

## THE LAW

of ....

### on Whistleblower Protection

#### Chapter 1.

#### General Provisions

Art. 1. The law specifies the terms and conditions of reporting abuse that came to the attention of the reporting party in connection with his or her job function, work or service contract, and the rights of persons who make such reports (whistleblowers) and the extent and conditions of granting them protection.

Art. 2. 1. A whistleblower is a person who:

- 1) has reported abuse under the law, or
- 2) has assisted another person to report abuse, in particular by providing such a person with information about abuse

in connection with his or her job function, work or service contract.

2. Any natural person may be a whistleblower, regardless of how the person is employed or hired by his or her employer that features in the reported abuse, which includes any time after such a formal relationship with the employer is terminated.

3. Whistleblowers shall enjoy legal protection to the extent and on terms specified in the law.

Art. 3. Whenever the law mentions:

- 1) **Abuse** shall mean measures that jeopardise public interest, any breach of universally applicable legislation, internal regulations or ethical standards applicable at the employer' site and/or resulting from self-regulation instruments binding the employer. They include in particular:

- a) Crimes listed in Article 16 of the law of 28 October 2002 on the Liability of Collective Entities for Punishable Offences (Journal of Laws, Issue 197, Section 1661, as later amended);
  - b) Violations of employee rights, as defined in the law of 26 June 1974 Labour Code (Journal of Laws, Issue 24, Section 141, as later amended);
  - c) Violations of internal regulations or procedures applicable at the employer's site;
  - d) Violations of ethical codes adopted by the employer or other self-regulation instruments binding the employer;
  - e) Measures that aim to conceal the abuse.
- 2) **Report of abuse** shall mean any act of passing information about abuse or any information that leads to a reasonable suspicion of the whistleblower in connection with his or her job function, performed in good faith and in public interest, to:
- a) the employer or a designated person (internal report);
  - b) a competent authority, or
  - c) the general public (external report);
- 3) **Good faith** shall mean a reasonable case-specific belief in the accuracy of the reported information.
- 4) **Retaliatory measures** shall mean any measures taken in connection with a report of abuse aimed at or resulting in a deterioration of the whistleblower's circumstances;
- 5) **Designated person** shall mean a person by the employer to be responsible for processing reports of abuse in line with in organizacji internal procedure of reporting abuse applicable in the organisation;
- 6) **Competent authority** shall mean a public administration body that is has the power to take appropriate measures in connection with in reported abuse;
- 7) **Employer** shall mean an employer as defined in the law of 26 June 1974 Labour Code or a client buying a service or intellectual property as defined in the law of 23 April 1964 Civil Code (Journal of Laws, Issue 16, Section 93, as later amended) or a beneficiary as defined in the law of 23 April 2003 on Public Benefit Operations and Volunteering (Journal of Laws, Issue 96, Section 873, as later amended) or a person in charge of a public entity;
- 8) **Employee** shall mean an employee as defined in the law of 26 June 1974 Labour Code, a person who is employed or provides a service under a civil contract, volunteers as

defined in the law of 23 April 2003 on Public Benefit Operations and Volunteering (Journal of Laws, Issue 96, Section 873, as later amended) and active officers;

- 9) **Trade union** shall mean trade union as defined in the law of 23 May 1991 on Trade Unions (Journal of Laws, Issue 55, Section 234, as later amended),
- 10) **Company trade union** shall mean a trade union organisation at the company level as defined in the law of 23 May 1991 on Trade Unions (Journal of Laws, Issue 55, Section 234, as later amended);
- 11) **Commission** shall mean the Whistleblower Protection Commission;
- 12) **Public entity** shall mean a public entity as defined in the law of 27 August 2009 on Public Finance (Journal of Laws, Issue 157, Section 1240, as later amended).

## Chapter 2.

### **Grounds for Whistleblower Protection and Method of Reporting Abuse**

Art. 4. 1. Whistleblowers who have reported abuse in good faith shall be protected from the moment of such reporting, regardless of whether the reported abuse has been then confirmed as accurate.

2. A whistleblower's good faith shall be assessed based on the state of affairs on the day of the report.

3. It is presumed that any whistleblower acts in good faith unless:

- 1) the circumstances of the case clearly do not support the perceived accuracy of the report, or
- 2) the report of abuse has been made for a purpose that breaches the law or principles of social cohabitation, or
- 3) the report has not disclosed the whistleblowers contribution to the reported abuse.

4. Specifically, any report of abuse made by a whistleblower for financial or personal gain shall be deemed in conflict with the principles of social cohabitation.

