

Useful information about the whistleblowing system in the light of the new Hungarian whistleblower protection act



Hungarian Parliament adopted new whistleblower act (Act XXV of 2023), that will affect all organisations with over 50 employees, as they will be required to operate a whistleblowing system. But who is obliged to maintain the whistleblowing system and from when? Who can make a report and on what subject? Can the system be outsourced, or should it be managed 'in-house'? Find out more on this in the summary from AZS Partners.



AZS PARTNERS

Advocate Zealously

1. What is the (old) new whistleblowing system about, what is its purpose, what are its possible future effects?

The legal framework for the application of the whistleblowing system already existed in the Hungarian legal system (Act CLXV of 2013 on Complaints and Public Interest), but it was up to the employers themselves to decide whether to operate such a system.

The introduction of the new whistleblowing system (Act XXV of 2023 on complaints, disclosures in public interest, and related rules on reporting abuses (hereinafter referred to as the Whistleblower Protection Act)) was necessary to comply with the EU/2019/1937 Directive, which had already been adopted in most EU Member States. The purpose of the legislation is to provide for the possibility to report to the employer certain illegal activities, typically related to corruption, money laundering or workplace abuse. At the same time, the new Whistleblower Protection Act creates a much broader scope for employees to report wrongdoing than the EU Directive. In essence, any unlawful activity, including conduct contrary to the employer's own ethical principles, can be reported in the future.

European and national legislators expect the new legislation to improve transparency for employers, protect workers and reduce the potential damage caused to companies (or the state) by criminal offences.

2. Which organisations are required to establish internal reporting channels and from when?

Those required to operate a whistleblowing system can be divided into the following 3 categories:

	Scope of organizations concerned:	Deadlines:
1	Organizations with at least 50 employees (f.e. companies, associations, trusts)	December 17 th , 2023
2	Organizations with at least 250 employees (f.e. companies, associations, trusts)	July 24 th , 2023
3	Regardless of the number of employees certain organizations under the scope of Money Laundering Act (credit institutions, real estate brokerage and sales organisations, accountants, tax advisors, other employers (e.g., offshore oil and gas, floating facility operators, etc.)	July 24 th , 2023

3. Who can report as a whistleblower?

- Any current or former employee (including trainees and volunteers),
- sole proprietorships and private entrepreneurs sole engaged by the organization,
- contractors, subcontractors, suppliers or persons under the supervision and direction of a contractor, subcontractor, supplier, or agent, who have started a procedure for establishing a contractual relationship with the employer, or who are or have been in a contractual relationship with the employer,
- any person who has an ownership interest in the employer and any person who is a member of the administrative, management or supervisory body of the employer, including a non-executive member.

(Bona fide) whistleblowers are protected by law, so that no adverse legal consequences can be imposed on the whistleblower for reporting abuse. In other words, an employee cannot be sanctioned for whistleblowing, for example, by dismissal, reduction of pay, withdrawal of fringe benefits (e.g., cafeteria) or arbitrary increase of workload.

From an employment law point of view, this is particularly important to bear in mind, as in the event of litigation, the onus is on the employer to prove the legitimate reasons for the action it took against the whistleblower.

It should also be stressed that the employment law protection referred to above applies only to the whistleblower acting in good faith; the whistleblower also has a duty to comply with the law and the employer's internal rules and to respect the privacy rights of others. Employers should therefore make it clear to whistleblowers that anyone who deliberately makes untrue allegations or malicious accusations without any basis is not entitled to the protection of the Whistleblower Protection Act.

4. How can a whistleblowing system be operated? What options are available to employers who are obliged to operate a system?

Employers who are required to operate a whistleblowing system can decide whether to manage the system internally or to seek external assistance. In the former case, the employee or department within the company must be designated to operate the whistleblowing system. In the latter case, a whistleblower protection lawyer or an external organisation may be used to ensure that the system is operated.

In the case of external organisations, it is important to note that a whistleblower protection lawyer or external organisation cannot be a person who has an engagement, employment, or other employment relationship with the employer or with whom he has had such a relationship in the five years preceding the conclusion of the engagement contract.

Employers who employ at least 50 and up to 249 persons under an employment relationship may jointly set up an internal

reporting system, so that they can share the costs of maintaining the whistleblower protection system.

5. What happens if an employer fails to comply with the new laws?

Compliance with the law is monitored by the employment supervisory authority (which is the competent metropolitan and county government office). Currently penalties and disqualification from performing the activity are not applicable, but other legal consequences under Act CXXXV of 2020 on Employment Promoting Services and Subsidies and on Employment Supervision (e.g.: warning, prohibition of employment) can be applied.

6. What are the obligations and responsibilities of employers when operating an "internal" whistleblowing system?

If an employer decides to maintain an internal whistleblowing system, it must take the following measures to comply with the regulation:

1. Designate the relevant employee(s) who will operate the whistleblowing system within the organisation (job description/amendment to the employment contract is necessary).
2. You shall develop an internal procedure that sets out how to handle and receive whistleblowing reports, how to operate the whistleblowing system and prepare and document the specifics procedure for reporting. The internal procedures must be drawn up in Hungarian and published on the employer's website.
3. You must prepare a privacy notice informing whistleblowers and any other person who may be affected by the notifications about the processing of personal data in accordance with the General Data Protection Regulation (2016/679/EU).
4. You shall establish the communication channels through which your organization will receive notifications.
5. You may provide appropriate training/education of the delegated employee or department operating the whistleblowing system to comply with the obligations imposed by the legislation.
6. Your employees should also be informed about the whistleblowing channels, the possibilities for reporting, the procedures for reporting and the rules on data management.
7. You should investigate the whistleblowing reports and it may require further legal action depending on the content of the reported misconduct or abuse.

7. What are the obligations and responsibilities of employers when operating an "external" whistleblowing system?

1. You must select a whistleblower protection lawyer or third-party organisation to operate the whistleblowing system on your behalf.
2. You shall develop an internal procedure that sets out how to handle and receive whistleblowing reports, how to operate the whistleblowing system and prepare and

document the specifics procedure for reporting. The internal procedures must be drawn up in Hungarian and published on the employer's website.

3. You must prepare a privacy notice informing whistleblowers and any other person who may be affected by the notifications about the processing of personal data in accordance with the General Data Protection Regulation (2016/679/EU).
4. You shall conclude the contract of engagement with the whistleblower protection lawyer or external organisation to operate the whistleblowing system.
5. You shall supervise or monitor the activities of the whistleblower protection lawyer/outside organisation engaged.
6. Your employees should also be informed about the whistleblowing channels, the possibilities for reporting, the procedures for reporting and the rules on data management.

8. How can AZS Partners András and Zsigmond Law Firm help your organization?

Whichever option you may choose, we are gladly assisting you achieve full legal compliance. We could help you to

- drawing up whistle-blower policies,
- prepare the appropriate data protection and employment law documentation,
- provide comprehensive training for your employees,
- setting up the necessary processes for the implementation and operation of the whistleblowing system, within the framework of general legal advice.

For further information please contact us, we are at your kind disposal:

dr. Gábor Szabó
Attorney at Law
gabor.szabo@azspartners.com
+36 30 896 7343

dr. Antónia Zsigmond
Attorney at Law, Managing Partner
antonia.zsigmond@azspartners.com
+36 30 654 7372



AZS PARTNERS

Advocate Zealously

AZS Partners, András and Zsigmond Law Firm

1126 Budapest, Tartsay Vilmos u. 3. II. floor

Phone: + 36 1 488 7008

www.azspartners.com