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TWEAKS TO ISLE OF MAN WHISTLEBLOWING LAW ON THE WAY

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TWEAKS TO ISLE OF MAN WHISTLEBLOWING LAW ON THE WAY

Advocate John Aycock, head of M&P Legal's Employment Law team, explains how new legislation will update the Island's protected disclosure regime.

AMONG the enhancements to the Island's employment law regime being made on 1 April 2025 are some significant changes to how whistleblowing claims may be generated.

Protected disclosures, as whistleblowing is known in law, are now a familiar part of local labour law and frequently feature in cases heard before the Employment & Equality Tribunal. They can often involve public sector employees and potentially large awards. This was seen for instance in the Ranson v Department of Health & Social Care case where in 2023 a £3.2million damages award was made, the highest by a Manx Tribunal by a considerable margin. The reason for such large amounts is that claims involving whistleblowing can have the effect of lifting the statutory compensatory award cap currently £56,000.

There are two changes in particular that the Employment (Amendment) Act 2024 ('the Act') introduces from 1 April 2025. Firstly, legislators have introduced a public interest requirement into the definition of a qualifying disclosure. The new law means a whistleblowing worker must reasonably believe the information should be disclosed in the public interest. In practice, this would mean that a worker who was disclosing a breach of a legal obligation in their own contract of employment will generally not be able to contend they are making a qualifying disclosure, because there would normally be no public interest arising out of a private contract of employment. Hitherto, that argument has been raised and indeed was approved as valid in a 2002 English Employment Tribunal case which in turn led to a change in English law now mirrored in our Manx law.

The counterbalance to adding the public interest test is that the Act removes the existing requirement that qualifying disclosures need to be made in good faith. However it provides for the Tribunal to reduce compensation made to a whistleblower if the protected disclosure was not made in good faith.

The second interesting whistleblowing development arising from the new Act is the introduction of what amounts to vicarious liability of the employer for the acts of co-workers or agents who may subject a whistleblowing worker to detriment.

The new position is that a worker who is subjected to detriment by a colleague has the potential to bring a claim against the employer even if the detriment was without the employer's knowledge or approval. That might seem harsh at first blush but there is a statutory defence for the employer if they can show they took all reasonable steps to prevent the colleague from doing the acts or any similar act that constituted the detriment.

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This reinforces the need for employers to ensure their policies and procedures are kept up to date and that they provide awareness and training courses for staff where appropriate.

An employer who takes such steps can argue they did all they reasonably could to prevent the co-worker detriment and, depending on the facts of each case, that might have the effect of defeating a vicarious whistleblowing claim brought against the employer.

The Act is also interesting as to what it does not contain. A proposed change to whistleblowing law that was in the draft bill stages (but which did not make the final cut) was a novel extra requirement that the whistleblower must make it clear when disclosing the information that it is intended to be a protected disclosure. This clause was questioned in the Legislative Council. Its genesis was not from other jurisdictions' whistleblowing legislation but arising out of judicial commentary in some Manx Tribunal cases where it had been noted that time and cost could be saved if the recipient of the information was told it was being provided as a whistleblow.

The clause was rejected by LegCo and was not reinserted by the House of Keys, thus demonstrating the measured influence of the second chamber. Had this clause survived, then it would have created a potentially difficult hurdle for whistleblowing claimants to overcome given that many do not realise they are making a valid protected disclosure when they impart the information.

The Island's Employment & Equality Tribunal will therefore be applying the new whistleblowing laws from April and it will be interesting to see how these nuances play out in resulting judgments. Under transitional arrangements, existing Tribunal cases will continue to be heard under the old laws.

Advocate John Aycock has 34 years' experience of labour law matters in three different jurisdictions. This article should not be construed as legal advice; always take advice on the specific facts of each case.

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