

Accountability Report Card Summary 2009
Rhode Island

Rhode Island has an unbalanced state whistleblower law:

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

Rhode Island has poor coverage (8 of 33 possible points) with a good degree of usability (23 out of 33) and fair remedies (21 out of 33) plus the one bonus point awarded for employee notification of rights.

Rhode Island's full Whistleblower Report Card
Narrative summary of Rhode Island law

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Coverage, Usability & Strength — Rating on a 100 Point Scale

Rhode Island Whistleblowers’ Protection Act- R.I. Gen. Laws § 28-50-1 *et. seq.* (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	6 Points
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	0 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	0 Points

Does the statute provide –

8. Employee may refuse to carry out illegal or improper orders	1 point	1 Point
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>8 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	4 points	4 Points
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entities		
3. Testimony in any official proceeding	4 points	4 Points
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 Points
5. Any federal or non-state governmental entity	3 points	3 Points
6. Co-workers or supervisors within the scope of duty	3 points	3 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 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)	3 Points
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>23 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
3. Opportunities for court challenge	4 points	4 Points
4. Trial by jury	3 points	0 points ¹

¹ Whistleblower statute does not provide for trial by jury. We did not determine whether jury trial would be available under other statutes or the Rhode Island Constitution. But the issue when it may be available in whistleblower cases will depend on the subject matter of the civil action and the remedies sought. The whistleblowers’ statute does not mention trial by jury. See [State Bd. of Health v. Roy, 22 R.I. 538, 48 A. 802 \(1901\)](#).

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
7. Actual/compensatory damages	3 points	3 Points ²
8. Interim relief, injunction or stay of personnel actions	3 points	3 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	0 Points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>21 Points</u>

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

Factor	Maximum Score	Awarded Score
Posting	1 point	1 Point

Total Points

100 Points

53 Points

² Actual damages.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Rhode Island

Statute - Rhode Island Whistleblowers' Protection Act- R.I. Gen. Laws 28-50-1 *et seq.* (2006)

Provisions – The Rhode Island Whistleblowers' Protection Act applies to both public and private employers. Under the law, an employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because: (1) an employee reports or is about to report to a public body, verbally or in writing, a violation of a federal or state law, regulation, or rule, which the employee knows or reasonable believes has occurred or is about to occur, unless the employee knows or has reason to know that the report is false; (2) an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or in a court action; (3) an employee refuses to violate or assist in violating a federal or state law, rule or regulation; or (4) the employee reports verbally or in writing to the employer or to the employee's supervisor a violation of a federal or state law, regulation or rule, which the employee knows or reasonable believes has occurred or is about to occur. In the latter case, if the report is verbally made, the employee must establish by clear and convincing evidence that the report was made.

The definitions of some of the key terms used in the previous paragraph follow: The definition of "employer" includes any department, agency, commission, committee, board, council, bureau or authority in state government. "Public body" includes the following: (1) a state officer, employee, department, authority, or other bodies in the executive branch of state government; (2) a member, employee, agency, commission and another body in the legislative branch of state government; (3) a law enforcement agency or any member or employee thereof; (3) the judiciary and any member or employee of the judiciary; (4) any other body created by the state or which is primarily funded by or through the state, or any member or employee of such body: or (5) any federal agency.

A person who alleges a violation of the act may bring a civil action for injunctive relief, or actual damages, or both within 3 years after the occurrence of the alleged violation. As used in the previous sentence, "damages" mean the injury or loss caused by each violation. An employee shall show by clear and convincing evidence that he or she or a person acting on his or hers behalf was about to report to a public body, verbally or in writing, a violation, which the employee knew or reasonably believed had occurred or was about to occur, of a federal or Rhode Island law. As the court considers appropriate, it shall order 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. Also, if

considered appropriate, a court may award the plaintiff all or part of the costs of litigation, including attorneys' fees. The whistleblowers' statute does not mention of trial by jury. However, the Rhode Island Constitution provides for trial by jury in civil actions. *Vt. Const. Ch. I, Art. 12 (2006)*. It states: "That when any issue in fact, proper for the cognizance of a jury is joined in a court of law, the parties have a right to trial by jury, which ought to be held sacred." The question that the Rhode Island courts will have to decide is whether any of the issues in the case challenging the reprisal action will be joined in a court of law so that the parties have a right to trial by jury. If the issues raised are equitable in nature, the right to jury trial under the V

The statute shall not be construed (i) to diminish or impair the rights of a person under any collective bargaining agreement; or (ii) to require an employer to compensate an employee for participation in an investigation, hearing, or inquiry held by a public body.