

## REPORTING OF SEXUAL AND MORAL HARASSEMENT IN NORWEGIAN MUNICIPALITIES

### LAWS AND REGULATIONS

- January 2007: New act on Whistleblowing – reporting of moral and sexual harassment, and other ethical and moral breaches, as well as direct violation of laws and regulations – the new law states that the whistleblower has the right to “blow the whistle”, and has the right to be protected<sup>1</sup>. **The employer is law-bound to have internal routines for whistleblowing.**
- One of the main objectives of the Act on Whistleblowing is to signal that whistleblowing is both legal and wanted.
- **The method of whistleblowing should be justifiable and reasonable**, eg. If the **method of whistleblowing was not justifiable and reasonable, the whistleblower is not protected from retaliation** – but the employer’s reaction has to be according to the issue at hand. A “justifiable and reasonable method for whistleblowing” is reporting internally in the organization, for instance, in municipalities it should be accepted to report to a responsible person in the organization, or as according to the internal routines. The employer is responsible for proving if the method of whistleblowing was *not* justifiable.
- If the whistleblower wishes to be anonymous, the identity should be at the very least restricted to a very small group of people. However, if the case reported goes to court and an obligation to testify arises, will this obligation to testify trump any promise of anonymity.

### KS’ WORK ON WHISTLEBLOWING

- June 2007: KS developed a **brochure** for its members<sup>2</sup> on how to develop good routines for whistleblowing.
- KS states in the brochure that its members should try to be “**open organizations**”, where employees are recommended to “blow the whistle” re. any situations or behavior that is of a critical nature. **Working on changing a culture towards openness and transparency** – very important for local governments, as local governments are reliant on the inhabitants’ trust to work optimally, and trust will decrease if there are many cases – or just suspicion – of corruption, nepotism, abuse of power or other unethical

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<sup>1</sup> Even if the whistleblower was not correct in the allegations, he/she is protected from retaliation if he/she acted in good faith.

<sup>2</sup> All municipalities and counties in Norway, as well as public companies.

actions. In an “open organization” and working culture the managers have to set the standards, and are recommended to ask for criticism and new ideas, without retaliating to the employees who report issues that might be challenging for the managers to address. In such a culture the need for whistleblowing will be less.

- KS recommends that its members **develop routines for internal whistleblowing by utilizing well-established existing channels**, i.e. managers, union representatives, health and safety representatives etc.
- KS also recommends that its members **establish another alternative channel<sup>3</sup>** for whistleblowing, in case the whistleblower does not wish to report to the established channels or the report is not registered after it has been reported.
- **The routines that are developed should be in accordance with the Work Environment Act and have legitimacy in the organization.** It should be well-known by all employees and easy to comprehend and use.
- KS also **outlines how the process for establishing routines for reporting for their members can be carried out**, and underlines that the overall responsibility for establishing – and maintain and update – these routines are the Working Environment Committee (*Arbeidsmiljøutvalget*) in the local governments, as these routines are a part of the Health, Safety and Environmental Activities system (*HMS*).

## LOCAL GOVERNMENTS

- KS' recommendation to the process of developing good routines for reporting (from the brochure in 2007):
  1. **Success criteria #1:** Have a good understanding of the laws and regulations re. Whistleblowing and routines for reporting.
  2. **Success criteria #2:** Support, understanding and **involvement from top management** – this signals that this is considered important work and the management can also aid in making sure that the work with this routines are coupled with the local government's other work on corruption, transparency, and quality.
  3. **Success criteria #3: Involvement of different actors / stakeholders** (Management, Employer Organizations, Unions etc) in order to secure different perspectives and experiences in the development process. Eg. Establishing a working group with broad participation.

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<sup>3</sup> This channel should be objective and independent, eg. A whistleblowing secretariat, whistleblowing ombud (where more than one local government can come together to establish this), internal unit, a law firm etc. What the local government chooses depends greatly on size and organization. Localities, costs and resource input should also of course be taken into consideration. And good guidelines need to be developed for this channel.

