

Accountability Report Card Summary 2009
South Carolina

South Carolina has a below average state whistleblower law:

- Scoring 48 out of a possible 100;
- Ranking 32nd out of 51 (50 states and the District of Columbia).

South Carolina has fair coverage (17 of 33 possible points) with a poor degree of usability (10 out of 33) and average remedies (21 out of 33).

South Carolina's full Whistleblower Report Card
Narrative summary of South Carolina law

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South Carolina Accountability Index Report card

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

S.C. Code Ann. § 8-27-10 *et. seq.* (2005)

Occupational Health and Safety- S.C. Code Ann. § 41-15-510 and 520

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 ²
5. Danger to health and/or public safety and/or environment	5 points	2 points ³
6. Communication of scientific opinion or alteration of technical findings	5 points	0 points
7. Breaches of professional ethical canons	5 points	5 points ⁴

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	1 point ⁵
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u>

¹ An employee of a public body may file a report with an appropriate authority (a federal or state entity) of wrongdoing. “Wrongdoing” means action by a public body which results in substantial abuse, misuse, destruction or loss of substantial public funds and resources. It also includes an employee’s allegation that another public employee has intentionally violated federal or state statutory law or regulations, or a code of ethics, which violation is not merely technical or of a minimum nature.

² An employee of a public body may file a report with an appropriate authority (a federal or state entity) of wrongdoing. “Wrongdoing” means action by a public body which results in substantial abuse, misuse, destruction or loss of substantial public funds and resources.

³ Disclosure of occupational health and safety violations are protected.

⁴ “Wrongdoing” also includes an employee’s allegation that another public employee has intentionally violated a code of ethics, which violation is not merely technical or of a minimum nature.

⁵ Before a civil action is brought, a whistleblower employee must exhaust all available grievance or other administrative and judicial remedies or is forever barred from bring such action.

		<u>17 points</u>
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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	6 points	0 points
3. Testimony in any official proceeding	4 points	1 points ⁶
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 points ⁷
5. Any federal or non-state governmental entity	4 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 ⁸

Does the state law –

⁶ Testimony regarding violations of occupational health and safety statutes are protected.

⁷ An employee of a public body files a report with an “appropriate authority” (a federal or state entity) of wrongdoing. “

“Appropriate authority” means the public body that employs the person making the report; or a federal or state governmental body having jurisdiction over criminal law enforcement, regulatory violations, or wrongdoing, including the South Carolina Law Enforcement Division, the State Auditor, the Legislative Audit Council, and the Office of Attorney General.

A report must be made with 60 days of the date the reporting employee first learns of the alleged wrongdoing.

Complaints of workplace health and safety are also covered.

⁸ There is no requirement that the employee must first disclose the wrongdoing to the public body (state entity) which employs him. If a report is made to an entity other than the public body employing the person making the report, the employing body must be notified as soon as practicable by the entity that received the report.

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 ⁹
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>10 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 ¹⁰
2. Opportunity for administrative challenge	4 points	4 points ¹¹
3. Opportunities for court challenge	4 points	4 points ¹²
4. Trial by jury	3 points	0 points ¹³
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 ¹⁴

⁹ The statute provides that a civil action must be commenced within one year after the accrual of the cause of action or exhaustion of all available grievance or other administrative and judicial remedies or is forever barred. This means that if the retaliatory action is taken in the 11th month following the employee’s reporting an alleged wrongdoing, the employee has one year from that date or one year after the exhaustion of all available grievance or other administrative and judicial remedies to bring such an action.

Consequently, the employee can institute a cause of action if the retaliatory action takes place within 1 year of his or her report. The employee then has one year after the retaliatory action takes place or after the exhaustion of all available grievance or other administration and judicial remedies, to institute the case.

¹⁰ No South Carolina public body may dismiss, suspend from employment, demote, or decrease the compensation of an employee of a public body because such person files a report with an appropriate authority (a federal or state entity) of wrongdoing.

¹¹ Before a civil action is brought, a whistleblower employee must exhaust all available grievance or other administrative and judicial remedies or is forever barred from bring such action.

¹² The statute also provides for a civil action to be brought challenging the retaliatory action taken by the employing public body.

¹³ The employee may bring a nonjury civil action for reinstatement to his former position, lost wages, actual damages, not in excess of \$15,000, and reasonable attorney fees, as determined by the court.

