

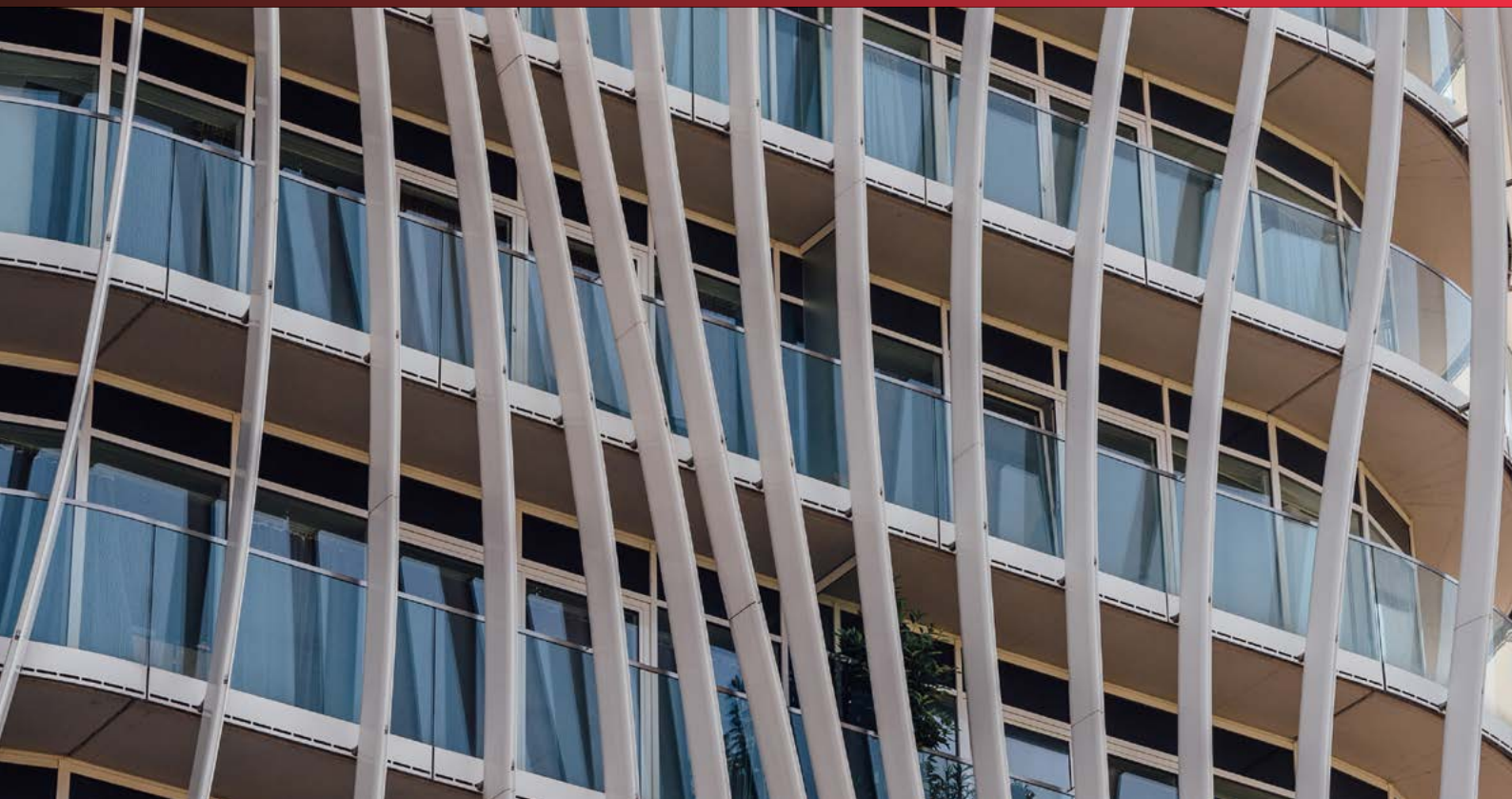


Manual for the Implementation of an Internal Whistleblowing System



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Introduction

Act No. 171/2023 Coll., on the Protection of Whistleblowers, introduces a completely new legal framework aimed at enabling employees in both the private and public sectors to report selected unlawful activities safely and subsequently providing them with protection against possible retaliatory measures.

