



New Statutory Law: Whistleblower Protection Act

www.prosman-pavlovic.sk

Whistleblower Protection Act

© 2017 PROSMAN A PAVLOVIČ advokátska kancelária s.r.o.

INTRODUCTION

On 30 January 2019 the National Council adopted a brand-new Act No. 54/2019 Coll. on Protection of Whistleblowers of Anti-social Activity and on Amendments and Supplements to Certain Acts (hereinafter referred to as the "**Whistleblower Protection Act**" or as the "**new law**"), with the **effective date on 1st March 2019**. The new law repeals the previous Act No. 307/2014 Coll. on Certain Measures Related to Reporting on Anti-Social Activity and on Amendments and Supplements to Certain Acts (hereinafter referred to as the "**prior act**"). However, previous basis set up by prior act remain in play, but with many changes that respond to shortcomings identified by the application practice. From **1st March 2019** the new law **imposes several new duties on selected legal and natural persons in the position of employers. Failure to comply with these obligations is sanctioned by considerable amounts of money by the supervisory authority.**

The following paragraphs briefly refers to the highlights of a newly adopted law.

WHISTLEBLOWER

A **whistleblower is a natural person – employee**, who in good faith alleges wrongdoing to a body competent to receive such report, to the Whistleblower Protection Authority or to an employer. According to the new law also a **person closely related to the whistleblower** is considered as a whistleblower, if that person is in an employment relationship:

- with the same employer as the whistleblower,
- with the employer who is a dependant person in relation to the whistleblower's employer; or
- with the employer who is set up by the whistleblower's employer.

SERIOUS WRONGDOING

A serious wrongdoing, which the whistleblower is entitled to disclose to the employer under the new law includes:

- criminal offences of damaging financial interests of the European Union pursuant to Articles 261 to 263 of the Criminal Code,
- criminal offences of deceitful practices in public procurement and public auction pursuant to Articles 266 to 268 of the Criminal Code,
- criminal offences committed by public officials pursuant to Articles 326 to 327a of the Criminal Code,
- criminal offences of corruption pursuant to Articles 328 to 336b of the Criminal Code,
- criminal offence with upper sentencing rate of at least 3 years,
- administrative offence punishable by a fine with a maximum amount determined by calculation, or
- administrative offence punishable by a fine with a maximum amount of at least EUR 30,000.

The new law protects the whistle-blower in case he **reports the facts he found out in connection to a performance of its employment, occupation, position or function or in relation to a public interest activity and connected to wrongdoing.**

OBLIGATIONS OF EMPLOYER

The Whistleblower Protection Act will significantly affect employers who employ at least 50 employees and employers who are the public authorities and employ at least 5 employees. For the purposes of the new law on protection of whistleblowers, the public authority is understood as follows:

- state authority, municipality, self-governing region,
- legal person established by law and legal person established by state, by municipality or by self-governing region,

- legal person established by the abovementioned persons and
- legal person to whose law authorises a jurisdiction over rights and obligations in the field of public administration.

Employer who employs at least 50 employees and employer who is a public authority and employs at least 5 employees has the following duties:

- **to designate a responsible officer,**
- **to issue or update an internal regulation on details of investigation of disclosures,**
- **to investigate every report on wrongdoing and**
- **to keep a record of complaints.**

DESIGNATION OF A RESPONSIBLE OFFICER

The employer has a duty to designate a person or an organisational unit which will carry out the obligations of the employer for the purpose of protection of whistleblowers of serious wrongdoing (hereinafter referred to as the „**responsible officer** “). A responsible officer may or may not be an employee of the employer. Therefore, responsible officer is allowed to perform its duties also on a contractual basis. **A responsible officer shall be a qualified professional in order to maintain its tasks according to the new law. Moreover, for a municipalities and self-governing regions duties of a responsible officer are designated to a principal controller under the new law.**

A responsible officer performs its tasks independently, responsibly and is bound only by instructions of the statutory body of the employer or of the statutory body of the parent company. Duties of a responsible officer may be performed by the Board of Directors or its member as well. Then, binding instructions for a responsible officer do not apply. The employer shall not retaliate a responsible officer for performance of its tasks and duties. On the other hand, the employer is obliged to provide him with the necessary cooperation in order to perform its tasks and duties. That means in particular to provide him with the sufficient resources and is obliged to give him access to the personal data and documents.

