

Act on special protection for workers against reprisals for whistleblowing concerning serious irregularities (2016:749)

Scope of the Act

Section 1

This Act contains provisions that provide special protection for workers against reprisals for whistleblowing concerning serious irregularities in the employer's activities. The Act does not restrict protection that may apply for other reasons.

The term 'serious irregularities' refers to offences for which the range of penalties includes imprisonment, or comparable irregularities. It is sufficient that, in reporting them, the worker conveys concrete suspicions of such serious irregularities.

Section 2

The term 'workers' refers equally to those performing work as temporary agency workers if the irregularities reported refer to conditions in the activities of the hiring company. In such cases, the hiring company is to be considered the employer.

The term 'temporary agency worker' refers to workers within the meaning of the Agency Work Act (2012:854). The term 'hiring company' refers to those defined as user undertakings under that Act.

Invalidity of agreements

Section 3

An agreement is invalid to the extent that it revokes or limits a worker's protection under this Act.

What the Act provides protection against

Section 4

An employer may not subject a worker to reprisals due to the worker reporting serious irregularities in the employer's activities under Sections 5–7.

A person who has the right to make decisions on the employer's behalf in matters concerning the worker shall be equated with the employer in the application of the first paragraph.

Different kinds of whistleblowing

Internal whistleblowing

Section 5

A worker is protected under Section 4 if they report irregularities to the employer or a representative of the employer, or make use of the internal procedures for reporting irregularities provided by the employer.

Whistleblowing to an employee organisation

Section 6

A worker is protected under Section 4 if they report irregularities by contacting their employee organisation.

External whistleblowing

Section 7

A worker who reports irregularities by disclosing information or providing information for disclosure, or by contacting a public authority, is protected under Section 4 if:

1. the worker

a) first reported the irregularity internally in accordance with Section 5 and the employer did not take appropriate action in response to the report and, to a reasonable extent, inform the worker of the scope of any measures taken; or

b) for some other reason had justifiable cause to report the irregularity externally; and

2. the worker had grounds for the claim of serious irregularities that they reported.

Exemptions from protection in the event of an offence

Section 8

A worker who by reporting irregularities becomes guilty of an offence is not protected under this Act.

Damages

Section 9

An employer that breaches Section 4 must pay damages for the loss incurred and for the violation the reprisal entails.

If legal action is taken on the basis of notice of termination or summary dismissal, or any other procedure covered by the Employment Protection Act (1982:80), compensation for losses in respect of the period following the cessation of employment may not, under any circumstances, exceed the amount specified in Section 39 of that Act.

Where reasonable, damages may be reduced, in whole or in part.

Burden of proof

Section 10

If a person who considers that they have been subjected to reprisals that are incompatible with this Act demonstrates circumstances from which it may be presumed that such is the case, it is up to the employer to demonstrate that such reprisals have not occurred.

Legal proceedings

Section 11

Cases concerning the application of this Act will be processed in accordance with the Labour Disputes (Judicial Procedure) Act (1974:371).

In such cases, a person who performs work as a temporary agency worker will also be regarded as a worker. The person at whose premises work is performed will be regarded as the employer. This also applies when the regulations on negotiations concerning disputes in the Employment (Co-determination in the Workplace) Act (1976:580) are applied.

When a legal action is brought, the following provisions of the Employment (Co-determination in the Workplace) Act (1976:580) will be applied:

- Section 64 concerning time limits for calling negotiations;
- Section 65 concerning time limits for bringing legal action;
- Section 66 concerning extended time limits for a person who is not represented by an employee organisation; and
- Section 68 concerning forfeit of the right to bring an action on the grounds that it is time-barred.