

# The employee's right to complain to the employer and its legal protection

Labour Code Amendment 2022, Slovakia

1 November 2022

The Directives also offer employees increased protection in the case of so-called horizontal workplace relationships. The employer is now obliged to respond to the employee's complaint **in writing**. At the same time, the employee who has made a complaint is also protected by the new wording of paragraph 8 of Article 13 of the Labour Code, which explicitly states the obligation of his/her colleagues and the employer not to sanction him/her for making a complaint, whether by some verbal insinuations in the workplace or even by terminating the employment relationship or deducting wages as possible sanctions for the complaint. This is a kind of superstructural protection to the effective Act No. 54/2019 Coll. However, according to this Act, protection by the Office for the Protection of Whistleblowers of Anti-Social Activities is conditional on the fact that the potentially protected person must submit an application for protection.

Another significant strengthening of the generally weaker position of the employee is the "**reversal**" of the **burden of proof against the employer** in the event of termination of the employment relationship with the employee. This means that if, for example, an employee who has been 'dismissed' on the basis of an alleged organisational change in the undertaking believes that the true reason for his/her 'dismissal' is different, the burden of proof will be on the employer, i.e. for the employer to prove that the employee's allegations are not true.

Text in force until 31 October 2022	Version effective from 1 November 2022
<b>§ 13 (untitled) - paragraphs 6, 7 and 8.</b>	<b>§ 13 (untitled) - newly paragraphs 7, 8 and 9.</b>
<p>6 An employee shall have the right to lodge a complaint with the employer in connection with a violation of the principle of equal treatment pursuant to paragraphs 1 and 2 and non-compliance with the conditions pursuant to paragraphs 3 to 5; the employer shall be obliged to respond to the employee's complaint without undue delay, to remedy, to refrain from such conduct and to remedy its consequences.</p>	<p>7 An employee shall have the right to lodge a complaint with the employer in connection with a violation of the principle of equal treatment pursuant to paragraphs 1 and 2, non-compliance with the conditions pursuant to paragraphs 3 to 6 and violation of rights and obligations arising from the employment relationship; the employer shall be obliged to respond to the employee's complaint <b>in writing</b> without undue delay, to remedy, to refrain from such conduct and to remedy the consequences thereof.</p>
<p>7 An employee who considers that his or her rights or legally protected interests have been affected by non-compliance with the principle of equal treatment or by non-compliance with the conditions under subsection (3) may apply to</p>	<p><b>8 An employee shall not be harassed or otherwise penalized in the employment</b></p>

a court and seek the legal protection provided for by the special Act on equal treatment in certain areas and on protection against discrimination and on amendment and supplementation of certain Acts (Anti-discrimination Act).

- 8 An employee who believes that his or her privacy in the workplace or common areas has been invaded by a failure to comply with the conditions under subsection (4) or that the employer has failed to comply with the conditions under subsection (5) may apply to the courts for legal redress.

**relationship for filing a complaint against another employee or the employer, filing a complaint with the competent labour inspection authority, filing a lawsuit, filing a petition for criminal prosecution or other notification of criminality or other anti-social activity, failing to maintain confidentiality about his or her working conditions, including wage conditions, and conditions of employment, or asserting his or her rights and legally protected interests arising out of the employment relationship.**

- 9 An employee who considers that his/her rights or legally protected interests **under paragraphs (1) to (8) have been violated** shall have the right to apply to the court and seek legal protection. If an employee in an employment dispute notifies the court of facts from which it may reasonably be inferred that the employer's termination of the employment relationship was due to the employee's assertion of his or her rights and legally protected interests arising out of the employment relationship, **the employer must prove that the termination of the employment relationship was due to other reasons.**

## WHAT WILL THESE CHANGES BRING TO YOUR PRACTICE?

### EXISTING EMPLOYMENT CONTRACTS/CURRENT STAFF

In the context of promoting the principle of enhanced protection of employees' rights in the workplace, which is to be applied to the greatest extent possible also to existing employment relationships, we consider that the new legislation will be fully relevant from the effective date also in the context of ongoing employment relationships. In case the content of an existing employment contract contradicts this new legislation in any way, we recommend that the wording of this existing employment contract be consolidated in the spirit of the new legislation by means of a written amendment to this existing employment contract.

### NEW EMPLOYMENT CONTRACTS/NEW STAFF

In the context of the new employment contracts, it will be essential for the employer to keep this new legislation in mind, and it is neither necessary nor mandatory for the employer to incorporate the terms of these new institutions explicitly in the new employment contracts. In the context of these new rules, the employer may wish to consider defining the specific conditions, e.g. the model of the complaint, the time limits for responding to the employee's complaint, the manner and form of its handling and remedy, etc., in its internal regulations (even more favourably than the statutory rules).

The above also applies to the rights of employees, which the new legislation under Article 13 of the Labour Code brings to employees, i.e. the employer has the possibility to regulate this "overview of rights" and details, e.g. also by its internal regulation, and does not have to specify them separately in the employment contract itself.

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