



International Employment Lawyer

# GUIDE TO WHISTLEBLOWING

IRELAND

AUTHORS:

ANNE O'CONNELL



Anne O'Connell  
Solicitors

# Ireland

**Anne O'Connell**

AOC Solicitors

## Legal basis for whistleblowing

### **1. Which body of rules regulates workplace whistleblowing procedures and the status of whistleblowers?**

The Protected Disclosures Act 2014 as amended by the Protected Disclosures (Amendment) Act 2022 regulates workplace whistleblowing procedures and the status of whistleblowers, referred to as 'protected disclosures' in Ireland. The 2022 Amendment to the 2014 Act ensured that the provisions fully complied with European standards as set out in the EU Whistleblowing Directive.

## Implementation of the whistleblowing procedure

### **2. Which companies must implement a whistleblowing procedure?**

All private-sector companies with 50 or more employees must have internal procedures and channels for employees to make protected disclosures. The threshold of 50 employees does not apply to public bodies or entities who fall within the scope of certain European Union acts, including but not limited to those related to financial services, products, markets, prevention of money-laundering and terrorist financing, transport safety, and protection of the environment. These employers must have in place internal procedures and channels regardless of their size.

### **3. Is it possible to set up a whistleblowing procedure at a Group level, covering all subsidiaries whether in-country or overseas?**

Employers with less than 250 employees may share resources as regards the receipt of protected disclosures and any investigation to be carried out as part of the follow-up process. However, this does not remove the obligation of each employer to put in place formal channels and procedures for employees to make protected disclosures. A Group with over 250 employees in total may be able to share resources where each entity within the Group has less than 250 employees. Furthermore, the ability to share resources is not limited to employers who are connected or part of the Group structure but also applies equally to unrelated employers who fall under the 250-employee threshold.

In addition, internal reporting channels and procedures shall be accessible by workers of the entity concerned or of any entity within the Group, where applicable and, where possible, by any of the Group's agents and suppliers who acquire information on a relevant wrongdoing through their work-related activities with the entity and the Group.

### **4. Is there a specific sanction if a Company fails to set up an internal whistleblowing procedure?**

A Company which fails to comply with its obligations to establish, maintain and operate internal reporting channels and procedures commits an offence and is liable:

- on summary conviction, to a class A fine (a fine not exceeding 5,000 EUR) or to imprisonment for a term not exceeding 12 months, or both; or
- on conviction on indictment, to a fine not exceeding 75,000 EUR or to imprisonment not exceeding 2 years, or both.

If it is proven that the Company committed the above offence with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other officer of the Company, or a person purporting to act in any such capacity, that person as well as the Company commits an offence and shall be liable to be proceeded against and punished as if he or she committed the offence.

#### **5. Must employee representative bodies be involved in the implementation of the system?**

There is no requirement in the Protected Disclosures Act 2014 (as amended) that employee representative bodies are involved in the implementation of the internal reporting channels and procedures. However, some companies themselves may wish to engage with employee representative bodies in this regard.

#### **6. What information must be provided to the workforce about whistleblowing procedures?**

The only requirement set out in the Protected Disclosures Act in relation to providing the workforce with information about the protected disclosure procedures is that the procedures must be accessible not only to the workers of the company but also to workers of any subsidiary and to any agents and suppliers. This results in such procedures being published on the websites, in addition to the company's intranet or Handbook.

Public bodies are required to confirm in their annual report that they have procedures in place and also ensure that they are fully accessible.

#### **7. Are there local language requirements?**

There are no local language requirements but the procedures must be understood by the workers as part of being accessible. Therefore, if an employee does not speak English then the employer should provide an interpreter or a translated version.

#### **8. Must an employer manage the reporting channel itself or can it be outsourced to an external provider whether in-country or overseas?**

An employer may manage the reporting channel internally through a designated person or department or it can outsource this to an external third party.

