

STATUS OF WHISTLEBLOWING LEGISLATION IN THE FOOD SECTOR IN SELECTED COUNTRIES

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INTRODUCTION

In recent years, the importance of whistleblowing¹ as a mechanism to combat corruption and fraud, and as an additional element of risk management, has been increasingly recognized (Motarjemi, 2014a, Soon and Manning, 2017). As such, whistleblowing is particularly important in the food and health sector, where fraud and safety management failures have led to multiple scandals (Visciano and Schirone, 2021, Motarjemi, 2014b).

Nevertheless, curiously, in these sectors, the subject has not received the same degree of recognition as in the financial sector, where many countries have promulgated specific laws for the promotion of whistleblowing and protection of whistleblowers.

In 2020, the Global Harmonization Initiative (GHI)² conducted a worldwide survey on the coverage of the subject in the national legislation. The purpose of the survey was to collect data on the status of legislation in various countries. This, as a source of guidance for developing a guideline on best-recommended practices on whistleblowing and protection of whistleblowers in the food sector.

The survey serves also as a tool for self-evaluation of countries and assessment of the awareness on the subject in the food sector.

EXECUTIVE SUMMARY

A questionnaire was sent to GHI ambassadors in 64 countries. The responses varied widely. 27 countries responded, of which 11 reported that there was no whistleblowing legislation at all. The situation within the EU is currently uneven, but member countries will have to transpose

¹ The definition of “*whistleblower*” varies according to the legislation of countries. For the purpose of this survey, the working definition used for the term “whistleblower” is the one given by the Council of Europe. That is “*any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether public or private.*” The term “report” refers to internal reporting within an organization or enterprise, while the term discloses refers to reporting to an outside authority or to the public

² Global Harmonization Initiative (GHI) is a scientific non-governmental organization dedicated to advancing the global harmonization of food safety laws and regulations through scientific consensus, education and advocacy.

the EU whistleblower directive into their legislation by the end of 2021. Still, it may be concluded that the importance of whistleblowing is being increasingly recognized by regulatory authorities around the world. Nevertheless, overall, the focus is generally more on the mechanism of reporting rather than real protection of whistleblowers and the compensation of those victimized.

As regard to food safety:

- A number of respondents reported whistleblowing legislation did exist in their countries, but food safety was not specifically mentioned. In some cases, it may be implicitly included.
 - **Whistleblowing legislation should explicitly cover public health issues and risks associated with products and services.**
- Very few countries have a “food law” which recognizes the importance of whistleblowing as an element of food safety management and the need for protection of employees against retaliation.
 - **National food laws should make specific provisions for whistleblowing and protection of whistleblowers. Retaliation against whistleblowers or moral harassment of employees should be considered as a food safety violation.**
- Some respondents indicated that they could not answer the questionnaire as the topic was outside their area of expertise, which in itself illustrates that whistleblowing is not universally recognized as an integral part of a food safety management system and a food safety culture.
 - **Whistleblowing and employees’ rights and protection need to be integrated into the education of food safety professionals worldwide.**
- Protection for the whistleblowers, including protections against revealing their identity, dismissal or other retaliatory measures including bullying and harassment, free and quick legal proceedings in case of retaliation and financial support where necessary, is often weak and/or insufficiently specific.
 - **Whistleblowing legislation will only succeed if individual whistleblowers can count on clear protection against all forms of retaliation.**
- The treatment of the complainant itself, including procedures and timelines for responses from authorities and companies, is often unclear and inadequate.
 - **Whistleblowing complaints need to be handled with urgency and within clear procedures – prescribed and protected by legislation.**
- Also, whistleblowing in itself is subject to varying definitions.
 - **Whistleblowing legislation would greatly benefit from harmonization around the world, including a standard definition of whistleblowing.**

A guide covering the full scope of whistleblowing procedures, from reporting to corrective action could facilitate the integration of whistleblowing into national food legislation.

- **Considering the importance of whistleblowing in the context of food safety management, we recommend the GHI to develop a whistleblowing Guideline**

for this purpose, using the information from existing legislation and the experience of whistleblowers world-wide.

METHODS AND APPROACH

A questionnaire was developed on the basis of the provisions of the EU Directive (2019), various existing guidelines and whistleblowers experiences (Annex 1). (EU 2019, COE 2014, Van der Meulen, 2019, Devine, 2016, Allard, 2018, Cronin and Afifi, 2018, Brown, 2019).

It consisted of 4 sections:

In a first section, it was asked whether the country had whistleblower legislation and, if not, whether it was considering developing one. In a second section, the definition, procedure, scope and enforcement provisions of the law were queried in countries that have, or are developing, such legislation.

A third section concerned the protection of whistleblowers from retaliation or, more generally, the protection of employees from harassment and unfair dismissal. These aspects are important and relevant to food safety management as they impact on the working conditions of employees. Abusive and unfair working conditions are a sign of a poor corporate culture and undermine food safety management. Moral or psychological harassment is an employee abuse and an occupational violence that should be banned in any working environment. However, in the context of food safety management, it is an additional risk for food safety as it disempowers employees and prevent them from doing their work. Where it is practiced, it discourages employees from whistleblowing. Therefore, in Annex 2, acts that constitute bullying and harassment have been described.

In the final section, countries were invited to share any good practices or experiences they could recommend.

This review summarizes the results of the survey. It focuses on the descriptive information or data providing an insight into the legislative status of countries as relevant for drafting a guideline for a recommended code of practice. Due to possible misinterpretation of the questions or the answers, or also lack of a complete reporting, there is some uncertainty in the legal situation of countries reported here. The translation from the original language may also contribute to some inaccuracies, especially considering that the respondents are not trained lawyers. In several cases, negative information, such as gaps in the law, is reported in this review to emphasize that even in a better situation, the laws are not comprehensive enough.

The results of the questionnaire were first consolidated by the authors of this report and then validated by the source. Some sections are taken verbatim from the source. Other sources of information are also used to complete the picture on the status of the regulatory situation in the world.

We would like to thank those who responded to the questionnaire, even if they reported not able to do so.

RESULTS OF THE SURVEY

The questionnaire was sent to GHI ambassadors in 64 countries. 27 countries responded to the questionnaire. These are:

Argentina, Australia, Canada, China, Chile, Croatia, Greece, Hungary, India, Indonesia, Iran, Kazakhstan, Kenya, Macedonia, Malaysia, Malta, Montenegro, Mexico, Norway, Portugal, Russia, Slovakia, Sri Lanka, Switzerland, Taiwan, Turkey, Uganda.

The following 11 countries reported having no specific whistleblowing legislation. They are Argentina, Chile, Greece, India³, Kazakhstan, Mexico, Portugal, Slovakia, Sri Lanka, Switzerland, Turkey. Note that EU member countries will have to transpose the EU whistleblower directive into their legislation by the end of 2021.

