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Labour Law Department

## **THE WHISTLEBLOWER OR WHISTLEBLOWING PROTECTION LAW**

On 23 February the Official State Gazette published [Law 2/2023, of 21 February 2023, Regulating the protection of persons reporting regulatory and anti-corruption infringements](#), transposing Directive 2019/1937.

- **Purpose of the Law**

Companies are under a duty to have an internal information system, commonly known as a “**whistleblowing channel**”, so that those people who are aware of certain punishable behaviours, can communicate them in-house. The Law provides a series of requirements that these channels (anonymous or not) must meet, including guaranteeing confidentiality, good practice in following up and investigating information and protecting whistleblowers. Likewise, a person responsible for ensuring that the whistleblowing channel is working correctly must be appointed, either in-house or outsourced.

Furthermore, there is **enhanced protection for persons who carry out in-house communication reporting a breach by expressly prohibiting all acts constituting retaliation** against them.

- **Obligated subjects and deadlines**

- In the private sphere, it is mandatory for all those companies that have at least 50 workers. There are two different transitional periods for applying this Law: (i) A general transition period, to comply with the content of this rule, of 3 months from its entry into force (from 13 March to 13 June), applicable to all subjects with more than 250 workers; and (ii) an exceptional period, **for those private companies with less than 250 workers, which will extend until 1 December 2023**.
- In the public sphere, all political parties, trade unions, business organisations, as well as foundations/entities that receive public funds for their financing.

- **Personal scope of application**

The field of protection sought by this Law encompasses **all those who may be “whistleblowers”**, whether they are workers, shareholders, participants and/or members of the governing body of companies in the process of incorporation and even those whose employment relationship has been terminated.

- **Sanctions**

The Law on Infractions and Sanctions in the Company Legal Order considers that a **failure to comply with the obligation to have an in-house information system is a very serious infraction**, which could lead to a penalty of between **€600,001 and €1,000,000** which right now is also associated to the possibility

of imposing a complete ban for obtaining public financial aid and undergoing into contractual relationship with the public administration up to 3 years.