



Capsulas

Updates in compliance programmes

Organic Law no. 10/2022, of 6 September, on the comprehensive guarantees of sexual freedom broadens the scope of situations in which companies can be criminally liable

Exemption via compliance programmes

The Spanish Criminal Code (article 31 bis) establishes that companies may be criminally liable for certain offences committed by their employees or managers. However, it also provides that such liability can be avoided or mitigated if the company has an adequate compliance programme in force.

To this end, compliance programmes must meet certain requirements: clearly identify the activities in which crimes can be committed (risk map); set out the necessary protocols and procedures to mitigate these risks, and inform and train its personnel; enforce the reporting of potential risks and breaches through so-called “whistle-blower channels”; fund the compliance programme as necessary; and set out a disciplinary system to sanction non-compliance with the programme. The company must also have an independent, autonomous supervising body (compliance officer). The compliance programme is a “living” element, which must be reviewed from time to time.

New situations that must be anticipated in compliance programmes

Organic Law no. 10/2022 classifies as an offence to inflict a degrading treatment on another person, seriously undermining their moral integrity, as well as to repeatedly conduct hostile or humiliating acts which, despite not constituting a degrading treatment, constitute serious harassment in the context of any employment relationship (whether with a public or private

employer), while taking advantage of hierarchical superiority. The law also classifies as an offence to favours of a sexual nature in the context of an employment or service provision, or similar, if this causes an objectively and seriously intimidating, hostile or humiliating situation to the victim.

Up until now, when faced with this kind of situations, the company could be declared vicariously liable for possible moral damages and compensation. From now on, the company may also be criminally sanctioned with a fine and other additional penalties, such as loss of the right to subsidies, disqualification from contracting with the public sector, among others, or even dissolution.

Therefore, it is recommendable to revise and update compliance programmes and all related documents so as to include these new scenarios in which companies can be criminally liable. In particular, it is convenient to update risk maps, have prevention plans and actions protocols in force as regards these crimes, and conduct awareness training within the companies.