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**GOVERNMENT NOTICE
GOEWERMENSKENNISGEWING**

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING**

No. 702

31 August 2011

**PRACTICAL GUIDELINES FOR EMPLOYEES IN TERMS OF SECTION 10(4)(a) OF
THE PROTECTED DISCLOSURES ACT, 2000 (ACT NO. 26 OF 2000)**

Under section 10(4)(a) of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), I, Jeffrey Thamsanqa Radebe, Minister of Justice and Constitutional Development, after consultation with the Minister of Public Service and Administration, hereby publish the Practical Guidelines for Employees, as approved by Parliament in terms of section 10(4)(b) of the Act, in the Schedule.

J. T. RADEBE

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

SCHEDULE**PRACTICAL GUIDELINES FOR EMPLOYEES****THE PROTECTED DISCLOSURES ACT, 2000 (ACT 26 OF 2000):
PRACTICAL GUIDELINES FOR EMPLOYEES****INTRODUCTION**

By remaining silent about corruption, offences or other malpractices taking place in the workplace, an employee contributes to, and becomes part of, a culture of fostering such improprieties which will undermine his or her own career as well as be detrimental to the legitimate interests of the South African society in general.

Every employer and employee has a responsibility to disclose criminal and other irregular conduct in the workplace.

Every employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from any reprisals as a result of such disclosure.

PART I**1. Purpose of the Protected Disclosures Act, 2000¹**

The purpose of the Protected Disclosures Act, 2000, is to provide **procedures** and to offer **protection**. The Act provides—

¹

These guidelines are issued by the Minister of Justice and Constitutional Development in terms of section 10(4) of the Protected Disclosures Act, 2000 (Act 26 of 2000). They are aimed at providing employees, who wish to disclose certain information, with a short summary of the Act, but do not deal comprehensively with all the provisions of the Act. The provisions of the Act are reflected at the back of the guidelines.

- * **procedures** in terms of which any employee may disclose information relating to an offence or a malpractice in the workplace by his or her employer or fellow employees; and
- * **protection** for an employee, who has made a disclosure in accordance with the procedures provided for by the Act, against any reprisals as a result of such a disclosure.

2. How the Act works

No employee may be victimised or penalised by his or her employer as a direct or indirect result of having made a disclosure in accordance with any one of the **procedures** provided for by the Act².

These **procedures** can be described as **routes** that can be followed in order to disclose information which show or tend to show one or more of the following—

- * that a criminal offence has been, is being or is likely to be committed;
- * that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- * that a miscarriage of justice has occurred, is occurring or is likely to occur;
- * 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 endangered;
- * unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000); or
- * that any matter referred to above has been, is being or is likely to be deliberately concealed.

²

Sections 2 and 3 of the Act.

The Act was **implemented** on 16 February 2001, and is applicable to any disclosure that was made after 16 February 2001 (it does not matter when the relevant impropriety took place, as long as the disclosure was made after 16 February 2001).

It is **important** to note that no provision in a contract of employment or other agreement which applies to an employer and employee may attempt to exclude any provision of the Act or—

- * attempt to prevent an employee; or
- * discourage an employee,

from making a protected disclosure. Such provision (in a contract of employment) or agreement (between an employer and employee) has no legal effect.

3. How do I make a disclosure?

If an employee decides to “blow the whistle” on criminal conduct or malpractices in the workplace, he or she may disclose that information to—

- * **a legal representative (route 1);**
- * **his or her employer (route 2);**
- * **a Minister or a Member of the Executive Council of a province (MEC) (route 3);**
- * **a specified person or body (route 4); or**
- * **any other person, under certain circumstances (route 5).**

Any **route** may be used to “blow the whistle”, but take note that each **route** has certain **requirements** which must be complied with.

LEGAL REPRESENTATIVE: (ROUTE 1)³

In many instances an employee will first wish to obtain legal advice regarding the making of the disclosure in terms of the Act and, in this process, make a disclosure to the legal adviser concerned.

Requirements:

- * The person being consulted by the employee must be a legal representative whose occupation must involve the giving of legal advice (for example, an attorney or legal representative of the employee's labour union).
- * The information must be given for the purpose of obtaining legal advice.

EMPLOYER (ROUTE 2)⁴

An employee can make a disclosure to his or her employer.

Requirement:

- * An employee must act **in good faith** when he or she discloses the information ("good faith" means that the employee must act in a responsible and honest manner without any motives to gain any personal advantages from making the disclosure).

Take note that:

- * An employer may decide to lay down certain procedures in terms of which disclosures must be made, even that a disclosure must be made to a person other than the employer (a disclosure of this nature will also be regarded as a disclosure to the employer).
- * Many employers have established anti-corruption hot-lines which employees may use to report crime in the workplace (ask your employer whether he or she has established such a hot-line).

³ Section 5 of the Act.

⁴ Section 6 of the Act.

MINISTER OR MEC OF A PROVINCE: (ROUTE 3)⁵

An employee can make a disclosure to a Minister or an MEC of a province.

Requirements:

- * The employee must act in good faith when he or she discloses the information.
- * This procedure only applies if the employee's employer is—
 - * an individual appointed by the relevant Minister or MEC in terms of legislation; or
 - * a body (eg a board or other institution) appointed by the relevant Minister or MEC in terms of legislation; or
 - * an organ of state falling within the area of responsibility of the relevant Minister or MEC. An organ of state is any state department or administration in the national or provincial sphere of government or any municipality in the local sphere of government or any other functionary (official) or institution exercising a power or performing a duty in terms of the Constitution or a provincial constitution or exercising a public power or performing a public function in terms of any other legislation.

SPECIFIED PERSON OR BODY: (ROUTE 4)⁶

An employee can, at this stage make a disclosure to the **Public Protector** or **Auditor-General**.

The **Public Protector** is a high level independent official who receives complaints against government agencies or officials and investigates improper prejudice suffered by a complainant for example as a result of abuse of power. Maladministration, dishonesty or improper dealings with regard to public money,

⁵ Section 7 of the Act.

⁶ Section 8 of the Act.

improper enrichment and receipt of improper advantages can also be investigated. (For contact details see Part III.)

The **Auditor-General** who is also a high level independent official must audit and report on the accounts, financial statements and financial management of all national and provincial state departments and administrations, all municipalities and any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General. (For contact details see Part III.)

Requirements:

- * The disclosure must be made in good faith.
- * The employee must reasonably believe that the impropriety which he or she wants to disclose, relates to matters that in the ordinary course are dealt with by the Public Protector or Auditor-General; and
- * that the information and allegations contained in the disclosure are substantially true.

GENERAL DISCLOSURE: (ROUTE 5)⁷

An employee can even make a disclosure to any person, for example, a member of the press (people working for radio and television stations or newspapers), a police official of the South African Police Service or a person working for an organisation which keeps watch over the public or the private sector.

Requirements:

- * The employee must act in good faith.
- * The employee must reasonably believe that the information is substantially true.

⁷

Section 9 of the Act.

- * In all the circumstances of the case, it must be reasonable to make the disclosure, taking into account—
 - * the identity of the person to whom the disclosure is made;
 - * the seriousness of the impropriety;
 - * whether the impropriety is continuing or is likely to occur in the future;
 - * whether the disclosure is made in breach of a duty of confidentiality of the employer towards another person;
- * The employee must not make the disclosure for personal gain, unless for a reward payable in terms of a law.
- * One or more of the following must apply—
 - * The employee must believe that he or she will be subjected to an occupational detriment (see paragraph 4 for more information) if the disclosure is made to the employer; or
 - * the employee must believe that the employer will conceal or destroy evidence relating to the criminal offence or malpractice if the disclosure is made to the employer; or
 - * no action was taken in respect of a previous disclosure of substantially the same information to the employer; or
 - * the criminal offence or malpractice is of an exceptionally serious nature.

4. Against what am I protected?

The Act prohibits an employer from subjecting an employee to what is called an “occupational detriment”. An occupational detriment occurs when an employee is—

- * subjected to any disciplinary action;
- * dismissed, suspended, demoted, harassed or intimidated;
- * transferred against his or her will;
- * refused transfer or promotion;

- * subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
 - * refused a reference, or is provided with an adverse reference;
 - * denied appointment to any employment, profession or office;
 - * threatened with any of the actions referred to above;
 - * in any other manner adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security,
- as a direct or indirect result of having made a protected disclosure.

5. What do I do if I am victimised as a result of making a disclosure?⁸

An employee who has been subjected, is subject or may be subjected to an occupational detriment as a result of making a disclosure may approach any court having jurisdiction for protection.

The Act relates to the employer/employee relationship, therefore an employee may also use the provisions of the Labour Relations Act, 1995 (Act 66 of 1995), to protect himself or herself from being subjected to an occupational detriment.

For example:

- * If an employee is **dismissed** as a result of making a disclosure in terms of the Protected Disclosures Act, 2000, that dismissal is deemed to be an "**automatically unfair dismissal**" for purposes of the Labour Relations Act, 1995.
- * All **other forms of occupational detriment** referred to in paragraph 4 above, are deemed to be "**unfair labour practices**" as contemplated in the Labour Relations Act, 1995.

Ask your labour union to advise you on what your remedies are and how you should go about enforcing your remedies.

⁸

Section 4 of the Act.

An employee may also request, if reasonably possible or practicable, to be **transferred** from the post or position occupied by him or her at the time of the disclosure, to another post or position in the same division or another division or if the employee making the disclosure is employed by an organ of state, to another organ of state.⁹ The terms and conditions of employment of a person transferred, may not without his or her consent be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer.

PART II

6. Are there any other procedures to report or remedy an impropriety?

There are other procedures, **in addition to those provided for in the Protected Disclosures Act, 2000**, which are available to employees who wish to report an impropriety in the workplace, namely—

6.1 The Public Service Act, 1994 (Proclamation No. 103 of 1994):

The Public Service Act¹⁰ provides that a complaint or grievance concerning an official act or omission may be investigated by the Public Service Commission. An employee may lodge a complaint or grievance with the relevant executing authority, defined in the Public Service Act¹¹. If that complaint or grievance is not resolved to the satisfaction of the employee, that executing authority must submit the complaint or grievance to the Public Service Commission.

The term "executing authority" means, in relation to—

- (a) the Office of the President, the President acting on his or her own;

9. Section 4 of the Act.

10. Section 35(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

11. Section 1 of the Public Service Act, 1994.

- (b) the Office of the Deputy President, the Deputy President;
- (c) a department or organizational component within a Cabinet portfolio, the Minister responsible for such portfolio;
- (d) the Office of the Public Service Commission, the Chairperson of Commission;
- (e) the Office of a Premier of a province, the Premier of that Province acting on his or her own; and
- (f) a provincial department within an Executive Council portfolio, the member of such Executive Council responsible for such portfolio.

