

**Republic of Moldova**

**PARLIAMENT**

**LAW No. 122**

**from 12-07-2018**

**on integrity warnings**

Chapter I

GENERAL DISPOSITIONS

**Article 1. Scope of regulation**

This law regulates disclosures of illegal practices by public and private entities, the procedure for examining such disclosures, the rights of whistleblowers and their protection measures, the obligations of employers, the powers of the authorities responsible for examining such disclosures and the protection of whistleblowers integrity.

**Article 2. Purpose of the law**

This law seeks to increase cases of disclosure of illegal practices and other disclosures of public interest by:

- a) promoting the climate of integrity in the public and private sectors;
- b) ensuring the protection of whistleblowers against retaliation in the context of examining disclosures of illegal practices which are of public interest;
- c) preventing and sanctioning retaliation against whistleblowers.

**Article 3. Notions**

For the purposes of this law, the following notions mean:

- integrity warning - disclosure in good faith by an employee of an illegal practice that constitutes a threat or harm to the public interest;
- whistleblower - an employee who makes an integrity warning;

- disclosure of illegal practices - disclosure of manifestations of corruption, as defined and listed in the Integrity Law no. 82/2017, environmental violations, violations of the fundamental rights and freedoms of the person, those related to national security, as well as other violations, actions or inactions that threaten or harm the public interest;
- employee - a natural person who:
  - a) was in the last 12 months an employee, within the meaning of labor legislation, in relation to an employer;
  - b) was in the last 12 months a trainee or volunteer in relation to an employer;
  - c) had in the last 12 months contractual, civil legal relations with an employer;
- employer - a public or private entity that:
  - a) entered into legal employment relationships with an employee;
  - b) entered into contractual, civil legal relations with an employee.

In the case of judges and prosecutors, the Superior Council of Magistracy and the Superior Council of Prosecutors are considered employers;

- good faith - standard of conduct, expressed through fairness, honesty and responsibility;
- retaliation - any form of pressure, disadvantage or discrimination in the workplace that is related to or results from the integrity warning. Forms of retaliation are: dismissal, suspension, demotion, refusal to be promoted or trained, repressive transfer, cancellation of bonuses, facilities or other benefits, harassment or other repressive treatment, as well as threats of such actions.

#### **Article 4. Principles of law enforcement**

When implementing the provisions of this law, the following principles shall be observed:

- a) the principle of protection of fundamental human rights and freedoms;
- b) the principle of equality and non-discrimination;

- c) the principle of intolerance of manifestations of corruption within public and private entities;
- d) the principle of presumption of good faith of the employee that reveals an illegal practice;
- e) the principle of liability, according to which the whistleblower is obliged to support the complaint with data or indications regarding illegal practices.

#### **Article 5. Subjects of the law**

The subjects that fall under the scope of this law are:

- a) employees;
- b) whistleblowers;
- c) employers;
- d) authorities examining disclosures of illegal practices (hereinafter - examining authorities);
- e) whistleblower protection authorities (hereinafter - protection authorities).

This law also applies to persons appointed in scientific and advisory councils, in specialized commissions and in other collegial bodies organized in the structure of public authorities / institutions or in addition to them.

Employees have the right to submit disclosures of illegal practices, to be recognized as whistleblowers of integrity and to benefit from protection under the conditions provided by this law.

By derogation from the provisions of par. (3), employees who are public agents, in case of inappropriate influences exerted on them, as well as other attempts to involve them in acts of corruption, as stipulated in the Integrity Law no. 82/2017 and Law no. 325/2013 on the assessment of institutional integrity, are obliged to refuse to participate in such acts. If they do not enjoy protection in a capacity of a witness and / or injured party in a criminal

proceeding, public officials who have reported inappropriate influence or other attempts to involve them in corruption may be recognized as whistleblowers and may be protected, under the conditions of this law.

#### **Article 6. Good faith**

- (1) The disclosure of the illegal practice by an employee is presumed to be true until proven otherwise.
- (2) The employee is considered in good faith if the disclosure of the illegal practice he has disclosed is true or if the employee has a reasonable conviction that it is true and threatens or harms the public interest.

