

Accountability Report Card Summary 2009
Alaska

Alaska has a relatively weak whistleblower law:

- Scoring only 46 out of a possible 100 points; and
- Ranking 38th out of 51 (50 states and the District of Columbia)

Alaska has moderately broad coverage (19 out of 33 possible points) with limited usability (14 out of 33) and weak remedies (13 out of 33).

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Alaska Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale
Alaska Whistleblower Act §39.90.100 -150 (2006)

A. Breadth of Coverage (33 points possible from 10 factors).

Does the statute cover disclosures of –

Factor	Maximum Points	Awarded Points
1. Violation of state or federal law, rules or regulations	6 points	6 points
2. Gross mismanagement	3 points	3 points
3. Abuse of authority (including violations of agency policy)	3 points	3 points
4. Waste of public funds or resources	3 points	3 points
5. Danger to health and/or public safety and/or environment	5 points	3 points
6. Communication of scientific opinion or alteration of technical findings	5 points	0 points
7. Breaches of professional ethical canons	5 points	0 points

Does the statute provide –

8. Employee may refuse to carry out illegal or improper orders	1 point	0 points
9. Prohibition on “gag orders” to prevent employee disclosures	1 point	0 points
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	1 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>19 points</u>

B. Usability: Scope of Protection (33 points possible from 10 factors)

Do the laws protect disclosures made to –

Factor	Maximum Points	Awarded Points
1. Any person or organization, including public media	24 points	0 points

Or does the statute protect disclosures made to –

2. Any state executive or legislative body or person employed by such entities	4 points	4 points- Officer or agency of the State
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3. Testimony in any official proceeding	4 points	4 points
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	0 points
5. Any federal or non-state governmental entity	3 points	3 points- Any officer or agency of the federal government.
6. Co-workers or supervisors within the scope of duty	3 points	0 points
7. Anyone as provided in paragraphs 2 thru 6 (above) without prior disclosure to another state official or supervisor	3 points	0 points

Does the state law –

8. Require an investigation by state auditor or other investigative entity of whistleblower disclosures	1 point	0 points
9. Have a statute of limitations of one year or longer for filing complaints	3 points (2 points if 6 months or longer and 1 point if 60 days or longer)	3 points ¹
10. Allow qui tam or false claim actions for recovery of “bounty” in cases of fraud against the state	5 points (2 points if a qui tam statute of limited scope)	0 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>14 points</u>

C. Strength: Remedies against retaliation (33 points possible from 11 factors)

Does the statute provide for –

Factor	Maximum Points	Awarded Points
1. Prohibition on retaliatory actions	4 points	4 points

¹ The Alaska whistleblower statute does not contain any statute of limitations for a state employee whistleblower complaint. However, we understand that under Alaska law a 2-year statute of limitations is applicable to the filing a state employee whistleblower complaint. **See AS 09.10.070. Actions for Torts, For Injury to Personal Property, For Certain Statutory Liabilities, and Against Peace Officers and Coroners to Be Brought in Two Years. “(a) (a) Except as otherwise provided by law, a person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) for personal injury or death, or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) upon a statute for a forfeiture or penalty to the state; or (5) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.” (Bold Provided)**

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Alaska

Statute- Alaska Whistleblower Act §39.90.100 -150 (2006)

Provisions- A public employer may not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, or privileges of employment because (1) an employee, or a person acting on behalf of the employee, reports to a public body, or is about to report to a public body, a matter of public concern; or (2) the employee participates in a court action, an investigation, a hearing, or an inquiry held by a public body on a matter of public concern.

The term "matter of public concern" refers to, among other things, (1) a violation of federal, state, or municipal law, regulation, or ordinance; (2) a danger to public health or safety; or, (3) gross mismanagement, a substantial waste of funds, or a clear abuse of authority. The term "public body" includes an officer or agency of (a) the federal government, (b) the state, (c) a political subdivision of the state, including a municipality, and a school district, and (d) the University of Alaska. **The term "public body" does not appear to include the legislative or judicial branch of the state government or its bodies, committees, members or employees.**

The employee is not entitled to receive the Act's protection unless the employee reasonably believes that the information reported is or is about to become a matter of public concern and reports such information in good faith. As part of its written personnel policy, a public employer may require that before initiating a report, the employee must submit a written report concerning the matter to his/her employer. However, such a report need not be submitted if the employee (1) believes that a report to the employer will not result in prompt action to remedy the matter of public concern; (2) believes with reasonable certainty that the activity, policy, or practice is already known to one or more supervisors; (3) reasonably believes that an emergency is involved; or, (4) reasonably fears reprisal or discrimination as a result of disclosure.

An employee who alleges a violation of the Act may bring a civil action and the court may award appropriate relief including punitive damages. A person who violates or attempts to violate the provisions of the Act is also liable for a civil fine not exceeding \$10,000. A similar fine applies to any person who attempts to prevent another person from making a report or participating in a matter with intent to impede or prevent a public inquiry.

The Act does not authorize the disclosure of any information that is legally required to be kept confidential, or, diminish or impair the rights of an employee under a collective bargaining agreement.