KEEPING IN TOUCH

THE NEWSLETTER OF RICHARD GROGAN & ASSOCIATES SOLICITORS

Protected Disclosures Act 2014

Claims under this Act do not regularly arise. This is one where it did arise and helpfully the AO in this case has set out the law in some detail.

The AO in this case set out the legislation in Section 3 which sets out what penalisation is and that Section 5 (8) of the Act provides that in proceedings as to whether a disclosure is a protected disclosure it is presumed until the contrary is proved that it is.

The AO pointed out that a worker must reasonably believe that the information disclosed by him tends to show one or more relevant wrongdoing. The worker is permitted to be wrong as outlined in a policy however the UK EAT case of Darnton –v- University of Surrey 2003 ICR615 set out that a reasonable belief must be based on facts as understood by the worker not as actually found to be the case. The AO pointed out that Section 5 (7) of the Act provides that motivation is irrelevant in making a protected disclosure. The AO pointed out that the seminal case on penalisation in this country to date is found in the case of Aidan and Henrietta McGrath Partnership –v- Anna Monaghan PDD2/2006 where the test was identified as

1. To establish that a protected disclosure is in existence
2. An examination of the facts to establish whether penalisation has occurred.

The AO pointed out that the detriment giving rise to the complaints must have been incurred because of or in retaliation for the complainant having made a protected act. The commission of a protected act must be the operative cause in the sense that "but for" the employee having committed the protected act he would not have suffered the detriment.

It is helpful, that the AO, in this case has set out the law in such depth.
This is a case which the employee won and was awarded €10,000.