

Factsheet Whistleblowing

Persons working at or for an organisation can report abuses at that organisation. This is often referred to as whistleblowing. Organisations should handle such whistleblowing reports carefully. They may warrant the launch of an internal investigation to establish whether the report is correct.

What is a whistleblower?

A whistleblower is someone who, in the context of work-related activities, reports or discloses suspected abuses. They can be an employee or a civil servant, but also a volunteer, trainee, self-employed worker, contractor, subcontractor, temporary worker, shareholder or job applicant.

An abuse is defined as (1) a breach of a European Union regulation or directive (Union law) and (2) a social grievance. A breach of Union law is an act or omission that defeats the purpose of legislation or harms the public interest. This can be in relation to financial services, prevention of money laundering and terrorist financing, consumer protection, environmental protection, etc. Reporting of social grievances may concern, for example, violations of national laws and regulations or company rules, risks to the safety of persons, public health, etc.

Mandatory internal whistleblowing procedure

Private and public sector organisations with more than 50 employees are obliged to implement an internal whistleblowing procedure. The procedure must meet a number of requirements. For example, it must:

- set out how internal reports are to be handled;
- describe when a suspected abuse is deemed to exist;
- state that reports can be made both orally and in writing;
- state that whistleblowers can consult an adviser confidentially;
- state that confirmation of receipt will be provided;
- state that feedback will be given within three months; and
- state that a registration requirement applies.

Whistleblowers do not need to begin by making an internal report – they can also directly approach the Dutch Whistleblowers Authority (*Huis voor Klokkenluiders*) or any other competent authority. The Dutch Whistleblowers Authority is an institution established by law that provides advice to whistleblowers and conducts investigations into abuses and the treatment of whistleblowers.

Prohibition of detrimental action

Organisations are not allowed to cause detriment to whistleblowers during or after the handling of a report or disclosure of a suspected abuse. Detriment may include measures such as dismissal, suspension, a fine, non-renewal of a temporary contract, transfer to another location or the withholding of a promotion. If a whistleblower suffers detriment, it is up to the organisation to prove that this is not due to the report but rather to something else.

Confidentiality

The identity of whistleblowers must be protected. This also entails that information from which their identity can be inferred cannot be freely shared. It may generally only be shared with the whistleblower's express consent. Exceptions do apply in some situations, but only if the whistleblower is notified in advance, with a statement of reasons for the disclosure.

Careful handling of whistleblowing reports

It is crucial to handle whistleblowing reports carefully, as they can have major implications for organisations. Reports of fraud, corruption or other abuses, for example, can result in a loss of trust among stakeholders, such as customers, shareholders and employees. Moreover, a report can prompt actions by the regulatory authority or the Public Prosecution Service.

It is desirable to foster a culture at the organisation in which employees feel safe to report abuses. Careful preparation and handling of whistleblowing reports is vital to safeguard the organisation's integrity and minimise the potential consequences of reports.

Houthoff has extensive experience advising organisations on internal whistleblowing procedures, whistleblowers, whistleblowing reports, the performance of internal investigations of any abuses, and the related employment law aspects.

Contact

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