

Whistleblower Protection on the Home Stretch

INTRODUCTION

Slow and steady... After the implementation deadline for the underlying EU Directive had already been expired for more than a year, the Whistleblower Protection Act was finally passed by the Bundestag. The Act provides for the duty to set up reporting channels through which employees can report violations they become aware of. Although it must still be confirmed by the Bundesrat at the beginning of next year, no resistance is expected. Because the provisions will necessitate implementation by employers, they should take a look at this as early as possible.

CURRENT LEGISLATION

After the legislative process had dragged on for some time, there were a few major changes right at the end. The core statements of the law are:

- In general, the Act only provides for a **duty to set up an internal reporting office** for employers with at least 50 employees, unless these are companies in certain specially obliged industries, particularly finance and insurance companies, for which the number of employees does not matter.
- Lawmakers have acknowledged, at least in the Explanatory Notes, the possibility that a **group of companies** may set up a centralized reporting office. This does not change anything regarding the individual responsibility of the individual entities.
- A major point here is that **anonymous reports** must also be processed by employers and that this is no longer a "should"-provision. This is new for the legislative process. Additionally, reporting channels that not only facilitate anonymous contacting but also anonymous communication between the whistleblower and the reporting office must also be provided.
- Furthermore, employees must be **informed** that there are reporting offices in a clear and transparent manner. The reporting offices should also be organized as attractively as possible to create an incentive to use them.

- In addition to the protection of whistleblowers, lawmakers also expanded the **damage claims for whistleblowers**, so that compensation can now also be demanded for immaterial damage (e.g. reputational damage).

CONCLUSIONS

Things are now getting serious for employers. This rather complex law contains some homework that must be attended to without delay to avoid being caught off guard when the law is also enacted by the Bundesrat as planned at the beginning of next year. The law provides for a transition period until December 17, 2023 for employers with no more than 249 employees who do not belong to the specially obligated industries. Anonymous reporting channels do not need to be set up, however, until the end of 2024.

The hotlines or mailboxes already in place at international companies and set up centrally in the United States or at other locations will no longer be sufficient. Because employers must organize their reporting systems to be as attractive and accessible as possible, particularly language barriers need to be avoided. The tougher requirements on anonymous communication will also necessitate further action. This is a particular challenge for the corporate bodies of German subsidiaries. Although the law now allows for a centralized office for an entire group of companies, the liability of local entities and thus of their corporate bodies for possible violations will remain.

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