



LEGAL GUIDEBOOK



A GUIDEBOOK FOR WHISTLEBLOWERS

Legal Considerations to Blowing the Whistle – Before, During, and After



www.whistleblowerhouse.org

DISCLAIMER

Your circumstances will change significantly. **It is imperative that you read these guidebooks in full before whistleblowing**, as the decisions you make will have serious and lasting consequences. Understanding what lies ahead and preparing accordingly is essential. This is precisely why The Whistleblower House (TWBH) exists—to support whistleblowers who will face these challenges and offer guidance throughout the process. We recommend pre-counselling or evaluation (consultation) with TWBH or a qualified legal practitioner before whistleblowing, to ensure thorough consideration and careful planning. TWBH provides this guidebook for informational purposes only and accepts no liability for any actions taken based on its content.

- This guidebook is not a substitute for legal, financial, psychological, or security advice. Consult qualified professionals for guidance tailored to your situation.
- Evaluate your circumstances without delay—inaction can make your situation worse.
- Emotional reactions or wishful thinking will not change reality. **A calm, logical approach is essential.**
- Do not let pride or fear of judgment cloud your decisions. **Your livelihood and security must come first.**
- A poor decision can have lasting consequences. **Understand the risks before taking action.**
- This guidebook is a **starting point**, not a standalone solution. Seek additional support where needed.
- Whistleblowing can have a profound financial and emotional impact. Be prepared for psychological and financial challenges, and seek professional support if needed.
- Finding new employment may be difficult. **Plan ahead and explore career options early.**

The information in this guidebook is not legal advice and is provided for general informational and educational purposes only. For advice on specific legal matters, please consult a legal practitioner. Ensure you refer to the most current legislation and case law, as the law may have changed. This guidebook is written in general terms and may not apply to your individual circumstances. Accessing this guidebook does not create an attorney–client relationship with the author or the sponsors, clients, or donors. We accept no liability for actions taken based on this content. The guidebook is accurate as of 20 May 2024, but the law is constantly evolving.

Remember, if you are unsure about blowing the whistle, always consult a lawyer. Employees who expose wrongdoing can often find themselves in difficult situations.

By using this guidebook, you accept full responsibility for your decisions and their consequences.

Note: Whistleblowing can have complex legal, financial, psychological, and security implications. Consult professionals and seek guidance to ensure a well-informed decision-making process.

TABLE OF CONTENTS

WHISTLEBLOWER DEFINITION	1
INTRODUCTION	1
LEGAL FRAMEWORK AND PROTECTIONS FOR WHISTLEBLOWERS	2
UNDERSTANDING THE NATURE OF A DISCLOSURE	5
WHERE DO I BLOW THE WHISTLE?	6
Why am I blowing the whistle?	6
What type of powers does the institution have to bring those accused of wrongdoing to account?	6
Does the institution have jurisdiction over the institution or action to investigate and/or stop the wrongdoing?	7
Investigate which institutions offer safe reporting	7
Considerations before blowing the whistle to the media, civil society organisations or non-pda listed institutions	7
WHAT ARE MY RIGHTS AFTER I HAVE BLOWN THE WHISTLE?	8
Right not to be subjected to occupational detriment	8
Prescription of claims in labour disputes	8
Transferred from post or position	10
Whistleblowers right to status of decision to investigate & outcome	10
Do I resign or stay in employment?	11
ENGAGING A LEGAL PRACTITIONER	11
Financial implications	11
CONCLUSION	15
REACHING OUT FOR HELP	16



WHAT IS A WHISTLEBLOWER?

A whistleblower is anyone who has and reports insider knowledge of illegal, illicit, and fraudulent activities occurring in an organisation. Whistleblowers can be employees, suppliers, contractors, clients, or any individual who becomes aware of wrongful business activities.

THE WHISTLEBLOWER HOUSE DEFINITION OF A WHISTLEBLOWER



A person who, in good faith, reports unlawful or immoral activity within an organisation to an individual or entity they believe will take appropriate action to address it.



INTRODUCTION

Whistleblowers are essential in upholding ethical standards, transparency, and accountability within organisations and society. However, the decision to come forward often involves not only personal and professional challenges but also legal risks. Understanding these legal implications is crucial for whistleblowers as they navigate this difficult and courageous path.

In recognition of these complexities, TWBH has developed this Legal Guidebook to provide vital legal support and guidance to those navigating the whistleblowing process. This guidebook aims to empower whistleblowers by offering clear, practical, and actionable advice on protecting their rights and understanding the legal landscape they may face.