The relatively low number of responses received, or the partial answers, may have different explanations. Some respondents indicated that they could not answer the questionnaire as the topic was outside their area of expertise. It is however to be noted that whistleblowing and/or organizational culture that may lead to abuse of employees or retaliation against whistleblowers are subjects inherent to food safety management and should be a core expertise of food safety professionals. Anytime, employees working in the food area may find themselves in a situation where they have to take a decision whether or not to blow the whistle. If they do, they need to know how to do so, what the consequences can be and what their rights are. Whatever the reasons, the low rate of response underlines the need to improve the understanding of the topic in the food safety community.

For the countries that responded to the questionnaire, the legal situation as described by the respondents, sometimes verbatim, is as follows:

Argentina. Although Argentina does not have a legislation for whistleblowing, the country has a specific legislation against gender discrimination and harassment (physical and psychological). This is mainly oriented towards women, who are employees of the national public administration (federal level).

Australia. Australia's first national law providing legal protection for government whistleblowers, the "*Public Interest Disclosure Act*", was adopted in 2013 and took effect at the beginning of 2014. A new law "*Enhancing Whistleblower Protections Act 2019*" was passed in December 2018 and came into force 1 July 2019.

The whistleblower protection law includes criminal offences and civil penalties for a person causing or threatening to cause detriment to a whistleblower or breaching a whistleblower's confidentiality, including during an investigation into the whistleblower's concerns. In Australia, whistleblower protection is offered for certain disclosures under a patchwork of laws at both federal and state level. Eligibility for protection depends on the requirements of the applicable law and the subject matter of the disclosure. Not all disclosures are protected by law in Australia. At federal level, whistleblowers face potential imprisonment for making disclosures about certain subjects, including national security and immigration matters. Australia has also made significant strides in the area of whistleblower protection for the private sector, with new legislation to amend the Corporations Act.

The new law, the Whistleblower Protection Act 2019, will cover some 33,000 companies, including those in the food industry. The Commonwealth Ombudsman would oversee the whistleblowing framework related to the food industry.

³ This proved not be correct, since 2011 India has the Whistleblower Protection Act.

Chile. While there is no specific whistleblowing law or a law for protection of whistleblowers, under the transparency law, the identity of the informant is protected.

China. In its food safety legislation, China integrated the notion of whistleblowing in the Food Safety Law and has in 2016 developed the standard *“Measures for the administration of food and drug complaints and reports”*. In this, China defines a whistleblower *“as a person who reports suspected violations of food safety related to the process of food production and operation by its producers and operators to the Food and Drug Administration at all levels”*. The standard covers incentives and procedures for whistleblowing, investigation, feedback and record keeping. It also makes provisions for protection of whistleblowers against retaliation.

The Food Safety Law stipulates that all the information of the informants should be kept confidential and all the rights and interests of the informant shall be protected. Where the whistleblower reports on a company, the company or business shall not retaliate against the whistleblower by dissolving or changing the labor contract or by other means. Under this law, relation such as psychological harassment or mobbing to punitive transfer, demotion, financial sanctions, unfair dismissal are prohibited although, accordingly, no sanction, such as disciplinary measures, is foreseen in case of such violations.

In authentic cases, whistleblowers can be rewarded for tip-offs, and whistleblowers reporting internally get more rewards. However, the law does not require an internal whistleblowing system, and does not define a specific order for reporting.

The law requires that within 5 days a response should be given to the informant as to the acceptance of the allegations and 60 days for investigation and feedback.

Croatia. The country benefits from the *“Whistleblower Protection Act”* also known as the Whistleblowers Act (or the law for the protection of reporters of irregularities). It came into force on 1 July 2019. Prior to the adoption of this act, the protection of whistleblowers was partially regulated in some other law documents. By irregularity it is meant *“any form of action which results in a threat to the public interest”*. It also implies violations of laws and regulations as well as negligent management of public goods, public funds and EU funds. They can also include issues related to the performance of work by the employer, such as for instance, non-disclosure of prescribed documents, manipulation of financial statements or negligent management of public goods, which can endanger human health.

The Whistleblowers Act applies to all public authorities at the central and local level, to legal entities with public authority, to companies' majority owned by the state or a local unit, and to all private sector employers.

The *“Food Law”* in Croatia does not provide specific provisions for whistleblowing since the new Whistleblowers Act covers all steps and conditions in whistleblowing process/situation.

The term whistleblower is defined *“as a person who has knowledge of certain irregularities, whether they are violations of laws, regulations, ordinances, codes of ethics, internal acts of companies and who reports them, which are related to the performance of work by the employer”*.

The law specifies all the procedures for whistleblowing, from reporting system (inclusive record keeping), to the procedures for investigation, feedback and records. The retribution against the company or institution involved (sanctions, disciplinary measures), protection of whistleblowers against retaliation, and enforcement mechanisms (inspection of compliance). No incentives are though foreseen for whistleblowing.

The law specifies who is covered under the law. It also requires companies or institutions to set up an internal system. An ombudsman is to be designated to receive the reports of irregularities and initiate an investigation.

Whistleblowers are protected from any form of retaliation or disadvantage, such as dismissal, harassment, refusal of promotion, non-payment and reduction of salary or other benefits, disciplinary action or punishment, denial of assignment of training, change in work schedules, transfer to another job, arbitrary referral for health examinations, etc. They have also a right to the protection of their identity and confidentiality of their information. The country provides specific infrastructure to support whistleblowers, through an independent ombudsman. The whistleblower is also exempt from paying court fees, the burden of proof is shifted to the employer and the court proceedings are conducted urgently. However, in the event that whistleblowers abuse the whistleblowing system to the detriment of the employer, they shall be punished by a fine.

The anti-discrimination law of Croatia defines harassment *“as any undesirable behavior intended to violate a person’s dignity, or creating fear, a hostile, degrading or offensive environment”*. In case of violation of the anti-discrimination law and filing a complaint, an investigation is to be carried out within 15 days from the receipt of the complaint. Regrettably there is no provision for investigating the role of the management nor a disciplinary or punitive sanction. Only financial sanctions are considered.

Hungary. The country has a general whistleblowing protection law, that also applies to food safety. The law defines whistleblowing as *“a public interest notice that draw attention to a circumstance the remedying or elimination of which is in the interest of the community or of society as a whole “*. Similar to some other countries of the region, the law outlines all the procedures for whistleblowing from reporting to investigation, feedback and records. Also, the retribution against the company or institution involved (sanctions, disciplinary measures), protection of whistleblowers against retaliation, and enforcement mechanisms (inspection of compliance) are specified. Protection of whistleblowers is though limited to punitive transfer, demotion, financial sanctions and unfair dismissal. However, under this law, whistleblowers are not specifically protected against bullying, moral harassment or other type of abuse. No incentives are provided for whistleblowers, nor is there any kind of legal support for those subjects of retaliation. Companies or institutions are required to have an internal whistleblowing system. The law provides details for investigation procedure inclusive protection of witnesses. The law covers all areas from illegal matters to threats to public interest (incl. public health, safety and environment), gross mismanagement such as abuse of authority or counseling to commit wrongdoing, concealment of a wrongdoing, miscarriage of justice except immoral acts. All sectors private and public sectors, including NGOs and independent experts are covered. The law requires that both authorities, internal and external, provide feedback to the whistleblowers within a timeframe of 30 days.

