

Company breach reporting procedures needed as of September

I. Whistleblower Act will impose new requirements on businesses

Published in the Journal of Laws on 24 June 2024 was the Whistleblower Protection Act of 14 June 2024, which implements into Polish law the EU Directive on the protection of persons who report breaches of law. The majority of the new provisions will go into effect as of 25 September 2024. Among others, the new act regulates: the conditions for the protection of whistleblowers who report or disclose breaches to the public; the protection measures for whistleblowers who report or disclose breaches to the public; the rules for establishing internal procedures for reporting and following-up on breaches; the rules for reporting breaches to public authorities; the rules for the public disclosure of breaches.

II. Reporting procedure mandatory at companies with more than 50 employees

One of the elements of the system introduced by the Whistleblower Act is the so-called internal reporting. The requirement to prepare an appropriate procedure will cover all entities that have at least 50 people in gainful employment as at 1 January or 1 July of a given year. Importantly, the number of 50 in gainful employment for a legal entity will include full time employees or those who perform paid work on a basis other than a work relationship, if no other persons are employed for this type of work, irrespective of the basis of employment. Thus it will also include those who provide services based on civil law contracts and service providers who are sole traders.

III. Procedure must be disclosed during recruitment

Companies that meet the employment limit will be required to establish an internal procedure for reporting breaches and taking follow up action (so-called internal reporting procedure). Entities with below-limit employment do not have to implement such procedures. They can, however, do so voluntarily. Importantly, entities where the procedure is mandatory will have to disclose information about the internal reporting procedure already at the stage of recruitment or pre-contract negotiations. This will apply to those applying for work based on an employment relationship or another legal relationship underlying the provision of work, as well as those who are to provide services or perform functions.

The Whistleblower Protection Act of 14 June 2024 (Journal of Laws item 928) will go into effect on 25 September 2024. It requires businesses to establish procedures for the internal reporting of breaches and taking follow-up action, referred to as internal reporting procedures. One of the most important obligations in this respect is to establish an internal reporting procedure.



V. Agreement must be reached with trade unions

The company (or another entity) required to implement an internal reporting procedure will have to do so after consulting the relevant trade union or unions, if there is more than one at the company, or employee representatives chosen in accordance with the relevant procedure adopted by the company, if it has no trade unions. These consultations will have to last no less than 5 and no more than 10 days from the company's presentation of a draft internal reporting procedure. The internal reporting procedure will go into effect 7 days after it is communicated to the company's employees in the manner adopted by the company.

IV. Mandatory scope of internal reporting procedure defined by law

The Whistleblower Act describes eight mandatory elements of an internal reporting procedure, as well as four additional elements that such a procedure may entail. And so the procedure should, above all, cover the entity (person) to whom breaches should be reported, the reporting methods and the person who will handle the report after it is received, who must be impartial. It will also be necessary to establish a procedure for the handling of anonymous reports. It should also specify a deadline of no more than 7 days for confirming the receipt of a report and no more than three months (from confirmation of receipt) for providing the whistleblower with feedback, i.e. information on what follow-up actions were taken and their results.



VI. All personal data to be kept strictly confidential

It will be necessary to guarantee that the internal reporting procedure and the related personal data processing prevent unauthorized access to the information in the report and protect the identity of the whistleblower, the person concerned, as well as any third party indicated in the report. Protection of confidentiality should apply to any information that may be used, either directly or indirectly, to deduce the identity of those persons. Only those with written authorization from the entity may be permitted to receive and verify internal reports, take follow-up action, and process the personal data of such persons. Authorized persons are required to keep confidential all information and data obtained while receiving, verifying and following up on internal reports, even after the termination of the employment or other legal relationship under which they performed these duties.



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