Art. 5. 1. Before making an external report to the public a whistleblower must report the abuse to competent authorities or use the internal system of reporting abuse if the employer has put such a system in place and it meets the criteria specified in Section 2.

2. Every whistleblower must use the internal system of reporting abuse referred to in Section 1, if:

- 1) the employer has announced the adoption of such a system to its employees and has communicated to them the operating principles of such a system;
- 2) If the system implemented by the employer:
  - a) guarantees the confidentiality of the reported data, including the protection of the identity and personal data of the whistleblower who has decided to disclose them and the identity and personal data of individuals mentioned in the report;
  - b) specifies the method of reporting that includes the option to make a report without disclosing the identity and specifies a person responsible for processing reports of abuse or mandate the company trade union active at the employer's site;
  - c) ensures whistleblower protection against retaliatory measures;
  - d) ensures a thorough and unbiased evaluation of the reported information;
  - e) defines the type and character of follow-up activities to any report received, the validation of the accuracy of the reported and the mechanism of co-ordinating this process;
  - f) allows any whistleblower to monitor the progress in investigating the reported abuse unless the report has been made anonymously;
  - g) is subject to periodic documented reviews of the system' adequacy and efficiency;
  - h) the content of the system and the rules for follow-up activity have been agreed with trade unions active at the employer's site or if no company trade union is active at the employer's site wit with employee representatives elected according to rules and regulations applicable at the employer's site.

3. Failure to meet the obligation referred to in Section 1 shall result in no protection granted to the whistleblower under this law.

4. If doubts arise regarding the failure by a whistleblower to meet the obligation referred to in Section 1 the case will be resolved in court, with consideration being given to the grounds for making an external report to the general public to be assessed against the case circumstances and the nature of the reported abuse.

Art. 6. 1. Internal procedures of reporting abuse shall be put in place and a person or entity responsible for processing such reports shall be appointed in public entities.

2. The procedures referred to in Section 1 shall define at least the following:

- 1) Terms and conditions of informing employees about the adopted procedure and any modifications thereof;
- 2) Terms and conditions of reporting abuse including an indication of a specific person or entity responsible for receiving such reports;
- 3) Steps to process reports, including the selection and evaluation criteria;
- 4) Method of maintaining and storing records of reports;
- 5) Type and character of follow-up activities that are performed if the reported abuse is confirmed including an indication of a specific person or entity responsible for such follow-up activities;
- 6) Mechanisms that ensure whistleblower protection against retaliatory measures and the confidentiality of any data help identify or identify persons mentioned in the abuse report;
- 7) Method of informing whistleblowers about the outcomes of report evaluation;
- 8) Rules of processing anonymous reports;
- 9) Terms and conditions for periodic performance reviews of the procedure.

3. Where a public entity is unionised internal procedure of reporting abuse must first be agreed with the trade unions or – if no trade unions are present in the entity – with employees representatives elected according to rules and regulations applicable at the employer's site.

4. Public entity managers shall be responsible ensuring that internal procedure of reporting abuse in public entities is applied correctly.

5. The process of adopting and applying internal procedures of reporting abuse in public entities shall be subject to audit performed by the Supreme Chamber of Audit under the law of 23 December 1994 on the Supreme Chamber of Audit (Journal of Laws 1995 Issue 13, Section 59) and shall be subject to management review under the law of 27 August 2009 on Public Finance (Journal of Laws, Issue 157, Section 1240, as later amended).

Art. 7 1. If the body to which a report has been sent is not competent to deal with the case because of the nature or size of the reported abuse such a body shall immediately forward it to a competent body and notify the whistleblower about this, unless such report has been made anonymously.

2. The Council of Ministers shall define, by way of an ordinance, a detailed procedure of referring reports of abuse to competent authorities, including a report template, and a method of processing and storing the received reports by such competent authorities while

maintaining the confidentiality of whistleblowers' personal data, the efficiency of report processing and the effectiveness and transparency of the process of accepting and selecting them.

Art. 8 1. Reports made under Article 5 or Article 6 should be processed without undue delay but no later than within 21 days after making the report, and processing shall mean a competent authority launching an investigation of the reported case or taking other fact-finding measures.

2. If

- 1) a report has not been processed within the time referred to in Section 1, or
- 2) using the internal system or reporting to bodies is impossible or is clearly unreasonable because of its nature of the reported abuse

a whistleblower may make an external report to the general public. Provisions of Chapter 3 shall apply respectively.

### Chapter 3.

#### Whistleblower Protection Measures

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Art. 9 1. Each whistleblower's personal data or any other identifying data shall in principle be confidential and shall not be disclosed.

