

# LAW ON PROTECTION OF WHISTLE-BLOWERS

("Official Herald of RS", No. 128/2014)

## Chapter I INTRODUCTORY PROVISIONS

### Subject of the Law

#### Article 1

This law regulates whistle-blowers, whistle-blowing procedure, the rights of whistle-blowers, obligations of state and other organs and organizations, and legal and natural persons in connection with whistle-blowing, as well as other issues of importance for whistle-blowing and protection of whistle-blowers.

### Meaning of Terms

#### Article 2

In terms of this Law, certain terms have the following meaning:

- 1) "Whistle-blowing" is the disclosure of information about violations of regulations, violation of human rights, the exercise of public authority contrary to the purpose for which it was entrusted, danger to life, public health, safety, the environment, and to prevent large scale damage;
- 2) "Whistle-blower" is the natural person who executed the whistle-blowing in connection with his job, recruitment procedure, using the services of state and other organs, holders of public authorities or public services, business collaboration and ownership rights in a company;
- 3) "Employer" is the authority of the Republic of Serbia, territorial autonomy or the unit of local government, holder of public authorities or public service, legal person or sole trader who employs one or more persons;
- 4) "Responsible person" is the person in the legal person entrusted with certain tasks relating to management, operations or work process, as well as a person in a state

organ, organ of territorial autonomy and unit of local government who performs his assigned duties;

5) "Work engagement" is the employment relationship, work outside employment, volunteering, performing official function, as well as any other factual work for an employer;

6) "Authorized body" is an authority of the Republic of Serbia, territorial autonomy or local government, or a holder of public authorities competent to hold proceeding initiated by the whistle-blowing information, in accordance with the law;

7) "Injurious act" is any act or omission in connection with whistle-blowing whereby the rights of the whistle-blower or the person who is entitled to protection as a whistle-blower are threatened or violated, or whereby such persons are placed at a disadvantageous position.

## Chapter II GENERAL PROVISIONS ON WHISTLE-BLOWING AND ENTITLEMENT TO PROTECTION

### Ban on Prevention of Whistle-Blowing

#### **Article 3**

It is banned to prevent whistle-blowing.

A provision of a general act or an individual act whereby whistle-blowing is prevented shall be null.

### Ban on Undertaking Injurious Act

#### **Article 4**

It is banned to undertake injurious act.

### Entitlement to Protection of Whistle-Blowers

#### **Article 5**

A whistle-blower is entitled to protection, in accordance with the law, if:

1) Performs whistle-blowing at the employer, authorized body or public, in a manner regulated by the law;

2) Discloses information under Article 2, item 1) of this Law (hereinafter: the information) within the term of one year from the day of learning about the performed act which is the subject of whistle-blowing, and the latest within the term of ten years from the day such act was performed;

3) At the moment of whistle-blowing, based on available data, a person with average knowledge and experience, and the whistle-blower, would believe in the truthfulness of the information.

## Protection of Linked Persons

### **Article 6**

A linked person is entitled to protection in the same manner as the whistle-blower, if such person proves that it is probable that the injurious act was inflicted on him because of his link to the whistle-blower.

## Entitlement to Protection if Mislabeled as a Whistle-Blower

### **Article 7**

A person who proves it is probable that the injurious act was inflicted on him is entitled to the same protection as the whistle-blower, if a person who has taken injurious act, mistakenly thought that such person was a whistle-blower, or a linked person.

## Protection of Persons Conducting Official Duty

### **Article 8**

A person who furnishes information while conducting official duty is entitled to protection as a whistle-blower if he proves as probable that an injurious act was undertaken against him because of furnishing information.

## Entitlement to Protection due to Sought Data

### **Article 9**

A person seeking data related to the information is entitled to protection as a whistle-blower if he proves as probable that an injurious act was undertaken against him because of seeking such data.

## Protection of Personal Data of the Whistle-Blower

### **Article 10**

A person who is authorized to receive information shall protect the whistle-blower's personal data, or data that may reveal the identity of the whistle-blower, unless the whistle-blower agrees with the disclosure of such data, in accordance with the law governing the protection of personal data.

