

Accountability Report Card Summary 2009
Hawaii

Hawaii has a fairly good state whistleblower law:

- Scoring only 53 out of a possible 100 points; and
- Ranking 22nd out of 51 (50 states and the District of Columbia).

Hawaii has narrow coverage (7 out of 33 possible points) with a good degree of usability (22 out of 33) and good remedies (23 out of 33) plus one bonus point awarded for employee notification of rights.

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Hawaii Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale
Whistleblowers’ Protection Act- HRS § 378-61 *et. seq.* (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
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	1 point
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>7 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
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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	4 points	4 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-Violations can be reported to a State employer.
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)	5 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>23 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 ¹
3. Opportunities for court challenge	4 points	4 points ²
4. Trial by jury	3 points	0 points ³

¹ If an administrative mechanism under a collective bargaining agreement is superior to the court action authorized by the statute, the employee should utilize the administrative mechanism.

² If the court action provided by the statute is superior to the administration mechanism available under a collective bargaining agreement, the employee should file a court action.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Hawaii

Statute- Whistleblowers' Protection Act- HRS § 378-61 *et. seq.* (2005)

Provisions- Hawaii has a general whistleblowers' statute that applies to both private and public employees. An employee is defined to include a person employed by a state or its political subdivision. An employer shall not discharge, threaten, or otherwise discriminate against an employee concerning the terms and conditions of his/her employment because (1) the employee, or a person acting on the employee's behalf, reports, or is about to report, to a public body, verbally or in writing, a violation or suspected violation of (i) a state or federal law, rule, regulation, or ordinance; or, (ii) a contract executed by the State or the United States, unless the employee knows the report to be false; or (2) an employee is asked by a public body to participate in an investigation, hearing, or inquiry held by that body, or a court action. The term "public body" includes to (1) a state officer, employee, or a body in the executive branch of state government; (2) a member, employee, or agency or other entity of the legislative branch of the state government; a law enforcement agency or any member or employee of such agency; or (4) the judiciary or any member or employee of the judiciary.

A person who alleges a violation of this statute may bring a civil action for injunctive relief, or actual damages, or both within 2 years after the occurrence of the violation. "Damages" means damages for injury or loss caused by each violation, including reasonable attorney fees. A court shall order, as the court considers appropriate, reinstatement of the employee, payment of back wages, full reinstatement of fringe benefits, actual damages, or any combination of these remedies. A court may also award the complainant all or portion of the litigation costs, if it deems it appropriate. A person who violates this part shall be fined not less than \$500 not more than \$5,000 for each violation.

The statute shall not diminish or impair any rights of any person under any collective bargaining agreement. Where such an agreement provides an employee rights or remedies superior to those in this statute, such contract rights shall supersede and take precedence of the rights, remedies, and procedures in this statute. When the reverse is true, the rights and remedies under the statute shall supersede and take precedence over what is provided in the collective bargaining agreement. In the event of a conflict between the terms and provisions of this statute and any other law on the subject, the more beneficial provisions favoring the employee shall prevail.