¹⁴ The employee may bring a civil action for reinstatement to his former position, lost wages, actual damages, not in excess of \$15,000, and reasonable attorney fees, as determined by the court.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- South Carolina

Statute- Public Officers and Employees-Employment for Reports of Violations of State or Federal Law or Regulation (Whistleblower Act) - S.C. Code Ann. § 8-27-10 *et. seq.* (2005) and Occupational Health and Safety- S.C. Code Ann. § 41-15-510 and 520

Provisions-

Under the first statute, no South Carolina public body may dismiss, suspend from employment, demote, or decrease the compensation of an employee of a public body because such person files a report with an appropriate authority (a federal or state entity) of wrongdoing. “Wrongdoing” means action by a public body which results in substantial abuse, misuse, destruction or loss of substantial public funds and resources. It also includes an employee’s allegation that another public employee has intentionally violated federal or state statutory law or regulation, or a code of ethics which violation is not merely technical or of a minimum nature. [Note -In addition, the statute defines a report as a written document alleging **waste or wrongdoing. This indicates that the report may concern only waste and not wrongdoing. However, the definition of “wrongdoing” encompasses what may be considered a “waste” of funds and resources.] A report must be made with 60 days of the date the reporting employee first learns of the alleged wrongdoing.**

“Public body” refers to a state department, board, commission, agency, authority, a public or governmental body or an organization, corporation, or agency supported in whole or in part by public funds or expending public funds, or a quasi-governmental body of the State. “Appropriate authority” means the public body that employs the person making the report; or a federal or state governmental body having jurisdiction over criminal law enforcement, regulatory violations, or wrongdoing, including the South Carolina Law Enforcement Division, the State Auditor, the Legislative Audit Council, and the Office of Attorney General. If a report is made to an entity other than the public body employing the person making the report, the employing body must be notified as soon as practicable by the entity that received the report.

If the appropriate authority decides the employee’s report is unfounded, or amounts to a mere technical violation, and is not made in good faith, the public body may take disciplinary action, including termination. Any public body may also impose disciplinary sanctions, in accordance with its internal disciplinary procedures, against any direct supervisory employees who retaliate against another employee for having filed a good faith report under this statute. If the employee’s report results in a saving of any public money, 25% of the estimated net savings resulting from the first year of implementation of the employee’s report, but not more than \$2,000, must be awarded to the employee by the public body. This last award program does not supersede the State Employee Suggestion Program. An employee is only entitled to one reward under either program.

The statute also provides for a civil action to be brought challenging the retaliatory action taken by the employing public body. If an employee is retaliated against, as described above, within one year, after timely reporting an alleged wrongdoing, the employee may bring a nonjury civil action for reinstatement to his former position, lost wages, actual damages, not in excess of \$15,000, and reasonable attorney fees, as determined by the court. However, the award for attorney fees for any trial may not exceed \$10,000 and \$5,000 for any appeal. No action may be brought unless the employee has exhausted all available grievance or other administrative remedies and any previous proceedings have resulted in a finding that the employee would not have been disciplined but for the reporting of alleged wrongdoing.

The statute also provides that the civil action must be commenced within one year after the accrual of the cause of action or exhaustion of all available grievance or other administrative and judicial remedies or is forever barred. This means that if the retaliatory action is taken in the 11th month following the employee's reporting an alleged wrongdoing, the employee has one year from that date or one year after the exhaustion of all available grievance or other administrative and judicial remedies to bring such an action. Consequently, the employee can institute a cause of action if the retaliatory action takes place within 1 year of his or her report. The employee then has one year after the retaliatory action takes place or after the exhaustion of all available grievance or other administration and judicial remedies, to institute the case.

Notwithstanding the filing of a report with an appropriate authority, a public body may dismiss, suspend, demote, or decrease the compensation for an employee for causes independent of the filing of a protected report.

The second statute concerns violations by employers of Occupational Health and Safety regulations. It covers state and local government employees, as well as private employees. § 71-102, promulgated under the authority of § 41-15-210, defines an employee as “any person employed by an individual.... or the State of South Carolina and any political subdivision thereof.”

§ 41-15-510 states that no person shall discharge or discriminate against any employee because that employee has filed a complaint, instituted an action, or testified about any right afforded by health and safety violations. Moreover, § 41-15-520 gives any employee who believes he or she has been retaliated against the right to file a complaint with the Commission of Labor within 30 days of such violation. The commissioner shall then cause an investigation to be made as he deems appropriate. Available remedies are “all appropriate relief including rehiring or reinstatement of employee to his former position with back pay.”