It outlines the key legal considerations, including understanding whistleblower protections, the potential legal consequences of blowing the whistle, and the importance of seeking legal advice, preferably before blowing the whistle. The guide then focuses on the process of engaging with legal representation, understanding the steps of legal proceedings, and how to safeguard your interests during legal challenges. Finally, it offers specific insights on dealing with retaliation, harassment, or adverse actions that may arise as a result of whistleblowing, as well as how to pursue remedies through the appropriate legal channels.

Through these sections, we aim to equip whistleblowers with the knowledge and tools necessary to protect their legal rights before, during, and after whistleblowing, all while continuing their vital work in the pursuit of justice. Whether you are in the early stages of your whistleblowing journey or are facing retaliation or legal challenges, this guide will help you understand your legal options, navigate the system, and make informed decisions.

Remember, seeking professional legal support and taking proactive steps are crucial in protecting yourself from potential legal risks. TWBH is here to provide you with the resources and guidance needed to navigate the legal aspects of your whistleblowing journey.



LEGAL FRAMEWORK AND PROTECTIONS FOR WHISTLEBLOWERS

Blowing the whistle is not only a brave act of defiance and a way to promote ethical standards, but also an action governed by law. Various pieces of legislation outline how and where wrongdoing can be reported. The main law protecting whistleblowers is the [Protected Disclosures Act \(PDA\)](#). This Act offers protection only to employees, independent contractors, and workers. It does not protect individuals outside the organisation, such as members of the public.¹

If you are not covered by the PDA, you may use the Protection from Harassment Act to apply for a protection order. Alternatively, if the matter is under police investigation or being prosecuted by the [National Prosecution Authority \(NPA\)](#), you can apply for witness protection. It is important to carefully assess your safety and security.

The PDA does not specifically mention 'whistleblowing' or 'whistleblower', nor does it define these terms. Instead, it uses the term 'occupational detriment' to describe any negative outcome resulting from a protected disclosure in the workplace. As you begin your whistleblower journey, familiarise yourself with the terminology used in the PDA:²

¹ For more information on who the PDA applies to, refer to [PLAAF's South Africa: Whistleblower Protection Guidebook](#), p. 13.

² For more information on the designated bodies to whom disclosures can be made, see PPLAAF's South Africa: Whistleblower Protection Guidebook, p. 20.



DISCLOSURE

In essence, this means the action of reporting of the wrongdoing. The PDA has defined a disclosure as ‘any disclosure of information regarding any conduct of an employer, or of an employee or of a worker of that employer, made by any employee or worker who has reason to believe that the information concerned shows or tends to show one or more of the following:

- (a) That a criminal offence has been committed, is being committed or is likely to be committed;
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) that the health or safety of an individual has been, is being or is likely to be endangered; that the environment has been, is being or is likely to be damaged;
- (e) unfair discrimination as contemplated in Chapter II of the Employment Equity Act, 1998 (Act 55 of 1998), or the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000); or that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed.’

PROTECTED DISCLOSURE

The disclosure will be regarded as protected only if it has been made to one or more of the following persons or institutions:

- (a) a legal adviser in accordance with section 5;
- (b) an employer in accordance with section 6;
- (c) a member of Cabinet or of the Executive Council of a province in accordance with section 7;
- (d) a person or body in accordance with section 8. Examples given include:
 - The Public Protector;
 - The South African Human Rights Commission;
 - The Commission for Gender Equality;
 - The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
 - The Public Service Commission;
 - The Auditor-General.
 or
- (e) any other person or body in accordance with section 9. This section is wide enough to include the media and civil society.



OCCUPATIONAL DETRIMENT

In relation to the working environment of an employee, means:

- (a) being subjected to any disciplinary action;
- (b) being dismissed, suspended, demoted, harassed or intimidated;
- (c) being transferred against his or her will;
- (d) being refused transfer or promotion;
- (e) being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
- (f) being refused a reference, or being provided with an adverse reference, from his or her employer;
- (g) being denied appointment to any employment, profession or office;
- (h) being subjected to any civil claim for the alleged breach of a duty of confidentiality or a confidentiality agreement arising out of the disclosure of-
 - (i) a criminal offence; or
 - (ii) information which shows or tends to show that a substantial contravention of, or failure to comply with the law has occurred, is occurring or is likely to occur;
- (i) being threatened with any of the actions referred to in paragraphs (a) to (h) above; or
- (j) being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities, work security and the retention or acquisition of contracts to perform work or render services.'



