

Accountability Report Card Summary 2009
Utah

Utah has a poor state whistleblower law:

- Scoring 42 out of a possible 100;
- Ranking 41st out of 51 (50 states and the District of Columbia).

Utah has below average coverage (12 of 33 possible points) with a poor degree of usability (10 out of 33) and fair remedies (19 out of 33) plus the one bonus point awarded for employee notification of rights. Utah has a false claims act for medical fraud, but no provisions for recovery of a “bounty.”

Utah’s full Whistleblower Report Card
Narrative summary of Utah law

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Utah Accountability Index Report card

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

Utah Protection of Public Employees Act- Utah Code Ann. § 67-21-1 *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 ²
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 ³
9. Prohibition on “gag orders” to prevent employee disclosures	1 point	1 point ⁴
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	1 point ⁵
	<u>Maximum Score</u> 33 points	<u>Awarded Score</u>

¹ Any state agency employer may not take adverse action against an employee because; the employee, or a person authorized to act on his or her behalf, communicates in good faith a violation or suspected violation of a law, rule or regulation, adopted under the law of Utah or any recognized federal entity.

² Any state agency employer may not take adverse action against an employee because; the employee, or a person authorized to act on his or her behalf, communicates in good faith the existence of any waste of public funds, property, or manpower.

³ Any state agency employer may not take adverse action against an employee because the employee has objected to, or refused to carry out, a directive that the employee reasonably believes violates a federal or Utah law, or rule or regulation adopted under the laws of Utah or of the United States.

⁴ A state employer may not implement rules or policies that unreasonably restrict an employee’s ability to document the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of any laws, rules or regulations.

⁵ The statute shall not be construed to diminish or impair the rights of any employee under a collective bargaining agreement.

		<u>12 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	4points	0 points
3. Testimony in any official proceeding	4 points	4 points ⁶
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	1 points ⁷
5. Any federal or non-state governmental entity	3points	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 auditor or other investigative entity of whistleblower disclosures	1 point	0 points ⁸
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 ⁹
10.Allow qui tam or false claim	5 points (2 points if a qui	0 points ¹⁰

⁶ An employer may not take adverse action against an employee because the employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review held by a public body.

⁷ An employee is presumed to have communicated in good faith the waste of resources or the violation or suspected violation of a state or federal law, rule or regulation, if he gives written notice or otherwise formally communicates the waste, violation or reasonable suspicion to the state auditor.

⁸ The statute does not require an investigation by the state auditor of information reported.

⁹ An employee who alleges a violation of the prohibitions against retaliatory personnel actions may bring a civil action for injunctive relief or actual damages (for injury or loss caused by each violation), or both, with 180 days after the occurrence of the alleged violation.

actions for recovery of “bounty” in cases of fraud against the state	tam statute of limited scope)	
	<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 ¹¹
2. Opportunity for administrative challenge	4 points	0 points
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
7. Actual/compensatory damages	3 points	3 points- Actual damages
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	2 points ¹⁵
11. Personnel actions against managers found to have retaliated	3 points	0 points

¹⁰ Utah has a false claims act for medical fraud, but no provisions for recovery of a “bounty.”

¹¹ “Adverse action” means to discharge, threaten, or otherwise discriminate against an employee in any manner that affects the employee’s employment, including compensation, terms, conditions, location, rights, immunities, promotions, or privileges.

¹² An employee who alleges a violation of the prohibitions against retaliatory personnel actions may bring a civil action for injunctive relief or actual damages (for injury or loss caused by each violation), or both, with 180 days after the occurrence of the alleged violation.

¹³ Statute does not mention trial by jury. We did not review whether other Utah statutes or its Constitution would provide for trial by jury for issues in the civil action, such as damages.

¹⁴ In rendering judgment in such action, the court may order reinstatement of the employee at the same level, payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. Also, the court shall award the complainant, if appropriate, all or part of the costs of litigation, including reasonable attorney and witness fees.

¹⁵ A person who violates the statute is liable for a civil fine of not more than \$500.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Utah

Statute- Utah Protection of Public Employees Act- Utah Code Ann. § 67-21-1 *et. seq.* (2005)

Provisions- Any state agency employer may not take adverse action against an employee because; (1) the employee, or a person authorized to act on his or her behalf, communicates in good faith the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a Utah or a federal entity law, rule, or regulation; (2) an employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review held by a public body; or (3) the employee has objected to, or refused to carry out, a directive that the employee reasonably believes violates a federal or Utah law, or rule or regulation adopted under the laws of Utah or of the United States. A state employer may not implement rules or policies that unreasonably restrict an employee's ability to document the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of any laws, rules or regulations.

“Adverse action” means to discharge, threaten, or otherwise discriminate against an employee in any manner that affects the employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions, or privileges For the purposes of (1) above an employee is presumed to have communicated in good faith if he gives written notice or otherwise formally communicates the waste, violation or reasonable suspicion to the state auditor. The presumption may be rebutted by showing that the employee knew or reasonably ought to have known that the report is malicious, false or frivolous. “ A “public body” means any of the following: (i) a state officer or any body in the executive branch of state government; (ii) an agency, member, employee, or institution of the legislative branch of state government; (iii) any other body created by state authority or that is primarily funded by or through state authority, or any member or employee of that body; (iv) a law enforcement agency or a member or employee of such agency; or (v) the judiciary or a member or employee of the judiciary.

An employee who alleges a violation of the prohibitions against retaliatory personnel actions may bring a civil action for injunctive relief or actual damages (for injury or loss caused by each violation), or both, with 180 days after the occurrence of the alleged violation. To prevail in such a case, the employee must establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee, or a person acting on his behalf, engaged or intended to engage in activity protected under the statute. In rendering judgment in such action, the court may order reinstatement of the

employee at the same level, payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. Also, the court shall award the complainant, if appropriate, all or part of the costs of litigation, including reasonable attorney and witness fees. A person who violates the statute is liable for a civil fine of not more than \$500.

The statute shall not be construed to diminish or impair the rights of any employee under a collective bargaining agreement. Nothing in the statute should be construed to require an employer to compensate an employee for participation in an investigation, hearing, or inquiry held by a public body.