

THE WHISTLEBLOWER PROTECTION ACT

On 06.03.2024, another draft act aimed at implementing the EU Whistleblower Protection Directive, i.e. the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23.10.2019 on the protection of persons who report breaches of Union law, appeared on the website of the Government Legislation Centre.

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Compared to previous draft acts, some very significant changes have been introduced, namely:

- the term 'person reporting violations of the law' has been replaced by the legislator with the term 'whistleblower' - this change is caused, as we read in the explanatory memorandum, by the presence of the term 'whistleblower' in the social perception of the issue of reporting violations of the law;
- the subjective scope of possible violations has been expanded to include issues regarding:
 - human and civil liberties and rights,
 - corruption,
 - human trafficking,
 - labor law violations;
- anonymous reporting was explicitly allowed;
- the amount of minimum damages for a whistleblower against whom retaliatory actions have been committed was established. This amount will be no less than twelve times the average monthly remuneration in the national economy in the previous year, which is currently over PLN 80,000. The upper limit of damages has not been specified and also the whistleblower will be able to demand payment of compensation in addition to damages;
- the method of calculating the number of staff determining the obligation to implement the whistleblowing system has been clarified. The obligation to establish an internal whistleblowing procedure applies, among others, to all legal entities for which, as of January 1 or July 1 of a given year, at least 50 persons perform or provide paid work;
- the possibilities regarding the protection of potential whistleblowers have been expanded by allowing them to benefit from free legal assistance and advice;
- **the *vacation legis* has been extended compared to previous draft acts. The act is to enter into force 3 months after the date of publication**, with the exception of the provisions of Chapter 4 (concerning external whistleblowing) which will become effective 6 months after the date of publication.

When planning to create a whistleblower protection system in your organization adapted to the legal requirements of the new Act, **you should take into account the requirement to consult the internal whistleblowing procedure with the company trade union or company trade unions, or, if there is no company trade union in your organization, with employee representatives selected according to the procedure adopted in your organization.** Existing employee representatives may be a party to consultations on establishing internal procedures. If there is no employee representative at a given employer, it will be necessary to appoint one. In order to improve the consultations in question, the draft act introduces a strictly defined deadline for conducting them, i.e. they shall last no less than 5 days and no more than 10 days from the date the legal entity submits the draft procedure for internal whistleblowing. Such a procedure will enter into force after 7 days from the date of its notification to employees, in the manner adopted in a given legal entity.

Let us recall that the most important obligations related to the implementation of whistleblower protection arising from the draft act are as follows:

1. the obligation to establish an internal whistleblowing and follow-up procedure. The draft still provides for the possibility to use the assistance of external entities in accepting reports and taking follow-up actions and providing feedback, but it is necessary to conclude a contract that will specify the rights and obligations related to the protection of personal data as well as technical and organizational solutions to ensure compliance with the Act,
2. identifying the means, i.e. channels, for whistleblowers to submit their reports,
3. preparing and granting written authorizations to accept and verify reports, take follow-up actions and process personal data,
4. establishing and maintaining an internal whistleblowing register,
5. prohibition of retaliation as well as obligation to comply with whistleblower protection measures.

Our law firm remains at your disposal in all activities aimed at implementing a whistleblower protection system in your organization.

Should you have further questions, we remain at your disposal.

** This Newsletter does not constitute legal or tax advice.*