UNDERSTANDING THE NATURE OF A DISCLOSURE

The PDA requires that disclosures be made in good faith. ‘Good faith’ means that the whistleblower’s intention is sincere, but it does not require proof of the validity of the concerns or suspicions. The whistleblower does not need to prove that wrongdoing has actually occurred. However, they must demonstrate a reasonable belief in the substantial truth of their allegations. Disclosures based on mere rumours, conjecture, or office gossip will not qualify for protection under the PDA. Additionally, simply expressing a subjective opinion or making unfounded accusations will not meet the criteria for a protected disclosure.³

A disclosure is not protected if it involves common knowledge or is already being addressed by the employer or another institution. For instance, if an employee has reported wrongdoing and the employer is investigating it, further whistleblowing on the same issue may not qualify for protection.

To qualify for protection, a disclosure must be based on a prima facie case, meaning there is enough initial evidence to support the claim as true unless disproved. This is why reporting office gossip or speculation is risky. You need a solid basis for believing wrongdoing is occurring. Useful evidence might include emails, contracts, proof of irregular transactions, meeting minutes, or resolutions passed incorrectly. Ensure your disclosure is well-supported.

Whistleblowing should be done privately rather than publicly. Simply sending an email to ‘all staff’ may not qualify for protection and could be seen as an attempt to embarrass the employer rather than addressing wrongdoing. Be clear about your intentions and ensure your actions align with them.

Remember, whistleblowing involves balancing the right to freedom of expression with the need to protect against defamation and reputational damage. The accused person may sue for defamation, so be prepared to defend your actions.

The PDA does not cover grievances such as dissatisfaction with salary, promotions, or appointments. If your grievance is related to wrongdoing, such as being denied a promotion due to nepotism, ensure you are blowing the whistle in good faith and not out of revenge.

³ [Communication Workers Union and Other v Mobile Telephone Networks \(Pty\) Limited](#) (JS 803/03) [2003] ZALC 59 (26 May 2003) para 21-22.



WHERE DO I BLOW THE WHISTLE?

The PDA outlines several options for reporting wrongdoing, including legal advisers, your employer, a Member of Cabinet or the Executive Council of a province (if they oversee your workplace), state institutions such as the [Public Protector](#), and other bodies like the media or civil society groups. The PDA Regulations also specify institutions to which you can report, such as the [South African Revenue Service \(SARS\)](#) or the [Special Investigating Unit \(SIU\)](#).

When making a disclosure to a specified institution, it is helpful to clearly request that it be treated as a protected disclosure under the PDA. You might include a statement in your correspondence such as:

“

I am reporting this wrongdoing as a protected disclosure in terms of the Protected Disclosures Act. I ask that you treat it as such, as I fear suffering occupational detriment in the workplace.

”

This shows the seriousness of your issue and highlights that legal protections are in place. Such correspondence can serve as evidence if you face any negative consequences. In cases where protection is sought, whether in court, a disciplinary hearing, or the [Commission for Conciliation, Mediation and Arbitration \(CCMA\)](#), the protected disclosure will be central to your claim. Protection must be properly substantiated for the CCMA or court to rule in your favour.

Before blowing the whistle, take some time to study and evaluate the institution you plan to report to by considering the following questions:

WHY AM I BLOWING THE WHISTLE?

Be clear about your reasons for blowing the whistle. Many whistleblowers face significant risks to their lives and livelihoods, so it is crucial to be confident in your decision. The PDA requires that protected disclosures be made in good faith. Any signs that your disclosure is intended to embarrass your employer, settle personal scores, or address a personal grievance may be deemed as made in bad faith by the CCMA or a court. Be prepared for this to be inspected during legal proceedings, and ensure your motives are well-considered and justified.

WHAT TYPE OF POWERS DOES THE INSTITUTION HAVE TO BRING THOSE ACCUSED OF WRONGDOING TO ACCOUNT?

It is crucial to understand the powers of the institutions you report to, so you have realistic expectations about the actions they can take. For instance, the Public Protector can investigate issues but does not have the authority to arrest or prosecute individuals. Knowing these limits will help you anticipate the potential outcomes and guide your expectations.



DOES THE INSTITUTION HAVE JURISDICTION OVER THE INSTITUTION OR ACTION TO INVESTIGATE AND/OR STOP THE WRONGDOING?

Before blowing the whistle, ensure the institution is the right one to address the wrongdoing you are reporting. The PDA advises that when disclosing to constitutionally recognised institutions, you should be sure that the issue falls within their usual remit. For example, if you are reporting tax evasion, SARS is the appropriate body. For issues such as terrorist financing or money laundering, the [Financial Intelligence Centre](#) is better suited.

