LAW n.179/2017

Provisions to protect people reporting crimes or irregularities they became aware of within their public or private employment

Art. 1.

(Amendment of article 54bis of Legislative Decree March 30th, 2001, n-165, on the protection of employees and collaborators who report illicit activities)

1. Article 54bis of Legislative Decree n.165/2001, is replaced by the following:

«Art. 54-bis. - (Protection of public employees reporting illicit activities). -

1. A public sector whistleblower who, in the interest of public administration, reports to the Transparency and Anticorruption Officer\(^1\), or to the National Anticorruption Agency (ANAC), or to the judiciary authority, or to the fiscal authority, about illicit behaviours he became aware of because of his employment, cannot be sanctioned, demoted, dismissed, transferred and cannot suffer other organisational measures that affect negatively, directly or indirectly, his working conditions as a consequence of his report.

The adoption of retaliatory measures against the whistleblower is communicated to ANAC by the same whistleblower or by the major unions in the public body where these measures took place.

ANAC informs the Department of Public Function at the Prime Minister or other relevant bodies to take care of their respective duties.

2. A public sector whistleblower is each employee of public administrations\(^2\).

\(^1\) As defined at article 1, paragraph 7 of Law n.190/2012. This law, also known as Law Severino (the name of former Ministry of Justice) or Anticorruption Law, introduced the obligation to appoint a Transparency and Anticorruption Officer in each public administration.

\(^2\) The definition of public administration at article 1, paragraphs 2 and 3 of the Legislative Decree n.165/2001 includes all the public administrations. Among them are schools, autonomous State administrations, Regions. Provinces, Municipalities, Mountain Communities, universities, popular houses institutions, Chambers of Commerce, non-financial public bodies, health institutions, the Agency for Negotiation of Public Administrations, Governmental bodies and Sports Institutions. Protected by this law are employees in public “regime”, such as magistrates, lawyers, prosecutors, military police, diplomats, prefects, Ministries Committee for Savings, National Commission for Stok Exchange, The Antitrust Authority, Firemen, Penitentiaries, professors and university researchers. Public controlled companies are included, too (requirements at article 2359 Civil Code).
This article is applicable to employees and contractors of companies providing goods or services on behalf of and in favour of the public administration.

3. The identity of the whistleblower cannot be revealed.

Within the criminal proceeding, the identity of the whistleblower is kept secret, according to the rules set in article 329 of Code of Criminal Procedure.

Within the proceeding at the Court of Accounts, the identity of the whistleblower cannot be revealed until the beginning of the court trial.

Within the disciplinary proceeding, the identity of the whistleblower cannot be revealed, if the disciplinary charges are based on separate elements than the report, also resulting from it.

When the charges are based, also partially, on the report and the identity of the reporter is necessary for the defence of the reported person, this cannot be used in the disciplinary proceeding without his consent.

4. The report is excluded from the right of access.

5. ANAC, after consultation with the Authority for the Protection of Private Data, enacts guidelines for whistleblowing procedures.

Guidelines provide for the use of IT channels and promote cryptography to guarantee the confidentiality of the whistleblower and protect the content of the report.

6. When ANAC ascertains the adoption of retaliatory measures by a public administration, it issues an administrative sanction of 5.000 to 30.000 Euro to the responsible person.

When ANAC ascertains the lack of whistleblowing procedures or the non-compliance with paragraph 5, it issues an administrative sanction of 10.000 to 50.000 Euro to the officer.

When ANAC ascertains that the anticorruption officer has not verified and analysed a report from a whistleblower, it issues an administrative sanction of 10.000 to 50.000 Euro to the officer.

The sanction issued by ANAC is calculated considering the size of the public administration involved.

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3 According to this article, investigative documents of the public prosecutor and the judiciary police are kept secret until the defendant has the right to know them, not later than the end of preliminary investigations. (...) Public prosecutor can rule, with motivated decree, to keep single acts secret.

