

*These notes refer to the Employment Act (Northern Ireland)
2016 (c.15) which received Royal Assent on 22nd April 2016*

Employment Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Protected Disclosures

Section 14: Power to reduce compensation where disclosure not made in good faith

The effect of this section is to remove the requirement in Articles 67C, 67E, 67F, 67G and 67H of the ERO 1996 that a disclosure be made in good faith in order to be a protected disclosure and benefit from whistleblowing protections. In addition, the section amends the ERO 1996 to provide industrial tribunals with the power to reduce an award of compensation by up to 25%, where a protected disclosure has not been made in good faith.

“Good faith” is not defined in the ERO 1996, but the courts in Great Britain have held that where the predominant motive of the individual making the disclosure was not directed at remedying one of the wrongs listed in section 43B of the Employment Rights Act 1996, but was instead for some ulterior purpose, the disclosure is unlikely to have been made in good faith (see *Street -v- Derbyshire Unemployed Workers’ Centre* [2004] IRLR 687). Article 67B is the corresponding provision in the ERO 1996.

Currently, the requirement for a disclosure to be made in good faith can affect the success of the claim. If an industrial tribunal finds that a disclosure was not made in good faith and instead there was an ulterior motive which was the predominant reason for the disclosure, the claim will fail.

Section 14 alters the effect of the good faith test; the issue of good faith will now be considered by a tribunal in relation to remedy, rather than liability, so a claim will not fail as a result of an absence of good faith. An industrial tribunal will have the discretion to reduce a compensatory award by up to 25% in the event that it finds the disclosure has not been made in good faith.