

Accountability Report Card Summary 2009
Maine

Maine has an average state whistleblower law:

- Scoring 48 out of a possible 100 points; and
- Ranking 32nd out of 51 (50 states and the District of Columbia).

Maine's statute has fairly narrow coverage (13 out of 33 possible points) with a poor degree of usability (11 out of 33) and useful remedies (23 out of 33) plus the one bonus point awarded for employee notification of rights.

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Maine State Accountability Index Report card

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

(Whistle Blowers’ Protection Act- 26 M.R.S. §831 *et. seq.* (2005) and 5 M.R.S. § 4612 *et. seq.* (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
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	0 points
5. Danger to health and/or public safety and/or environment	5 points	5 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
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>13 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

Or does the statute only protect disclosures made to –

2. Any state executive or legislative body or person employed by such	4 points	4 points
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entities		
3. Testimony in any official proceeding	4 points	4 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)	3 points ¹
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>33 points</u>	<u>Awarded Score</u> <u>11 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

¹ Court action must be started within 2 years of retaliatory act. Complaint to Human Rights Commission must be made within 6 months of such act and must be filed in order to be able to file a court case. An employee, who alleges a violation of that employee’s rights and has provided prior notice to his/her employer, may bring a complaint before the Maine Human Rights Commission or go directly to court. Court action must be started within 2 years of retaliatory act. A complaint to the Human Rights Commission must be made within 6 months of such act. Also, the Human Rights Commission under certain circumstances will issue a right to sue letter to the whistleblower as long as he has first filed a complaint with the Human Rights Commission. The statute shall not be construed to diminish or impair the rights of a person under a collective bargaining agreement, or, to derogate any common-law rights of an employee

2. Opportunity for administrative challenge	4 points	4 points
3. Opportunities for court challenge	4 points	4 points ²
4. Trial by jury	3 points	0 points ³
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 (5 M.R.S. § 4613 2B (8) (2005))
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>23 Points</u>

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

Factor	Maximum Score	Awarded Score
Posting	1 point	1 point

Total Points

100 Points

48 Points

² There appear to be two ways court cases can be brought. First, pursuant to 5 MRS § 4621 (2005), a whistleblower may file a civil action against the person, who retaliated against him or her. Second, the Human Rights Commission under certain circumstances will issue a right to sue letter to the whistleblower as long as he has first filed a complaint with the Human Rights Commission.

³ Whistleblower statute does not provide for trial by jury. We did not determine whether a right to jury trial would be available under other statutes or the Maine Constitution. But the issue when it may be available in whistleblower cases will depend on the subject matter of the civil action and the remedies sought. See [DiCentes v. Michaud, 1998 ME 227, 719 A.2d 509, 1998 Me.](#)

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Maine

Statute- Whistleblowers' Protection Act- 26 M.R.S. § 831 *et. seq.* (2005)

Provisions- The Maine Whistleblowers' Protection Act applies to both public and private entities. Under the statute no employer may threaten or otherwise discriminate against an employee because the employee (1)acting in good faith reports, orally or in writing, to the employer or a public body what the employee has reasonable cause to believe is a violation of a federal or Maine law or rule; (2) acting in good faith reports to the employer or a public body, orally or in writing, what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual; (3) is requested to participate in an investigation, hearing, or inquiry held by that public body, or in a court action; (4) acting in good faith has refused to carry out a directive to engage in an activity that would be a violation of a federal or Maine law or rule or that would expose the employee or any individual to a condition that would result in serious injury or death, after having sought and been unable to obtain a correction of the illegal activity or dangerous condition from the employer.

The protections provided to an employee are not applicable unless the employee has first brought the alleged violation, condition, or practice to the attention of the person having supervisory authority with the employer and has allowed the employer a reasonable opportunity to correct the violation. Such prior notice is not required if the employee has specific reason to believe that reports to the employer will not result in promptly correcting the violation, condition, or practice. The term "public body" to which disclosures can be made includes an agency, board, commission, council, member or employee of the legislative branch of the Maine government.

An employee, who alleges a violation of that employee's rights and has provided prior notice to his/her employer, may bring a complaint before the Maine Human Rights Commission or go directly to court. Court action must be started within 2 years of retaliatory act. A complaint to the Human Rights Commission must be made within 6 months of such act. Also, the Human Rights Commission under certain circumstances will issue a right to sue letter to the whistleblower as long as he has first filed a complaint with the Human Rights Commission. The statute shall not be construed to diminish or impair the rights of a person under a collective bargaining agreement, or, to derogate any common-law rights of an employee.

The Maine whistleblower statute does not specify that there should be a trial by jury in court cases challenging a retaliatory action. However, Article 1, § 20 of the Maine Constitution provides that in all civil suits, and in all controversies concerning property,

the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced. This section provides a broad constitutional guarantee of a right to a jury in all civil cases, except where, by the common law and Maine statutory law that existed prior to the adoption of the Maine Constitution in 1820, such cases were decided without a jury. [DiCentes v. Michaud, 1998 ME 227, 719 A.2d 509, 1998 Me.](#)