



Labour law

Whistleblower Protection Act - How to deal with Whistleblowers properly?

Dear Reader,

On 16 December 2022, the German Parliament („Bundestag“) passed the Whistleblower Protection Act (HinSchG). After it initially did not receive the required majority in the second Chamber („Bundesrat“), the Bundesrat now agreed to the Bundestag's agreement proposal on 12 May 2023, so that the law is now to enter into force in mid-June 2023.

The law aims to better protect employees who have become aware of certain violations in the course of their professional activities and wish to report them to the designated bodies (whistleblowers). For employers, this gives rise to several obligations, in particular through the creation of an internal reporting office or duties of conduct towards such whistleblowers. With this newsletter we would like to inform you about what the content of the law is and what employers have to do.

I. Scope of Application

All employers are affected, regardless of their legal form. Employers with at least 50 employees are subject to even more extensive obligations.

With regard to the violations that employees can report, section 2 HinSchG regulates in particular criminal offences or violations of special standards subject to fines such as occupational health and safety regulations, the Minimum Wage Act, standards for the prevention and avoidance of money laundering and terrorist financing, environmental protection or violations of tax law.

Of course, there are still restrictions for those bound to professional secrecy, such as doctors, lawyers or tax consultants.

II. Reporting Offices

The most important innovation is the reporting offices. Employees can contact the reporting offices if they suspect a violation. They can choose between internal and external reporting offices.

The most relevant are the internal reporting offices. These must be set up by 17.12.2023 by all employers with, as a rule, 50 to 249 employees. These internal hotlines must be independent and can also consist of only one person. It is also possible for third parties to take over the tasks of internal hotlines. The explanatory memorandum to the law mentions in particular external lawyers who cooperate with the company.

Employers must establish reporting channels. It should be noted that, among other things, internal investigations may be carried out by the internal offices, so that, at least in theory, the internal offices must be allowed access to highly sensitive information. This forces a particularly careful selection. At best, the selection should fall on a person who is bound to professional secrecy and has the necessary expertise.

In this context, it is advisable to create the greatest possible trust in the competence and



independence of the internal reporting office among employees in order to achieve the most efficient handling of reports and to be able to control costs to ensure compliance.

External reporting offices are set up, for example, by the Federal Ministry of Justice, of course separately from the ministry's other areas of responsibility, in particular by the public prosecutors' offices or at the Federal Cartel Office or the Federal Financial Supervisory Authority.

III. Current ToDos for Employers

Based on the Whistleblower Protection Act, employers should now do or check the following:

- Selection of the persons responsible for the internal reporting office,
- Transparent communication to workers that they can contact the hotlines at any time and without risk; and
- Technical implementation of the creation of reporting channels.

IV. Violations and Consequences

Threatening, attempting or carrying out reprisals against whistleblowers is prohibited for employers

and may lead to a fine of up to €50,000 in addition to claims for damages or compensation. Moreover, intentional or grossly negligent false reports lead to claims for damages by the employer.

If an employer fails to set up an internal reporting office, it faces a fine of up to EUR 20,000.

As you can see from the above, you should start with the preparation and concrete implementation of internal hotlines. Should you have any questions regarding the implementation and the optimal integration into your company, we are of course at your disposal at any time.

Your employment law team



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