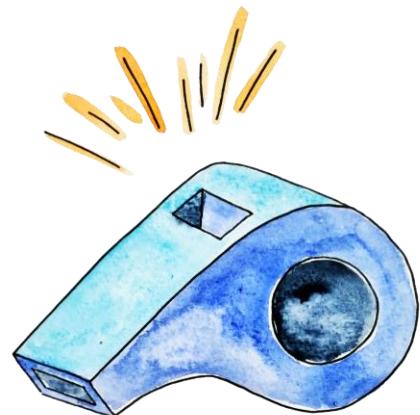


# NEW AUSTRIAN WHISTLEBLOWING PROTECTION ACT



On 25 February 2023 the new Austrian Whistleblowing Protection Act (HinweisgeberInnenschutzgesetzes – *HSchG*; WPA) came into force, implementing the EU Whistleblowing Directive ((EU) 2019/1937). The WPA's objective is to protect Whistleblowers and those around them. Companies fulfilling certain criteria will therefore have to establish internal reporting channels. Hereinafter you will find answers to 12 of the most pressing questions concerning the WPA.

## 1 To whom does the Austrian Whistleblowing Protection Act apply?

To companies with **50 or more employees**; and to companies in **specific areas** (e.g., financial services), regardless of the number of employees.

Employees are counted per head. In case of a fluctuating number of employees, the average number of the previous calendar year is decisive.

## 2 As of when does the Austrian Whistleblowing Protection Act apply?

As of **25 August 2023**, for companies with **250 or more employees** and to those in **specific areas** (e.g., financial services); and as of **17 December 2023**, for companies with **50 to 249 employees**.

## 3 Who is protected by the Austrian Whistleblowing Protection Act?

The protection under the WPA applies to:

- | (former) employees; leased employees; applicants; trainees; volunteers; apprentices; and
- | self-employed persons; members of administrative, management or supervisory boards and all who work under a contractor, sub-contractor or supplier; as well as
- | supporters of the whistleblower; persons around the whistleblower and legal entities partly or fully owned by the Whistleblower.

## 4 To which legal areas does the Austrian Whistleblowing Protection Act apply?

The WPA only applies to the reporting of breaches which concern the following legal areas:

- | (1.) public procurement; (2.) financial services, products and markets, and prevention of money laundering and terrorist financing; (3.) product safety and compliance; (4.) transport safety; (5.) protection of the environment; (6.) radiation protection and nuclear safety; (7.) food and feed safety, animal health and welfare; (8.) public health; (9.) consumer protection; (10) protection of privacy and personal data, and security of network and information systems; and
- | corporate tax law;
- | any financial disadvantage of the European Union; and
- | criminal law on corruption pursuant to Sections 302 to 309 Austrian Criminal Act (*Strafgesetzbuch - StGB*).

## 5 Is there an obligation do implement an internal reporting channel?

Yes, companies within the scope of the WPA are required to implement an internal reporting channel. There are no penalties if no internal reporting channel is implemented. However, to stay ahead of possible breaches, it is recommended that the employer establish an internal reporting channel.

## 6 Do Whistleblowers have to use the internal reporting channel?

No, Whistleblowers can also use an external reporting channel even if an internal reporting channel is established. However, an easy, accessible employer-established internal reporting channel reduces the risk that the Whistleblower goes directly to the authorities' external reporting channel.

## 7 How should the internal reporting channel be designed?

The internal reporting channel should encourage the Whistleblower to give preference to its use over using an external one.

Reports have to be handled by an internal department, which:

- | has sufficient personnel and financial funds,
- | is able to protect the identity of the Whistleblower, and
- | acts impartially and without bias in the receipt and treatment of the report.

It is possible to establish a joint internal department of a group of companies, as well as transferring the tasks of the internal department to a third party (e.g., an attorney).

Internal reporting channels may determine whether they accept reports in writing, orally, or both. The receipt of written reports is to be confirmed within **7 calendar days**. Within **3 months** after the receipt of the report, the Whistleblower is to be informed about the measures taken or the reasons why no measures were taken.

## 8 Which external reporting channels exist?

The general external reporting channel is established at the Federal Office for the Prevention of and Fight against Corruption (*Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung*).

The Federal Office for the Prevention of and Fight against Corruption is the competent reporting authority as long as the matter of the report does not pertain to any other authority (e.g., Federal Competition Authority; Financial Market Authority; etc.), in which case the relevant authority would be the competent reporting authority.

## 9 How are Whistleblowers protected?

The following retaliation measures are especially prohibited by the WPA:

- | suspension, dismissal or comparable measures;
- | non-renewal or early termination of a fixed-term employment contract;
- | downgrading or denial of promotion;
- | change of tasks and/or duty station, reduction of remuneration, change of working hours;
- | refusal to participate in trainings;
- | negative appraisal or reference;
- | disciplinary actions, reprimands or other sanctions, including financial sanctions;
- | early termination or cancellation of a contract for goods or services;
- | withdrawal of a licence or a permit;
- | harassment, intimidation, bullying or exclusion;
- | discrimination, disadvantageous or unequal treatment;
- | not converting a fixed-term employment contract in a permanent contract, if the employee had a legitimate expectation of such conversion;
- | damage, including damage to reputation, especially in social media, or causing financial loss, including loss of contracts or revenue;
- | blacklisting of whistleblowers; and
- | psychiatric or other referral for medical treatment.

In case of such retaliation measures, Whistleblowers and those around them are entitled to a restore of the lawful state of affairs, compensation for pecuniary damage and compensation for personal impairment.

## 10 Which fines apply?

The WPA provides for administrative fines in the amount of up to **EUR 20,000** (up to EUR 40,000 in case of recurrence) for:

- | any obstruction or any attempted obstruction of a protected person (e.g., Whistleblower or persons around them) in connection with a reporting or initiating proceedings to put pressure on such a person;
- | any retaliation measures;
- | any violation of confidentiality and especially protection of the identity of the Whistleblower;
- | knowingly false reports made by a Whistleblower.

The fines apply to anyone - not only may the company face fines, but also supervisors, executives, colleagues, etc., who take such measures.

## 11 Is a shop agreement or agreement with the employees required for the internal reporting channel?

No, as long as only the obligations under the WPA are fulfilled by the reporting channel.

However, if the internal reporting channel should apply beyond the scope of the WPA (e.g., also include breaches of industrial safety laws, etc.), a necessary shop agreement (e.g., control measure, personnel data system) or the consent of the individual employees in companies without a works council, may be required. This is to be assessed on a case by case basis.

## 12 What should companies do now?

For WPA-applicable companies, the transition period until 25 August 2023 (or until 17 December 2023 for smaller companies with 50 to 249 employees) should be used to implement an internal reporting channel fulfilling the requirements of the WPA. Therefore, either an internal department has to be set up or third party provider (e.g., an attorney) has to be engaged.

As the WPA provides for comprehensive legal obligations which apply to the whole workforce, trainings of the workforce, starting with the management and those who are entrusted with dealing with the reports, is highly recommended.

If an internal reporting channel is already implemented, it is advisable to review if it still satisfies the requirements under the WPA, and to adapt it accordingly if it does not.

As the success of any internal reporting channel depends on its acceptance by the workforce, companies' provision of transparent and accessible information regarding the various aspects and functions of the internal reporting channel to employees will be key in its adoption.

## Your Team



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