

**Accountability Report Card Summary 2009**  
**Louisiana**

Louisiana has a below average state whistleblower law:

- Scoring 51 out of a possible 100 points; and
- Ranking 26<sup>th</sup> out of 51 (50 states and the District of Columbia).

Louisiana's statute has restricted coverage (15 out of 33 possible points) with a limited degree of usability (15 out of 33) and useful remedies (20 out of 33), with one bonus point for employee notice of whistleblower rights.

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

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## **Louisiana Accountability Index Report card**

Coverage, Usability & Strength — Rating on a 100 Point Scale

Code of Governmental Ethics- La. R.S. § 42:1169 (2006)

Interference with Individual Rights - La. R.S. § 23: 967

Public Employees Who Disclose Violations of Environmental Laws, Rules, or  
Regulations- La. R.S. § 30:2027

### **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	1 points <sup>2</sup>

<sup>1</sup> Louisiana has two whistleblower statutes that protect from reprisal actions public employees' disclosure of information concerning wrongdoing. The first of these statutes provides that any public employee who reports to his agency head or the Louisiana personnel board information which the employee reasonably believes is a violation of law within the jurisdiction of the board or a violating of any order, rule, or regulation issued under the Code of Government Ethics, or any other alleged acts of impropriety within any government entity, shall be free from discipline or reprisal for reporting such acts of impropriety.

In addition, any public employee who reports to a person or entity of competent jurisdiction information which he/she reasonably believes is a violation of any law or of any order, rule, or regulation issued in accordance with law or any other alleged acts of impropriety related to the scope or duties of public employment or public office within any branch of state government shall be free from discipline or reprisal for reporting such acts of alleged impropriety.

The second statute applies to both state public and private employees. An employer shall not take reprisal against an employee who in good faith, and after advising the employer of the violation of law, (1) discloses or threatens to disclose a workplace act or practice in violation of state law; (2) provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into any violation of law; or, (3) objects to, or refuses to, participate in an employment act or practice that is in violation of law.

<sup>2</sup> Section A of the first statute also protects the reporting of “any other alleged acts of impropriety” within any government entity, but does not define what those might be. They might cover subjects listed in Factors 2-7, but we do not know what the term “impropriety” covers. **It is more likely that they relate the Louisiana Code of Government Ethics, which is listed in the Louisiana Revised Statutes.**

Further, Section B of the first statute allows reporting of “any other alleged acts of impropriety related to the scope or duties of public employment or public office within any branch of state government.” The term “alleged acts of impropriety” is also undefined.

3. Abuse of authority (including violations of agency policy)	3 points	0 points <sup>3</sup>
4. Waste of public funds or resources	3 points	0 points <sup>4</sup>
5. Danger to health and/or public safety and/or environment	5 points	2 points <sup>5</sup>
6. Communication of scientific opinion or alteration of technical findings	5 points	0 points <sup>6</sup>
7. Breaches of professional ethical canons	5 points	5 points <sup>7</sup>

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	0 points
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	0 points
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>15 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>8</sup> .

**Or** does the statute protect disclosures made to –

2. Any state executive or legislative	4 points	4 points <sup>9</sup>
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<sup>3</sup> See textual comment in Footnote 2 above

<sup>4</sup> See textual comment in Footnote 2 above

<sup>5</sup> See textual comment in Footnote 2 above

<sup>6</sup> See textual comment in Footnote 2 above

<sup>7</sup> **The first statute also protects the reporting of “any other alleged acts of impropriety” within any government entity, but does not define what those might be. They might cover subjects listed in Factors 2-7, but we do not know what the term “impropriety” covers. It is more likely that they relate the Louisiana Code of Government Ethics, which is listed in the Louisiana Revised Statutes.**

<sup>8</sup> There are 2 Louisiana statutes protecting reprisals. The first covers a public employing reporting to an agency head or board, as well as to a person or entity of competent jurisdiction. The second statute provides for disclosures, but doesn’t make clear to whom the disclosure is made. However, the employee must first advise the employer of the violation of law

body or person employed by such entities		
3. Testimony in any official proceeding	4 points	4 points <sup>10</sup>
4. Any state or federal law enforcement or investigative body or entity or its employees	4 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	2 points <sup>11</sup>

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 <sup>12</sup>
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)	2 points- Qui tam suits in medical assistance programs.
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>15 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	4 points	4 points <sup>13</sup>

<sup>9</sup> In the first statute, public employee reports to his/her agency head or a state board, as well as to a person or entity of competent authority or jurisdiction.

