

# Summary

## Freedom of speech and whistleblowing in Norwegian municipalities and counties

This report examines freedom of speech and whistleblowing in Norwegian municipalities and counties. The report comprises ten chapters and draws on numerous data sources. In particular, the analysis builds on two questionnaires: one for municipal and county employees; the other designed for municipalities and counties as employers, where the questionnaire was answered by designated representatives. In addition, we have conducted qualitative interviews with informants in four municipalities, and analysed 50 municipalities' routines regarding whistleblowing. The report focuses on the following questions:

- What are the conditions for freedom of speech for municipal and county employees? To what degree are employees encouraged or limited in using their freedom of speech?
- Is the right to blow the whistle being taken advantage of? How is whistleblowing handled by the relevant authorities in municipalities and counties?
- How well developed are the routines for whistleblowing in the municipal sector? Do these routines make it easier and safer to blow the whistle, and is there a connection between the whistleblowing routines that exist and the perceived conditions for freedom of speech?

Freedom of speech is protected in the Norwegian Constitution, and was strengthened through amendments that were ratified and came into force on 30 September 2004. The current system regulating whistleblowing was incorporated in the Working Environment Act (*arbeidsmiljøloven*) in 2007. In June 2016, the Norwegian Ministry of Labour and Social Affairs submitted proposed changes to the law for a hearing. The proposed changes include a requirement that mandates routines for whistleblowing, as well as the expansion of whistleblowing protections to subcontracted or temporary workers, not just permanent employees.

### **Why is this important?**

Why is it important that municipal employees make use of these rights? What opportunities and limitations are pursuant to prevailing legislation? The public sector is the steward of the community's funds and is responsible for provision of services to the population, including to disadvantaged and vulnerable groups. Openness and transparency are conducive to detection and rectification of gross errors, wastefulness or abuse of the community's funds. To employers, it is also crucial that the employees participate in professionally related discussions of priorities and issues related to health, safety and the environment. To employees, it is important to enjoy co-determination in the workplace. However, ability on the part of employers to handle criticism and unpleasant information is a precondition for this to happen.

### **Whistleblowing in safety**

Good preconditions for freedom of speech in the workplace are fundamentally a matter of the possibilities to submit notification about concerns and voice criticism, be it to superiors or colleagues, without risk of retaliation.

First, the internal conditions: there is widespread acceptance for discussing professional matters in the workplaces, and nearly 60 per cent of the respondents also believe that there are ample opportunities to discuss work-related problems. This notwithstanding, one in four responds that they risk being met with displeasure on the part of their boss should they voice critical viewpoints about workplace issues. Nearly half of all employees find that discussions on workplace-related problems largely take place in informal settings. Repeatedly being told that 'someone has conferred' may give rise to feelings of insecurity. This would also challenge principles such as openness and accountability as the basis of any decisions made.

Temporary employees are vulnerable in the sense that they deem their internal preconditions for freedom of speech to be poorer than those of other employees. This shows that without permanent employment, voicing criticism in the workplace may be more risky.

### **What about public statements?**

Making a public statement, to journalists or in letters to the editor, is not a common occurrence for most employees. On the other hand, the parameters for employees' freedom of speech are broad. As employees we may not issue statements on behalf of the enterprise, but we have the right to speak out as private individuals, including about conditions at work. On several occasions, the Parliamentary Ombudsman has affirmed that public-sector enterprises, including municipal ones, in some cases impose restrictions that violate Section 100 of the Norwegian Constitution with regard to their employees' freedom of speech. In this context, we find that nearly 40 per cent of

the respondents to our survey fully or partly agree that the top management imposes such restrictions out of consideration for the enterprise's reputation. Even more seriously, nearly 40 per cent believe that restrictions are imposed on reporting censurable conditions in the workplace. Nineteen per cent respond that employees are rebuked for making public statements.

Women deem their freedom of speech – both internally and externally – to be poorer than men do. The same applies to employees who have gone through a restructuring process in the course of the last two years.

A majority of the employees think that it is acceptable for both managers and other employees to participate in public debate using the professional knowledge they have accumulated through their jobs. However, their statements should not include criticism of their own municipality. No more than 30 per cent of the respondents believe that criticism of their own municipality is acceptable.

Although only very few speak out through newspapers, radio and TV, the majority act as their own editors through social media. This gives rise to new questions regarding what can be said and in what context. As a result, a growing number of workplaces have established their own routines for the use of social media. In the municipal sector, altogether 66 per cent of the respondents report to be encompassed by such routines.

### **The duty of loyalty**

The question of freedom of speech is closely linked to the duty of loyalty. This duty implies that employees must act loyally with regard to the enterprise's legitimate interests. Moreover, those who are in a position close to the political leadership are subject to stricter demands for loyalty than others. In addition, employers are free to decide who should speak on behalf of the enterprise and what they should say. However, this does not apply when staff members speak on their own behalf. This freedom of speech is restricted only when employees make statements that can harm their employers or their interests unnecessarily.

