

The Netherlands “House for Whistleblowers” Regulation: How Small & Medium Sized Enterprises (SMEs) Can Prepare

In March 2016 the Dutch Senate passed the “House for Whistleblowers” Act (Huis voor Klokkeluiders) to protect the interests of whistleblowers.

Snapshot

- » **What has changed?** Organisations must now have an internal procedure in place to enable employees to report suspicions of misconduct.
- » **Who does it impact?** Public and private sector Dutch organizations with over 50 employees
- » **What do I need to do?** Employers must now have a documented internal procedure to enable employees to raise concerns about wrongdoing and to protect them from retaliation. This can be handled internally or outsourced to a third party vendor.

Whilst the rules currently only apply to companies in the Netherlands, the increasingly global nature of the way the world does business means the legislation will affect many organisations headquartered elsewhere, but who have operations in the Netherlands.

Previously, small firms not been affected by whistleblower legislation anywhere in the world so this bill is somewhat unique. Many organisations will need guidance to help them meet the new requirements.

What You Need to Know

1. New Rules for Internal Whistleblower Reporting

All firms employing 50 employees or more are obliged to adopt an internal whistleblowing procedure. This can either be handled internally or outsourced to an external provider of speak-up lines. Employers must also inform employees in writing about when the internal procedure applies, under which circumstances the suspicion of abuse may be disclosed externally and about the protections available to them. Organisations should set out its whistleblowing procedure, and inform its employees of the following:

- » How internal notifications will be handled;
- » The definition of a “suspected matter of abuse”;
- » How the suspicion of abuse can be reported;
- » That the notification will be treated confidentially if requested by the whistleblower; and
- » That the whistleblower has the opportunity to take confidential advice.

In addition, before publishing any whistleblowing procedure, the organisation has to ensure that its Works Council consents to the new procedure. This is still legally required.

A guiding principle of the House for Whistleblowers Act is that employees must use their company's internal reporting channels as first port of call to report any suspicions of abuse. They will be able to consult the "House for Whistleblowers" for advice before doing so, or, at a later stage, to request an investigation if they feel that their concerns were not handled sufficiently internally.

2. External Investigations: The "House for Whistleblowers"

The act also sets out the establishment of the new "House for Whistleblowers," which will consist of two chambers: an *Advisory Chamber* and an *Investigation Chamber*.

- » The purpose of the Advisory Chamber is to provide general information and any necessary guidance is to provide general information and guidance to employees who are considering blowing the whistle.
- » Employees can turn to the Investigation Chamber if they feel that their employer has not responded to their concerns properly. If the Investigations Chamber deems the case to be sufficiently founded, it will either conduct an inquiry itself or will engage other supervisors or the public prosecutor. The employer is required to cooperate with the House throughout all investigations.

Why is this Important?

Whatever size your firm is, it only takes one issue to cause a crisis. In an ideal world, employees should never feel the need to turn to the Whistleblowers' *Investigation Chamber* because they do not trust their firm's internal reporting system or reported incidents are not being handled effectively.

So for any firm, the internal reporting stage is crucial. But it is even more so for Small and Medium Enterprises (SMEs) because incidents of wrongdoing can have a disproportionate effect on small firms, making it even more important to attend to these issues early before they turn critical.

SMEs are also disproportionately affected by the new rules because they don't always have the scale or budget to appoint a dedicated compliance officer or to implement the types of reporting procedures afforded to larger firms. As a result, many will look to appoint an external ethics line service, or speak-up line, to provide a cost effective facility to ensure anonymity even within the smallest office or branch location.

Some SMEs may be under the impression that they already have a whistleblowing procedure if they appointed a confidential counsellor (*vertrouwenspersoon*). However, the confidential counsellor usually only gets involved in HR-related matters and in most cases does not investigate matters. While the whistleblowing procedure and the confidential counsellor can be complimentary, they are definitely not the same thing.

However, simply implementing the minimum requirements to comply with the new regulations is not enough to ensure your employees will speak-up to report incidents. One of the major barriers to evolving a speak-up culture is that employees simply don't use the system available to them. There are three main reasons that this may happen:

1. Employees are not aware of how they should report an incident;
2. They don't have faith that management will do anything with the information they report;
3. They fear retaliation—this is especially pertinent in small organisations because employees work closely with the people in leadership.

It is therefore essential both that the internal reporting systems are efficient and cost-effective, and that they are well understood by leadership and by the employees for whom they are designed.

What Should I Do Now?

