Dorothy Flint

22224920

MBAA 811

Individual assignment

The Protected Disclosure Act Amendment

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Content

The Protected Disclosure Act Amendment (PDAA)

Over the years corruption and unethical practices has taken its toll in both public and private sectors. This unresolved gap has created several initiatives to undertake and promote the accountability for corruption and unlawful events.

Whistle blowing is all about raising a concern in good faith, to promote individual's responsibility and organisational accountability within the workplace. When impropriety is suspected the whistle blowing network can assist the individual without having the fear of victimisation or any occupational detriment.

Requirements and procedures for PDAA

The Protected Disclosure Act Amendment Act, Act 5 of 2017 was modified from the Protected Disclosure Act, Act 26 of 2000, to comply with the 'Whistle Blowing Act'. The reasoning behind this was to support the legal protection of the whistle blowers and that provision was made for employees to report any illegal or irregular behaviour by employers and fellow employees. The act encourages employees to raise concerns and report any corruption without fear.

This Act is a crucial 'tool' for corporate governance that will provide guidance and assistance to promote safe, accountable and responsible work environments.

The amended Act extended the protection of individuals, not just only to employees but also to workers or third parties contracted that would provide a service the individuals organisation. This includes temporary employment services, consultants, agents and independent contractors. The employer and their clients will be likewise accountable for occupational detriments suffered by client's employee where the disclosure is allied to employer's customer.

Purpose of legislation

The purpose of legislation is to protect employees and workers who blow the whistle, by providing solutions for whistle blowers against certain occupational detriment, to have procedures in place where information is disclosed from corruption in a responsible manner. Eliminate criminal or other irregular conduct in the public and private sector. Gives opportunity to form values and ethics that will help facilitate the disclosure of information by employees and workers relating to criminal and other irregular conduct in the work place in a responsible manner. When looking at disclosure, it contains information about impropriety. This can be a concern about the past, present and future misconducts that are taking place in an organisation.

The change in requirements for Amendment Act

The Amendment Act has introduced new requirements for employers that authorise suitable internal procedures for receiving impropriety information and how to manage the information to address the issue. A whistle blowing policy should give guidance on the quality and quantity of relevant information (e.g. type of conduct, dates, place, duration, individuals involved) and procedures that should be followed when disclosures are made. Trainings are essential for employees to familiarise themselves with the policy.

Internal procedures should be brought to attention, have measures in place when disclosure matters are dealt with. Allow this to be accessible in the company policy, this gives opportunity for employees to report and exchange information about the unseen events without them having to fear victimisation or to any occupational detriments. Once a report is done investigation can take place.

It is the responsibility of an employee or worker to inform any disclosure. When it as soon possible, within a period of 21 days after receiving the protected disclosure the employer should decide if they want to investigate or should it be referred to a relevant person that can deal with the disclosure. The employer should acknowledge that disclosure was received, informing in writing to the employee or worker of its decision to continue investigation or if the matter has been referred.

The employer is required to inform the employee or worker if he or she is unable to decide within this period. This would be on a regular basis with intervals of not more than two months that the decision is still pending and within a period of six months. The outcome of the investigation should be informed to employee or worker.

If any false information is given intentionally and it could cause harm to the affected party and the affected party suffers harm because of such disclosures it would be a guilty offence. The conduct would establish an offence even if an employee or worker “ought reasonably to have acknowledged” that the information being disclosed is false.

When found guilty of this offence, the individual will be accountable on conviction to a fine or to imprisonment for a period not exceeding two years, or to both imprisonment and fine.

Whistle blowing should be done with good faith, therefor employees with false claims against their employers or fellow employees can be prosecuted. There should be a foundation on which the relevant disclosure is made and should be mere speculation without any substance. These allegations can have severe consequences.

An employee or a worker cannot be held accountable for any public, illegal or disciplinary proceedings for making a disclosure which is forbidden by any other law, oath, agreement, practice or contract requiring the individual to maintain discretion or limiting the disclosure of information with respect to a matter.

PDAA with conduct today

Research professor Brene Brown made the following statement: “Integrity is choosing courage over comfort; choosing what is right over what is fun, fast and easy; and choosing to practice our values rather then simply professing them.” Integrity and speaking what you stand for are core principles for our loyalty and responsibility to your company or profession.

Whistle blowing and the fact that the Protected Disclosure Amended Act was released, has brought to attention that doing the right thing, is not always easy in the work environment. Employees does face different challenges and prefer to be under the radar than to speak out to what is done wrong. There might be treats or they fear the unfair treatment that will go with spilling the beans.

With regards to the Daniels article, suspension or the consequences she had to face by blowing the whistle might have cause some changes both in work and personal life, but the Act is there to protect the employee. Allowing the employee to be respected and not be treated unfair with regards to reporting an incident. Procedures and policies should be in place for employees or workers to be aware of the channel of reporting and how they can follow up an incident. Addressing the matter internally before any external exposure would be best, as external channelling can open doors to company exposure before the investigation is settled, that can also put employee at risk if the claims or reports where false.

Bibliography

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2. South Africa. 2000. Protected Disclosures Act 26 of 2000