Book Review

Joseph England, *NHS whistleblowing and the law*, Law Brief Publishing (www.lawbriefpublishing.com), 2019; 89 pp. ISBN 9781912687350, £49.99 (pbk)

Reviewed by: Evelyn Palmer

This is a paperback book; additionally, there is a foreword by Francesca West, Chief Executive of Protect, and a preface by the author. It is available to order online direct from the publisher, through Amazon, and good legal bookshops such as Wildy & Son.

About the author

Joseph England is a barrister specialising in Employment Law. He currently practises at 3 Paper Buildings and has significant expertise in whistleblowing cases both within and outside the NHS.

Introduction

*NHS Whistleblowing and the Law* provides a comprehensive claimant-focused guide on the legal framework and requirements of whistleblowing claims.

Summary of argument

It highlights the importance of protecting whistleblowers who are targeted as a result of raising patient safety concerns. It also provides useful guidance on how those making a protected disclosure, and who suffer a detriment or are unfairly dismissed as a result, might enforce their employment rights through an Employment Tribunal claim.

Summary of contents

The backdrop to this guide is the Francis Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (6 February 2013), whose recommendations tackled issues of openness, transparency and candour in the NHS. The report was instrumental in advancing reforms including the introduction of a statutory duty of candour to be open and honest with service users and their families when something goes wrong, and which has caused or could lead to significant harm.

Introductory chapters outline procedural issues including who can be a whistleblower and how to start a whistleblowing claim in the Employment Tribunal. Alternative avenues for bringing a claim are also considered, including internal resolution, an application for an interim injunction and an application for judicial review.

The book assists the reader in deciding whether a protected disclosure has been made and navigating the complex and highly technical procedure through which a protected disclosure is determined. Once one of the two possible claims – suffering a detriment and unfair dismissal – are identified, the subsequent chapters assist in the assessment of where liability lies and outline the remedies available to the successful Claimant.

The concluding paragraph notes the impact of the Freedom to Speak Up Report (11 February 2015) as a catalyst for the introduction of the Employment Rights Act 1996 (NHS Recruitment – Protected Disclosure) Regulations 2018, and examines the idea of financially rewarding whistleblowers to compensate them for the inconvenience they invariably suffer.

Finally, there is an examination of the use of confidentiality clauses which might appear to restrict or prevent a signatory from making a protected disclosure, and of the use of non-disclosure agreements.

Analysis

*NHS Whistleblowing and the Law* includes excellent advice on starting an Employment Tribunal claim and the need to ensure the ET1 and grounds of complaint adequately address the statutory definition of a qualifying disclosure contained in s.43B of the Employment Rights Act 1996 (ERA 1996), achieved by explicitly stating the required facts and providing supporting evidence. This will help guard the Claimant against the risk of their claim being struck out for failing to make clear to the employer exactly what is alleged.

The different elements of the legal tests are practically organised into sub-headings, which highlight relevant legislative provisions and are punctuated by case
law references which helpfully demonstrate the practical interpretation and application.

There is useful guidance on calculating statutory time limits for different types of claims, and on the types of documentary evidence required, including statistical data, and how these might be obtained. There is a helpful section on the statutory defences potentially available to the Respondent wishing to avoid liability, as well as the non-financial remedies available to the successful Claimant including reinstatement and re-engagement.

Additional sources of information and advice and funding options provided in the final chapter will prove particularly useful to litigants in person.

**Conclusion**

*NHS Whistleblowing and the Law* is broader than its title suggests. It is an invaluable resource for the prospective Claimant employed in an NHS setting, but it is equally applicable to those in other sectors. The guide contains a thorough review of the extensive employment law provisions which must be satisfied in order for the whistleblowing protection to be used. It will be of particular interest to whistleblowing guardians, human resources professionals, and those conducting an investigation into the handling of whistleblowing concerns in the NHS and other organisations. It will also be of benefit to those defending whistleblowing claims, particularly at the initial stages when assessing merits and whether the statutory test has been met.

**About the reviewer**

Evelyn Palmer is a barrister and has a master’s degree in Medical Law and Ethics from King’s College London. Before being called to the Bar by the Honourable Society of Gray’s Inn in 2019, she held policy roles at the Nursing and Midwifery Council and Care Quality Commission, advising on regulatory and professional disciplinary issues which had national application. She has also assisted in the prosecution of fitness to practise cases concerning the handling of whistleblowing by senior NHS professionals.