

**Accountability Report Card Summary 2009**  
**North Carolina**

North Carolina has an average state whistleblower law:

- Scoring 54 out of a possible 100 points, but its scope is varied;
- Ranking 17<sup>th</sup> out of 51 (50 states and the District of Columbia).

North Carolina's statute has fair coverage (20 out of 33 possible points) with limited usability (15 out of 33) and slightly higher than average remedies (19 out of 33).

*North Carolina's full Whistleblower Report Card*                      *page 2*  
*Narrative summary of North Carolina law*                              *page 6*

**North Carolina Accountability Index Report card**  
 Coverage, Usability & Strength — Rating on a 100 Point Scale  
 N.C.G.S.A. §-126-84 *et. seq.* (2005)  
 Occupational Health and Safety- N.C.G.S.A. § 95-240 *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 <sup>1</sup>
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	4 points <sup>2</sup>
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 –

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<sup>1</sup> It is the policy of North Carolina that State employees shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority, evidence of activity by a State agency or employee constituting a violation of State or federal law, rule or regulation, fraud, misappropriation of state resources, substantial and specific danger to the public health and safety, or gross mismanagement, a gross waste of monies, or gross abuse of authority. Further, it is the policy of North Carolina that State employees be free of intimidation or harassment when reporting to public bodies about matters of public concern, including offering testimony to or testifying before appropriate legislative panels.

No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the State employee (i) reports or is about to report, verbally or in writing, any activity described in the previous sentence, unless the employee knows or has reason to believe that the report is inaccurate; or (ii) has refused to carry out a directive which in fact constitutes a violation of State or federal law, rule or regulation or poses a substantial and specific danger to the public health and safety.

No State employee shall retaliate against another State employee because the employee reports or is about to report any activity referred to in the first sentence of this discussion or carry out a directive which constitutes a violation of State or federal, rule or regulation and a specific danger to the public health and safety.

<sup>2</sup> North Carolina law covers disclosure of public safety and health violations, as well as occupational health and safety, but does not cover environmental violations.

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 point
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	0 point
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>19 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

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

2. Any state executive or legislative body or person employed by such entities	4points	4 points <sup>3</sup>
3. Testimony in any official proceeding	4 points	1 points <sup>4</sup>
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	1 points <sup>5</sup>
5. Any federal or non-state governmental entity	3 points	0 points
6. Co-workers or supervisors within the scope of duty	3 points	3 points <sup>6</sup>
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	1 point	0 points
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<sup>3</sup> State employees shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority.

<sup>4</sup> Testimony and disclosure to investigative or law enforcement bodies are covered under N.C.G.S.A. § 95-240.

<sup>5</sup> See FN4.

<sup>6</sup> State employees shall be encouraged to report verbally or in writing to their supervisor,

of whistleblower disclosures		
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>7</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)	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>

**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 challenge	4 points	0 points
3. Opportunities for court challenge	4 points	4 points
4. Trial by jury	3 points	0 points <sup>8</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 <sup>9</sup>
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 <sup>10</sup>

<sup>7</sup> Any employee, who is injured by any violation of the prohibitions of discrimination and retaliation described above, may maintain an action for damages, an injunction, or other remedies against the person or agency who committed the violation within one year after the occurrence of the alleged violation.

<sup>8</sup> The statute does not mention trial by jury. Some of the issues in court action may be ones a jury could consider. However, we did not examine whether a right to trial by jury of these issues would be found in other North Carolina statutes or it’s Constitution.

<sup>9</sup> Under both statutes, a court, in rendering judgment in an action, may order an injunction, damages, reinstatement of the employee, back wages, full restoration of fringe benefits and seniority rights, reasonable attorney’s fees or any combination of these. If an application for a permanent injunction is granted, the employee shall be awarded costs and reasonable attorney’s fees.

<sup>10</sup> If in an action for damages the court finds that the employee was injured by a willful violation of retaliation or discrimination, the court shall award as damages three times the amount of actual damages



April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- North Carolina

Statute- State Personnel System, Protection for Reporting Improper Government Activities- N.C.G.S.A. §-126-84 *et. seq.* (2005) and Occupational Health and Safety- N.C.G.S.A. § 95-240 *et. seq.*

Provisions-

**First statute-** It is the policy of North Carolina that State employees shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority, evidence of activity by a State agency or employee constituting a violation of State or federal law, rule or regulation, fraud, misappropriation of state resources, substantial and specific danger to the public health and safety, or gross mismanagement, a gross waste of monies, or gross abuse of authority. Further, it is the policy of North Carolina that State employees be free of intimidation or harassment when reporting to public bodies about matters of public concern, including offering testimony to or testifying before appropriate legislative panels.

**No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the State employee (i) reports or is about to report, verbally or in writing, any activity described in the previous paragraph, unless the employee knows or has reason to believe that the report is inaccurate; or (ii) has refused to carry out a directive which in fact constitutes a violation of State or federal law, rule or regulation or poses a substantial and specific danger to the public health and safety.**

**No State employee shall retaliate against another State employee because the employee (i) reports or is about to report, verbally or in writing, an activity described in the first paragraph; or (ii) has refused to carry out a directive which may constitute a violation of State or federal law, rule or regulation or poses a substantial and specific danger to the public health and safety. None of the activities referred in this and the previous paragraph must first be brought to the attention of the head of any agency, a supervisor, or any other State government employee and the agency be given a reasonable time to correct the activity. The protections afforded State employees include employees who report any activity described in the first paragraph to the State Auditor or to the Program Evaluation Division.**

Any employee, who is injured by any violation of the prohibitions of discrimination and retaliation described above, may maintain an action for damages, an injunction, or other remedies against the person or agency who committed the violation within one year after

the occurrence of the alleged violation. A court, in rendering judgment in an action, may order an injunction, damages, reinstatement of the employee, back wages, full restoration of fringe benefits and seniority rights, reasonable attorney's fees or any combination of these. If an application for a permanent injunction is granted, the employee shall be awarded costs and reasonable attorney's fees. If in an action for damages the court finds that the employee was injured by a willful violation of retaliation or discrimination, the court shall award as damages three times the amount of actual damages plus costs and reasonable attorney's fees against the individual or individuals found to have committed any wrongdoing specified in the first paragraph of the North Carolina statute.

**Second statute- No person shall discriminate or take retaliatory action against an employee because the employee in good faith does or threatens to file a claim or complaint, initiate an inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to the statutes listed herein (including Chapter 95, Article 16- Occupational Health and Safety and Chapter 74, Article 2A- Mine Safety and Health Act).**

An employee allegedly aggrieved by a violation of G.S. 95-241 may file a written complaint with the Commissioner of Labor alleging the violation. The complaint shall be filed within 180 days of the alleged violation. Within 20 days following receipt of the complaint, the Commissioner shall forward a copy of the complaint to the person alleged to have committed the violation and shall initiate an investigation. The Commissioner will make a finding and may issue a right-to-sue letter to the aggrieved employee. An employee who has been issued a right-to-sue letter or the Commissioner of Labor may commence a civil action in the superior court of the county where the violation occurred, where the complainant resides, or where the respondent resides or has his principal place of business.

The employee or the Commissioner may seek and the court may award any or all of the following types of relief: injunction, reinstatement of position and fringe benefits, compensation for lost wages, lost benefits, and other economic losses. Treble damages may be awarded if violation was willful.

§ 95-204 describes person as “any individual, partnership, association, corporation, business trust, legal representative, the State, a city, town, county, municipality, local agency, or other entity of government.”