VLT Quarterly Client Update

July 2022

Amendments to Whistleblower Protection Act - Continued

As we noted in our April 2022 quarterly update, the recent amendments to the Whistleblower Protection Act (***Act)*** would take effect on June 1, 2022. This quarterly update will address practical issues with regard to complying with the Act.

Investigations

The Consumer Affairs Agency (***CAA***) released guidance which states that part of a firm's obligation is to establish an internal system to handle whistleblowing matters and to investigate any claims made (except for cases in which there is a justifiable reason not to do so). This guidance also states that in order to protect the whistleblower, the firm has an obligation to protect the confidentiality of the whistleblower's personal information, and an obligation to prohibit employees and directors from searching for information about the whistleblower.

Additional Links

Note: all links are Japanese only.

- FAQ from Consumer Affairs Agency
- Consumer Affairs Agency's Whistleblower Handbook

Recommended Approach

1. In line with the information stated above, when an investigator interviews a relevant employee, in addition to asking the person to sign a confidentiality agreement, the firm should also notify the employee of the disciplinary actions that the firm may take against him/her if he/she leaks information concerning the whistleblowing (including personal information about the whistleblower if the interviewer is aware of any).
2. Also, in order to reduce the chances that the interviewee may guess the identity of the whistleblower, when possible, the investigator would be better off not disclosing to the interviewee that the trigger for the investigation was a whistleblowing report, but instead stating that the interview is being conducted, for example, as part of a random audit process etc.
3. If the firm retains some internal memos related to the whistleblowing report (such as interviewee memos), in order to minimize the chance that the whistleblower's personal information is unnecessarily disclosed, the full name of the whistleblower should not be included in the documents, and instead using another naming convention such as abbreviations would ideally be used. Also, if the firm discusses the whistleblowing matter within the firm's disciplinary committee, whenever possible, we recommend not providing them with the whistleblower's name (or other easily identifiable information of the whistleblower). By refraining from disclosing the whistleblower's name or any easily identifiable information to the disciplinary committee, a company would not need to designate the disciplinary committee as "designated personnel" who are handling the whistleblowing matter.

Risk of Leaks and International Firms

1. If any designated personnel who have been selected to address the whistleblowing report unjustifiably leak personally identifiable information about the whistleblower which only the selected personnel could have become aware of in the course of addressing the whistleblowing report, a fine of up to JPY 300,000 will be imposed on the person who leaked the information (Articles 12 and 21 of the Act). In the case that such information is accidentally leaked, no fine will be imposed. In addition, if an employee who is not part of the designated personnel leak information, no fine will be imposed.
2. Criminal liability will only be imposed if the person leaks the information within Japan (Articles 1 and 8 of the Criminal Law).

For more information, please contact Akiko Yamakawa, Tomohiro Yokota, or Maria Abe