

Whistleblowing in Jersey update

Briefing Summary: The Employment Forum was tasked by the Minister for Social Security in May 2024 to consider the introduction of statutory whistleblowing protections in Jersey following the States Assembly's agreement in July 2023 to a proposition supporting such legislation.

Service Area: Employment, Pensions and Incentives

Location: Jersey

Content Authors: Huw Thomas

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The recommendations for the introduction of a statutory public interest disclosure (or "whistleblowing") in Jersey have been published and the key proposals are as follows:

Definition and scope

The proposed law would protect individuals who make a "protected disclosure" of wrongdoing in the public interest—commonly referred to as whistleblowing.

The types of wrongdoing would include:

- Instances where a whistleblower has a reasonable belief that an organisation is breaking the law, for example:
 1. Criminal activity, such as fraud
 2. Breaches of health and safety legislation
 3. Breaches of data protection laws
 4. Environmental damage
- Miscarriages of justice
- An observer believes someone is covering up wrongdoing, either for personal or organisational reasons
- Where an organisation has demonstrated an intention to break the law criminal offences.

Key Contacts



Huw Thomas
PARTNER, JERSEY
+44 (0)1534 822224



Tarina Le Boutilier
COUNSEL, JERSEY
+44 (0)1534 822490

[EMAIL HUW](#)

[EMAIL TARINA](#)

OFFSHORE LAW SPECIALISTS

BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY

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Who would be protected

Protection would extend beyond employees to include agency workers, police officers, Crown officeholders, and (in a future Phase 2), potentially partners, non-executive directors, and charity trustees.

Protection would be a **day one right**.

Disclosure pathways

A tiered disclosure system is proposed:

- **First tier:** internal disclosures to the employer.
- **Second tier:** disclosures to prescribed persons (e.g. regulators and no doubt in the case of arm's length employers, to Ministers).
- **Third tier:** wider disclosures (e.g. to the media), subject to stricter conditions.

Tribunal access and remedies

Whistleblowers would be able to bring claims to the Jersey Employment and Discrimination Tribunal.

Remedies would be modelled on existing remedies for discrimination and compensation for detriment and/or unfair dismissal, with a long-term aim of removing the current cap on awards.

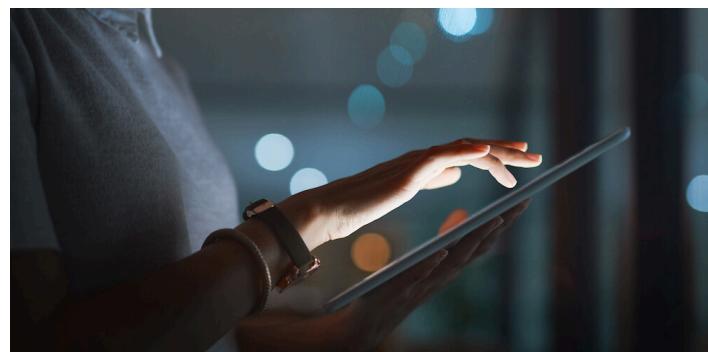
Conclusion

These proposals are likely to require significantly more from employers, even if you already have a whistleblowing policy in place. Planning for when these proposals become law should be part of any project planning you are undertaking for the next 6-12 months.

Please reach out to Huw Thomas or Tarina Le Boutillier if you would like to discuss anything further.

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