4 According to articles 22 and subsequent of Law n.241/1990. These articles regulate the access to administrative documents for interested parties and wider citizenship.

5 Other profiles of liability on the person stand.
7. The public administration where the whistleblower suffers retaliations must prove that the measures taken against the whistleblower are motivated by different reasons than the report. Discriminatory and retaliatory measures are void.

8. The whistleblower, who is dismissed because of his report, is reinstated in his workplace\(^6\).

9. Protections under this law are not applicable when the whistleblower is convicted in first degree for libel, defamation, other crimes related to the report or civil responsibilities for the same behaviour.

Art. 2.

*(Protection of the employee or collaborator reporting illicit activities in the private sector)*

1. At article 6 of Legislative Decree June 8\(^{th}\), 2001, n.231\(^7\), after paragraph 2 following paragraphs are added:

2-bis. Programs provided at paragraph 1, letter a), provide that:

a) one or more channels that allows employees\(^8\) to report in detail, in the interest of the organisation, illicit behaviours (as stated in this decree), based on specific and convergent elements, or violations of the compliance programme they became aware of because of their employment; these channels guarantee the confidentiality of the whistleblower during the management of the disclosure;

b) at least one alternative reporting channel that guarantees the confidentiality of the identity of the whistleblower through IT tools;

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\(^6\) According to article 2 of Legislative Decree March 4\(^{th}\), 2015, n. 23.

\(^7\) Legislative Decree n.231/2001 introduced the criminal liability for legal persons in the Italian framework. To avoid this liability companies can implement specific compliance programmes; when one of the crimes covered by this law (the list is quite extended) is committed by a company manager or an employee, the judge evaluates the compliance programme to understand if the company had activated preventive measures for the commission of crimes committed by its employees or if the subject has committed the crime bypassing the programme. These programmes are not binding for the companies: protection in the private sector is thus incomplete.

\(^8\) According to article 5, paragraph 1, letters a) and b) of this Decree (231/2001), these employees are: a) subjects in representative, administrative or directive position at the organisation or at an organisational body with financial and functional independence, subjects managing the organisation; b) subjects operating under the overseeing and the direction of those at letter a).
c) the prohibition of retaliatory or discriminatory acts, direct or indirect, against the whistleblower for reasons related to the report;

d) the disciplinary system introduced within the programme\(^9\), provides sanctions against subjects violating the protection of the whistleblower and against whistleblowers making false reports deliberately or with gross negligence.

2-ter. Discriminatory actions taken against whistleblowers can be reported to the National Work Inspectorate by the whistleblower or the union he indicated.

2-quarter. Retaliatory or discriminatory dismissal of the whistleblower is void. Change of assignments\(^10\) and other discriminatory or retaliatory acts against the whistleblower are void, too.

In case of disputes over disciplinary sanctions, demotions, dismissals, transfers or other organisational measures negatively affecting, directly or indirectly the whistleblower’s working conditions and following his report, it is up to the employer to prove that these measures are motivated by different reasons than the report.

Art. 3

*(Integration to the provisions on the official, corporate, professional, scientific and industrial secret)*

1. In case of reports made accordingly to article 54bis of Legislative Decree n.165/2001 and article 6 of Legislative Decree n.231/2001, as amended by this law, the pursuit of integrity in public and private administration along the prevention and repression of malpractices are good cause to reveal information covered by the obligation of secrecy\(^11\).

2. Paragraph 1 is not applicable to subjects who become aware of the information when working as consultants or providers of assistance to interested public or private organisation or physical persons.

3. When news or documents covered by secrecy are communicated to the relevant body, it is prohibited to reveal them with modalities exceeding the purpose of removing the illicit activity, especially using non-appropriate communication channels.

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\(^9\) Regulated at article 2, paragraph 2, letter e).

\(^10\) As regulated at article 2103 of Civil Code.

\(^11\) As regulated at articles 326 (official secret), 622 (professional secret) and 623 (scientific and industrial secret) of Criminal Code and article 2105 of Civil Code (duty of loyalty).