

Accountability Report Card Summary 2009
Iowa

Iowa has a fair state whistleblower law:

- Scoring only 47 out of a possible 100 points; and
- Ranking 36th out of 51 (50 states and the District of Columbia).

Iowa has fair coverage (19 out of 33 possible points) with a poor degree of usability (13 out of 33) and fair remedies (14 out of 33), plus 1 bonus point for employee notice of whistleblower rights.

Iowa's full Whistleblower Report Card
Narrative summary of Iowa's law

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Iowa Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale
 Financial and Other Provisions for Public Officers and Employees- § 70A.28 (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	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	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
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>19 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

¹ Head of a state department or agency, or a person who serves in a supervisory capacity within the executive or legislative branch of state government **shall not prohibit an employee of the state from disclosing information** to any other state official or law enforcement agency if the employee reasonably believes the information evidences one of the Factors in 1, 3, 4, or 5 above.

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	0 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)	3 points 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>13 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	4 points	2 points ³

² No statute of limitations is contained in the statute. However, we understand that it under Iowa law that the applicable statute of limitations period is within 5 years . Iowa Code, Section 614.1(4)

and conditions of employment		
2. Opportunity for administrative challenge	4 points	0 points
3. Opportunities for court challenge	4 points	4 points ⁴
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
7 Actual/compensatory damages	3 points	0 points
8. Interim relief, injunction or stay of personnel actions	3 points	3 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	2 points ⁶
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	1 point

Totals

100 Points

47 points

³ A full 4 points were not awarded. The prohibition covers less than this Factor. It prohibits, as a reprisal, a person from discharging an employee from, or taking or failing to take action regarding an employee's appointment to, promotion or proposed promotion to, or any advantage, in, any position in state employment.

⁴ Prohibition on reprisals can be enforced through a civil action brought by the state employee. Also, an aggrieved employee or Iowa Attorney General may bring an action to enjoin reprisal activities.

⁵ Trial by jury is not mentioned in statute. The relief to be provided is **equitable in nature** and not of the type usually considered by a jury in a civil action.

⁶ Any person who violates restrictions on disclosure of information or prohibitions on reprisals commits a simple misdemeanor.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Iowa

Statute- Financial and Other Provisions for Public Officers and Employees- § 70A.28 and § 70A.29 (2005)

Provisions- A person who serves as the head of a state department or agency or otherwise serves in a supervisory capacity within the executive or legislative branch of state government shall not require an employee of the state to inform such person that the employee made a disclosure of information permitted by the statute and shall not prohibit an employee of the state from disclosing any information to a member or employee of the general assembly (Iowa legislature) or from disclosing information to any other public official or law enforcement agency, if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health and safety.

The statutory prohibition on reprisals covers less aspects of the whistleblower's employment situation than other state statutes, which often refer to the employee's terms and conditions of employment. A person shall not discharge or take or fail to take action regarding an employee's employment as a reprisal for the failure of the employee to inform the person that he/she made a disclosure of information permitted by the statute, or for a disclosure of any information by the employee to a member or employee of the Iowa general assembly, or a disclosure of information to any other public official or law enforcement agency, if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health and safety.

A person who violates one of these two paragraphs commits a simple misdemeanor. An aggrieved employee or the Iowa Attorney General may seek injunctive relief to prevent any reprisals because of the employee's disclosure of information. The employee may bring a civil action for affirmative relief including reinstatement, with or without back pay, or any other equitable relief the court deems appropriate, including attorney fees and costs.