After the Public Service Commission has investigated and considered such complaint or grievance, the Commission may recommend that the relevant executing authority acts in terms of a particular provision or provisions of the Public Service Act, 1994, or any other law if, having regard to the circumstances of the case, the Commission considers it appropriate to make such a recommendation¹². The latest rules, effective from 19 September 2003, were published in the Government Gazette No. 25209 under Government Notice No. R. 1012 of 25 July 2003. These rules are also available on the website of the Public Service Commission, at the following address.

<http://www.psc.gov.za/docs/pubs/govgazette/25209.pdf>. (See Part III for the contact details.)

The Code of Conduct for the Public Service¹³ also places an obligation on an employee to report on certain matters and provides as follows:

An employee, in the course of his or her official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence or which is prejudicial to the public interest.

12. Section 35(2) of the Public Service Act, 1994.

13. Regulation C.4.10 of Chapter 2 of the Public Service Regulations, 2001.

An employee who fails to comply with this provision is guilty of misconduct.¹⁴

The above applies to persons who are employed in the public service, namely—

- (a) employees of all national departments, provincial administrations and provincial departments and organisational components listed in Schedules 1 to 3 of the Public Service Act, 1994; and
- (b) employees in the South African Police Service, the South African National Defence Force, Department of Correctional Services, state educational institutions, as defined in the Public Service Act, 1994, the National Intelligence Agency, and South African Secret Service, but only insofar as they are not contrary to the laws governing their employment.

6.2 The Defence Act, 2002 (Act 42 of 2002):

The South African National Defence Force employs two categories of employees, namely persons employed in terms of the Public Service Act, 1994, or in terms of the Defence Act, 2002.

Persons employed in terms of the Public Service Act, 1994, are subject to the provisions mentioned in paragraph 6.1 above, and persons employed in terms of the Defence Act, 2002, are subject to the Military Discipline Code¹⁵ which, among others, provides for the following:

Section 7: Offences relating to the failure of a person to report activities likely to endanger the safety of the S A Defence Force to his or her superior officer;

Section 21: Any person who is aware of or suspects that an offence in relation to the acquisition or disposal of public property has

14. Regulation B.3 of Chapter 2 of the Regulations.

15. The First Schedule to the Defence Act, 1957 (Act 44 of 1957).

been or might be committed to report it to his or her superior officer without delay;

Section 134: A grievance procedure that has to be followed by a person who is aggrieved by any act or omission of any person subject to the Code.

6.3 The South African Police Service Act, 1995 (Act 68 of 1995):

The South African Police Service Act¹⁶, provides that an employee commits misconduct if he or she "withholds or unreasonably delays any complaint or an adverse communication in connection with another employee or person employed by the Service". The relevant regulation should be read with regulation 18(9) which provides that "[a]n employee commits misconduct, ... if the employee knowingly makes a false accusation against any employer or person employed by the Service, or during an investigation, trial or inquiry makes a false statement or wilfully suppresses or conceals material facts."

The Independent Complaints Directorate¹⁷, investigates complaints in respect of offences and misconduct by members of the SAPS. The Anti-Corruption Command Unit of the Directorate in particular investigates complaints of corruption against members of the SAPS. Another mechanism which is available to address complaints against members of the SAPS is the National Inspectorate.

National Instruction 1 of 1999 deals with special arrangements regarding members who provide information to the Organised Crime unit of SAPS. A member or other employee of SAPS who has provided information to the Organised Crime unit may apply in writing to the Divisional Commissioner: Personnel Management for a temporary or permanent transfer or that

16. Regulation 18(10) of the South African Police Service Discipline Regulations, issued under section 24(1)(g) of the South African Police Service Act, 1995.

17. Established in terms of sections 50 to 54 of the South African Police Service Act, 1995.

such other arrangement concerning the performance of his or her duties or functions be made. The relevant application must be submitted to the Commander: Organised Crime who will make a recommendation to the Divisional Commissioner: Personnel Management regarding the application.

6.4 National Environmental Management Act, 1998 (Act 107 of 1998):

Evidence of an environmental risk may in terms of the National Environmental Act¹⁸, be disclosed to—

- * a committee of Parliament or of a provincial legislature;
- * an organ of state responsible for protecting any aspect of the environment or emergency services;
- * the Public Protector;
- * the South African Human Rights Commission;
- * the National Director of Public Prosecutions.

A disclosure may also be made to one or more news media subject to certain requirements mentioned in section 31.

6.5 The Western Cape Public Protector Act, 1994 (Act 6 of 1994):

The Western Cape Public Protector Law¹⁹, provides that any person (which includes employees of the Western Cape Province) may report any—

- * maladministration in connection with the affairs of government at provincial and local authority level;
- * abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;
- * improper or dishonest act or omission or corruption with respect to public money;
- * improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by

18. Section 31 of the National Environmental Management Act, 1998.

19. Sections 4(1) and 5(1) and (2) of the Western Cape Public Protector Law, 1994.

a person as a result of an act or omission in the public administration or in connection with the affairs of government at provincial level or of a person performing a public function; or

- * act or omission by a person in the employ of government at provincial level, local authority level or a person performing a public function, which results in unlawful or improper prejudice to any other person,

to the Western Cape Public Protector who may endeavour to resolve any dispute or rectify any act or omission by mediation, conciliation or negotiation. Where the facts disclose the commission of an offence the matter will be brought to the notice of the relevant Director of Public Prosecutions.

6.6 The following direct, indirect or supporting remedies are also available to public service employees:

(a) Direct remedies:

- * A public service employee may use **labour remedies** regarding official acts or omissions of a labour nature, namely disputes of rights (for example, unfair dismissal or unfair labour practice as described in sections 185 – 188 of the Labour Relations Act, 1995). A dispute can be referred to the relevant bargaining council having jurisdiction, for example the Public Service Co-ordinating Bargaining Council (PSCBC) or one of the sectoral bargaining councils of the PSCBC, for example the General Public Service Sectoral Bargaining Council.
- * A public service employee may also lodge a complaint with a labour inspector concerning any alleged contravention of the **Basic Conditions of Employment Act**.²⁰ An employee may also make a complaint to a trade union representative or trade union official

20. Section 78(1) of the Basic Conditions of Employment Act, 1997 (Act 75 of 1997).

concerning any alleged failure or refusal by an employer to comply with the Basic Conditions of Employment Act.

- * Such employee may bring an alleged contravention of the **Employment Equity Act**²¹ to the attention of another employee, an employer, a trade union, a labour inspector, a workplace forum, the Director-General: Labour or the Commission for Employment Equity. A dispute regarding unfair discrimination in any employment policy or practice, as described in the Employment Equity Act may be referred to the Commission for Conciliation, Mediation and Arbitration²².
- * A public service employee may lodge a complaint with the **South African Human Rights Commission**²³ concerning an official act or omission that is suspected to constitute a violation of or threat to any fundamental right.
- * An employee may use other legal remedies such as the institution of proceedings for the judicial review of an administrative action in terms of the **Promotion of Administrative Justice Act**,²⁴ or seeking an interdict from the relevant court to prevent a contravention or the continuation of a contravention²⁵.

(b) Indirect/supporting remedies:

A public service employee may also request—

- * reasons for an administrative action in terms of the **Promotion of Administrative Justice Act, 2000**²⁶;
- * access to records of a government department or other public body in terms of the **Promotion of Access to Information Act, 2000**²⁷.

21. Section 34 of the Employment Equity Act, 1998.

22. Chapter II of the Employment Equity Act, 1998.

23. Section 8 of the Human Rights Commission Act, 1994 (Act 54 of 1994).

24. Section 6 of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).

25. Section 8 of the Promotion of Administrative Justice Act, 2000.

26. Section 5 of the Promotion of Administrative Justice Act, 2000.

27. Section 11 of the Promotion of Access to Information Act, 2000 (Act 2 of 2000).

PART III**7. General information****Contact details of the Public Protector²⁸**

National Office:	Private Bag X677 PRETORIA 0001 (012) 366 7000 / 0800 112040 (tel) (012) 362-3473 / 086 575 3292 (fax)
Eastern Cape Office:	P O Box 424 BISHO 5605 (040) 635-1286 (tel) (040) 635-1291 (fax)
North West Office:	P O Box 512 MAFIKENG 2745 (018) 381-1060 (tel) (018) 381-2066 (fax)
Western Cape Office:	P O Box 712 Cape Town 8000 (021) 423 8644 (tel) (021) 423 8708 (fax)

Contact details of the Auditor-General²⁹

P O Box 446

28. For purposes of section 8(1)(a) of the Act.
29. For purposes of section 8(1)(b) of the Act.

Pretoria
0001

Tel: 012 – 4268000
Fax: 012 – 4268333

Contact details of the Public Service Commission³⁰

Head Office: Private Bag X 121
Pretoria
0001
Tel: 012 – 3287690
Fax: 012 – 325 8382

Eastern Cape: P O Box 2167
King William's Town
5601
Tel: 043 – 6434704
Fax: 043 – 6421371

Gauteng: P O Box 8962
Johannesburg
2000
Tel: 011 – 8335721/2/3/4/5/6
Fax: 011 – 8341200

Mpumalanga: P O Box 11303
Nelspruit
1200
Tel: 013 – 7554070

30. For general information.

Fax: 013 -7525814

Limpopo: Private Bag X 9543
Polokwane
0700
Tel: 015 – 291 4783
Fax: 015 – 291 4683

Western Cape: P O Box 2078
Cape Town
8000
Tel: 021 – 421 3980
Fax: 021 – 421 4060

Free State: Private Bag X 20572
Bloemfontein
9300
Tel: 051 – 4488696
Fax: 051 – 4484135

KwaZulu-Natal: Private Bag X 9130
Pietermaritzburg
3200
Tel: 033 – 3451621
Fax: 033 – 3458505

Northern Cape: Private Bag X 5071
Kimberley
8300
Tel: 053 – 8326222
Fax: 053 – 8326225

North West: Private Bag X 2065
Mmabatho
2735
Tel: 018 – 384 1000
Fax: 018 – 384 1012

Contact details of the South African Human Rights Commission³¹

Private Bag X2700
HOUGHTON
2041
Tel: 011 – 484 8300
Fax: 011 – 484 0582

Contact details of the Commission on Gender Equality³²

PO Box 32175
BRAAMFONTEIN
2017
Tel: 011 – 403 7182
Fax: 011 – 403 7188 / 5609

31. For general information.
32. For general information.

PART IV**PROTECTED DISCLOSURES ACT 26 OF 2000**

[ASSENTED TO 1 AUGUST 2000] [DATE OF COMMENCEMENT: 16 FEBRUARY 2001]
 (English text signed by the President)

ACT

To make provision for procedures in terms of which employees in both the private and the public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers; to provide for the protection of employees who make a disclosure which is protected in terms of this Act; and to provide for matters connected therewith.