Every person who learns about data referred to in paragraph 1 of this Article shall protect this data.

Person authorized for receiving information shall upon receipt of the information inform the whistle-blower that his identity may be disclosed to the competent authority, if, without revealing the identity of the whistle-blower, it would not be possible for that authority to deliberate, as well as to inform him about the measures for protection of participants in criminal proceedings.

If it is necessary in the course of the proceedings to disclose the identity of the whistle-blower, the person authorized to receive the information shall inform the whistle-blower about that, before revealing his identity.

Data from paragraph 1 of this Article shall not be communicated to the person being indicated in the information, unless a special law provides otherwise.

## Ban on Abuse of Whistle-Blowing

### **Article 11**

Abuse of whistle-blowing is banned.

Abuse of whistle-blowing is done by a person who:

- 1) Furnishes information for which he knew that it was not true;
- 2) Along with the demand for proceeding in relation to the whistle-blowing information seeks unlawful benefit.

## Chapter III PROCEDURE

### a) General provisions

#### Types of Whistle-Blowing

### **Article 12**

Whistle-blowing may be internal, external or public whistle-blowing.

Internal whistle-blowing is disclosure of information to the employer.

External whistle-blowing is disclosure of information to the competent authority.

Public whistle-blowing is disclosure of information to the media, via internet, in public gatherings or in other manner which provides availability of the information to the public.

#### Content of the Information

### **Article 13**

Information contains data on violations of regulations, violation of human rights, the exercise of public authority contrary to the purpose for which it was entrusted, danger to life, public health, safety, environment, as well as information to prevent large scale damage.

Information may include the signature of the whistle-blower and data on the whistle-blower.

The employer and the authorized body shall act on anonymous notices in connection with the information, within their competence.

### b) Internal Whistle-Blowing

#### Duties of the Employer

## **Article 14**

The employer shall, within its mandate, take measures aimed at eliminating the irregularities determined in connection with the information.

The employer shall, within its mandate, protect the whistle-blower from a harmful act, and to take the necessary measures in order to end the harmful act and to eliminate the consequences of the harmful act.

The employer shall not take measures with the aim of disclosure of the identity of an anonymous whistle-blower.

The employer shall provide all work engaged persons with a written notice about the rights under this Law.

The employer shall appoint a person authorized to receive the information and to conduct procedure in connection with the whistle-blowing.

Procedure

## **Article 15**

Procedure of internal whistle-blowing starts with submission of the information to the employer.

The employer shall act on the information without delay, the latest within the term of 15 days from the day of the receipt of the information.

The employer shall notify the whistle-blower on the outcome of the procedure upon its completion, within the term of 15 days from the day of completion of the procedure referred to under paragraph 1 of this Article.

The employer shall, at the request of the whistle-blower, provide notifications to the whistle-blower on the progress and actions taken in the procedure, as well as to let the whistle-blower inspect the case files and to attend the procedural actions.

Employer's General Act

## **Article 16**

An employer who has more than ten employees shall adopt a general act regulating the procedure of internal whistle-blowing.

The employer shall place the general act referred to in paragraph 1 of this Article in a visible place, accessible to every work engaged person, as well as on the internet page of the employer if there are technical possibilities.

The provisions of the general act on internal whistle-blowing shall be in accordance with this Law and the by-law referred to in Article 17 of this Law.

The provisions of the general act referred to in paragraph 1 of this Article may not reduce the scope of rights or deny any right of the whistle-blower prescribed by this Law.

The provisions of the general act referred to in paragraph 1 of this Article that are not in accordance with this Law and regulations adopted on the basis of this Law, are null and void.

Minister's Bylaw

### **Article 17**

The minister in charge of justice adopts an act which specifies the manner of internal whistle-blowing, the method of determining the authorized person with the employer, as well as other issues of importance for the internal whistle-blowing at the employer who has more than ten employees.

v) External Whistle-Blowing

### **Article 18**

The procedure of external whistle-blowing starts with submitting the information to the competent authority.

