



*Procedure governing dealing with  
suspected misconduct  
or irregularities*

**OPHTEC BV**



## **Main points of the Procedure governing dealing with suspected misconduct irregularities (“Wet Huis voor Klokkenluiders”)**

With effect from 1 July 2016, organisations employing 50 or more people must have a procedure in place to handle the reporting of suspected misconduct. The works council has a right of consent in this respect.

What is the law? In general terms, the law states the following:

- An organisation's own employees and employees of other organisations can report the suspicion of misconduct or irregularities both internally and externally;
- An internal report is made to a manager, MT member, the Managing Director or the Supervisory Board;
- A report can also be made via the internal or external confidential adviser, who will then function as an intermediary;
- Under certain conditions, the whistleblower can consult an adviser;
- The whistleblower, confidential adviser or internal adviser is protected against being placed at a disadvantage;
- The report can be made orally as well as in writing and will in all cases be laid down in writing. The whistleblower receives a confirmation. The report is forwarded to the managing director (most senior manager) or the Supervisory Board;
- The managing director and/or the Supervisory Board may have an investigation conducted by impartial and independent investigators;
- Investigators are given access to documents they consider necessary to conduct the investigation;
- The managing director and/or the Supervisory Board inform the whistleblower in writing, within the set term (see the reporting regulations), of the substantive point of view;
- The whistleblower is given the opportunity to respond to the investigation report or the employer's point of view;
- The whistleblower may also make an external report if he disagrees with the point of view referred to above or is not informed of it or receives the information late;
- An external report without a prior internal report can also be made if an internal report cannot reasonably be expected of him (e.g. in the event of acute danger, imminent destruction of evidence, etc.);
- The external report can be submitted to an authority that investigates criminal offences, an authority that monitors compliance with legislation and regulations or the Investigation Department of the “Huis voor Klokkenluiders”<https://huisvoorklokkenluiders.nl>);
- The managing director sees to it that the whistleblower regulations are published. In addition, he draws up an annual report setting out the policy pursued, the number of reports, etc.

**The above is rendered in more detail in procedure for reporting suspected misconduct applicable to OPHTEC.**



## **The Procedure for reporting suspected misconduct or irregularities at OPHTEC BV**

### **Definitions**

The terms used in this scheme are defined as follows:

**Employee:** the person who is employed or hired by OPHTEC BV for a fixed or indefinite period of time, as well as other interested parties such as suppliers, customers, etc.

**Suspected misconduct:** an employee or other interested party suspects that there has been misconduct within the organisation at which he works or has worked or at another organisation if he has come into contact with that organisation as a result of his work:

1. the suspicion is based on reasonable grounds.

These grounds derive from the knowledge acquired by the employee at his place of work or as a result of his work at another company or organisation.

2. the public interest is at stake:

- The actual or imminent violation of a statutory provision, including an actual or imminent criminal offence;
- an actual or imminent threat to public health;
- an actual or imminent threat to the safety of persons;
- an actual or imminent threat of environmental damage;
- an actual or imminent threat to the proper functioning of the organisation as a result of an improper manner of acting or failing to act;
- An actual or imminent violation of rules other than a statutory provision;
- An actual or imminent waste of public money;
- The actual or imminent threat of knowingly withholding, destroying or manipulating information about the above facts.

**Suspicion of an irregularity:** a reasonable suspicion of an irregularity of a general, operational or financial nature. This takes place under the responsibility of the organisation and is so serious that it falls outside of the regular work processes. It goes beyond the responsibility of the employee's immediate superior;

**In principle, this concerns situations or cases that do not concern a single case or a few personal cases but go beyond this level, for example because of the seriousness of the situation, the extent of the situation or its structural nature.**

**The scheme is expressly NOT intended for:**

- reporting personal complaints of employees or other interested parties about personal matters relating to employment;
- reporting conscientious objections concerning the performance of normal business activities;
- criticising the policy decisions made by the employer.



## The procedure

### Information, advice and support for the employee

1. An employee can consult an adviser in confidence about a suspicion of misconduct. The internal adviser is the prevention officer.
2. The employee can also contact the internal or external confidential adviser for information, advice and support with regard to suspicions of misconduct and reporting them.
3. The employee can also request information, advice and support from the advice department of the "Huis voor Klokkenluiders" on the suspicion of misconduct.

