



Amendments to the Whistleblower Protection Act



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1. Introduction

The Whistleblower Protection Act¹ was enacted in 2004 and enforced in 2006 in Japan (the “**2004 Act**”) to protect whistleblowers and thereby encourage potential whistleblowers to report any misconduct of certain business operators,² such as their employers, and to encourage such business operators, through whistleblowing, to comply with laws and regulations.

In 2020, the Act was amended (the “**2020 Act**”) to enhance the protection of whistleblowers by not only expanding the scope of protected whistleblowing but also enhancing the obligations of business operators. The 2020 Act will take effect by June 1, 2022, but a more specific date will be provided in a government regulation. Government regulations and guidelines with further details will also be issued by then.

2. Enhancement of Whistleblowing Protection

(1) Outline of the whistleblowing protection under the 2004 Act

In the 2004 Act, if a worker, without the purpose of acquiring a wrongful gain, causing damage to others, or any other wrongful purpose, reports the wrongdoing of certain business operators as provided in the said act, such as his/her employer or a business operator to which the worker has been dispatched under the Worker Dispatching Act³ (collectively, the “**Employer**”), to the Employer; an administrative organ (e.g., government agency) with the authority to impose a disposition, make a recommendation, etc., regarding the reportable fact; or any person to whom reporting the reportable fact is recognized as necessary to prevent the occurrence thereof or the spread of the damage caused thereby (e.g., consumers’ group and the media) (“**Other External Recipients**”) (such act of reporting, the “**whistleblowing**”), and if the whistleblowing meets the following requirements (depending on the recipient of the whistleblowing), then the dismissal of, or termination of the worker dispatch contract of, such whistleblower on account of such whistleblowing shall be void, and any demotion, salary cut or any other disadvantageous treatment of

1. Act No. 122 of 2004.

2. “Business operators” means corporations and other organizations as well as individuals who are engaged in business (2004 Act, art. 2, para.1).

3. 2004 Act, art. 2, para. 1.

4. *Id.*, arts. 2 to 5.



the whistleblower based thereon is prohibited:⁴

- (a) If to the Employer, the whistleblower considers that the reportable fact has occurred, is occurring, or is about to occur.
- (b) If to an administrative organ, there are reasonable grounds for the whistleblower to believe that the reportable fact has occurred, is occurring, or is about to occur.
- (c) If to any Other External Recipient, there are reasonable grounds for the whistleblower to believe that the reportable fact has occurred, is occurring, or is about to occur, and any of the following applies:
 - (i) the whistleblower has reasonable grounds to believe that he/she will be subject to dismissal or any other disadvantageous treatment if he/she whistleblows to the Employer or an administrative organ;
 - (ii) the whistleblower has reasonable grounds to believe that evidence pertaining to the reportable fact might be concealed, counterfeited or altered if he/she whistleblows to the Employer;
 - (iii) the whistleblower was requested by the Employer, without any just cause, not to whistleblow to the Employer or an administrative organ;
 - (iv) the whistleblower does not receive notice from the relevant Employer about the commencement of an investigation on the reportable fact within 20 days from the day the whistleblowing was made in writing to the Employer, or such Employer does not investigate the reportable fact without any just cause; or
 - (v) the whistleblower has reasonable grounds to believe that harm to the life or body of an individual is being caused or is about to be caused.

(2) Expansion of the scope of whistleblowers

In the 2004 Act, the worker protected thereunder refers to any worker as provided for in Article 9 of the Labor Standard Act and does not include retired workers and executives. In the 2020 Act, however, workers who have retired within one year before the whistleblowing are also protected. Executives have also been included, although the requirements for their protection are stricter than other whistleblowers as described in section (6) below.⁵

(3) Expansion of the scope of protected reportable facts

The 2004 Act protects whistleblowers only when they report facts pertaining to the criminal acts of the Employer under certain laws. In the 2020 Act, acts which are subject to administrative penalties under certain laws are now also protected.⁶ The Whistleblowing Protection Act, which imposes both criminal and administrative penalties, has also been added as one of the laws covered by the scope of protected reportable facts.