Small firms can follow these simple steps to evolve a speak-up culture in their organisation:

1. Where possible, take a holistic approach to compliance reporting, of which the whistleblowing/reporting system is one key part. Encourage and educate employees to report via multiple channels. The whistleblower line may be the top of mind, but employees should also be able to submit reports via a web form, email or through conversations with managers and supervisors. Emphasise that employees are protected from retaliation so that walk-in reporting won't be seen as a threat. The whistleblower helpline could also take reports from outside of your organisation from outside of your organisation, including emails sent from an anonymous email address or letters addressed to the CEO.
2. Engage the board and senior leadership—tone from the top is crucial as it sets the expectation for the rest of the organisation. Additionally, make sure your frontline managers are trained in how to respond to any reports that employees come to them with and are trained in how to respond to employees who come to them with questions or concerns and to make sure managers have a mechanism to report these cases.
3. Provide sufficient staff training and engagement to ensure that employees are aware of the reporting systems available to them and when they can be used, both through physical awareness tools (such as posters and banners) and through your company's intranet.
4. Create a reporting programme that goes beyond reporting incidents to also encourage employees to ask questions around company policies, ethical dilemmas and guidance on how to act in difficult situations.
5. Having a whistleblower line is not enough in itself. Firms need to make sure that the reports are being acted upon promptly and triaged correctly. Identify any trends, investigate the root cause and resolve issues before they become critical. A good case management system will generate reports that make analysis much easier.
6. Finally, language plays an important role in changing internal culture. Whilst the new Dutch legislation refers to 'whistleblowers', we advise firms to move away from terminology that can have negative connotations, such as 'whistleblowing line', and instead use terms such as 'Ethics Helpline' or 'Speak-Up Line'.

Best Practices to Comply

SMEs may worry that the new rules for reporting introduced in the Dutch House for Whistleblowers Act will be more of a burden than a help to them. However, reporting, or helpline data that is carefully tracked, reviewed, benchmarked and presented with sufficient context often provides the early warning signs needed to detect, and resolve problems before they escalate. As a result, a modest but effective compliance and ethics programme—including a whistleblower line and website—can actually have an important, positive effect on the business.

Once internal reporting systems are established, there are several opportunities for firms to increase the effectiveness of those programmes¹:

- » Increase focus on anti-retaliation efforts including training senior and frontline managers, ensuring prompt and confidential investigations and building awareness and trust with employees to encourage use of the official helpline.
- » Work on getting case closure times within best practice ranges;
- » Get a more complete picture of your risks by documenting all reports in one centralised incident management centre;
- » If your reporting volumes increase, make the business case for matching appropriate resources to ensure all cases are investigated in a timely fashion;

1 <http://www.navexglobal.com/en-us/resources/navex-globals-2016-ethics-compliance-hotline-benchmark-report>

- » Ensure that you handle every report appropriately to avoid employees turning to the Investigation Chamber to report. The Investigation Chamber can start their own investigation and report it publicly so providing the resources to report internally can protect your employees and your organisation's reputation.

How NAVEX Can Help

Small organisations often wrongly assume that external reporting mechanisms are only available to larger firms. NAVEX Global is one of the largest providers of whistleblower services, or speak-up lines, in the world and have tailored a version of its whistleblower services specifically for smaller organisations. NAVEX Global also provides online training, policy management, third party risk solutions and advisory services—a holistic approach to compliance.

Smaller organisations want to know that they are not alone. The NAVEX Global platform can be scaled for use by SMEs, enabling them to leverage the experience and knowledge enjoyed by thousands of clients across the world but at a scale and cost appropriate to them.

How ECMC Can Help

ECMC can help you design a whistleblowing procedure that suits your organisation and assist in the training of your managers and employees and the communication of the procedure.

ABOUT THE AUTHOR



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Andrew Foose, J.D., vice president of NAVEX Global's Advisory Services team, is a former senior trial attorney in the US Department of Justice's Civil Rights Division. Andy is recognised among the country's leading experts on conducting lawful and effective internal investigations and has trained thousands of attorneys, compliance officers, auditors and human resource professionals on best-practice investigative techniques and on how to write effective, comprehensive investigative reports. He currently works with organisations ranging from large multi-national companies to smaller non-profits to assess their ethics and compliance programs and to provide guidance on ways to enhance program effectiveness and efficiency.



Geert Vermeulen, CEO at Ethics & Compliance Management & Consulting (ECMC)

Geert Vermeulen is a seasoned compliance professional, specialised in establishing and improving ethics and compliance programmes, especially in respect of anti-bribery and corruption and trade restrictions. Other specialties include corporate governance, compliance risk assessments and whistleblowing systems and procedures.

On January 1 2016 Geert started his own company, Ethics & Compliance Management & Consulting (ECMC). His mission is to help organisations conduct business in an ethical way and make the world a slightly better place. Through ECMC Geert provides compliance training, compliance consulting and interim ethics & compliance management. Geert also speaks and writes on compliance and ethics.

ABOUT NAVEX GLOBAL

NAVEX Global's comprehensive suite of ethics and compliance software, content and services helps organizations protect their people, reputation and bottom line. Trusted by 95 of the FORTUNE 100 and more than 12,500 clients, our solutions are informed by the largest ethics and compliance community in the world.