PUBLICATION OF AN INTERNAL REGULATION

For the purpose of protection of whistleblowers, the employer has a duty to publish an internal regulation in which he specifies the details about:

- **disclosures,**
- **investigation of the reports and the scope of the authority of a responsible officer,**
- **confidentiality of the whistleblower’s identity,**
- **record-keeping of the complaints,**
- **informing the whistleblower about the results of his complaint,**
- **processing the personal data contained in the disclosure.**

Designation of the responsible officer and the process of reporting shall be made public and accessible to all employees in a standard and commonly available course of action. The employer is obliged to ensure that at least one (1) approach of receiving of submissions is available on an ongoing basis. The following duty is to make information about the internal system of investigation of the complaints available in a concise, comprehensible, clearly worded and easily accessible form. The new law also obliges the employers to facilitate reporting.

EXAMINATION OF THE DISCLOSURES

The employer has to accept and examine every complaint on wrongdoing within 90 days from its receipt. This period may be extended by a next thirty (30) days. The whistleblower shall be notified about the extension by the employer together with the reasoning behind the decision.

The referral of the issue according to the Criminal Code (criminal complaint), the Code of Administration Offences (offense notice) or other statutory law is also considered as an examination of the report. During the examination, the employer has a duty to maintain confidentiality of the whistleblower's identity.

The employer has a duty to inform the whistleblower about the outcome of examination and about the measures, if taken, within 10 days after the investigation of the complaint. If the investigation of the report was referred according to the Criminal Code, the Code of Administration Offences or a statutory law, a responsible officer has a duty to request the result of the investigation and to inform the whistleblower about this result within 10 days after receiving such information.

The new law does not state how to examine the complaints and the employer is obliged to provide in its internal regulation the details how the investigation of report will take place, which persons will be involved in investigation and which authorisations will be given to a responsible officer. The approach to the examination may vary. It depends on the employer itself and on its specifics as a number of employees, corporate structure, number of organisational units etc.

RECORD-KEEPING

The employer is obliged to keep the record about the complaints for at least 3 years from the date of disclosure. The record is kept in the following scope:

- date of receipt of the complaint,
- name, surname and address of the whistleblower,
- subject of the disclosure,
- outcome of the examination and
- date of the end of the examination.

The employer has a duty to take appropriate technical and organisational measures to ensure and demonstrate compliance of the internal investigation system with the new law in regard to the latest knowledge, costs and the purpose of the internal investigation system.

CONCLUSION

The new law is based on the legal provisions already existing and its aim is to provide protection to the whistleblowers. **The employers are obliged to designate a responsible officer, to set up a system and method for investigation of reports of alleged wrongdoing in its internal regulations, to examine the disclosure of wrongdoing and to comply the registration obligations.**

The Whistleblower Protection Authority may impose a fine amounting to EUR 20.000 for breach of any of obligations under the new law.

Vydala

PROSMAN A PAVLOVIČ advokátska kancelária s.r.o.
Hlavná 31, 917 01 Trnava
Slovenská Republika

Zodpovedný za obsah

JUDr. Tomáš Pavlovič, advokát a partner

Tento informačný list je nezáväznou informačnou publikáciou slúžiacou na všeobecné informačné účely a celý jeho obsah je duševným vlastníctvom spoločnosti Prosman a Pavlovič advokátska kancelária, s.r.o.

Published by
PROSMAN A PAVLOVIČ, Law Firm
Hlavná 31, 917 01 Trnava
Slovak Republic
Responsible for the context
JUDr. Tomáš Pavlovič, partner & attorney-at-law

This information sheet is a non-binding information publication for general information purposes and its entire context is intellectual property of Prosmán a Pavlovič, Law Firm

All information is available on our website www.prosman-pavlovic.sk