

Protected Disclosures Act 26 of 2000 (PDA)

Topic: Labour

IN A CALABASH

Introduction

To protect an employee against victimisation or an unfair labour practice and to encourage the reporting of unlawful or unethical behaviour in the workplace, an Act known as the Protected Disclosures Act (PDA) was brought into operation. This Act is often referred to as the 'whistle-blower' Act.

Objectives of the Act

The Act makes provision for procedures in terms of which employees in both private and public sectors may disclose information regarding unlawful or irregular conduct by their employers or other employees in the workplace. It also provides for the protection of such employees when they make such disclosures.

Application of the Act and its implication to Tourism

The PDA applies to any employer and its employees in both the private and public sector.

Summary of the provisions of the Act

The Act protects an employee who has made a protected disclosure.

Where the disclosure has been made in accordance with the provisions of the PDA and any related internal employer policy or code, that employee will be protected against any unfair acts which may be taken by the employer or co-employees as a consequence of such disclosure.

Conditions for protection

Before any person can rely on the PDA for protection as a result of making a protected disclosure, certain conditions will have to be satisfied. Firstly, the disclosure must have been made by the employee in good faith. Secondly, the employee must reasonably believe that the information disclosed and any allegation contained in it are substantially true. Thirdly, the employee must not make the disclosure for purposes of personal gain, except where there is a reward payable in terms of any law.

In addition to the above, a disclosure must be reasonable and the employee who makes the disclosure must have sound reason to believe that he or she will be subjected to an occupational detriment if he or she makes such disclosure to his or her employer or to any other person.

When the employee is afraid that the individual to whom he or she should report the disclosure will act adversely against him or her or conceal or destroy the evidence concerning the matter, then such employee may make the disclosure to the Public Protector or the Auditor-General.

Contracting out of the PDA

When an employer attempts to contract out of the provisions of the PDA, such as when the employer places a provision in a contract of employment or other agreement which negates or denies the employee's rights under the PDA, such clause or provision will be void in so far as it attempts to exclude any provision of the PDA.



WHAT HAPPENS IF YOU DO NOT COMPLY?

Penalties

There are no direct penalties which will be imposed when the PDA is contravened.

When an employee, who has made a protected disclosure is then victimised or loses his or her job as a result of such disclosure, such action will be viewed as unlawful and may amount to an unfair labour practice, which is actionable under the Basic Conditions of Employment Act and the Labour Relations Act.

In such a case, the affected employee will have the right to approach the CCMA or Labour Courts for relief, which could be in the form of an order to reinstate the employee or the payment of damages where the employee has suffered some form of financial loss as a result of the victimisation or unlawful act.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

The following physical controls and measures must be implemented to demonstrate compliance:

- Training on the PDA and the procedure to follow when making a protected disclosure;
- Entrenched right of protection where employees make a valid disclosure;
- Ethics policy to be in place;
- Disciplinary procedures must be set out in order to deal with incidents of unlawful activity; and
- Help line to be available to place individuals in a position to report incidents anonymously.

FURTHER INFORMATION

Regulator

Department of Justice and Constitutional Development

Website

www.justice.gov.za