If the whistle-blowing is related to the work engaged persons in the competent authority, the whistle-blower shall address the head officer of such authority, and if the whistle-blowing is related to the head offices of the authority, the whistle-blower shall address the head officer of the directly superior authority.

The competent authority shall act on the information referred to in paragraph 1 of this Article within the term of 15 days of the day of receipt of the information.

If the authority to which the information was submitted is not competent to act in connection with the whistle-blowing, it shall forward the information to the competent authority within the term of 15 days of the day of receipt and at the same time notify the whistle-blower about that.

The competent authority referred to in paragraph 4 of this Article shall apply the measures of protection awarded to the whistle-blower by the authority which forwarded the information.

If the whistle-blower did not give permission to reveal his identity, the competent authority which has received information from the whistle-blower, and is not competent to act, shall, before forwarding that information to the competent authority request the consent of the whistle-blower, unless the law stipulates otherwise.

The competent authorized shall, at the request of the whistle-blower provide information on the progress and actions taken in the procedure, and to allow the whistle-blower to inspect the case files and to attend procedural actions, in accordance with the law.

The competent authority shall notify the whistle-blower about the outcome of the procedure referred to in paragraph 1 of this Article after its completion, in accordance with the law.

g) Alerting the Public

### **Article 19**

The public may be alerted, without prior notification to the employer or the competent authority in case of imminent danger to life, public health, safety, environment, from appearance of large scale damage, or if there is an imminent danger of destruction of evidence.

The whistle-blower shall, while alerting the public, respect the presumption of innocence of the accused, the right to protection of personal data, as well as not to undermine conducting of the court proceedings.

#### d) Treatment of Classified Data

Whistle-blowing if the Information Contains Classified Data

### **Article 20**

The information may contain classified data.

It is considered that classified data under paragraph 1 of this Article include the data that are in accordance with the regulations on confidentiality of data previously marked as confidential.

If the information contains classified data, the whistle-blower shall first contact the employer, and if the information relates to a person authorized to act on the information, the information is submitted to the manager at the employer.

In the event that the employer, within the term of 15 days, did not act upon the information which contained classified data, or did not respond or take appropriate measures within his competence, the whistle-blower may contact the authorized body.

Notwithstanding paragraph 3 of this Article, in the event that the information relates to the manager at the employer, the information is submitted to the authorized body.

If the information contains classified data, the whistle-blower shall not alert the public, unless the law provides otherwise.

If the information contains classified data, the whistle-blower and other persons shall adhere to general and specific measures of protection classified data prescribed by the law governing the confidentiality of data.

## Chapter IV

### PROTECTION OF WHISTLE-BLOWERS AND COMPENSATION FOR DAMAGES

Prohibition on Placing Whistle-Blowers in a Disadvantageous Position

### **Article 21**

The employer shall not by an act or omission place a whistle-blower in a disadvantageous position in connection with whistle-blowing, especially if disadvantageous position relates to:

- 1) Employment;
- 2) Acquiring the trainee or volunteer status;

- 3) Work outside employment;
- 4) Education, training or professional development;
- 5) Promotion, evaluation, acquisition or loss of vocation;
- 6) Disciplinary measures and penalties;
- 7) Work conditions;
- 8) Termination of employment;
- 9) Salary and other remuneration from employment;
- 10) Participation in the profits of the employer;
- 11) Payment of bonus and severance pay;
- 12) Assignment or transfer to another job;
- 13) Failure to take measures to protect from harassment by other persons;
- 14) Sending to mandatory medical examinations or sending to examinations for assessment of work capacity.

The provisions of the general act which deprive or infringe whistle-blower's right, or which places these persons in a disadvantageous position in relation to whistle-blowing, shall be null and void.

#### Compensation of Damages to the Whistle-Blower

##### **Article 22**

In cases of damages caused by whistle-blowing, the whistle-blower is entitled to compensation, in accordance with the law governing contractual relations.

#### Judicial Protection of Whistle-Blowers

##### **Article 23**

Whistle-blower against whom a harmful act was taken in connection to the whistle-blowing is entitled to judicial protection.