### **Reporting of wrongdoing**

Pursuant to the Working Environment Act (Sections 2-4 and 2-5), employees have the right to notify in an appropriate manner about wrongdoing at the workplace, and retaliation against the employee is prohibited. Barely ten years after the enactment, less than 20 per cent of the municipal employees report to be well familiar with these provisions.

What are wrongdoing? These may include violations of laws and regulations, or violations of guidelines or general notions of defensibility or ethical acceptability.

Among the municipal and county employees, altogether 21 per cent have witnessed, discovered or experienced wrongdoing. Six out of ten reported the issue. This is

a higher proportion of whistleblowers than in the employed population as a whole (Trygstad & Ødegård 2016). Destructive management that is harmful for the working environment, harassment/bullying and violations of ethical guidelines are the most frequently occurring wrongdoing. Altogether 65 per cent of the respondents answer that a manager was responsible for the issue in question.

Notification can be submitted internally as well as externally. Whistleblowing in accordance with appropriate routines, to trade union representatives, safety delegates and the authorities (such as the Labour Inspection Authority) will always be defensible. Occasionally there will be a need to notify the media, for example if an internal notification has failed to produce a response or when quick action needs to be taken, or when criminal acts have been committed. Some have also established special, external reception offices for whistleblowing. As it turns out, municipal employees primarily submit notifications internally, 'in the line of command,' meaning that more than half of them have notified their immediate superior first. Women blow the whistle to a greater extent than men, possibly because many of them work in the health and care sector. These workplaces have a long-standing tradition for reporting aberrations, which may have helped increase whistleblowing.

### **Does whistleblowing help?**

The whistleblowers were asked whether the wrongdoing was rectified or improved. Four of ten responded that it was rectified/improved fully or partially, while four of ten reported that their notification had failed to produce a significant change. Three per cent reported a deterioration, while 16 per cent reported that too little time had elapsed since the notification was submitted to be able to say.

### **Sanctions and fears**

In the context of whistleblowing, sanctions against whistleblowers is an issue that has frequently attracted public attention. In the study, the whistleblowers were asked about any reactions they had been met with in the aftermath of a notification. Altogether 36 per cent had met with positive reactions, while 19 per cent had faced negative reactions.

What is meant by retaliation and sanctions may be unclear, since there are numerous virtually invisible ways to strike back at the whistleblower, such as deferred promotion and giving him or her fewer/other job tasks. In this study, the most common negative reaction included rebukes and reprimands from a superior. Those who receive notifications (managers, trade union representatives and safety delegates) were asked how the whistleblower fared, during as well as after the notification. Only 34 per cent responded that they had investigated this issue.

Four of ten employees have refrained from submitting a notification of the wrongdoing they had experienced or witnessed. When asked why, 37 per cent responded that they had expected the unpleasant consequences of doing so to be disproportionate. Altogether 24 per cent cited the heavy personal burden involved as their reason for remaining silent.

### **The importance of whistleblowing routines**

Employers in the municipalities and counties received a special questionnaire about whistleblowing routines. In addition, a detailed analysis of 50 sets of whistleblowing routines was undertaken.

The Working Environment Act (Section 3-6) states that the enterprises shall prepare whistleblowing routines if the circumstances so indicate. Eighty per cent of the municipalities and county administrations have whistleblowing routines, and another seven per cent respond that such routines are being prepared. The main reasons given for introducing whistleblowing routines is compliance with legislation and good governance practices.

Fewer than half of the whistleblowing routines analysed (18 of 50) include provisions regarding feedback to the whistleblower, and only half of them (23 of 50) pointed out that retaliation against whistleblowers is prohibited by law.

One key question is whether the whistleblowing routines have made it safer and simpler to submit a notification. In this respect, the answers vary depending on whether the responses come from representatives of municipal employers or from the employees themselves. Seven of ten municipalities and county administration fully or partly agree that the routines have made it easier and simpler to submit notifications. Altogether 37 per cent of the employees agree that the routines have made it safer to submit notifications, and 40 per cent of them believe that it has become simpler.

Moreover, the analyses show that whistleblowing routines are important. There is a clear association between the presence of whistleblowing routines and whistleblowing effectiveness (i.e. that it helps to blow the whistle). Those who are encompassed by whistleblowing routines have also been less exposed to sanctions because of their whistleblowing than those who are not encompassed by such routines. Last, but not least, employees who are encompassed by whistleblowing routines deem their internal as well as external conditions for freedom of speech to be better, when compared to those who answer that they are not encompassed by such routines or do not know whether or not they are.