



# Legal Update

## Penalties for Whistleblower Retaliation

In the recent U.S. case of Gaia Inc and Paul C. Tarell Jr, the U.S. Securities and Exchange Commission (SEC) issued an order that reflecting a \$2 million dollar settlement for penalisation of a whistleblower. Such an approach is of interest in the Irish context the where new Protected Disclosures (Amendment) Act 2022 the “(New Act)” broadens the scope of actions that constitute penalisation of whistle-blowers and also the penalties for firms if they engage in whistleblower retaliation.

### SEC charges

On May 23, 2023, the SEC issued an Order Instituting Proceedings reflecting a \$2 million settlement with Gaia Inc. This Order included findings that Gaia made material misstatements about the number of paid subscribers, engaged in whistleblower retaliation against the employee who reported the issue internally and to the SEC and also impeded whistleblowing to the SEC by including language in severance agreements that required employees to waive their right to monetary incentives for whistleblowing. In line with the settlement Gaia agreed to make efforts to contact past employees who entered such severance agreements and advise that such agreements do not prevent them from accepting whistleblower awards.

### Irish legislation

The principle Irish legislation with regards to the protection of whistleblowers is contained within the Protected Disclosures Act 2014 (PDA 2014). There have been updates to this act contained in the New Act. The initial legislation passed in 2014 was enacted to afford protection and seek to prevent negative treatment of whistleblowers in Ireland. The PDA 2014 provides a right of redress where penalisation has occurred following the making of a disclosure or whistleblowing. The examples of penalisation that could occur in this regard would include (a) suspension, lay off or dismissal, (b) demotion or loss of opportunity for promotion, (c) transfer of duties or location, reduction in wages, (d) unfair treatment, (e) coercion, intimidation, or harassment. The redress for such penalisation of up to five years’ salary which can be awarded is significantly in excess of the provisions contained within the Unfair

Dismissal Act. The person to whom the detriment is caused is also allowed a right of action in tort against the person by whom the detriment was caused under this legislation.

### Updates

The New Act of 2022 broadens the scope of the people who can rely on the provisions of the legislation to specifically includes directors and shareholders. The New Act requires that relevant firms implement procedural infrastructure to address related matters. Other new obligations include the designation of a responsible person to handle such reports by whistleblowers. The New Act also broadens the scopes of actions that constitute penalisation or retaliation. These actions include the withholding of promotion, ostracism, withholding of training, negative performance assessment, failure to convert temporary employment into permanent, failure to renew or early termination of a temporary employment contract, blacklisting within a sector and psychiatric or medical referrals.

### Scope

This legislation is applicable to firms regulated by legislation relating to financial services, products and markets and also those subject to anti money laundering requirements. Firms operating within the funds industry will typically fall within its scope.

### How can Clerkin Lynch help?

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



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