

Accountability Report Card Summary 2009
Ohio

Ohio has an incomplete state whistleblower law:

- Scoring 38 out of a possible 100;
- Ranking 44th out of 51 (50 states and the District of Columbia).

Ohio has poor coverage (7 of 33 possible points) with a below average degree of usability (11 out of 33) and average remedies (20 out of 33).

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

page 2
page 6

Ohio Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale
Whistleblower's Protection- ORC Ann. 4113.51 *et. seq.* (2006) and Department of
Administrative Services, Personnel, Layoff Procedure- ORC Ann. 124.341 (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	2 points ¹
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	2 points ²
5. Danger to health and/or public	5 points	3 points

¹ Ohio has two statutes protecting state employees from retaliatory actions as a result of the employee's reporting a violation of state or federal law. The first of these statute's, the Whistleblower's Protection law, applies to both public sector and private employers and employees and concerns criminal offenses, rather than other violations of federal or state law or regulations.

There are three situations where a whistleblower employee will be protected against disciplinary or retaliatory employer actions. First, if an employee becomes aware in the course of his employment of a violation of any state or federal statute that the employee's employer has authority to correct, and the employee reasonably believes that the violation is a criminal offense that is likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety, or a felony, the employee shall orally notify the employee's supervisor or other responsible officer of the employee's employer of the violation and subsequently shall file with any such person a written report in sufficient detail to identify and describe the violation.

Second, If an employee becomes aware in the course of his employment of a violation of the legislation concerning air pollution, solid waste disposal, safe drinking water or water pollution control that is a criminal offense, the employee may notify, either orally or in writing, any appropriate public official or agency that has regulatory authority over the employer and the industry, trade, or business.

Third, if an employee becomes aware in the course of his or her employment of a violation by a fellow employee of any federal or state statute, or any work rule or company policy of the employee's employer and the employee reasonably believes that violation is a criminal offense that is likely to cause an imminent risk of public harm to persons or a hazard to public health or safety, a felony, the employee shall notify his or her supervisor or other responsible officer of the employee's employer, and subsequently shall file with that supervisor or officer a written report that provides sufficient detail to identify or describe the violation.

Another Ohio statute provides state employees who report violations or misuse of public resources protection against disciplinary actions. If a state employee in the classified or unclassified civil service becomes aware in the course of his employment of a violation of federal or state statutes, rules or regulations or the misuse of public resources and the employee's supervisor or appointing authority has authority to correct the violation or misuse, the employee may file a written report identifying the violation or misuse with either of such persons.

² The second statute covers the misuse of resources. See discussion under Footnote 1 above.

safety and/or environment		
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
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>7 points</u>

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	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	4 points ³
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	2 points ⁴

³ The second part of the Whistleblower’s law concerns environmental violations. The employee may notify, either orally or in writing, any state appropriate public official or agency that has regulatory authority over the employer and the industry, trade, or business in which the employer is engaged.

⁴ In the first part of the Whistleblower’s statute (See A 1 above), the employee shall orally notify the employee’s supervisor or other responsible officer of the employee’s employer of the violation and subsequently shall file with any such person a written report in sufficient detail to identify and describe the violation.

If the employer does not correct the violation or make a reasonable and good faith effort to correct the violation, within 24 hours after the oral notification or the receipt of the report, whichever is earlier, the employee may file a written report with the prosecuting authority of the country where the violation occurred, with a peace officer, with the inspector general if within his jurisdiction, or with any other appropriate official that has regulatory authority over the employer.

5. Any federal or non-state governmental entity	3points	0 points
6. Co-workers or supervisors within the scope of duty	3 points	3 points ⁵
7. Anyone as provided in paragraphs 2 thru 6 (above) without prior disclosure to another state official or supervisor	3 points	0 points ⁶

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)	2 points ⁷
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>11 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	4 points	4 points

The second statute provides that if a state employee in the classified or unclassified civil service becomes aware in the course of his employment of a violation of federal or state statutes, rules or regulations or the misuse of public resources and the employee’s supervisor or appointing authority has authority to correct the violation or misuse, the employee may file a written report identifying the violation or misuse with either of such persons. If the employee believes that a violation or misuse of public resources is a criminal offense, the employee, in addition to, or instead of, filing a written report, may report it to a prosecuting attorney, director of law, a peace officer, or the inspector general if the violation or misuse of resources is within the inspector general’s jurisdiction.

⁵ With regard to violations of law mentioned in the third part of the Whistleblower’s statute, the state employee shall notify his or her supervisor or other responsible officer of the employee’s employer, and subsequently shall file with that supervisor or officer a written report that provides sufficient detail to identify or describe the violation.

⁶ The Whistleblower’s statute involves, in one part, prior disclosure to a supervisor or other responsible officer of the employee’s employer.