Choosing the right institution helps avoid being redirected between bodies. Institutions such as the Financial Intelligence Centre are required to inform, advise, and collaborate with others like the [NPA](#) and the SIU. Selecting an institution that handles the issue directly can simplify the process and reduce your need to coordinate with multiple bodies.

One issue often faced by whistleblowers is that after making a protected disclosure to a specific institution, they also report any occupational detriment (loss or harm) to the same body. While reporting occupational detriment is not wrong, the institution may lack the power to address it and might refer the matter to the CCMA or court instead. This can be frustrating and disappointing for whistleblowers, as these institutions may not have the jurisdiction to take action against the wrongdoers.

INVESTIGATE WHICH INSTITUTIONS OFFER SAFE REPORTING

To reduce the risk of occupational detriment, ensure that the institution you report to provides a safe reporting environment. You can choose to report anonymously, but note that institutions like the Public Protector may only accept anonymous complaints if they contain sufficient details about the incident.⁴

The PDA allows for protected disclosures to be made to employers, but many whistleblowers have had negative experiences with employer tip-off hotlines, particularly if those involved in the wrongdoing have access to the hotline.

When making a protected disclosure, verify how the institution will conduct the investigation, who will receive the report, and whether the findings will be published to a higher body. Ensuring these aspects are addressed can help protect you and increase the effectiveness of your report.

CONSIDERATIONS BEFORE BLOWING THE WHISTLE TO THE MEDIA, CIVIL SOCIETY ORGANISATIONS OR NON-PDA LISTED INSTITUTIONS

Blowing the whistle to the media, on social media, or to a civil society organisation is a valid option. In South Africa, many people trust the media and civil society to expose corruption more than law enforcement. However, this route has higher requirements compared to reporting to your employer or institutions like the Public Protector.

⁴ Rule 5(5) of the Rules relating to Investigations by the Public Protector and Matters Incidental thereto, 2018.



For guidance, consult [PPLAAF's South Africa: Whistleblower Protection Guidebook](#).⁵ To ensure protection when going this route, you must show that you had a reasonable belief that making a disclosure to the employer would result in occupational detriment, or that you previously reported the issue to the employer or a PDA-listed institution without any action being taken. Ensure you have proof that these conditions are met before taking this step.



WHAT ARE MY RIGHTS AFTER I HAVE BLOWN THE WHISTLE?

RIGHT NOT TO BE SUBJECTED TO OCCUPATIONAL DETRIMENT

The PDA requires that employers do not subject an employee or worker to any occupational detriment after a protected disclosure. However, there is no automatic penalty for employers who fail to comply. It is the employee's responsibility to seek remedy by approaching a court for appropriate relief. Remedies are typically limited to compensation, actual damages, or orders requiring the employer to rectify the detriment (e.g., reinstatement or return to the original position if demoted or transferred).

Employees must prove their claim for damages, which may involve using experts to measure losses such as future earnings and medical expenses.

Trusting the process is an important part of your journey. While the investigation or disciplinary process may not yield the outcome you hope for, it is crucial to remember that you did the right thing in coming forward. These processes are beyond your control, especially in internal matters, and confidentiality may prevent you from knowing the consequences. However, that does not necessarily mean that nothing was done.

Remedies

Section 23(2) of the Constitution guarantees everyone the right to fair labour practices. The Labour Relations Act supports this right by protecting against unfair dismissal and labour practices. Generally, disputes are referred to the CCMA, but employees in specific environments, such as local government, should refer to the [South African Local Government Bargaining Council](#). Always check which forum has jurisdiction before filing a dispute.

PRESCRIPTION OF CLAIMS IN LABOUR DISPUTES

Claims related to labour disputes generally prescribe after three years, meaning they can no longer be referred, actioned, or claimed unless the matter is already ongoing at the Labour Court.

For example, if a dismissed employee refers an unfair dismissal dispute to the Labour Court more than three years after dismissal, that claim is considered prescribed. This is because the Prescription Act's time limits apply to all claims under the Labour Relations Act (LRA), as they are not in conflict.

⁵ For more information on how to blow the whistle to the media or civil society, consult PPLAAF's *South Africa: Whistleblower Protection Guidebook*, p. 23.



However, in certain cases, a court may grant condonation, allowing a claim to proceed despite being prescribed. This is not automatic and requires compelling evidence to justify the delay. A strong motivation must be provided to convince the court that exceptional circumstances exist.

