

Delphi

New Swedish Whistleblowing Law

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On September 29, 2021, the Swedish Parliament passed a bill on a new whistleblowing law. The Whistleblowing Act (lagen om skydd för personer som rapporterar om missförhållanden) will come into force on December 17, 2021. The act requires, among other things, that private and public employers with 50 or more employees have internal whistleblowing functions. The mandatory introduction of whistleblowing functions will apply gradually depending on the size of the legal entity.

The Swedish bill is based on an EU directive, which means that similar legislation will also be implemented in the other EU countries.

The obligation to implement whistleblowing functions for employees, consultants, interns and other persons in work-related situations will be established gradually in accordance with the following:

- July 17, 2022, all public employers with 50-249 employees, and all employers (both private and public) with at least 250 employees will be required to have a whistleblowing function in place.
- December 17, 2023, all private employers with 50-249 employees will be required to have a whistleblowing function in place.

A whistleblowing function can include traditional methods of communication, for example phone, post

and e-mail. However, there is a trend towards increased use of digital solutions that safeguard the anonymity of the whistleblower and ensure a secure and encrypted communication with the whistleblower.

What type of misconduct is regarded as a whistleblowing matter today?

Currently, for a matter to be handled as a whistleblowing matter the following applies:

- That the reported misconduct is *serious*, for example financial crime, bribery, environmental crime, major security risks, and serious forms of discrimination and harassment.
- Furthermore, the serious misconduct must have been committed by *a person in a leading position or a person who holds a key position* in the business.

What is a whistleblowing matter according to the new law?

The new law applies to a report in a *work-related context* regarding information on *misconduct which is of public interest that it comes out*. To be of public interest it should concern serious misconduct.

Unlike the current law, there is no limitation stating that the misconduct must have been committed by a person that holds a leading or key position.

What are the requirements for the whistleblowing function according to the new legislation?

The Swedish bill stipulates that reporting must be possible both orally and in writing. The whistleblower should also have the right to book a meeting for reporting the matter.

There must be *independent and autonomous persons or units* that receive the whistleblowing reports, maintain contact with the reporting person, and follow up and provide feedback to the reporting person. There is no requirement that the independent and autonomous persons must not be employees of the company. The whistleblowing function can be internal within the company or provided by a person or unit outside the company.

What about protection for the whistleblower?

The new whistleblowing law will replace the existing Swedish whistleblowing protection law (lagen om särskilt skydd mot repressalier för arbetstagare som slår larm om allvarliga missförhållanden). Just like today, it will be prohibited for an employer to expose an employee to reprisals, for example in the form of termination or relocation due to his or her whistleblowing. In the event of a breach, the employer may be liable for damages.

As the new whistleblowing law comes into force, amendments will be made to the Public Access to Information and Secrecy Act (offentlighets- och sekretesslagen) 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 reports about whistleblowing have been requested as public documents.

Can corporate groups share whistleblowing functions?

Many corporate groups currently share a whistleblowing function for the entire group. This will also be possible in the future, provided that all private companies with at least 50 employees set up parallel whistleblowing functions and procedures for internal reporting. These internal whistleblowing functions can be shared with

other private companies with up to 249 employees. Private companies with 250 employees or more are not allowed to share an internal whistleblowing function with other legal entities.

Both the directive and the bill have been criticized in this regard. In June 2021, Denmark voted for a new whistleblowing law which allows private corporate groups to only have a whistleblowing function at group level. However, the EU commission has explained that this is not in line with the EU directive. It will be of great interest to observe how the directive is implemented in this regard within the rest of the EU countries.

Companies in the public sector are not affected by the restrictions regarding limitations of shared whistleblowing functions.

Next step for companies with an existing whistleblowing function?

Legal entities with a whistleblowing function should review how they handle whistleblowing matters to ensure that they comply with the new bill, for example deadlines for responding to reporting persons and providing feedback to them. Furthermore, existing policies for whistleblowing need to be reviewed and updated.

How should businesses (with at least 50 employees) without a whistleblowing function proceed?

Don't wait until the last minute to set up a whistleblowing function. There are many issues that a company should consider before deciding on how to establish a whistleblowing function, and the process takes time. Start by asking yourself the following questions:

- What requirements do you have of a whistleblowing function? Is a digital solution appropriate or are traditional communication channels, such as telephone, post or e-mail sufficient?
- Are there any people within your business who are suitable, from an independence and objectivity perspective, to receive whistleblowing reports and handle them effectively?

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