

**Accountability Report Card Summary 2009**  
**Vermont**

Vermont does not have a general whistleblower statute for state government employees but does provide protection for reports of work health and safety violations and improper quality of patient care in a hospital or nursing home.

- Scoring 10 out of a possible 100;
- Ranking 50<sup>th</sup> out of 51 (50 states and the District of Columbia).

Vermont has very narrow coverage (4 of 33 possible points) with a slight degree of usability (5 out of 33) and minimal remedies (1 out of 33).

*Vermont's full Whistleblower Report Card*  
*Narrative summary of Vermont law*

*page 2*  
*page 5*

**Vermont Accountability Index Report card**

Coverage, Usability & Strength — Rating on a 100 Point Scale  
 Labor, Employment Practices- Whistleblower Protection-Health Care  
 Employees- 21 V.S.A. § 507 (2006)  
 Occupational Health and Safety- 21 V.S.A. § 231

**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	2 Points <sup>1</sup>
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	2 Points <sup>2</sup>
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	0 Points
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	0 Points
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>0 Points</u></b>

**B. Usability: Scope of Protection (33 points possible from 10 factors)**

Do the laws protect disclosures made to –

<sup>1</sup> Vermont does not have a general whistleblower statute for state government employees. However, workplace health and safety complaints are covered. In addition, whistleblower protection is available to health care employees for reporting violations of law and improper quality of patient care in a hospital or nursing home. We could find no information indicating that such facilities are owned and/or operated by the state government or any of its agencies.

<sup>2</sup> Workplace health and safety complaints are covered.

<b>Factor</b>	<b>Maximum Points</b>	<b>Awarded Points</b>
1. Any person or organization, including public media	24 points	0 Points

**Or** does the statute only protect disclosures made to –

2. Any state executive or legislative body or person employed by such entities	4 points	1 Points <sup>3</sup>
3. Testimony in any official proceeding	4 points	1 Points <sup>4</sup>
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	1 Points <sup>5</sup>
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	1 Points <sup>6</sup>

Does the state law –

8. Require a follow-up investigation by state auditor or other investigative entity of whistleblower disclosures	1 point	1 Points <sup>7</sup>
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)	0 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
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>5 Points</u></b>

**C. Strength: Remedies against retaliation (33 points possible from 11 factors)**

<sup>3</sup> See FN2.

<sup>4</sup> See FN2.

<sup>5</sup> See FN2.

<sup>6</sup> See FN2.

<sup>7</sup> See FN2.

Does the statute provide for –

<b>Factor</b>	<b>Maximum Points</b>	<b>Awarded Points</b>
1. Prohibition on retaliatory actions affecting a state employee's terms and conditions of employment	4 points	0 Points
2. Opportunity for administrative challenge	4 points	0 Points
3. Opportunities for court challenge	4 points	0 Points
4. Trial by jury	3 points	0 Points <sup>8</sup>
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	1 Points <sup>9</sup>
7. Actual/compensatory damages	3 Points	0 Points
8. Interim relief, injunction or stay of personnel actions	3 points	0 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
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>0 Points</u></b>

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

<b>Factor</b>	<b>Maximum Score</b>	<b>Awarded Score</b>
Posting	1 point	0 Points

**Total Points**

**100 Points**

**0 points**

<sup>8</sup> The Whistleblower statute does not provide for trial by jury. We did not determine whether a jury trial would be available under other Vermont statutes or the Vermont 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 available.

<sup>9</sup> See FN2.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Vermont

Statute- Labor, Employment Practices- Whistleblower Protection-Health Care Employees- 21 V.S.A. § 507 (2006) and Occupational Health and Safety- Employee's Rights- 21 V.S.A. § 231

Provisions- Vermont does not have a general whistleblower statute for state government employees. Whistleblower protection is available to health care employees for reporting violations of law and improper quality of patient care in a hospital or nursing home. It is also available to public employees who have found their employers violation the Occupational Health and Safety Code.

Under the first statute no employer shall take retaliatory action against an employee because the employee does any of the following: (1) discloses or threatens to disclose to any person or entity any activity, policy, practice, procedure, action, or failure to act of the employer or its agent that the employee reasonable believes is a violation of any federal or state law, rule or regulation or constitutes improper quality of patient care; (2) provides information, or testifies before, any public body conducting a hearing, an inquiry, or an investigation that involves allegations that the employer has violated any law or has engaged in behavior constituting improper quality of patient care; or (3) objects to or refuses to participate in any activity, policy, or practice of the employer or its agent that the employee reasonably believes is in violation of law or constitutes improper quality of patient care.

The protection against retaliation shall not apply in the case of (1) and (3) in the previous paragraph unless the employee first reports the alleged infraction to the employer, supervisor, or other person designated by the employer to address reports by employees of improper quality of patient care, and the employer has had a reasonable opportunity to address the matter. The employee shall not be required to make a report if the employee reasonably believes that doing so would be futile because making the report would not result in appropriate action to address the matter. "Improper quality of patient care" means any practice, procedure, action, failure to act of an employee or employer that violates any provision of the Nurses Practice Act, codes of ethics, hospital policies, or any other established standards of care related to public or patient health or safety. The "public body" conducting, a hearing, an investigation, or an inquiry refers to the federal or any state legislature or judiciary or any member or employee thereof; a federal or state regulatory, administrative or public agency or authority or instrumentality; any federal, or state law enforcement agency, prosecutorial office or policy or peace officer; any division, bureau, office, board committee or commission of any of the public bodies previously mentioned.

An employee aggrieved by a retaliatory action may (i) utilize any available internal process, grievance procedure, or similar process available to the employee to maintain or restore any loss of employment rights with the employer; or (ii) bring an action in the superior court of the county in which the retaliatory action is alleged to have occurred. If the court finds that the employer had retaliated against the employee, the court shall order, as appropriate, reinstatement of the employee, payment of back pay, lost wages, benefits, and other remuneration, compensatory damages, punitive damages, attorney fees, or any other appropriate relief. Nothing in the statute shall be considered to diminish the rights, privileges or remedies of any employee under any law or under any collective bargaining agreement or employment contract.

**Under the second statute, no person shall discharge or in any way discriminate against an employee because that employee has filed a complaint, instituted an action, or testified about any right afforded by the Occupational Health and Safety Code.** Moreover, an employee who believes he or she has been retaliated against may within 30 days of such discrimination file a complaint with commissioner. The commissioner shall cause an investigation and take appropriate action. Possible relief includes rehiring or reinstatement with back pay.