Public interim relief applications – a powerful tool for claimants in whistleblowing cases

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The word "whistleblower" derives from 19th Century U.S. police officers who blew their whistles to alert citizens to riots. Nowadays, the term is used to describe anyone who conveys information highlighting wrongdoing in the public interest.

The purpose of World Whistleblowers Day (23 June) is to raise awareness of the important role that whistleblowers play in the combating of corruption and maintenance of national security.

In the employment law context, whistleblowing disclosures are less likely to relate to national security issues than to legal obligations relating to the running of the business and individuals' conduct. However, given the strong public interest in the exposure of civil and criminal wrongdoing, individuals making disclosures play an important role in reducing unlawful and unethical behaviour in our society.

UK employment law grants important protections to whistleblowers. It is unlawful to subject someone to a 'detriment' or to terminate their employment because they have blown the whistle. Doing so leaves the employer, and the individuals responsible, liable to a potential claim for compensation that is not capped by statute in the way that a standard unfair dismissal claim is.

For claimants who have been dismissed because they have blown the whistle, one of the most powerful tools in their litigation armoury is the right to make an application for interim relief.

What is interim relief?

Interim relief is only available to claimants bringing a small number of specific claims for automatic unfair dismissal in the Employment Tribunal. In our experience, interim relief applications are most commonly brought in relation to

whistleblowing dismissals.

In order to make an application for interim relief, the claimant must submit a claim for automatic unfair dismissal and make an application for interim relief within seven days of the date of dismissal. The Tribunal is then required to list a hearing "as soon as practicable".

A claimant will succeed in their application if the Tribunal is satisfied that they are "likely" to succeed in their claim for automatic unfair dismissal at the Final Hearing. Put another way, the claimant needs to have a "pretty good chance" of success (Taplin v. Shippam).

If the Tribunal grants the application, it must then ask the respondent whether it is willing to reinstate the claimant in their previous role, or reengage them in a suitable alternative role, pending the determination of the full claim at the Final Hearing. If the respondent is willing to reinstate then the claimant goes back to work. Where (much more commonly) the respondent is not willing, the Tribunal will make a 'continuation order', meaning the respondent is ordered to pay the claimant as if their employment contract was still continuing, until the Final Hearing.

Sums paid to a claimant under a continuation order are irrecoverable. This means that a claimant does not have to repay the salary paid under the order even if they ultimately lose their claim at the Final Hearing. This makes interim relief a potentially very valuable remedy for claimants, and burdensome one for respondents.

Interim relief – public or private?

BDBF recently acted for the successful claimant in Queensgate Investments LLP v Millet, an Employment Appeals Tribunal decision which confirmed that interim relief applications should be heard in public.

This is the first appellant authority on this point and is of particular importance given the public interest nature of whistleblowing cases.

The majority of the EAT's decision focussed on the construction of the Employment Tribunals (Constitution and Rules of Procedure) 2013, finding that the wording of these rules required interim relief applications to be heard in public. However, the EAT also emphasised the importance of the principle of open justice when interpreting rules of procedure, with the need to resolve any ambiguity in favour of the principle of open justice.

In our view, the principle of open justice is of particular importance when Tribunals are considering whistleblowing cases as if interim relief applications were heard in private, the disclosures, made in the public interest would be heard by the public for the first time at the Final Hearing. This would deny the public the ability to scrutinise the allegations. This is perhaps particularly important at a time when claimants are experiencing very lengthy delays in reaching the Final Hearing in some Employment Tribunals.

What does this mean for whistleblowers?

Given the very short time limit for making an interim relief application, it is important that anyone who considers they have been subjected to a detriment, or are about to be dismissed, as a result of blowing the whistle seeks legal advice as soon as possible. Doing so will put them in the best possible position to make an application for interim relief, in the appropriate case.

If you want to find out more about whistleblowing, please contact Clare Brereton (ClareBrereton@bdbf.co.uk) or Gareth Brahams (GarethBrahams@bdbf.co.uk) on 020 3828 0350 or get in touch with your usual BDBF contact.

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