Although the whistleblower protection law does not specifically protect against abuse, moral harassment is a criminal offense and is well covered under criminal law. Victims are given the rights to i) be assisted by a lawyer, an observer or a person of confidence, ii) confirming one’s testimony (signing one's deposition and/or commenting any inaccuracy), iii) accessing and retrieving the entirety of a witness deposition, iv) commenting on the report of the investigation, v) requesting witnesses without limitation, vi) having their documented evidence examined.

Indonesia. It is reported that Indonesia also to benefit from a whistleblowing law applicable to food and pharmaceutical industry as well as public health authorities. It requires companies and organizations to also have an internal whistleblowing system. The law covers the procedures for whistleblowing, for investigation, feedback and records as well as protection of whistleblowers against retaliation. In case of retaliation, there is administrative support to the victimized whistleblowers. Sanctions or disciplinary measures are specified for those responsible of violations.

Iran. Islamic republic of Iran does not have a law on whistleblowing and protection of whistleblowers as such. Actually, disclosure of confidential governmental information that has been sealed as top secret or secret is a crime. Harassment of employees objecting to malpractice is also not uncommon. In case of public risks, non-governmental organizations utilize directly the mass media to draw the attention of the public to corruption that are associated with the misuse of public funding. The respondent also highlights the good question of the role of consumers in alerting on any risk associated with food, cosmetics and health products. A specific form is available for citizens to report directly to the Food and Drug Administration. The perpetrator of illegal acts, such as counterfeit goods adulteration, sale of corrupt or expired goods, are punished according to the law. A project of law consisting of i) protecting whistleblower, ii) rewarding them and iii) setting up a structure to assist whistleblowers is under discussion.

Kazakhstan. Kazakhstan has no specific legislation or standard for whistleblowing but under the food safety law the subject is covered to some degree.

Under the civil law, employees are to some extent protected against moral harassment. The rules for investigation and accounting of accidents and other injuries to the health of workers associated with work are defined a unified procedure, Furthermore, the "*Criminal Procedure Code of the Republic of Kazakhstan* " defines the rights of victims. These include the rights i) to be assisted by a lawyer, ii) to access and retrieve the entirety of a witness deposition and the iii) the right to have the documented evidence examined. There is though no sanction for the management committing such violations.

Kenya. Kenya does not have a specific law for whistleblowing applicable to food safety. It has a general law that is limited to reporting miscarriage of justice at county and national level.

Macedonia. The country has a whistleblowing law, which in 2018 was amended to include protection of whistleblowers. Although the law does not specifically refer to food safety, it addresses it implicitly by referring to health risk as well as other public interests such as environment, nature and corruption. In the sense of the law on whistleblower protection, a whistleblower is "*a person who with good intentions makes a notification (disclosure) of a protected information*". The law covers the procedures for whistleblowing, from investigation, feedback and records, retribution against the company or institution involved as well as the protection of whistleblowers against retaliation. The type of employees covered by the law are specifically outlined. The law requires businesses to have an internal whistleblowing system, and upon reporting, within 15 days, the whistleblowers should be notified of the actions taken. Similarly, authorities have to react within 15 days from the receipt of a complaint. Paradoxically, it does not address the issue of enforcement and compliance, that is a system of monitoring to ensure that internal reporting system works. While whistleblowers or people closed to them are protected from any kind of violence or danger, whistleblowers are not particularly protected from retaliation in form of moral harassment. No infrastructure or

financial support is foreseen to assist whistleblowers. A positive point is that businesses that do not follow an internal complaint can be fined.

Malaysia. In Malaysia, the “*Whistleblower Protection Act of 2010*” provides protection to whistleblowers who voluntarily come forward to report or reveal information on corruption activities and other wrongdoings.

Under this law, a whistleblower is defined as “*any person who makes a disclosure of improper conduct to the competent enforcement agency*”. The law does not define who is specifically covered but describes all whistleblowing procedures from the reporting system to investigation, feedback, retaliation against the company or institution involved, including whistleblower protection, enforcement as well as incentives to report. The law defines “*enforcement agency*” as any ministry, department, agency or body conferred with investigation and enforcement functions, or powers established by the Federal or State governments, or by Federal or State laws.

The law provides for the protection of whistleblowers against any type of reprisal. The employer and the enforcement agencies should each investigate the complaint within 6 months and report on the action to be taken. A court will decide on the protection rights of the whistleblowers and subsequent assistance. If a complaint is not followed up, the employer can be fined by the enforcement agency. Similarly, in case of retaliation against the whistleblower, the enforcement agency may decide on disciplinary measures. Although food safety is not specifically mentioned, it is likely that food safety failures are also covered by the law. However, there have been arguments over the significance of the term « *wrongdoings* ». These limit the scope of the application of the law and the types of information that can be disclosed and the agencies that can benefit from the law. So, its applicability to food sector is not clear. Nevertheless, whistleblowers may come forward to report to the Food Safety and Quality Department (FSQD), District Health Department or the police, any misconduct related to food safety.

There are plans to revise the Whistleblower Protection Act 2019 by allowing disclosure to non-enforcement agencies removing the restrictions on types of disclosures permitted and on the motive behind them.

Malta. Malta has also a whistleblowing act, but there is no specific reference to food safety and the national food legislation does not make any reference to whistleblowing. There was no specific information on protection of employees.

Montenegro. Since January 2016, Montenegro applies the Law on « Prevention of Corruption ».⁴

The law provides a definition for whistleblowers as follows “*A whistleblower can be any natural or legal person who submits a report on endangering the public interest that indicates the existence of corruption*”. The whistleblower can do so in writing, give a statement orally, electronically and by mail. The whistleblower may remain anonymous, unless the person explicitly requests that the data be made available to the public, in which case the data on the

⁴ Official Gazette" of MNE, No. 53/14

whistleblower shall be treated in accordance with the law governing the confidentiality of data (Articles 44, 45, 47 and 56 of the Law on Prevention of Corruption).

Although the law does not specifically mention food safety and the food law does not make specific provision for whistleblowing, Article 44 of the Law on « Prevention of Corruption » covers also issues related to health and safety.

The law states *“Endangerment of the public interest is any violation of regulations, ethical rules or the possibility of such a violation that has caused, is causing or threatens to endanger the life, health and safety of people and the environment, human rights or material and non-material damage to the state or legal and physical person, as well as an action aimed at not finding out about such an injury”*.

This law regulates the procedure for filing a whistleblower report, the manner of resolving it as well as the procedure for a request for protection of whistleblowers.

The application can be submitted to a government body, company, other legal entity, entrepreneur (Article 45 of the Law on Prevention of Corruption).

