

**Accountability Report Card Summary 2009**  
**Oklahoma**

Oklahoma has a relatively good state whistleblower law:

- Scoring 59 out of a possible 100;
- Ranking 9<sup>th</sup> out of 51 (50 states and the District of Columbia).

Oklahoma has fair coverage (19 of 33 possible points) with a good degree of usability (25 out of 33) and average remedies (14 out of 33) plus the one bonus point awarded for employee notification of rights.

*Oklahoma's full Whistleblower Report Card*  
*Narrative summary of Oklahoma law*

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**Oklahoma Accountability Index Report card**

Coverage, Usability & Strength — Rating on a 100 Point Scale  
 Oklahoma Whistleblower Act- 74 Okl. St. § 840-2.5 (2005) and Oklahoma Personnel  
 Act- 74 Okl. St. § 8401.2 (2005)  
 Oklahoma OSHA Standards Act- 40 Okl. St. § 403(B)

**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 <sup>2</sup>
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>3</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	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>

<sup>1</sup> No officer or employee of any state agency shall prohibit or take disciplinary action against employees of such agency, whether subject to the provisions of the Merit System or in unclassified service for: (1) disclosing public information to correct what the employee reasonably believes evidences a violation of the Oklahoma Constitution or law or rule promulgated pursuant to law; (2) reporting a violation of the Oklahoma Constitution, state or federal law, rule or policy; mismanagement; a gross waste of public funds; an abuse of authority; or a substantial and specific danger to public health or safety.

<sup>2</sup> The term “mismanagement” means fraudulent activity, criminal misuse of funds, or abuse or violation of well-established, articulated, clear and compelling public policy.

<sup>3</sup> Oklahoma law protects disclosures of health and public safety violations, as well as occupational health and safety violations, but does not protect disclosures of environmental violations.

		<b>19 points</b>
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**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	24 points <sup>4</sup>

**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	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)	1 point <sup>5</sup>
10. Allow qui tam or false claim	5 points (2 points if a qui	0 points

<sup>4</sup> The purpose of the Oklahoma Whistleblower Act is to encourage and protect the reporting of wrongful government activities and to deter retaliation against state employees for reporting those activities. There is no specific mention as to whom or to what organization information should be disclosed or reported. However, one activity that is protected under the statute is discussing the operations and functions of the agency, either specifically or generally, with the Governor, members of the Legislature, the print or electronic media or other persons to investigate or initiate corrective action. This is the closest the statute comes to suggesting to whom disclosures or reports are to be made.

<sup>5</sup> Any employee or former employee aggrieved by this statute may file an appeal with the Oklahoma Merit Protection Commission within 60 days of the alleged violation.

actions for recovery of “bounty” in cases of fraud against the state	tam statute of limited scope)	
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>25 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 <sup>6</sup>
2. Opportunity for administrative challenge	4 points	4 points <sup>7</sup>
3. Opportunities for court challenge	4 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	3 points <sup>8</sup>
7. Actual and/or 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	3 points <sup>9</sup>

<sup>6</sup> The term “disciplinary action” means any direct or indirect form of discipline, any dismissal, demotion, transfer, reassignment, suspension, reprimand, admonishment, warning of possible dismissal, reduction in force, reduction in rank, reduction in status, or withholding of work.

<sup>7</sup> Any employee or former employee aggrieved by this statute may file an appeal with the Oklahoma Merit Protection Commission within 60 days of the alleged violation. If after investigation, the Commission’s Executive Director determines that a violation may have occurred, the Director shall appoint a hearing examiner.

<sup>8</sup> If after the hearing, it is determined that a violation has occurred the Commission or hearing officer shall order corrective action.

<sup>9</sup> Such corrective action shall include, but not be limited to, suspension without pay, demotion or discharge. In addition to being suspended or demoted, any party found to have violated this provision shall be placed on probation for 6 months. Any employee, supervisor, or appointing authority of any state agency who knowingly and willfully violates the provision of this statute shall forfeit the position of the person and be ineligible for appointment to, or employment in, a position of state service for at least 1 year and no more than 5. The decision of the Commission in such cases may be appealed.



April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Oklahoma

Statute- Oklahoma Whistleblower Act- 74 Okl. St. § 840-2.5 (2005), Oklahoma Personnel Act- 74 Okl. St. § 8401.2 (2005), and Oklahoma OSHA Standards Act- 40 Okl. St. § 403(B)

Provisions-

**The purpose of the Oklahoma Whistleblower Act is to encourage and protect the reporting of wrongful government activities and to deter retaliation against state employees for reporting those activities. No officer or employee of any state agency shall prohibit or take disciplinary action against employees of such agency, whether subject to the provisions of the Merit System or in unclassified service for: (1) disclosing public information to correct what the employee reasonably believes evidences a violation of the Oklahoma Constitution or law or rule promulgated pursuant to law; (2) reporting a violation of the Oklahoma Constitution, state or federal law, rule or policy; mismanagement; a gross waste of public funds; an abuse of authority; or a substantial and specific danger to public health or safety; (3) discussing the operations and functions of the agency, either specifically or generally, with the Governor, members of the Legislature, the print or electronic media or other persons to investigate or initiate corrective action; or (4) taking any of the previous described actions without giving prior notice to the employee's supervisor or anyone else in the employee's chain of command. The term "disciplinary action" means any direct or indirect form of discipline, any dismissal, demotion, transfer, reassignment, suspension, reprimand, admonishment, warning of possible dismissal, reduction in force, reduction in rank, reduction in status, or withholding of work. The term "mismanagement" means fraudulent activity, criminal misuse of funds, or abuse or violation of well-established, articulated, clear and compelling public policy.**

Any person who has authority to take, direct others to take, recommend or approve any personnel action shall take or fail to take any personnel action with respect to any employee for filing an appeal or testifying on behalf of any person filing an appeal with the Oklahoma Merit Protection Commission. This provision shall not be construed as prohibiting disciplinary action of an employee who discloses information that the employee knows to be false; knowingly and willfully discloses with reckless disregard for its truth and falsity; or knows to be confidential pursuant to law.

Any employee or former employee aggrieved by this statute may file an appeal with the Oklahoma Merit Protection Commission within 60 days of the alleged violation. If after investigation, the Commission's Executive Director determines that a violation may have occurred, the Director shall appoint a hearing examiner. If after the hearing, it is determined that a violation has occurred the Commission or hearing officer shall order

corrective action. Such corrective action shall include, but not be limited to, suspension without pay, demotion or discharge. In addition to being suspended or demoted, any party found to have violated this provision shall be placed on probation for 6 months. Any employee, supervisor, or appointing authority of any state agency who knowingly and willfully violates the provision of this statute shall forfeit the position of the person and be ineligible for appointment to, or employment in, a position of state service for at least 1 year and no more than 5. The decision of the Commission in such cases may be appealed by any party pursuant to Article II of the Administrative Procedures Act.

**It is the purpose of the Oklahoma Personnel Act to protect the public from improper use of authority, to protect public officials and employees from unwarranted assaults on their integrity and to enforce the protections for classified employees and citizens under the Merit System of Personnel Administration.**

**The third statute protects state employees who report a violation of OSHA standards by their employer (§40-402(1)). It provides that no person shall discharge, discriminate, or take adverse personnel action against any employee because such employee has filed a complaint, instituted an action or testified about any right affect by the Act.**