

Accountability Report Card Summary 2009
Nevada

Nevada has an uneven state whistleblower law:

- Scoring 53 out of a possible 100 points, but its scope is varied;
- Ranking 22nd out of 51 (50 states and the District of Columbia).

Nevada's statute has average coverage (17 out of 33 possible points) with good usability (24 out of 33) and below average remedies (12 out of 33).

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

page 2
page 6

Nevada Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale
 Nev. Rev. Stat. Ann. § 281.611, 621, 631, 641, 651, and 671 (2005)
 Labor- Occupational Health and Safety: N.R.S. § 618.445

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	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 ²
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 ³
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	0 points

¹ It is hereby declared to be the public policy of Nevada that a state officer or employee are encouraged to disclose, to the extent not expressly prohibited by law, improper governmental action, and it is the intent of the legislature to protect the rights of a state officer or employee who makes such a disclosure.

“Improper governmental action” means any action taken by a state officer or employee in the performance of his or her official duties, whether or not the action is within the scope of his or her employment, which is (a) in violation of any state law or regulation; (b) an abuse of authority; (c) a substantial and specific danger to the public health and safety; or (d) a gross waste of public money.

² Nevada law protects disclosure of specific dangers to public health and safety, but not environmental danger. Nevada law also protects reports of occupational health and safety violations.

³ It is a prohibited practice for a state officer or employee to use his/her official authority to seek to prevent a state employee from disclosing improper government action.

	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>17 points</u>
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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, including public media	24 points	24 points ⁴

Or does the statute protect disclosures made to –

2. Any state executive or legislative body or person employed by such entities	4points	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	3 points	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 ⁵

⁴ The statute does not specify to whom information about improper government activity should be disclosed, e.g. the legislature, a public body, inspector generals, supervisor or head of an agency. Consequently, we have allotted 24 points to Factor 1 because a disclosure may apparently be made to any person, organization, or government agency. We did not ascertain whether Nevada regulations prescribe to whom or to what organization the information would be disclosed.

⁵ The statute does not provide the time in which a complaint must be filed. If any reprisal or retaliatory action is taken against a state officer or employee who discloses information concerning improper governmental action within 2 years after the information is disclosed, the state officer or employee may file

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>24 points</u>

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

Does the statute provide for –

Factor	Maximum Points	Awarded Points
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	4 points ⁶
3. Opportunities for court challenge	4 points	0 points ⁷
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	1 points ⁸
7. Actual/compensatory damages	3 points	0 points
8. Interim relief, injunction or stay of personnel actions	3 points	3 points ⁹
9. Transfer preference for prevailing whistleblower or ban on blackballing	3 points	0 points
10. Punitive damages or other fines and penalties for willful and intentional actions	3 points	0 points
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>12 Points</u>

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

a written appeal with a hearing officer of the department of personnel for a determination whether the action was a reprisal or retaliatory action.

⁶ See comment in Footnote 4. Statute does not mention that a court can review hearing officer’s decision.

⁷ Statute does not authorize court actions. However, such actions may be available under other Nevada laws or as part of the State’s common law.

⁸ The Occupational Health and Safety statute provides for reinstatement and back pay.

⁹ Hearing officer may order a state employee to desist and refrain from engaging in a reprisal or retaliatory action.

Factor	Maximum Score	Awarded Score
Posting	1 point	0 points
<u>Totals</u>	<u>100 Points</u>	<u>53 points</u>

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Nevada

Statutes- Public Officers and Employees- Disclosure of Improper Government Action- N.R.S. § 281.611, 621, 631, 641, 651, and 671 (2005) and Labor- Occupational Health and Safety: N.R.S. § 618.445

Provisions-

First statute- **It is hereby declared to be the public policy of Nevada that a state officer or employee is encouraged to disclose, to the extent not expressly prohibited by law, improper governmental action, and it is the intent of the legislature to protect the rights of a state officer or employee who makes such a disclosure. “Improper governmental action” means any action taken by a state officer or employee in the performance of his or her official duties, whether or not the action is within the scope of his or her employment, which is (a) in violation of any state law or regulation; (b) an abuse of authority; (c) a substantial and specific danger to the public health and safety; or (d) a gross waste of public money. The statute does not provide to whom such information should be disclosed, e.g. the legislature, a public body, inspector generals, supervisor or head of an agency.**

A state officer or employee shall not directly or indirectly use his official authority or influence to intimidate, threaten, coerce, command or attempt to intimidate, threaten, coerce, command or influence another state officer or employee in an effort to interfere or prevent the disclosure of information concerning improper governmental action. “Official authority or influence” includes disciplinary actions affecting employment such an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, evaluation, or other disciplinary action concerning a governmental job. No remedy is provided in the statute for a violation of this prohibition.

If any reprisal or retaliatory action is taken against a state officer or employee who discloses information concerning improper governmental action within 2 years after the information is disclosed, the state officer or employee may file a written appeal with a hearing officer of the department of personnel for a determination whether the action was a reprisal or retaliatory action. The term “reprisal or retaliatory action” includes, but is not limited to, among other things, dismissal, demotion, suspension, transfer, reduction in pay, or the refusal to assign meaningful work.

If the hearing officer determines that action taken was a reprisal or retaliatory action, he may issue an order directing the proper person to desist and refrain from engaging in such action. The hearing officer shall file a copy of his decision with the governor or any other elected state officer who is responsible for the actions of that

person. The hearing officer may not rule against the state officer or employee based on the person or persons to whom the improper governmental action was disclosed.

A state officer or employee shall not use the provisions of the statute to harass another state officer or employee. These provisions are intended to be directory and preventative rather than punitive, and do not abrogate or decrease the effect of any provisions of the Nevada Revised Statutes which define crimes or prescribe punishments with respect to the conduct of state officers or employees.

Second statute- An employer shall not discharge or discriminate against an employee because the employee has filed a complaint, instituted a proceeding, or testified against the employer based on any right afforded by the chapter.

An employee aggrieved by violation of subsection 1 may file a complaint, after first notifying his employer and the division of his intention to file the complaint. The complaint must be filed within 30 days after the violation occurred. Upon receipt, the administrator shall cause an investigation as he deems appropriate. If he finds a violation, he shall bring an action in the name of the administrator in district court.

Possible relief includes reinstatement and reimbursement for lost wages and work benefits.

Employer means “(1) The State of Nevada, any state agency, county, city, town, school district or other unit of local government” (NRS § 618.095)