

Provisions for the protection of whistleblowers who report crimes or misconduct of which they become aware in the context of private or public employment. (17G00193)

Art. 1

Amendment of Article 54-bis of Legislative Decree No. 165 of 30 March 2001 on the protection of an employee or collaborator who reports unlawful activity

1. Article 54-bis of Legislative Decree No. 165 of 30 March 2001 is replaced by the following:

«Art. 54-bis (Protection of civil servants who report unlawful conduct).

- 1. A civil servant who, on behalf of the integrity of the public administration, reports to the person responsible for the prevention of corruption and transparency set forth in Article 1, paragraph 7, of Law No. 190 of 6 November 2012, or to the National Anticorruption Authority (ANAC), or who reports to the ordinary judicial authorities or Court of Auditors, unlawful conduct of which he has become aware due to his employment cannot be punished, demoted, dismissed, transferred or subjected to another organizational measure having direct or indirect adverse consequences on his conditions of employment that are the result of the reporting. The adoption of measures that are deemed to be retaliation, set forth in the first paragraph, against the whistleblower shall in any case be communicated to ANAC by the interested party or by the unions that are the most representative within the relative administration. ANAC shall inform the Department of Public Administration of the Presidency of the Council of Ministers or other supervisory or disciplinary bodies for the activities and any measures within the scope of their responsibility.

2. For the purposes of this Article, civil servant means an employee of the public administration as set forth in Article 1, paragraph 2, including employees set forth in Article 3, employees of a public economic entity or employees of a private entity under public control in accordance with Article 2359 of the Italian Civil Code. The regime set forth in this Article shall also be applied to workers and collaborators of companies that are suppliers of goods and services who work on behalf of the public administration.

3. The identity of the whistleblower cannot be disclosed. In the context of criminal proceedings, the identity of the whistleblower shall be subject to secrecy in the manner and within the limits provided by Article 329 of the Italian Code of Criminal Procedure. In the context of proceedings before the Court of Auditors, the identity of the whistleblower cannot be disclosed until the conclusion of the evidentiary phase. In the context of disciplinary proceedings, the identity of the whistleblower cannot be disclosed when the disciplinary complaint is based on distinct and additional verifications with respect to the report, even if consequential with respect to it. If the complaint is based, in all or in part, on the report and knowledge of the identity of the whistleblower is indispensable for the accused's defense, the report will be used for purposes of the disciplinary proceedings only with the whistleblower's consent to the disclosure of his identity.

4. The report shall not be subject to the access provided by Articles 22 et seq. of Law No. 241 of 7 August 1990 and subsequent amendments.

5. ANAC, having heard the Data Protection Authority, shall adopt specific guidelines related to procedures for the presentation and management of reports. The guidelines shall provide for the use of various means, including electronic, and shall promote the use of encryption tools to guarantee the confidentiality of the whistleblower as well as of the content of the reports and relative documentation.

6. If it is determined, in the context of the preliminary investigation conducted by ANAC, that discriminatory measures have been used by one of the public administrations or one of the entities set forth in paragraph 2, without prejudice to other aspects of liability, ANAC will apply an administrative sanction against the responsible party that adopted such measure that ranges from 5,000 to 30,000 Euro. If it is found that procedures are lacking for making and managing reports, or that the procedures do not comply with what is set forth in paragraph 5, ANAC shall apply an administrative sanction against the responsible party that ranges from 10,000 to 50,000 Euro. If it is established that the responsible party has failed to control and analyze the reports received, an administrative sanction will be applied against the responsible party that ranges from 10,000 to 50,000 Euro. ANAC will determine the amount of the sanction, considering the size of the administration or entity to which the report refers.

7. It shall be the responsibility of the public administration or entity set forth in paragraph 2 to demonstrate that the discriminatory or retaliatory measures applied to the whistleblower were based on reasons extraneous to the relative report. Discriminatory or retaliatory acts taken by the administration or entity shall be null and void.

8. A whistleblower who is dismissed due to the report shall be reinstated in his job in accordance with Article 2 of Legislative Decree No. 23 of 4 March 2015.

9. The protections set forth in this Article are not guaranteed in cases in which, including by means of a judgment of first instance, the whistleblower is found criminally liable for the crimes of slander or defamation or in any case for crimes committed by means of the complaint set forth in paragraph 1, or is found civilly liable, for the same reason, in cases of malicious conduct or grave negligence».

Art. 2

Protection of the employee or collaborator who reports unlawful activity in the private sector

1. The following shall be included in Article 6 of Legislative Decree No. 231 of 8 June 2001, after paragraph 2:

«2-bis. The models set forth in paragraph 1, clause a) shall provide for:

a) one or more channels that allow the parties indicated in Article 5, paragraph 1, clauses a) and b) to make, as protection of the entity's integrity, detailed reports of unlawful conduct relevant pursuant to this Decree based on specific and consistent evidence, or of violations of the entity's Organization and Management Model, of which they became aware due to the functions performed; such channels must guarantee the confidentiality of the identity of the whistleblower during the activities managing the report;

b) at least one alternative reporting channel suitable for guaranteeing, by electronic means, the confidentiality of the identity of the whistleblower;

c) the prohibition of direct or indirect retaliatory or discriminatory acts against the whistleblower for reasons that are directly or indirectly related to the report;

d) sanctions in the disciplinary system used in accordance with paragraph 2, clause e) against anyone who violates the measures of protection for the whistleblower, and anyone who makes groundless reports with malice or grave negligence.

2-ter. The application of discriminatory measures against the whistleblowers set forth in paragraph 2-bis can be reported to the National Labor Inspectorate for the measures for which it is responsible, not only by the whistleblower but also by the union organization indicated by him.

2-quater. The retaliatory or discriminatory dismissal of the whistleblower shall be null and void. The change of duties set forth in Article 2103 of the Italian Civil Code shall also be null and void, as well as any other retaliatory or discriminatory measure applied to the whistleblower. The burden is on the employer, in the case of controversies related to the implementation of disciplinary sanctions or demotions, dismissals, transfers, or subjecting the whistleblower to other organizational measures having direct or indirect adverse consequences on his employment conditions after making a report, to demonstrate that such measures are based on reasons extraneous to such reporting.».

Art. 3

Integration of the regime on the obligation of official, corporate, professional, scientific and industrial secrecy

1. In cases of a report or complaint made in the manner and within the limits set forth in Article 54-bis of Legislative Decree No. 165 of 30 March 2001, and in Article 6 of Legislative Decree No. 231 of 8 June 2001, as amended by this law, the pursuit of the interest of the integrity of public and private administrations, as well as the prevention and repression of wrongdoing, constitutes just cause for the disclosure of information subject to the obligation of secrecy set forth in Articles 326, 622 and 623 of the Italian Criminal Code and Article 2105 of the Italian Civil Code.
2. The provision set forth in paragraph 1 does not apply if the obligation of professional secrecy rests with anyone who becomes aware of the information due to a relationship of professional consulting or assistance with respect to the entity, company or individual concerned.
3. When information and documents that have been communicated to the body assigned to receive them are subject to corporate, professional or official secret, excessive disclosure with respect to the purpose of eliminating the unlawful act, and specifically, disclosure outside of the channel of communication prepared especially for such purpose, shall be a breach of the relative obligation of confidentiality.

This law, which bears the State seal, will be included in the Official Journal for laws of the Italian Republic. It is an obligation for everyone to comply with it and ensure that it is complied with as a law of the State.

Dated in Rome, this 30 November 2017

MATTARELLA

Gentiloni Silveri, President of the Council of Ministers

Seen, the Minister for Justice: Orlando