

Topic : Korea's Public Interest Whistleblower Protection System

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1. Background of Public Interest Whistleblower Protection

System Information in the public sector

- The Korean government with an aim to better protect people's rights to know and to enhance transparency, enacted and enforced the Act on Information Disclosure in the Public institution in 1996 and 1998 respectively.
- By disclosing information produced in the public institution including the central and local government agencies, the government encourages citizen participation in state affairs.

Information in the private sector

- Unlike public sector information, information produced in the private sector is secret and sophisticated, making it hard for the general public to understand.
- So illegal practices in the private sector which could directly affect people's lives or safety can only be discovered by the insiders, or whistleblowers. However, whistleblower in the private sector suffered disadvantages since due to the lack of protection measures for them.
- As a result, the ACRC enacted the Act on the Protection of Public Interest Whistleblowers to protect whistleblowers in the private sector who had not been protected by laws.

Korea's public interest violation whistleblowing protection system

- Korea's public interest whistleblowing system is unique in that it is operated by an agency dedicated to protecting whistleblower, the ACRC. This differentiates Korea's whistleblower protection system from that of other countries.
- In other countries, when whistleblowers suffer disadvantages after whistleblowing, s/he has to seek remedies by filing a lawsuit for him/herself. In Korea, however, the ACRC requests protective measures for a whistleblower. If the reported party does not comply with request and files a lawsuit against the ACRC's decision, the ACRC defends the suit on behalf of the whistleblower.

2. Understanding of the public interest violation whistleblower protection

system Overview

What is public interest whistleblowing?

- Public interest whistleblowing report refers to an act of reporting practices that are subject to penal provisions or administrative disposition of 279 related Acts stated in the public interest whistleblower protects Act in areas of to public safety and health, the environment, customer interests and fair competition.

Who can make a public interest violation report?

- Anyone can file a public interest violation report. Not only employers or duty-related people but also the general public can make a report.

Where can a public interest violation report be made?

- Report can be made to various agencies including the ACRC, investigative agencies, administrative agencies and supervisory agencies, public organizations which are set up under laws related to public interest violations, lawmakers, or representatives or users of companies.

How can a public interest violation report be made?

- A report should be made after filling in personal information, the contents of public violation, the purport and reason of the report, and including evidence.
- In order to prevent frivolous reports and protect reporters, reporter's name should be provided.

Protection measures Guaranteeing

Confidentiality

- The disclosure of a whistleblower's identity without his or her consent is prohibited. If not, the ACRC can request disciplinary actions against those involved from the relevant authorities. Criminal sanctions can be imposed if a public interest whistleblower's confidentiality is breached.

Prohibiting disadvantageous measures against a whistleblower

- No one shall inflict personal, administrative, financial disadvantages on whistleblowers for blowing the whistle. Otherwise, the person will be subject to a penalty for negligence or criminal punishment.
- For the reporter suffering disadvantageous measures as a result of blowing the whistle, the ACRC can request protective measures to invalidate the imposed disadvantageous measures. They can be restoring personal status or reinstatement. If such measures are not taken, criminal punishment is imposed.
- In order to prevent the reported party from delaying the implementation of the requested measures by filing an administrative proceeding against the ACRC's decision, the ACRC imposes charges for compelling the compliance.

Personal protection for a whistleblower

- If it is evident that a reporter is likely to face serious physical damage or danger to life because of the report, he or she can ask the ACRC for personal protection.

Mitigating liability for a whistleblower

- If the whistleblowing leads to the detection of illegal practice of the whistleblower, the punishment, disciplinary actions or administrative disposition may be mitigated or remitted.
- If the whistleblowing contains confidential work-related information, the whistleblower shall be deemed not to have violated confidentiality of his professional work.
- The whistleblowee cannot file a claim for damages caused by the whistleblowing against the whistleblower.

Compensation for a whistleblower

Rewards

- If a report led to recovery of or increase in the revenue of public organizations, up to 2 billion won of rewards will be provided as rewards to the whistleblower.

Awards

- Even though a report does not lead to a revenue increase in public organizations, if the report serves public interests, rewards can be provided.

Relief money

- Relief money for cost of physical or mental treatment can also be provided.

Major Cases

Public interest violation case

- In 2014, a public interest violation case where a pharmaceutical company provided kickbacks to hospitals and clinics in return for prescribing its products was reported. An Investigation confirmed the case and 300 people including doctors were prosecuted. This case raised an alarm about the illegal rebate practices which are rampant in pharmaceutical market.

Public interest whistleblower protection case

- An employer of Company A disclosed that the company manipulated its telephone survey. In retaliation, the company imposed disadvantageous measures two times including dismissal on the whistleblower. Based on its decision that A had been subject to disadvantageous measure as a result of the whistleblowing, the ACRC took measures to invalidate such decision. In response, Company A filed a lawsuit against the ACRC's decision, and the Supreme Court upheld the ACRC's decision.
- This case demonstrates the ACRC's strong will to protect public interest whistleblowers.
- It also shows that the ACRC alone cannot protect whistleblowers. Companies should join the efforts to protect whistleblower by changing their mindset.

3. Achievements of the system

Through the revision of the Act, Areas subject to reporting was expanded and protection for public interest whistleblower was strengthened.

- Through the revision of the Act in 2016, areas subject to the public whistleblower protection increased from 180 to 279, ensuring better protection for public safety.
- In order to strengthen the efficiency in compliance with public interest whistleblower protection, a charge for compelling compliance was imposed.
- Public whistleblower protection was strengthened by including a joint penal provision stipulating that if interest whistleblower violation occurred, employers shall be punished.
- To strengthen protection for public interest whistleblowers, scope of liability mitigation for public interest whistleblowers was expanded to include disadvantageous administrative disposition.

More protective measures and financial rewards

- Since its enforcement, 25 protective measures including personal protection measures were taken.
- Rewards of 2 billion won in total were provided.

4. Conclusion

- Laws and regulations have its limits in encouraging whistleblower to come forward and whistle the blow. Most important thing is make a culture where whistleblowers are not stigmatized.
- As an agency dedicated to and overseeing public interest whistleblower protection, the ACRC is actively engaging in a variety of activities to create a culture where people see whistleblowers positively. The ACRC believes that its continuous effort will contribute to making Korea more transparent society.