the act complained of affects more than one person it could meet the “public interest” test.
- Don't forget that a wide range of individuals are covered under the whistleblowing category of “worker”, including agency workers and members of LLPs.
- Don't assume that activities which take place outside of the UK are exempt. If an employee makes a disclosure about a breach of a foreign law, that is protected too.
- Don't hastily dismiss someone who has blown the whistle. Consider carefully the dismissal of someone who has made a disclosure which might be protected under whistleblowing laws. Even though you will, of course, have a completely unconnected and perfectly justifiable, fair reason, the employee is likely to connect the dismissal to their disclosure. You can still go ahead with a dismissal, but put extra effort into ensuring the reason and process you are relying on are watertight.
- Don't forget that there is no longer a “good faith” requirement when it comes to disclosures. Since 25 June 2013 workers do not have to make their disclosure in good faith for it to be protected. In balance the public interest test was introduced at the same time (which ironically, given the name of the legislation – *The Public Interest Disclosure Act 1998* - did not previously exist).