

Act Partially Amending the Whistleblower Protection Act (summary)

In light of recent trends both domestically and internationally regarding how enterprises respond to whistleblowing disclosure and the protection of whistleblowers, the following measures will be taken (1) establishing and fully implementing a system for enterprises to appropriately respond to whistleblowing disclosure, and improving its effectiveness, (2) expanding the scope of whistleblowers, (3) addressing factors that discourage whistleblowing disclosure, (4) strengthening measures to prevent and remedy disadvantageous treatment on the grounds of whistleblowing disclosure.

1. Establishing and fully implementing a system for enterprises to appropriately respond to whistleblowing disclosure, and improving its effectiveness

- In addition to the authority under the current Act to provide guidance, advice, and **recommendations to enterprises that violate the obligation to designate employees** (limited to those with more than 300 regular employees), **the power to issue orders if the recommendations are not followed, as well as criminal penalties for violating orders** (a fine of up to 300,000 yen, dual criminal liability provisions) are to be newly established. [Related to Articles 15-2, 21 and 23]
- In addition to the authority under the current Act to collect reports, along with establishing **the authority to conduct on-site inspections, criminal penalties for neglecting to report, false reporting, and refusing inspection** (a fine of up to 300,000 yen, dual criminal liability provisions) are to be newly established only for the above-mentioned enterprises. [Related to Articles 16, 21 and 23]
- As an example of the existing legal obligation to establish an internal reporting system under the current Act, **the obligation to inform workers, etc. of the whistleblower response system of the enterprise is to be clearly stated.** [Related to article 11]

2. Expanding the scope of whistleblowers

- The scope of whistleblowers is to be expanded **to include freelancers** who have a contractual relationship with enterprises (*1) and freelancers whose contractual relationship ended within the past year, **prohibiting the termination of those contracts, or any other disadvantageous treatment on the grounds of whistleblowing disclosure.** [Related to Articles 2 and 5]

*1 The definition of a freelancer is specified by quoting Article 2 of the "Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators."

3. Addressing factors that discourage whistleblowing disclosure

- Enterprises are **prohibited from engaging in acts that hinder whistleblowing disclosure, such as by requiring workers, etc. to agree not to whistleblow without just cause, and any legal acts such as agreements made in violation of this prohibition will be deemed null and void.** [Related to Article 11-2]
- **It is prohibited for enterprises to engage in acts aimed at identifying whistleblowers without just cause.** [Related to Article 11-3]

4. Strengthening measures to prevent and remedy disadvantageous treatment on the grounds of whistleblowing disclosure

- **Dismissal or disciplinary action taken within one year of the report** (*2) **is presumed to be made on the grounds of whistleblowing disclosure** (shifting the burden of proof in civil litigation). [Related to Article 3]
*2 If the enterprise dismisses or disciplines a worker after learning of an external report, the dismissal or discipline must be within one year from the date the enterprise becomes aware of it.
- **A direct penalty** (imprisonment of up to 6 months or a fine of up to 300,000 yen, dual criminal liability provisions) is to be newly established **for those who dismiss or discipline a worker on the grounds of whistleblowing disclosure.**
The statutory penalty for corporations is to be a fine of up to 30 million yen. [Related to Articles 21 and 23]
- **Prohibit disadvantageous treatment of regular service national public employees or other public employees on the grounds of whistleblowing disclosure**, and newly establish **a direct penalty** (imprisonment of up to 6 months or a fine of up to 300,000 yen) **for those who impose dismissal or disciplinary action in violation of this prohibition.** [Related to Articles 9, 21 and 23]
- This Act comes into effect on the day specified by Cabinet Order within one year and six months from the date of promulgation. [Related to Supplementary Provision Article 1]

公益通報者保護法の一部を改正する法律(概要)

近年の事業者の公益通報への対応状況及び公益通報者の保護を巡る国内外の動向に鑑み、①事業者が公益通報に適切に対応するための体制整備の徹底と実効性の向上、②公益通報者の範囲拡大、③公益通報を阻害する要因への対処、④公益通報を理由とする不利益な取扱いの抑止・救済を強化するための措置を講ずる。

1. 事業者が公益通報に適切に対応するための体制整備の徹底と実効性の向上

- 従事者指定義務に違反する事業者(常時使用する労働者の数が300人超に限る)に対し、現行法の指導・助言、勧告権限に加え、勧告に従わない場合の命令権及び命令違反時の刑事罰(30万円以下の罰金、両罰)を新設する。【第15条の2、第21条、第23条関係】
- 上記事業者に対する現行法の報告徴収権限に加え、立入検査権限を新設するとともに、報告懈怠・虚偽報告、検査拒否に対する刑事罰(30万円以下の罰金、両罰)を新設する。【第16条、第21条、第23条関係】
- 現行法の体制整備義務の例示として、労働者等に対する事業者の公益通報対応体制の周知義務を明示する。【第11条関係】

2. 公益通報者の範囲拡大

- 公益通報者の範囲に、事業者と業務委託関係にあるフリーランス^(※1)及び業務委託関係が終了して1年以内のフリーランスを追加し、公益通報を理由とする業務委託契約の解除その他不利益な取扱いを禁止する。【第2条、第5条関係】

※1 フリーランスの定義は、「特定受託事業者に係る取引の適正化等に関する法律」第2条を引用して規定。

3. 公益通報を阻害する要因への対処

- 事業者が、労働者等に対し、正当な理由がなく、公益通報をしない旨の合意をすることを求めることが等によって公益通報を妨げる行為をすることを禁止し、これに違反してされた合意等の法律行為を無効とする。【第11条の2関係】
- 事業者が、正当な理由がなく、公益通報者を特定することを目的とする行為をすることを禁止する。【第11条の3関係】

4. 公益通報を理由とする不利益な取扱いの抑止・救済の強化

- 通報後1年以内^(※2)の解雇又は懲戒は公益通報を理由としてされたものと推定する(民事訴訟上の立証責任転換)。【第3条関係】
- 公益通報を理由として解雇又は懲戒をした者に対し、直罰(6月以下の拘禁刑又は30万円以下の罰金、両罰)を新設する。法人に対する法定刑を3,000万円以下の罰金とする。【第21条、第23条関係】
- 公益通報を理由とする一般職の国家公務員等に対する不利益な取扱いを禁止し、これに違反して分限免職又は懲戒処分をした者に対し、直罰(6月以下の拘禁刑又は30万円以下の罰金)を新設する。【第9条、第21条、第23条関係】
- この法律は公布の日から1年6月以内で政令で定める日から施行する。【附則第1条関係】