Preamble

Recognising that—

- the Bill of Rights in the Constitution of the Republic of South Africa, 1996, enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality and freedom;
- section 8 of the Bill of Rights provides for the horizontal application of the rights in the Bill of Rights, taking into account the nature of the right and the nature of any duty imposed by the right;
- criminal and other irregular conduct in organs of state and private bodies are detrimental to good, effective, accountable and transparent governance in organs of state and open and good corporate governance in private bodies and can endanger the economic stability of the Republic and have the potential to cause social damage;

And bearing in mind that—

- neither the South African common law nor statutory law makes provision for mechanisms or procedures in terms of which employees may, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct by their employers, whether in the private or the public sector;
- every employer and employee has a responsibility to disclose criminal and any other irregular conduct in the workplace;
- every employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from any reprisals as a result of such disclosure;

And in order to—

- create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing comprehensive statutory guidelines for the disclosure of such information and protection against any reprisals as a result of such disclosures;
- promote the eradication of criminal and other irregular conduct in organs of state and private bodies,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

- 1.** In this Act, unless the context otherwise indicates—
- (i) “*disclosure*” means any disclosure of information regarding any conduct of an *employer*, or an *employee* of that *employer*, made by any *employee* 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;
 - (e) that the environment has been, is being or is likely to be damaged;
 - (f) unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000); or
 - (g) that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed;
- (ii) “*employee*” means—
- (a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration;

- (b) any other person who in any manner assists in carrying on or conducting the business of an *employer*;
- (iii) “*employer*” means any person—
- (a) who employs or provides work for any other person and who remunerates or expressly or tacitly undertakes to remunerate that other person; or
- (b) who permits any other person in any manner to assist in the carrying on or conducting of his, her or its business,
- including any person acting on behalf of or on the authority of such employer;
- (iv) “*impropriety*” means any conduct which falls within any of the categories referred to in paragraphs (a) to (g) of the definition of “*disclosure*”, irrespective of whether or not—
- (a) the impropriety occurs or occurred in the Republic of South Africa or elsewhere;
- (b) the law applying to the impropriety is that of the Republic of South Africa or of another country;
- (v) “*Minister*” means the Cabinet member responsible for the administration of Justice;
- (vi) “*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 threatened with any of the actions referred to paragraphs (a) to (g) above; or
- (i) being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security;
- (vii) “*organ of state*” means—
- (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
- (b) any other functionary or institution when—
- (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
- (ii) exercising a public power or performing a public function in terms of any legislation;
- (viii) “*prescribed*” means prescribed by regulation in terms of section 10;
- (ix) “*protected disclosure*” means a *disclosure* made to—
- (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; or
- (e) any other person or body in accordance with section 9, but does not include a *disclosure*—
- (i) in respect of which the *employee* concerned commits an offence by making that *disclosure*; or
- (ii) made by a legal adviser to whom the information concerned was disclosed in the course of obtaining legal advice in accordance with section 5;
- (x) “*this Act*” includes any regulation made in terms of section 10.

Objects and application of Act

2. (1) The objects of *this Act* are—
- (a) to protect an *employee*, whether in the private or the public sector, from being subjected to an *occupational detriment* on account of having made a *protected disclosure*;
- (b) to provide for certain remedies in connection with any *occupational detriment* suffered on account of having made a *protected disclosure*; and
- (c) to provide for procedures in terms of which an *employee* can, in a responsible manner, disclose information regarding *improprieties* by his or her *employer*.
- (2) *This Act* applies to any *protected disclosure* made after the date on which this section comes into operation, irrespective of whether or not the *impropriety* concerned has occurred before or after the said date.
- (3) Any provision in a contract of employment or other agreement between an *employer* and an *employee* is void in so far as it—
- (a) purports to exclude any provision of *this Act*, including an agreement to refrain from instituting or continuing any proceedings under *this Act* or any proceedings for breach of contract; or
- (b) (i) purports to preclude the *employee*; or

(ii) has the effect of discouraging the *employee*, from making a *protected disclosure*.

Employee making protected disclosure not to be subjected to occupational detriment

3. No *employee* may be subjected to any *occupational detriment* by his or her *employer* on account, or partly on account, of having made a *protected disclosure*.

Remedies

4. (1) Any *employee* who has been subjected, is subject or may be subjected, to an *occupational detriment* in breach of section 3, may—

(a) approach any court having jurisdiction, including the Labour Court established by section 151 of the Labour Relations Act, 1995 (Act No. 66 of 1995), for appropriate relief; or

(b) pursue any other process allowed or prescribed by any law.

(2) For the purposes of the Labour Relations Act, 1995, including the consideration of any matter emanating from this Act by the Labour Court—

(a) any dismissal in breach of section 3 is deemed to be an automatically unfair dismissal as contemplated in section 187 of that Act, and the dispute about such a dismissal must follow the procedure set out in Chapter VIII of that Act; and

(b) any other *occupational detriment* in breach of section 3 is deemed to be an unfair labour practice as contemplated in Part B of Schedule 7 to that Act, and the dispute about such an unfair labour practice must follow the procedure set out in that Part: Provided that if the matter fails to be resolved through conciliation, it may be referred to the Labour Court for adjudication.

(3) Any *employee* who has made a *protected disclosure* and who reasonably believes that he or she may be adversely affected on account of having made that *disclosure*, must, at his or her request and if reasonably possible or practicable, be transferred from the post or position occupied by him or her at the time of the *disclosure* to another post or position in the same division or another division of his or her *employer* or, where the person making the *disclosure* is employed by an *organ of state*, to another *organ of state*.

(4) The terms and conditions of employment of a person transferred in terms of subsection (2) may not, without his or her written consent, be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer.

Protected disclosure to legal adviser

5. Any *disclosure* made—

(a) to a legal practitioner or to a person whose occupation involves the giving of legal advice; and

(b) with the object of and in the course of obtaining legal advice, is a *protected disclosure*.

Protected disclosure to employer

6. (1) Any *disclosure* made in good faith—

(a) and substantially in accordance with any procedure *prescribed*, or authorised by the *employee's employer* for reporting or otherwise remedying the *impropriety* concerned; or

(b) to the *employer* of the *employee*, where there is no procedure as contemplated in paragraph (a), is a *protected disclosure*.

(2) Any *employee* who, in accordance with a procedure authorised by his or her *employer*, makes a *disclosure* to a person other than his or her *employer*, is deemed, for the purposes of *this Act*, to be making the *disclosure* to his or her *employer*.

Protected disclosure to member of Cabinet or Executive Council

7. Any *disclosure* made in good faith to a member of Cabinet or of the Executive Council of a province is a *protected disclosure* if the *employee's employer* is—

(a) an individual appointed in terms of legislation by a member of Cabinet or of the Executive Council of a province;

(b) a body, the members of which are appointed in terms of legislation by a member of Cabinet or of the Executive Council of a province; or

(c) an *organ of state* falling within the area of responsibility of the member concerned.

Protected disclosure to certain persons or bodies

8. (1) Any *disclosure* made in good faith to—
- (a) the Public Protector;
 - (b) the Auditor-General; or
 - (c) a person or body *prescribed* for purposes of this section; and
- in respect of which the *employee* concerned reasonably believes that—
- (i) the relevant *impropriety* falls within any description of matters which, in the ordinary course are dealt with by the person or body concerned; and
 - (ii) the information disclosed, and any allegation contained in it, are substantially true,
- is a *protected disclosure*.

(2) A person or body referred to in, or *prescribed* in terms of, subsection (1) who is of the opinion that the matter would be more appropriately dealt with by another person or body referred to in, or *prescribed* in terms of, that subsection, must render such assistance to the *employee* as is necessary to enable that *employee* to comply with this section.

General protected disclosure

9. (1) Any *disclosure* made in good faith by an *employee*—
- (a) who reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and
 - (b) who does not make the *disclosure* for purposes of personal gain, excluding any reward payable in terms of any law;
- is a *protected disclosure* if—
- (i) one or more of the conditions referred to in subsection (2) apply; and
 - (ii) in all the circumstances of the case, it is reasonable to make the *disclosure*.

- (2) The conditions referred to in subsection (1)(i) are—
- (a) that at the time the *employee* who makes the *disclosure* has reason to believe that he or she will be subjected to an *occupational detriment* if he or she makes a *disclosure* to his or her *employer* in accordance with section 6;
 - (b) that, in a case where no person or body is *prescribed* for the purposes of section 8 in relation to the relevant *impropriety*, the *employee* making the *disclosure* has reason to believe that it is likely that evidence relating to the *impropriety* will be concealed or destroyed if he or she makes the *disclosure* to his or her *employer*;
 - (c) that the *employee* making the *disclosure* has previously made a *disclosure* of substantially the same information to—
 - (i) his or her *employer*; or
 - (ii) a person or body referred to in section 8,
 in respect of which no action was taken within a reasonable period after the *disclosure*; or
 - (d) that the *impropriety* is of an exceptionally serious nature.

(3) In determining for the purposes of subsection (1)(ii) whether it is reasonable for the *employee* to make the *disclosure*, consideration must be given to—

- (a) the identity of the person to whom the *disclosure* is made;
- (b) the seriousness of the *impropriety*;
- (c) whether the *impropriety* is continuing or is likely to occur in the future;
- (d) whether the *disclosure* is made in breach of a duty of confidentiality of the *employer* towards any other person;
- (e) in a case falling within subsection (2)(c), any action which the *employer* or the person or body to whom the *disclosure* was made, has taken, or might reasonably be expected to have taken, as a result of the previous *disclosure*;
- (f) in a case falling within subsection (2)(c)(i), whether in making the *disclosure* to the *employer* the *employee* complied with any procedure which was authorised by the *employer*; and
- (g) the public interest.

(4) For the purposes of this section a subsequent *disclosure* may be regarded as a *disclosure* of substantially the same information referred to in subsection (2)(c) where such subsequent *disclosure* extends to information concerning an action taken or not taken by any person as a result of the previous *disclosure*.

Regulations

10. (1) The *Minister* may, after consultation with the Minister for the Public Service and Administration, by notice in the *Gazette* make regulations regarding—

- (a) for the purposes of section 8(1), matters which, in addition to the legislative provisions pertaining to such functionaries, may in the ordinary course be referred to the Public Protector or the Auditor-General, as the case may be;
- (b) any administrative or procedural matter necessary to give effect to the provisions of *this Act*; and
- (c) any other matter which is required or permitted by *this Act* to be prescribed.
- (2) Any regulation made for the purposes of section 8(1)(c) must specify persons or bodies and the descriptions of matters in respect of which each person or body is prescribed.
- (3) Any regulation made in terms of this section must be submitted to Parliament before publication thereof in the *Gazette*.
- (4) (a) The *Minister* must, after consultation with the Minister for the Public Service and Administration, issue practical guidelines which explain the provisions of *this Act* and all procedures which are available in terms of any law to *employees* who wish to report or otherwise remedy an *impropriety*.
- (b) The guidelines referred to in paragraph (a) must be approved by Parliament before publication in the *Gazette*.
- (c) All organs of state must give to every *employee* a copy of the guidelines referred to in paragraph (a) or must take reasonable steps to bring the relevant notice to the attention of every *employee*.