#### **9. What are the obligations of an employer regarding the protection of data collected through the operation of the whistleblowing procedure?**

Under the Protected Disclosures Act 2014, as amended, an employer may restrict the rights of a data subject (eg, to transparency, information and access, rectification and erasure):

- to the extent necessary and proportionate for:
  - safeguarding the important objectives of the general public interest;
  - protecting the data subject or the rights and freedoms of others; and
  -
- to the extent, and as long as, necessary to prevent and address attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations, or attempts to find out the identity of reporting persons.
- A restriction will be considered necessary and, as the case may be, proportionate where the exercise of the right or compliance with the obligation may:
- necessitate the disclosure of information that might identify the reporting person where such disclosure would be contrary to the duty of confidentiality; or
- prejudice the effective follow-up, including any investigation of the relevant wrongdoing concerned.

Where a restriction of a right or obligation is applied, an employer who receives a report must inform the data subject of the restriction, unless to do so would:

- necessitate the disclosure of information that might identify the reporting person where such disclosure would be contrary to the duty of confidentiality;
- prejudice the effective follow-up, including any investigation, of the relevant wrongdoing concerned; or
- prejudice the achievement of any of the important objectives of the general public interest.

An employer who receives a report must also inform the data subject of the possibility of lodging a complaint with the Data Protection Commission or of seeking a judicial remedy concerning such restriction. The employer must also ensure that personal data is stored for no longer than is necessary.

An employer is also required to implement technical and organisational measures to prevent the abuse or unlawful access to or transfer of personal data in respect of which the employer is the controller, including but not limited to:

- the use of secure storage, passwords, encryption and other methods to ensure that personal data can only be accessed by persons authorised by the employer to access that data;
- the use of controls to ensure that personal data is only disclosed to persons authorised by the employer, or are entitled or permitted by law, to receive that data; and
- data minimisation, including the use of anonymisation and pseudonymisation, where appropriate.

In addition, personal data which is manifestly not relevant for the handling of a specific report must not be collected or, if accidentally collected, must be deleted without undue delay.

## **10. What precautions should be taken when setting up a whistleblowing procedure?**

The whistleblowing procedure should be set up to ensure that it is capable of being easy to follow and comply with in respect of the size of the company. Measures should be included to address a protected disclosure made about senior management and company directors. The procedure should contain flexibility where the circumstances require it. Training should be regularly provided to all employees about the procedure.

## **Scope of the whistleblowing procedure**

### **11. What types of breaches/violations can be the subject of a whistleblowing report?**

Any worker may make a protected disclosure where they believe they have information that tends to show one or more relevant wrongdoings, and such information came to their attention in a work-related context.

The following matters are relevant wrongdoings under the 2014 Act:

- that an offence has been, is being or is likely to be committed;
- that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or another contract whereby the worker undertakes to do or perform any work or services personally;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health or safety of any individual has been, is being or is likely to be endangered;
- that the environment has been, is being or is likely to be damaged;
- that unlawful or otherwise improper use of funds or resources of a public body, or other public money, has occurred, is occurring or is likely to occur;
- that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement;

- that a breach has occurred, is occurring or is likely to occur; or
- that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed or an attempt has been, is being or is likely to be made to conceal or destroy such information.

A breach means an act or omission that is unlawful and to which one or more of the following applies:

- it falls within the scope of the European Union acts set out in Schedule 6 to the 2014 Act that concern the following areas:
  - public procurement;
  - financial services, products and markets, and prevention of money laundering and terrorist financing;
  - product safety and compliance;
  - transport safety;
  - protection of the environment;
  - radiation protection and nuclear safety;
  - food and feed safety and animal health and welfare;
  - public health;
  - consumer protection;
  - protection of privacy and personal data, and security of network and information systems;
- it affects the financial interests of the Union;
- it relates to the internal market, including breaches of European Union competition and state aid rules, as well as breaches relating to the internal market regarding acts that breach the rules of corporate tax or to arrangements designed to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law; or
- it defeats the object or purpose of the rules in the Union acts and areas referred to above.

