



# Small Business, Enterprise and Employment Act 2015

## 2015 CHAPTER 26

### PART 11

#### EMPLOYMENT

##### *Whistleblowing*

#### **148 Protected disclosures: reporting requirements**

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) In Part 4A (protected disclosures), after section 43F insert—

##### **“43FA Prescribed persons: duty to report on disclosures of information**

- (1) The Secretary of State may make regulations requiring a person prescribed for the purposes of section 43F to produce an annual report on disclosures of information made to the person by workers.
- (2) The regulations must set out the matters that are to be covered in a report, but must not require a report to provide detail that would enable either of the following to be identified—
  - (a) a worker who has made a disclosure;
  - (b) an employer or other person in respect of whom a disclosure has been made.
- (3) The regulations must make provision about the publication of a report, and such provision may include (but is not limited to) any of the following requirements—
  - (a) to send the report to the Secretary of State for laying before Parliament;

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- (b) to include the report in another report or in information required to be published by the prescribed person;
  - (c) to publish the report on a website.
- (4) The regulations may make provision about the time period within which a report must be produced and published.
- (5) Regulations under subsections (2) to (4) may make different provision for different prescribed persons.”
- (3) In section 236 (orders and regulations)—
- (a) in subsection (3), before “43K(4)” insert “ 43FA (but see subsection (3A)), ”;
  - (b) after subsection (3) insert—
- “(3A) Subsection (3) does not apply to regulations under section 43FA that contain only the provision mentioned in section 43FA(2), (3) or (4).”

**Commencement Information**

**II** S. 148 in force at 1.1.2016 by [S.I. 2015/2029](#), [reg. 2\(a\)](#)

**149 Protection for applicants for employment etc in the health service**

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) After section 49A insert—

**“PART 5A**

PROTECTION FOR APPLICANTS FOR EMPLOYMENT ETC IN THE HEALTH SERVICE

**49B Regulations prohibiting discrimination because of protected disclosure**

- (1) The Secretary of State may make regulations prohibiting an NHS employer from discriminating against an applicant because it appears to the NHS employer that the applicant has made a protected disclosure.
- (2) An “applicant”, in relation to an NHS employer, means an individual who applies to the NHS employer for—
  - (a) a contract of employment,
  - (b) a contract to do work personally, or
  - (c) appointment to an office or post.
- (3) For the purposes of subsection (1), an NHS employer discriminates against an applicant if the NHS employer refuses the applicant's application or in some other way treats the applicant less favourably than it treats or would treat other applicants in relation to the same contract, office or post.
- (4) Regulations under this section may, in particular—

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- (a) make provision as to circumstances in which discrimination by a worker or agent of an NHS employer is to be treated, for the purposes of the regulations, as discrimination by the NHS employer;
  - (b) confer jurisdiction (including exclusive jurisdiction) on employment tribunals or the Employment Appeal Tribunal;
  - (c) make provision for or about the grant or enforcement of specified remedies by a court or tribunal;
  - (d) make provision for the making of awards of compensation calculated in accordance with the regulations;
  - (e) make different provision for different cases or circumstances;
  - (f) make incidental or consequential provision, including incidental or consequential provision amending—
    - (i) an Act of Parliament (including this Act),
    - (ii) an Act of the Scottish Parliament,
    - (iii) a Measure or Act of the National Assembly for Wales, or
    - (iv) an instrument made under an Act or Measure within any of sub-paragraphs (i) to (iii).
- (5) Subsection (4)(f) does not affect the application of section 236(5) to the power conferred by this section.
- (6) “NHS employer” means an NHS public body prescribed by regulations under this section.
- (7) “NHS public body” means—
- (a) the National Health Service Commissioning Board;
  - (b) a clinical commissioning group;
  - (c) a Special Health Authority;
  - (d) an NHS trust;
  - (e) an NHS foundation trust;
  - (f) the Care Quality Commission;
  - (g) Health Education England;
  - (h) the Health Research Authority;
  - (i) the Health and Social Care Information Centre;
  - (j) the National Institute for Health and Care Excellence;
  - (k) Monitor;
  - (l) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;
  - (m) the Common Services Agency for the Scottish Health Service;
  - (n) Healthcare Improvement Scotland;
  - (o) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;
  - (p) a Special Health Board constituted under that section.
- (8) The Secretary of State must consult the Welsh Ministers before making regulations prescribing any of the following NHS public bodies for the purposes of the definition of “NHS employer”—
- (a) a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006;

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- (b) an NHS trust established under section 18 of that Act;
  - (c) a Local Health Board established under section 11 of that Act.
- (9) The Secretary of State must consult the Scottish Ministers before making regulations prescribing an NHS public body within any of paragraphs (m) to (p) of subsection (7) for the purposes of the definition of “NHS employer”.
- (10) For the purposes of subsection (4)(a)—
- (a) “worker” has the extended meaning given by section 43K, and
  - (b) a person is a worker of an NHS employer if the NHS employer is an employer in relation to the person within the extended meaning given by that section.”
- (3) In section 230(6) (interpretation of references to employees, workers etc) for “and 47B(3)” substitute “, 47B(3) and 49B(10) ”.
- (4) In section 236(3) (orders and regulations subject to affirmative procedure) after “47C,” insert “ 49B, ”.

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**Commencement Information**

**I2** S. 149 in force at 26.5.2015 by [S.I. 2015/1329](#), [reg. 2\(e\)](#)

**Changes to legislation:**

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