OCCUPATIONAL DETRIMENT	CLAIM	FORUM
Disciplinary (challenge outcome of disciplinary short of dismissal, i.e., transfer or demotion)	Unfair labour practice	CCMA – Conciliation. If conciliation fails, then referral to Labour Court for adjudication
Disciplinary	Interdict (Stop the disciplinary)	Court
Disciplinary	Request the disciplinary be held in terms of Section 188A of the LRA. Additional protection as arbitrator is from the CCMA.	Employer/Chair of disciplinary hearing
Suspension/demotion/transfer/ being subjected to a term or condition of employment which is altered or kept altered to the employee's disadvantage/being otherwise adversely affected in respect of employment, including opportunities and work security	Unfair labour practice or Interdict	CCMA Court
Dismissal	Automatically unfair dismissal	CCMA – Conciliation. If conciliation fails, referral to Labour Court for adjudication.
Being denied appointment to any employment	Unfair labour practice	CCMA
Being subjected to any civil claim for alleged breach of a duty of confidentiality or NDA arising out of criminal offence	Civil dispute	Court



TRANSFERRED FROM POST OR POSITION

After making a protected disclosure, if an employee reasonably believes they might face adverse effects, they can request a transfer to a different post or division, either within the same organisation or to another organ of state, if applicable.⁶ The new position should have the same terms and conditions of employment unless the whistleblower agrees to different terms in writing.⁷

It is crucial to clearly state that you have made a protected disclosure to safeguard yourself from occupational detriment. However, if the employer denies the transfer request, claiming that it is unreasonable, the whistleblower can refer the matter as an unfair labour practice to the CCMA.

WHISTLEBLOWERS RIGHT TO STATUS OF DECISION TO INVESTIGATE & OUTCOME

Under the PDA, if a whistleblower makes a protected disclosure to the employer, a member of Cabinet, the Executive Council, or a constitutionally recognised institution such as the Public Protector, they have the right to:

1. **Decision on investigation:** Receive a decision on whether the matter will be investigated within 21 days of the disclosure. If the disclosure will be referred to another person or body, the whistleblower should be informed of this.
2. **Acknowledgement and time frames:** Get a written acknowledgment of receipt of the disclosure and the decision to investigate. Where possible, this should include a time frame for completing the investigation or for referring the matter to another body. If the decision is not to investigate, reasons should be provided.
3. **Outcome of investigation:** Be informed of the outcome of the investigation once it is concluded.

These provisions may not apply if the institution does not know the whistleblower's identity or contact details or if revealing such information could jeopardise the prevention, detection, or investigation of a criminal offence.

The challenge in enforcing the right to a status report is the absence of penalties or oversight bodies to address non-compliance. However, whistleblowers can use these timelines to follow up with the institution and seek closure on the matter.

Investigations can be lengthy due to the sensitive nature of the wrongdoing. Whistleblowers must ensure their safety and maintain their anonymity if they reported without revealing their identity. They should avoid actions that might compromise the investigation, such as hacking or surveillance.

Whistleblowers may sometimes report to multiple institutions. While this is legally permissible, it can lead to duplicated efforts, wasted resources, and confusion between institutions. It is advisable to ensure you have given each institution sufficient time to respond before approaching another one.

⁶ Section 4(3) of the PDA.

⁷ Section 4(4) of the PDA.



If a whistleblower reports their occupational detriment to another entity, they may face frustration as these entities might refer them to the CCMA, courts, or law enforcement for protection. Understand that, under the PDA, only the CCMA or courts can address claims of occupational detriment, while law enforcement can offer witness protection.

DO I RESIGN OR STAY IN EMPLOYMENT?

Whistleblowers often worry about potential occupational loss or harm and may consider resigning as a precaution. This is a personal decision that requires careful thought. Here are some factors to consider:

- **Unemployment insurance fund (UIF):** If you resign, you won't be eligible for UIF benefits.
- **Pension fund:** If you stay and are dismissed, accessing your pension fund might be complicated. If you resign, the employer would need to pursue legal action to prevent you from accessing it.
- **Employment records:** Resigning might appear more favourable than being dismissed when explaining your departure from a job.
- **Challenge dismissal:** If dismissed, you can contest the dismissal at the CCMA or in court.
- **Constructive dismissal:** If you resign, you would need to prove constructive dismissal. This involves showing that the employer made your working conditions intolerable. You must provide detailed evidence of the occupational detriment you faced, grievances lodged, and how the employer failed to address these issues, leading to your resignation without notice.

Careful consideration and planning are essential before making your decision.



