

**Accountability Report Card Summary 2009**  
**Idaho**

Idaho has a relatively good state whistleblower law:

- Scoring only 57 out of a possible 100 points; and
- Ranking 15<sup>th</sup> out of 51 (50 states and the District of Columbia).

Idaho has moderately narrow coverage (12 out of 33 possible points) with a very good degree of usability (25 out of 33) and fairly good remedies (19 out of 33), plus the one bonus point awarded for employee notification of rights.

*Idaho's full Whistleblower Report Card*  
*Narrative summary of Idaho's law*

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## Idaho Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale  
Idaho Protection of Public Employees<sup>1</sup> Act- Idaho Code § 6-2101 *et. seq.* (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	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	1 point <sup>1</sup>
9. Prohibition on “gag orders” to prevent employee disclosures	1 point	1 point <sup>2</sup>
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	1 point
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>12 points</u></b>

### 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	24 points <sup>3</sup>

<sup>1</sup> An employee objects or refuses to carry out a directive that the employee reasonably believes violates a federal or state law, rule, or regulation.

<sup>2</sup> An employer may not implement rules or policies that unreasonably restrict an employee to document the existence of waste of public funds, property, or manpower, or suspected violation of any laws, rules or regulations. This provision stands as a prohibition on “gag orders.”

**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	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- 6 months or less to bring a law suit contesting an adverse action.
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
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>25 points</u></b>

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

Does the statute provide for –

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<sup>3</sup> **Statute does not specify to whom a verbal or written report of violations or waste should be reported. Absent that specificity, we have concluded that the report can be made to any person or entity.** Also, Idaho legislature finds, determines, and declares that government constitutes a large part of the Idaho work force and it is beneficial to the citizens of the state to protect the integrity of government by providing a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of law, rule, or regulation.

<b>Factor</b>	<b>Maximum Points</b>	<b>Awarded Points</b>
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	0 points
3. Opportunities for court challenge	4 points	4 points
4. Trial by jury	3 points	0 points <sup>4</sup>
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	3 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 <sup>5</sup>
11. Personnel actions against managers found to have retaliated	3 points	0 points
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>19 points</u></b>

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

<b>Factor</b>	<b>Maximum Score</b>	<b>Awarded Score</b>
Posting	1 point	1 point

**Total points**

**100 points**

**57 points**

<sup>4</sup> Statute does not specify that a trial by jury would be available for some issues raised in litigation. We did not examine whether trial by jury would be available under other Idaho state laws or it's Constitution.

<sup>5</sup> A court may assess a civil fine of not more than \$500 on state employer for violation of prohibitions.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Idaho

Statute- Idaho Protection of Public Employees Act- Idaho Code § 6-2101 *et. seq.* (2006)

**Provisions-** The Idaho legislature finds, determines, and declares that government constitutes a large part of the Idaho work force and it is beneficial to the citizens of the state to protect the integrity of government by providing a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of law, rule, or regulation. “Adverse action” means to discharge, threaten, or otherwise discriminate against an employee in any manner concerning an employee’s employment, including compensation, and its terms and conditions.

An employer may not take an adverse action against an employee because (i) the employee, or a person authorized to act on his/her behalf, communicates **in good faith** the existence of any waste of public funds, property, or manpower or a violation or suspected violation of a federal or state law, rule or regulation. **Such communication shall be made at a time and in a manner which gives the employer a reasonable opportunity to correct the waste or violation. Good faith is lacking where the employee knew or reasonably should have known that the report is malicious, false, or frivolous;** (ii) an employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review; or (3) the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a federal or state law, rule, or regulation. An employer may not implement rules or policies that unreasonably restrict an employee to document the existence of waste of public funds, property, or manpower, or suspected violation of any laws, rules or regulations. **Statute does not specify to whom a verbal or written report of violations or waste should be reported. Absent that specificity, we have concluded that the report can be made to any person or entity.**

**An employee who alleges a violation of this statute may bring a civil action for injunctive relief or damages, or both, within 180 days of the occurrence of the alleged violation of this statute. “Damages” means damages for injury or loss caused by each violation and includes court costs and reasonable attorneys’ fees. To prevail in court the employee must establish, by the preponderance of the evidence, that the employee has suffered an adverse action because the employee, or someone acting on his/her behalf, engaged, or intended to engage, in an activity protected by the statute.** A court may order, among other things, an injunction, the reinstatement of the employee to the same or equivalent position, reinstatement of lost wages and benefits, and the payment of the employee’s reasonable costs of litigation. It may also fine the employer not more than \$500.

A court may also order that reasonable attorneys' fee and court costs be awarded to an employer if the court determines that an action brought by an employee is without basis in law or fact. The statute shall not impair or diminish an employee's rights under any collective bargaining agreement. An employer shall use appropriate means to notify its employees of their protection and obligation under the statute.