2. Data referred to in Section 1 may be disclosed exclusively:

- 1) upon explicit consent of the whistleblower, or
- 2) upon the consent of a court, if this is a condition precedent for a trial of the abuse case, to ensure protection of an important public interest or for the protection of the rights of other persons.

3. No conditionality for accepting a report of abuse will be attached to a prior consent by the whistleblower to disclose any data referred to in Section 1.

Art. 10 1. No retaliatory measures or threats of retaliatory measures against any whistleblower will be allowed. Retaliatory measures will include but will not be limited to:

- 1) Termination of a contractual arrangement between the whistleblower and his or her employer or any change in the terms and condition of such an arrangement that are less favourable for the employee;

- 2) Transfer of the whistleblower to a different work position or job location under the arrangement;
- 3) Adoption of significant modifications of the whistleblower's responsibilities or scope of professional relationship with whistleblower;
- 4) Disciplinary sanctions or any other personnel decisions that are detrimental for the whistleblower;
- 5) Unequal, unfair or discriminatory treatment of the whistleblower;
- 6) Other measures aimed at or resulting in skutkiem is in a deterioration of the whistleblower's circumstances;  
- if such measures have been made in connection with the whistleblower's report of abuse.

2. Any legal or personnel decisions of a retaliatory nature that may be taken against a whistleblower within 3 years from the day the employer becomes aware of the report having been made will be null and void.

3. The burden of proof regarding the claim that measures taken against a whistleblower within the time specified in Section 2 that have led to the deterioration of the whistleblower's circumstances are of not retaliatory nature rests on the employer.

4. A whistleblower whose circumstances have deteriorated as a result of retaliatory measures taken against him within the time specified in Section 2 will be entitled to a compensation from the employer in proportion to the extent to which his or her circumstances have deteriorated, no less however than PLN 10,000.

5. Regardless of the compensation, any whistleblower referred to in Section 4 may demand to be reinstated as an employee on the same terms and conditions or, should such reinstatement be impossible or unreasonable, the whistleblower may demand a compensation equal to a two-year salary received in the latest job position.

6. All retaliatory measures against a whistleblower constitute grounds for such an employee to claim damages under the law of 26 June 1974 Labour Code (Journal of Laws, Issue 24, Section 141, as later amended).

Art. 11. 1. In case of litigation in connection with retaliatory measures taken against a whistleblower, the court will ex officio secure the claim referred to in Article 10 Section 4 and 5.

2. Such security must be revoked immediately in whole or in part, if the reasons for such security of the specified size cease to exist or other reasons are found to exist that support such revocation.

3. The method of securing the claim is specified in the provisions of Civil Procedure Code.

4. A whistleblower who has paid legal expense in connection with retaliatory measures taken against him or her shall be entitled to the reimbursement of such expense by the employer.

Art. 12. If the information reported by the whistleblower is bound by confidentiality no report of abuse under the terms and conditions specified in the law shall constitute an infringement on the obligation to hold such information confidential..

Art. 13. Any contractual provisions that prevent an employee from reporting abuse or limiting the opportunities to report abuse by employees will be null and void under law.

Art. 14. A report of abuse made in good faith and in public interest pursuant to the terms and conditions defined in this law shall not constitute an infringement personal interest of the person featured in the report, nor can it be create grounds for liability referred to in the provisions of Title VI of the law of 23 April 1964 Civil Code (Journal of Laws, Issue 16, Section 93, as later amended) or Article 266 of the law of 6 June 1997 Criminal Code (Journal of Laws, Issue 88, Section 553, as later amended).

#### Chapter 4.

### **Whistleblower Protection Commission**

Article 15. 1. The Whistleblower Protection Commission shall be established, hereinafter called "the Commission", as a competent authority to audit compliance with the Law.

2. The Commission shall have 21 members.

3. The Commission shall be made up of the Ombudsman and representatives of Government, employees, employers and non-governmental organisations.



4. The Ombudsman shall be a member of the Commission throughout his or her tenure as the Ombudsman.

5. The Government shall be represented by one representative of minister of labour, of minister of justice, minister of internal affairs, minister of administration and government officer for gender equality, at the level not lower than department director.

6. Employees shall be represented in the Commission by five representatives of representative trade union organisations, as defined in the Law on Social Dialogue Council and Other Social Dialogue Institutions of 24 July 2015.

7. Employers shall be represented in the Commission by five representatives of representative employer organisations, as defined in the Law on Social Dialogue Council and Other Social Dialogue Institutions of 24 July 2015.

8. Non-governmental organisations shall be represented by 5 representatives of non-governmental organisations as defined in the Public Benefit and Volunteering Law of 24 April 2003. The Public Benefit Council shall present candidate members of the Commission under terms and conditions specified in separate regulations.