In addition, the 2014 Act states that a matter concerning interpersonal grievances exclusively affecting a reporting person is not relevant wrongdoing for the Act. Instead, such grievances should be dealt with through other internal procedures.

## **12. Are there special whistleblowing procedures applicable to specific economic sectors or professional areas?**

Nothing other than what is specified in the Protected Disclosures Act as referred to in answer to questions 2 and 11.

## **13. When can an individual make an external whistleblowing report or a public disclosure?**

An individual is encouraged to make a report through internal procedures. However, a reporting person may make a report through external channels or make a public disclosure if the individual reasonably believes that the information disclosed in the report, and any allegation contained in it, are substantially true and the worker:

- has already exhausted internal channels or procedures for disclosure, but no appropriate action was taken in response to the report within the periods specified; or
- reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage; or
- if the worker were to make a report internally or to a prescribed person, Protected Disclosure Commissioner or Minister as the case may be, there is a risk of penalisation or there is a low prospect of the relevant wrongdoing being effectively addressed, due to the particular circumstances of the case, such as those where evidence may be concealed or destroyed or where a prescribed person may be in collusion with the perpetrator of the wrongdoing.

## Identification of the whistleblower

### 14. What is the legal definition of a whistleblower?

An individual is encouraged to make a report through internal procedures. However, a reporting person may make a report through external channels or make a public disclosure if the individual reasonably believes that the information disclosed in the report, and any allegation contained in it, are substantially true and the worker:

- has already exhausted internal channels or procedures for disclosure, but no appropriate action was taken in response to the report within the periods specified; or
- reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage; or
- if the worker were to make a report internally or to a prescribed person, Protected Disclosure Commissioner or Minister as the case may be, there is a risk of penalisation or there is a low prospect of the relevant wrongdoing being effectively addressed, due to the particular circumstances of the case, such as those where evidence may be concealed or destroyed or where a prescribed person may be in collusion with the perpetrator of the wrongdoing.

### 15. Who can be a whistleblower?

A “worker” can make a protected disclosure. The definition of a “worker” under this Act is very broad. The Protected Disclosures (Amendment) Act 2022 extended the definition of a “worker” to cover volunteers, unpaid trainees, board members, shareholders, members of administrative, management or supervisory bodies and job applicants (where information on relevant wrongdoing is acquired during the recruitment process or pre-contractual negotiations), in addition to employees, contractors and sub-contractors.

### 16. Are there requirements to fulfil to qualify as a whistleblower?

To be able to avail of the protections afforded by the Protected Disclosures Act 2014, as amended, a worker has to make a disclosure of information that he/she believes tends to show a relevant wrongdoing, as defined in the Act, and such information came to the worker’s attention in a work-related context. The disclosure must be by one of the methods as set out in the Act.

### 17. Are anonymous whistleblowing reports admissible?

The Protected Disclosures Act 2014, as amended, provides that there is no obligation to accept and follow up on anonymous reports, but an employer may choose to do so. It also clarifies that a worker who makes a disclosure by way of an anonymous report, and who is subsequently identified and penalised for having made a protected disclosure, is entitled to the protections contained in the 2014 Act.

### 18. Must a whistleblower have been a direct witness to the breach/violation that they make a whistleblowing report on?

No, a reporting person does not have to be a direct witness of the violation that they are reporting on. The Protected Disclosures Act 2014, as amended, provides that any worker may make a protected disclosure where they disclose information that they believe tends to show one or more relevant wrongdoings, and such information came to their attention in a work-related context.

## Processing of the whistleblowing procedure

### 19. What are the terms and conditions of the whistleblowing procedure?

Employers are required to establish and operate internal reporting channels that maintain the confidentiality of the identity of the reporting person. Employers must acknowledge a report, in writing, to the reporting person within seven days of receipt of the report.

