

Accountability Report Card Summary 2009
Indiana

Indiana has a poor state whistleblower law:

- Scoring only 37 out of a possible 100 points; and
- Ranking 45th out of 51 (50 states and the District of Columbia).

Indiana has poor coverage (10 out of 33 possible points) with a modest degree of usability (17 out of 33) and inadequate remedies (10 out of 33). Indiana has a false claims statute that provides for recovery of “bounty” in cases of fraud against the state.

Indiana’s full Whistleblower Report Card *page 2*
Narrative summary of Indiana’s law *page 5*

Indiana Accountability Index Report card
 Coverage, Usability & Strength — Rating on a 100 Point Scale
 State Employees Bill of Rights-§ 4-15-10-1 (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 ¹
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	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>10 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
<u>Or</u> 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	3 point ²
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 ³
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 ⁴
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 ⁵
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>17 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
3. Opportunities for court challenge	4 points	0 points ⁶
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;	3 points	0 points

restoration of benefits, etc.)		
7. Actual/compensatory 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	2 points	2 points ⁷
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>10 points</u>

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

Factor	Maximum Score	Awarded Score
Posting	1 point	0 points

Totals

100 points

37 points

¹ Any employee of a State agency may report in writing the existence of a violation of federal or state law or regulation, or the misuse of public resources, to a supervisor or inspector general.

² Inspector general

³ Supervisor

⁴ There is no requirement in the statute that the Inspector General undertakes an investigation.

⁵ The statute contains no statute of limitations for filing complaints. However, we have been advised that other Indiana statutes provide statute of limitations of at least for filing complaint. The applicable statutes of limitation are Indiana Code sections 34-11-2-1 (2 years for employment related actions), 34-11-2-11 (10 years for a contract in writing) and 34-11-2-4 (tort actions for harm to person or property).

⁶ The statute does not provide for a court challenge. But it states that nothing limits any other right or legal remedy of a state employee.

⁷ An employer who knowingly or intentionally violates the reprisal prohibitions commits a Class A misdemeanor.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Indiana

Statute- State Employees Bill of Rights-§ 4-15-10-1 (2005)

Provisions- Any employee of a State agency may report in writing the existence of a violation of federal or state law or regulation, or the misuse of public resources to a supervisor or the inspector general. The employee making the report may not be dismissed, have salary increases or employment related benefits withheld, be transferred or reassigned, be denied promotion, or be demoted. However, an employee must make a reasonable attempt to ascertain the correctness of any information to be furnished and may be subject to disciplinary actions for knowingly furnishing false information. An employer who knowingly or intentionally violates this provision commits a misdemeanor.

No employee shall suffer a penalty or threat of a penalty because he/she exercised rights under this statute. Nothing in the statute shall impair or limit any other right or legal remedy of an employee. Indiana has a false claims and whistleblower statute, which allows qui tam suits by individuals, who may be rewarded by a percentage of a recovery, if a suit is successful.

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⁶ The statute does not provide for a court challenge. But it states that nothing limits any other right or legal remedy of a state employee.

⁷ An employer who knowingly or intentionally violates the reprisal prohibitions commits a Class A misdemeanor.