

Whistleblowing – your rights

Sarah Buxton clarifies the law in respect of agency workers

A whistleblower is a person who raises a concern about a wrongdoing in their workplace or within the NHS or social care setting. An employee has always had protection under the law that if they made a complaint about wrongdoing in the workplace they were protected from dismissal or a detriment. However, the law was not clear on whether a worker would be protected.

More recently, the Employment Appeals Tribunal has held that an agency worker is eligible to bring a claim in accordance with the whistleblowing provisions which protect workers from being subjected to any detriment on the grounds that they have made a protected disclosure.

Ms McTigue was employed by an agency and was assigned to work as a nurse at a sexual assault referral centre operated by the University Hospital Bristol NHS Foundation Trust. She had a written contract with the agency on their standard agency terms and she was also given the Trust's standard form contract that set out, among other things, absence notification procedure and required her to cooperate in relation to issues of health and safety, clinical governance and working time.

Ms McTigue was removed from her assignment in December 2013 and brought a claim against the Trust and the



agency. The Claim against the agency was discontinued.

At first instance, the Employment Tribunal found that it could not hear the claim because she was not a worker. However, the Employment Appeal Tribunal overturned that decision. The Judge considered the whistleblowing legislation in this area and concluded that the primary focus was to protect agency workers and was designed to secure whistleblowing protection for health workers. It was also considered to the extent that agency workers do not determine their own terms of engagement and, therefore, should fall within these protections.

This case has clarified the law in respect of agency workers and who is has whistleblowing protection.

If an employee or worker wishes to raise their concerns, they should obtain a copy of their organisation's whistleblowing policy and seek advice. There are protections in place to ensure that an individual is not subject to a detriment if they raise an issue at work. If an employee or worker is dismissed or treated unfairly, because they have raised an issue at work, then they can be awarded compensation. Should their claim succeed, it can be whatever the judge believes in fair and equitable and is unlimited.



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Whistleblowing – the CQC

If you're employed by an organisation regulated by the Care Quality Commission (CQC), and you have concerns about the care being provided by your employer, the CQC wants you to tell them. They say: 'Your information is very important in helping us form a picture of how well the service you work for cares for all the people who use it. All organisations that provide care must have whistleblowing procedures and must make them available to their employees. Follow your employer's procedures if you have any concerns about care. We don't have any powers to protect you from action taken against you by your employer. However, if you're involved in an employment tribunal in the future, the fact that you told us about your concerns may help you to claim for unfair dismissal.'