

**Accountability Report Card Summary 2009**  
**New Jersey**

New Jersey has an uneven state whistleblower law:

- Scoring only 58 out of a possible 100 points; and
- Ranking 12<sup>th</sup> out of 51 (50 states and the District of Columbia).

New Jersey has a very narrow statute (9 out of 33 possible points) with moderate usability (21 out of 33) and strong remedies (27 out of 33) plus the one bonus point awarded for employee notification of rights.

*New Jersey's full Whistleblower Report Card*  
*Narrative summary of New Jersey's law*

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**New Jersey Accountability Index Report card**

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

Conscientious Employee Protection Act- N.J. Stat. § 34:19-1 *et. seq.* (2006)

Public Employee’s Occupational Safety and Health Act- N.J. Stat § 34:6A-25 *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
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	2 Points <sup>1</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 –

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 <sup>2</sup>
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>9 Points</u></b>

**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,	24 points	0 Points

<sup>1</sup> Disclosure of workplace health and safety violations are covered.

<sup>2</sup> If state employee institutes a court action, he waives his rights and remedies under a collective bargaining agreement, any other contract, a State law, rule or regulation or under the common law.

including public media		
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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 <sup>3</sup>
5. Any federal or non-state governmental entity	3 points	3 Points
6. Co-workers or supervisors within the scope of duty	3 points	3 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	1 Point <sup>4</sup>
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>5</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>21 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	4 points	4 Points

<sup>3</sup> Workplace health and safety complaints are specifically protected.

<sup>4</sup> Mandatory investigations are limited to workplace health and safety violations.

<sup>5</sup> There is a 180 day statute of limitations for occupational health and safety complaints.

affecting a state employee's terms and conditions of employment		
2. Opportunity for administrative challenge	4 points	4 Points
3. Opportunities for court challenge	4 points	4 Points
4. Trial by jury	3 points	3 Points <sup>6</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>7</sup>
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	0 Points <sup>8</sup>
11. Personnel actions against managers found to have retaliated	3 points	3 Points
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>27 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

**Total Points**

**100 Points**

**58 Points**

<sup>6</sup> Either party may request a trial by jury to try the validity of any claim under the act. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any legal or equitable relief provided by CEPA or any other statute.

<sup>7</sup> All remedies available in common law tort actions shall be available to prevailing plaintiffs

<sup>8</sup> The court may order punitive damages, fines and penalties may be ordered. However, these awards are not conditioned on willful and intentional actions

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- New Jersey

**Statute-** Conscientious Employee Protection Act- N.J.S.A. § 34:19-1 *et. seq.* (2006) and New Jersey Public Employee's Occupational Safety and Health Act- N.J.S.A. § 34:6A-25 *et, seq.*

**Provisions-** The New Jersey Conscientious Employee Protection Act (CEPA) applies to both private and public sector (including State) whistleblowers. A person shall not retaliate against an employee or licensed site professional because he/she engages in certain activities. "Retaliatory action" means the discharge, suspension, or demotion of any employee, or other adverse employment action affecting his/hers terms and conditions of employment.

Employee activities which are protected by CEPA include any of the following: the employee (1) discloses or threatens to disclose to the department an activity, policy, or practice of the employer, that the employee reasonable believes (i) is in violation of a law, or rule or regulation promulgated pursuant to law, or (ii) is fraudulent or criminal, including any activity, policy, or practice of deception or misrepresentation , which the employee believes may defraud any governmental entity; (2) provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into a violation of law, or a rule or regulation promulgated pursuant to law, by the employer, including any violation involving deception of, or misrepresentation to, any governmental entity; (3) objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes (i) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any deception of, or misrepresentation to, any governmental entity, (ii) is fraudulent or criminal, including any activity, policy, or practice of deception or misrepresentation which the employee reasonably believes may defraud any governmental entity, or (iii) is incompatible with a clear mandate of public policy concerning the public health, safety, or welfare or protection of the environment.

The protection against retaliatory action pertaining to disclosure to a public body shall not apply to an employee unless the employee has brought the matter to the attention of a supervisor of the employee by written notice and has afforded the employer a reasonable opportunity to correct the matter. Disclosure shall not be required where the employee is reasonably certain that the matter is known to one or more supervisors of the employer or where the employee fears physical harm as a result of the disclosure provided, however, that the situation is emergency in nature. The term "public body" means the Federal and New Jersey executive branch, legislature, judiciary or any member or employee thereof, regulatory, administrative or public agency or authority, law enforcement agency,

prosecutorial office, or police or peace officer, and any division, board, bureau, office, committee or commission of any of the previously described public bodies.

Upon a violation of one of the protections afforded employees, an employee, or former employee, may, bring a civil action in a court of competent jurisdiction and both parties to the action may request a trial by jury. All remedies available in common law tort actions shall be available to a prevailing plaintiff. These remedies are in addition to any legal or equitable relief provided by the statute or any other statute. Where appropriate, the court shall also order, to the fullest extent possible, injunctive relief, reinstatement of the employee, full fringe benefits and seniority rights, compensation for lost wages, benefits, and other remuneration, reasonable costs and attorneys' fees. In addition, the court or jury may assess a civil fine of not more than \$10,000 for the first violation and \$20,000 for each subsequent violation, and provide for punitive damages. The filing of a suit under the statute shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, State law, rule or regulation or under the common law.

New Jersey does not have a False Claims Act, which provides an economic incentive to persons bringing qui tam actions alleging that companies and/ or individuals have defrauded the state government or its instrumentalities, or entities. The economic incentive is a share of any recovery.

**The New Jersey Public Employee's Occupational Safety and Health Act prohibits discrimination or discipline against any employee because such employee filed a complaint, instituted an action, or testified about any right afforded by the Act. It defines employer as "any person acting directly on behalf of, or with the knowledge and ratification of (1) the State, or any department, division, bureau, board, council, agency or authority of the State, except any bi-state agency." (§ 34:6A-27)<sup>9</sup> An employee who believes he has been discriminated against may, within 180 days from the employee's first knowledge of the violation, file a complaint with the commissioner. Upon receipt, the commissioner shall cause an investigation to be made as he deems appropriate. In case of a finding for the employee, he is entitled to all appropriate relief, including rehiring or reinstatement to his former position with back pay and reasonable legal costs.**

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<sup>9</sup> This statute also defines employer as any county, municipality, or any department, division, bureau, board council, agency or authority of any county or municipality