

Accountability Report Card Summary 2015
Illinois

Illinois has an average state whistleblower law:

- Scoring only 62 out of a possible 100 points; and
- Ranking 16th out of 51 (50 states and the District of Columbia).

Illinois has average coverage (19 out of 33 possible points) with a good degree of usability (25 out of 33) and weak remedies (17 out of 33), plus the one bonus point awarded for employee notification of rights.

Illinois' full Whistleblower Report Card
Narrative summary of Illinois' law

page 2
page 5

Illinois Accountability Index Report card

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

Whistle Blower Protection- § 5 ILCS 430/15-5 *et seq* (2012);

Environmental Whistleblower Protection § 415 ILCS 5/52 (2012);

Personnel Code-§ 20 ILCS 415/191.1 (2012);

Prevailing Wage Act: Discharge or discipline of “whistle blowers” prohibited § 820 ILCS 130/11b (2012)

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	3 points ²
3. Abuse of authority (including violations of agency policy)	3 points	3 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	3 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	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 ³
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>19 points</u>

¹ Whistleblower Protection, § 5 ILCS 430/15-10(1).

² No disciplinary action may be taken against an employee who discloses information which they reasonably believe evidences “(i) a violation of any law, rule, or regulation; or (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.” 20 ILCS 415/19c.1.

³ “Nothing in this Article shall be deemed to diminish the rights, privileges, or remedies of a State employee under any other federal or State law, rule, or regulation or under any collective bargaining agreement or employment contract.” 5 ILCS 430/15-35

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	4 points	4 points ⁴
3. Testimony in any official proceeding	4 points	4 points ⁵
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 points ⁶
5. Any federal or non-state governmental entity	3 points	3 point
6. Co-workers or supervisors within the scope of duty	3 points	3 points ⁷
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)	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)	5 points ⁸
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>25 points</u>

⁴ “Public body” means (1) any officer, member, or State agency; (2) the federal government; (3) any local law enforcement agency or prosecutorial office; (4) any federal or State judiciary, grand or petit jury, law enforcement agency, or prosecutorial office; and (5) any officer, employee, department, agency, or other division of any of the foregoing.” § 5 ILCS 430/15-5.

⁵ Whistleblower Protection, § 5 ILCS 430/15-10(2).

⁶ Whistleblower Protection Act for State employees defines “public body” to include a federal or state law enforcement agency or prosecutorial office. § 5 ILCS 430/15-5.

⁷ Section 5 ILCS 430/15-10(1).

⁸ Note: The Statute does not specifically refer to public employees. Whistleblower Reward and Protection Act, 740 ILCS 175/8 (2011)

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 ⁹
3. Opportunities for court challenge	4 points	4 points
4. Trial by jury	3 points	0 points
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 ¹⁰
7. Actual/constructive damages	3 points	2 point ¹¹
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 for willful and intentional actions	3 points	0 points
11. Personnel actions against managers found to have retaliated	2 points	0 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>17 points</u>

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

Factor	Maximum Score	Awarded Score
Posting	1 point	1 point ¹²

Total Points

100 Points

62 Points

⁹ Circuit courts have jurisdiction. 5 ILCS 430/15-25; § 820 ILCS 130/11b(b) (2012).

¹⁰ 5 ILCS 430/15-25

¹¹ Court may award double the back pay. 5 ILCS 430/15-25(2).

¹² "All officers, members, and State agencies shall conspicuously display notices of State employee protection under this Act." 5 ILCS 430/15-40.

State Legislation Protecting State Employee Whistleblowers (updated Aug 24, 2015)

State- Illinois

Statute- Whistle Blower Protection- § 5 ILCS 430/15-5 *et seq* (2011); Personnel Code- § 20 ILCS 415/191.1 (2011); Environmental Whistleblower Protection § 415 ILCS 5/52;

Provisions- Illinois has several statutes that protect state employees from retaliation for disclosing wrongdoing: (1) Public employee Whistle Blower Protection (2) a provision of the Personnel Code applicable to Executive Branch employees and (3) an environmental whistleblower statute.