9. The Chair shall convene Commission meetings on an as needed basis at least once in three months. Moreover, the Commission meetings may be convened upon the motion of at least one quarter of its members and upon the motion of the Ombudsman.

10. The Ombudsman shall convene the first meeting of the Commission and the first meeting of the Commission after the Chair position has been vacated and the Ombudsman shall chair the meetings until a new Chair has been elected.

11. The Commission Chair and Vice Chair shall be internally elected and dismissed by Commission members.

12. Detailed operating rules of Commission shall be adopted by the Commission in its first meeting.

13. The Commission shall be appointed for a 6-year term counting from the day of appointing the last member. Commission members serve until their successors have been appointed. The same person may not be appointed Commission member for more than two consecutive terms.

14. Any Commission member may be dismissed by the body authorised to appoint Commission members exclusively if a Commission member:

1) waives his or her membership;

- 2) develops a chronic medical condition that prevents a member from serving on the Commission;
- 3) has been effectively sentenced for a premeditated crime;
- 4) has filed an inaccurate Communist lustration statement, as effectively confirmed by a court ruling;
- 5) violated the law, as effectively confirmed by a court ruling.
- 6) has not attended three consecutive Commission meetings without providing a reasonable explanation.

15. In case a Commission member has been prematurely dismissed or died, a competent authority shall appoint a new member for the remainder of the term.

Art. 16. The Commission's responsibilities include but are not limited to:

- 1) Collect statistics of abuse reports received by competent authorities, including the number of received reports, the type of abuse cases, follow-up measures and case outcomes;
- 2) Monitor practices regarding the handling of whistleblower reports employed by competent authorities;
- 3) Develop recommendations for internal procedures of reporting abuse;
- 4) Review draft legislation regarding whistleblower legal status and protection;
- 5) Disseminate whistleblower protection standards and collaborate with other government bodies, non-governmental organisations and institutions to promote best whistleblowing practices and build a professional community that supports whistleblowing.

Art. 17. 1. Competent authorities shall provide the Commission with the statistics specified in Article 16 Item 1 by 31 October each year.

2. Upon the Commission's request competent authorities shall provide clarifying comments regarding the statistics referred to in Section 1 within deadlines and in the format specified by the Commission.

3. The Council of Ministers shall define, by way of an ordinance, the detailed scope of the statistics referred to in Section 1, and the method and format of submission to ensure the efficient collection of complete and up-to-date data by the Commission.

Article 18. 1. The Commission may:

1) Appoint experts;

2) Invite representatives of public administration, representatives of trade union organisations, representatives of employer organisations and representatives of non-governmental organisations who are not represented in the Commission to attend its meetings as well as other persons whose attendance may contribute to the mission of the Commission;

3) Commission studies and papers on matters that are within the scope of its mission.

Art. 19. 1. The Commission Office shall provide technical and office services to the Commission.

2. The Commission Office will be managed by an Office Manager to be appointed by the Commission Chair.

3. The Commission Chair shall dismiss the Office Manager upon the request of at least half of the Commission members.

4. The Office Manager will report to the Commission Chair on matters that are included in the Commission' mission.

Art. 20. 1. The government shall cover the operating cost of the Commission and the Office under Part 31 – Labour, of a separate budget appropriation.

2. The Office Manager shall draft the Office budget that will then be submitted to the Commission for approval.

3. Members of the Commission will be reimbursed for the service on the Commission in the form per diems and travel expenses, pursuant to provisions based on Article 77 5 Para.2 of the Labour Code.

4. Any employer whose employee is a Commission member is expected to release such an employee to attend Commission meetings. Such an employee will be compensated for such time that he or she is available to attend the Commission meetings under the terms and conditions applicable to holiday equivalent, to be paid by the government under Part 31 – Labour, of a separate budget appropriation.

5. The Office Manager shall present the Office financial report for the preceding year to the Commission by 31 January of each year.

6. The Commission shall approve the report by the end of February of each year.

## Chapter 5.

### **Criminal Provisions**

Art. 21. 1. Any person who takes retaliatory measures against a whistleblower where such measures have caused the whistleblower to sustain a severe or irreversible health damage or have made the whistleblower feel a reduced level of employability shall be liable to a fine or restriction of liberty.

2. The same sanction shall apply to anyone who controls retaliatory measures that may be taken by another person or who abuses the dependence of another person on him or her by instructing such person to take the said measures.

Art. 22. Any person who discloses the whistleblower's personal data or any other identifying data in breach of Article 9, shall be liable to a fine.

Art. 23. Any manager of a public entity where no internal procedure of reporting abuse has been put in place as prescribed by Article 8 or where no such procedure is applied shall be liable to a fine.

