

Accountability Report Card Summary 2009
Oregon

Oregon has a fairly balanced state whistleblower law:

- Scoring 60 out of a possible 100;
- Ranking 8th out of 51 (50 states and the District of Columbia).

Oregon has good coverage (21 of 33 possible points) with a good degree of usability (24 out of 33) and poor remedies (15 out of 33).

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

page 2
page 6

Oregon Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale
Whistleblower Law- ORS § 659A.200 *et. seq.* (2003)

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	3 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	5 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	1 point ²
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>21 points</u>

¹ It is an unlawful employment practice to prohibit any employee from disclosing, or take or threaten to take disciplinary action against an employee, for the disclosure of any information that the employee reasonably believes is evidence of:

(i) a violation of any federal or state law, or rule or regulation by the state or an agency of the state; (ii) mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from any action of the state or an agency of the state; and
(ii) the fact that a person receiving services, benefits, or assistance from the state or an agency of the state is subject to a felony or misdemeanor warrant for arrest by Oregon or any other state, the federal government, or any territory, commonwealth or government instrumentality of the United States.

² The statute provides that it is an unlawful employment practice for any public employer to prohibit any state employee from disclosing any information that the employee reasonably believes is evidence of certain activities. See Footnote 1.

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 ³

Or does the statute protect disclosures made to –

2. Any state executive or legislative body or person employed by such entities	4 points	
3. Testimony in any official proceeding	4 points	
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	
5. Any federal or non-state governmental entity	3 points	
6. Co-workers or supervisors within the scope of duty	3 points	
7. Anyone as provided in paragraphs 2 thru 6 (above) without prior disclosure to another state official or supervisor	3 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	3 points (2 points if 6 months or longer and 1	0 points ⁴

³ In general, the Whistleblower Law does not specify to whom the disclosure of information is to be made, except in two specific instances:

(1) an employee can discuss, in response to an official request, either specifically or generally, with a member of the Oregon Legislative Assembly or legislative committee staff, acting under the direction of a member, the activities of (i) the State of Oregon or any agency thereof; or (ii) any person authorized to act on behalf of the State or any agency thereof.

(2) a state employee must report to his/her supervisor, the fact that a person receiving services, benefits, or assistance from the state, or an agency of the state, is subject to a felony or misdemeanor warrant for arrest by Oregon or any other state, the federal government, or any territory, commonwealth or government instrumentality of the United States.

complaints	point if 60 days or longer)	
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 ⁵
2. Opportunity for administrative challenge	4 points	4 points ⁶
3. Opportunities for court challenge	4 points	4 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	3 points ⁸
7. Actual/compensatory damages	3 points	0 points ⁹

⁴ As noted previously, if a public employer violates any of the prohibitions on certain conduct, it is an unlawful employment practice, which may give rise to a law suit under Oregon tort law. Such a remedy is in addition to any administrative appeal proceeding available under Oregon law for a state employee. (See ORS 240.560).

Under the latter statute an appeal from an employee’s reduction in grade, dismissal, suspension or demotion to the Oregon Employee Relations Board must be brought in writing not later than 30 days after the action taken.

We did not review what the statute of limitations is for the Oregon tort law.

⁵ The statute prohibit any state employee from taking or threatening to take disciplinary action against an employee, for the disclosure of any information that the employee reasonably believes is evidence of certain listed activities. “Disciplinary action” includes, but is not limited to, any discrimination, dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work, whether or not the action effects or will affect employee compensation.

⁶ Can appeal to administrative body Oregon Employee Relations Board

⁷ Although not specifically mentioned in the statute, any prohibited actions may give rise to a tort suit under Oregon’s tort law.

⁸ Employee Relations Board, if it finds for the whistleblower, it shall order immediate reinstatement and the reemployment of the individual without the loss of pay. The findings and order of the Board shall be certified to the state agency’s appointing authority and shall put them into effect.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Oregon

Statute- Whistleblowing Law- ORS § 659A.200 *et. seq.* (2003)

Provisions- It is an unlawful employment practice to:

(1) prohibit any employee from discussing, in response to an official request, either specifically or generally, with any member of the Legislative Assembly or legislative committee staff acting under the direction of a member of the Legislative Assembly the activities of (i) the state or any agency of the state; or (ii) any person authorized to act on behalf of the state or any state agency;

(2) prohibit any employee from disclosing, or take or threaten to take disciplinary action against an employee, for the disclosure of any information that the employee reasonably believes is evidence of (i) a violation of any federal or state law, or rule or regulation by the state or an agency of the state; (ii) mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from any action of the state or an agency of the state; or (iii) the fact that a person receiving services, benefits, or assistance from the state or an agency of the state is subject to a felony or misdemeanor warrant for arrest by Oregon or any other state, the federal government, or any territory, commonwealth or government instrumentality of the United States;

(3) require any employee to give notice prior to making any disclosure or engaging in discussion described in this provision; or

(4) discourage, restrain, dissuade, coerce, prevent, or otherwise interfere with such disclosure and discussions.

No public employer shall invoke or impose any disciplinary action against any employee for any of employee activity previously described. “Disciplinary action” includes, but is not limited to, any discrimination, dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work, whether or not the action effects or will affect employee compensation.

The prohibitions set out in the previous paragraphs are not intended to:

(a) prohibit a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to official legislative requests for information to the agency or the substance of testimony made or to be made, by the employee to legislators on behalf of a state agency;

(b) permit an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and policies pertaining to leave, unless the employee is requested by a member of the Legislative Assembly or a legislative committee to appear before a legislative committee;

(c) authorize an employee to represent the employee's personal opinions as the opinions of the agency;

(d) authorize an employee to disclose information required to be kept confidential under state or federal law, rule or regulation;

(e) restrict or preclude disciplinary action if the information disclosed is known by the employee to be false, if the employee discloses the information with reckless disregard for its truth or falsity, or if the information relates to the employee's own wrongdoings; or

(f) restrict or impair any judicial right of action an employee or employer has under existing law.

These provisions are not intended to allow disclosure of records exempt from disclosure or prevent public employers from prohibiting employee disclosure of information of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to any final agency determination of policy or action.

The identity of the employee who discloses any of the following shall not be revealed by a public employer without the written consent of the employee during any investigation of the information provided by the employee, relating to

(i) matters concerning a violation of federal or state law, rule, or regulation by the state or a state agency; mismanagement, gross waste of funds or abuse of authority or specific danger to public health and safety resulting from any action by the state or a state agency; or the fact that a person receiving benefits or assistance from the state is subject to a felony or misdemeanor warrant for arrest; or

(ii) a report to an employee's supervisor that a person receiving services, benefits, or assistance from the state is subject to a felony or misdemeanor warrant for arrest. A violation of this provision is an unlawful employment practice.

As noted previously, if a public employer violates any of the prohibitions on certain conduct, it is an unlawful employment practice, which may give rise to a law suit under Oregon tort law. Such a remedy is in addition to any administrative appeal proceeding available under Oregon law for a state employee. (See ORS 240.560)