<sup>10</sup> The second statute covers testifying before any public body.

<sup>11</sup> Disclosures of environmental violations are broadly protected under La. R.S. § 30:2027.

<sup>12</sup> There are no statute of limitations in each of the two Louisiana whistleblower statutes. However, in *Nolan v Jefferson Parish Hosp. Serv. Dis. No. 2*, 870 So. 2d 236 (2003 La. App.), the court concluded that the cause of action was subject to the general one-year prescriptive period for delictual actions provided in La. Civ. Code Ann. art. 3492.

challenge		
3. Opportunities for court challenge	4 points	4 points <sup>14</sup>
4. Trial by jury	3 points	0 points <sup>15</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 <sup>16</sup>
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 <sup>17</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>20 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 <sup>18</sup>

**Totals**

**100 points**

**46 points**

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<sup>13</sup> Under first statute, state employee must report alleged violation to the Louisiana Ethics Commission before be allowed to bring a law suit. *Goldby v. Dep't of Corr.*, 860 So.2d 236 (2003 La. App.)

<sup>14</sup> See discussion above in Footnote 3 about first statute. The second and third statutes establish an employee's right to commence a civil action.

<sup>15</sup> Neither statute mentions trial by jury. We did not investigate whether some issues raised by litigation may involve a right to trial by jury pursuant to other Louisiana laws or it's State Constitution.

<sup>16</sup> In the second statute, damages include compensatory damages.

<sup>17</sup> Under first statute, any person who violates the statutory prohibitions is subject to the same fines and penalties provided for other violations of the Code of Government Ethics. The third statute provides for triple damages.

<sup>18</sup> Under provisions of the Code of Government Ethics chapter of the Louisiana Revised statutes all employees are given a copy of the Code.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Louisiana

**Statute-** Code of Governmental Ethics- La. R.S. § 42:1169 (2006), Interference with Individual Rights- La. R.S. § 23: 967, and Public Employees Who Disclose Violations of Environmental Law, Rule, or Regulation- La. R.S. § 30:2027

**Provisions-** Louisiana has three statutes that protect public employees' disclosure of information concerning wrongdoing from reprisal actions.

**The first of these statutes provides that any public employee who reports to his agency head or the Louisiana personnel board information which the employee reasonably believes is a violation of law within the jurisdiction of the board or a violation of any order, rule, or regulation issued under the Code of Government Ethics, or any other alleged acts of impropriety within any government entity, shall be free from discipline, reprisal, or threats of discipline or reprisal for reporting such acts of impropriety.**

**In addition, any public employee who reports to a person or entity of competent jurisdiction information which he reasonable believes is a violation of any law or if any order, rule, or regulation issued in accordance with law or any other alleged acts of impropriety related to the scope or duties of public employment or public office within any branch of state government shall be free from discipline, reprisal , or threats of discipline or reprisal for reporting such acts of alleged impropriety.**

In the event that any such public employee is suspended, demoted, or dismissed in violation of this statute, the employee shall report such action to the board. Any employee wrongfully dismissed, suspended, or demoted shall be entitled to receive any lost income and benefits for the period of any dismissal, suspension, or demotion. Any person who violates this statute is subject to the same fines and penalties provided for other violations of the Code of Governmental Ethics.

**The second statute applies to both state public and private employees. An employer shall not take reprisal against an employee who in good faith, and after advising the employer of the violation of law, (1) discloses or threatens to disclose a workplace act or practice in violation of state law; (2) provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into any violation of law; or, (3) objects to, or refuses to, participate in an employment act or practice that is in violation of law. "Reprisal" includes firing, layoff, loss of benefits or any discriminatory action the court finds was taken as a result of an action by the employee that is protected under the statute.**

An employee may commence a civil action against any employer who engages in a prohibited practice. If the court finds that the statute has been violated, the plaintiff may recover from the employer damages, including compensatory damages, back pay, benefits, reinstatement, reasonable attorney fees, and court costs.

**The third statute applies to public employees who disclose violations of environmental laws, rules, and regulations. No employer, public or private, may act in a retaliatory manner against an employee, acting in good faith, who (1) discloses or threatens to disclose an activity that the employee reasonably believes is in violation of an environmental law, rule or regulation or (2) provides information to or testifies about any environmental violation by the employer.**

An employee against whom retaliatory action is taken may commence a civil action in a district court and shall recover from his employer triple damages resulting from the action taken against him and all court costs and attorneys fees if the court finds the statute has been violated.