

ALERT

Whistleblowing

LEGISLATION ON WHISTLEBLOWERS IS GETTING CLOSER

With a delay of over 2 years, the draft legislation on the protection of whistleblowers is being proceeded by the Polish Parliament. This follows many earlier versions of draft legislation implementing the EU directive on whistleblowers (Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law). The legislation is in the final stages of adoption. We recommend that you familiarise yourself with its main provisions and prepare for the upcoming changes.

Who is a whistleblower?

A whistleblower is a person who reports (discloses) information about a violation of the law which they learned about in a work-related context. Therefore, a whistleblower can be an employee, contractor, volunteer or intern.

For a person to acquire whistleblower status, the report must be made via the appropriate reporting channel or in accordance with the principles of public disclosure. Such reporting must also be done in good faith.

How are whistleblowers protected?

A whistleblower is protected against retaliatory actions which are related to their employment and may violate the whistleblower's rights or cause harm. This includes terminating the whistleblower's contract or reducing salary. Whistleblowers against whom retaliatory actions have been taken are entitled to compensation amounting to at least the average Polish monthly salary or to remedy.

Which kinds of violations can whistleblowers report?

Whistleblower reports can relate to violations concerning labour law, corruption, public procurement, anti-money laundering and terrorist financing, transportation safety, environmental protection, food and feed safety, public health, consumer protection, or privacy and data protection.

How can whistleblowers report violations?

Whistleblowers can report violations via:

- internal reporting channels;
- external reporting channels to the relevant state authorities;
- public disclosure (in specified cases).

The Polish institution responsible for supporting whistleblowers is the Ombudsman for Human Rights (in Polish: *Rzecznik Praw Obywatelskich (RPO)*). The RPO will also accept external reports on constitutional rights and human and civil rights.

Which businesses are obliged to establish internal notification channels?

Any entity that, on 1 January or 1 July of a given year, **employs at least 50 people** (regardless of the basis of such employment) is obliged to establish an internal whistleblowing procedure. These employment thresholds do not apply

to legal entities which operate in the following sectors: financial services, products and markets; anti-money laundering and terrorist financing; transportation safety; and environmental protection.

Implementing the whistleblower procedure requires consultation with trade unions or, in the absence of a trade union, with employee representatives.

What is the deadline for implementing the internal notification procedure?

The law is expected to enter into force 3 months after publication. We estimate that the new regulations will enter into effect during the holiday season or early in the fourth quarter of 2024.

Before the new legislation comes into force, it is worth considering the following questions:

- Who will be responsible for receiving whistleblower reports and conducting internal investigations? Someone within your business or an external entity?
- Which reporting channels will work best for your business? A dedicated e-mail address, a helpline or perhaps an online platform?
- Do you plan to extend the scope of whistleblower reports? The draft legislation allows internal reporting procedures to also apply to violations of internal regulations or ethical standards.
- How should the new procedure be integrated with pre-existing internal procedures (e.g. anti-mobbing procedures)?
- Do you have employee representatives and are they entitled to be consulted about the creation of an internal reporting procedure?

How can we help?

- We can prepare an internal reporting procedure tailored to your organisation, plus a template for an internal reporting register.
- We can prepare or update your data protection documentation – the new notification procedure and handling process are qualified as procedures involving personal data processing.
- We can help you to implement reporting channels – including by helping you select a whistleblower system provider and by preparing the required documents. We cooperate with two providers of such systems – Whistlelink and Whistleblower Software.
- We can train your management and staff to ensure the procedure is fully and correctly implemented.
- As you prefer, we can either act as an external compliance officer and investigate cases from start to finish or support you in individual whistleblowing cases.

FEEL FREE TO
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