

Accountability Report Card Summary 2009
District of Columbia

District of Columbia has a very good and evenly balanced whistleblower law:

- Scoring 79 out of a possible 100;
- Ranking 1st out of 51 (50 states and the District of Columbia).

The District of Columbia has above average coverage (22 of 33 possible points) with a high degree of usability (28 out of 33) and strong remedies (29 out of 33).

The District of Columbia also allows individuals to bring qui tam or false claim actions for recovery of “bounty” in cases of fraud against the District.

District of Columbia’s full Whistleblower Report Card
Narrative summary of the District of Columbia law

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District of Columbia Accountability Index Report card

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

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

Does the statute (§ 1-615.51 *et. seq.* (2006) 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	5 points	5 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	1 point
9. Prohibition on “gag orders” to prevent employee disclosures	1 point	1 point ¹
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	0 points ²
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>22</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 only protect disclosures made to – 20 points or less

2. Any state executive or legislative body or person employed by such entities	4 points	4 points
3. Testimony in any official	4 points	4 points ³

proceeding		
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	3 points
6. Co-workers or supervisors within the scope of duty	3 points	3 points-Supervisors
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 ⁴
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)	5 points-§ 2-398-15 (2006)
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>28 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 ⁵
3. Opportunities for court challenge	4 points	3 points ⁶
4. Trial by jury	3 points	3 points ⁷
5. Burden shifting upon prima facie showing.	1 point	1 point ⁸
6. Make whole remedies (court costs, attorney fees, back pay; restoration of benefits, etc.)	3 points	3 points ⁹
7 Actual/compensatory damages	3 points	3 points ¹⁰

8. Interim relief, injunction or stay of personnel actions while appeals being taken	3 points	3 points ¹¹
9. Transfer preference for prevailing whistleblower or ban on blackballing	3 points	0 points
10. Punitive damages or other fines and penalties	2 points	2 points ¹²
11. Personnel actions against managers found to have retaliated	3 points	3 points ¹³
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>29 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 Score

100 Points

79 Points

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- District of Columbia

Statute- Merit Personnel System Whistleblower Protection- § 1-615.51 *et. seq.* (2006) and Employees of District Contractors and Instrumentalities Whistleblower Protection § 2-223.01 *et. seq.* (2006)

Provisions- **The District of Columbia has two statutes that provide whistleblower protection to DC employees or the employees of DC instrumentalities, such as the DC Water and Sewer Authority (DCWASA).** The first of these statutes concerns DC government employees. The District of Columbia Council finds and declares that the public interest is served when the employees of the District government are free to report waste, fraud, abuse of authority, violations of law, or threats to public health or safety with fear of retaliation and reprisal. **Accordingly, the Council declares as its policy to, among other things, (1) enhance the rights of District employees to challenge the actions or failures of their agencies and to express their views without fear of retaliation through appropriate channels within the agency, complete and frank responses to Council inquiries, oversight agencies of both executive and legislative branches of government, and appropriate communication with the public; (2) ensure that rights of employees to expose corruption, dishonesty, incompetence, or administrative failure are protected; (3) guarantee the rights of employees to contact and communicate with the Council and be protected in that exercise; and (4) protect employees from reprisal or retaliation for the performance of their duties.**

An employee's supervisor shall not threaten or take a prohibited personnel action or otherwise retaliated against an employee because of the employee's protected disclosure or because of the employee's refusal to comply with an illegal order. A "prohibited personnel action" involves changes in the terms and conditions and the job situation of a DC government employee because the employee makes a protected disclosure or refuses to comply with an illegal order. A "protected disclosure" refers to **any disclosure of information, not specifically prohibited by statute, by an employee to a supervisor or a public body** that the employee reasonable believes evidences, among other things (a) gross mismanagement, (b) gross misuse or waste of public funds or resources, (c) abuse of authority in connection with the administration of a public program or the execution of a public contract, (d) a substantive violation of federal or local law, rule, or regulation, and (e) a substantial and specific danger to the public health and safety. A "public body" refers to, among other entities, the U.S. Congress, the DC Council (legislature), federal or DC courts, regulatory, administrative or public agencies or instrumentalities, or law enforcement agencies. **An "illegal order" means a directive to violate or assist in violating a federal or local law, rule, or regulation.**

An aggrieved employee may appeal any reprisal or retaliation action or contest it through arbitration pursuant to a negotiated grievance and arbitration procedure. Absent the use of

these procedures, an aggrieved employee may bring a civil action before a court or jury seeking relief and damages, including an injunction, reinstatement to his position and benefits and compensatory damages. Such an action must be started within one year after a violation occurs or within one year after the employee first becomes aware of the violation. As part of the relief order in any administrative, arbitral or judicial proceedings, any supervisor who is found to have violated the prohibition on retaliation shall be subject to appropriate disciplinary action, up to and including dismissal. A supervisor who is found to have violated the prohibition on retaliation shall be subject to a fine not to exceed \$1,000 as part of the relief ordered in a judicial proceeding.