Judicial protection is accomplished by filing a complaint for protection in connection to the whistle-blowing at the competent court, within the term of six months from the day the plaintiff found out about the damaging action, or three years from the day when the damaging action was taken.

The Higher Court has the jurisdiction in the process of judicial protection according to the place where the damaging action was taken or the place of residence of the plaintiff.

The procedure for judicial protection in connection to the whistle-blowing is urgent.



In the procedure for judicial protection in connection to the whistle-blowing revision is permitted.

In the procedure for judicial protection in connection to the whistle-blowing the provisions of the Law on Civil Procedure governing proceedings in labor disputes shall apply mutatis mutandis, unless this law provides otherwise.

Composition of the Court

#### **Article 24**

In civil proceedings on the complaint in connection to the whistle-blowing a single judge shall rule at the first instance, while in the second instance a panel of three judges.

Possession of Special Knowledge in Relation to Whistle-Blowing

#### **Article 25**

The judge dealing with the complaint in relation to whistle-blowing, or in special procedures referred to in Article 27 of this Law, shall be a person who has acquired special knowledge concerning the protection of whistle-blowers.

Courses for acquisition of specific knowledge and professional development of persons that deal with protection of whistle-blowers are organized by the Judicial Academy, in cooperation with the ministry responsible for justice.

Program of acquiring special knowledge related to the protection of whistle-blowers is prescribed by the act of the minister in charge of justice.

Content of the Complaint

#### **Article 26**

The complaint for protection in connection with the whistle-blowing may contain the following claims:

- 1) Establishing that a harmful act was undertaken towards the whistle-blower;
- 2) Forbidding the exercise and repeating of the harmful act;
- 3) Removing the consequences of the harmful act;
- 4) Compensation of material and non-material damages;
- 5) Publication of the judgment passed on the claim filed for the reasons provided in items 1) to 4) of this paragraph in the public media, at the expense of the defendant.

The action referred to in paragraph 1 of this Article may not contest the legality of an individual act by which the employer has decided on the rights, obligations and responsibilities of the employee related to his work.

Rights of the Whistle-blower in Special Proceedings

## **Article 27**

In the action for determination of legality of an individual act of the employer which addressed the rights, obligations and responsibilities of the whistle-blower related to his work, according to special regulations, whistle-blower may state the allegation that the individual act of the employer represents harmful act related to whistle-blowing.

The allegation referred to in paragraph 1 of this Article may be stated in the action or at the preliminary hearing, and then after that only if the claimant of the allegation makes it credible that without his fault this allegation could not have been brought out earlier.

In a separate proceeding the court assesses the merits of the allegation that an individual act of the employer is a harmful act related to whistle-blowing, in accordance with this Law.

Introducing the Parties with the Right to Settle the Dispute through Mediation

## **Article 28**

The court ruling in the proceedings for protection in connection with the whistle-blowing shall, at the preliminary hearing, or at the first hearing of the trial, introduce the parties with a possibility to settle the dispute out of court through mediation or in another agreed manner.

Burden of Proof

## **Article 29**

If during the proceedings the plaintiff made it credible that a harmful act had been taken towards him in relation to whistle-blowing, the defendant has the burden of proof that the harmful act is not causally related to the whistle-blowing.

Investigation Principle

## **Article 30**

In the procedure for protection in connection with the whistle-blowing, the court may determine the facts even when they are not in dispute between the parties, and may also independently investigate the facts that no party has put forward in the proceedings, if it deems it of significance for the outcome of the proceedings.

Absence of the Defendant

## **Article 31**

If the defendant fails to appear at the main hearing, and was duly summoned, the court may hold a hearing even without the presence of the defendant, as well as to decide on the basis of established facts at the hearing.

Interim Measures and Jurisdiction

## **Article 32**

In the process of protection in relation to the whistle-blowing, or in the proceedings under Article 27 of this Law, the court conducting proceedings may order interim measure in accordance with the law governing enforcement and security.

Proposal to order the interim measure may be filed before the start of the court proceedings, during the course of court proceedings, as well as after the end of court proceedings, as long as the enforcement is not carried out.

During the proceedings the court may also order the interim measure ex officio.