Short title and commencement

11. This Act is called the Protected Disclosures Act, 2000, and commences on a date determined by the President by proclamation in the *Gazette*.

No. 702

31 Augustus 2011

PRAKTIESE RIGLYNE VIR WERKNEMERS KRAGTENS ARTIKEL 10(4)(a) VAN DIE WET OP BESKERMDE BEKENDMAKINGS, 2000 (WET NO. 26 VAN 2000)

Kragtens artikel 10(4)(a) van die Wet op Beskernde Bekendmakings, 2000 (Wet No. 26 van 2000), publiseer ek, Jeffrey Thamsanqa Radebe, Minister van Justisie en Staatkundige Ontwikkeling, na oorlegpleging met die Minister van die Staatsdiens en Administrasie, die Praktiese Riglyne vir Werknemers, soos deur die Parlement ingevolge artikel 10(4)(b) van die Wet goedgekeur, in die Bylae.

J. T. RADEBE

MINISTER VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

BYLAE

PRAKTIESE RIGLYNE VIR WERKNEMERS**DIE WET OP BESKERMDE BEKENDMAKINGS, 2000 (WET 26 VAN 2000):
PRAKTIESE RIGLYNE VIR WERKNEMERS****INLEIDING**

Deur stil te bly oor korrupsie, misdrywe en ander wanpraktyke wat in die werkplek plaasvind, dra 'n werknemer by tot, en word hy of sy deel van, 'n kultuur waarby sodanige wanpraktyke in stand gehou word wat sy of haar eie loopbaan ondermyn en ook benadelend is tot die regmatige verwagtinge van die Suid-Afrikaanse gemeenskap in die algemeen.

Elke werkgewer en werknemer het 'n verantwoordelikheid om kriminele en ander onreëlmatige optrede in die werkplek te openbaar.

Elke werkgewer het 'n verpligting om alle nodige stappe te neem ten einde te verseker dat werknemers wat sodanige inligting bekend maak teen wraakoptrede as gevolg van sodanige bekendmaking beskerm word.

DEEL I**1. Oogmerke van die Wet op Beskermdede Bekendmakings, 2000¹**

Die oogmerk van die Wet op Beskermdede Bekendmakings, 2000, is om **prosedures** daar te stel en om **beskerming** te bied. Die Wet maak voorsiening vir—

¹ Hierdie riglyne word deur die Minister van Justisie en Staatkundige Ontwikkeling ingevolge artikel 10(4) van die Wet op Beskermdede Bekendmakings, 2000 (Wet 26 van 2000), uitgereik. Die oogmerk van die riglyne is om werknemers, wat sekere inligting wil openbaar maak, van 'n kort opsomming van die Wet te voorsien, maar die riglyne handel nie op volledige wyse met al die bepalings van die Wet nie. Die bepalings van die Wet word aan die einde van hierdie riglyne weergegee.

- * **prosedures** ingevolge waarvan 'n werknemer inligting met betrekking tot 'n misdryf of 'n wanpraktyk deur sy of haar werkgever of mede-werknemers in die werkplek kan bekend maak; en
- * **beskerming** van 'n werknemer, wat 'n bekendmaking in ooreenstemming met die prosedures van die Wet gemaak het, teen enige weerwraak as gevolg van sodanige bekendmaking.

2. Hoe die Wet werk

Geen werknemer mag deur sy of haar werkgever geviktimiseer of gestraf word nie as 'n direkte of indirekte gevolg daarvan dat hy of sy 'n bekendmaking gedoen het in ooreenstemming met enige van die **prosedures** in die Wet vervat².

Hierdie **prosedures** kan as **roetes** beskryf word wat gevolg kan word ten einde inligting bekend te maak wat een of meer van die volgende aantoon—

- * dat 'n misdaad gepleeg is, gepleeg word of waarskynlik gepleeg gaan word;
- * dat 'n persoon versuim het, besig is om te versuim of waarskynlik gaan versuim om aan 'n regsplig, waaraan daardie persoon onderhewig is, te voldoen;
- * dat 'n onreg in die regspleging plaasgevind het, plaasvind of waarskynlik gaan plaasvind;
- * dat die gesondheid of veiligheid van 'n individu in gevaar gestel is, in gevaar gestel word of waarskynlik in gevaar gestel gaan word;
- * dat die omgewing beskadig is, beskadig word of waarskynlik beskadig gaan word;

- * onbillike diskriminasie soos beoog in die "Promotion of Equality and Prevention of Unfair Discrimination Act, 2000" (Wet No. 4 van 2000)³; of
- * dat enige aangeleentheid hierbo uiteengesit opsetlik verberg is, verberg word of waarskynlik verberg gaan word.

Die Wet was op 16 Februarie 2001, **geïmplementeer** en is van toepassing op enige bekendmaking wat na 16 Februarie 2001 gedoen is (dit is irrelevant wanneer die onbehoorlikheid plaasgevind het, mits die bekendmaking na 16 Februarie 2001 gedoen is).

Dit is **belangrik** om kennis te neem dat geen bepaling in 'n werkskontrak of ander ooreenkoms wat op die werkgewer en werknemer verhouding van toepassing is kan poog om enige bepaling van die Wet uit te sluit of—

- * poog om 'n werknemer te verhoed; of
- * 'n werknemer te ontmoedig,

om 'n beskermende bekendmaking te doen. Sodanige bepaling (in 'n werkskontrak) of ooreenkoms (tussen 'n werkgewer en werknemer) het geen regsrag nie.

3. Hoe doen ek 'n bekendmaking?

Indien 'n werknemer besluit om die "fluitjie te blaas" met betrekking tot kriminele gedrag of wanpraktyke in die werkplek, kan hy of sy daardie inligting bekendmaak aan—

- * 'n regsverteenvoerder (roete 1);
- * sy of haar werkgewer (roete 2);
- * 'n Minister of 'n Lid van die Uitvoerende Raad van 'n provinsie (LUR) (roete 3);
- * 'n bepaalde persoon of liggaam (roete 4); of
- * 'n ander persoon, onder sekere omstandighede (roete 5).

3 Die Wet is nie in Afrikaans beskikbaar nie.

Enige **roete** kan gebruik word om die "fluitjie te blaas", maar neem kennis dat elke **roete** sekere **vereistes** het waaraan voldoen moet word.

REGSVERTENWOORDIGER: (ROETE 1)⁴

In baie gevalle wil 'n werknemer eers regsadvies inwin aangaande die maak van 'n bekendmaking ingevolge die Wet, en in die proses, 'n bekendmaking aan die betrokke regsadviseur doen.

Vereistes:

- * Die persoon wat om advies genader word moet 'n regsverteenvoordiger wees wie se beroep met die verlening van regsadvies gemoeid is (byvoorbeeld, 'n prokureur of regsverteenvoordiger van die werknemer se vakbond).
- * Die inligting moet gegee word vir doeleindes van die inwin van regsadvies.

WERKGEWER (ROETE 2)⁵

'n Werknemer kan 'n bekendmaking aan sy of haar werkgever doen.

Vereiste:

- * 'n Werknemer moet **in goeie trou** optree wanneer hy of sy die inligting openbaar ("goeie trou" beteken dat die werknemer op 'n verantwoordelike en eerlike wyse moet optree sonder enige bedoeling om persoonlike voordeel uit die bekendmaking te verkry).

Neem kennis dat:

- * 'n Werkgever kan besluit om sekere prosedures voor te skryf ingevolge waarvan bekendmakings gedoen moet word, selfs dat 'n bekendmaking aan 'n ander persoon as die werkgever gedoen

⁴ Artikel 5 van die Wet.

⁵ Artikel 6 van die Wet.

moet word ('n bekendmaking van hierdie aard word geag 'n bekendmaking aan die werkgewer te wees).

- * Baie werkgewers het anti-korrupsie aanmeldingspunte ingestel wat werknemers kan gebruik om misdrywe in die werkplek aan te meld (vra jou werkgewer of hy of sy so 'n aanmeldingspunt ingestel het).

MINISTER OF LUR VAN 'N PROVINSIE: (ROETE 3)⁶

'n Werknemer kan 'n bekendmaking aan 'n Minister of 'n LUR van 'n provinsie doen.

Vereistes:

- * Die werknemer moet in goeie trou optree wanneer hy of sy die inligting openbaar.
- * Hierdie prosedure geld net indien die werknemer se werkgewer—
 - * 'n individu is wat deur die betrokke Minister of LUR ingevolge wetgewing aangestel is; of
 - * 'n liggaam (bv. 'n raad of ander instelling) deur die betrokke Minister of LUR ingevolge wetgewing aangestel; of
 - * 'n staatsorgaan is waarvoor die betrokke Minister of LUR verantwoordelik is. 'n Staatsorgaan is enige staatsdepartement of administrasie in die nasionale of provinsiale regeringsfeer of enige munisipaliteit in die plaaslike regeringsfeer of enige ander funksionaris of instelling wat ingevolge die Grondwet of 'n provinsiale grondwet 'n bevoegdheid uitoefen of 'n funksie verrig of ingevolge wetgewing 'n openbare bevoegdheid uitoefen of 'n openbare funksie verrig.

6

Artikel 7 van die Wet.

SEKERE PERSOON OF LIGGAAM: (ROETE 4)⁷

'n Werknemer kan, op hierdie stadium 'n bekendmaking aan die **Openbare Beskermer** of **Ouditeur-generaal** doen.

Die **Openbare Beskermer** is 'n hoë-vlak onafhanklike amptenaar wat klagtes teen staatsinstellings of –beamptes ontvang en wat onbehoorlike benadeling van 'n klaer of klaagster as gevolg van byvoorbeeld magismisbruik, ondersoek. Wanbestuur, oneerlikheid of onbehoorlike transaksies met betrekking tot staatsgeld, onbehoorlike verryking en ontvangs van onbehoorlike voordele kan ook ondersoek word. (Sien Deel III vir kontakbesonderhede.)

Die **Ouditeur-generaal** wie ook 'n hoë-vlak amptenaar is moet die rekeninge, finansiële state en finansiële bestuur van alle nasionale en provinsiale departemente en administrasies, alle munisipaliteite en ander instellings en enige ander rekenpligtige instelling aldus deur nasionale of provinsiale wetgewing vereis, oudit. (Sien Deel III vir kontakbesonderhede.)

Vereistes:

- * Die bekendmaking moet in goeie trou gedoen word.
- * Die werknemer moet redelikerwys glo dat die betrokke onbehoorlikheid wat hy of sy wil openbaar binne 'n beskrywing val van aangeleenthede wat in die gewone loop van sake deur die Openbare Beskermer of Ouditeur-generaal gehanteer word; en
- * die inligting wat bekend gemaak word, en enige aantyging daarin vervat, wesenlik waar is.