The second statute applies to contractors with the DC government, DC instrumentalities, and persons or entities that employ the contractors. DC instrumentality is defined as “a quasi-governmental entity that operates with District funds, including, but not limited to, DCWASA (referred to above), the Health and Hospitals Public Benefits Corporation, the Public Service Commission, and the Washington Convention Center Authority.” The provisions of this statute are almost identical to the ones described previously and will not be described because of their similarity.

¹ Note: § 1-615.58 (2006) creates a series of rights and responsibilities that employees shall have. These give employees a right to disclose information and the responsibility to make protected disclosures as soon as information is made known. This “sounds in” prohibition on gag order.

² No civil action shall be brought under § 1-615.54 if the aggrieved employee has a final decision on the same cause of action from the Office of Employee Appeals or from an arbitrator pursuant to a negotiated grievance or arbitration procedure or an employment contract. Institution of a civil action shall preclude the pursuing of any of these aforementioned administrative remedies.

§ 1-615.56 (a) and (b) (2006). Except as aforementioned, nothing in the whistleblower law shall diminish the rights and remedies of an employee pursuant to any other federal or District law. Ibid. (c).

³ Note: official proceeding not specifically mentioned. But disclosures authorized to Congress, DC Council, federal and DC courts, etc. Some of these disclosures could involve testimony.

⁴ A civil action shall be filed within 1-year after a violation occurs or within one year after the employee becomes aware of the violation.

§ 1-615.54 (a) (2006). Administrative actions are probably governed by personnel law or other arrangements, e.g. employment contract.

⁵ DC employee can pursue an administrative remedy or a cause of action. (See 3 immediately below.)

⁶ 3 points- No civil action shall be brought under § 1-615.54 if the aggrieved employee already has a final decision on the same cause of action from the DC Office of Employee Appeals or from an arbitrator pursuant to a negotiated grievance or arbitration procedure or an employment contract. Institution of a civil action shall preclude the pursuing of any of these aforementioned administrative remedies.

§ 1-615.56 (a) and (b) (2006). Except as aforementioned, nothing in the whistleblower law shall diminish the rights and remedies of an employee pursuant to any other federal or District law. Ibid. (c).

⁷ An employee aggrieved can file a civil action before a court or jury. § 1-615.54 (a) (2006).

1 point Once the employee demonstrates by a preponderance of the evidence that a prohibited retaliation activity was a contributing factor to the alleged personnel action, the burden of proof shall be on DC to show by clear and convincing evidence that the alleged action would have occurred for legitimate independent reasons, even if the employee had not engaged in protected activities. § 1-615.54 (b) (2006).
3 Points- Reinstatement of the employee to the same or equivalent position and seniority rights, restoration of lost benefits, back pay, compensatory damages and reasonable costs and attorney fees. § 1-615.54 (2006)
3 points- Compensatory damages
3 Points- An employee who prevails in a civil action shall be granted the equitable relief, e.g., injunction, provided in the decision effective upon the date of decision absent a stay. § 1-615.54 (d) (2006).
0 points
<u>2 points- Note: As part of the relief in a judicial proceeding, any supervisor who has violated the prohibition on retaliation shall be subject to a civil fine not to exceed \$1,000. § 1-615.55 (b) (2006).</u>
3 points-As part of the relief ordered in any administrative or judicial proceeding, a DC official who has violated the prohibition on retaliation shall be subject to appropriate disciplinary action, including dismissal § 1-615.55 (a) (2006)

⁹ Reinstatement of the employee to the same or equivalent position and seniority rights, restoration of lost benefits, back pay, compensatory damages and reasonable costs and attorney fees. § 1-615.54 (2006).

¹⁰ Compensatory damages

¹¹ An employee, who prevails in a civil action, shall be granted the equitable relief, e.g., injunction, provided in the decision, effective upon the date of decision, absent a stay. §1-615.54 (d) (2006).

¹² Note: As part of the relief in a judicial proceeding, any supervisor who has violated the prohibition on retaliation shall be subject to a civil fine, not to exceed \$1,000. § 1-615.55 (b) (2006).

¹³ As part of the relief ordered in any administrative or judicial proceeding, a DC official, who has violated the prohibition on retaliation, shall be subject to appropriate disciplinary action, including dismissal.
§ 1-615.55 (a) (2006).