### **Chapter II**

#### **DISCLOSURE OF ILLEGAL PRACTICES**

#### **Article 7. Ways of disclosing illegal practices**

- (1) The disclosure of illegal practices may be internal (communicated to the employer), external (communicated to the examining authorities) and public.
- (2) The disclosure of the illegal practice is made in writing, on paper, being signed by the employee, or through the electronic online disclosure system or is communicated to the anti-corruption telephone lines of the employers or of the examining authorities. The disclosure is made by filling in the forms provided in annexes no 1 and 2. By the employee or, as the case may be, by the operator of the telephone line. 1 and no. 2.
- (3) The disclosure of the illegal practice shall be entered in the Register of disclosures of illegal practices and integrity warnings, kept by employers and examining authorities, the model of which is provided in Annex no. 3.
- (4) The confidentiality of the personal data of the employee who discloses an illegal practice is guaranteed in accordance with the provisions of art. 8.

## **Article 8. Confidentiality of the identity of the employee who discloses illegal practices**

- (1) The identity of the employee who discloses illegal practices shall not be disclosed or communicated to persons suspected of such practices unless the employee himself discloses or communicates his identity.
- (2) Personal data may be disclosed only in the case of criminal proceedings initiated on the basis of disclosure of public interest. In this case, the whistleblower is heard as a witness under the conditions of the Code of Criminal Procedure of the Republic of Moldova or, as the case may be, of the Contravention Code of the Republic of Moldova and may benefit from protection in accordance with Law no. 105/2008 on the protection of witnesses and other participants in criminal proceedings.

### **Chapter III**

## **THE EXAMINATION OF DISCLOSURES OF ILLEGAL PRACTICES AND THE RECOGNITION OF THE STATUS OF WHISTLEBLOWERS**

### **Article 9. Disclosure of illegal practices**

- (1) The employee is entitled to make an internal disclosure of the illegal practices or, in the cases established in par. (4) of this article, an external or public disclosure of illegal practices, except in the case provided in art. 5 para. (4), when the employee is obliged to report manifestations of corruption.
- (2) The employer or another examining authority shall record the disclosures of illegal practices by the person or subdivision designated for this purpose in the Register of disclosures of illegal practices and integrity warnings. The employer approves the procedures for internal examination and reporting of disclosures of illegal practices according to the model established by the Government.

(3) Where the internal disclosure of the unlawful practice contains the constituent elements of a contravention or offense, the employer shall be required to transmit the information contained in the disclosure to a competent examining authority.

The employee may omit the procedures of internal disclosure of the illegal practice, making an external or public disclosure, when:

- a) considers that the employer could be involved in the disclosed illegal practices;
- b) considers that there is a risk of non-confidentiality of his data;
- c) considers that there is a risk of loss, disappearance or destruction of evidence;
- d) the employer did not ensure the registration of the disclosure of the illegal practices under the conditions of par. (2) of this article or did not inform him about the results of the examination within the term provided in art. 12.

(4) If the employee makes a public disclosure of the illegal practices and they contain the constituent elements of a contravention or offense, the examining authorities shall notify themselves.

(5) The confidentiality and professional secrecy clauses between employer and employee shall not prevent the disclosure of illegal practices.

#### **Article 10. Authorities responsible for examining disclosures of illegal practices**

(1) The authorities responsible for examining the disclosures of illegal practices are the employers, in case of disclosures of internal illegal practices, and the National Anticorruption Center, in case of disclosures of illegal external practices.

(2) The National Anticorruption Center, as the authority responsible for examining the disclosures of illegal practices:

- a) ensures the promotion and operation of the national anti-corruption line;

- b) registers the disclosures of illegal practices received in writing, through the electronic online disclosure system, as well as those received at the national anti-corruption line, if they meet the content requirements provided in art. 11;
  - c) examines the disclosures of illegal practices regarding manifestations of corruption and communicates in writing to the employee about the result of the examination within the term provided in art. 12;
  - d) transmits, within 3 working days, to other public entities, according to the competencies, the disclosures of illegal practices that have as subject other illegal practices than those provided in let. c) and constitute threats or prejudices brought to the public interest;
  - e) the disclosures of the illegal practices made public are notified and registered if they meet the content requirements provided in art. 11.
- (3) The examining authorities have the obligation to immediately take measures to prevent actions that may cause harm to the public interest. To that end, the examining authorities shall, within the limits of their respective powers, order the suspension of those actions.
- (4) Examining authorities may establish internal channels for communicating disclosures of illegal practices and internal integrity warnings (trusted telephone lines, mailboxes, e-mail addresses).

