



Whistle-blowers

Things you should know



Why do we raise this topic?

People working for public or private organization or staying in touch with such organization due to their professional activities are usually first to get information on irregularities or committing an offence.

Thanks to quick reaction, it is possible to avoid negative financial, organizational and image consequences. This is the reason why some people report or publicly disclose information on violation of the law obtained in the work-related context. Such individuals are called whistle-blowers.

Adopting the Act

So far, many irregularities have remained undisclosed, because people who know about them may be afraid of retaliatory actions, like losing their job or mobbing.

Therefore, in accordance with the obligation to transpose the Directive of the European Parliament and of the Council, the Whistle-blower Protection Act of June 14, 2024 has been adopted (Journal of Laws 2024, item 928).

Who is a whistle-blower?

A whistle-blower is a natural person who reports the violation of the law obtained in the work-related context, regardless of the position, type of employment or contract.

According to the Whistle-blower Protection Act, a person cannot have a whistle-blower status without “work-related context”, even though a report on violation of the law fits in the list of matters covered by the Act.



Violation of the law

Violation of the law is every unlawful activity or nonfeasance being in conflict with the law or activity aiming at evading the law, which concerns:

- corruption;
- public procurement;
- financial services, products and markets;
- public health;
- environment protection;
- customer protection;
- animal health and welfare;
- money laundering and anti-terrorist financing protection;
- constitutional freedoms and rights of a human being and a citizen.

Full catalogue of violations of the law is defined in Article 3 Section 1 of Whistle-blower Protection Act.

Three ways to report

The Act envisages three ways to report wrongdoings:

- internal reports received by the employer;
- external reports received by the Ombudsman or public body;
- public disclosure of the violation of the law.

Internal reports

Legal entities which employ at least 50 people (for the days January 1st or July 1st) are obliged to set internal reporting and follow-up procedures.

The obligation does not apply to entities operating in financial sector (above all: banks, investment funds), which are obliged to set external reporting channels in all cases.

External reports

External reporting is a procedure which enables forwarding the information on violation of the law to the Ombudsman or public body, including Central Anti-Corruption Bureau.

In CBA, there are 4 reporting channels concerning violation of the law:

1. written-form reports channel;
2. online reports channel by e-mail signal@cba.gov.pl;
3. in-person reports channel, during the meeting with the CBA officer;
4. telephone reports channel, by a dedicated 24/7 hotline at + 48 800 808 808.

External reporting procedure

1. receiving a report;
2. initial verification – it has to be determined whether the report concerns violation of the law in the area of authority's scope of activity, if not – a competent public body to take follow-up actions must be settled ;
3. consideration of the report or forwarding the report to the competent public body;
4. taking follow-up actions;
5. giving feedback to the whistle-blower.



What are follow-up actions?

These are activities taken in order to assess the truthfulness of the information contained in a report, and to counteract violation of the law, including explanatory proceedings.

Whistle-blowers' protection

A whistle-blower is entitled to be protected from the moment of reporting or public disclosure only if they have reasonable grounds to believe in truthfulness of the information being reported or disclosed to the public at the time of reporting or public disclosure as well as the information regards a violation of the law.

The Whistle-blower Protection Act does not envisage exemption of the whistle-blower from criminal liability.

A whistle-blower will be protected only if the report is based on the reasonable grounds.

A person who files a report or publicly discloses information knowing that there has been no violation of the law, is a subject to criminal liability and shall be liable to a fine, restriction of liberty or to imprisonment for a term up to two years.

Who is protected?

- whistle-blowers;
- persons assisting in reporting;
- persons associated with the whistle-blower;
- legal persons or other organisational units assisting the whistle-blower or associated with the whistle-blower, particularly these owned by the whistle-blower or employing the whistle-blower.

Retaliatory actions

Retaliatory action is a direct or indirect activity or nonfeasance in the context of whistle-blower's work. It is caused by reporting or disclosing information to the public.

These actions may include termination of the employment relationship, suspension of promotion or mobbing. According to the Whistle-blower Protection Act, no retaliatory actions nor attempts or threats of applying such measures against whistle-blower may be taken.

A whistle-blower against whom retaliatory actions have been taken is entitled to get damages.

Criminal liability

Preventing the whistle-blower from reporting or making it significantly difficult to do so, results in:

- fine
- restriction of liberty
- imprisonment for a term up to one year.

If the perpetrator uses violence, unlawful threat or deception, is punishable by the imprisonment for a term up to three years.

Taking retaliatory actions against a whistle-blower, persons assisting in reporting or persons associated with the whistle-blower is punishable by the:

- fine
- restriction of liberty
- imprisonment for a term up to two years.

If the perpetrator acts in a persistent manner, is subject to imprisonment for a term up to three years.

Disclosure of identity of a whistle-blower, a person assisting in reporting or a person associated with the whistle-blower is punishable by the:

- fine
- restriction of liberty
- imprisonment for a term up to two years.

Non-setting the internal reporting procedure or setting them with significant violations is punishable by the:

- fine.

Reviewing the reports

If the report does not concern matters in the scope of external reporting procedures reviewed by CBA, please contact the Ombudsman.



Ombudsman

According to the Whistle-blower Protection Act, Ombudsman fulfils the competences in the scope of received external reports, takes reports on violation of the law, initially verifies and forwards them to competent public bodies which undertake follow-up actions.

Anonymous reports

Anonymous reports are not reviewed by CBA on the basis of the provisions of the Whistle-blower Protection Act. Such reports are analysed and considered in compliance with other legal provisions.

A whistle-blower must provide their identity and contact details in order to enable effective explanatory proceedings conducted by the CBA and to provide full legal protection of the persons filing a report. As soon as explanatory proceedings end, the whistle-blower is informed about planned or undertaken follow-up actions and their reasons.

Omitting internal stage

External report may be filed excluding internal stage, that is without former report in a workplace.

If an employer is not obliged to set internal reporting procedure, as well as if a whistle-blower does not want to make internal report because of the fear of retaliatory actions, it is possible for the whistle-blower to contact Ombudsman or competent public body directly.