

# Whistleblowing Procedure under French Law

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France's new Law on Transparency and Anti-Corruption aims to bring cohesion to the fractured system for whistleblowing rules and procedures in the country.

Until the 8 November vote on the Law on Transparency and Anti-Corruption, France—unlike many countries—did not have a global framework for whistleblowing procedures; the mechanisms for addressing whistleblowing in the country were diluted among several laws and lacking a global coherence.

France's new whistleblowing legal framework, which will come into force after the publication of an administrative decree, introduces a definition of whistleblower and provides provisions on whistleblowing alert procedures applicable to companies with 50 or more employees.

## Overview of Current Provisions on Whistleblowing

Current provisions that protect employees coming forward with information on misconduct can be found in anticorruption laws, laws relating to the protection of the environment, and even laws regarding tax evasion. The French Labor Code also provides protection for whistleblowers that prohibits employers from punishing employees in the following scenarios:

- Employee who reports a situation “when [the individual] had a reasonable reason to think that it presents a serious and imminent danger to [the individual’s] life or health”<sup>[1]</sup>
- Members of the Health and Safety Committee reporting situations that could “present a serious and imminent danger”<sup>[2]</sup>
- Employee representatives who report the occurrence of “a violation of rights of persons, physical or mental health, or individual freedoms in the firm that would not be justified by the nature of the task at hand nor proportionate to the goal sought,” including, among others, situations of harassment and discrimination<sup>[3]</sup>
- Employees who report sexual or moral harassment practices

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The French Supreme Court (Cour de Cassation) widened these provisions by protecting employees who took legal action against their employers on the grounds of the behaviors or situations mentioned above. Nonetheless, there was a lack of coherence in the legal system that led to a difficulty for whistleblowers to be heard and protected.

## **The New Legal Framework**

The recent Law on Transparency and Anti-Corruption provides a definition for persons who could be deemed whistleblowers and sets out new measures to facilitate and secure the process of whistleblowing within companies. As stated above, these provisions will come into force after the publication of an administrative decree.

### ***Definition of Whistleblower***

The new law defines a whistleblower as “a physical person who reports or reveals, in a disinterested manner and in good faith, a crime or offence, a severe and manifest violation of an international commitment. . .a law or regulation, or a threat or a severe harm to general interest, which the individual personally gained knowledge of.”<sup>[4]</sup>

The last condition—“which the individual personally gained knowledge of”—is extremely vague and leaves open the question of whether an employee who was made aware of a violation by someone else would still be protected by the status of whistleblower.

### ***Whistleblower Protection***

Whistleblowers cannot be discriminated against for their actions as whistleblowers. As for any form of discrimination, any punishment by the employer for the act of whistleblowing would be considered null and void. Restraining the right of alert is a crime punishable by up to one year in prison and a criminal fine of up to €15,000 (for individuals) and by a criminal fine of up to €75,000 (for legal entities).

### ***Protection against Abusive Whistleblowing***

Disciplinary sanctions are available against employees who launch unfounded actions.

Abusive whistleblowing is considered to be libel, and can be treated as such. If abusive and unfounded accusations are made against an entity or person holding public authority, the individual who made the accusation is liable for a criminal fine of up to €45,000. If the unfounded accusations were made against a private person, the accuser is liable for a criminal fine of up to €12,000. The fines are increased fivefold if the accusations originated from a legal entity.

### ***Procedure of Alerts To Be Implemented by Companies***

During the entire whistleblowing process, the identity of the whistleblower, the information provided, and the person(s) involved in the reported facts must remain confidential. Revealing information that could lead to the identification of a whistleblower is punishable by up to two years in prison and a fine of up to €50,000. This fine is increased to a maximum of €250,000 for legal entities.

The whistleblowing process should follow the below steps:

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1. The whistleblower alerts his hierarchical managers or the person(s) designated for that purpose (internal inspection, ethics committee, or other relevant persons). Companies with at least 50 employees must implement appropriate internal alert procedures through internal regulations.
  2. If the alert is not addressed within a reasonable time period, the alert can be raised to the relevant judicial authority, personnel representatives, *Defenseur des Droits* (Ombudsman), or any association that assists whistleblowers that has been legally registered for at least five years.
  3. If the alert is yet again not addressed, the whistleblower can disclose it to the public through press or social media. Such disclosure must only occur in cases of absolute necessity to stop an imminent threat to general interest.

The employer has the duty to declare to the French Data Protection Authority (CNIL), under a simplified declaration procedure, all databases relating to whistleblowing that contain personal employee information, as well as to inform the employees of their right to access, modify, or erase the content pertaining to them. The new law does not address specifics steps regarding how to inform employees, which leaves room for uncertainty as to when, how, and to what extent an employee should be notified of the content of an employer's whistleblowing database(s).

### ***Anticorruption Provisions***

Six months after the publication of the new law, companies with a turnover of at least €100 million and 500 or more employees will have to take all necessary measures to prevent and detect—in France or abroad—acts of corruption or influence trafficking.<sup>[5]</sup>

Article 17, II of the law imposes, among other things, the implementation of an internal alert procedure.

For companies having to implement both the whistleblowing and anticorruption provisions, there is room for uncertainty about the date on which the internal alert procedures must be implemented, since the provisions on whistleblowing are enforceable from the date of the publication of an administrative decree, while the provisions on anticorruption measures (i.e., implementation of an internal alert procedure) are enforceable six months after the publication of the new law.

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[1] See Labor Code, art. L. 4131-1

[2] *Id.* at art. L. 4131-2

[3] *Id.* at art. 2313-2

[4] Law on Transparency and Anti-Corruption, art. 6

[5] *Id.* at art. 17

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