#### **Article 11. Registration of the disclosure of illegal practices and recognition of the status of whistleblower**

- (1) In order to be registered in the Register of Disclosures of Illegal Practices and Integrity Warnings and to be recognized as a whistleblower, the disclosure of illegal practices must meet the following conditions:
- a) be made by an employee of a public or private entity;
  - b) to refer to the activity of the entity whose employee he is;

- c) contain information / evidence about illegal practices and actual, imminent or potential harm to the public interest;
- d) the person making the disclosure must identify himself (name, surname, place of work, contact details, and in case of writing the integrity warning - and signature).

(2) The registration of a disclosure of illegal practices of public interest in the Register of disclosures of illegal practices and integrity warnings grants the employee who makes it the status of whistleblower.

(3) If the disclosure is recorded, the employee shall, in the context of his or her recognition as a whistleblower, be provided with the following:

- a) in case of writing the integrity warning – written confirmation regarding the registration in the Register of disclosures of illegal practices and integrity warnings, the fact of initiating an examination of the circumstances described in the integrity warning and the term in which it will be informed about the results of the examination, according to annex no. 3;
- b) in case of communication of the integrity warning by telephone - the call registration number, the fact of initiating an examination of the circumstances described in the integrity warning and the term in which he can return with a call or, as the case may be, in which the operator will contact him by telephone ( according to the employee's preferences) to inform him of the results of the examination;
- c) regardless of the manner of communication of the integrity warning - about the observance of the confidentiality of his identity when examining the disclosure, except in the cases of initiating criminal or contravention proceedings in which he will appear as a witness and be granted witness protection;



d) in all cases - the fact that the status of integrity whistleblower will be withdrawn if, during the examination, it is found that the disclosure does not meet any of the conditions provided in para. (1).

(4) If, during the examination of the disclosure, it is found that it does not meet the conditions provided in par. (1) lit. a), b) or d), the information transmitted shall be examined in accordance with the general rules.

(5) In case of public disclosure of illegal practices, the employee may be recognized as a whistleblower either by the examining authorities or by the protection authorities, with the concomitant request for the granting of protection under the conditions of art. 13.

#### **Article 12. Deadlines for examining integrity warnings**

(1) The whistleblower is informed, in writing or, as the case may be, by telephone, according to art. 11 para. (3), within 30 days from the date of registration in the Register of disclosures of illegal practices and integrity warnings, about the results of the integrity warning examination.

(2) If the deadline provided in par. (1) is insufficient, it can be extended by another 30 days, of which the whistleblower will be informed accordingly.

(3) If, on the basis of the integrity warning, a contravention or criminal trial is initiated, the whistleblower is informed that the integrity warning will be examined under the conditions and terms of the Contravention Code of the Republic of Moldova or the Criminal Procedure Code. Republic of Moldova.

### **Chapter IV**

#### **WHISTLEBLOWER PROTECTION**

##### **Article 13. Request for the protection of the whistleblower**

An employee who, in connection with the integrity warning he has given, is subject to retaliation (through actions, inactions or threats) from the employer or another person within

the public or private entity in which he operates is entitled to seek protection from the authorities provided in art. 16.

#### **Article 14. Guarantees for the protection of the whistleblower**

The whistleblower has the following guarantees:

- a) his transfer or that of the person who undertakes retaliation, during the examination of the application for protection, to another subdivision of the public or private entity in which he operates, maintaining the specificity of activity, and in its absence - in a subdivision that carries out a related activity, in order to exclude or limit the influence of the person who retaliated in connection with the integrity warning or the disclosure of illegal practices;
- b) the sanctioning of the person who retaliated in connection with the integrity warning or the disclosure of the illegal practices or, as the case may be, of the head of the public or private entity for not ensuring the protection measures;
- c) the annulment of the disciplinary sanction against the whistleblower, enforced based on the decision of the employer or, as the case may be, based on the decision of the administrative dispute court, made as a result of a good faith disclosure of a wrongdoing, in public interest;
- d) compensation for material and moral damages incurred as a result of retaliation.