4. **Success criteria #4: Mapping** of any cases have been reported before the work on these routines; what kinds of cases have been reported; how it has been reported; in what sphere etc. This will allow for increased awareness re. the need for routines and how the routines should be developed.
  5. **Success criteria #5: Involving employees on all levels** through group work, describing the status quo of the working environment and it's level of openness, and the level one should aim for, and *how*.
  6. **Success criteria #6:** Do not make the routines too complicated – they should be comprehensible to all.
  7. **Success criteria #7:** The approved routine needs to be well-know in the organization – introduce training of management, union representatives and
- Internal routines for whistleblowing should include definition of what kind of circumstances can be reported. Eg. Professional and political differences / disagreements does not fall under this category. **Examples of issues that can be reported:**
    - Circumstances that can lead to risk for life and health;
    - Sexual and moral harassment;
    - Corruption;
    - Abuse of power;
    - Embezzlement, theft and financial non-compliance;
    - Breach of professional secrecy; and discrimination.
  - If the local governments choose to **establish an alternative channel for reporting**, this needs to include good working guidelines that do not allow room for misunderstanding. This channel should be objective and independent, eg. A whistleblowing secretariat, whistleblowing ombud (where more than one local government can come together to establish this), internal unit, a law firm etc. What the local government chooses depends greatly on size and organization. Localities, costs and resource input should also of course be taken into consideration.
  - Whistleblowing can happen by an oral statement, via email, documentation, or any other way that is usable for getting the message across. This is also applies if the circumstances being reported are in conflict with, or might hurt, the employee's interests. But the criticism should not be based on gossip or groundless allegations.
  - A well thought-through routine for reporting protects the whistleblower and makes the identity only known to very few people, if this is a wanted situation – and there are also ways of not making the identity of the whistleblower known to the management. In some cases media has been utilized to report cases – as they protect their sources.
  - Some larger local governments have established an **electronic anonymous reporting system** – the person reporting a situation can log on anonymously and follow what is happening with the reported situation and can be asked to provide more information (through this system), and can also later choose to give up his/her identity.

## TNS GALLUP MAPPING OF WHISTLEBLOWING IN NORWEGIAN LGs (2011)

- TNS Gallup – a competence network of communication services - interview-based data collection and analysis.
- TNS Gallup conducted a mapping of whistleblowing in Norwegian LGs for KS, the Norwegian Local Government – System of Internal Supervision and Control and External Audit Control (*Norges kommunerevisorforbund*) and Transparency International Norway. Financed by the Ministry of Local and Regional Authorities – as part of the project “Transparency, Integrity and Anti-Corruption in the Municipal Sector”.
- Survey focused on HR-managers and auditors in a selection of Norwegian LGs as well as a selected number of employees.
- Main conclusions:
  1. The culture of openness in Norwegian LGs is “pretty open”.
  2. Whistleblowing-routines are seen as important in order to uncover breaches on laws and regulations, but is not always working as well as desired. The routines are not as well-known among the employees as preferred.
  3. HR-managers gave a better appraisal of the routines than the employees.
  4. Today’s routines for reporting / whistleblowing are different from one LG to the next, but the most common one is reporting to union representative or health and safety representative (*verneombud*) – it is a simple routine and easy to utilize, however the survey uncovered some uncertainties from the employees re. protection and anonymity.
  5. On average 1 – 4 cases are reported each year.
  6. Most of the cases are connected with harassment of employees and / or unwarrantable leadership. Auditors usually receive reporting on financial mismanagement directly.
  7. Missing whistleblowing on cases is usually because the cases are not considered serious enough, or that it can be difficult to know what the real circumstances are (word against word). Many of the employees in this survey pointed at conflict of loyalty as an issue – between both colleagues and management.
  8. Management and the employees give different answers re. retaliation and protection of the whistleblower: 3 out of a 100 HR-managers know off negative consequences for a whistleblower, in comparison to 3 out of 10 of employees. Most managers believed that the whistleblower is protected against retaliation, while 4 out of 10 employees who do not believe the whistleblower is protected.
  9. 9 out of 10 managers state that reported cases are followed up with measures of improvement. This is also confirmed by employees (and auditors), however the uncertainty here is a bit bigger.
  10. There is still need for information re. routines for reporting as well as rights for whistleblowers – awareness raising. 8 out of 10 managers think the routines work well, against 3 out of 10 of the employees.

## ELECTRONIC REPORTING

- Many municipalities have electronic reporting
- Either the employees will be able to find it on the intranet or for anyone else it is also accessible on the webpage (eg. Oslo municipality: <http://www.oslo.kommune.no/varsling/> - in Norwegian)
- The electronic forms are simple and concentrated around the description of the situation that is reported and what the reporter/whistleblower thinks should be done with the situations
- The reporter can choose to be anonymous or give the name
- After the electronic form has been filled in and sent, the reporter/whistleblower receives a pin code and a reference number – these can then be used to log into the site and see what is happening with the situation and also allows for further clarification on the situation without the reporter having to give his/her name