⁷ The employee may bring a civil action for appropriate injunctive relief and for other prescribed remedies, or both, within 180 days after the date the disciplinary or retaliatory action was taken.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Ohio

Statute- Whistleblower's Protection- ORC Ann. 4113.51 *et. seq.* (2006) and Department of Administrative Services, Personnel, Layoff Procedure- ORC Ann. 124.341 (2006)

Provisions- **Ohio has two statutes protecting state employees from retaliatory actions as a result of the employee's reporting violation of state or federal law. The first of these statute's, the Whistleblower's Protection law, applies to both public sector and private employers and employees. There are three situations where a whistleblower employee will be protected against disciplinary or retaliatory employer actions.** First, if an employee becomes aware in the course of his employment of a violation of any state or federal statute or any ordinance or regulation of a political subdivision that the employee's employer has authority to correct, and the employee reasonably believes that the violation is a criminal offense that is likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety, or a felony, or an improper solicitation of a contribution, the employee shall orally notify the employee's supervisor or other responsible officer of the employee's employer of the violation and subsequently shall file with any such person a written report in sufficient detail to identify and describe the violation.

If the employer does not correct the violation or make a reasonable and good faith effort to correct the violation, within 24 hours after the oral notification or the receipt of the report, whichever is earlier, the employee may file a written report with the prosecuting authority of the county where the violation occurred, with a peace officer, with the inspector general if within his jurisdiction, or with any other appropriate official that has regulatory authority over the employer.

Second, if an employee becomes aware in the course of his employment of a violation of the legislation concerning air pollution, solid waste disposal, safe drinking water or water pollution control that is a criminal offense, the employee may notify, either orally or in writing, any appropriate public official or agency that has regulatory authority over the employer and the industry, trade, or business in which the employer is engaged. In these first two instances, an employee shall make a reasonable and good faith effort to determine the accuracy of any information reported. If the employee fails to make such an effort, the employee may be subject to disciplinary action by the employee's employer, including suspension or removal, for reporting information without a reasonable basis to do so in these two instances.

Third, if an employee becomes aware in the course of his or her employment of a violation by a fellow employee of any federal or state statute, or any work rule or company policy of the employee's employer and the employee reasonably believes

that violation is a criminal offense that is likely to cause an imminent risk of public harm to persons or a hazard to public health or safety, or a felony, the employee shall notify his or her supervisor or other responsible officer of the employee's employer, and subsequently shall file with that supervisor or officer a written report that provides sufficient detail to identify or describe the violation.

No employer shall take any disciplinary or retaliatory action against an employee for making any report authorized in these three instances or as a result of the employee's having made any inquiry or taken any other action to ensure the accuracy of any information reported. Disciplinary or retaliatory action by the employer includes, without limitation, doing any of the following: removing or suspending the employee from employment; withholding from the employee salary increases or employee benefits to which he or she is entitled; transferring or reassigning the employee, denying the employee a promotion that otherwise should have been received;; and reducing the employee in pay or position.

In all three instances, the employee may bring a civil action, in accordance with the Rules of Civil Procedure, for appropriate injunctive relief and for other prescribed remedies, or both, within 180 days after the date the disciplinary or retaliatory action was taken. No civil action is available under this statute to an employee as a remedy for any disciplinary or retaliatory action taken by an appointing authority against an employee for filing a report under division (A) of section 124.341 of the revised Ohio Code. (This section concerns another provision of Ohio law, to be discussed below, regarding a state employee's report of violation of law or a misuse of public resources.) The court may order, as it deems appropriate, reinstatement of the employee to his or her position held at the time of the disciplinary or retaliatory action and at the same site of employment or to a comparable position at that site, payment of back wages, full reinstatement of fringe benefits and seniority rights, or any combination of these remedies. The court may also award the prevailing party all or a portion of the costs of litigation. If the employee prevails the court may award reasonable attorney's fees, witness fees, and fees for experts testifying at trial, in an amount the court determines is appropriate. If the court determines that an employer had deliberately violated the prohibitions on disciplinary or retaliatory actions, the court in awarding back pay may include interest at a specified amount.

Another Ohio statute provides state employees who report violations or misuse of public resources protection against disciplinary actions. If a state employee in the classified or unclassified civil service becomes aware in the course of his employment of a violation of federal or state statutes, rules or regulations or the misuse of public resources and the employee's supervisor or appointing authority has authority to correct the violation or misuse, the employee may file a written report identifying the violation or misuse with either of such persons. If the employee believes that a violation or misuse of public resources is a criminal offense, the employee, in addition to, or instead of, filing a written report, may report it to a prosecuting attorney, director of law, a peace officer, or the inspector general if the violation or misuse of resources is within the inspector general's jurisdiction. It may

also be reported to the appropriate ethics commission if it is a violation of other Ohio statutes.

No state officer or state employee shall take any disciplinary action against a state employee for making any report, including, without limitation, doing any of the following: removing or suspending the employee from employment; withholding from the employee salary increases or employee benefits to which he or she is entitled; transferring or reassigning the employee; denying the employee a promotion that otherwise have been received; and reducing the employee in pay or position. These are the same items that are prohibited in the three situations described previously. However, an employee is subject to disciplinary action, including suspension or removal, as determined by the employee's appointing authority for purposely, knowingly, or recklessly reporting false information. Consequently, a state employee shall make a reasonable effort to determine the accuracy of any information.

If a disciplinary or retaliatory action is taken against an employee, the employee's sole and exclusive remedy, notwithstanding any other provision of law, is to file an appeal with the state personnel appeals board within 30 days after receiving actual notice of the appointing authority's action. The board may affirm or disaffirm the action of the appointing authority or may issue such order as appropriate. The order of the board is appeal able to the Ohio Court of Common Pleas.