There is no specific requirement for an internal whistleblowing system. However, the authority, company, other legal entity or entrepreneur is obliged to appoint a person to receive and act on whistleblower reports. This person will be responsible to check the veracity of the allegations from the same and propose measures to the head of the body or responsible person in the legal entity or entrepreneur. Within 45 days from the date of submission of the report, the whistleblower is to be informed of the outcome of the measures (Articles 48, 49 and 50 of the Prevention of Corruption Act). The application can also be submitted directly to the Montenegrin Agency for Prevention of the Corruption, if the whistleblower has not been notified or is not satisfied with the notification by the authority, company, other legal entity or entrepreneur. After checking the allegations from the submitted application, the Agency issues an opinion on the existence of a threat to the public interest, which indicates the existence of corruption, and provides a recommendation if the threat has occurred. The Agency may initiate a procedure to determine the existence of a threat to the public interest ex officio (Articles 51, 52 and 54 of the Law on Prevention of Corruption).

A direct telephone line has been opened in the Agency.

The whistleblower has the right to protection if been harmed, i.e. there is a possibility of damage due to the filing of a report, as well as to a reward if the reporting has contributed to preventing the endangerment of public interest (Para 70 of the Law on Prevention of Corruption).

Also, whistleblowers have a right to a reward if they have contributed to preventing the endangerment of public interest (Para 70 of the Law on Prevention of Corruption).

The law applies to any field from illegal matters, threats to public interest (incl. public health, safety and environment), immoral acts, gross mismanagement such as abuse of authority or encouragement to commit wrongdoing, concealment of a wrongdoing or miscarriage of justice and to all sectors from private sector, public sector, NGOs, to independent experts.

Norway. Under the *“Working Environment Act”*, dating 2020, Norway has a comprehensive law for whistleblowing and protection of whistleblowers that covers all kind of whistleblowing issues. Implicitly, it covers also warnings related to food safety.

Accordingly, a whistleblower is defined as “*someone who notifies censurable conditions/wrongdoings such as risk of health and life; risk to climate or environment; corruption or economic crime, governmental abuse, improper working environment or breach of personal data security*”. The law specifies those who benefit from the law. Whistleblowers are protected against retaliation in form of threats, harassment, undue differential treatment, social exclusion or other improper conduct, warning notices, change in work tasks, relocation or demotion, suspension, wrongful termination, dismissal or disciplinary action.

Employers have the obligation to establish an internal whistleblowing procedure and the duty of confidentiality in connection with notification to public authorities. The Working Environment Act requires the obligation to prepare procedures for notification including receipt, processing and follow-up of notifications.

Generally, the employee reports the wrongdoing to the employer using the employer’s notification procedures for internal notification. If the employee has reason to believe that internal notification would not be appropriate or would serve no purpose, then the employee can report to supervisory authorities and other external authorities such as the Norwegian Food Safety Authority, or the media.

Effective 1 January 2020, employers will have a duty to ensure that the notification is adequately examined “*within reasonable time*”. The undertaking’s notification procedures must contain requirements for the handling and processing of received notifications. The introductory provisions state that the routine procedures should specify the deadlines for processing the case and implementing the necessary measures, including feedback to the whistleblower.

Norwegian law prohibits retaliation. In the event of breach of the law, an employee may claim redress in form of compensation for financial damage on objective grounds, i.e. without regard to culpability on the part of the employer.

The employer can also get imprisonment for breaking the law.

Portugal. Portugal does not have a specific law on whistleblowing. However, as member of the European Union, it will have to transpose the EU Directive into its national legislation. Its proposal for a national strategy to combat corruption is criticized by the NGO Transparency International as being vague and not very ambitious. Under the civil law harassment of employees is considered as a serious infraction.⁵ Moral harassment is understood, *as an unwanted behavior, namely that based on a discrimination factor, practiced when accessing employment or in employment, work or vocational training, with the aim or effect of disturbing or embarrassing the person, affecting the dignity, or to create an intimidating, hostile, degrading, humiliating or destabilizing environment.*

The offending employer can be fined according to the turnover of the company and the degree of the offender’s fault. In spite of a clear and specific penalty for harassment, the law does not foresee a procedure for investigation.

⁵ Artigo 139.º e ss. do Código do Procedimento Administrativo, aprovado pela Lei n.º 4/2015, de 07 de janeiro, na sua atual redação

Russia. There is a general Federal Law 237-FZ, dating 2008, about “*anti-corruption*” and some 41 other laws that touches whistleblowing. However, none of these cover food safety specifically and there is no specific whistleblower protection law.

On the other hand, in the national Food Safety Management Standard (GOST R ISO 22000-2019), the responsibilities of staff in reporting and exchanging information and that of companies for investigating the case are outlined in general terms. Retaliation against whistleblowers is to some point covered under the labor law (Labor Law N197-FZ). According to this law, complaints of employees should be addressed within 2 working days. Employees are supported internally by the company's labor union, or externally by labor union associations or the government labor inspectorate. Should the staff need to turn to a court, there is no judicial cost.

Slovakia. The country does not have a specific whistleblowing law, but employees are protected against bullying and psychological harassment by the criminal law. Under this law, “*psychological harassment is defined as a behavior as a result of which an intimidating, hostile, embarrassing degrading humiliation, abusive, or insulting environment is or may be created and which has the intention or effect of interfering with freedom or human dignity*”.

Sri Lanka. Protection whistleblowers against bullying and harassment is covered under civil law. However, not much detailed information is available on the strength of this law.

Switzerland. Presently, the country has no legislation on whistleblowing. Actually, whistleblowing including reporting on failures, fraud or other criminal acts of employers to general public is prohibited by law. A draft law for regulating whistleblowing was under consideration since 2008, but in 2019 it was rejected. The proposal was about regulating the process without providing any protection for whistleblowers.

There is an embryonic civil law against harassment and bullying of employees, however, there is no sanction against violating employers, nor any effective protection for employees. Psychological abuse is practically tolerated. The costs of recourse are so high that victimized whistleblowers or abused employees are often discouraged from seeking redress and employers go scot-free (Motarjemi, 2020).

Taiwan. In Taiwan, the law on food safety management includes specific provisions for the protection for whistleblowers. Under this law, there is an obligation for employers to communicate the rights and duties of employees with regard to reporting and disclosing safety concerns. In case of whistleblowing, all the duties, salary and rights of the whistleblowers will be protected. The law sets a specific order of reporting. The food and drug administration will receive and investigate the case, within a 2-months period. No matter if the claim is true or not, the whistleblower would be protected. However, if the information is true, depending on the importance of the case, the whistleblower will receive a considerable reward. A whistleblower can be rewarded with 20% to 50% of the fine. On the other hand, if it is found that the disclosure of information is for malicious reasons the whistleblower can be fined. The law also encourages the establishment of an internal whistleblowing system and provides incentives to companies that establish one.