Employers must designate an impartial person competent to follow up on reports. This designated person is tasked with maintaining communication with the reporting person. The designated person is required to diligently follow up on the report. Diligent follow-up includes the provision of feedback within a reasonable period and, in any case, at three-month intervals. It must include the carrying out of an initial assessment. If, having carried out an initial assessment, the designated person decides that there is no prima facie evidence that a relevant wrongdoing occurred, the procedure can be closed and the reporting person notified, in writing, as soon as practicable, of the decision and the reasons for it.

However, if, having carried out an initial assessment, the designated person decides that there is prima facie evidence that a relevant wrongdoing may have occurred, appropriate action should be taken to address the relevant wrongdoing, having regard to the nature and seriousness of the matter concerned.

Clear and easily accessible information on the procedures applicable to the making of reports must also be provided.

Similar provisions to those in relation to internal reporting channels and procedures also apply to reports to prescribed persons. The different reporting channels and the thresholds to be met in order to qualify for protection for having made a protected disclosure through a relevant channel.

### 20. What confidentiality obligations apply?

Employers are required to establish and operate internal reporting channels that maintain the confidentiality of the identity of the reporting person. Employers must acknowledge a report, in writing, to the reporting person within seven days of receipt of the report.

Employers must designate an impartial person competent to follow up on reports. This designated person is tasked with maintaining communication with the reporting person. The designated person is required to diligently follow up on the report. Diligent follow-up includes the provision of feedback within a reasonable period and, in any case, at three-month intervals. It must include the carrying out of an initial assessment. If, having carried out an initial assessment, the designated person decides that there is no prima facie evidence that a relevant wrongdoing occurred, the procedure can be closed and the reporting person notified, in writing, as soon as practicable, of the decision and the reasons for it.

However, if, having carried out an initial assessment, the designated person decides that there is prima facie evidence that a relevant wrongdoing may have occurred, appropriate action should be taken to address the relevant wrongdoing, having regard to the nature and seriousness of the matter concerned.

Clear and easily accessible information on the procedures applicable to the making of reports must also be provided.



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## **21. Is there a hierarchy between different reporting channels?**

Both the EU Whistleblowing Directive and the Irish implementing legislation makes it clear that ideally wrongdoing would be reported internally in the first instance. The various external reporting channels and accompanying tests that have to be met in order to make disclosures through those channels have been put in place to incentivise workers to report wrongdoing internally first, and to only seek assistance through other channels where internal procedures are exhausted or may not be appropriate in certain limited circumstances.

Subject to meeting the required tests, the order of disclosures is as follows:

- employer/legal adviser;
  - prescribed person/Protected Disclosure Commissioner;
  - relevant institute, body, office or agency of the European Union;
  - Government Minister/Protected Disclosure Commissioner; and
  - the public, for example, a reporter.

## **22. Must an employer inform external authorities about whistleblowing reports received? If so, in what circumstances?**

Section 19 of the Criminal Justice Act 2011 establishes that a person/corporate entity will be guilty of an offence if they have information, and:

- they know or believe that information will or might be of material assistance in preventing the commission of a relevant offence or securing the apprehension, prosecution or conviction of any other person for a relevant offence; and
- they fail without a reasonable excuse to disclose that information as soon as it is practicable to do so to An Garda Síochána (the Irish police force).

The “relevant offences” are set out in the schedule to the 2011 Act and are wide-ranging. These are arrestable offences and include: breaches of company law, competition law, banking, investment funds and other financial activities, theft and fraud, bribery and corruption, criminal damage to property and consumer protection. The range of offences covered can be amended by ministerial order.

The obligation to make a notification under section 19 applies to any person, including corporate entities as well as natural persons. If an offence is committed by a corporate entity and it can be proven that this was done with the consent or connivance of any officer (such a director) or was as a result of the officers wilful neglect, that person will also be guilty of an offence and will be prosecuted and penalised as if they had committed the offence themselves.

The maximum penalty for failing to report an offence is an unlimited fine and imprisonment for up to five years, or both.