Art. 24. Any person who reports of abuse does so while knowing the disclosed information to be inaccurate, shall be liable to a fine.

Art. 25. If the employer involved in the reported abuse proves that he or she has done his or her best to prevent such abuse such as he or she has implemented an effective system of reporting abuse, a court or another competent authority may reduce the level of sentence for the breach or decide not to apply the sentence and dismiss the proceeding.

## Chapter 6.

### **Amendments**

Art. 26. In the law of 6 June 1997 Criminal Code (Journal of Laws, Issue 88, Section 553, as later amended):

1) in Article 213, Para. 3 shall be added after Para. 2 with the following wording:

"Para. 3. No crime specified in Article 212 Para. 1 or 2 will be committed by any person who makes a report of abuse as defined in the law of ... on Whistleblower Protection (Journal of Laws, ...) under the terms and conditions specified in the law.";

2) in Article 230, Para. 3 shall be added after Para. 2 with the following wording:

"Para. 3. No perpetrator of the crime specified in Para. 1 or in Para. 2 will be penalised if the financial or personal gain or a promise thereof have not been accepted and the perpetrator has reported the incident to a competent law enforcement agency and has disclosed all material circumstances of the crime before such law enforcement agency has become aware of the same.";

3) in Article 234, the existing wording is marked as Para. 1 and Para. 2 shall be added with the following wording:

"Para. 2. No crime specified in Para. 1 will be committed by any person who makes a report of abuse as defined in the law of ... on Whistleblower Protection (Journal of Laws, ...) under the terms and conditions specified in the said law.";

4) Article 237 shall be worded as follows:

"Article 233 Para. 5 Item 2 shall apply respectively to offences specified in Article 234 Para. 1, Article 235 and in Article 236 Para. 1.";

Art. 27. In the law of 27 August 2009 on Public Finance (Journal of Laws, Issue 157, Section 1240, as later amended) in Article 53 Section 1 shall be worded as follows:

"1. The manager of a public entity, hereinafter called "the entity manager", shall be responsible for all financial affairs of the entity, subject to Section 5, and for the adoption of an internal procedure of reporting abuse referred to in the law of ... on Whistleblower Protection (Journal of Laws, ...) and for ensuring it is followed."

Art. 28. In the law of 26 June 1974 Labour Code (Journal of Laws, Issue 24, Section 141, as later amended) in Article 108:

1) in Para. 1, the introductory sentence shall be worded as follows:

"Para. 1. For any breach by an employee of an established work rules and regulations, health and safety regulations, fire regulations, the applicable method of checking in/confirming "at work" status, submission of reasons of legitimate absence from work, and for taking any retaliatory measures as defined in the law of ... on Whistleblower Protection (Journal of Laws, ...), the employer may apply:";

2) Para. 2 shall be worded as follows:

"Para. 2. For any breach by an employee of health and safety regulations, fire regulations, unreasonable absenteeism, reporting to work in a state of being intoxicated or drinking alcohol during work hours or for taking any retaliatory measures as defined in the law of ... on Whistleblower Protection (Journal of Laws, ...), the employer may also apply a financial sanction."

Art. 29. In the law of 27 August 2009 on Public Finance (Journal of Laws, Issue 157, Section 1240) in Article 68 in Section 2, Item 1 shall be worded as follows:

„1) compliance with the laws and regulation and with internal procedures, including the application of abuse reporting procedures;”.

Art. 30. In the law of 5 August 2015 on Free Legal Assistance and Education (Journal of Laws of 2015 Section 1255, as later amended) in Article 4 in Section 1, Item 9 shall be added after Item 8 with the following wording:

„9) any person wishing to report abuse under the law of ... on Whistleblower Protection (Journal of Laws, ...), in terms of identifying whether or not circumstances have occurred as referred to in Article 6 Section 1 of the law”.

Article 31. In the Public Benefit and Volunteering Law of 24 April 2003 (Journal of Laws of 2018 Section 450 as later amended) Item 9 shall be added in Article 35 Paragraph 2 with the following wording:

8) holding elections of representatives of non-governmental organisations in the Whistleblower Protection Commission referred to in Article 15 of the Whistleblower Protection Law of [date]

## Chapter 7.

### **Interim and Final Provisions**

Art. 32. Public entity managers shall implement internal procedures of reporting abuse in their entities no later than 6 months after the entry into force of this law.

Art. 33. The competent authorities shall draft and submit the first statistics referred to in Article 17 Section 1 to the Commission within 12 months after the entry into force of this law.

Art. 34. The law shall enter into force 90 days after the publication.

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