Workx Advocaten

WHISTLEBLOWING PROCEDURE: **WHAT MUST EMPLOYERS HAVE IN PLACE?**

With its Declaration and an accompanying model procedure (2023), the Labour Foundation (Stichting van de Arbeid) gives employers guidance for an internal procedure through which employees can safely report a suspected wrongdoing, aligned with the Wet bescherming klokkenluiders (Whistleblowers Protection Act, Wbk). It is a recommendation: you choose which articles to adopt, and part of it goes further than the law requires.

01. EIGHT BUILDING BLOCKS OF A GOOD PROCEDURE

- **a** A clear description of what a wrongdoing is
- **b** Independent officers who receive and follow up reports
- **c** How an internal report is handled
- **d** The reporter hears what happens with their report
- **e** Arrangements that shield the report and the reporter
- **f** An adviser the reporter can confide in
- **g** Explanation of reporting outside the organisation
- **h** Protection for those who report with due care

02. WHO DOES WHAT?

Manager
An employee can report to any manager in a higher position, including outside their own reporting line. That manager forwards the report straight to senior management.

Confidential counsellor
Provides information, advice and support. The report can go through the confidential counsellor, who does not take part in deciding how it is handled.

Senior management
Confirms receipt, decides whether to investigate and gives its view on the report.

Internal supervisory body
Takes over the role of senior management if there is a reasonable suspicion that senior management itself is involved (if the organisation has such a body).

Contact person
Appointed immediately after the report, in consultation with the reporter, to prevent detriment. According to the explanatory notes this is optional; the Wbk does not require it.

Investigators
Independent and impartial, and never anyone who may be involved in the wrongdoing.

03. TIME LIMITS IN THE MODEL PROCEDURE

Within 7 days
Written confirmation that the report has been received

Within 2 weeks
No investigation? Then the reporter is told so in writing, with the reason

Within 8 weeks
Written position on the report, and which steps follow from it

No more than 12 weeks
8 weeks not feasible? Say so in writing, with a new time limit. The investigation may take no longer than 12 weeks in total from receipt of the report

The reporter may then respond to the investigation report and the position. Note: the time limits of 2, 8 and 12 weeks come from the model. The Wbk itself requires a confirmation within 7 days of receipt and feedback within a reasonable period of no more than 3 months after that confirmation was sent.

PROTECTION **AGAINST DETRIMENT**

- No detriment as a result of a report, whether internal, external or a public disclosure under the conditions set out opposite. For example: dismissal, demotion, a pay cut, a negative appraisal, intimidation or not renewing a temporary contract.
- This also applies to the confidential counsellor, the contact person, an adviser or investigator employed by the employer, colleagues who give statements or provide documents, and family members of the reporter.
- Those handling the report do not disclose the reporter's identity unless the reporter expressly consents in writing.
- Does the reporter feel they have suffered detriment? They can ask senior management or the Whistleblowers Authority (Huis voor Klokkenluiders) to investigate.

EXTERNAL **REPORTING**

- Reporting directly to a competent authority is permitted, without giving reasons. The employer may, however, ask that wrongdoing also be reported internally, and that its interest in keeping damage to a minimum be taken into account.
- After an internal report, external reporting is also possible if the reporter disagrees with the position and considers that their suspicion has been wrongly dismissed, or if that position is not given in time.
- Public disclosure is possible if an external report produced no result, or if the reporter has reasonable grounds to believe that there is an (imminent) danger to the public interest, an emergency or a risk of irreparable damage.
- The employer may never prohibit external reporting or public disclosure, not even when employment ends.

ROLE OF **THE WORKS COUNCIL**

Consent
The works council has a right of consent over the procedure (Article 27(1)(m) of the Works Councils Act).

No obligation to have a works council?
Then the employee representative body (personeelsvertegenwoordiging) consents or, if there is none, a majority of the employees. Alternatively, the procedure can be agreed with the parties to the collective labour agreement.

Publication and annual report
Under the model, the procedure is published on the intranet and website, and senior management discusses a draft annual report on the policy, the reports received and any detriment with the works council every year. This annual report is not required by the Wbk.

Based on the Declaration and model procedure on whistleblowing (Labour Foundation, 2023) and, for the statutory time limits, the Whistleblowers Protection Act
This document does not constitute legal advice and is for illustrative purposes only.

NEED MORE TIPS **OR ADVICE?**
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