

Accountability Report Card Summary 2009
Pennsylvania

Pennsylvania has a passable state whistleblower law:

- Scoring 53 out of a possible 100;
- Ranking 22nd out of 51 (50 states and the District of Columbia).

Pennsylvania has below average coverage (15 of 33 possible points) with some degree of usability (12 out of 33) and good remedies (25 out of 33), plus the one bonus point awarded for employee notification of rights.

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

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Pennsylvania Accountability Index Report Card
 Coverage, Usability & Strength — Rating on a 100 Point Scale
 Whistleblower Law- 433 P.S. § 1421 *et. seq.* (2005)

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	0 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	0 points
6. Communication of scientific opinion or alteration of technical findings	5 points	0 points
7. Breaches of professional ethical canons	5 points	5 points ²

Does the statute provide –

¹ No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee’s compensation, terms, conditions, location or privileges of employment because the employee

(1) or a person acting on behalf of the employee, makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste; or

(2) is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action. “Appropriate authority means a federal or state body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics; or a member, officer, representative, agent, or supervisory employee of such an organization. The term includes, but is not limited to, the Pennsylvania General Assembly and committees of the General Assembly having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste.

“Waste” means an employer’s conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from Commonwealth of Pennsylvania sources.

“Wrongdoing” means a violation which is not of a merely technical or minimal nature of a federal or state statute or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

² Wrongdoing” means a violation which is not of a merely technical or minimal nature of a federal or state statute or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

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	1 point
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>15 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	

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	4 points ³
4. Any state or federal law enforcement or investigative body or entity or its employees	3points	4 points ⁴
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	3 points

Does the state law –

8. Require an investigation by state	1 point	0 points
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³ A state employee is requested by an “appropriate authority” to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.

⁴ An employee can disclose to an appropriate authority. This term refers to a federal or state body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics; or a member, officer, representative, agent, or supervisory employee of such an organization.

auditor or other investigative entity of whistleblower disclosures		
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 ⁵
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>13 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	3 points	3 points ⁷
4. Trial by jury	3 points	0 points ⁸
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 ⁹
7. Actual and/or compensatory damages	3 points	3 points-Actual damages
8. Interim relief, injunction or stay of personnel actions	3 points	3 points ¹⁰

⁵ A person who alleges a violation of the statute may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, **within 180 days** after the occurrence of the alleged violation.

⁶ An employee covered by civil service who contests a civil service ruling, believing it to be motivated by his or her having made a good faith report, verbally or in writing, of an instance of waste or wrongdoing, may submit as admissible evidence any or all material relating to the action as whistleblower and to the resulting alleged reprisal. **Contesting a civil service rule will involve an administrative hearing.**

⁷ A person who alleges a violation of the statute may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within 180 days after the occurrence of the alleged violation.

⁸ The statute does not provide for trial by jury. We did not review whether other Penna. statutes or it’s Constitution may provide for trial by jury for some of the issues in court action, such as damages.

⁹ A court in rendering a judgment under the statute shall order, as appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. The court may also offer the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees.

9. Transfer preference for prevailing whistleblower or ban on blackballing	3 points	0 points
10. Punitive damages or other fines and penalties	2 points	2 points ¹¹
11. Personnel actions against managers found to have retaliated	3 points	3 points ¹²
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>25 points</u>

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

Factor	Maximum Score	Awarded Score
Posting	1 point	1 point

Totals

100 points

54 points

¹⁰ A person who alleges a violation of the statute may bring a civil action in a court of competent jurisdiction for appropriate **injunctive relief** or damages, or both.

¹¹ A person who, under color of an employer's authority, violates the statute shall be liable for a civil fine of not more than \$500.

¹² If the court specifically finds that the person, while in the employee of the Commonwealth of Pennsylvania, committed a violation of the statute with the intent to discourage the disclosure of criminal activity, the court may order such person suspended from public service for not more than 6 months.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Pennsylvania

Statute- Whistleblower Law- 433 P.S. § 1421 *et. seq.* (2005)

Provisions- The Pennsylvania Whistleblower Law applies to public employees and public employers. An employee is defined as a person who works for a public body. An employer is a person supervising one or more employees of a public body. The term “public body” includes, but is not limited to, a state agency, department, or other body in the executive branch of state government, or any other body created, or which is funded in any amount, by the Commonwealth of Pennsylvania. It does not include the legislative branch of government, including its commissions, boards, units, members or employees.

No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee’s compensation, terms, conditions, location or privileges of employment because the employee,

(1) or a person acting on behalf of the employee, makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste; or

(2) is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.
“Appropriate authority means a federal or state body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics; or a member, officer, representative, agent, or supervisory employee of such an organization. The term includes, but is not limited to, the Pennsylvania General Assembly and committees of the General Assembly having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste.

“Waste” means an employer’s conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from Commonwealth of Pennsylvania sources. “Wrongdoing” means a violation which is not of a merely technical or minimal nature of a federal or state statute or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

A person who alleges a violation of the statute may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within 180 days after the occurrence of the alleged violation. An employee alleging a violation of this act must show by a preponderance of the evidence that prior to the alleged reprisal,

the employee, or a person acting on his or her behalf, had reported or was about to report an instance of waste or wrongdoing to the employer or an appropriate authority. It shall be a defense against such suit if the defendant proves by a preponderance of the evidence that the action by the employer occurred for separate and legitimate reasons, which are not merely pretextual.

A court in rendering a judgment under the statute shall order, as appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. The court may also offer the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees. A person who, under color of an employer's authority, violates the statute shall be liable for a civil fine of not more than \$500. If the court specifically finds that the person, while in the employ of the Commonwealth of Pennsylvania, committed a violation of the statute with the intent to discourage the disclosure of criminal activity, the court may order such person suspended from public service for not more than 6 months.

An employee covered by civil service who contests a civil service ruling, believing it to be motivated by having made a good faith report, verbally or in writing, of an instance of waste or wrongdoing, may submit as admissible evidence any or all material relating to the action as whistleblower and to the resulting alleged reprisal. Contesting a civil service rule will involve an administrative hearing. The statute shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by an appropriate authority or impair the rights of any person under a collective bargaining agreement.