

Increasing requirements on whistleblowers's protection – what are the consequences for companies?

Whistleblowers represent a key source of information because they usually inform about potential breach of rules, which might result in damages to the whole society. Nevertheless, suspicions are often unreported due to the whistleblowers' fear of adverse actions taken against them by their employers. This reporting procedure is generally known as "whistleblowing".

The European Union thus decided to do more in the area of protection of the whistleblowers. In October 2019, the European Directive No. 2019/1937 on protection of persons who report breaches of Union law was adopted. This directive defines new minimal rules for the protection of whistleblowers and should be transposed to the Czech law in two years at the latest.

1 Purpose of the Directive

Protect the interest of EU and in this respect ensure also higher level of protection of whistleblowers reporting breaches in areas such as public tenders, financial services, prevention of money laundering, security of products, public health, protection of consumers and personal data.

The Directive defines whistleblower from a wider point of view. Not only as current and former employees, shareholders and governing bodies, but also the employees of its suppliers and subcontractors who might have information on the illegal activities of the given organisation.

2 Obligation to establish internal reporting channels and procedures for follow-up

Why: The whistleblower should have the right to blow the whistle either internally within the organisation (preferred option) or externally (to public institutions or specialised bodies).

Who is obliged: Organisations, both private or public, with over 50 employees and municipalities with over 10 ths. inhabitants. This trigger might be further decreased in the Czech legislation

Obligation: These organisations will have obligation to establish internal reporting channels and implement other measures described further in point 3.

3 Requirements

- Create safe internal channels for accepting the reports (can be maintained externally) to ensure processing of the reports and anonymity of the whistleblower;
- This internal reporting channels should allow written or verbal reports;
- Confirm to the whistleblower the receipt of the report within 7 days;
- Define procedures for accepting and processing the reports and follow-up corrective measures; and
- Provide feedback to the whistleblower within appropriate deadline, not longer than three months.

Tips

If your company already has a system for reporting unethical or illegal behaviour in place, you should assess whether the system is sufficient and compliant with the new rules. You should find the response at least to the following questions:

- Does the system ensure a sufficient protection of the whistleblower's identity?
- Does it allow the submission of reports to individuals outside the organisation?
- Can the system deal with an increased number of reports?
- Is there a dedicated independent person/team to accept and investigate the reports and communicate with the whistleblower?
- Does it allow to properly document each step taken after a report was received?
- Reference to the EU Directive

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937&from=EN>

 Thorough documentation of the whole case (report) will be critical, as the whistleblower can file a claim against the organisation for adverse action, such as dismissal, transfer to lower grade position, non-promotion, discrimination, disadvantage treatment. In such case, the organisation should be ready to bear the burden of proof before court and demonstrate that the report did not have any adverse impact on the whistleblower.

Would you like to learn more? Contact us

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