

Accountability Report Card Summary 2009
Arkansas

Arkansas has a relatively weak whistleblower law:

- Scoring only 41 out of a possible 100 points; and
- Ranking 42nd out of 51 (50 states and the District of Columbia)

Arkansas has moderately broad coverage (15 out of 33 possible points) with limited usability (12 out of 33) and weak remedies (14 out of 33).

Arkansas's full Whistleblower Report Card *page 2*
Narrative summary of Arkansas's law *page 5*

Arkansas Accountability Index Report card
 Coverage, Usability & Strength — Rating on a 100 Point Scale
 Arkansas Whistle-Blower Act § 21-1- 601 *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	3 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	5 points

Does the statute provide –

8. Employee may refuse to carry out illegal or improper orders	1 point	1 point
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>15 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	4 points	0 points
---	----------	----------

entities		
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	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)	2 point 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 ²
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>12 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

¹ Public employee may bring a civil action within 180 calendar days after the occurrence of the alleged violation of the statute.

² No qui tam suits allowed for Medicaid Fraud. However, Arkansas Medicaid Fraud False Claims Act provides an incentive to a person alerting the State to Medicaid fraud, although no qui tam suit authorized.

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	3 points
7. Actual/compensatory damages	3 points	3 points
6. 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>14 points</u>

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

Factor	Maximum Score	Awarded Score
Posting	1 point	0 points

Totals

100 points

41 points

³ Statute doesn't mention trial by jury. However, some of issues in a court case brought may involve subjects for which right of trial by jury, e.g. compensatory damages, is traditionally available. We did not investigate whether other Arkansas statutes or its Constitution provide a right to trial by jury.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Arkansas

Statute- Arkansas Whistle-Blower Act § 21-1- 601 *et. Seq.* (2006)

Provisions- A public employer shall not take an adverse action against a public employee, (1) because the public employee, or a person authorized to act on his/her behalf, communicates **in good faith** to an appropriate authority (i) the existence of the waste of public funds, property, or manpower, including federal funds, property or manpower administered or controlled by a public employer, or (ii) a violation or suspected violation of law, rule, or regulation adopted under state law; (2) because the employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review; or, (3) because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation adopted under the authority of Arkansas laws or a political subdivision of the state. **A public employee does not have to inform the public employer of the waste or violation of law before notifying an appropriate authority. However, the communication to an appropriate authority shall be made at a time and in a manner which gives the public employer reasonable notice of the need to correct the waste and violation.**

A “violation” means an infraction or breach, which is not merely technical or of a minimal nature, of a state statute or regulation or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer. “Waste” refers to a public employer’s conduct or omissions which result in substantial abuse, misuse, destruction, or loss of public funds, property, or manpower belonging to or derived from state or local political subdivision’s resources. An “appropriate authority” includes a state department, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste or a member, agent, investigator, auditor, representative or supervisory employee of such entities. Specific examples of “appropriate authority” include the office of the Attorney General and the Auditor of the State, the Arkansas Ethics Commission, the Legislative Joint Auditing Committee and the Division of Legislative Audit, and various prosecuting attorneys with the power to investigate violations of law and waste.

An employee lacks “good faith” if he does not have personal knowledge of the factual basis for the employee’s communication to an appropriate authority or when the employee knew or reasonably should have known that the communication of waste or violation of law was malicious, false, or frivolous. A public employee who alleges that an illegal adverse action has taken place may, within 180 calendar days of the violation, bring a civil action for injunctive relief or actual damages, or both. Damages includes damages for a job-related injury or loss caused by each violation of the statute, including,

but not limited to, fringe benefits, retirement service credit, compensation for lost wages, benefits, and other remuneration, and reasonable court costs and attorneys' fees.

The term “whistle-blower” refers to a person who witnesses or has evidence of waste or violation while employed with a public employer and who communicates in good faith or testifies to the waste or violation, verbally or in writing, to one of the employee’s superiors, to an agent of the public employer, or to an appropriate authority, provided the communication is made prior to any adverse action by the employer.