ALGEMENE BEKENDMAKING: (ROETE 5)⁸

'n Werknemer kan selfs 'n bekendmaking doen aan enige persoon, byvoorbeeld, 'n lid van die pers (mense wat vir radio of televisie stasies of koerante werk), 'n polisie beampte van die Suid-Afrikaanse Polisediens of

⁷ Artikel 8 van die Wet.

⁸ Artikel 9 van die Wet.

'n persoon wat vir 'n organisasie werk wat die openbare of privaat sektor dophou, maak.

Vereistes:

- * Die werknemer moet in goeie trou optree.
- * Die werknemer moet redelikerwys glo dat die inligting wesenlik waar is.
- * Dit moet, in al die omstandighede van die geval, redelik wees om die bekendmaking te doen, met inbegrip van—
 - * die identiteit van die persoon aan wie die bekendmaking gedoen word;
 - * die erns van die onbehoorlikheid;
 - * of die onbehoorlikheid steeds voortduur of waarskynlik in die toekoms sal plaasvind;
 - * of die bekendmaking strydig met 'n vertrouenspilig van die werkgewer teenoor 'n ander persoon gedoen word;
- * Die werknemer moet nie die bekendmaking vir doeleindes van persoonlike gewin, met die uitsondering van 'n beloning ingevolge 'n wet betaalbaar, doen nie.
- * Een of meerdere van die volgende moet geld—
 - * Die werknemer moet glo dat hy of sy aan 'n beroepsnadeel onderwerp sal word (sien paragraaf 4 vir meer inligting) indien die bekendmaking aan die werkgewer gedoen word; of
 - * die werknemer moet glo dat die werkgewer bewysmateriaal met betrekking tot die misdryf of wanpraktyk sal verberg of vernietig indien die bekendmaking aan die werkgewer gedoen sou word; of
 - * geen stappe was geneem ten opsigte van 'n vorige bekendmaking van wesenlik dieselfde feite aan die werkgewer nie; of

- * die kriminele oortreding of wanpraktyk van 'n buitengewone ernstige aard is.

4. Teen wat word ek beskerm?

Die Wet verbied 'n werkgewer om 'n werknemer aan, wat 'n "beroepsnadeel" genoem word, te onderwerp. 'n Beroepsnadeel vind plaas wanneer 'n werknemer—

- * aan dissiplinêre stappe onderwerp word;
- * ontslaan, geskors, gedegradeer, geteister of geïntimideer word;
- * teen sy of haar wil verplaas word;
- * verplasing of bevordering geweier word;
- * aan 'n beding of voorwaarde van diens of aftrede onderwerp word wat tot sy of haar nadeel verander, of onveranderd gehou, word;
- * 'n getuigskrif geweier word, of van 'n nadelige getuigskrif voorsien word;
- * aanstelling in 'n werk, professie of amp geweier word;
- * met enige optrede hierbo gedreig word; of
- * andersins nadelig geraak word met betrekking tot sy of haar diens, professie of amp, met inbegrip van werkgeleenthede en werksekerheid,

as 'n direkte of indirekte gevolg daarvan dat hy of sy 'n beskermde bekendmaking gedoen het.

5. Wat doen ek as ek geviktimizeer is as gevolg van bekendmaking?⁹

'n Werknemer wat onderwerp was, onderwerp word of aan 'n beroepsnadeel onderwerp kan word as gevolg daarvan dat hy of sy 'n bekendmaking gedoen het kan enige hof wat jurisdiksie het vir beskerming nader.

⁹

Artikel 4 van die Wet.

Die Wet hou met die werkgewer/werknemer verhouding verband, derhalwe kan 'n werknemer ook die bepalings van die Wet op Arbeidsverhoudinge, 1995 (Wet 66 van 1995), gebruik om hom- of haarself daarteen te beskerm om aan 'n beroepsnadeel onderwerp te word.

Byvoorbeeld:

- * Indien 'n werknemer **ontslaan** word as gevolg van 'n bekendmaking wat hy of sy ingevolge die Wet op Beskernde Bekendmakings, 2000, gedoen het, word daardie ontslag geag 'n "**outomaties onbillike ontslag**" vir doeleindes van die Wet op Arbeidsverhoudinge, 1995, te wees.
- * Alle **ander vorme van beroepsnadeel** in paragraaf 4 hierbo uitgelig, word geag "**onbillike arbeidspraktyke**" vir doeleindes van die Wet op Arbeidsverhoudinge, 1995, te wees.

Vra jou vakbond om jou van advies te voorsien met betrekking tot jou remedies en hoe jy jou remedies kan afdwing.

'n Werknemer kan ook, indien dit redelik moontlik of doenlik is, versoek om **verplaas** te word vanaf die pos of posisie deur hom of haar ten tye van die bekendmaking bekleed, na 'n ander pos of posisie in dieselfde afdeling of 'n ander afdeling of indien die werknemer wat die bekendmaking doen vir 'n staatsorgaan werk om na 'n ander staatsorgaan verplaas te word.¹⁰ Die terme en diensvoorwaardes van 'n persoon wat verplaas is kan nie sonder sy of haar instemming minder gunstig wees as die terme en voorwaardes wat onmiddellik voor sy of haar verplasing van toepassing was nie.

10. Artikel 4 van die Wet.

DEEL II

6. Is daar enige ander prosedures om 'n onbehoorlikheid aan te meld of te remediër?

Daar is ander prosedures, **bykomend tot die in die Wet op Beskernde Bekendmakings, 2000**, wat beskikbaar is aan werknemers wat onbehoorlikhede in die werkplek will aanmeld, naamlik—

6.1 Die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994):

Die Staatsdienswet¹¹ maak daarvoor voorsiening dat 'n klag of grief met betrekking tot 'n amptelike handeling of versuim deur die Staatsdienskommissie ondersoek kan word. 'n Werknemer kan 'n klagte of grief by die betrokke uitvoerende gesag, in die Staatsdienswet omskryf, aanmeld¹². Indien daardie klagte of grief nie tot bevrediging van die werknemer opgelos is nie, moet die uitvoerende gesag daardie klagte of grief by die Staatsdienskommissie inhandig.

Die term "uitvoerende gesag" beteken, met betrekking tot—

- (a) die Presidensie, die President;
- (b) die Adjunk Presidensie, die Adjunk President;
- (c) 'n departement of 'n regeringskomponent binne 'n Kabinetsportefeulje, die Minister verantwoordelik vir sodanige portefeulje;
- (d) die Kantoor van die Staatsdienskommissie, die Voorsitter van die Kommissie;
- (e) die Kantoor van 'n Premier van 'n provinsie, die Premier van daardie provinsie; en
- (f) 'n provinsiale departement binne 'n Uitvoerende Raadportefeulje, die lid van die Uitvoerende Raad verantwoordelik vir sodanige portefeulje.

11. Artikel 35(1) van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994).

12. Artikel 1 van die Staatsdienswet, 1994.

Nadat die Staatsdienskommissie sodanige klagte of grief ondersoek en dit oorweeg het, kan die Kommissie aanbeveel dat die betrokke uitvoerende gesag ingevolge 'n besondere bepaling of bepalings van die Staatsdienswet, 1994, of enige ander wet optree, indien, met inagneming van die omstandighede van die geval, die Kommissie dit goed ag om sodanige aanbeveling te maak¹³. Die mees onlangse reëls, met ingang van 19 September 2003, was in Goewermentskennisgewing No. 25209 kragtens Goewermentskennisgewing No. R. 1012 van 25 Julie 2003 gepubliseer. Hierdie reëls is ook beskikbaar op die webblad van die Staatsdienskommissie, by die volgende adres.

<http://www.psc.gov.za/docs/pubs/govgazette/25209.pdf>. (Sien Deel III vir die kontakbesonderhede.)

Die Gedragskode vir die Staatsdiens¹⁴ plaas ook 'n verpligting op 'n werknemer om sekere aangeleenthede te rapporteer en bepaal as volg:

An employee, in the course of his or her official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence or which is prejudicial to the public interest.

'n Werknemer wat versuim om aan hierdie bepaling te voldoen is aan wangedrag skuldig.¹⁵

Bovermelde is van toepassing op persone wat in die staatsdiens werk, naamlik—

- (a) werknemers van alle nasionale departemente, provinsiale administrasies en provinsiale departemente en regeringskomponente in Bylaes 1 tot 3 van die Staatsdienswet, 1994, gelys; en
- (b) werknemers in die Suid-Afrikaanse Polisediens, die Suid-Afrikaanse Nasionale Weermag, Departement van Korrektiewe Dienste, opvoedkundige staatsinstellings, soos

13. Artikel 35(2) van die Staatsdienswet, 1994.

14. Regulasie C.4.10 van Hoofstuk 2 van die Staatsdiensregulasies, 2001, (nie in Afrikaans beskikbaar nie).

15. Regulasie B.3 van Hoofstuk 2 van die Regulasies.

omskryf in die Staatsdienswet, 1994, die Nasionale Intelligensie-agentskap, en Suid-Afrikaanse Geheime diens, maar slegs insoverre dit nie strydig is met die wetgewing wat op hul indiensneming van toepassing is nie.

6.2 Die "Defence Act, 2002 (Act 42 of 2002)"¹⁶:

Die Suid-Afrikaanse Nasionale Weermag verskaf werk aan twee kategorieë werknemers, naamlik persone wat ingevolge die Staatsdienswet, 1994, of ingevolge die "Defence Act, 2002", in diens geneem is.

Persone wat ingevolge die Staatsdienswet, 1994, in diens geneem is, is aan die bepalings vermeld in paragraaf 6.1 hierbo, onderhewig en persone wat ingevolge die "Defence Act, 2002", in diens geneem is, is onderhewig aan die Reglement van Dissipline¹⁷ wat, onder andere, as volg bepaal:

Artikel 7: Misdrywe met betrekking tot die versuim van 'n persoon om bedrywighede wat waarskynlik die veiligheid van die SA Weermag in gevaar stel by sy of haar senior offisier aan te meld;

Artikel 21: 'n Persoon wat bewus is of vermoed dat 'n misdryf met betrekking tot die verkryging van of beskikking oor staatseiendom gepleeg is of dalk gepleeg gaan word moet dit onverwyld by sy of haar senior offisier aanmeld;

Artikel 134: 'n Griewe prosedure wat deur 'n persoon gevolg moet word wat verontreg voel deur enige handeling of versuim van enige persoon wat aan die Reglement onderworpe is.

16. Die Wet is nie in Afrikaans beskikbaar nie.

17. Die Eerste Bylae tot die Verdedegingswet, 1957 (Wet 44 van 1957).

6.3 Die Wet op die Suid-Afrikaanse Polisie, 1995 (Wet 68 van 1995):
Die Wet op die Suid-Afrikaanse Polisie¹⁸, maak daarvoor voorsiening dat 'n werknemer wangedrag pleeg indien hy of sy enige klagte of nadelige inligting in verband met 'n ander werknemer of iemand wat vir die Diens werk weerhou of onredelik vertraag. Die betrokke regulasie moet gelees word met regulasie 18(9) wat daarvoor voorsiening maak dat 'n werknemer wangedrag pleeg indien die werknemer bewustelik 'n valse aanklag lê teen 'n werknemer of teen iemand wat vir die Diens werk, of tydens 'n ondersoek of verhoor 'n valse verklaring aflê of opsetlik materiële feite onderdruk of verberg.

