

**Accountability Report Card Summary 2009**  
**New Mexico**

New Mexico does not have a state whistleblower law:

- Scoring only 2 out of a possible 100 points;
- Ranking 51st out of 51 (50 states and the District of Columbia).

New Mexico received 2 points for a Medicaid False Claims Act, which allows qui tam suits and the receipt of a bounty for persons bringing qui tam suits.

*New Mexico's full Whistleblower Report Card* *page 2*  
*Narrative summary of New Mexico law* *page 5*

**New Mexico Accountability Index Report card**

Coverage, Usability & Strength — Rating on a 100 Point Scale  
 Governmental Conduct Act- N.M. Stat. Ann. § 10-16-1 *et. seq.* (2006);  
 Occupation Health and Safety- N.M. Stat. Ann. § 50-9-25 (2006)

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

<sup>1</sup> New Mexico is only one of very few states that does not have a whistleblowers’ law for public employees. One statute that protects workers if they file a complaint is the Occupation Health and Safety Act, but it does not apply to public employees.

New Mexico also has a statute called the Governmental Conduct Act, which establishes ethical principles of public service and requires that the legislative and executive branch agencies have codes of conduct. The codes of conduct sound like they would be similar to the Federal Standards of Conduct, which govern employees’ behavior. The statute does not discuss or deal with protecting public employees who disclose wrongdoing or unethical practices in governmental activities.

**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	4 points	0 points
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	3points	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)	0 points
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)	2 points- New Mexico has a Medicaid False Claims Act, which allows qui tam suits.
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>2 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	0 points

affecting a state employee's terms and conditions of employment		
2. Opportunity for administrative challenge	4 points	0 points
3. Opportunities for court challenge	3 points	0 points
4. Trial by jury	3 points	0 points
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	0 points
7. Actual/compensatory damages	3 points	0 points
8. Interim relief, injunction or stay of personnel actions	3 points	0 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
11. Personnel actions against managers found to have retaliated	3 points	0 points
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>0 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	0 points

**Totals**

**100 points**

**2 points**

**April 16, 2009**

**State Legislation Protecting State Employee Whistleblowers**

**State**- New Mexico

**Statute**- Governmental Conduct Act- N.M. Stat. Ann. § 10-16-1 *et. seq.* (2006);  
Occupation Health and Safety- N.M. Stat. Ann. § 50-9-25 (2006)

**Provisions**- New Mexico does not have a public employee whistleblowers statute. One statute that protects workers if they file a complaint is the Occupation Health and Safety Act and it does not appear to be applicable to public (State) employees. Under the Act an employer shall not discharge or in any matter discriminate against any employee because the employee has filed a complaint or instituted a proceeding under the statute or is about to testify in any such proceeding or because of the exercise by the employee on behalf of himself or others of any rights afforded by the statute. Within 30 days of such discrimination, an employee can file a complaint with the Secretary, in writing and acknowledged by the employee. Within 60 days of the receipt of the complaint filed, the Secretary shall notify the complainant of his determination. If he or she finds that the statute has been violated, the Secretary shall file a petition in court to restrain the violation and for other appropriate relief including rehiring or reinstatement to his former position with back pay.

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New Mexico has a Medicaid False Claims Act, which allows qui tam suits.