

SLOVAKIA: NEW WHISTLE-BLOWER PROTECTION ACT

On January 1, 2015 a new Act No. 307/2014 Coll., on certain measures related to reporting of anti-social behaviour (hereinafter the "Act"), which introduces legal regulation on whistle-blowing in Slovakia, took effect. The Act introduces in particular the following:

1. Reporting of Anti-Social Behaviour

An individual – whistle-blower - who finds out in connection with his/her job performance, facts that can significantly help to resolve serious anti-social behaviour¹ and these facts are reported in good faith to respective authorities, from January 1, 2015 the individual is protected from all unjustified acts by his/her employer.

The type of protection will depend on the facts, whether the reporting relates to issues outside the employment (i.e. by criminal or administrative complaint) or inside the employment - within the framework of new-created system of handling of complaints (compliance hot-line). With respect to the reporting of anti-social behaviour a whistle-blower does not breach any confidentiality commitment, commitment to keep bank or other secret protected by law or contract.

1.1. Whistle-blower Protection within the Criminal and Administrative Procedure

A whistle-blower, who makes a criminal complaint or proposal for starting of procedure on administrative offence with regard to serious anti-social behaviour, can ask the relevant authority (i.e. prosecutor, court, administrative authority) for protection. In case, it meets the criteria set forth whistle-blowers, the respective authority immediately notifies the local labour inspectorate, the employer as well as the whistle-blower of the fact that protection is granted. Upon delivery of this notification to the

¹ Under the Act serious anti-social behavior comprises the following offences: criminal offences committed by public officers, corruption, criminal offence of damaging the financial interests of the European Union, criminal offence of deceitful practices during public procurements and public auctions, criminal offence punishable by at least 3 years' imprisonment and administrative offence punishable by a fine of at least EUR 50,000 – f.e. cartel agreements.

SLOVAKIA: NEW WHISTLE-BLOWER PROTECTION ACT

Employer the whistle-blower becomes a protected employee.

Restrictions for the Employer

The employer is entitled to take adverse employment-related acts which impacts towards the protected employee (e.g. wage deduction, change of work position, termination of employment etc.) only upon the employee's consent. In case the employee does not agree with the intended act the employer has to ask the labour inspectorate for approval.

If an employer performs the employment-related act without the consent of the labour inspectorate, the legal act becomes invalid. In such case, not even the limitation on the maximum amount of wage compensation to be provided by the employer in case of an invalid employment termination of the employment relationship (i.e. 36 months) will apply. The court will be entitled to provide the employee with wage compensation for the entire period during which the employee was not allowed to perform work.

Whistle-blower Anonymity

The employee who wishes to be kept anonymous towards the employer can ask the prosecutor, court or administrative authority for issuance of confirmation on the fact, that he/she is a whistle-blower. In case the employer takes any adverse action against this employee, the employee is entitled to submit such confirmation to the employer, in which case the effectiveness of the underlying act will be suspended (see point 1.2 below).

1.2. Employer's Internal System of Receiving and Examining of Complaints

Until June 30, 2015 all employers with at least 50 employees have to create an internal system of receiving and examining of complaints (compliance hot-line). The employees will be allowed, through the use of this system, to report not only serious anti-social behaviour, but also any other forms of anti-social activities, including unethical and uneconomical behaviour. The requirements on this internal system are as follows:

SLOVAKIA: NEW WHISTLE-BLOWER PROTECTION ACT

Responsible Person

At latest by June 30, 2015 a responsible person for receiving and examining of employees' complaints has to be appointed. The responsible person can be an employee but also a specific department or a third party (e.g. external advisor) who will perform this activity by contract. In case the responsible person is an employee, he/she must be directly subordinated to the statutory body of the employer, and unless an employee, he/she will have to follow only the instructions of the statutory body of the employer.

Receiving and Examining of Complaints

The Employer must take over through the responsible person any and all anonymous as well as disclosed complaints from the employees and to examine them within the period of 90 days. This period can be extended by another 30 days. After expiry of this period the respective employee has to be told about the outcome of the complaint examination.

Other Employer's Obligations

The Employer shall publicly inform the employees of who the responsible person is and the way it is possible to submit complaints. At least one method has to be available to all employees 24 hours a day. The employer shall further issue an internal rule determining details concerning submitting and examining of complaints and describing the rights and duties of the responsible person. Besides this the employer shall keep the evidence on received complaints within the period of 3 years following their delivery date.

The labour inspectorate is entitled to impose on the employer a fine up to EUR 20,000 for breaching of employer's duties hereunder.

Whistle-Blower Protection

The employee, who deems that the employer has undertaken an adverse labour-law act due to his/her complaint towards him/her, is entitled to ask the labour inspectorate for suspension of effectiveness of such act within 7 days. If there is reasonable suspicion that the legal act has indeed been undertaken with respect to the

SLOVAKIA: NEW WHISTLE-BLOWER PROTECTION ACT

complaint, the labour inspectorate immediately suspends its effectiveness, issues and delivers the confirmation about this fact to the employer and the employee. By delivery of this confirmation to the employee the effectiveness of this labour-law act is suspended. The suspension of the effectiveness expires within 14 days after the delivery of the confirmation to the employee. If the Employee wants to prevent adverse effects of this legal act, he/she must ask the court for the granting of preliminary protection within this period. In such case the suspension of effectiveness is prolonged until the court decision on granting of preliminary protection is enforceable.

This kind of protection shall apply also to anonymous whistle-blowers reporting of serious anti-social behaviour.

2. Discrimination Prohibition Extended

An employee cannot be discriminated due to the reporting of crimes or other anti-social behaviour. The employee shall be entitled in this connection to ask the court to forbid the employer to continue in discriminating act, provide remedy and appropriate satisfaction. The employer will be also allowed to ask the court to declare all legal acts, the effectiveness of which was suspended by the labour inspectorate, invalid.

bpv BRAUN PARTNERS

Europeum Business Center,

Suché myto 1

SK-811 03 Bratislava

Tel.: (+421) 2 33 888 880

www.bpv-bp.com

bratislava@bpv-bp.com



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