

WHISTLE-BLOWING PROCEDURES AT THE OSLO NATIONAL ACADEMY OF THE ARTS

Approved at the IDF meeting 22 September 2017 and the board meeting 26 September 2017

Before blowing the whistle on wrongdoing, the employee should ask him- or herself the following:

- Is my criticism justified?
- How should I proceed?
- To whom should I report my concerns?

Advice on such matters may be sought from the Labour Inspection Authority, employee representatives or safety representatives.

1. WHISTLE-BLOWING

Everyone has the right to a completely satisfactory workplace environment as well as the right to be treated with respect and dignity (cf. section 4.3 of the Working Environment Act).

The Oslo National Academy of the Arts shall have a workplace environment that promotes self-efficacy, health and well-being.

To blow the whistle is to provide information about wrongdoing in the workplace. All employees and students at the Academy have the right to blow the whistle on wrongdoing. This right also applies to hired labour and also includes the right to blow the whistle externally to public authorities.

Sections 2A.1(1) and 2A.1(2) of the Working Environment Act

The Academy is required to develop a culture of openness about addressing wrongdoing and discussing and resolving such issues.

The purpose of whistle-blowing is to rectify wrongdoing.

The Academy constantly strives to have in place adequate procedures for whistle-blowing and for following up such cases, so as to lower the threshold for providing information when something is wrong. The employer is obliged to ensure that whistle-blowing can be carried out in a satisfactory manner.

Section 2A.1(3) of the Working Environment Act (“Obligation to create procedures for internal whistle-blowing”)

2. WHAT IS WHISTLE-BLOWING?

Whistle-blowing is the act of providing information about serious wrongdoing, illegal activities and violations of general ethical norms or internal guidelines.

Examples of wrongdoing include the following:

- Violations of laws and regulations
- Corruption, financial irregularities, embezzlement
- Misuse of power / domination techniques/ abuse

- Unwanted sexual attention
- Bullying, harassment, discrimination
- Acts that may represent a danger to life and human health
- Breaches of internal procedures and guidelines
- Breaches of confidentiality
- Breaches of ethical norms, such as the *Ethical Guidelines for the Public Service*
- Circumstances related to environmental pollution
- Breaches of the Academy's financial regulations

The employee has the right and sometimes also the duty to blow the whistle on wrongdoing in the workplace. This also applies to employees hired from a temporary-work agency.

As an employee, you have a duty to blow the whistle on the following circumstances:

- mistakes and deficiencies that may threaten life and human health
- workplace harassment / bullying/ discrimination
- circumstances that may cause loss or harm to the employer, employees or general surroundings

Sections 2A.1(1) and 2A.1(2) of the Working Environment Act

3. HOW TO BLOW THE WHISTLE?

The law requires whistle-blowing to take place in a responsible manner. This entails that whistle-blowing must be done in accordance with internal procedures.

Whistle-blowing can take place both externally and internally. The employee always has the right to blow the whistle to inspectorates or other public authorities.

Sections 2A.1(2) and 2A.1(3) of the Working Environment Act

4. RESPONSIBLE WHISTLE-BLOWING

An employee who blows the whistle in accordance with internal procedures shall act in a proper and correct manner. This entails among other things that the employee shall not blow the whistle in a way that harasses or is unnecessarily hurtful or stressful to individuals or the workplace environment, or by knowingly making baseless claims.

It is important to keep in mind that claims about wrongdoing are stressful for the person being reported on, for his or her colleagues and for the organisation as a whole. Many people also experience that blowing the whistle is stressful for themselves.

In those instances when the whistle-blowing relates to a person, whether an employee or student, this person shall be notified of the information that has been provided. The person in question shall be given the opportunity to present their version of the case. The consequences of letting the person in question know of the accusations must however be assessed in regard to for example the risk of evidence being destroyed or of retaliation.

It is possible to seek advice from employee representatives, the Norwegian Labour Inspection Agency or others before blowing the whistle on wrongdoing at the Academy.

The employer has the burden of proof if it claims that whistle-blowing has been done in breach of the Working Environment Act's requirement to responsible whistle-blowing.

Chapter 2A of the Working Environment Act, cf. section 2A.1(3)

5. DOCUMENTATION

Write down what you are providing information about. It is advisable to use the whistle-blowing form, which includes instructions for filling in the form. Provide a description of specific events. In order to facilitate the processing of the case and substantiate the information being provided, relevant documentation should be submitted, for example e-mails, text messages, letters, pictures and the like.

Be aware that the Academy may have a limited possibility to process the case if there is no evidence that wrongdoing has taken place.

If necessary, seek advice from your employee representative or safety representative.

6. THE WHISTLE-BLOWER'S IDENTITY

The whistle-blower's identity shall not be made known to more people than what is absolutely necessary to process the case. The whistle-blower is entitled to the case being treated confidentially and processed by employees who have the necessary competence and are bound by confidentiality.

