

Accountability Report Card Summary 2009
Connecticut

Connecticut has a relatively strong whistleblower law:

- Scoring 62 out of a possible 100 points; and
- Ranking 5th out of 51 (50 states and the District of Columbia)

Connecticut has broad coverage (24 out of 33 possible points) with average usability (19 out of 33) and some remedies (19 out of 33).

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Connecticut Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale

Protection of Employees- Conn. Gen. Stat. § 31-51m *et. seq.* (2006)

Whistleblowing-. Disclosure of Information to Auditors of Public Accounts- Conn. Gen. Stat. § 4-61dd (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 ¹ |
| 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)

¹ § 31-51q (2006) provides that an employer, including a state employer, shall not subject any employee to discipline or discharge on account of the exercise by such employee of rights guaranteed by certain sections of article first of the Connecticut Constitution, including the right of free speech. Such right is granted provided such activity does not substantially or materially interfere with the employee’s *bona fide* job performance or the working relationship between the employee and the employer. Employer shall be liable to employee for damages caused by such discipline or discharge, including punitive damages and for reasonable attorney’s fees.

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 |
| 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 |
| 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) | 1 Point ² |
| 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>15 Points</u> |

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

Does the statute provide for –

² § 31-5m(c) (2006) provides that an employee may, after exhausting all administrative remedies, bring a civil action within 90 days of the final administrative determination, or within 90 days of such violation, which ever is later.

| 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 |
| 3. Opportunities for court challenge | 4 points | 4 Points |
| 4. Trial by jury | 3 points | 0 Points ⁴ |
| 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 | 0 Points |
| 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>15 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

36 Points

³ Employee must exhaust administrative remedies before bringing court action.

⁴ Whistleblower statute does not provide for trial by jury. We did not determine whether jury trial would be available under other statutes or the Connecticut Constitution. There is a constitutional amendment referring to jury trials in civil actions. Conn. Const. Art. I, Sec.19 (2004) but the issue when it may be available in whistleblower cases will depend on the subject matter of the civil action and the remedies sought.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Connecticut

Statute- Protection of Employees- Conn. Gen. Stat. § 31-51m *et. seq.* (2006); and Whistleblowing- Disclosure of Information to Auditors of Public Accounts- Conn. Gen. Stat. § 4-61dd (2006)

Provisions- Connecticut has two statutes that protect state employee whistleblowers. The first applies to all employers and their employees in the state and the second to state employees and state contractor employees. Under the first statute, no employer, including the state, shall discharge, discipline, or otherwise penalize any employee because the employee, or a person acting on his behalf, reports verbally or in writing, a violation or suspected violation of any state or federal law to a **public body, including the legislature or one of its committees or any federal agency or employee**, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry by that public body, or a court action. **This prohibition shall not be applicable when the employee knows that such report is false.**

Any employee who is discharged, disciplined, or otherwise penalized by the employer in violation of the prohibition on such action in the statute, may, after exhausting all available administrative remedies, bring a civil action, within 90 days of the date of the final administrative determination or within 90 days of such violation, whichever is later, in the superior court for the reinstatement of his previous job, payment of back wages and reestablishment of employee benefits to which he would have otherwise been entitled if such disciplinary action had not occurred. Recovery in such cases shall be limited to such items, provided that the court may allow the prevailing party his costs, together with reasonable attorney's fees. **An employee found to have knowingly made a false report shall be subject to disciplinary action by his employer up to and including dismissal.**

§ 31-51q (2006) provides that an employer, including a state employer, shall not subject any employee to discipline or discharge on account of the exercise by such employee of rights guaranteed by certain sections of article first of the Connecticut Constitution, including the right of free speech. Such right is granted provided such activity does not substantially or materially interfere with the employee's bona fide job performance or the working relationship between the employee and the employer. Employer shall be liable to employee for damages caused by such discipline or discharge, including punitive damages and for reasonable attorney's fees. : § 31-5m(c) (2006) provides that an employee may, after exhausting all administrative remedies, bring a civil action within 90 days of the final administrative determination, or within 90 days of such violation, which ever is later.

Whistleblower statute does not provide for trial by jury. There is a constitutional amendment referring to jury trials in civil actions. Conn. Const. Art. I, Sec.19 (2004) But

the issue when it may be available in whistleblower cases will depend on the subject matter of the civil action and the remedies sought.

The second statute provides that: (1) any person having knowledge of any matter involving corruption, unethical practices, violation of state laws and regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in a state department or agency or any quasi-public agency; or (2) any person having knowledge of any matter involving corruption, violation of state or federal laws and regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in a large state contract; may transmit all facts and information in such persons possession concerning such matter to the Auditors of Public Accounts. The Auditors shall review the matter and report their findings and any recommendations to the Attorney General, which shall make such an investigation as he deems appropriate. Upon the conclusion of an investigation, the Attorney General shall, where necessary, report any findings to the Governor, or in matters involving criminal activity, to the Chief State's Attorney.

No state officer or employee shall take or threaten to take any personal action against any state or quasi-state employee in retaliation for such employee's disclosure of information to an employee of (i) the Auditors of Public Accounts or the Attorney General or (ii) the state agency or quasi-public agency where such state officer or employee is employed. Employees have several remedies they may take in case of retaliation. First, they can report a threatened or taken personnel action for investigation to the Attorney General. Second, not later than ninety (90) days after learning of a threatened or taken personnel action, an employee may file a complaint with the Chief Human Rights Referee, who shall assign it to a staff referee for an administrative hearing. If the referee finds a violation, he/she may award the employee reinstatement to his/her former position, back pay, reestablishment of benefits, reasonable attorneys' fees, and any other damages. Thirdly, as an alternative to the first remedies, within ninety (90) days of learning of the specific incident, the employee may file an appeal with the Employees' Review Board, or in the case of a state agency covered by a collective bargaining agreement in accordance with the procedure in such contract.

If a personal action against an employee occurs is threatened or taken not later than three years after the employee transmits facts and information concerning a matter to the Auditors of Public Accounts or the Attorney General, there shall be a rebuttable presumption that the personnel action is in retaliation for the action taken by the employee.

No person who, in good faith, discloses information in accordance with the provisions of the Act shall be liable for any civil damages resulting from the good faith disclosure.