

Accountability Report Card Summary 2009
Wyoming

Wyoming has a below average state whistleblower law:

- Scoring 44 out of a possible 100;
- Ranking 39th out of 51 (50 states and the District of Columbia).

Wyoming has average coverage (18 of 33 possible points) with a poor degree of usability (10 out of 33) and below average remedies (15 out of 33) plus the one bonus point awarded for employee notification of rights.

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

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Wyoming Accountability Index Report card

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

State Government Fraud Reduction Act- Wyo. Stat. § 9-11-101 *et. seq.* (2006)

Labor and Employment: Occupational Health and Safety- Wyo. Stat. § 27-11-109(e)

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 | 3 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 | 4 points ¹ |
| 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 ² |
| | <u>Maximum Score</u> <u>33 points</u> | <u>Awarded Score</u> <u>18 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 |

¹ Disclosures of public health and safety dangers are covered, but dangers to the environment are not. In addition, occupational health and safety violations are covered.

² Whistleblower must first exhaust administrative remedies.

Or does the statute protect disclosures made to –

| | | |
|---|----------|----------------------------------|
| 2. Any state executive or legislative body or person employed by such entities | 4 points | 4 points-Reports to his employer |
| 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 | 1 points ³ |
| 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 | 0 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) | 1 point |
| 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 |
| 2. Opportunity for administrative | 4 points | 4 points |

³ Occupational safety complaints are protected.

April 16, 2009

State Legislation Protecting State Employee Whistleblowers

State- Wyoming

Statutes- State Government Fraud Reduction Act - Wyo. Stat. § 9-11-103 *et. seq.* (2006) and Labor and Employment: Occupational Health and Safety- Wyo. Stat. § 27-11-109(e)

Provisions-

Under the State Government Fraud Reduction Act, no state employer may discharge, discipline, or retaliate against an employee by unreasonably altering the terms, location, or conditions of employment because the employee acting in good faith and within the scope of duties of employment: (1) reports in writing to the employer what the employee has reasonable cause to believe is (i) a demonstration of fraud, waste or gross mismanagement in a state government office; (ii) a violation of federal or state law, regulation, code or rule; or (iii) a condition or practice that would put at risk the health or safety of that employee or any other individual; (2) participates or is requested to participate in any investigation, hearing or inquiry held concerning an issue subject to reporting; or (3) has refused to carry out a directive which is beyond the scope, terms and conditions of his or her employment that would expose the employee or any individual to a condition likely to result in serious injury or death, after having sought and been unable to obtain a correction of the dangerous condition from the employer. "State" means the state of Wyoming and any authority, board, commission, department, or separate operating agency of the executive, legislative or judicial branch of the state of Wyoming, excluding political subdivisions.

The prohibitions on personnel actions set out in the previous paragraph do not apply to an employee who has reported or caused to be reported a violation, condition, or practice, unless the employee has first brought these matters to the attention of a person having supervisory authority over the employee and has allowed the state employer a reasonable opportunity to correct such violation, conduct or practice. Such prior notice is not required if the employee reasonably believes the report may not result in prompt correction. In such case the employee may report the violation, condition or practice to the department or agency director of the state entity with which he or she is employed.

Any employee who is discharged, disciplined or otherwise penalized by a state employer in violation of the statute may after exhausting all administrative remedies, bring a civil action within 90 days after the date of the final administrative determination, or after the violation of the prohibition, whichever is later. An employee's recovery shall be limited to reinstatement of his previous job, back pay, and reestablishment of employee benefits, litigation costs, including attorney's fees. Any employee found to have knowingly made a

false report shall be subject to disciplinary action by his employer up to and including dismissal.

Wyoming does not have a false claims statute, which allows an individual to bring suit alleging fraud and in certain instances sharing in any recovery.

The Occupational Health and Safety Act also provides protection for state employees who disclose or report a violation of the code by the State. §27-11-103. No employer shall discharge or in any manner discriminate against any employee because such employee has filed any notice of complaint or has instituted, or caused to be instituted, any proceeding under or related to this act or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or others any right afforded by the act.