Under the Whistleblower Protection Act, neither an officer or member of State government nor a State employee or a State agency shall take any retaliatory action against a State employee because he/she does any of the following: (i) discloses or threatens to disclose an activity, policy, or practice of an officer or member of State government or a State agency, or other State employee that the State employee, reasonably believes is in violation of a law, rule, or regulation; (ii) provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by an officer, member, State agency or other State employee; or (iii) assists or participates in a proceeding to enforce the provisions of the Act. “Public body” means any officer or member of State government or a State agency, any federal or State judiciary, law enforcement agency, or prosecutorial office, or any officer, employee, department, agency or other division of any of the foregoing. The term “retaliatory action” means a change in the terms or conditions of employment, such as the reprimand, discharge, suspension, demotion or denial of promotion or transfer of the State employee making the protected disclosure.

A violation of the act may be established only upon a finding that the State employee engaged in the protected conduct and that the conduct was a contributing factor in the retaliatory action alleged by the State employee. The state employee may bring a civil action to make his/her self whole and prevent future violations of the statute. A court may apply the following remedies: (i) reinstatement of the employee to the same or equivalent position, (ii) 2 times back pay, (iii) reinstatement of full fringe benefits and seniority rights, and (iv) the payment of reasonable costs and attorneys’ fees.

Nothing in the statute shall diminish the rights, privileges, or remedies of a State employee under federal or State law, rule or regulation or under any collective bargaining agreement or employment contract. The employer must provide notice to its employees of their rights and obligations under the statute.

The Personnel Code provision, § 20 ILCS 415/191.1, provides protection to the executive branch of the state government. It prohibits disciplinary action against any employee for the disclosure of any wrongdoing under investigation or for any related activity, such as information which the employee reasonably believes evidences (1) a violation of any law, rule or regulation; or, (2) mismanagement, a gross waste of funds, an abuse of authority,

or a substantial and specific danger to public health or safety. “Disciplinary action” means any retaliatory action taken against an employee which affects the terms or conditions of their employment. This statute merely establishes the principle in the Illinois Personnel Code that such activity will not be tolerated.

The Environmental Whistleblower Protection Act allows the employee to file a complaint with the Department of Labor for alleged discrimination upon disclosure of an environmental violation. It provides an opportunity for public hearing, and remedies including rehiring, reinstatement, and full compensation for the time unemployed.

Under the Discharge or discipline of “whistle blowers” prohibited provision of the Prevailing Wage Act, No person shall discharge, discipline, or in any other way discriminate against, or cause to be discharged, disciplined, or discriminated against, any employee or any authorized representative of employees by reason of the fact that the employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of this Act, or offers any evidence of any violation of this Act.

Any employee or a representative of employees who believes that he has been discharged, disciplined, or otherwise discriminated against by any person in violation of subsection (a) of this Section may, within 30 days after the alleged violation occurs, apply to the Director of Labor for a review of the discharge, discipline, or alleged discrimination. A copy of the application shall be sent to the person who allegedly committed the violation, who shall be the respondent. Upon receipt of an application, the Director shall cause such investigation to be made as he or she deems appropriate. The investigation shall provide an opportunity for a public hearing at the request of any party to the review to enable the parties to present information relating to the alleged violation. The parties shall be given written notice of the time and place of the hearing at least 5 days before the hearing. Upon receiving the report of the investigation, the Director shall make findings of fact. If the Director finds that a violation did occur, he or she shall issue a decision incorporating his or her findings and requiring the party committing the violation to take such affirmative action to abate the violation as the Director deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his or her former position and compensating him or her for the time he or she was unemployed. The party committing the violation shall also be liable to the Department of Labor for a penalty of \$5,000 for each violation of this Section. If the Director finds that there was no violation, he or she shall issue an order denying the application. An order issued by the Director under this Section shall be subject to judicial review under the Administrative Review Law.