

Accountability Report Card Summary 2009
Kentucky

Kentucky has a fair state whistleblower law:

- Scoring 55 out of a possible 100 points; and
- Ranking 16th out of 51 (50 states and the District of Columbia).

Kentucky statute has fair coverage (21 out of 33 possible points) with an average degree of usability (16 out of 33) and average remedies (18 out of 33).

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

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Kentucky Accountability Index Report card
 Coverage, Usability & Strength — Rating on a 100 Point Scale
 KRS § 61.101 *et. seq.* (2005)
 Occupational Health and Safety KRS § 338.121 *et. seq.*

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	3 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 ²
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	1 point ³
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>21 points</u>

¹ Disclosures covered an actual or suspected violation of any federal or Kentucky law, statute, executive order, administrative regulation, mandate, rule or ordinance; (2) actual or suspected mismanagement, waste, fraud, abuse of authority, or a substantial and specific danger to public health and safety.

² Kentucky law also protects disclosure of occupational safety and health violations. KRS § 338.121 and 338.991

³ No state employer shall use or threaten to use any official authority or influence, in any manner whatsoever, which tends to deter, coerce, or discriminate against any state employee who in good faith reports, discloses, or divulges to the Kentucky Legislative Ethics Commission, the Attorney General, the Auditor of Public Accounts, the General Assembly of the Commonwealth of Kentucky or any of its members or employees, the judiciary or any member or employee of the judiciary, any law enforcement agency or its employees, any facts or information relative to...(See Factor 1 above).

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 ⁴
3. Testimony in any official proceeding	4 points	4 points ⁵
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 points ⁶
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 ⁷

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)	2 point ⁸
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>Awarded Score</u>

⁴ General Assembly of the Commonwealth of Kentucky or its employees

⁵ Any employee testifying in an official proceeding.

⁶ Any enforcement agency or its employees.

⁷ **No employer shall require any employee to give notice prior to making such a report, disclosure, or divulgence.**

⁸ Whistleblower may bring a civil action within 90 days after the occurrence of the alleged violation. Under the Occupational Safety and Health statute, an employee may report discrimination with a reasonable time.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Kentucky

Statute- KRS § 61.101 *et. seq.* (2005) and KRS § 338.121 and 338.991 (Violation of Occupational Health and Safety Statute)

Provisions-

First Statute: No state employer shall subject to reprisal, or use or threaten to use any official authority or influence, in any manner whatsoever, which tends to deter, coerce, or discriminate against any state employee who in good faith reports, discloses, or divulges to the Kentucky Legislative Ethics Commission, the Attorney General, the Auditor of Public Accounts, the General Assembly of the Commonwealth of Kentucky or any of its members or employees, the judiciary or any member or employee of the judiciary, any law enforcement agency or its employees, any facts or information relative to (1) an actual or suspected violation of any federal or Kentucky law, statute, executive order, administrative regulation, mandate, rule or ordinance; (2) actual or suspected mismanagement, waste, fraud, abuse of authority, or a substantial and specific danger to public health and safety. No employer shall require any employee to give notice prior to making such a report, disclosure, or divulgence.

No employer shall subject to reprisal or discriminate against any person who supports, aids, or substantiates any employee who makes public any wrongdoing. These prohibitions shall not be construed as preventing an employer from requiring an employee inform him of an official request made to an agency for information, or the substance of testimony made, or to be made, by the employee to legislators on behalf of the agency. These prohibitions do not bar disciplinary or punitive action of an employee if an employee discloses information which he knows to be false or which he discloses with reckless disregard for its truth or falsity, is exempt from disclosure under statute, or confidential under any other provision of law.

Notwithstanding the administrative remedies available under Kentucky law, an employee alleging an employer's violation of the prohibition against reprisal and discrimination may bring a civil action for injunctive relief or punitive damages, or both, within 90 days after the occurrence of the alleged violation. An employee must show that a *prima facie* case of reprisal has been established by a preponderance of the evidence and that the disclosure was a contributing factor in the personnel action. Once such a case is made out, the burden of proof shall be on the employer, a state agency, to prove by clear and convincing evidence that the disclosure was not a material fact in the personnel action.

Any employee who testifies in an official proceeding shall be afforded the same protections and rights as the employee who makes a disclosure under this statute.

Second Statute: This statute concerns the violation of the occupational health and safety statute by employers. It applies state and local government employees (See § 338.015 and § 338.021- excluding only federal employees). An employee who believes there has been a violation of the statute that threatens physical harm or where imminent danger exists, may request an inspection by giving notice to the executive director. An employer may not discharge or discriminate against an employee because the employee has filed any complaint or institute any proceeding or has or will testify because of the exercise by such employee on of any right afforded by the Occupational Health and Safety code. Any employee who believes he or she has been discriminated against may, within a reasonable time of such violation, file a complaint with the executive director. § 228.991 addresses the various penalties for violation of § 338.121.