Die Onafhanklike Klagtesdirektoraat¹⁹, ondersoek klagtes in verband met misdrywe of wangedrag wat deur lede van SAPD gepleeg word. Die Teen-Korrupsie Bevel Eenheid in besonder ondersoek klagtes van korrupsie teen lede van die SAPD. Die Nasionale Inspektoraat is 'n verdere meganisme wat beskikbaar is om klagtes teen lede van die SAPD te ondersoek.

Nasionale Instruksie 1 van 1999 vervat spesiale reëlings met betrekking tot lede wat inligting aan die Georganiseerde Misdadseenheid van die SAPD voorsien. 'n Lid of ander werknemer van die SAPD wat inligting aan die Georganiseerde Misdadseenheid verskaf het kan skriftelik by Divisie Kommissaris: Personeelbestuur aansoek doen om 'n tydelike of permanente verplasing of dat sodanige ander reëling met betrekking tot die verrigting van sy of haar pligte en werksaamhede getref word. Die betrokke aansoek moet by die Bevelvoerder: Georganiseerde Misdad ingehandig word wat dan 'n aanbeveling aan die Divisie Kommissaris: Personeelbestuur met betrekking tot die aansoek sal maak.

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18. Regulasie 18(10) van die Suid-Afrikaanse Polisie Dissiplinêre Regulasies, kragtens artikel 24(1)(g) van die Wet op die Suid-Afrikaanse Polisie, 1995, uitgevaardig.
 19. Ingestel ingevolge artikels 50 tot 54 van die Wet op die Suid-Afrikaanse Polisie, 1995.

6.4 Wet op Nasionale Omgewingsbestuur, 1998 [Wet 107 van 1998]:

Bewysmateriaal van 'n omgewingsrisiko kan, ingevolge die Wet op Nasionale Omgewingsbestuur²⁰, aan—

- * 'n Parlementêre Komitee of 'n provinsiale wetgewer;
- * 'n staatsorgaan wat vir die omgewing of nooddienste verantwoordelik is;
- * die Openbare Beskermer;
- * die Suid-Afrikaanse Menseregtekommissie;
- * die Nasionale Direkteur van Openbare Vervolgings,

openbaar gemaak word.

'n Bekendmaking kan ook aan een of meerdere media instellings, onderhewig aan sekere vereistes in artikel 31 vermeld, gedoen word.

6.5 Die Wes-Kaapse Wet op die Provinsiale Openbare Beskermer, 1994 [Wet 6 van 1994]:

Die Wes-Kaapse Wet op die Provinsiale Openbare Beskermer²¹, maak daarvoor voorsiening dat enige persoon (wat werknemers van die Wes-Kaapse Provinsie insluit) kan enige—

- * wanadministrasie in verband met regeringsaangeleenthede op provinsiale en plaaslike vlak;
- * misbruikmaking of onregverdige uitoefening van mag of onbillike, wispelturige, onbeleefde of ander onbehoorlike optrede of onverskoonbare vertraging deur 'n persoon wat 'n openbare werksaamheid verrig;
- * onbehoorlike of oneerlike handeling of late of korrupsie ten opsigte van openbare fondse;
- * onbehoorlike of onregmatige verryking, of ontvangs van enige onbehoorlike voordeel, of belofte van sodanige verryking of voordeel, deur 'n persoon as gevolg van 'n

20. Artikel 31 van die Wet op Nasionale Omgewingsbestuur, 1998.

21. Artikels 4(1) en 5(1) en (2) van die Wes-Kaapse Wet op die Provinsiale Openbare Beskermer, 1994.

handeling of late in die staatsadministrasie of in verband met regeeringsaangeleenthede op provinsiale of plaaslike vlak of van 'n persoon wat 'n openbare werksaamheid verrig; of

- * handeling of late deur 'n persoon in diens van die regering op provinsiale of plaaslike vlak of 'n persoon wat 'n openbare werksaamheid verrig wat tot onregmatige of onbehoorlike benadeling vir enige ander persoon tot gevolg het,

aan die Wes-Kaapse Provinsiale Openbare Beskermer bekend maak, wat kan poog om enige geskil op te los of enige handeling of late reg te stel deur middel van bemiddeling, versoening of onderhandeling. Waar die feite die pleeg van 'n misdryf openbaar sal die aangeleentheid onder die aandag van die betrokke Direkteur van Openbare Vervolgings gebring word.

6.6 Die volgende direkte, indirekte of ondersteunende remedies is beskikbaar vir staatsdiens werknemers:

(a) Direkte remedies:

- * 'n Staatsdiens werknemer kan **arbeidsreg remedies** met betrekking tot amptelike handeling of versuim van 'n arbeidsaard gebruik (byvoorbeeld, onregverdig ontslag of onregverdig arbeidspraktyk soos omskryf in artikels 185 – 188 van die Wet op Arbeidsverhoudinge, 1995). 'n Dispuut kan na die betrokke onderhandelingskamer wat jurisdiksie het, byvoorbeeld die Koördinerende Staatsdiens Bedingingsraad (KSB) of een van die sektorale bedingingsrade van die KSB, byvoorbeeld die Algemene Staatsdiens Sektorale Bedingingsraad verwys word.
- * 'n Staatsdiens werknemer kan ook 'n klagte by 'n arbeidsinspekteur lê aangaande beweerde oortreding van die **Wet op Basiese Diensvoorwaardes**.²² 'n Werknemer kan ook 'n klagte by 'n vakbond verteenwoordiger of vakbond beampte lê aangaande

22. Artikel 78(1) van die Wet op Basiese Diensvoorwaardes, 1997 (Wet 75 van 1997).

- enige beweerde versuim of weiering deur 'n werkgewer om aan die Wet op Basiese Diensvoorwaardes te voldoen.
- * Sodanige werknemer kan enige beweerde oortreding van die **Employment Equity Act**²³ onder die aandag van 'n ander werknemer, 'n werkgewer, 'n vakbond, 'n arbeidsinspekteur, 'n werkplekforum, die Direkteur-generaal: Arbeid of die Kommissie vir "Employment Equity" bring. 'n Dispuut met betrekking tot onregverdig diskriminasie in enige indiensnemingsbeleid of gebruik, soos omskryf in die "Employment Equity Act" kan na die Kommissie vir Konsiliasie, Mediasie en Arbitrasie²⁴ verwys word.
 - * 'n Staatsdiens werknemer kan 'n klagte by die **Suid-Afrikaanse Menseregtekommissie**²⁵ met betrekking tot 'n amptelike handeling of versuim wat vermoedelik 'n bedreiging vir 'n fundamentele reg inhou, lê.
 - * 'n Werknemer kan ander regsremedies gebruik soos die instel van verrigtinge vir die hersiening van administratiewe optrede ingevolge die **Promotion of Administrative Justice Act**,²⁶ of aansoek doen vir 'n interdik om 'n oortreding te vermy of die voortsetting van 'n oortreding stop te sit²⁷.

(b) Indirekte/ondersteunende remedies:

'n Staatsdiens werknemer kan ook—

- * redes vir administratiewe optrede ingevolge die **Promotion of Administrative Justice Act, 2000**²⁸;

23. "Section 34 of the Employment Equity Act, 1998 (Act 55 of 1998)" (Wet is nie in Afrikaans beskikbaar nie).

24. "Chapter II of the Employment Equity Act, 1998".

25. Artikel 8 van die Wet op die Menseregtekommissie, 1994 (Wet 54 van 1994).

26. "Section 6 of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)" (Wet is nie in Afrikaans beskikbaar nie).

27. "Section 8 of the Promotion of Administrative Justice Act, 2000".

28. "Section 5 of the Promotion of Administrative Justice Act, 2000".

- * toegang tot rekords van 'n staatsdepartement of ander openbare liggaam ingevolge die **Wet op Bevordering van Toegang tot Inligting, 2000**²⁹

versoek.

DEEL III

7. Algemene inligting

Kontak besonderhede van Openbare Beskermer³⁰

Nasionale Kantoor: Privaatsak X677

PRETORIA
0001

(012) 366 7000 / 0800 112040 (tel)
(012) 362-3473 / 086 575 3292 (faks)

Oos-kaap Kantoor: Posbus 424
BISHO
5605

(040) 635-1286 (tel)
(040) 635-1291 (faks)

Noord-wes Kantoor: Posbus 512
MAFIKENG
2745

(018) 381-1060 (tel)
(018) 381-2066 (faks)

Wes-kaap Kantoor: Posbus 712
Kaapstad
8000

29. Artikel 11 van die Wet op die Bevordering van Toegang tot Inligting, 2000 (Wet 2 van 2000).

30. Vir doeleindes van artikel 8(1)(a) van die Wet.

(021) 423 8644 (tel)
(021) 423 8708 (faks)

Kontak besonderhede van Ouditeur-generaal³¹

Posbus 446
Pretoria
0001

Tel: 012 – 4268000
Faks: 012 – 4268333

Kontak besonderhede van Staatsdienskommissie³²

Hoofkantoor: Privaatsak X 121
 Pretoria
 0001
 Tel: 012 – 3287690
 Faks: 012 – 325 8382

Oos-kaap: Posbus 2167
 King William's Town
 5601
 Tel: 043 – 6434704
 Faks: 043 – 6421371

Gauteng: Posbus 8962
 Johannesburg
 2000
 Tel: 011 – 8335721/2/3/4/5/6

31. Vir doeleindes van artikel 8(1)(b) van die Wet.
32. Vir algemene inligting.

Faks: 011 – 8341200

Mpumalanga:

Posbus 11303

Nelspruit

1200

Tel: 013 – 7554070

Faks: 013 -7525814

Limpopo:

Privaatsak X 9543

Polokwane

0700

Tel: 015 – 291 4783

Faks: 015 – 291 4683

Wes-kaap:

Posbus 2078

Kaapstad

8000

Tel: 021 – 421 3980

Faks: 021 – 421 4060

Vrystaat:

Privaatsak X 20572

Bloemfontein

9300

Tel: 051 – 4488696

Faks: 051 – 4484135

KwaZulu-Natal:

Privaatsak X 9130

Pietermaritzburg

3200

Tel: 033 – 3451621

Faks: 033 – 3458505

Noord-kaap: Privaatsak X 5071
 Kimberley
 8300
 Tel: 053 – 8326222
 Faks: 053 – 8326225

Noord-wes: Privaatsak X 2065
 Mmabatho
 2735
 Tel: 018 – 384 1000
 Faks: 018 – 384 1012

