

Accountability Report Card Summary 2009
Alabama

Alabama has a relatively weak whistleblower law:

- Scoring only 31 out of a possible 100 points; and
- Ranking 47th out of 51 (50 states and the District of Columbia)

Alabama has very narrow coverage (6 out of 33 possible points) with limited usability (13 out of 33) and weak remedies (12 out of 33).

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Alabama Accountability Index Report Card

Coverage, Usability & Strength — Rating on a 100 Point Scale
The State Employment Protection Act §36-26A-1 *et. seq.* (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	0 points
3. Abuse of authority (including violations of agency policy)	3 points	0 points
4. Waste of public funds or resources	3 points	0 points
5. Danger to health and/or public safety and/or environment	5 points	0 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	0 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>6 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. ¹
3. Testimony in any official proceeding	4 points	0 points
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 points
5. Any federal or non-state governmental entity	3 points	0 points
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	3 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
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>13 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 affecting a state employee’s terms and conditions of employment	4 points	4 points
2. Opportunity for administrative challenge	4 points	0 points ²

¹ Disclosures can be made to a public body, which includes entities, bodies, or persons in the executive, judicial, or legislative branch of the Alabama State government. It also includes disclosures to the State Attorney General and district attorneys or any member or employee of a law enforcement agency

² No provision in the statute mentions administrative challenges, though such might lie under provisions of Alabama law.

3. Opportunities for court challenge	4 points	4 points
4. Trial by jury	3 points	0 points ³
5. Burden shifting upon prima facie showing	1 point	0 points
6. Make whole remedies (court costs, attorney fees, back pay; restoration of benefits, etc.)	3 points	1 point ⁴
7. Actual/compensatory damages	3 points	3 Points-compensatory damages
8. Interim relief, injunction or stay of personnel actions	3 points	0 Points
9. Transfer preference for prevailing whistleblower or ban on blackballing	3 points	0 points
10. Punitive damages or other fines and penalties	2 points	0 points
11. Personnel actions against managers found to have retaliated	3 points	0 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>12 Points</u>

Bonus Point (1 point): Posting or employee notice of whistleblower rights required.

Factor	Maximum Score	Awarded Score
Posting	1 point	0 points

Total Points

100 Points

31 Points

³ The statute does not provide for trial by jury. However, the judge, where appropriate, may order compensatory damages. We did not examine whether either party might be entitled to a trial by jury to consider the question of compensatory damages under other provisions of Alabama law or it's Constitution.

⁴ Only provides for elements of make whole remedies: back wages and front wages.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Alabama

Statute- The State Employment Protection Act §36-26A-1 *et. seq.*(2006)

Provisions- A state employee's supervisor may not discriminate against a state classified employee concerning his/her compensation, terms, conditions, or privileges of employment, if the employee reports, under oath, or by affidavit, a violation of law, regulation, or a rule, promulgated pursuant to the laws of the state, or a political subdivision, to a public body. The term "public body" includes (1) a state officer, employee, or body in the executive branch of state government; (2) any member or employee or organization of the of the legislative branch; (3) a law enforcement agency, including the state's Attorney General and district attorneys and any employee of that branch; and (4) the judicial branch of government or a member or employee of that branch. The state employee is not required to provide prior notification to his supervisor or other agency employees of the violation of state laws, rules or regulations.

A state employee has two years after any discrimination in the compensation, terms, conditions, or privileges of employment because of his actions to bring a civil action in court. As appropriate the court, in its judgment, may order payment of back wages, front wages, and compensatory damages, or any combination of these remedies. Nothing in the State Employment Protection Act shall be interpreted to prevent a supervisor from taking any action concerning the terms of employment not connected with conducted protected by the statute.