

Whistleblower regulations

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Adopted by the Executive Board	20-11-2023
Consent from University Participation Council	14-11-2023
Supervisory Board approval	11-10-2023
Legal basis	Section 2 Whistleblower Protection Act (Wet bescherming klokkenluiders)
Particulars	The Whistleblower regulations contain many provisions of the Whistleblower Protection Act (Wet bescherming klokkenluiders). For a complete picture of the legal framework, it is advisable to consult this act.
Short description	The Whistleblower regulations contain the procedure for reporting suspected breach within the institution. The regulations determine, among other things, who can make a report, where this report is made, how a report is followed-up and how a reporter is protected.

Introduction

The Whistleblower regulations contain the procedure for reporting suspected breach within the institution and the handling thereof. The regulations determine, among other things, who can make a report, article 3, where this report is made, article 4, how a report is handled, article 4, and how a reporter is protected, article 7. It also determines what information the employer must provide to employees and others, article 2, and that the employer has a register of reports, article 9. The confidentiality of those involved in a report is regulated in article 8.

The Whistleblower regulations is based on the Whistleblowers Protection Act (Wet bescherming klokkenluiders). This act implements Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

Persons who want to make a report or have made a report can contact the House for Whistleblowers, which is established by the Whistleblowers Protection Act (Wet bescherming klokkenluiders), for information and advice, <https://www.huisvoorklokkenluiders.nl/>. A suspicion of a breach can also be reported to this house or a request can be made to conduct an investigation into the way in which the employer behaved towards the reporter in response to a report.

Article 1 Definition of terms

- 1 The terms used in these regulations have the same definitions as those in the Whistleblower Protection Act (Wet bescherming klokkenluiders), unless explicitly stated otherwise.
- 2 In these regulations the following terms are further defined:
 - a breach:
 - a a violation or threat of violation of Union law, or
 - b an act or omission in which the public interest is in question:
 - 1° a violation or a risk of violation of a legal regulation or of internal rules that contain a concrete obligation and that have been established by an employer on the basis of a legal regulation, or
 - 2° a danger to public health, to the safety of persons, to damage to the environment or to the proper functioning of the public service or a company as a result of an improper act or omission;

- The public interest is in any case in question if the act or omission does not only affect personal interests and there is either a pattern or structural character or the act or omission is serious or extensive;
- b ombudsman: the ombudsman for employees of the employer;
 - c directive: directive (EU) 19/1937 of the European parliament and of the council of 23 October 2019 (PbEU 2019, L 305);
 - d violation of Union law: act or omission that:
 - a are unlawful and relate to the Union acts and policy areas falling within the material scope referred to section 2 of the directive; or
 - b defeat the object or the purpose of the rules in the Union acts and policy areas falling within the material scope referred to in section 2 of the directive;
 - e employer: Stichting NHL Stenden Hogeschool;
 - f employee: the person who performs or has performed work for the employer pursuant to an employment contract under civil law or the person who otherwise performs work for remuneration in a relationship of subordination;
 - g follow-up: action by the employer to assess the accuracy of the allegations made by the reporter and, if necessary and insofar as authorized, to conduct further investigation or take measures;
 - h suspicion of a breach: the suspicion of a reporter that there has been a breach within the organization in which he works or has worked or at another organization if he has come into contact with that organization through his work, insofar as the suspicion is based on reasonable grounds, arising from the knowledge that the reporter has gained from his employer or arising from the knowledge that the reporter has acquired through his work at another company or organization;
 - i act: Whistleblower Protection Act (Wet bescherming klokkenluiders).

Article 2 Information

The employer will make information available to employees and the persons referred to in article 3 sub b in writing or electronically about:

- a the procedure for reporting a suspicion of a breach within the employer's organization;
- b the way in which a suspicion of a breach outside the organization can be reported to competent authorities and, where applicable, to institutions, bodies and agencies of the European Union, and
- c the legal protection of an employee when reporting a suspected breach.

Article 3 Reporter

A reporter is:

- a a natural person who is an employee who reports a suspicion of a breach in the context of his work-related activities;
- b a natural person who is not an employee, but otherwise performs or has performed work-related activities and who reports a suspicion of breach in the context of his work-related activities.

Article 4 Report and follow-up report

- 1 A reporter can report a suspicion of a breach to the ombudsman.
- 2 A report can be made in the following ways:
 - a in writing, including electronically;
 - b orally via telephone or other voice messaging systems, or
 - c at his request within a reasonable time by means of an interview at a location.

- 3 A report is followed up by the employer's ombudsman. To this end, the ombudsman determines the manner in which follow-up will take place and he may involve one or more experts in the follow-up of the report.
- 4 A follow-up takes place impartially and carefully, and is appropriate to the suspicion of the breach to which the report relates.