Interestingly, many organizations from a national foundation to the police and social department of the government, and a humanitarian foundation, may provide support. Additionally, in case of retaliation, the government may provide the services of a free solicitor and exempt the whistleblowers from judicial fees.

Uganda. Since 2010, Uganda has a “*Whistleblower Protection Act*”. It specifies procedures by which individuals in both the private and public sectors may, in the public interest, disclose information that relates to irregular, illegal or corrupt practices. In this context, a whistleblower is defined as “*a person who makes a disclosure of impropriety under the Whistleblowers Protection Act, 2010*”. However, although the law is general and very comprehensive, it does not specifically apply to food safety. It makes provisions for many aspects of whistleblowing, ranging from requiring companies to have an internal whistleblowing system, to protection against retaliation, such as providing the whistleblower a free solicitor and incentives. The law stipulates that “*a whistleblower shall be rewarded for his or her disclosure five percent of the net liquidated sum of money recovered consequent upon the recovery of the money, based on that disclosure. A whistleblower shall be paid within six months after the recovery of the money*”.

DISCUSSION

Despite recent progresses in recognizing the importance of whistleblowing and the need to protect whistleblowers, the situation remains highly uneven, both between nations and between sectors of society. In general, awareness seems to be particularly weak in the food sector, although many epidemics, incidents or crises could have been prevented by whistleblowers. This was confirmed by the survey results, as the level of response and awareness on the subject is low, especially regarding the protection of whistleblowers from retaliation. Most respondents were unable to answer about the status of the legislation regarding harassment and bullying that many whistleblowers face internally.

The survey shows that many countries focus on strengthening the whistleblowing reporting system, and less on the need to protect the whistleblower through, for example, financial support, free and quick legal proceedings in case of retaliation, a clear procedure for investigating abuses and mistreatment of employees, systematic information of employees about their rights and duties at the time of hiring, etc. The same has also been reported in a review of draft legislation of some EU countries (Worth, 2021).

Today, a number of countries have initiated whistleblower legislation and offer protection to employees who report wrongdoing. The Enron scandal in 2001 in the USA and the Clapham rail collision (1988) in the UK were major impetus for recognition of the importance of whistleblowing and the need for legislating the subject matter. Financial violations and various incidents in the areas of environment and public health reminded governments on the need to promote whistleblowing and protect employees against retaliation. In the area of food safety, incidents such as the melamine outbreaks in USA in 2007 and China /South Africa in 2008 as well as the horsemeat scandal in Europe in 2013 are examples.

However, parallel to the regulatory developments, following the Enron scandal, under the pressure of investors requiring multinational companies to have a better corporate governance, the New York Stock Exchange (NYSE) required companies listed on the NYSE to meet certain governance standards, including the establishment of a Code of Business Conduct and Ethics. The standards required companies to establish an internal whistleblowing system and encourage their staff to report any non-compliance or problems of other forms, in violation with laws, regulations, or the provisions of the Code itself and protect them against retaliation (Motarjemi, 2022a). Hence, independent from the regulatory requirements, since mid 2000's, many multinational companies had established an internal whistleblowing system.

The United States was among the first countries to recognize the importance of whistleblowers for prevention of corruption and enacted legislation. Historically, their first law, the False Claims Act, dates back to the American Civil War of the 1860s, where whistleblowers who revealed fraud could receive a financial reward. In 2011, led by the U.S. Food and Drug Administration, whistleblower protection was explicitly incorporated into the Food Safety Modernization Act. Under Section 402, the law protects employees who report food safety violations (FDA, 2011). The law is enforced by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA). In Europe, in 2014, the Council of Europe issued recommendations for whistleblower protection. It states that "*whistleblowers should be protected against any form of retaliation, direct or indirect, by their employer and by persons working for or acting on behalf of the employer*" (COE, 2019). Such retaliation could include termination, suspension, demotion, loss of promotional opportunities, punitive transfers and salary reductions or deductions, harassment or other punitive or discriminatory treatment.

Later in October 2019, the European Commission adopted a whistleblower directive that defines the minimum requirements for the protection of employees against reprisals. The EU directive requires companies with more than 50 employees to set up an internal whistleblower system. The directive recommends a three-step reporting channel: 1) internal reporting 2) reporting to public authorities and 3) public disclosure. However, under certain conditions, it also allows direct reporting to external channels. It requires employers and public authorities to provide feedback within a reasonable timeframe but, not exceeding three months from the acknowledgment of receipt. It recommends prohibition of any form of retaliation, including threats or attempts of retaliation.⁶ The 27 EU countries have until December 2021 to transpose the provisions of the EU directive into national law (EU, 2019).

In the United Kingdom, the Public Interest Disclosure Act (1998) also protects workers from adverse treatment or victimization by their employers if they disclose wrongdoing in the public interest. In applying this law, the UK Food Standards Agency has extended protections to food industry workers, whether or not the information is confidential, or the wrongdoing takes place in the UK. Qualifying disclosures include a criminal offence, breach of statutory duty, miscarriage of justice, danger to the health and safety of any person, damage to the environment and deliberate concealment of information relating to any of the five matters listed above. Following the horsemeat scandal, in 2015, the United Kingdom launched the National Food Crime Unit (NFCU) as a dedicated law enforcement function of the Food Standards Agency (FSA).

⁶ (a) suspension, lay-off, dismissal or equivalent measures; (b) demotion or withholding of promotion; (c) transfer of duties, change of location of place of work, reduction in wages, change in working hours; (d) withholding of training; (e) a negative performance assessment or employment reference; (f) imposition or administering of any disciplinary measure, reprimand or other penalty, including a financial penalty; (g) coercion, intimidation, harassment or ostracism; (h) discrimination, disadvantageous or unfair treatment; (i) failure to convert a temporary employment contract into a permanent one, where the worker had legitimate expectations that he or she would be offered permanent employment; (j) failure to renew, or early termination of, a temporary employment contract; (k) harm, including to the person's reputation, particularly in social media, or financial loss, including loss of business and loss of income; (l) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry; (m) early termination or cancellation of a contract for goods or services; (n) cancellation of a license or permit; (o) psychiatric or medical referrals.

Other European countries have also adopted legislation for whistleblower protection. In France, for instance, the Sapin II law, or the anti-corruption law, also provides certain protections for employees. It requires companies with more than 500 employees or recording a turnover superior to 100 million euros to have an internal whistleblowing procedure (Eversheds Sutherland, 2017)

Although not reported in this survey, as described above for some of the neighboring countries, Serbia has one of the best whistleblowing laws. Whistleblowers benefit from the effective support of a whistleblowing platform *Pištaljka* (The Whistle) combining both journalism and media service with free legal advice.⁷

Since 2006 Japan benefits from a Whistleblower Protection Act that defines the reporting system. However, as the scope of application of the Act was too narrow, in June 2020 Japan brought amendments to its Act. The scope of Whistleblower Protection Act has been broadened and to ensure a proper whistleblowing system including the protection of identity of whistleblowers (Sawasaki and Ko, 2020).

