

News on whistleblowers – April 2022



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The existing whistleblower protection system in France, the milestones of which were laid by the *Sapin II* law in 2016ⁱ, has just been completed by the new law from March, 21st 2022 to improve the protection of whistleblowersⁱⁱ whose entry into force is scheduled for September, 1st 2022.

We propose a focus on the main points of interest of this new law, from an employment law perspective.

❖ **Broadening the scope of beneficiaries of the whistleblower protective status:**

The new law gives a more precise, and broader definition of what a whistleblower is. First, the requirement that the alert be made in a disinterested manner is replaced by the more precise requirement that it should be made *without direct financial interest*, in order to distinguish the whistleblower from the person guided exclusively by a financial interest.

Moreover, until now, the whistleblower had to have *personal* knowledge of the facts that were the subject of the alert; the new law now limits this condition to the sole case where the information has not been obtained in the course of professional activities.

In practice, an employee may benefit from the protective status if he reports unlawful acts, even if he has not had personal knowledge of these facts that would have been reported to him.

In addition, the field of alerting includes more potential elements since the law removes the condition of seriousness previously required for threats or harm to the public interest, as well as for violations of international commitments, law or regulation.

In practice, this means that the **nature of the facts** that may be the subject of a report is assessed more broadly.

❖ **Protection extended to the whistleblower's circle:**

The benefit of the protective status against retaliatory measures is extended in particular to:

- Individuals in connection with a whistleblower and at risk of reprisals in the context of their professional activities by their employer or client (co-workers of the employee, relatives of the whistleblower);
- Facilitators: any person under private law on a non-profit basis assisting the whistleblower (trade unions are referred to here);

❖ **The mitigation of the reporting procedure:**

The new law removes the obligation to comply imperatively with successive levels of reporting internal (hierarchical superior) then external (judicial authority, administrative, professional order) then public.

From now on, the alert in question can be brought directly to the attention of the above-mentioned authorities, without going through the internal reporting stage, and be made public in the event of a serious and imminent danger or in the presence of a risk of irreversible damage.

❖ **The whistleblower protection system must be recalled within internal regulations.**

❖ **A more complete list of prohibited reprisals against whistleblowers:**

The law adds to the prohibition of reprisal and threats made towards the whistleblower:

- Early termination or cancellation of a contract for goods or services.
- Damage, including reputational damage, or financial loss, including loss of business or income.

❖ **Strengthening sanctions against reprisal:**

In the event of termination of the employment contract following the reporting of an alert, the whistleblower may obtain from the judge, in summary proceedings, the contribution of his CPF ("Compte personnel de formation", an account on which are credited training hours) by the employer. This measure aims to **facilitate the professional retraining** of the whistleblower; indeed, its maintenance in the company can often be complicated, if not impossible, following the alert.

❖ **Harmonization with the protection of employees reporting harassment:**

The law redefines the conditions for the protection of persons who have suffered or refused to suffer acts of moral or sexual harassment or denouncing such acts by rewriting the Labour Code (Articles L1152-2 and L1152-3 of the Labour Code) to indicate that "no person who has suffered or refused to suffer repeated acts of moral harassment or sexual harassment or having, ***in good faith***, reported or testified to such acts may not be the subject of retaliatory measures".

In doing so, the law endorses the jurisprudence of the Court of Cassation which requires that the employee who denounces should be of *good faith*, and extends the protection to "*any person*" and abandons the differences that could result from the drafting of the various articles of the Labour



Code relating to harassment (targeting employees, depending on the situation, employees, people in training, candidates for recruitment).

The new legislation introduces a much more protective approach regarding whistleblowers.

Following these evolutions, it will be necessary to pay particular attention to the potential alerts introduced by employees, and to apprehend them in consideration of the new legal provisions regarding this matter.

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ⁱ Law "Sapin 2" 2016-1691 of 9-12-2016.

ⁱⁱ Law No. 2022-401 of 21-03-2022.

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