Kontak besonderhede van die Suid-Afrikaanse Menseregtekommissie³³

Privaatsak X2700
HOUGHTON
2041
Tel: 011 – 484 8300
Faks: 011 – 484 0582

Kontak besonderhede van die Kommissie vir Geslagsgelykheid³⁴

Posbus 32175
BRAAMFONTEIN
2017
Tel: 011 – 403 7182
Faka: 011 – 403 7188 / 5609

33. Vir algemene inligting.

34. Vir algemene inligting.

DEEL IV**WET OP BESKERMDE BEKENDMAKINGS 26 VAN 2000**

[GOEDGEKEUR OP 1 AUGUSTUS 2000] [DATUM VAN INWERKINGTREDING: 16 FEBRUARIE 2001]
(Engelse teks deur die President geteken)

WET

Om voorsiening te maak vir prosedures ingevolge waarvan werknemers in beide die privaat en die openbare sektor inligting in verband met onwettige of onreëlmatige optrede deur hul werkgewers of ander werknemers in die diens van hul werkgewers kan bekend maak; om voorsiening te maak vir die beskerming van werknemers wat 'n bekendmaking doen wat ingevolge hierdie Wet beskerm word; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

Aanhef

Met erkenning dat—

- die Handves van Regte in die Grondwet van die Republiek van Suid-Afrika, 1996, die regte van alle mense in die Republiek bewaar en die demokratiese waardes van menswaardigheid, gelykheid en vryheid bevestig;
- artikel 8 van die Handves van Regte voorsiening maak vir die horisontale toepassing van die regte in die Handves van Regte, met inagneming van die aard van die reg en die aard van enige verpligting wat deur die reg opgelê word;
- kriminele en ander onbehoorlike optrede in staatsorgane en privaatliggame nadelig is vir goeie, effektiewe, verantwoordbare en deursigtige staatsbestuur in staatsorgane en oop en goeie korporatiewe bestuur in privaatliggame, en die ekonomiese stabiliteit van die Republiek in gevaar kan stel en die potensiaal inhou om sosiale leed te berokken;

En gedagtig daaraan dat—

- nóg die Suid-Afrikaanse gemene reg nóg die statutêre reg voorsiening maak vir meganismes of prosedures ingevolge waarvan werknemers, sonder vrees vir vergelding, inligting kan bekend maak wat verband hou met vermoedelik of beweerde kriminele of ander onreëlmatige gedrag deur hul werkgewers, hetsy in die privaat of die publieke sektor;
- elke werkgewer en werknemer 'n verantwoordelikheid het om kriminele en ander onreëlmatige gedrag in die werkplek bekend te maak;
- elke werkgewer 'n verantwoordelikheid het om alle nodige stappe te doen ten einde te verseker dat werknemers wat sodanige inligting bekend maak van weerwraak as gevolg van sodanige bekendmaking beskerm word;

En ten einde—

- 'n kultuur te skep wat die bekendmaking van inligting deur werknemers met betrekking tot kriminele en ander onreëlmatige optrede in die werkplek op 'n verantwoordelike wyse sal fasiliteer deur die daarstelling van omvattende statutêre riglyne vir die bekendmaking van sodanige inligting en beskerming teen vergelding as gevolg van sodanige bekendmakings;
- die uitwissing van kriminele en ander onreëlmatige optrede in staatsorgane en privaatliggame te bevorder,

WORD DAAR DERHALWE BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Woordomsrywings

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - (i) "*bekendmaking*" enige bekendmaking van inligting rakende enige optrede van 'n *werkgewer*, of 'n *werknemer* van daardie *werkgewer*, wat gedoen word deur 'n *werknemer* wat rede het om te glo dat die betrokke inligting een of meer van die volgende aantoon:
 - (a) Dat 'n misdaad gepleeg is, gepleeg word of waarskynlik gepleeg gaan word;
 - (b) dat 'n persoon versuim het, besig is om te versuim of waarskynlik gaan versuim om aan 'n regsplig, waaraan daardie persoon onderhewig is, te voldoen;
 - (c) dat 'n onreg in die regspleging plaasgevind het, plaasvind of waarskynlik gaan plaasvind;
 - (d) dat die gesondheid of veiligheid van 'n individu in gevaar gestel is, in gevaar gestel word of waarskynlik in gevaar gestel gaan word;
 - (e) dat die omgewing beskadig is, beskadig word of waarskynlik beskadig gaan word;
 - (f) onbillike diskriminasie soos beoog in die "Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000)"; of
 - (g) dat enige aangeleentheid bedoel in paragrawe (a) tot (f) opsetlik verberg is, verberg word of waarskynlik verberg gaan word;
 - (ii) "*beroepsnadeel*", in verhouding tot die beroepsgewing van die *werknemer*—

- (a) om aan dissiplinêre stappe onderwerp te word;
 - (b) om ontslaan, geskors, gedegradeer, geteister of geïntimideer te word;
 - (c) om teen sy of haar wil verplaas te word;
 - (d) om verplasing of bevordering geweier te word;
 - (e) om aan 'n beding of voorwaarde van diens of aftrede onderwerp te word wat tot sy of haar nadeel verander, of onveranderd gehou, word;
 - (f) om 'n getuigskrif geweier te word, of van 'n nadelige getuigskrif voorsien te word, deur sy of haar *werkgewer*;
 - (g) om aanstelling in 'n werk, professie of amp geweier te word;
 - (h) om met enige optrede bedoel in paragrawe (a) tot (g) hierbo gedreig te word; of
 - (i) om andersins nadelig geraak te word met betrekking tot sy of haar diens, professie of amp, met inbegrip van werkgeleenthede en werksekerheid;
- (iii) "*beskermdede bekendmaking*" 'n *bekendmaking* wat aan—
- (a) 'n regsadviseur ooreenkomstig artikel 5;
 - (b) 'n *werkgewer* ooreenkomstig artikel 6;
 - (c) 'n lid van die Kabinet of van die Uitvoerende Raad van 'n provinsie ooreenkomstig artikel 7;
 - (d) 'n persoon of liggaam ooreenkomstig artikel 8; of
 - (e) 'n ander persoon of liggaam ooreenkomstig artikel 9, gedoen word, maar sluit nie 'n *bekendmaking* in nie—
 - (i) ten opsigte waarvan die *werknemer* 'n misdryf pleeg by die doen daarvan; of
 - (ii) wat gedoen word deur 'n regsadviseur aan wie die betrokke inligting bekend gemaak is in die loop van die inwin van regsadvies ooreenkomstig artikel 5;
- (iv) "*hierdie Wet*" ook 'n regulasie ingevolge artikel 10 uitgevaardig
- (v) "*Minister*" die Kabinetslid wat vir die regspleging verantwoordelik is
- (vi) "*onbehoorlikheid*" enige gedrag wat binne enige van die kategorieë bedoel in paragrawe (a) tot (g) van die woordskrywing van "*bekendmaking*" val, ongeag of—
- (a) die onbehoorlikheid in die Republiek van Suid-Afrika of elders plaasvind of plaasgevind het; of
 - (b) die reg wat op die onbehoorlikheid van toepassing is dié van die Republiek van Suid-Afrika of van 'n ander land is;
- (vii) "*staatsorgaan*"—
- (a) enige staatsdepartement of administrasie in die nasionale of provinsiale regeringsfeer of enige munisipaliteit in die plaaslike regeringsfeer; of
 - (b) enige ander funksionaris of instelling wanneer—
 - (i) ingevolge die Grondwet of 'n provinsiale grondwet 'n bevoegdheid uitgeoefen of 'n funksie verrig word; of
 - (ii) ingevolge wetgewing 'n openbare bevoegdheid uitgeoefen of 'n openbare funksie verrig word;
- (viii) "*voorgeskryf*" voorgeskryf by regulasie ingevolge artikel 10.
- (ix) "*werkgewer*" 'n persoon—
- (a) wat 'n ander persoon in diens hou of werk aan die ander persoon verskaf en wat die ander persoon vergoed of uitdruklik of stilswyend onderneem om die ander persoon te vergoed; of
 - (b) wat iemand anders toelaat om op enige wyse in die voortsetting of bedryf van sy of haar besigheid behulpsaam te wees,
- met inbegrip van 'n persoon wat namens of op gesag van sodanige *werkgewer* optree;
- (x) "*werknemer*"—
- (a) 'n persoon, uitgesonderd 'n onafhanklike kontrakteur, wat vir iemand anders of vir die Staat werk en wat besoldiging ontvang of daarop geregtig is om besoldiging te ontvang; en
 - (b) enige ander persoon wat op enige wyse help om die besigheid van 'n *werkgewer* voort te sit of te bedryf.

Oogmerke en toepassing van Wet

2. (1) Die oogmerke van *hierdie Wet* is—
- (a) om 'n *werknemer*, hetsy in die privaat of openbare sektor, te beskerm teen onderwerping aan 'n *beroepsnadeel* omrede hy of sy 'n *beskermdede bekendmaking* gedoen het;
 - (b) om voorsiening te maak vir sekere remedies in verband met 'n *beroepsnadeel* wat gely is as gevolg van 'n *beskermdede bekendmaking* wat gedoen is; en
 - (c) om voorsiening te maak vir prosedures ingevolge waarvan 'n *werknemer*, op 'n verantwoordelike wyse, inligting aangaande *onbehoorlikhede* deur sy of haar *werkgewer* bekend kan maak.
- (2) *Hierdie Wet* is van toepassing op enige *beskermdede bekendmaking* na die datum van inwerkingtreding van hierdie artikel gedoen, ongeag of die betrokke *onbehoorlikheid* voor of na die genoemde datum plaasgevind het.

(3) 'n Bepaling in 'n werkskontrak of ander ooreenkoms tussen 'n *werkgewer* en 'n *werknemer* is nietig vir soverre dit—

- (a) die strekking het om 'n bepaling van hierdie Wet, met inbegrip van 'n ooreenkoms om regstappe kragtens hierdie Wet of regstappe vir kontrakbreuk in te stel of voort te sit, uit te sluit; of
- (b) (i) die strekking het om die *werknemer* daarvan te weerhou; of
- (ii) die uitwerking het om die *werknemer* te ontmoedig, om 'n *beskermdede bekendmaking* te doen.

Werknemer wat beskermdede bekendmaking doen, word nie aan beroepsnadeel onderwerp nie

3. Geen *werknemer* mag deur sy of haar *werkgewer* aan 'n *beroepsnadeel* onderwerp word op grond daarvan, of gedeeltelik op grond daarvan, dat hy of sy 'n *beskermdede bekendmaking* gedoen het nie.

Remedies

4. (1) 'n *Werknemer* wat in stryd met artikel 3 aan 'n *beroepsnadeel* onderwerp is, word of kan word, kan—

- (a) enige hof wat jurisdiksie het, met inbegrip van die Arbeidshof ingestel by artikel 151 van die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), nader om gepaste regshulp; of
- (b) enige ander proses aanwend wat deur 'n wet toegelaat of voorgeskryf word.

