

Major Changes to Slovak Whistleblowing Rules as of March 1, 2019

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A new act on whistleblowing (Act No. 54/2019 Coll., on the Protection of Whistleblowers) (the "**Act on Whistleblowing**", or the "**Act**") **has been adopted with effect as of March 1, 2019**, which replaces the former Act No. 307/2014 Coll., on Some Measures Related to the Reporting of Anti-Social Activities.

The new Act introduces, among other things, the following changes from previous rules:

- Extension of the types of serious anti-social activity (in Slovak: *závažná protispoločenská činnosť*) subject to regulation by the Act;
- New obligations of employers with respect to the individuals in charge of investigating notifications within the context of internal review systems;
- Enhanced protection of whistleblowers;
- Establishment of a new Office for the Protection of Whistleblowers; and
- Introduction of new administrative offenses (in the form of breaches of certain obligations ensuing from the Act on Whistleblowing) carrying punitive repercussions.

Employers who are required to implement an internal system for reviewing notifications by whistleblowers within the meaning of previous legislation (i.e. in particular, any employer employing a workforce of 50 or more employees) **must make sure they are in compliance with the Act on Whistleblowing by September 30, 2019 at the latest.**

What follows is a summary of the most important changes introduced by the Act on Whistleblowing, with a particular focus on the duties of employers.

1. Broader Scope of Offenses Qualifying as Serious Anti-social Activity under Act

On top of the former regulation, the definition of serious anti-social activity (in Slovak: *závažná protispoločenská činnosť*) has been revised to include criminal offences of legal persons (in Slovak: *trestné činy právnických osôb*). Furthermore, serious anti-social activity now covers administrative misdemeanors punishable by a fine with an upper limit of up to EUR 30,000 (formerly, the threshold was higher and only covered administrative misdemeanors with the upper limit of fines of up to EUR 50,000). This means a broader scope of notified offenses with respect to which the whistleblower enjoys protection, and with respect to which an internal investigation must be conducted if the employer has an internal review system in place.

Under the Act on Whistleblowing, it is enough for a whistleblower to be eligible for protection, if their notification, made in good faith, would (or did) contribute to resolving a serious anti-social activity or the identification or conviction of the perpetrator. It is no longer necessary for the whistleblower's information to contribute to resolving a serious anti-social activity "to a significant degree".

2. Obligations of Employers with Regard to Responsible Persons

Under the new rules, the responsible person who is in charge of reviewing the merits of whistleblowers' notifications submitted within the internal system must have the professional qualifications required to perform their duties under the Act. This is a general obligation only, and the Act makes no specific demands as to their education and/or other professional qualification. However, by the very nature of this role, the responsible person should have adequate education and expertise in the given field (e.g. have a law degree, or previous experience in the field of internal audits/compliance, etc.).

The Act on Whistleblowing places increased emphasis on the need for the independent discharge of duties by the responsible persons, and stipulates additional obligations of employers in this respect, e.g. if responsible persons perform other duties in addition to the duties ensuing from the Act on Whistleblowing, the employers shall ensure that no conflict of interest arises, and that the responsible persons are never punished for discharging their duties under the Act. The Act also expressly stipulates that employers must provide the responsible persons with the necessary cooperation, including access to personal data and documents, and ensure that the professional qualifications of the responsible persons are up to date.

3. Enhanced Protection of Whistleblowers

The protection of whistleblowers has been strengthened especially by the following:

- Extension of the period within which the employer is required to request the prior consent of the Office for the Protection of Whistleblowers (see Section 5 below) when acting in labor relations *vis-à-vis* the protected whistleblower;
- Introduction of more extensive whistleblowers' rights within criminal proceedings (e.g. the right to submit proposals for new evidence and/or to submit complaints against certain decisions in criminal proceedings and/or the right to be informed if a criminal proceeding initiated based on their motion has been stayed), as well as within proceedings on administrative misdemeanors; or the possibility to have the denial of protection by the public prosecutor or administrative authority reviewed by a higher instance; and
- Prolongation of the deadline (from 7 to 15 days) within which the whistleblower may ask the Office for the Protection of Whistleblowers (or until it has been fully established, the labor inspectorate) to suspend the effectiveness of the employer's actions in the area of labor law (e.g. notice of termination), which they believe to have undertaken against them in connection with their notification. The possibility to request the suspension of effectiveness is also granted to whistleblowers who publicize serious anti-social activity, provided that they had reason to believe that an internal notification would not result in a proper review or would lead to their punishment.

4. New Sanctions for Breaches of Act

The Act also introduces new sanctions for those who take labor-law action against whistleblowers without the approval of the Office for the Protection of Whistleblowers (if required under the Act), or punish a whistleblower in connection with the notification they make, or breach their obligation to keep the identity of the whistleblower secret. The aforementioned offenses carry a fine of up to EUR 2,000.

5. Establishment of Office for Protection of Whistleblowers

The Act has created the Office for the Protection of Whistleblowers, which will be in charge of overseeing compliance with obligations under the Act. It will also perform certain tasks that, until now, were carried out by the regional labor inspectorates, and pay rewards to whistleblowers.

However, since the Office for the Protection of Whistleblowers is not yet fully functional, during the transition period, the duties of the Office for the Protection of Whistleblowers will be performed by the competent labor

inspectories (which were the competent authorities under the former legislation), and by the Ministry of Justice of the Slovak Republic (with respect to the payout of rewards).

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