A person is under a mandatory statutory obligation to make a report under the 2011 Act as soon as it is practicable to do so.

Persons/corporate entities will be guilty of an offence under the 2011 Act if they fail to report a relevant offence without “reasonable excuse”.



A reasonable excuse is also not defined under the 2011 Act and would likely be dependent on the circumstances of the case. For example, when a person may themselves be involved or implicated in the offence and reporting might compel them to incriminate themselves, this would be a reasonable excuse. The Courts have held that a reasonable excuse may exist when there is some "physical or practical" difficulty in reporting the crime or if the information has already been disclosed.

### **23. Can a whistleblower be sanctioned if the facts, once verified, are not confirmed or do not demonstrate a qualifying violation/breach?**

A person making a protected disclosure, as defined by the Protected Disclosures Act 2014, as amended, is protected against penalisation, detriment and criminal and civil liability, other than in respect of a defamation action. However, qualifying protected disclosures attract qualified privilege for the purposes of the Defamation Act 2009.

There is no requirement that the report must be verified or the facts confirmed in order to avail of the protections of the 2014 Act so long as the disclosure is made in the manner set out in the Act, depending on whether the disclosure is to the employer, a prescribed person, a Minister, a legal advisor, the Protected Disclosures Commissioner or in some other way.

However, a reporting person who makes a report containing any information that he or she knows to be false commits an offence. A person who commits such an offence is liable on summary conviction, to a class A fine (a fine not exceeding 5,000 EUR) or to imprisonment for a term not exceeding 12 months, or both; or on conviction on indictment, to a fine not exceeding 100,000 EUR or to imprisonment for a term not exceeding 2 years, or both.

### **24. What are the sanctions if there is obstruction of the whistleblower by the employer?**

It is an offence to hinder or attempt to hinder a worker in making a report, or to penalise or threaten penalisation or cause or permit any other person to penalise or threaten penalisation a reporting person or to bring vexatious proceedings against a reporting person. These offences attract significant penalties. A person who commits one of these offences is liable on summary conviction, to a class A fine (a fine not exceeding 5,000 EUR) or to imprisonment for a term not exceeding 12 months, or both; or on conviction on indictment, to a fine not exceeding 250,000 EUR or to imprisonment for a term not exceeding two years, or both.

## **Whistleblower Protection**

### **25. What procedure must a whistleblower follow to receive protection?**

The procedure that a whistleblower must follow in order to receive protection under the Protected Disclosures Act 2014, as amended, will depend on the person to whom he/she reports the relevant wrongdoing. These procedures are set out in section 6, 7, 8, 9 and 10 of the 2014 Act. The various tests that have to be met in order to make disclosures through various channels are put in place to incentivise workers to report wrongdoing internally first and to only seek assistance through other channels where internal procedures are exhausted or may not be appropriate in certain limited circumstances.

A disclosure is made in the manner specified in section 6 where the worker makes it to his/her employer or to another person where the worker reasonably believes that the relevant wrongdoing relates solely or mainly to the conduct of that other person; or to something for which that other person has legal responsibility.

A disclosure is made in the manner specified in section 7 where the worker makes it to a prescribed person and reasonably believes that

- that the relevant wrongdoing falls within the remit of that prescribed person; and
- that the information disclosed, and any allegation contained in it, are substantially true.

A disclosure is made in the manner specified in section 8 where the worker makes it to a relevant Minister if the worker is or was employed in a public body; and one or more than one of the following conditions are met:

- the worker has previously made a report of substantially the same information in the manner specified in section 6, 7 or 8, but no feedback has been provided, or, where feedback has been provided, the worker reasonably believes that there has been no follow-up or that there has been inadequate follow-up;
- the worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing;
- the worker reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.

A disclosure is made in the manner specified in section 9 if it is made by the worker in the course of obtaining legal advice (including advice relating to the operation of this Act) from a barrister, solicitor, trade union official or official of an excepted body.