In the private sector, this will particularly concern employers who, as of January 1 of the relevant calendar year, employ at least 50 employees, including those working under agreements to complete a job (DPP) or agreements to perform work (DPČ). Therefore, the Whistleblower Protection Act could affect a relatively large number of employers who employ „only“ temporary staff.

The basic obligation that employers and other obligated entities have under the Whistleblower Protection Act is to establish what is known as an internal whistleblowing system. Below, we provide a basic summary (manual) on how to implement an internal whistleblowing system and what the internal whistleblowing system should include.



Explanation of the term internal whistleblowing system

An internal whistleblowing system can generally be understood as a set of applied rules and procedures that govern the processes for receiving and handling reports. In the case of employers, this system will typically take the form of a special internal regulation.

Therefore, an internal whistleblowing system does not necessarily have to take the form of, for example, an information system or a special application. However, to fulfill the legal obligation to establish an internal whistleblowing system it is, theoretically, sufficient to adopt a relevant internal regulation. Although the use of an information system or special application is not necessary, in practice it is highly recommended. The use of an information system or special application not only reduces the administrative burden associated with receiving and resolving reports but also significantly increases the level of protection of confidential information related to the reports (e.g., the identity of the whistleblower, the content of the report, etc.), which the employer is obliged to secure.

Minimum content requirements for internal whistleblowing system (Internal regulation)

A relevant internal regulation, which implements an internal whistleblowing system, should as a minimum specify the following rules and procedures:

a) Definition of Scope and Basic Concepts

The internal regulation should first contain a definition of its scope (i.e., in particular, specification of the group of persons to whom it applies) and a definition of basic concepts – for example, what is considered a report, who is a whistleblower, who is a so-called relevant person, what is understood by retaliatory measures, etc.

b) Rules for Designating a So-Called Relevant Person

The internal regulation should also contain rules for designating a so-called relevant person, that is, the person who will be responsible for receiving reports, their resolution and evaluation, and for communication with whistleblowers. The internal regulation should also set out conditions for the performance of the relevant person's duties (e.g. integrity), conditions for the manner of performance of the function of the relevant person (e.g. impartiality, expertise), procedures for managing and excluding any conflict of interest, procedures for the termination of the relevant person's duties, etc..

c) Rules and Procedures for Submitting Reports

These rules and procedures should include, for example, specification of the group of persons who can make a report (and possibly specification of the group of persons who cannot make a report), specification of whether a report can be made anonymously or not, specification of the range of information which is excluded from a report, specification of how a report can be made (and possibly specification of the conditions that must be met for each method), etc.

d) Rules and Procedures for Receiving and Assessing Reports, and Other Rights and Obligations of So-Called Relevant Persons

The internal regulation should further specify steps to be taken by relevant persons in connection with received reports. In particular, the internal regulation should regulate if and by when relevant persons are required to confirm receipt of a report to the whistleblower, the deadlines within which the relevant persons are required to assess the validity of the received report, and possibly propose appropriate corrective measures. The internal regulation should also regulate the rights and obligations of the relevant persons in assessing the report, in proposing corrective measures (including, for example, a list of possible corrective measures) in monitoring their implementation, or in communication with whistleblowers. The internal regulation should also establish general obligations that the relevant persons must comply with in the performance of their duties (e.g. maintaining confidentiality about the content of a received report, rules for keeping records of received reports and their storage, etc.).