### The report

1. An employee with a suspicion of misconduct or irregularities at his employer's organisation can report this to any manager who has a higher hierarchical position within the organisation than himself. If the employee has a reasonable suspicion that the senior manager (managing director) is involved in the suspected misconduct or irregularity, he may also report this to the Supervisory Board. In that case, "the supervisory board" should be read as "the senior management" in these regulations.
2. An employee of another organisation who has come into contact with OPHTEC as a result of his work and who has a suspicion of misconduct at OPHTEC can report to any manager who has an equal or higher position than himself within the OPHTEC organisation. If the employee of another organisation has a reasonable suspicion that the management is involved in the suspected misconduct, he can report this to the Supervisory Board.
3. The employee referred to in paragraph 1 or 2 may also report the suspicion of misconduct via the internal or external confidential adviser. The confidential adviser forwards the report to the managing director or the supervisory board in consultation with the employee.

### Protecting the whistleblower from being put at a disadvantage

The "Wet Huis voor Klokkenluiders" and this procedure are intended to encourage and enable employees and other interested parties to report situations of concern within OPHTEC instead of seeking solutions in good faith outside of OPHTEC. The position of the whistleblower who has reported a suspicion of misconduct in accordance with the provisions of these rules will in no way be disadvantaged, either materially or immaterially, as a result of the report.

The employer will hold to account employees who are guilty of causing the whistleblower harm as a result of making the report and, if necessary, take disciplinary or other measures.

Please note: The person or people involved in the report are innocent until proven otherwise! In order to protect these people, the management will also ensure confidentiality during and after the investigation of the report, insofar as the situation (and its seriousness) permits this.

### Confidentiality treatment of the report and the identity of the whistleblower

1. The employer ensures that the information about the report is stored in such a way that it is physically and digitally accessible only to those who are involved in its handling.



2. All those involved in handling a report will not reveal the identity of the person making the report without his or her explicit written consent and will treat the information about the report confidentially.
3. If the suspicion of misconduct or irregularities has been reported via the confidential adviser and the whistleblower has not given his or her consent to disclose his or her identity, all correspondence about the report is sent to the confidential adviser and will be forwarded directly by the confidential adviser to the whistleblower.

#### Recording, forwarding and acknowledgement of receipt of the report

1. If the employee makes the report orally or in writing to a manager the manager ensures that this is laid down in writing in consultation with the whistleblower. He submits this record to the whistleblower for approval and signature. The whistleblower receives a copy of this.
2. If the employee makes the report orally or in writing via the internal or external confidential adviser, this confidential adviser will arrange for it to be laid down in writing and will submit it to the whistleblower for approval and signature. The whistleblower receives a copy of this.
3. The manager or internal or external confidential adviser the report has been made to forward the report to the managing director as soon as possible and in any event within 24 hours.
4. If the whistleblower and/or the manager/confidential adviser the report has been made to have a reasonable suspicion that the managing director is involved in the suspected misconduct or irregularity, the manager/confidential adviser will immediately forward the report to the Supervisory Board. (In that case, read 'the Supervisory Board' where reference is made below to the managing director).
5. The managing director immediately sends confirmation to the whistleblower that the report has been received. The acknowledgement of receipt at least contains a concise description of the report, the date on which it was received and a copy of it.

#### Handling of the report by the employer

1. The managing director investigates the reported suspicion of a misconduct or irregularity, unless:
  - a. the suspicion is not based on reasonable grounds, or
  - b. it is immediately clear that the report does not relate to a suspicion of misconduct or irregularity.
2. If the managing director decides not to open an investigation, he will inform the whistleblower in writing of this within two weeks of the report, stating his reasons.
3. The managing director assesses whether an external body should be informed of the internal reporting of a suspected misconduct. (For a definition of an external body, see "external reports"). If an external body is informed, the managing director will send a copy to the whistleblower, unless there are serious objections to this.
4. The managing director entrusts the investigation to a committee of inquiry of independent and impartial standing, to be set up by him, and will not in any circumstances entrust the investigation to any person who may be or have been involved in the suspected misconduct or irregularity. In the written assignment to the committee of inquiry, the managing director will indicate the required confidentiality in how the report is handled.