A disclosure is made in the manner specified in section 10 if:

- it is made otherwise than in the manner specified in sections 6 to 9;
- the worker reasonably believes that the information disclosed in the report, and any allegation contained in it, are substantially true; and
- the worker:
  - has previously made a disclosure of substantially the same information in the manner specified in section 6, 7 or 8, but no appropriate action was taken; or
  - reasonably believes that:
    - the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage; or
    - if he or she were to make a report in the manner specified in section 7 or 8, there is a risk of penalisation; or there is a low prospect of the relevant wrongdoing being effectively addressed, due to the particular circumstances of the case, such as those where evidence may be concealed or destroyed or where a prescribed person may be in collusion with the perpetrator of the wrongdoing or involved in the wrongdoing.

## **26. What is the scope of the protection?**

A reporting person who makes a qualifying protected disclosure under the Protected Disclosures Act 2014, as amended, has the benefit of relatively wide-ranging protections under the Act.

They are protected from dismissal for having made a protected disclosure. In addition, they are protected from penalisation or threatened penalisation for having made a disclosure. Penalisation is broadly defined as: "any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report and causes or may cause unjustified detriment". Examples of penalisation include the following acts and omissions:

- withholding of promotion;
- ostracism;
- withholding of training;
- a negative performance assessment or employment reference;
- failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment;

- failure to renew or early termination of a temporary employment contract;
- harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
- blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
- early termination or cancellation of a contract for goods or services;
- cancellation of a licence or permit; and
- psychiatric or medical referrals.

If a person causes detriment to another person because the other person made a protected disclosure, the reporting person has a right of action in tort against the person by whom the detriment was caused.

The employer also has a duty of confidentiality in relation to the identity of the reporting person.

As outlined above, it is also an offence to:

- hinder or attempt to hinder a worker in making a report;
- penalise or threaten penalisation or cause or permit any other person to penalise or threaten penalisation;
- bring vexatious proceedings against a reporting person;
- breach the duty of confidentiality regarding the identity of reporting persons.

## **27. What enforcement mechanisms apply and what are the possible sanctions for breach of the requirements?**

The Protected Disclosures Act 2014, as amended, provides for enforcement measures that apply in relation to protections outlined in the answer to question 26 above.

Unfair Dismissals[A1] – a whistleblower who is dismissed wholly or mainly on the basis of having made a protected disclosure shall be considered to have been unfairly dismissed. It is presumed that the disclosure amounts to a protected disclosure unless proved otherwise. Those who are unfairly dismissed on this basis may take a claim to the Workplace relations Commission and may be awarded up to five years' remuneration. The maximum award to a worker who was not in receipt of remuneration from the employer concerned is 15,000 EUR. However, compensation awarded to workers may also be reduced by up to 25% where the investigation of the relevant wrongdoing was not the sole or main motivation for making the protected disclosure concerned. Whistleblowers may also apply to the Circuit Court for interim relief while waiting for the hearing of the Unfair Dismissal claim

Penalisation – a whistleblower who was penalised for having made a protected disclosure can take a claim to the Workplace Relations Commission for penalisation and may be awarded compensation up to five years' remuneration. There is a presumption that the disclosure made was a protected disclosure unless proven otherwise and a presumption that the penalisation was due to having made the protect disclosure, unless proven otherwise. However, compensation awarded to workers may be reduced by up to 25% where the investigation of the relevant wrongdoing was not the sole or main motivation for making the protected disclosure concerned. Similarly to an unfair dismissal, a worker may make an application to the Circuit Court for interim relief while waiting for the penalisation claim to be heard by the Workplace Relations Commission.

Detriment– a whistleblower has a claim in tort if he/she suffers a detriment for having made a protected disclosure. This is relevant to those whom it is not appropriate to take a claim to the Workplace Relations Commission.

Duty of confidentiality – whistleblowers or persons concerned may have an action in tort against the person who caused the breach of confidentiality. It is also an offence to breach the duty of confidentiality.

