Workx Advocaten

WRONGDOING AT WORK? HOW TO REPORT IT SAFELY

The Wet bescherming klokkenluiders (Whistleblowers Protection Act, Wbk) has applied since 18 February 2023. It sets out how you can report a suspected wrongdoing, what protection you then have and what an employer must arrange.

01. WHEN IS IT A WRONGDOING?

TWO TYPES

- A breach of European rules (or the Dutch rules based on them) in certain policy areas.
- A wrongdoing affecting the public interest, such as a breach of the law, or a danger to public health, people's safety, the environment or (through improper acts or omissions) the proper functioning of the organisation.

THE TEST

- The public interest is in any event at stake if more than just personal interests are involved, and there is a pattern, something structural or something serious or extensive. This is assessed case by case.
- Your suspicion is reasonable: you have concrete, reliable indications.

WHO MAY REPORT?

Anyone with a work-related relationship with the organisation. So not only employees, but also, for example, freelancers, interns, volunteers, directors, shareholders, former employees and job applicants.

02. HOW A REPORT WORKS

1

Feel free to seek confidential advice first

You are entitled to a confidential adviser, often the confidential counsellor (vertrouwenspersoon). You can also turn to the Whistleblowers Authority (Huis voor Klokkenluiders).

2

Report internally or externally: your choice

Internally through your employer's reporting procedure, or directly to a competent authority. Reporting internally first is never mandatory.

3

7 days

Within 7 days of receipt, you receive confirmation that your report has been received.

4

3 months

Internal report: within a reasonable period, no later than 3 months after the confirmation was sent, you hear what is being done with your report. Even if nothing is done with it, you are told why.

EXTERNAL REPORTING TO, AMONG OTHERS, ACM | AFM | AP | DNB | Whistleblowers Authority | IGJ | NZa | ANVS

Reported externally? Feedback within 3 months of receipt, extendable once (with reasons) to 6 months. Not sure which authority is competent? The Whistleblowers Authority will help you and, where necessary, forward your report to the right authority.

03. YOUR PROTECTION AS A WHISTLEBLOWER

YOUR IDENTITY

Without your consent, your identity may not be shared with anyone other than those handling your report. The report itself is also treated confidentially.

NO DETRIMENT

If you report wrongdoing in the proper way, you may not suffer detriment for it: no dismissal, forced transfer, refused promotion, bullying or exclusion – and this protection has no end date. Those who help you, such as the confidential counsellor or a colleague, are also protected.

If you can show in court that you made a report and then suffered detriment, the court will presume that this was because of your report, and the employer must prove otherwise.

NO LIABILITY

If, for your report, you had to breach a duty of confidentiality, copyright or the confidentiality of personal data, for example, you cannot be held liable for it, provided you could reasonably assume this was necessary and you made your report in accordance with the law.

Still suffered detriment? Ask the Whistleblowers Authority to investigate or go to court.

EMPLOYER: WHAT YOU NEED TO ARRANGE

50

or more employees? Then an internal reporting procedure is mandatory. In some sectors, including financial services, this also applies to employers with fewer.

Content: what a wrongdoing is, how and to whom you report, how the report is handled and which independent officer(s) receive and follow it up.

Time limits: confirmation within 7 days of receipt, feedback within a reasonable period of no more than 3 months after that confirmation was sent.

Confidential: protect the report, the identity of the reporter and that of the person the report concerns.

Easy to find: make the procedure available in writing or digitally, in plain language.

Advice and anonymity: designate a confidential adviser. Anonymous reporting is not (yet) mandatory; the government intends to regulate it in a future amendment of the law. You may already offer it.

Oral and written: both must be possible. Tip: record an oral report and allow the reporter to supplement and sign it.

Inform about the protection available and about reporting directly to an external authority; never pressure anyone to report internally first.

Consent: the works council must consent, including to any amendments. No works council or employee representative body (personeelsvertegenwoordiging), and not required to have one? Then more than half of the employees must consent, unless the procedure is laid down in the collective labour agreement.

Based on the Whistleblowers Protection Act and information from the Whistleblowers Authority (Huis voor Klokkenluiders)
This document does not constitute legal advice and is for illustrative purposes only.

NEED MORE TIPS OR ADVICE?

We are happy to help. Get in touch with us!