(4) Expansion of recipients of the whistleblowing

The 2004 Act expressly stipulates that whistleblowing can be made to a person designated by the Employer but it did not state that it can be made to a person designated by an administrative organ. The 2020 Act now expressly states that whistleblowing can also be made to a person designated by an administrative organ.⁷

5. 2020 Act, art. 2, para. 1.

6. *Id.*, art. 2, para. 3.

7. *Id.*, art. 2, para. 1.



(5) Expansion of the scope of whistleblowing protection

The 2020 Act expands the scope of whistleblowing protection as follows:

(a) For whistleblowing to an administrative organ, in addition to whistleblowing by a whistleblower who meets the requirement described in section (1)(b) of paragraph 2 above, the 2020 Act further protects whistleblowing by a whistleblower who merely considers that a reportable fact has occurred, is occurring, or is about to occur, and reports such fact by submitting a written form stating his/her name and address, the details of the reportable fact, the reason why he/she considers that the reportable fact has occurred, is occurring, or is about to occur, and the reason why he/she considers that measures pursuant to the law or other appropriate measures must be taken with respect to the reportable fact.⁸ Thus, if a whistleblower simply considers that a reportable fact has occurred, is occurring, or is about to occur, even without reasonable grounds, he/she will be protected by submitting the above described form.

(b) For whistleblowing to any Other External Recipient, the following item has been added to section (1)(c) of paragraph 2 above: there is a reasonable ground for the whistleblower to believe that the Employer is leaking information that identifies the whistleblower. In addition, item (v) in section (1)(c) above has been amended to state that the whistleblower has reasonable grounds to believe that harm to the life or body of an individual, or damage to the property of an individual (i.e., one that cannot be cured, or a substantial amount of damage to a significant number of individuals, which must be directly caused by the reportable fact,) has been or is about to be caused.⁹

(6) Expansion of protection measures

In addition to the nullity of any dismissal and the prohibition of any disadvantageous treatment of the whistleblower, the 2020 Act prohibits the Employer from making claims against whistleblowers for damages caused by the whistleblowing that meets the requirements thereunder.¹⁰ As to executives, they can be dismissed; however, they can claim for damages caused by such dismissal, provided that they meet certain additional requirements, such as making an effort to take the necessary measures to investigate and rectify the reportable facts in advance of the whistleblowing when they report the reportable facts to the administrative organ or Other External Recipients.¹¹

3. Enhancement of Business Operators' Obligations

To ensure the protection of whistleblowers, the 2020 Act now obliges all business operators (other than those who have hired only 300 or less regular employees, who are only obliged to make an effort to take these actions) to take the following measures:¹²

8. *Id.*, art. 3, item 2.

9. *Id.*, art. 3, item 3.

10. *Id.*, art. 7.

11. *Id.*, art. 6.

12. *Id.*, art. 11.



- (i) Designate a person to take charge of receiving whistleblowing, investigating the reported fact(s), and taking the necessary measures to rectify thereported fact(s); and
- (ii) Establish a necessary system to appropriately receive and report any whistleblowing.

Under the 2004 Act, these measures were recommended to be voluntarily taken pursuant to the guidelines issued by the Consumers Affairs Agency. They must now be taken under the 2020 Act. To ensure the effective enforcement of these provisions, the administrative organs may take administrative measures, such as giving advice, guidance or recommendations to the business operators, and publish the names of those who do not follow the administrative recommendations.¹³ Guidelines will be issued for the details of the measures to be taken by the business operators.¹⁴ According to the draft guidelines recently published for public comment, there are also a few new measures which need to be taken by the business operators who have already taken measures in accordance with the current guidelines, such as the creation of records of whistleblowing and the storage thereof for an appropriate period of time.

In addition, the 2020 Act specifies the confidentiality obligation of the person in charge of whistleblowing work as mentioned in item (i) above with respect to information that can identify a whistleblower. The breach of such obligation will be subject to criminal penalty.¹⁵

4. Conclusion

With the enhanced scope of whistleblower protection, business operators in Japan are encouraged to review their internal rules and systems to align them with the foregoing amendments that are about to take effect next year as well as the guidelines to be issued thereon.

13. *Id.*, arts. 15 to 17.

14. *Id.*, art. 11, para. 4.

15. *Id.*, arts. 12 and 21.