Offences – all offences under the Protected Disclosures Act, as set out in answers to question 26 above, can attract significant penalties. A person who commits an offence under this section is liable on summary conviction, to a class A fine (a fine not exceeding 5,000 EUR) or to imprisonment for a term not exceeding 12 months, or both; or on conviction on indictment, to a fine not exceeding 75,000 EUR, 100,000 EUR or 250,000 EUR (depending on the specific offence) or to imprisonment for a term not exceeding two years, or both.

[A1] Unfair Dismissals is a claim under the Unfair Dismissals Acts and therefore it is more accurate to have a capital “D”.

## **28. Are there sanctions for violating a duty to maintain the confidentiality of the identity of a whistleblower? If so, what sanctions apply?**

There are a range of sanctions that may apply to a person who breaches a duty to maintain the confidentiality of a whistleblower. Offences and penalties shall apply to any individual who fails to protect the confidentiality of identity of a whistleblower is liable:

- on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months, or both; or
- on conviction on indictment, to a fine not exceeding 75,000 EUR or to imprisonment for a term not exceeding two years, or both.

Where a breach of duty of confidentiality is committed by a body corporate and is committed with the consent, approval or neglect of a person, such as , a director, manager, secretary or other officer, or person acting in any similar capacity – that person and the body corporate both shall be held liable and face the above-mentioned sanctions.

Whistleblowers also have a right of action in tort against a person who fails to respect the right to confidentiality of identity, as per section 16 of the Protected Disclosures (Amendment) Act 2022.

## **29. Are there exemptions from liability for whistleblowers?**

There are certain exemptions that apply to whistleblowers for civil liability and criminal liability:

Civil liability – whistleblowers are exempted from civil liability proceedings being taken against them for making a protected disclosure, except for defamation proceedings within the parameters of the Defamation Act 2009. Whistleblowers who face defamation proceedings may rely on the defence of “qualified privilege”, whereby the defendant can prove that there was a duty or interest in communicating the report to the receiving party, without malice.

Criminal liability – making a protected disclosure does not constitute a criminal offence, if at the time of making the disclosure, the whistleblower was a worker and the report was, or they reasonably believed it to be a protected disclosure. In the prosecution of a person for the restriction or prohibition of disclosure of information, it may be a defence for the person to show that the disclosure was protected.

These exemptions from liability apply to whistleblowers who make a report through internal channels, external channels, or those who make a public disclosure.

### **30. What support measures are provided to an individual who qualifies as a whistleblower?**

The Protected Disclosures Act 2014, as amended, provides that comprehensive and independent information and advice on the making of protected disclosures and related procedures; protection against penalisation; remedies available in respect of penalisation and the rights of the person concerned as provided for under the Act, shall be made easily accessible, public and free of charge. Information is available on the website of the Protected Disclosure Commissioner.

Prescribed persons, the Protected Disclosures Commissioner, or other suitable persons are required to provide the Workplace Relations Commission, the Labour Court or other courts of competent jurisdiction with information relating to proceedings by a whistleblower, as to whether the whistleblower is entitled to protection under the Act.

### **31. What are the risks for a whistleblower who makes a false report or who fails to comply with the whistleblowing procedure?**

In order to obtain the protection of the Protected Disclosures Act 2014, as amended, in relation to protection from penalisation, detriment, civil and criminal liability, the reporting person must report the relevant wrongdoing in the manner set out in the 2014 Act, the parameters of which will depend on whether the disclosure is to the employer, a prescribed person, a Minister, a legal advisor, the Protected Disclosures Commissioner or in some other way.

In addition, a reporting person who makes a report containing any information that he or she knows to be false commits an offence. A person who commits such an offence is liable on summary conviction, to a class A fine (a fine not exceeding 5,000 EUR) or to imprisonment for a term not exceeding 12 months, or both; or on conviction on indictment, to a fine not exceeding 100,000 EUR or to imprisonment for a term not exceeding two years, or both.