

Accountability Report Card Summary 2009
Missouri

Missouri has a mediocre state whistleblower law:

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

Missouri has average coverage (20 of 33 possible points) with a below average degree of usability (11 out of 33) and fair remedies (19 out of 33), plus the one bonus point awarded for employee notification of rights.

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

page 2
page 5

Missouri Accountability Index Report card

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

Public Officers and Employees- Miscellaneous Provisions- § 105.055 R.S. Mo. (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	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	3 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	1 point ²
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>20 points</u>

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

¹ No supervisor or appointing authority of any state agency shall (1) prohibit a state employee from, or take any disciplinary action against a state employee for, the disclosure of any alleged wrongdoing under investigation or any related activity; (2) prohibit a state employee from, or take any disciplinary action against a state employee, for the disclosure of information, which the employee reasonably believes evidences a violation of law, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety; (3) require any such employee to give notice to the supervisor or appointing authority prior to making any such report.

² No supervisor or appointing authority can prohibit disclosures of any alleged prohibited activity under investigation or other types of improper activities set out in Footnote 1 above.

Do the laws protect disclosures made to –

Factor	Maximum Points	Awarded Points
1. Any person or organization, including public media	24 points	0 points ³

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	0 points
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 points ⁵
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

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)	1 point ⁶
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

³ The statute is unclear about to whom the state employee can make disclosures. Based on the statute, we consider that disclosures would be made to state bodies or officials who would be involved in investigating prohibited or improper activities.

⁴ No supervisor or appointing authority of any state agency shall prohibit any employee of an agency from discussing the operations of the agency with any member of the legislature, state auditor, attorney general, or any state official or body charged with investigating any alleged misconduct.

In addition, no supervisor or appointing authority of any state agency shall (1) prohibit a state employee from, or take any disciplinary action against a state employee for, the disclosure of any alleged wrongdoing under investigation or any related activity; (2) prohibit a state employee from, or take any disciplinary action against a state employee, for the disclosure of information, which the employee reasonably believes evidences the types of activities listed in Section A, Factor 1.

⁵ State investigative body

⁶ Bring a court action within 90 days of alleged disciplinary action. 30 days to bring administrative action.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Missouri

Statute- Public Officers and Employees- Miscellaneous Provisions- § 105.055 R.S. Mo. (2005)

Provisions- No supervisor or appointing authority of any state agency shall prohibit any employee of an agency from discussing the operations of the agency with any member of the legislature, state auditor, attorney general, or any state official or body charged with investigating any alleged misconduct. In addition, no supervisor or appointing authority of any state agency shall (1) prohibit a state employee from, or take any disciplinary action against a state employee for, the disclosure of any alleged wrongdoing under investigation or any related activity; (2) prohibit a state employee from, or take any disciplinary action against a state employee, for the disclosure of information, which the employee reasonably believes evidences a violation of law, mismanagement, a gross waste of funds, an abuse of authority, and a substantial and specific danger to public health and safety; (3) require any such employee to give notice to the supervisor or appointing authority prior to making any such report. The term “disciplinary action” means any dismissal, demotion, transfer, reprimand, reassignment, suspension, warning of possible dismissal or withholding of work.

This provision of law shall not be construed as prohibiting a supervisor or appointing authority from requiring that an employee inform one of them as to legislative requests for information to the agency or the substance of testimony made, or to be made, by the employee to legislators on behalf of the agency. A state merit employee may file an administrative appeal whenever the employee alleges that disciplinary action was taken against the employee in violation of this provision with the state personnel advisory board within 30 days of the alleged disciplinary action. For nonmerit employees the appeal should be filed with the appropriate agency review board or body which has appeal procedures substantially similar to those provided merit employees. If the board or appropriate review body finds that the disciplinary action was unreasonable, it shall modify or reverse the agency’s action and order such relief for the employee as it deems appropriate. If the board finds a violation of this statute, it may recommend to the appointing authority that that action be taken against the offending official. The decisions of the board or appropriate review body may be appealed by any party as provided by law.

In addition to the administrative appeals, a person alleging a violation of the statute may bring a civil action for damages within 90 days after the occurrence of the alleged violation. An employee must show by clear and convincing evidence that he or she has reported or was about to report, verbally or in writing, any wrongdoing, or a suspected

wrongdoing. A court in rendering judgment shall order, as appropriate, actual damages and also costs of litigation, including reasonable attorney fees.

In another related provision, § 105.058 R.S. Mo. (2005), no state agency or state official, shall by agency policy, executive order, ethics codes, or any other means, prohibit any state employee from communicating with the state auditor or his or her state representative or state senator. In addition, no such state agency or official shall require any employee to provide any record or other information regarding any communication with such persons, except when such communications are directly related to the primary employment duties of such employee.