5. The managing director informs the whistleblower immediately in writing that an investigation has been opened and by whom the investigation will be carried out. The managing director sends a copy of the investigation order to the whistleblower, unless there are serious objections to this being done.
6. The managing director will inform the persons to whom a report relates of the report and that an external authority has been informed unless the interests of the investigation or enforcement may thus be harmed.

#### The investigation

1. The investigators give the whistleblower the opportunity to be heard. The investigators ensure that this is laid down in writing, and presented to the whistleblower for approval and signature. The whistleblower receives a copy of this.
2. The investigators can also hear others. The investigators ensure that a written record is made of this, and submit this record for approval and signature to the person who has been heard. The person heard receives a copy of this.
3. The investigators may inspect and retrieve all internal documents that they consider reasonably necessary for the conduct of the investigation.
4. Employees may provide the investigators with any document that they consider reasonably necessary for the investigators in the course of the investigation.
5. The investigators draw up a draft investigation report and give the whistleblower the opportunity to comment on it, unless there are serious objections to this. Once the report has been adopted, they will send a copy of it to the whistleblower unless there are serious objections to this, and send the investigation report to the managing director.
6. The managing director informs the whistleblower in writing within eight weeks of the report of his point of view regarding the reported suspicion of misconduct or irregularities. The steps being taken in response to the report are indicated. If the 8-week period cannot be met, the managing director will inform the whistleblower in the interim period, stating the reasons.
7. The persons to whom the report relates will be informed in the same way as in paragraph 6, unless this could harm the interests of the investigation or enforcement.
8. The employer will give the whistleblower the opportunity to respond to the investigation report and the point of view of the managing director/employer.
9. If the whistleblower, in response to the investigation report or the employer's point of view, takes the reasoned position that the suspicion of an irregularity or misconduct has not been properly or actually investigated or that the investigation report or the employer's point of view contains material inaccuracies, the employer will respond to this and, if necessary, conduct a new or additional investigation.

#### External report

1. After making an internal report, the whistleblower can make an external report if:
  - a. the whistleblower disagrees with the employer's point of view and is of the opinion that the suspicion has been wrongly dismissed;
  - b. the whistleblower has not received a response adopting a position within the period of 8 weeks and has not been further informed of this.



2. The whistleblower can immediately make an external report of suspected misconduct if he cannot reasonably be expected to first make an internal report. This will apply in all cases if this results from any statutory provision or in the case of:
  - a. an acute threat, in which a serious and urgent public interest requires that the matter be reported externally without delay;
  - b. a reasonable suspicion that the highest officer of the organisation of the employer is involved in the suspected misconduct;
  - c. a situation in which the whistleblower has a reasonable fear of countermeasures in connection with making an internal report;
  - d. a clearly identifiable threat of embezzlement or destruction of evidence;
  - e. a previous report, in accordance with the procedure for the same misconduct, which has not eliminated the misconduct;
  - f. an obligation to make a direct external report.
  
3. The whistleblower can make the external report to the external body which, in the reasonable opinion of the whistleblower, is best placed to do so. An external body is defined in all cases as:
  - a. an authority responsible for investigating criminal offences;
  - b. an authority charged with the supervision of compliance with the provisions under or by virtue of any statutory provision;
  - c. another competent authority where the suspicion of misconduct can be reported, including the Investigation Department of the House for Whistleblowers.
  
4. If the public interest outweighs the employer's interest in secrecy, the whistleblower may also make the external report to an external third party who, in his reasonable opinion, may be considered directly or indirectly able to remedy the suspected misconduct or have it remedied.

## **Periodic reports**

Each year the managing director draws up a report on the policy for handling reports on suspicions of misconduct and irregularities and the implementation of this scheme. This information will in all cases include:

1. information about the policy pursued in the past year with regard to handling reports on suspicions of misconduct and irregularities and the policy to be pursued in this area in the coming year;
2. information about the number of reports and an indication of the nature of the reports, the results of the investigations and the points of view of the employer (with due observance of the applicable privacy legislation);
3. general information about the experiences with counteracting disadvantage to the whistleblower;
4. The managing director sends this report to the Works Council, after which it is discussed in a consultation meeting with the Works Council.



## **Adoption**

This scheme was adopted by the board of directors and received the approval of the Works Council.