ENGAGING A LEGAL PRACTITIONER

It is advisable to consult with a legal practitioner before blowing the whistle. Legal practitioners include attorneys and advocates. Advocates can only consult with clients directly if they have a trust account; otherwise, they must be briefed by an attorney. If you are unsure whether your legal practitioner is properly registered, visit the [Legal Practice Council's](#) website and search for their name. Engaging a registered legal practitioner ensures that if they misappropriate your funds or act unethically, you can report them to the Legal Practice Council.

Legal practitioners will also need to collect personal information to comply with the Financial Intelligence Centre, such as proof of address and your identity document.

Before engaging a legal practitioner, consider the following:

FINANCIAL IMPLICATIONS

Paid-for Service

Legal advice is crucial, despite the potential cost. It helps ensure you understand your rights and responsibilities and remain within the law. Missteps could put your case at risk and lead to dismissal.



Legal proceedings, including those at the CCMA, can be expensive. What seems like a straightforward case may escalate into significant costs due to the complexities of the legal process. Legal practitioners need to sift through extensive documents, conduct thorough research, and come up with a strategy, all of which require time and multiple consultations.

Employers often employ tactics to delay legal proceedings, such as requesting postponements or bringing irrelevant motions. Each delay can increase legal costs, as attorneys need to respond to these tactics. Additionally, attorneys typically work with junior lawyers or advocates, whose fees are separate. Always ask for an estimate of these fees.

When consulting a legal practitioner, request a clear explanation of the cost implications and how fees will be calculated. This will help you budget for the litigation or explore more cost-effective options. Ensure you are kept informed about costs and scrutinise invoices if charges are unclear.

Pro Bono

If you cannot afford a legal practitioner, you have several options for assistance. [Legal Aid South Africa](#) may handle your case if it's a straightforward employment issue. Other organisations such as the [Legal Practice Council](#), [Probono.Org](#), and university legal clinics offer support based on a means test, generally for those with an income below R7 500 per month and/or a total asset value of R350 000. Their services are often free for vulnerable and low-paid workers.

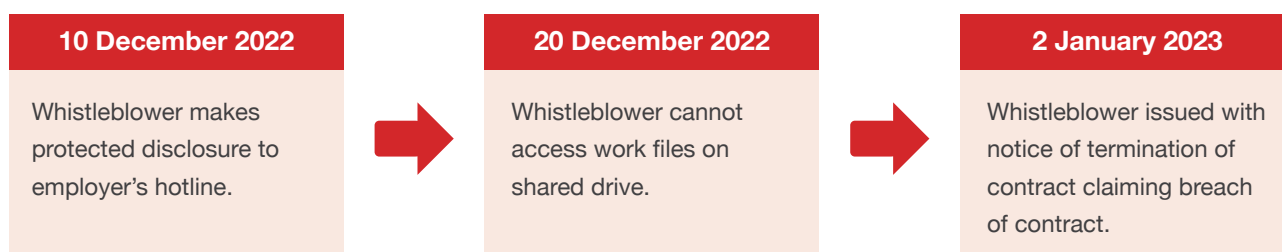
Contingency Fee Arrangement

Another option is a contingency fee arrangement, where you pay the legal practitioner only if you win your case. In this arrangement, the fee is capped at 25% of the total amount awarded. However, you will still need to agree on how to handle payments, such as advocate's fees, sheriff's fees, travel expenses, and photocopying.

Have Your Ducks In A Row

Before meeting with your legal practitioner, be well prepared to discuss your case. Gather key details such as the date, place, and nature of the event that led to your protected disclosure. Collect any available evidence that supports your account.

Create a timeline outlining how events developed and progressed regarding the retaliation you faced. This preparation will help the legal practitioner understand your situation and provide effective advice.





In terms of evidence, ensure you gather all relevant documentation related to the facts of your occupational detriment or other forms of retaliation. Organise this documentation chronologically (from oldest to newest) to make it easier for the legal practitioner to review.



DISMISSAL/TRANSFER/DEMOTION/SUSPENSION

1. Contract of Employment
2. Notice to attend disciplinary hearing
3. Evidence/record of the disciplinary hearing
4. Ruling and Sanction of the disciplinary hearing
5. Notice of termination/transfer/demotion/suspension
6. Payslips (including any showing salary differences due to retaliation)
7. Employer's Code of Conduct/disciplinary code/collective agreement
8. Evidence of the protected disclosure



HARASSMENT

1. Communications (e.g., WhatsApp, social media, email) with threatening content
2. Photographs or videos of people or cars following you
3. Proof of physical or sexual violence (e.g., photographs, doctor's reports)

Clear Expectations

When consulting with a legal practitioner, it is crucial to discuss your prospects of success and any potential challenges you may face. If the practitioner indicates that your chances of success are low, set clear expectations about the possibility of losing the case and being made responsible not only for your own costs but also those of your opponent.