e) Rules and Procedures for Maintaining Confidentiality of Received Reports

These rules and procedures should include, in particular, general rules applied by all employees of the employer (or another obligated entity) – for example, technical requirements for securing records of received reports, the obligation to pass on the report to the relevant person if another employee finds out that it is a report, rules for transferring phone callers (if submission of reports by phone is allowed), rules for working with an information system for resolving reports (if one is implemented), etc.

f) Specification of Employer's (Obligated Entity's) Obligations in the Area of Whistleblower Protection

Lastly, the internal regulation should define the obligations that the employer (or another obligated entity) is required to ensure are fulfilled, including the designation of the person responsible for fulfilling these obligations. This may particularly include the obligation to establish and maintain an internal whistleblowing system, the obligation to designate a so-called relevant person and to check whether the relevant person meets the conditions laid down by the law or the relevant internal regulation, or the obligation to ensure that appropriate corrective measures are implemented where a report is justified. Furthermore, the internal regulation should specify the information that the employer (obligated entity) must publish on its website or by other means allowing remote access.



Application of established procedures and rules

Additionally, it should be noted that proper implementation of an internal whistleblowing system does not mean merely formally adopting a relevant internal regulation; the established rules and procedures must subsequently be applied and adhered to in practice, including technically securing the appropriate level of confidentiality of received reports. For example, it is necessary to ensure that no one other than relevant persons has access to the designated email address, or that received reports, including any attachments, are not accessible to third parties and that an adequate level of protection is ensured (including, for example, possible encryption of digitally stored documents or storage of hard copy documents in lockable filing cabinets, etc.). Given that the implementation of sufficient security measures may be relatively difficult for many employers or other obligated entities in practice, using specialized software or an application that provides the required level of security may be a suitable alternative.



Conclusion

The implementation of an internal whistleblowing system does not necessarily have to be complicated. However, when drafting a relevant internal regulation, it is necessary to carefully consider the specific conditions of your company and to design the relevant rules and processes so that your internal whistleblowing system is truly functional. The established rules and procedures must then be applied in practice. If an employer (or another obligated entity) designs its whistleblower protection rules and processes inadequately or does not apply the established rules and processes in practice, it exposes itself to a risk of being fined up to CZK 1,000,000. Therefore, we always recommend that an internal regulation dealing with whistleblower protection is drafted by a law firm that specializes in this area. Especially for smaller employers, we also recommend considering the possibility of using specialized software for managing received reports, as ensuring an adequate level of security of confidential information can be quite challenging in practice.

Regulatory and compliance advice, including whistleblower protection law, is one of the specialisms of our law firm. We can assist our clients not only with the preparation of a relevant internal regulation but also, in cooperation with our partner company Allison & McKee, s.r.o., we have designed a special application called Revelto which facilitates convenient and secure administration of received reports. Upon agreement, we are also able to perform the role of the so-called relevant person for clients or provide a comprehensive turnkey solution for whistleblower protection.



About the Author

Mgr. David Svoboda graduated from the Faculty of Law of Charles University in Prague, and he is registered on the roll of attorneys of the Czech Bar Association. In his legal practice, he primarily specializes in administrative law, employment law, and related legal regulations, including whistleblower protection law. His other specializations include regulatory matters in general, with an emphasis on competition law, financial sector matters, and personal data protection.

In his legal practice, he also designs and updates internal regulations for clients to comply with their legal obligations, prepares comprehensive

compliance programs including training and workshops for clients or their employees, and advises in proceedings for obtaining public law permissions according to special legal regulations (licenses). As part of his specialization, he regularly represents clients before courts and administrative bodies, such as the Office for the Protection of Economic Competition, the Office for Personal Data Protection, the Czech National Bank, the Czech Trade Inspection Authority, the Financial Arbitrator, the Financial Analytical Office, or the Labor Inspectorates.

Contact

MKA **NOSKO**

Mašek, Kočí, Aujezdský
law firm

Opletalova 1535/4
110 00 Praha 1
Česká republika

e-mail: info@mkanosko.cz
phone: +420 233 375 542
+420 602 626 065
web: www.mka-nosko.cz