Anyone who is being accused has the right to access to the case. Access should be limited to the parties in the case. Access is granted to the degree it is necessary to shed light on the case and to maintain the parties' right to contradiction.

Sections 2A.2 and 2A.4(2) of the Working Environment Act

7. INTERNAL WHISTLE-BLOWING

Whistle-blowing may be addressed to

- the safety representative or head safety representative
- the employee representative
- the immediate superior

The recipient is responsible for forwarding the information to the head of human resources.

The head of human resources will assess how the case should proceed. If the whistle-blowing concerns the senior management (i.e. the rector, academy director and prorector), the case shall be forwarded to the board and cc-ed to the head of human resources. If the whistle-blowing concerns the head of human resources, the case shall be forwarded to the director.

Whistle-blowing can take place anonymously if the whistle-blower so desires. Anonymous reporting will in most cases make it harder to investigate the concerns in question and should be considered only as an emergency solution.

Section 2A.3 of the Working Environment Act.

Use of the whistle-blowing form is encouraged.

8. EXTERNAL WHISTLE-BLOWING

Employees and students also have the right to contact public inspectorates and authorities concerning relevant cases, for example the Labour Inspection Authority, the police, the Parliamentary Ombudsman, the Norwegian Data Protection Authority and the Equality and Anti-discrimination Ombud. Whistle-blowing to a superior authority such as a ministry is regarded as external whistle-blowing.

If the wrongdoing constitutes a punishable offence, you may be asked to report the case to the police. The Academy may also choose on their own volition to report a case to the police.

Whistle-blowing to public authorities is encompassed by the duty to confidentiality. This duty also applies to the parties of the case and their representatives.

Section 2A.4 of the Working Environment Act

9. PROHIBITION AGAINST RETALIATION

It is forbidden to retaliate against someone after they have blown the whistle on a given circumstance. Retaliation includes being ostracised, having tasks and responsibilities reassigned or altered, being suspended or getting dismissed. Those who blow the whistle in a responsible manner shall not be exposed to negative reactions.

The management at the Academy bears a particular responsibility for preventing negative reactions, whether from leaders, colleagues or fellow students.

As the whistle-blower, you will receive confirmation that the case has been received. You will be notified when the case is completed and whether any measures have been implemented.

Section 2A.2 of the Working Environment Act

10. FALSE ACCUSATIONS

Falsely accusing someone is a punishable offence.

11. INFORMATION ON WHISTLE-BLOWING GUIDELINES AND PROCEDURES

All employees and students at the Academy are made aware of the guidelines on whistle-blowing. Procedures and auxiliary forms shall be available on the Academy' website (the HSE handbook): [https://cp.compendia.no/kunsthogskolen-i-oslo/kunsthogskolen-i-oslo-hms-handbok/intranettet for studenter](https://cp.compendia.no/kunsthogskolen-i-oslo/kunsthogskolen-i-oslo-hms-handbok/intranettet_for_studenter).

WHAT HAPPENS WHEN YOU BLOW THE WHISTLE AT THE ACADEMY? WHO RECEIVES YOUR CASE?

Whistle-blowing that concerns employees and students is forwarded to the Section of Human Resources, represented by the head of human resources.

If the whistle-blowing concerns the senior management (i.e. the rector, academy director and prorector), the case shall be forwarded to the board and cc-ed to the head of human resources. If the whistle-blowing concerns the head of human resources, the case shall be forwarded to the director.

HOW IS THE CASE PROCESSED?

- *The person receiving the case is responsible for forwarding it to the proper authority for investigating the case.*
- *Within around a week you will receive information from the assigned case officer about how the case will proceed further.*
- *As the whistle-blower, you will receive confirmation that the case has been received and be notified when it is completed.*

WHO WILL KNOW THAT YOU ARE BLOWING THE WHISTLE?

- *Case documents are exempt from public disclosure, and the case is processed confidentially. Your name will not be made known to more people than what is necessary to process the case.*

PROCESSING OF THE CASE

All instances of whistle-blowing are forwarded to the Section of Human Resources, represented by the head of human resources.