Apart from countries mentioned above, a number of other countries have a more or less developed legislation on the subject. Examples are Albania, Belgique, Bosnia and Herzegovina, Botswana, Canada, Ghana, India, Ireland, Israel, Italy, Jamaica, Kosovo, South Korea, Luxembourg, Lebanon, Liberia, Moldova, Mozambique, New Zealand, Peru, Romania, Rwanda, Slovenia, South Africa, Sweden, Tanzania, Tunisia, Vietnam, and Zambia. This report is not an exhaustive review of all countries. However, the survey allows to have an insight into the legislation of number of countries and compare their strength in terms of coverage, adequacy and approach.

The survey shows that although some countries seem to have a comprehensive legislation, when the real needs of whistleblowers are taken into account, none of the countries have an optimum legislation covering the full scope of issues that whistleblowers face. Every country has certain gap in its legislation as a consequence of which whistleblowers continue to suffer huge setbacks. This is also confirmed by the findings of another survey which shows whistleblowers laws are widely underutilized and that the majority of whistleblowers do not formally succeed in retaliation complaints. As the study rightly stresses: *"Even when whistleblowers officially prevail, they often 'lose by winning' because of small financial awards, high costs and lengthy procedures for resolving retaliation cases."* (IBA/GAP, 2021).

The ambiguities and lack of specificity in some laws are traps for some whistleblowers who come forward with information only to discover that the law does not apply to them. This has a chilling effect on employees and weaken their trust in the system. Consequently, even in countries that have passed legislation, many whistleblowers still struggle to survive. Sometimes they are denied whistleblower status and protection. In other cases, their concerns, which are the subject of whistleblowing, are ignored.

The worst situation is for those whistleblowers who expose wrongdoing of their leaders or authorities. They risk severe retaliation. Although many respondents reported prohibitions on retaliation against whistleblowers in their legislation, none reported specific punitive or disciplinary action against those who violate this law. Often investigations fail to examine the

⁷ Whistleblowing International Network. Pištaljka <https://whistleblowingnetwork.org/Membership/Our-Members/Members/Pistaljka>

role of the management in a wrongdoing. As a result, the laws become ineffective in protecting whistleblowers. As Blaise Pascal said: *"Justice without force is powerless"*.

In responding to the questionnaire, some respondents were under the impression that whistleblower protection was well covered by their food safety legislation or their other laws and that the issue was well addressed in their country. However, the experience of many whistleblowers shows that, in practice, there may be loopholes in the system that only come to light when the system is put to the test. For example, the role of unions in supporting whistleblowers was mentioned. While workers can benefit from the support of trade unions, this is not necessarily the case for managers or high-level scientists facing powerful companies. Or, there is no international regulatory authority to which whistleblowers from multinational companies can report information of global importance and receive protection. In a situation of conflict of interest, national authorities may prioritize their home interests rather than addressing issues outside their jurisdiction (Motarjemi, 2020).

The survey also gave us a comparative overview of the whistleblower legislation and infrastructure in different countries. For example, in some countries such as Taiwan and Uganda, whistleblowers are provided free solicitor. In Russia, in case of labor law violations, employees are exempted from legal costs. In several countries, such as China, Montenegro, Taiwan, Uganda and the USA, whistleblowers can receive financial reward. In contrast, in Switzerland, abused employees have to advance considerable legal costs and incur huge attorney fees. Even in the case of a proven injury, the cost of legal proceedings may exceed the compensation they may receive. These conditions become a disincentive for reporting and discourage victimized whistleblowers to seek redress. De facto, corporations enjoy impunity and are sustained in their malpractices (Motarjemi, 2020).

Despite the theoretical protection offered, the reality is often different and lies in all the details that are not covered by the law or that are unfair. This is why the actual experience of whistleblowers is valuable and must be used to improve the situation. The adequacy and efficacy of any proposed legislation should be checked against real case scenarios.

Many countries have developed a general whistleblower law that are supposed to apply to food safety, but without taking into account its specificity. For example, as mentioned above, the European directives requires that actions should be taken within a reasonable time but not later than 3-months. Different countries provide different time frame. For example: China: 60 days; Croatia: 15 days; Hungary: 30 days; Macedonia: 15 days; Malaysia: 6 months; Montenegro: 45 days; Russia: 2 working days, Taiwan: 2 months. Such delays are not reasonable for health and safety issues or environmental issues, which require immediate reactions and actions.

Furthermore, the legislation of countries does not make a distinction between the need for addressing an urgent food safety issue, e.g., a product recall versus the need for long-term measures such as a root cause analysis and correction of systemic or latent failures (Motarjemi 2014a). None of these laws seem to make specific reference to record keeping and type of information that need to be documented. Such information is essential in case of prosecution. Nor do they consider the need for members of management to have a clear definition of responsibilities and accountabilities, short of which, in case of violation and judicial procedures, they will conveniently put the blame on each other. In other words, the quality of management is a pre-requisite for a responsible food safety management.

In the context of food safety management, the mere act of bullying and harassment should also be considered as a food safety violation. Based on such a principle, bystanders should be encouraged to report such misdeeds under the same terms as any other food safety violation. They should be considered as food safety whistleblowers and benefit from legal protection.

Another specificity of whistleblowing in the context of food safety management is the specific need of considering failures in preventive measures, such as negligence in food safety management or lack of adequate infrastructure or reporting system. Whistleblowing in these situations is much more difficult and ambiguous for employees because sometimes the legislation is not precise and leave much latitude to internal management of businesses. Sometimes the assessment of the failure is a subjective matter, or there is no certainty that a failure will translate into an immediate danger for consumers. Such is, for instance, the lack of infrastructure, expertise, or appropriate internal reporting system. Furthermore, the identification of failures and their correction is inherent to food safety management system and the question that raises for an employee at what point in time, or degree of gravity, should the employee report a failure to authorities.

The EU Directive requires that there should be a close link between reporting and the adverse treatment suffered, directly or indirectly, by the reporting person, for that adverse treatment to be considered to be retaliation and consequently for the reporting person to benefit legal protection. However, experience of some whistleblowers has shown that in case of internal reporting, retaliation may come some time after reporting. This would be typically the case of a food safety professional, a compliance manager or auditor who try to address the dysfunctions within the company. It has happened that the offender has been promoted years later and taken revenge on the person who has reported the non-compliance.

The survey results highlight the need to specifically incorporate the issue of whistleblowers into national food legislation, taking into account the specific requirements of food safety management and food production conditions. Such a measure will also raise awareness of the importance of this issue among food professionals. In addition to the United States and the United Kingdom mentioned above, the survey showed that few other countries have addressed the issue of whistleblowers in their national “food” legislation. China and Taiwan are examples.

