



Labour aspects of Law 2/2023 of 20 February 2023, on the protection of persons reporting regulatory infringements and the fight against corruption

Legal Alert

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Labour aspects of Law 2/2023 of 20 February 2023, on the protection of persons reporting regulatory infringements and the fight against corruption.

21 February 2023 saw the publication in the Official State Gazette of the final text of the Law that transposes the European “Whistleblower Directive”. The recently published Law, which will enter into force 20 days after its publication, **includes features that will have significant implications for labour relations**, particularly noteworthy of which being the **obligation on companies with 50 or more employees to set in place an internal reporting channel** (a “whistleblowing channel”) and **protection of up to two years for persons making use of such channels**.

The breach by companies of the obligations introduced by the Law may entail **penalties of up to a million Euros, a four-year ban on receiving subsidies and a three-year ban on public-sector contracting**.

What is the main obligation imposed by the Law?

Subject to consultation with workers’ representatives, companies must set in place an **internal reporting channel via which to report infringements of European Union Law and any acts or omissions potentially constituting a criminal offence or serious or very serious administrative infringement**. This shall be deemed to include all cases of criminal offences and serious or very serious administrative infringements entailing financial detriment to the public treasury and social security.

The Law also introduces a number of safeguards designed to protect persons making use of this internal reporting system.

Who is required to implement the measures?

In addition to public sector bodies, political parties, trade unions, business organisations and foundations, the obligations introduced by this Law apply to:

- **Natural persons or legal entities** operating in the private sector with **50 or more workers**.
- **Legal entities** that operate in the **finance sector or are subject to obligations in relation to the prevention of money laundering and terrorist financing, transport safety and the protection of the environment, irrespective of the number of workers**.

What is the deadline for implementing the new measures?

- For companies with between 50 and 249 employees: **1 December 2023**.
- For companies with more than 249 employees: **3 months as from the entry into force of this Law** (20 days after its publication in the Official State Gazette).

Who can use the internal reporting channel (whistleblowing channel) and benefit from the whistleblower protection measures?

- Civil servants and employees;
- **Self-employed workers;**
- **Shareholders**, members and **persons belonging to the managing or oversight body** of a company;
- **Any person working for or under the supervision and management of contractors, subcontractors and suppliers;**
- **Former workers and interns;**
- Persons engaging in **voluntary work**; and
- **Persons involved in recruitment or pre-contractual negotiation processes.**

The Law also provides for measures to protect **workers' representatives** acting in the discharge of their duties to provide whistleblowers with advice and support.

What protection measures are envisaged for whistleblowers?

Any acts that may be deemed to constitute retaliation against whistleblowers are expressly prohibited.

By way of example, retaliation is taken to mean:

- (i) **Suspension of an employment contract,**
- ^(a) (iii) **Dismissal** or termination of employment (including non-renewal or early termination of a temporary employment contract once the trial period is complete),
- (iv) The imposition of any kind of **disciplinary measure,**
- (v) Demotion or **denial of promotion,**
- (vi) **Material modification of working conditions,** and
- (vii) **Failure to convert a temporary employment contract into an indefinite-term contract** where the worker had legitimate expectations of an offer of indefinite employment, inter alia.

How long does whistleblower protection last?

Whistleblower protection will last for **2 years** and the competent authority may, exceptionally, **extend this protection where there is good reason to do so.**

What penalties does the Law envisage for failure to establish internal reporting channels?

The Law provides for a system of infringements and penalties whereby breach of the obligation to set in place an internal reporting channel and acts of retaliation against whistleblowers are deemed very serious infringements, subject to **fines ranging from Euros 600,001 to Euros 1,000,000** in the case of legal entities.

The above very serious infringements may also entail a **four-year ban on receiving subsidies and a three-year ban on public-sector contracting.**

There is thus no question as to the relevance of this Law for labour relations. Indeed, as of its entry into force:

- **All companies with 50 or more employees will have three months (or until the end of 2023, depending on their size) to set in place an internal reporting channel.**
- The whistleblowing channel must be available **not only to employees, but also to self-employed workers collaborating with the company, interns, former workers and candidates in recruitment processes.**
- Any of the following conduct may be deemed to **constitute retaliation** against whistleblowers: **dismissal, non-renewal of a temporary contract, failure to convert a temporary employment contract into an indefinite-term employment contract or denied promotion,** inter alia.
- This **protection, which also covers workers' representatives, lasts for two years** and may be extended further in exceptional cases.
- Failure to set in place the mandatory internal reporting channel and acts of retaliation may lead to companies being punished with **penalties of up to one million Euros, loss of entitlement to subsidies or a ban from public-sector contracting.**

The seriousness of their labour implications will require companies to consider these new obligations

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