Interim Measure Prior to the Start of the Court Proceedings

### **Article 33**

The court competent for acting on the complaint for protection in connection with the whistle-blowing is also competent to decide on the proposal to order interim measure which was filed before the start of court proceedings.

While ordering the interim measure referred to in paragraph 1 of this Article, the court shall specify the time limit within which the complaint shall be filed before the competent court taking into account the time limits laid down in special regulations for filing a complaint.

Proposal to Order the Interim Measure

### **Article 34**

Proposal to order the interim measure may contain the demand that the court postpones the legal effect of the act, prohibits the execution of harmful act, and orders the removal of the consequence caused by the harmful act.

The court shall decide on the proposal for an interim measure order within the term of eight days from the day of receipt of the proposal.

Appeal against the Decision on the Interim Measure Order

### **Article 35**

No separate appeal is allowed against the decision that orders the interim measure.

Supervision of Law Enforcement

### **Article 36**

The labor inspection, or the administration inspection, shall supervise the enforcement of this Law in accordance with the laws that regulate their powers.

## Chapter V PENALTY PROVISIONS

Misdemeanors

### **Article 37**

A fine of 50,000 to 500,000 dinars shall be imposed for a misdemeanor on the employer - legal person with more than ten employees, if:

- 1) It fails to adopt a general act on the procedure of internal whistle-blowing (Article 16, paragraph 1);
- 2) It fails to place the general act that regulates the procedure of internal whistle-blowing in a visible place, accessible to every work engaged person (Article 16, paragraph 2).

For the misdemeanor referred to in paragraph 1 of this Article a fine of 10,000 to 100,000 dinars shall be imposed on a responsible person in the legal person, state authority, organ of the territorial autonomy or unit of the local government.

For the misdemeanor referred to in paragraph 1 of this Article a fine of 20,000 to 200,000 dinars shall be imposed on a sole trader who has more than ten employees work engaged.

### **Article 38**

A fine of 50,000 to 500,000 dinars shall be imposed for a misdemeanor on an employer - legal person if:

- 1) He fails, within his powers, to protect the whistle-blower from a harmful act, or fails to undertake necessary measures to end the harmful act and to eliminate the consequences of the harmful act (Article 14, paragraph 2);
- 2) He fails to provide all work engaged persons with a written notice about the rights under this Law (Article 14, paragraph 4);
- 3) He fails to appoint a person authorized to receive the information and to conduct procedure in connection with the whistle-blowing (Article 14, paragraph 5);
- 4) He fails to, within the prescribed deadline, act on the information (Article 15, paragraph 2);
- 5) He fails to, within the prescribed deadline, notify the whistle-blower on the outcome of the procedure in accordance with the law (Article 15, paragraph 3);
- 6) He fails to provide the whistle-blower, at his request, with notifications on the progress and actions taken in the procedure, or if he fails to let the whistle-blower inspect the case files and to attend the procedural actions in accordance with the law (Article 15, paragraph 4).

For the misdemeanor referred to in paragraph 1 of this Article a fine of 10,000 to 100,000 dinars shall be imposed on a responsible person in the legal person, state authority, organ of the territorial autonomy or unit of the local government.

For the misdemeanor referred to in paragraph 1 of this Article a fine of 20,000 to 200,000 dinars shall be imposed on a sole trader.

## Chapter VI TRANSITIONAL AND FINAL PROVISIONS

## Deadline for Adoption of the Bylaw

### Article 39

The bylaw under Article 17 and Article 25, paragraph 3 of this Law shall be adopted within the time limit of three months from the day this Law enters into force.

Employers shall adopt the general act under Article 16, paragraph 1 of this Law within the time limit of one year from the day this Law enters into force.

## Entry into Force of the Law

### Article 40

This Law shall enter into force on the eighth day of the day of its publishing in the "Official Herald of the Republic of Serbia", and it shall be applicable after the expiry of six months from the day of its entry into force.

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- regulation published in „Official Herald of the RS”, Nos 128/2014 from 26th November 2014, entered into force on 4th December 2014, implementation started on 5th July 2015

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