

**Accountability Report Card Summary 2009**  
**Illinois**

Illinois has a mediocre state whistleblower law:

- Scoring only 49 out of a possible 100 points; and
- Ranking 30<sup>th</sup> out of 51 (50 states and the District of Columbia).

Illinois has narrow coverage (19 out of 33 possible points) with a good degree of usability (22 out of 33) and poor remedies (7 out of 33), plus the one bonus point awarded for employee notification of rights.

*Illinois' full Whistleblower Report Card*  
*Narrative summary of Illinois' law*

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## Illinois Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale  
Whistle Blower Protection- § 5 ILCS 430/15-5 (2005) and Personnel Code-  
§ 20 ILCS 415/191.1 (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 <sup>1</sup>
2. Gross mismanagement	3 points	3 points <sup>2</sup>
3. Abuse of authority (including violations of agency policy)	3 points	3 points <sup>3</sup>
4. Waste of public funds or resources	3 points	3 points <sup>4</sup>
5. Danger to health and/or public safety and/or environment	5 points	3 points <sup>5</sup>
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 <sup>6</sup>
10. Whistleblower protection does not preclude	1 point	1 point

<sup>1</sup> Illinois has two statutes that protect state employees from retaliation for disclosing wrongdoing: (1) Whistle Blower Protection and (2) a provision of the Personnel Code applicable to Executive Branch employees. Under the Whistle Blower statute a state employee discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of an officer or member of State government or a State agency, or other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation.

In the second statute, the state employee’s disclosure of information involves information which the employee reasonably believes evidences (1) a violation of any law, rule or regulation.

<sup>2</sup> Second statute involves the employee’s disclosure of mismanagement.

<sup>3</sup> Second statute involves the employee’s disclosure of abuse of authority.

<sup>4</sup> Second statute involves the employee’s disclosure of a gross waste of funds.

<sup>5</sup> Second statute involves the employee’s disclosure of a substantial and specific danger to public health or safety.

<sup>6</sup> Illinois has an anti-gag statute that prohibits an employer from adopting any policy which would prevent an employee from disclosing whistleblower information. However, it does not apply to state employees. 740 ILCS 174/1 *et seq.*

collective bargaining or other rights		
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>19 points</u></b>

**B. Usability: Scope of Protection (33 points possible from 10 factors)**

Do the laws protect disclosures made to –

<b>Factor</b>	<b>Maximum Points</b>	<b>Awarded Points</b>
1. Any person or organization, including public media	24 points	0 points <sup>7</sup>

**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 <sup>8</sup>
3. Testimony in any official proceeding	4 points	4 points <sup>9</sup>
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 points <sup>10</sup>
5. Any federal or non-state governmental entity	3 points	0 points
6. Co-workers or supervisors within the scope of duty	3 points	3 points <sup>11</sup>
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	3 points (2 points if 6 months or longer and 1	0 points

<sup>7</sup> The second statute does not make clear to whom the disclosure would be made. It is possible to read it to involve a disclosure to any person or organization. However, we did not consider such a position as appropriate given the limited wording in the statute.

<sup>8</sup> First statute permits disclosure to a “public body”, which is defined to include any officer, member or state agency.

<sup>9</sup> First statute refers to testimony before as public body.

<sup>10</sup> First statute defines “public body” to include a federal or state law enforcement agency or prosecutorial office.

<sup>11</sup> First statute refers to disclosure or threat to disclose information to a supervisor.

complaints	point if 60 days or longer)	
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
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>22 points</u></b>

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

Does the statute provide for –

<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 <sup>12</sup>
3. Opportunities for court challenge	4 points	0 points <sup>13</sup> .
4. Trial by jury	3 points	0 points
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/constructive 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 for willful and intentional actions	3 points	0 points
11. Personnel actions against managers found to have retaliated	2 points	0 points
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>7 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>
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<sup>12</sup> Statute does not specify any administrative procedure to challenge a retaliatory action a whistleblower suffers. However, we did not review whether retaliatory actions would be handled through the Illinois personnel system or in some other way.

<sup>13</sup> We did not review the opportunities that whistleblower would have to sue in court under other Idaho statutes or under other legal doctrines

Posting	1 point	1 point
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**Total Points**

**100 Points**

**49 Points**

**April 16, 2009**

**State Legislation Protecting State Employee Whistleblowers**

**State-** Illinois

**Statute-** Whistle Blower Protection- § 5 ILCS 430/15-5 (2005) and Personnel Code- § 20 ILCS 415/191.1 (2005)

**Provisions-** Illinois has two statutes that protect state employees from retaliation for disclosing wrongdoing: (1) Whistle Blower Protection and (2) a provision of the Personnel Code applicable to Executive Branch employees. Under the first of these statutes, neither an officer or member of State government nor a State employee or a State agency shall take any retaliatory action against a State employee because he/she does any of the following\*: (i) discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of an officer or member of State government or a State agency, or other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation. “Public body” means any officer or member of State government or a State agency, any federal or State judiciary, law enforcement agency, or prosecutorial office, or any officer, employee, department, agency or other division of any of the foregoing; (ii) provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by an officer, member, State agency or other State employee; or (iii) assists or participates in a proceeding to enforce the provisions of the Act. The term “public body” does not include the Illinois legislature, any of its elected members, its employees, or entities of the legislative or their employees.

(\* Note- The term “retaliatory action” means a change in the terms or conditions of employment, such as the reprimand, discharge, suspension, demotion or denial of promotion or transfer of any State employee` that is taken in retaliation for a State employee’s involvement in protected activity.)

A violation of the act may be established only upon a finding that the State employee engaged in the protected conduct and that the conduct was a contributing factor in the retaliatory action alleged by the State employee. The state employee may bring a civil action to make his/her self whole and prevent future violations of the statute A court may apply the following remedies: reinstatement of the employee to the same or equivalent position, 2 times back pay, reinstatement of full fringe benefits and seniority rights, and the payment of reasonable costs and attorneys’ fees. Nothing in the statute shall diminish the rights, privileges, or remedies of a State employee under federal or State law, rule or regulation or under any collective bargaining agreement or employment contract.

The second statute prohibits disciplinary action against any employee for the disclosure of any wrongdoing under investigation or for any related activity. “Disciplinary action” means any retaliatory action taken against an employee including, but not limited to,

reprimand, discharge, demotion or denial of promotion or transfer. The employee's protected activities involves any disclosure of information by an employee which the employee reasonably believes evidences (1) a violation of any law, rule or regulation; or, (2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if not specifically prohibited by law. This statute does not provide the employee with authority to bring a civil action. This statute was not designed like the first one, to provide rights for the employee to contest any retaliatory actions. It merely establishes the principle in the Illinois Personnel Code that such activity will not be tolerated.