

Accountability Report Card Summary 2009
Colorado

Colorado has a relatively strong state whistleblower law:

- Scoring only 61 out of a possible 100 points; and
- Ranking 6th out of 51 (50 states and the District of Columbia).

Colorado has moderately broad coverage (15 out of 33 possible points) with a high degree of usability (25 out of 33) and strong remedies (21 out of 33).

Colorado's full Whistleblower Report Card *page 2*
Narrative summary of Colorado's law *page 6*

Colorado Accountability Index Report card
 Coverage, Usability & Strength — Rating on a 100 Point Scale
 State Employee Protection- C.R.S. 24-50.5-101 (2005)

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 ¹
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	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>15 points</u>

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

Do the laws protect disclosures made to –

¹ The statute provides that the “disclosure of information” by the state employee whistleblower to any person refers to any action, policy, regulation, practice, or procedure, including, but not limited to, matters concerning the waste of public funds, abuse of authority, or mismanagement of any state agency. This formula leaves open the possibility that there will be other matters which the state employee might disclose, including violations of state law or regulations. The legislative declaration of the statute states that the General Assembly declares that state employees should be encouraged to disclose information on actions of state agencies that are not in the public interest.

Factor	Maximum Points	Awarded Points
1. Any person or organization, including public media	24 points	24 points ²
Or does the statute protect disclosures made to –		
2. Any state executive or legislative body or person employed by such entities	4 points	0 points
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	0 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	0 points

Does the state law –

8. Require an investigation by state auditor or other investigative entity of whistleblower disclosures	1 point	1 point ³
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)	0 points ⁴
10. Allow qui tam or false claim actions for recovery of “bounty” in	5 points (2 points if a qui tam statute of limited	0 points

² Statute says that **“disclosure of information” means the written provision of evidence to any person** or the testimony before any committee of the General Assembly.

³ Whenever the state personnel board finds that a disclosure of information concerning a waste of public funds or mismanagement of a state agency has occurred, a copy of its investigation report should be sent to the state auditor. The state auditor shall conduct a preliminary investigation to determine the need for an audit or management study. The Legislative Audit Committee may direct an immediate audit or study is undertaken. Upon completion of this task the Committee shall submit its findings to the Governor and the members of the General Assembly.

⁴ Statute provides that a state employee may file a written complaint to the state personnel board within 30 days after the employee knew or should have known of a disciplinary action. This administrative procedure could take some time.

An employee not in the state personnel system or any employee who is, but no reasonable basis was found for his/her charges, may bring a civil action in district court alleging a disciplinary action covered by the statute had taken place. If the employee prevails, he may recover damages, together with court costs, and the court may order such other relief as it deems appropriate.

cases of fraud against the state	scope)	
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>25 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	4 points
3. Opportunities for court challenge	4 points	4 points:
4. Trial by jury	3 points	0 points ⁵ .
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-State personnel board can order such relief.
7. Actual/compensatory damages	3 points	3 points ⁶
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	3 points ⁷
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>21 points</u>

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

Factor	Maximum Score	Awarded Score
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⁵ An employee not in the state personnel system or any employee who is, but no reasonable basis was found for his/her charges, may bring a civil action in district court alleging a disciplinary action covered by the statute had taken place. If the employee prevails, he may recover damages, together with court costs, and the court may order such other relief as it deems appropriate

⁶ If the employee prevails in court, he or she may recover damages, together with court costs.

⁷ If the state personnel board finds that an appointing authority or a supervisor had violated the strictures against reprisal actions, these individuals shall be disciplined. Such actions may range from a suspension for a minimum of one week up to and including termination.

Posting	1 point	0 points
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Total Points

100 Points

61 points

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Colorado

Statute- State Employee Protection- C.R.S. 24-50.5-101 (2005)

Provisions- The Colorado general assembly declares that the people of Colorado are entitled to information about the workings of state government in order to reduce waste and mismanagement of public funds, to reduce abuses in government authority, and to prevent illegal and unethical practices. Further, the General Assembly declares that the employees of the State of Colorado are citizens first and have a right and a responsibility to behave as good citizens in our common efforts to provide sound management of government affairs. To help achieve these objectives, the general assembly declares that state employees should be encouraged to disclose information on actions of state agencies that are not in the public interest and that legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official.

The term “disclosure of information” means the written provision of evidence to any person, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure, including, but not limited to, the waste of public funds, abuse of authority, or mismanagement of any state agency. No appointing authority or supervisor shall initiate or administer any disciplinary action against an employee on account of the employee’s disclosure of information except when an employee discloses information that (1) he knows to be false or who discloses information with disregard for its truth or falsity; (2) comes from public records, which are closed for inspection pursuant to statute; or (3) is confidential under any provision of law. “Disciplinary action: means any direct or indirect form, or the threat, of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, etc. **An employee who wishes to disclose information under protection of this statute must make a good faith effort to provide his supervisor or appointing authority or member of the general assembly the information to be disclosed prior to the time of disclosure.**

An employee may file a written complaint with the state personnel board within ten (10) days after the employee knew or should have known of a disciplinary action alleging a violation of the conduct protected under the statute. The statute provides the details of the procedure to be followed by the state personnel board. If after a hearing the board determines that a violation of the statute has occurred, the state personnel board shall order the appropriate relief within forty five (45), including, but not limited to, reinstatement, back pay, restoration of lost service credit, and expungement of the records of the employee. In addition, the board shall order that the employee should be reimbursed for any costs, including court costs and attorney fees, if any, incurred in the

proceeding. Whenever the personnel board determines that a violation of the statute has occurred, the appointing authority or supervisor shall be disciplined. An employee who filed a complaint and no reasonable basis was found for the charges may bring a civil action in district court alleging a violation of the statute. If the employee prevails, he may recover damages, together with court costs, and the court may award such relief as it deems appropriate.