#### **Article 15. Procedure for the protection of the whistleblower**

- (1) The whistleblower who was subject to retaliation is entitled to submit to the protection authorities a written request to request the realization of its guarantees provided in art. 14.
- (2) In order to benefit from protection, the employee must meet the following conditions:
  - a) to be recognized as a whistleblower under the conditions of art. 11 or have made a public disclosure of illegal practices;

b) to be subject to retaliation;

c) there is a causal link between the disclosure of the illegal practices and the alleged retaliation.

(3) The protection authority shall examine as a matter of priority, within a maximum of 15 days, the request for the protection of the whistleblower, after which it shall inform the whistleblower of the satisfaction of its request or of the reasons for refusal.

The expiry of the time limit shall begin on the day on which the application is received and registered with the protection authority.

(4) The protection granted may be withdrawn if the following situations are subsequently ascertained:

a) the information communicated is not true, including it is demonstrated that the employee knew or should have known about the false nature of the content of his disclosure (the disclosure is not made in good faith);

b) the alleged retaliation is not real;

c) there is no causal link between the disclosure of public interest and the alleged retaliation.

#### **Article 16. Protection authorities of whistleblowers**

(1) The protection of whistleblowers shall be provided by the following entities:

a) the employer, in case of internal disclosures of illegal practices;

b) The People's Advocate, in case of external and public disclosures of illegal practices.

(2) The employer shall take administrative action to terminate retaliation against the employee, including in the workplace, and to ensure that he or she is protected as a whistleblower. The employer cancels the administrative acts passed as a result of retaliation against the whistleblower due to the disclosed wrongdoings.

(3) The People's Advocate examines the request for protection of whistleblowers and contributes to their defense in accordance with the provisions of Law no. 52/2014 on the People's Advocate (Ombudsman). In case of public disclosures of illegal practices, the People's Advocate may be notified ex officio in accordance with art. 22 of Law 52/2014 on the People's Advocate.

#### **Article 17. Appeals against whistleblower protection authorities**

- (1) Decisions, actions and inactions of whistleblower protection authorities shall be challenged in administrative proceedings after the exhaustion of the preliminary procedure.
- (2) The decisions, actions and inactions of the employer private entity as an authority to protect whistleblowers, provided by this law, shall be challenged in civil proceedings within 30 days.
- (3) The decisions of the People's Advocate regarding the examination or rejection of the applications requesting the protection of the whistleblower cannot be challenged.

### **Chapter V**

#### **SANCTIONING**

#### **Article 18. Liability for violating the provisions of the law**

(1) Failure by the employer to take measures to ensure the disclosure of illegal practices within the entity, non-compliance with the confidentiality of employees who disclose illegal practices and failure to ensure measures to protect employees recognized as whistleblowers entails disciplinary and / or misdemeanor liability.

(2) The disclosure by the employer's representative or other authorities examining the identity of the whistleblower to the persons allegedly responsible for the illegal practices he invokes entails disciplinary and / or misdemeanor liability.

(3) Failure to take measures to terminate or suspend acts that are prejudicial to the public interest and / or to prevent acts that may cause subsequent harm to the public interest entails contraventional or, as the case may be, criminal liability.

(4) Revenge against the whistleblower entails criminal or, as the case may be, criminal liability.

(5) It is the employer's responsibility to demonstrate that the measures taken against the employee are not related to the integrity warning or his involvement in any capacity in relation to an integrity warning. Otherwise, the actions of the employer are considered revenge.

(6) The reparation of the material and moral damages caused to the whistleblower shall be borne by the employer.

## **Chapter VI FINAL AND TRANSITIONAL PROVISIONS**

### **Article 19**

(1) This law enters into force 3 months from the date of publication in the Official Gazette of the Republic of Moldova.

(2) Within 3 months from the date of entry into force of the law, the Government shall bring its normative acts in accordance with its provisions.