Ensure that the legal practitioner outlines the approach they will take and agree on a schedule for regular updates on your case. Given that legal processes in South Africa can be slow, with court dates potentially taking months or even years to be scheduled, avoid frequent communication that could result in additional fees. Instead, negotiate a periodic update, such as monthly or quarterly, depending on the complexity of the case.

Many whistleblowers have expressed dissatisfaction with their legal practitioners' services. If you decide to terminate your engagement with the current practitioner, ensure that all invoices are settled before collecting your file. Be aware that transferring your case to another legal practitioner will involve additional costs, as the new practitioner will need to review the existing file and conduct initial consultations to fully understand your case.



Settlement

It is common for employers to make a settlement offer to stop ongoing litigation. Settlements can involve returning to work in the same or a different position or receiving a monetary amount. Settlement is a ‘no-fault’ process where neither party admits any fault in the dispute. It is voluntary, and no one, including a court, can force you to settle. Given the heavy caseloads in courts and the CCMA, judges and commissioners often prefer settlements.

PROs of Settling

- **Active participation in outcome:** You have the opportunity to negotiate and play a role in determining the settlement terms.
- **Control over outcome:** Even if you and your legal practitioner are confident about your chances of success, there is always uncertainty in how a judge or commissioner might rule. Settling allows you to avoid a potentially adverse decision.
- **Reduced legal costs:** Settling early can significantly reduce legal expenses, as costs increase the longer the case continues.
- **Reduced stress:** The longer a case drags on, the more emotional toll it takes. Settling can alleviate this stress.
- **Time-saving:** Settling ends the case, saves you time, and allows you to move on with your life.

CONs to Settling

- **Perception of unfairness:** As a whistleblower, you may feel that settling is unjust because you did nothing wrong.
- **Belief in a better outcome:** You might believe that a judge will be sympathetic to your case and that you could achieve a better outcome through litigation.
- **Potential for high compensation:** There is a chance of receiving a significant compensation (i.e., payment) award that could cover all your debts.

Can You Represent Yourself?

Absolutely. There is nothing wrong with representing yourself at the CCMA or in court. Although it might seem difficult and rather intimidating, many people have represented themselves successfully. If you do choose to do so, it is very important to stick to the laws and the facts. Simply being aggrieved does not guarantee that a commissioner or judge will see your side of the story. However, if finances allow, it is advisable to engage with a legal practitioner. Just as soldiers go to war with an army, having professional legal support can significantly improve your chances.



CONCLUSION

The Legal Guidebook for Whistleblowers explored key aspects of legal considerations for whistleblowers: understanding the Protected Disclosures Act, occupational detriment, making a protected disclosure, and whistleblower protections. While this document focuses on the legal protections available, the process of whistleblowing is inherently tied to ethics and accountability.

THE KEY PRINCIPLES IN WHISTLEBLOWING CAN BE SUMMARISED AS FOLLOWS:

- Understanding the legal framework for whistleblowing.
- Evaluating the potential risks and protections available.
- Ensuring good faith when making a disclosure.
- Using appropriate channels to report.
- Protecting oneself from retaliation through legal safeguards.

To conclude, engaging in whistleblowing requires not only courage but also an understanding of the legal protections and processes available. We hope this guide serves to empower you with the necessary knowledge to navigate the whistleblowing process with confidence, ensuring your protection as you make a stand for ethical conduct in your organisation.



REACHING OUT FOR HELP

ORGANISATION	DESCRIPTION	CONTACT
LAW ENFORCEMENT		
<u>HAWKS</u> <u>(Directorate for Priority Crime Investigation)</u>	The Hawks are a specialised unit of the South African Police Service (SAPS) responsible for investigating serious organised crime, corruption, and economic offences. They operate independently to tackle high-profile cases involving state corruption, financial crimes, and other priority offences.	012 846 4590 <u>GET IN TOUCH</u>
<u>National Prosecuting Authority (NPA)</u>	The NPA is responsible for prosecuting criminal cases on behalf of the state and ensuring justice is served. It includes specialised units such as the Investigating Directorate, which focuses on high-level corruption and state capture cases.	012 845 6000 <u>GET IN TOUCH</u>
<u>Organisation Undoing Tax Abuse (OUTA)</u>	OUTA is a registered non-profit civil action organisation in South Africa that focuses on exposing government corruption and the misuse of public funds. Their vision is to create a prosperous South Africa with an organised, engaged, and empowered civil society that ensures responsible use of tax revenues across all levels of government.	087 170 0639 <u>GET IN TOUCH</u>