Article 5 Acknowledgment of receipt and further information

- 1 A reporter will receive an acknowledgment of receipt within seven days of receipt of a report.
- 2 A reporter will receive information about the assessment and, where applicable, the follow-up of the report within a reasonable time and no later than three months after sending the acknowledgement of receipt as referred to in the first paragraph of this article.

Article 6 Consulting an advisor

A reporting employee can consult the employer's confidential adviser regarding a report. Every reporter is free to consult an advisor of his own choice in confidence about a suspicion of breach. This is not facilitated by the employer.

Article 7 Protection reporter

- 1 A reporter may not be disadvantaged during and after the handling of a report of a suspected breach, on the condition that when reporting to the employer, a competent authority or an administrative body, service or other competent body as referred to in section 2j of the act, the reporter has reasonable grounds to assume that the reported information about the suspected breach is correct at the time of the report.
- 2 A reporter may not be disadvantaged during and after the disclosure of a suspicion of a breach, on the condition that:
 - a the reporter has reasonable grounds to believe that the reported information about the suspected breach is correct at the time of disclosure;
 - b the reporter has made a report prior to the disclosure:
 - 1° with the employer and a competent authority or an administrative body, service or other competent body as referred to in section 2j of the act, or
 - 2° directly with a competent authority or an administrative body, service or other competent authority as referred to in section 2j of the act, and
 - c based on the information referred to in section 2e(2)(b) or section 2k(1) of the act, the reporter has reasonable grounds to assume that the investigation is not progressing satisfactorily.
- 3 A reporter may also not be disadvantaged during and after the disclosure of a suspected breach, under the condition referred to in paragraph 2 sub a of this article and the reporter has reasonable grounds to believe that:
 - a the breach may pose an imminent or real danger to the public interest;
 - b there is a risk of harm when reporting to a competent authority or other competent body, or
 - c it is unlikely that the breach will be remedied effectively.
- 4 In the event that a reporter is disadvantaged during and after the handling of a report to the employer, a competent authority or an administrative body, service or other competent body as referred to in section 2j of the act, or after disclosure of a suspicion of a breach, it is suspected that the harm is the result of the report or the disclosure.
- 5 This article applies accordingly to the person who assists a reporter, an involved third party and the employer's ombudsman.

Article 8 Confidentiality

- 1 Anyone who is involved in a report of or the investigation into a suspicion of a breach or information about a breach, and at that gets access to information of which he knows or should reasonably suspect the confidential nature, is obliged to maintain the confidentiality of that information, except insofar as any legal regulation obliges him to provide information or the need to provide information arises from his duties in the implementation of the act.
- 2 Under information of a confidential nature is understood in any case:
 - a information about the identity of a reporter and of the person to whom the breach is attributed or with whom that person is associated and information that can be traced back to this, and
 - b information about a trade secret.
- 3 The identity of a reporter and the information from which the identity of the reporter can be traced directly or indirectly will not be disclosed without the reporter's consent.
- 4 In the event that any legal regulation in the context of an investigation by a competent authority or legal proceedings requires disclosure of the identity of a reporter, the reporting person will be notified in advance, unless such information could jeopardize the related investigation or legal proceedings.
- 5 With the notification referred to in paragraph 4 of this article, a reporter or a person concerned receives a written explanation of the reasons for the disclosure of the information about his identity.
- 6 Paragraphs 1 to 5 of this article shall not apply insofar as the sector-specific rules set out in Part II of the Annex to the directive apply to a report of a breach of Union law.

Article 9 Register and registration of reports

- 1 The employer registers a report upon receipt in a register set up for this purpose.
- 2 If a telephone or another voice messaging system is used for a report or a reporter makes a report in a conversation at an agreed location, the employer will register the report by:
 - a by making a recording of the conversation in a durable and retrievable form, or
 - b through a complete and accurate transcript of the conversation.
- 3 The prior consent of the reporter is required for the recording of a conversation, as referred to in paragraph 2 sub a of this article.
- 4 The reporting person shall be offered the opportunity to check, rectify and agree the minutes of the transcript of the call as referred to in the first paragraph sub b by signing them.
- 5 The data of a report in the register will be destroyed if they are no longer necessary to comply with the requirements of the act or other requirements imposed by law or Union law.

Article 10 Unforeseen cases

In cases not covered by this regulations, the employer will decide in accordance with the act.

Article 11 Entry into force and citation reference

- 1 These regulations entry into force on 1 December 2023.
- 2 These regulations shall be cited as: Whistleblower regulations.

Article 12 Authentic text

In the event of contrariety between the Dutch text of these regulations and text in a different language, the Dutch text of these regulations will prevail.