(2) Vir die doeleindes van die Wet op Arbeidsverhoudinge, 1995, met inbegrip van die oorweging van enige aangeleentheid wat uit hierdie Wet voortspruit deur die Arbeidshof—

- (a) word 'n ontslag in stryd met artikel 3 geag 'n outomaties onbillike ontslag soos beoog in artikel 187 van daardie Wet te wees, en die geskil oor sodanige ontslag volg die prosedure in Hoofstuk VIII van daardie Wet uiteengesit; en
- (b) word enige ander *beroepsnadeel* in stryd met artikel 3 geag 'n onbillike arbeidspraktyk soos beoog in Deel B van Bylae 7 tot daardie Wet te wees, en die geskil oor sodanige onbillike arbeidspraktyk volg die prosedure in daardie Deel uiteengesit: Met dien verstande dat indien die aangeleentheid nie deur versoening besleg word nie, dit na die Arbeidshof vir beregting verwys kan word.

(3) 'n *Werknemer* wat 'n *beskermdede bekendmaking* gedoen het en wat redelikerwys glo dat hy of sy nadelig geraak kan word as gevolg van die *bekendmaking*, moet, op sy of haar versoek en indien dit redelikerwys moontlik of prakties is, verplaas word vanaf die pos of posisie wat hy of sy ten tyde van die *bekendmaking* beklee het, na 'n ander pos of posisie in dieselfde of 'n ander afdeling van sy of haar *werkgewer* of, waar die persoon wat die *bekendmaking* doen in diens van 'n *staatsorgaan* is, na 'n ander *staatsorgaan*.

(4) Die bedinge en voorwaardes van diens van 'n persoon wat ingevolge subartikel (2) verplaas word, mag nie sonder sy of haar skriftelike toestemming minder gunstig wees as die bedinge en voorwaardes wat onmiddellik voor sy of haar verplasing op hom of haar van toepassing was nie.

Beskermdede bekendmaking aan regsadviseur

5. 'n *Bekendmaking* wat gedoen word—

- (a) aan 'n regspraktisyn of aan 'n persoon wie se beroep met die verlening van regsadvies gemoeid is; en
- (b) met die doel van, en in die loop van, die inwin van regsadvies, is 'n *beskermdede bekendmaking*.

Beskermdede bekendmaking aan werkgewer

6. (1) 'n *Bekendmaking* wat in goeie trou gedoen word—

- (a) en wat wesenlik in ooreenstemming is met 'n prosedure wat voorgeskryf is, of wat deur die *werknemer* se *werkgewer* gemagtig is vir doeleindes van die aanmelding of ander regstelling van die betrokke *onbehoorlikheid*; of
- (b) aan die *werkgewer* van die *werknemer*, waar daar geen prosedure soos in paragraaf (a) beoog is nie, is 'n *beskermdede bekendmaking*.

(2) 'n *Werknemer* wat, in ooreenstemming met 'n prosedure wat deur sy of haar *werkgewer* gemagtig is, 'n *bekendmaking* aan 'n ander persoon as sy of haar *werkgewer* doen, word, vir die doeleindes van hierdie Wet, geag 'n *bekendmaking* aan sy of haar *werkgewer* te doen.

Beskermdede bekendmaking aan lid van Kabinet of van Uitvoerende Raad

7. 'n *Bekendmaking* wat in goeie trou aan 'n lid van die Kabinet of die Uitvoerende Raad van 'n provinsie gedoen is, is 'n *beskermdede bekendmaking* indien die *werknemer* se *werkgewer*—

- (a) 'n individu is wat ingevolge wetgewing deur 'n lid van die Kabinet of die Uitvoerende Raad van 'n provinsie aangestel is;
- (b) 'n liggaam is waarvan die lede ingevolge wetgewing deur 'n lid van die Kabinet of die Uitvoerende Raad van 'n provinsie aangestel is; of

- (c) 'n *staatsorgaan* is wat binne die verantwoordelikeheidsveld van die betrokke lid val.

Beskernde bekendmaking aan sekere persone of liggame

8. (1) 'n *Bekendmaking* wat in goeie trou gedoen word aan—
- (a) die Openbare Beskermer;
 - (b) die Ouditeur-generaal; of
 - (c) 'n persoon of liggaam wat vir doeleindes van hierdie artikel voorgeskryf is; en
- ten opsigte waarvan die betrokke *werknemer* redelikerwys glo dat—
- (i) die betrokke *onbehoorlikheid* binne 'n beskrywing val van aangeleenthede wat in die gewone loop van sake deur die betrokke persoon of liggaam gehanteer word; en
 - (ii) die inligting wat bekend gemaak word, en enige aantyging daarin vervat, wesenlik waar is, is 'n *beskernde bekendmaking*.
- (2) 'n Persoon of liggaam bedoel in, of voorgeskryf ingevolge, subartikel (1) wat van mening is dat die aangeleentheid meer gepas gehanteer kan word deur 'n ander persoon of liggaam bedoel in, of voorgeskryf ingevolge, daardie subartikel, moet sodanige hulp aan die *werknemer* verleen as wat nodig is ten einde die *werknemer* in staat te stel om aan hierdie artikel te voldoen.

Algemene beskernde bekendmaking

9. (1) 'n *Bekendmaking* wat in goeie trou deur 'n *werknemer* gedoen word—
- (a) wat redelikerwys glo dat die inligting wat bekend gemaak word, en enige aantyging daarin vervat, wesenlik waar is; en
 - (b) wat nie die *bekendmaking* vir doeleindes van persoonlike gewin, met die uitsondering van 'n beloning ingevolge 'n wet betaalbaar, doen nie,
- is 'n *beskernde bekendmaking* indien—
- (i) een of meer van die voorwaardes in subartikel (2) bedoel van toepassing is; en
 - (ii) in al die omstandighede van die geval, dit redelik is om die *bekendmaking* te doen.
- (2) Die voorwaardes bedoel in subartikel (1)(i) is—
- (a) dat die *werknemer* wat die *bekendmaking* doen ten tye daarvan rede het om te glo dat hy of sy aan 'n *beroepsnadeel* onderwerp sal word indien hy of sy die *bekendmaking* aan sy of haar *werkgewer* ooreenkomstig artikel 6 sou doen;
 - (b) in die geval waar geen persoon of liggaam vir doeleindes van artikel 8 in verband met die betrokke *onbehoorlikheid* voorgeskryf is nie, dat die *werknemer* wat die *bekendmaking* doen rede het om te glo dat dit waarskynlik is dat bewysmateriaal met betrekking tot die *onbehoorlikheid* verberg of vernietig sal word indien hy of sy die *bekendmaking* aan sy of haar *werkgewer* sou doen;
 - (c) dat die *werknemer* wat die *bekendmaking* doen voorheen 'n *bekendmaking* van wesenlik dieselfde inligting gedoen het aan—
 - (i) sy of haar *werkgewer*; of
 - (ii) 'n persoon of liggaam bedoel in artikel 8,
 ten opsigte waarvan geen stappe binne 'n redelike tyd na die *bekendmaking* gedoen is nie;
 - (d) dat die *onbehoorlikheid* van 'n buitengewone ernstige aard is.
- (3) By die vasstelling vir die doeleindes van subartikel (1)(ii) of dit redelik is vir die *werknemer* om die *bekendmaking* te doen, moet oorweging geskenk word aan—
- (a) die identiteit van die persoon aan wie die *bekendmaking* gedoen word;
 - (b) die erns van die *onbehoorlikheid*;
 - (c) of die *onbehoorlikheid* steeds voortduur of waarskynlik in die toekoms sal plaasvind;
 - (d) of die doen van die *bekendmaking* strydig is met 'n vertrouenspelig van die *werkgewer* teenoor 'n ander persoon;
 - (e) in 'n geval vermeld in subartikel (2)(c), enige stappe wat die *werkgewer* of die persoon of liggaam aan wie die *bekendmaking* gedoen is, gedoen het, of redelikerwys verwag kon word om te gedoen het, as gevolg van die vorige *bekendmaking*;
 - (f) in 'n geval vermeld in subartikel (2)(c)(i), of die *werknemer* by die doen van die *bekendmaking* aan die *werkgewer* aan enige prosedure wat deur die *werkgewer* gemagtig is, voldoen het; en
 - (g) die openbare belang.
- (4) Vir die doeleindes van hierdie artikel kan 'n daaropvolgende *bekendmaking* as 'n *bekendmaking* van wesenlik dieselfde inligting bedoel in subartikel (2)(c) geag word, waar sodanige daaropvolgende *bekendmaking* uitgebrei is tot inligting aangaande stappe wat gedoen is of nie gedoen is nie deur 'n persoon as gevolg van die vorige *bekendmaking*.

Regulasies

10. (1) Die *Minister* kan, na oorleg met die Minister vir die Staatsdiens en Administrasie, by kennisgewing in die *Staatskoerant* regulasies uitvaardig betreffende—

- (a) vir die doeleindes van artikel 8(1), aangeleentede wat, addisioneel tot die wetgewende bepalings wat op sodanige funksionariesse van toepassing is, in die gewone loop na die Openbare Beskermer of die Ouditeur-generaal, na gelang van die geval, verwys kan word;
- (b) enige administratiewe of prosedurele aangeleentheid wat nodig is om aan die bepalings van *hierdie Wet* gevolg te gee; en
- (c) enige ander aangeleentheid wat deur *hierdie Wet* voorgeskryf moet of kan word.
- (2) 'n Regulasie wat vir doeleindes van artikel 8(1)(c) uitgevaardig is, moet persone of liggame en die beskrywing van aangeleentede ten opsigte waarvan elke persoon of liggaam voorgeskryf word, spesifiseer.
- (3) 'n Regulasie ingevolge hierdie artikel uitgevaardig, moet aan die Parlement voorgelê word voor publikasie daarvan in die *Staatskoerant*.
- (4) (a) Die *Minister* moet, na oorleg met die Minister vir die Staatsdiens en Administrasie, praktiese riglyne uitreik ter verduideliking van die bepalings van *hierdie Wet* en alle prosedures wat ingevolge enige wet beskikbaar is aan *werknemers* wat 'n *onbehoorlikheid* wil aanmeld of andersins wil regstel.
- (b) Die riglyne bedoel in paragraaf (a) moet deur die Parlement goedgekeur word voor publikasie daarvan in die *Staatskoerant*.
- (c) Alle staatsorgane moet aan elke *werknemer* 'n afskrif van die riglyne bedoel in paragraaf (a) verskaf of moet redelike stappe doen om die betrokke kennisgewing onder die aandag van elke *werknemer* te bring.

Kort titel en inwerkingtreding

11. Hierdie Wet heet die Wet op Beskernde Bekendmakings, 2000, en tree in werking op 'n datum wat die President by proklamasie in die *Staatskoerant* bepaal.