

Accountability Report Card Summary 2009
Minnesota

Minnesota has a below average state whistleblower law:

- Scoring 54 out of a possible 100 points; and
- Ranking 17th out of 51 (50 states and the District of Columbia).

Minnesota's statute has limited coverage (16 out of 33 possible points) with a moderate degree of usability (18 out of 33) and fair remedies (19 out of 33), plus the one bonus point awarded for employee notification of rights.

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

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Minnesota Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale
 Employment, Notice of Termination- Minn. Stat. § 181.931 (2005)
 Occupational Health and Safety- Minn. Stat. § 182.669

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	0 points
5. Danger to health and/or public safety and/or environment	5 points	3 points ²
6. Communication of scientific opinion or alteration of technical findings	5 points	5 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>16 points</u>

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

¹ This statute applies to both private and public sector, state government, employees, who act as whistleblowers. An employer shall not take any adverse action involving the employee’s terms and conditions of employment because: (1) the employee, or a person acting on behalf of the employee, in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official.

² Specific statutes protect reports of workplace health and safety violations as well situations in which the quality of health care provided by a health care facility or provider violates standards established by federal or state law and potentially places the public at risk of harm.

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
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	3 points
5. Any federal or non-state governmental entity	3 points	1 points ³
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

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 ⁴
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>18 points</u>

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

Does the statute provide for –

Factor	Maximum Points	Awarded Points
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³ Reports of scientific or technical materials to government agencies are specifically protected.

⁴ No statute of limitations in the statute. However, we understand that under Minnesota law the applicable statute of limitations is 2-years.

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- Statute does not mention administrative challenge.
3. Opportunities for court challenge	4 points	4 points
4. Trial by jury	3 points	0 points ⁵
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 ⁶
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>19 points</u>

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

Factor	Maximum Score	Awarded Score
Posting	1 point	1 point

Totals

100 points

54 points

⁵ No right trial by jury provided in the statute. We did not review whether Minnesota laws of it's Constitution, would provide for a jury trial in civil action brought to cover all damages recoverable at law.

⁶ \$25 per day civil penalty, not to exceed \$750 per employee for failure to provide written reason for employee's involuntary termination.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Minnesota

Statute- Employment, Notice of Termination- Minn. Stat. § 181.931 (2005) and Occupational Health and Safety- Minn. Stat. § 182.669

Provisions- The first statute applies to both private and public sector, state government, employees, who act as whistleblowers. An employer shall not take any adverse action involving the employee's terms and conditions of employment because: (1) the employee, or a person acting on behalf of the employee in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official; (2) the employee is requested by a public body or office to participate in an investigation, hearing, or inquiry; (3) the employee refuses an employer's order to perform an act the employee has an objective basis in fact to believe violates any state or federal law or regulation and the employee informs the employer that the order is being refused for that reason; or (4) the employee, in good faith, reports a situation in which the quality of health care provided by a health care facility or provider violates standard established by federal or state law or (5) the employee communicates the finding of a scientific or technical study that the employee, in good faith, believes to be truthful and accurate, including reports to a government body or law enforcement official.

In addition to any remedies otherwise provided by law, an employees injured by a violation of this statute may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief as determined by the court. Moreover, the court may order reinstatement, back-pay, restoration of loss of service credit, if appropriate, compensatory damages and the expungement of any adverse records of an employee who was the subject of the alleged acts of misconduct.

The second statute gives a state employee (§ 182.651) who believes he or she has been retaliated against by any person because the employee exercised a right under the Occupational Health and Safety Act the right to file a complaint with the commissioner within thirty (30) days alleging the discriminatory act. Upon receipt, the commissioner shall cause an investigation to be made and if he or she determines that a discriminatory act was committed against an employee, the commissioner shall refer the matter to the Office of Administrative hearings for a hearing.