



**Dutch House for Whistleblowers Act (in Dutch: “Wet Huis voor Klokkenluiders”): mandatory internal procedure and new prejudice prohibition as of 1 July 2016**

The Dutch House for Whistleblowers Act (**HW Act**) will enter into force as of 1 July 2016. The purpose of the act is to improve the conditions for whistleblowers within organizations by making investigations possible and by providing better information to and protection of the whistleblowers. Below you will an overview of the most relevant changes for employers in the Netherlands:

Subject	Explanation
<b>Scope</b>	HW Act is applicable to (former) employees and (former) non-employees (for example: contractors, pay rollers, interns and volunteers, etc.).
<b>(Potential) whistleblower: broad definition</b>	The person who has a suspicion or concern of wrongdoing, based on reasonable grounds, which wrongdoing takes place within the company or another company and impacts public interest (for example: breach of law, threat to public health, safety or environment and/or a danger for the public service or a company). Please note: a former (non-)employee or person who works outside of the company, but who came in contact with the activities of the company, can also report a suspicion of wrongdoing.
<b>Mandatory internal procedure</b>	A new obligation is introduced for employers with (as a rule) 50 or more employees to have an internal whistleblowers’ procedure, which contains: <ul style="list-style-type: none"> <li>- how to deal with the report of (suspected) wrongdoing?</li> <li>- a definition of suspicion of wrongdoing (as mentioned in the HW Act);</li> <li>- a company officer to whom the person can report;</li> <li>- the confidential treatment of the report (on request);</li> <li>- the consultation of an advisor by the (potential) whistleblower;</li> <li>- the situations in which a suspicion of wrongdoing can be notified externally;</li> <li>and</li> <li>- the legal protection of a whistleblower.</li> </ul>
<b>New right of consent Works Council</b>	The Works Council will have a new right of consent regarding adoption, amendment or withdrawal of an internal whistleblower’s scheme.
<b>Establishment House for Whistleblowers</b>	A House for Whistleblowers will be established, consisting of an Advice Department (provides information, advice and support on request) and an Investigation Department (investigation on its own initiative or on request).
<b>Step 1: internal report</b>	As a rule, the (potential) whistleblower will <i>in principle</i> first have to report (orally or written) a suspicion of wrongdoing to the employer, who will then perform an investigation and possibly take measures.
<b>Step 2: external report</b>	If the (potential) whistleblower is of the opinion that the report has not been dealt with properly within the company, he will submit a report of wrongdoing to the House for Whistleblowers (or another competent body, for example an inspectorate or supervisory body).

<b>Prejudice prohibition</b>	During and after the employer or the House of Whistleblowers has handled the report, employee may not be unfairly prejudiced by employer (in his legal position) on account of reporting a suspicion of wrongdoing.
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<b>Investigation by the House for Whistleblowers</b>	<p>Within 6 weeks, the Investigation Department will first a.o. investigate whether the request is unfounded, the public interest is sufficient and whether another body investigates the matter.</p> <p>Thereafter, the Investigation Department will perform the investigation into the suspected wrongdoing and the consequences thereof (with the aim to complete the investigation within 12 months). At the request of the (potential) whistleblower, the department will also investigate whether the employer has breached the prejudice prohibition. As a rule, employer and his personnel are obliged to cooperate (declare truthfully, allow inspection and appear), unless this would breach a (statutory) confidentiality obligation or this person himself could be exposed to criminal conviction of a crime.</p>
<b>Public report House for Whistleblowers</b>	The Investigation Department will draft a report with its findings, judgment and possible recommendations for the employer. The report will be made public by the House for Whistleblowers. Information which is not included in the report shall in principle not be made public.
<b>Our recommendations</b>	Employers with 50 employees, but also employers with a smaller number of employees should set up an internal procedure, because the possibility to make a report to the House for Whistleblowers is not linked to the threshold of 50 employees. In addition, the possibility to report an wrongdoing is not bound by a statutory time limit. Furthermore, the prejudice prohibition will also apply to <i>all</i> employees. The prejudice prohibition itself is not further defined in the HW Act and is also not bound by a statutory time limit. This <i>could</i> in principle include dismissal of the employee, but also taking disciplinary measures or denying promotion opportunities due to the report or during the investigation. Also, it seems that the prohibition should be observed at least one year if the report is being handled by the Investigation Department, as this department should make an effort to complete its investigation within that period. Future case law will show how broad this prohibition will be interpreted. In view of the above, we recommend that employers take precautionary measures and set up an internal whistleblowers' procedure. A <a href="#">template scheme</a> is available through the website of the House for Whistleblowers ( <a href="https://huisvoorklokkenluiers.nl">https://huisvoorklokkenluiers.nl</a> ), but please note that this scheme contains more and (too) far-reaching rights for the (potential) whistleblower and obligations for the employer in comparison to those included in the HW Act. Therefore, it is recommendable not to simply adopt this template, but to fine-tune it for your own organization.

If you wish to draft a whistleblower scheme or examine whether your current scheme is HW Act-proof, you can contact Wietje de Muinck Keizer ([w.demuinckkeizer@denklaw.nl](mailto:w.demuinckkeizer@denklaw.nl)) and Martine Hoogendoorn ([m.hoogendoorn@denklaw.nl](mailto:m.hoogendoorn@denklaw.nl)).