In general, the response to the section on bullying and harassment was low, indicating either a certain lack of interest and/or awareness of the seriousness of the problem, or the absence of specific laws and regulations. Some respondents stated that the topic was not within the scope of their expertise. Yet, knowledge of rights and duties should be of interest to anyone entering the professional world. Without this knowledge, they will not be able to protect themselves or fulfil their responsibilities. Once again, this survey allows us to identify the need for employees to be aware of their country's labor laws, their rights to protection against bullying and harassment, and unfair dismissal.

The subject of violence and harassment at work is presently being addressed by the International Labor Organization (ILO), under the C190 - Violence and Harassment Convention (ILO 2019). The Convention was adopted in 2019 by a majority of countries. Member countries of ILO are in the process of its ratification. This is a major advancement. So far only 7 countries (Argentina, Ecuador, Fiji, Namibia, Mauritius, Somalia, Uruguay) have ratified it (ILO, 2019).

To support the integration of whistleblowing into national food legislation, it is recommended that a food sector-specific guideline be developed. Such a guideline should provide guidance

on measures and requirements for the entire process, from informing employees about their rights and the whistleblower system to reporting and investigation procedures, feedback, correction of deficiencies, compensation and record keeping. It should also provide guidance for measuring the effectiveness of the law and its implementation.

In addition, legal and judicial procedures need to be adapted to ensure prompt and effective resolution of disputes, so that whistleblowers can be reintegrated into working life as soon as possible. Infrastructure to guide and support whistleblowers is also needed.

Additionally, the well-functioning of whistleblowing procedures and adequate handling of complaints, be they food safety failures or retaliatory measures should be integrated in food safety audits and/or inspection. Specific attention should also be given to the structure of reporting and such a structure should be independent from the day-to-day management of food safety. The unit in charge should be preferably be reporting to the governing board of the company or organization.

Laws are useful when, in practice, they have proven to be effective. To this end, the whistleblower's experience should be monitored, reviewed, analyzed and used to fill gaps and bring improvements to the system (Gibaud, 2018, Motarjemi, 2022b, Detwiler, 2015).

Independently to the whistleblowing legislation, the issue of abusive treatment of employees is of critical importance to food safety management and, more generally, to public health. Food safety management is not only about science and technology, but also about corporate culture and the working conditions of employees. A company or organization that allows bullying and harassment to occur, without taking effective action against it, demonstrates a lack of ethics and promotes a negative organizational culture. It fosters a culture of fear in which employees are more concerned about their own position than challenging the flaws in the food safety management system. They will be discouraged from speaking up and pointing out any shortcomings they may observe. The stage is set for failure. Furthermore, in a situation where employees work under duress and coercive conditions, they are likely to make mistakes or commit violations. As such bullying and harassment of employees should be considered as an important food safety violation (Griffith and Motarjemi, 2022, Motarjemi, 2022b).

Several respondents recognized the need to strengthen their legislation in the area of bullying and harassment and to protect whistleblowers, and employees more generally, from such abuse.

Even in countries where labor laws explicitly prohibit bullying, harassment, or discrimination, the survey results suggest that often there are no sanctions for such criminal violations, the role of company/organization management is not examined, and members of management are not held accountable. Given the importance of organizational culture in risk management, this is a major gap in food safety management.

CONCLUSIONS AND RECOMMENDATIONS

The importance of whistleblowing and whistleblower protection is increasingly recognized by regulators around the world. Nevertheless, the state of whistleblowing legislation varies from country to country, with some having no specific legislation, others having fairly comprehensive legislation.

A number of countries have also addressed the issue in their food safety legislation. This has the advantage of raising awareness of the subject among food professionals, promoting whistleblowing in the food sector and setting requirements specific to food safety.

Many laws focus on the reporting mechanism and not enough on the protection of whistleblowers and their needs. The negative impact of bullying and harassment of employees on food safety management has not yet been fully recognized and this practice is not yet considered a critical food safety failure.

Although general whistleblowing legislation exists in some countries, the inclusion of whistleblowing in national food laws would promote this issue in the food sector. The protection of employees from bullying and harassment should be emphasized and recognized as part of food safety management.

Given the global nature of the food supply, whistleblowing legislation in the food sector should be harmonized. It is recommended that the GHI develop an international guideline outlining best practice, i.e. the optimal procedures for reporting, investigating and handling complaints, as well as requirements for employee protection. That guideline may then be used for the development of globally harmonized whistleblowing regulations.

Whistleblowing and employee protection rights should also be integrated into the training of food safety professionals.

The experience of whistleblowers should be monitored and used to improve the effectiveness of the existing system.

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Annex 1: Questionnaire

Questionnaire for a survey (or for self-evaluation) of the national legislation for whistleblowing and/or protection of whistleblowers/employees

Name

Affiliation

Name of the Country/State

Address

Email:

Telephone number

Introductory section

1. Does your Country/State have specific legislation or standards on whistleblowing?

- Yes
- No

Comments

2. If yes, does it apply to food safety?

- Yes
- No

Comments

3. Does the national "food law" provide specific provisions for whistleblowing?

- Yes
- No

Comments

4. If there is no legislation, is there a plan in the pipeline (a draft proposal)?

- Yes
- No

Comments

If there is no legislation on whistleblowing, or a plan to have one, please go to section B. If there is a general law (or a plan in the pipeline) or whistleblowing is covered in the food law, please answer to questions in section A considering what applies best to professionals working in food industry.

Section A- Countries that have legislation or standards for whistleblowing and/or are in the process of developing such legislating or standards

A 1. What is the definition for the term "whistleblower" in your national legislation (or draft proposal)?

A 2. What does the whistleblowing legislation cover (mark all that apply)?

- The procedures for whistleblowing (reporting system inclusive record keeping)
- The procedures for investigation, feedback and records
- The retribution against the company or institution involved (sanctions, disciplinary measures)
- Protection of whistleblowers against retaliation
- Enforcement (inspection of compliance)
- Incentives for whistleblowing

Comments

A 3. Are there specific provisions re who is covered by the legislation (e.g., full-time, part-time employees, volunteers and trainees, non-executive members, shareholders, temporary and probationary employees, contractors, consultants, or those assisting whistleblowers)?

- Yes (please specify)
- No

Comments

A 4. Is there any legal obligation for companies or institutions to have an internal whistleblowing system?

- Yes
- No

Comments

A 5. Is there a prescribed order of reporting or disclosing for the whistleblower?

- Yes
- No

Comments

A 6. Are whistleblowers protected against specific forms of retaliation (mark all that apply)?

- Psychological harassment or mobbing
- Punitive transfer
- Demotion
- Financial sanctions
- Unfair dismissal
- Others (please specify)

Comments

A 7. Are the acts constituting psychological harassment outlined?

- Yes (see the list on the Annex 2 and choose those acts that are specified).
- No

Comments

A 8. Does the legislation cover the rights of whistleblowers? For instance, the right to refuse to violate the law, the right to reintegrate the employment or the right to receive compensation for the costs and damages.

