

LEGAL UPDATE

Whistleblower Protection Act passed

Date: 25 January 2023

The Senate passed the [Whistleblower Protection Act](#) (*Wet bescherming klokkenluiders*) yesterday. This new act implements a European Directive. The House of Representatives had already agreed to the new act in December 2022. This was preceded by an extended legislative process, with several amendments being made to the bill. It is therefore important for employers to carefully check what the new legislation means for them. This Legal Update addresses the key issues.

When does the new act enter into force?

That is not yet quite clear, as it is to be determined by Royal Decree. However, we already know that parts of the act will take effect on different dates. What we also know is that private sector employers with 50 to 249 employees still have until 17 December this year to modify their current procedures for reporting suspected wrongdoing. An earlier date may therefore apply to larger employers. To determine the size of an employer, what counts is not only its regular employees but also anyone working for it "against payment in a relationship of subordination" (the latter may be the case with contractors). Government organisations already had to comply with the new rules starting from the European Directive implementation deadline (17 December 2021).

Who may submit a report as a whistleblower?

Currently, only employees (and civil servants) may submit a report. Soon, however, self-employed individuals, temporary agency workers, trainees and volunteers will also be able to do so if they receive remuneration for their work. But the number of persons entitled to submit an external report to the Whistleblowers Authority or another authorised body is even larger, as it includes job applicants, shareholders and suppliers. The same goes for anyone who is protected in the event that a report is submitted. In fact, in future it will also apply to persons of trust and any third parties involved, e.g. colleagues or family members.

Do I as an employer need to make any other changes to our internal whistleblower policy?

Yes, the new Whistleblower Protection Act will require several changes to be made to your current policy. The new act changes the definition not only of "employee" but also of "wrongdoing" (*misstand*). What will also change is the timeframes within which a reporting person is required to receive acknowledgement of receipt and be informed about the follow-up to his or her report. In future, it must also be possible to submit reports in writing as well as orally, and the way in which an anonymous or external report can be submitted has to be defined.

Does the Works Council have a right of consent with regard to the amendment of an employer's whistleblower policy?

Yes, the Works Council does have a right of consent with regard to its amendment as well as its adoption or revocation. What is new is that if the employer does not have a Works Council but does have employee representation, employee representation must be involved. If the employer does not have any employee representation either, it then requires the consent of more than half of its employees unless this procedure is substantively regulated in the collective agreement.

More information

For more information, please feel free to call any of the lawyers in our Employment & Pensions practice. The government has also set up a website with more information for employers: <https://www.wetbeschermingklokkenluiders.nl/voor-werkgevers> Please note that this website had not yet been fully updated at the time of this Legal Update's publication.

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