

WORKPLACE WHISTLEBLOWING NOW REGULATED IN HUNGARY

- The Hungarian Parliament adopted a new Act on complaints, whistleblower reports and rules on reporting abuse.
- The law provides the possibility for employees to report workplace abuse and misconduct by name or anonymously and requires certain companies to set up a mandatory whistleblowing system.
- Whistleblower reports must be investigated within 30 days and retaliation against the reporter is prohibited.

The new Whistleblowing Act XXV of 2023 mainly follows the provisions of the EU Whistleblowing Directive, and in many respects adopts the provisions of Act CLXV of 2013 on Complaints and Whistleblowing (the so-called Complaints Act), but also establishes new obligations for companies.

WHAT DOES THE WHISTLEBLOWING SYSTEM CONCERN?

The whistleblowing system can be used for reporting information to the employer about an unlawful or allegedly unlawful act or omission or other abuse. It is important to note that reportable conduct includes not only unlawful conducts, but also conducts defined as unlawful in the employer's internal rules (e.g. acceptance of business gifts, breach of pay secrecy policy).

WHO SHOULD SET UP AN INTERNAL WHISTLEBLOWING SYSTEM?

All companies with more than 50 employees are obliged to set up a whistleblowing system.

In addition, the following are obliged to maintain the whistleblowing system regardless of their size.

- credit institutions and insurance companies, auditors, accountants (bookkeepers), tax consultants, chartered accountants, tax advisors;
- traders accepting cash payments of HUF 3 million or more,
- lawyers, persons engaged in real estate activities, providers of registered seat services, traders in certain works of art and antiques,
- other employers according to the Act on the Prevention and Combating of Money Laundering and Terrorist Financing
- employers operating ships and aircraft.

FEATURES OF THE WHISTLEBLOWING SYSTEM

A whistleblowing report can be made in writing or orally. Oral reports can be made through telephone or other voice messaging system or in person to the designated person. Employers can decide which whistleblowing channel(s) are available to the employees.

The new law gives discretion in the choice of who is authorised to receive and investigate whistleblower reports e.g. whether an internal unit (chief legal adviser, ethics committee) or the appointment of an external person, such as a whistleblower protection lawyer or other external organisation. In addition, companies with between 50 and 249 employees can establish an internal whistleblowing system jointly in accordance with the provisions of the Whistleblowing Directive, thus significantly reducing the costs of implementing and operating such a system and allowing company groups to maintain a single, harmonised anti-abuse system.

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In principle, the employer is obliged to investigate the whistleblower report but, in the case of anonymous complaints, the Whistleblowing Act in line with the current rules of the Complaints Act, leaves it up to the employer to decide whether or not to investigate the complaints.

In addition to employees, the (co-)owners, supervisory board members, subcontractors and suppliers of the employing company, and anyone who has ceased to have such a relationship with the employer or whose procedure to establish such a relationship is still in progress, have the possibility to report. Such report is subject to a mandatory obligation to investigate.

Feedback should be sent to the reporter within 7 days on whether the investigation has been opened, whether further information is needed and, if so, whether the reporter should be heard. The report must be investigated within 30 days, which may be extended to a maximum of 3 months if reasonable. If the report justifies the initiation of criminal proceedings, steps must be taken to file a denunciation.

The Whistleblowing Act prohibits retaliation against the reporter, specifies in detail the types of retaliation that may be committed and, by amending the Offences Act, classifies retaliation against the reporter as an offence.

Those required to implement an internal whistleblowing system should therefore ensure in particular to:

- Establish reporting channels;
- Designate internal or external persons to handle reports;
- Establish whistleblowing management policies, which need to be harmonised with other internal policies, in particular in the areas of data protection, labour law, IT security, and employment and property protection;
- Develop and internally publish guidelines on notifiable or reportable behaviour depending on the risks associated with different potential behaviours.

Compliance with the obligations relating to the operation of the internal whistleblowing system is monitored by the employment monitoring authority, although the authority is not entitled to impose fines or prohibit the employer from carrying out the activity. However, when implementing and operating the system, all employers should ensure that they comply with strict data protection and employment law rules. Failure to do so could result in financial consequences in the event of a data protection authority procedure or employment law dispute.

The system should introduce transparent procedures and appropriate safeguards to ensure that all reports can be investigated within the time limits provided by law, that the personal data and privacy rights of the reporter and the persons concerned are adequately protected, to prevent retaliation against the reporter in the event of a legitimate reports and that appropriate and proportionate measures are taken in the case of unfounded or unlawful reports. The employer's responsibility is to implement a whistleblowing system that ensures adequate protection against abuse and harassment in practice, for example by making the whistleblowing channel widely available on the website or intranet and providing detailed information on the procedure in Hungarian.

HOW LONG DOES IT TAKE TO IMPLEMENT THE WHISTLEBLOWING SYSTEM?

The Whistleblowing Act will enter into force within 60 days, of its publication, on **24 July 2023** by which time all companies with 250 or more employees will be required to have an internal whistleblowing system that complies with the new rules.

Companies with between 50 and 249 employees will be given a slightly longer period to establish an internal whistleblowing system, which they have until **17 December 2023** to do.

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