



Procedure for whistleblowing and protection of whistleblowers

A draft act on the protection of whistleblowers has been recently published. It is aimed at implementing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting infringements of Union law into the Polish legal order. The law is scheduled to be enacted in the fourth quarter of 2021.

New obligations for businesses

The Directive, and the following Act, will impose new obligations on businesses to implement procedures and so-called internal reporting (whistleblowing) channels, as well as whistleblower protection.

Importantly, according to the draft, the regulation shall enter into force 14 days after its publication. As soon as it comes into force, entities employing more than 250 people will have to comply with its provisions. Private-sector entrepreneurs with 50 to 249 employees will have time until December 17, 2023 to implement relevant procedures.

For entrepreneurs with up to 50 employees, the introduction of procedures is not to be mandatory, except for entities performing activities in the field of financial services, products and markets, and the prevention of money laundering and terrorist financing, transport safety and environmental protection, covered by certain acts of European Union law, which will have to implement the relevant procedures regardless of the number of employees.

Protection of whistleblowers (reporters)

The purpose of the new regulation is to provide protection to individuals who report or disclose information on or reasonable suspicion of a breach and who become aware of the breach in connection with their work. The draft act clarifies what reportable violations of law may relate to (i.e., conduct that is unlawful or intended to circumvent the law and involving, i.a., public procurement, prevention of money laundering and terrorist financing, environmental protection, consumer protection, privacy and personal data protection). At the same time, the employer will have the opportunity to expand the statutory catalog, including the possibility of reporting violations related to the employer's internal regulations or ethical standards.

Whistleblowers – provided that they make a report in the appropriate manner and have a reasonable suspicion that a breach has occurred (or is likely to occur, in the case of potential breaches) – are to enjoy specified measures of protection. In particular, they shall not become the object of any retaliatory action. Not only an employee, but also a service provider or a contractor can be a whistleblower.

Internal reporting regulations

Pursuant to the provisions of the draft act, the rules of internal reporting are to be determined by the employer after consultation with a company trade union or employee representatives selected in accordance with the procedure established by the employer (if there is no trade union at the enterprise).

These regulations are to come into force after 2 weeks from the day they are communicated to the employees in the manner adopted by the employer.

The procedure will need to indicate, among other things, to whom reports are to be addressed and how they will be processed. Of particular importance is the fact that the procedures will have to be designed in such a way as to protect the identity of both the person making the report and the person who will be affected by the report. It will be up to the employer to decide whether to allow anonymous reporting.

Whistleblowing channels

In the internal reporting regulations, entrepreneurs will have to indicate, i.a., the means by which reports will be submitted. Reporting the irregularity to the employer will be considered an internal report. Notwithstanding the above, the draft act also provides for external reporting (to relevant state authorities) and public disclosure. The whistleblower will be able to report irregularities through an internal channel or outright through an external channel. Should internal and external channels prove ineffective, the whistleblower will be able to disclose the news of the infringement to the public.

Sanctions

The draft act also contains penal regulations. The latter include fine, restriction of liberty or imprisonment for up to three years for failing to establish an internal whistleblowing procedure or establishing such a procedure in violation of the law. A person who makes a report or public disclosure of false information is also to be subject to the same penalty.



CONTACT

We encourage you to contact us in case of any doubts regarding procedure of whistleblowing.

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