- *See above: The head of human resources evaluates the evidence and opens a case on the basis of the information provided (cf. the duty to activity: investigate / react / normalise)*
- *A preliminary investigation of the wrongdoing in question shall be carried out, and the further process of investigating the case shall be decided upon. It shall be made apparent whether the case is being treated as a personnel conflict or as an instance of whistle-blowing (cf. our procedures for managing conflicts and our procedures for whistle-blowing), and at which the level it is recommended that the case be resolved.*

complaint or whistle-blowing

investigation

foreseeable

information to the complainant and the involved parties

unfortunate

activity and restoration

follow-up and control

- *Those involved and the parties in the case shall be informed about who is in charge of the case and the further procedure of the case. In the event of a disciplinary procedure, the case shall be processed in accordance with current law and internal guidelines.*
- *While the case is being processed, the documents in the case must be regarded as being internal to the entity in question and are exempt from public disclosure. When the case has been processed, requests for access will be processed as per usual by the head of human resources, who is responsible for ensuring that these requests are processed pursuant to the general provisions of the Freedom of Information Act. In this context it is important to be aware of the exemptions for personal information and of the provisions in the Personal Data Act.*
- *The person whom the whistle-blowing concerns shall as soon as possible be notified about the case and about what information has been provided, so that this person is allowed to present his or her version of the events. The parties are allowed access to the necessary documents and records so that their right to*

contradiction is upheld. When the case has been completely processed, the person whom the whistle-blowing concerns shall immediately be notified of the conclusion and of the outcome of the process.

- *If the investigation of the case in question concludes that official misconduct has taken place, it will be considered whether to begin a disciplinary procedure. Disciplinary procedures are carried out in accordance with rules laid down in chapter 3 of the State Employee Act. The case is subject to the current rules for processing cases as laid down in the State Employee Act and the Public Administration Act.*

- *If a student has acted in a grossly disruptive manner, the case may be submitted to the Learning Environment Committee. Rules for how such cases are processed are found in section 4.8 of the Universities and University Colleges Act.*

- *In those cases where the final conclusion is either that laws or regulations have been breached or that other forms of wrongdoing have taken place, the necessary measures will be implemented. The purpose of these measures is to rectify wrongdoing and normalise the workplace environment, and also prevent conflicts and breaches of laws and regulations.*

- *The case will be archived and registered in accordance with the Academy's current archival procedures and the Archives Act and its attendant regulations.*

Chapter 2A of the Working Environment Act ("Whistle-blowing")

THE ACT ON WHISTLE-BLOWING IS INCORPORATED IN CHAPTER 2A OF THE WORKING ENVIRONMENT ACT

Section 2A.1 The right to blow the whistle at the enterprise

(1) An employee has a right to blow the whistle about wrongdoing at the employer's enterprise. A worker hired from a temporary-work agency also has the right to blow the whistle at the hirer's enterprise.

(2) The employee shall proceed responsibly when acting as a whistle-blower. The employee has in any event the right to blow the whistle in accordance either with a duty to act as a whistle-blower or with the enterprise's procedures for whistle-blowing. The same applies to blowing the whistle to supervisory authorities or other public authorities.

(3) The employer has the burden of proof if it claims that the whistle-blowing has been done in breach of this provision.

Section 2A.2. Protection against retaliation in connection with whistle-blowing

(1) Retaliation against an employee who blows the whistle pursuant to section 2A.1 is prohibited. For a worker hired from a temporary-work agency, the prohibition shall apply to both the employer and the hirer. If the employee submits information that gives reason to believe that retaliation in breach of the first or second paragraph has taken place, it shall be assumed that such retaliation has taken place unless the employer or hirer substantiates otherwise.

(2) The first subsection applies correspondingly in connection with retaliation against an employee who makes known that the right to blow the whistle pursuant to section 2A.1 will be invoked, for example by providing information.

(3) Anyone who has been subjected to retaliation in breach of the first or second subsection may claim compensation without regard to the culpability of the employer or hirer. The compensation shall be determined at the amount the court deems reasonable in view of the circumstances of the parties and other facts of the case. Compensation for financial loss may be claimed pursuant to the normal rules.

Section 2A.3. Obligation to create procedures for internal whistle-blowing

- (1) If the conditions at the enterprise so indicate, the employer shall be obligated to create procedures for internal whistle-blowing in accordance with section 2A.1 in connection with the enterprise's systematic work on health, safety and environment.
- (2) The employer is always obligated to create such procedures if the enterprise regularly employs at least five employees.
- (3) The procedures shall be created in cooperation with the employees and their elected representatives.
- (4) The procedures shall not limit the employees' right to blow the whistle pursuant to section 2A.1.
- (5) The procedures shall be in writing and at least contain
 - a) encouragement to blow the whistle about wrongdoing,
 - b) a procedure for whistle-blowing, and
 - c) a procedure for receiving, processing and following up instances of whistle-blowing.
- (6) The procedures shall be easily accessible to all employees at the enterprise.

Section 2A.4. Duty of confidentiality in connection with blowing the whistle to a public authority

- (1) When supervisory authorities or other public authorities are notified of wrongdoing, any person who performs work or services for the body receiving such notification shall be obliged to prevent other persons from gaining knowledge of the employee's name or other information identifying the employee.
- (2) The duty of confidentiality shall also apply in relation to parties to the case and their representatives. Sections 13 to 13E of the Public Administration Act shall otherwise apply correspondingly.