ORGANISATION	DESCRIPTION	CONTACT
<u>South African Police Service (SAPS)</u>	SAPS is responsible for upholding the law, maintaining public safety, and investigating criminal activities across South Africa. Whistleblowers can report crimes, corruption, and unethical behaviour to SAPS through various channels, including the Crime Stop hotline and specialised units like the Hawks for priority crime investigations.	012 393 1000 <u>GET IN TOUCH</u>
<u>Special Investigating Unit (SIU)</u>	The SIU is a state agency empowered to investigate and recover public funds lost due to corruption, fraud, and maladministration. It operates under presidential proclamations and can institute civil proceedings but does not have the power to prosecute criminal cases.	012 843 0000 <u>GET IN TOUCH</u>
<u>The Public Protector</u>	The Public Protector is an independent constitutional body that investigates complaints of misconduct, corruption, and abuse of power in government institutions. It acts as a watchdog to ensure accountability and good governance in the public sector.	(0800) 112 040 <u>GET IN TOUCH</u>
LEGAL RESOURCES		
<u>Legal Aid</u>	Legal Aid South Africa provides free legal assistance to those who cannot afford private legal representation, primarily in criminal and civil matters affecting vulnerable individuals. It ensures access to justice for all citizens, particularly those in disadvantaged communities.	(0800) 110 110 <u>GET IN TOUCH</u>



ORGANISATION	DESCRIPTION	CONTACT
<u>Pretoria Bar</u>	The Pretoria Bar is a professional association of advocates who provide legal representation, including pro bono services in certain cases. It upholds high ethical and professional standards in legal practice and offers expertise across various areas of law.	012 323 2520 <u>GET IN TOUCH</u>
<u>Probono.org</u>	ProBono.Org is an NGO that works with private legal professionals to provide free legal services to indigent individuals and communities. It connects whistleblowers and other vulnerable individuals with experienced lawyers willing to assist on a pro bono basis.	011 339 6080 <u>GET IN TOUCH</u>
<u>The Legal Resource Centre</u>	The LRC is a public interest law organisation that provides free legal services to protect human rights, advance social justice, and promote constitutional democracy. It focuses on cases involving land rights, housing, education, and corruption.	011 038 9709 <u>GET IN TOUCH</u>
WHISTLEBLOWER SUPPORT PROVIDERS		
<u>Corruption Watch</u>	Corruption Watch is a South African non-profit organisation that combats corruption by empowering the public to report corrupt activities. They investigate selected reports, conduct research to identify corruption patterns, and mobilise communities through campaigns to promote transparency and accountability.	(0800) 023 456 <u>GET IN TOUCH</u>



ORGANISATION	DESCRIPTION	CONTACT
<u>The Platform to Protect Whistleblowers (PLAAF)</u>	PPLAAF is a non-profit organisation that offers legal, financial, and advocacy support to whistleblowers exposing corruption and abuses of power across Africa.	<u>GET IN TOUCH</u>
<u>The Whistleblower House (TWBH)</u>	TWBH is a non-profit, public benefit organisation that facilitates access to support services for whistleblowers, creates awareness of whistleblowers' plight, and acknowledges the vital role of whistleblowers in strengthening ethics and democracy in South Africa.	064 524 0241 <u>GET IN TOUCH</u>

A MEETING PLACE FOR COURAGE

The Whistleblower House is a not-for-profit, public benefit organisation that facilitates access to support services for whistleblowers, creates awareness of whistleblowers' plight, and acknowledges the vital role of whistleblowers in strengthening ethics and democracy in South Africa.

We extend our sincere gratitude to all those who contributed to the development of this guidebook and who are dedicated to supporting whistleblowers. Narisscia Campher served as the principal reviewer and editor, with cover design and layout by Nadia Sinovich.



 www.whistleblowerhouse.org

 info@whistleblowerhouse.org

 (+27) 064 524 0241

© 2025 The Whistleblower House. All rights reserved.



[@The Whistleblower House](https://www.linkedin.com/company/the-whistleblower-house)



[@WhistleblwrHse](https://twitter.com/WhistleblwrHse)



[@WhistleblowerHouse](https://www.youtube.com/channel/UCWhistleblowerHouse)