

WHISTLEBLOWERS PROTECTED BY LAW

The National Assembly of the Republic of Serbia adopted the Law on Protection of Whistleblowers ("Official Gazette of RS", No. 128/2014), which entered into force on 4 December 2014, and will become applicable as of 05 June 2015.

This Law seeks to provide protection to persons reporting suspicions relating to corruption, violation of human rights or the exercise of public authority contrary to the entrusted purpose, danger to life, public health, safety, environment, and prevention of major damage.

A whistleblower, as a natural person, is entitled to protection in accordance with the Law, if he/she makes the disclosure within a year from the day he/she learned about the action which is subject to disclosure, and no later than ten years from the performance of such action, providing that, at the moment of disclosure, based on available information, an average person with similar knowledge and experience as the whistleblower would believe that the disclosed information is true.

The Law distinguishes between three types of whistleblowing: internal whistleblowing if disclosure is made to the employer, external whistleblowing when disclosure is made to a competent body, and public whistleblowing, made through the media, via the Internet, at public meetings and otherwise made publicly available.

As regards "internal whistleblowing" every employer is obliged to inform, in writing, all his/her employees of their rights under the Law, and appoint a person authorised to receive disclosures relating to whistleblowing (by no later than 5 June 2015), and failure to meet this obligation will result in misdemeanours liability on part of employer, punishable by a fine ranging between 50.000 and 500.000 RSD, and between 10,000 and 100,000 RSD in case of the responsible person in the company.

Furthermore, the law requires employers who have 10 or more employees to adopt an internal by-law regulating the procedure of internal whistleblowing, within one year from the date of entry into force of the Law (4 December 2015). Such by-law must be posted on a visible place and also on internet page if possible, and it must be in accordance with the Law and a regulation to be adopted by the Ministry of Justice. A failure to adopt such by-law will also result in misdemeanours liability, punishable by the above fine imposed on the legal person and the relevant responsible person.

The employer and the competent body are obliged to act even upon anonymous disclosures, within their powers.



Advokatska kancelarija TSG TOMIĆ SINDJELIĆ GROZA informiše o aktuelnostima u radu kancelarije i zakonodavnom reljefu RS / Die Rechtsanwälte TSG TOMIĆ SINDJELIĆ GROZA informieren über aktuelle Themen der Kanzlei und den Rechtsrahmen der RS / The aim of the TSG Newsletter is to help our clients and friends understand trends and legal developments in various areas of the law in RS/ Юридическая контора ТСГ ТОМИЧ СИНДЖЕЛИЧ ГРОЗА информирует о самых актуальных событиях, о работе конторы и законодательном релiefe PC / Glavni urednik/Chefredakteur /Editor-in-Chief / Главный редактор: Ljubica Tomić /Lektor/Lektor/Proofreader/Лектор: Ivana Radović, Vesna Gašić, Vojislava Katić, Viktorija Topalović, Magda Braun / Br. 76/15

Carice Milice 3, Beograd, Srbija, TEL/FAX +381 (0)11 3285.227, +381 (0)11 3285.208, +381 (0)11 3285.153, office@tsg.rs, www.tsg.rs

Under the Law, the employer of a whistleblower may not, through its actions or omissions to act, put the whistleblower in an unfavourable position due to whistleblowing, particularly in relation to employment or work engagement, promotion, evaluation, acquisition or loss of vocation, disciplinary measures and penalties, working conditions, termination of employment, salary and other benefits, participation in the profit of the employer, payments of remuneration and severance payment, placement or secondment to another work position, failure to undertake measures for the protection from harassment by third persons, referral to the mandatory medical examinations etc. This is not an exhaustive list.

The Law provides for judicial protection of whistleblowers, specifically, a whistleblower against whom damaging action was undertaken, is entitled to file to the competent court a claim for protection in relation to his/her whistleblowing, within 6 months of becoming aware of such action or 3 years from the date such action occurred. A whistleblower may request the court to: (1) determine that damaging action was taken against him/her; (2) ban the damaging action or its repetition; (3) remove the consequences of the damaging action; (4) grant pecuniary and non-pecuniary damages; (5) publish a court ruling in the media, at the expense of the defendant. The proceedings are urgent, initiated before the High Court with territorial jurisdiction over the whistleblower's place of residence or the place where the damaging action occurred, and review is always permitted.

The burden of proof in the court procedure for protecting whistleblowers is on the defendant, *i.e.* employer, and if the whistleblower has demonstrated the likelihood that the damaging action was indeed a consequence of whistleblowing, the employer shall have to prove that the damaging action is not in causal relation with whistleblowing.

We are at your disposal for drafting the above mandatory written information and for any further issues related to the application of the Law.

Please do not hesitate to contact us if you should have any further queries.

Attorney-at-Law Saša Sindjelić
sasa.sindjelic@tsg.rs

DISCLAIMER:

The information contained in this newsletter is for general information purposes only and it does not claim to be comprehensive. Furthermore, this text may not serve as a substitute for legal advice in any given legal case.