

Further Legal Support for Irish Whistle-blowers

The principal Irish legislation designed to ensure the protection of whistle-blowers in Ireland, the Protected Disclosures Act 2014 (the “PDA 2014”), has been updated and supplemented by new primary legislation in the form of the Protected Disclosures (Amendment) Act 2022 (the “New Act”). This clarifies certain aspects of the PDA 2014 and expands the range of obligations of firms within its scope.

Background

Legislation was originally passed in 2014 to provide protection and a means of redress for negative treatment which whistle-blowers may be subjected to in Ireland. The PDA 2014 provides for a right of redress where “penalisation” is suffered following the making of a relevant disclosure, i.e. whistleblowing. Penalisation in this regard was widely defined to include any act or omission to the whistle-blower’s detriment, and in particular includes— (a) suspension, lay-off or dismissal, (b) demotion or loss of opportunity for promotion, (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours, (d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty), (e) unfair treatment, (f) coercion, intimidation or harassment, (g) discrimination, disadvantage or unfair treatment, (h) injury, damage or loss, and (i) threat of reprisal. Redress for such treatment of up to five year’s salary can be awarded – significantly in excess of the provisions contained under the Unfair Dismissals Act, and the person to whom the detriment is caused is afforded a right of action in tort against the person by whom the detriment is caused under this legislation. The potential severity of these penalties underlines the need for firms to ensure their staff do not engage in conduct that transgresses the legislation.

Updates

The New Act broadens the scope of persons who can rely on the protections afforded under this body of legislation to specifically include directors (including non-executives) and shareholders. The

former group were arguably already included under the broad definition of “worker” but this amendment ensures clarity. It also extends the already broad scope of the definition of “penalisation” to include additional matters including negative reviews, “blacklisting”, withholding of promotion and other negative actions towards the individual.

The New Act requires firms to put in place procedural infrastructure to address related matters, for example to establish, maintain and operate internal reporting channels and procedures for the making of such relevant reports and for follow-up, as well as to educate workers on such procedures. Other new obligations include the designation of a contact person, department or external party to handle such reports by whistle-blowers.

Scope

The legislation is specifically applicable to firms regulated under legislation pertaining to financial services, products and markets as well as the prevention of money laundering and terrorist financing. Accordingly, firms operating within the funds industry, for example, will typically fall squarely within its scope.

How Clerkin Lynch Can Help

Clerkin Lynch can assist firms to ensure compliance with this legislation through the drafting of related policies and procedures or by reviewing drafts for consistency with the relevant legal obligations.



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