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Whistleblowing – new legislation

Rebecka Thörn / Partner / Advokat



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A new whistleblowing legislation is about to come into force on the 1st of December 2021. The law includes, among other things, that employers who have 50 employees or more will be obliged to have internal whistleblower functions. The requirement to introduce whistleblower functions will be mandatory and will be introduced gradually depending on the size of the company.

In 2019, an EU directive was issued according to which both private and public employers within the EU with 50 employees or more will have an obligation to set up whistleblower functions (whistleblower systems). A Swedish bill was presented in June 2020 to implement the EU directive. The proposal is now being circulated for consultation and we will know more about the new law in detail probably during summer 2021.

But it is already clear that most companies in Sweden and within the rest of the EU will be required to have whistleblower functions for their employees, consultants, trainees and other people who are in corresponding work situations.

The obligation to implement whistleblower functions is planned to be established gradually in accordance with the following;

- On the 1st of July 2022, all public employers with

50–249 employees and all (both private and public) employers with at least 250 employees will be required to have a whistleblower function set up.

- On the 1st of December 2023, all private employers with 50–249 employees will also be required to have a whistleblower function set up.

In the past few years, an increasing number of public and private companies have implemented internal whistleblower functions in order to be able to detect serious irregularities within their own operations. A whistleblower function can consist of traditional communication channels such as telephone, mail and e-mail, although it is getting more common with digital solutions that ensure the whistleblower to be and remain anonymous and also enable secure and encrypted communication with the whistleblower.

What applies today?

In order for a report to constitute a whistleblower case, the following applies today;

- The reported irregularities must be serious, such as financial crime, bribery, environmental offence, major security risks and serious forms of discrimination and harassment.
- Furthermore, the irregularities must have been

committed by a person in a leading position or a person who holds a key position within the company.

What are the requirements for the whistleblower function according to the bill?

The bill stipulates that reporting must be possible both orally and in writing.

There must also be *independent and autonomous persons or units* that receive the whistleblower reports, have contact with the reporting person as well as follow up and provide feedback to the reporting person. There is no requirement that the independent and autonomous persons must be non-employed by the company – the whistleblower function can be internally within the company. However, the whistleblower function may also be provided by a person or unit outside the company.

What protection does the whistleblower have?

The proposal for the new whistleblower act is planned to replace the existing law (2016:749) with special protection against reprisals for employees who sound the alarm about serious misconduct. As present, it should continue to be prohibited for an employer to expose an employee to reprisals, for example in the form of termination or relocation. The employer may be liable for damages in case of violations against the law.

The committee appointed to implement the EU whistleblower directive has also proposed amendments to the Public Access to Information and Secrecy Act to protect the whistleblower's identity in the public sector. This change is of great importance as several whistleblowers in the public sector have had their identities revealed when whistleblower reports have been requested as public documents.

Can corporate groups share whistleblower functions?

At present, many corporate groups have a shared whistleblower function for the entire group. However, the new bill will not make it possible for companies in the private sector with more than 249 employees to share a whistleblower function with other companies. The proposal has been criticized in this part and there is hope among several larger corporate groups that the

final law will make it possible to continue to have a shared whistleblower function.

What is the next step for companies that already have a whistleblower function?

When the new whistleblower law is final in detail (probably during this summer), companies that already have a whistleblower function implemented should review their management of whistleblower cases in order to fulfill the requirements in the new law. Furthermore, existing whistleblower policies need to be reviewed and updated.

What should companies without a whistleblower function but with at least 50 employees do?

Start by asking the following questions;

- What does the company want to achieve with the whistleblower function? Is it only to meet legal requirements and because “it looks good”? Or does the company want to genuinely promote that employees and others can report serious misconduct?
- Are there any people in the company who are suitable to receive and handle whistleblower reports in an independent and objective manner?
- What requirements do you need on a whistleblower function? Is a digital solution necessary or are traditional communication channels such as telephone, mail and e-mail enough?

Want to know more?

Please contact Rebecka Thörn, partner and lawyer at Delphi, specialized in labour law with many years of experience as an external recipient and investigator of whistleblower cases.

Contact:
Rebecka Thörn / Partner / Advokat
+46 (0) 709 25 26 02
rebecka.thorn@delphi.se