- Yes (please specify)
- No

Comments

A 9. The scope of misconduct/wrongdoing and field of application:

A 9a. Scope of misconduct/wrongdoing (mark all that apply)

- Illegal matters
- Threats to public interest (incl. public health, safety and environment)
- Immoral acts
- Gross mismanagement such as abuse of authority or counseling to commit wrongdoing
- Concealment of a wrongdoing
- Miscarriage of justice

Comments

A 9b. Field of application (mark all that apply)

- General (covering all types of field)
- Financial crimes (money laundering, public procurement)
- Public health
- Food industry
- Pharmaceutical industry
- Environment
- Transport
- Ethical and moral issues
- Others

A 9c. Sector of application (mark all that apply)

- Private sector
- Public sector
- NGOs
- Independent experts

A 10. Are there provisions for feedback obligation (does the authority to which the complaint has been submitted have an obligation to respond regarding to both misconduct/food safety concerns and retaliation?)

- Yes (please specify)
- No, if no please go to question A12.

Comments

A 11. What is the time frame for feedback, specify?

- If reported to internal authority (i.e., management of employer), what is the time frame?
- If reported to external authority (i.e., Public health authorities), what is the time frame?

A 12. Is there any specific infrastructure (e.g., a help center) to assist whistleblowers?

- Yes, if yes, is it an organization independent from industry or the government? (please specify)
- No

Comments

A 13. In case of retaliation, is there legal support (e.g. free solicitor, exemption from judicial fees)?

- Yes (if yes, please specify)
- No

Comments

A 14. In case of retaliation, is there a whistleblower relief fund to financially support whistleblowers

- Yes (if yes, please specify)
- No

Comments

A 15. Does the legislation provide incentives for whistleblowing, for instance, a whistleblower compensation program that includes a percentage-based reward for original information that leads to successful financial recovery?

- Yes (if yes, please specify)
- No

Comments

A 16. In case of failures in following up reports of whistleblowers, is any sanction foreseen for the management?

- Yes (if yes, specify the nature of sanctions)
- No

Comments

A 17. In case of confirmed retaliatory measures, is there any appropriate disciplinary measures foreseen for those responsible?

- Yes (if yes, specify nature of disciplinary measures)
- No

Comments

A 18. Does the legislation specify the obligation of employers to clearly communicate the rights and duties of employees with regard to reporting and/or disclosing safety concerns?

- Yes (if yes, please specify)
- No

Comments

Section B - Personal protection of employees

B 1. Is there a specific legislation against psychological harassment, or mobbing? If so, choose the option (s) that applies?

- Criminal law
- Civil law
- Public/administrative law

Comments

B 2. Does the law give a definition for psychological harassment or mobbing?

- Yes (if yes, please specify)
- No

Comments

B 3. In case of established psychological harassment, is any sanction foreseen?

- Yes (if yes, please specify)
- No

Comments

B 4. Does the law specify the procedure for investigating psychological harassment/mobbing?
If "No" go to section C.

- Yes
- No

Comments

B 5. Is there any time frame for the investigation of the complaint?

- Yes (if yes, please specify)
- No

Comments

B 6. What are the mechanisms for ensuring an unbiased and professional investigation?

B 7. Does the law provide protection for witnesses?

- Yes (if yes, please specify)
- No

Comments

B 8. Does the law foresee "effective" mechanisms for sanctioning of witnesses who lie?

- Yes (if yes, please specify)
- No

Comments

B 9. What are the rights of the plaintiff in the investigation?

- Right to be assisted by a lawyer, an observer or a person of confidence
- Right to confirming one's testimony (signing one's deposition and/or commenting any inaccuracy)
- Right to access and retrieve the entirety of a witness deposition
- Right to comment on the report of the investigation
- Right to request witnesses without limitation
- Right to have the documented evidence examined
- Others, specify

Comments

B 10. What are the mechanisms of selection of witnesses?

B 11. Does the investigation examine the role and implications of the management in retaliation?

- Yes (if yes, please specify)
- No

Comment

B 12. In case of established failures of management, is any sanction foreseen?

- Yes (if yes, please specify)
- No

Comment

Section C- Best practices

Please write what are the specific elements in your legislation and its enforcement that you like to recommend for a guidance for best practices? Or, alternatively, specific problems that you have experienced, and you would like to have it addressed in such a guideline (others than those raised in this questionnaire)?

Annex 2: Indicators for bullying and moral harassment

The following is the Psychological Terror List (LIPT) developed by Prof. Dr. Heinz Leymann. The list is a typography of 45 actions of harassment, grouped in 5 categories. When one or several of these actions are repeated over time, they constitute "mobbing".

If your law for protection of whistleblowers or employees specify acts constituting psychological harassment or mobbing, please specify which of these acts are specified in your legislation as potential harassment. Mark all the options that apply.

1. Effects on self-expression and communication:

- The superior restricts the opportunity for the victim to express her/himself.
- The victim is constantly interrupted.
- Colleagues restrict victim's opportunity to express her/himself.
- The victim is yelled at and loudly scolded.
- The work is constantly criticized.
- There is constant criticism about victim's personal life.
- The victim is terrorized on the telephone.
- Oral threats are made.
- Written threats are sent.
- Contact is denied through looks or gestures.
- Contact is denied through innuendo.

2. Effects on social contacts:

- People do not speak with the victim anymore.
- The victim cannot talk to anyone; access to others is denied.
- The victim is relocated to another room far away from colleagues.
- Colleagues are forbidden/discouraged to talk to the victim.
- The victim is treated as if they are invisible.

3. Effects on personal reputation:

- People talk badly about the victim behind her/his back.
- Unfounded rumors are circulated.
- The victim is ridiculed.
- The victim is treated as mentally ill.
- The victim is forced to undergo a psychiatric evaluation.
- The victim's handicap (if any) is ridiculed.
- People imitate the victim's gestures, walk, or voice to ridicule him/her.
- Victims' political or religious beliefs are ridiculed.
- Victim's private life is ridiculed.
- Victim's nationality is ridiculed.
- The victim is forced to do a job that affects her/his self-esteem.
- The victim's efforts are judged in a wrong and demeaning way.
- The victim's decisions are always questioned.

- The victim is called by demeaning names.
- Sexual innuendoes are present.

4. Effects on occupational situation and quality of life:

- There are no special tasks for the victim.
- Supervisors take away assignments so that the victim cannot invent new tasks to do.
- The victim is given meaningless jobs to carry out.
- The victim is given jobs that are below her/his qualifications.
- The victim is continually given new tasks.
- The victim is given tasks that affect his/her self-esteem.
- The victim is given tasks that are way beyond his/her qualifications in order to discredit her/him.
- The victim is given impossible assignments.⁸

5. Effects on physical health:

- The victim is forced to do a physically strenuous job.
- Threats of physical violence are made.
- Light violence is used to threaten the victim.
- Physical abuse is present.
- Causing general damages that create financial costs to the victim.
- Damaging the victim's workplace or home.
- Outright sexual harassment is present.

⁸ For the purpose of the survey, this point has been added to the Psychological Terror List.