

**Accountability Report Card Summary 2018**  
**New Mexico**

New Mexico has a pretty strong state whistleblower law:

- Scoring 72 out of a possible 100 points;
- Ranking 6<sup>th</sup> out of 51 (50 states and the District of Columbia).

New Mexico has broad coverage (22 out of a possible 33 points), excellent usability (29 out of 33 possible) and average remedies (20 of 33), plus the one bonus point awarded for employee notification of rights.

*New Mexico's full Whistleblower Report Card*  
*Narrative summary of New Mexico's law*

*page 2*  
*page 5*

## New Mexico Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale  
 Whistleblower Protection Act, N.M. Stat. Ann. § 10-16C-1 to -6 (2012)  
 Governmental Conduct Act, N.M. Stat. Ann. § 10-16-1 to 7 (2012)  
 Fraud Against Taxpayers Act, N.M. Stat. Ann. § 44-9-1 to -11 (2012)  
 Occupational Health and Safety, N.M. Stat. Ann. § 50-9-1 to -9 (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 <sup>1</sup>
2. Gross mismanagement	3 points	3 points
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	5 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 <sup>2</sup>
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 <sup>3</sup>
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>22 points</u></b>

<sup>1</sup> A disclosure is protected if it regards an “unlawful or improper act,” meaning a “practice, procedure, action or failure to act on the part of a public employer that: (1) violates a federal law, a federal regulation, a state law, a state administrative rule or a law of any political subdivision of the state; (2) constitutes malfeasance in public office; or (3) constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public.” N.M. Stat. Ann. § 10-16C-2(E).

<sup>2</sup> N. M. S. A. 1978, § 10-16C-3(C).

<sup>3</sup> The remedies provided for in the Whistleblower Protection Act are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law. Also, nothing in the Whistleblower Protection Act precludes civil actions or criminal sanctions for libel, slander or other civil or criminal claims against a person who files a false claim under that act. N.M. Stat. Ann. § 10-16C-4.

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

Do the laws protect disclosures made to –

<b>Factor</b>	<b>Maximum Points</b>	<b>Awarded Points</b>
1. Any person or organization, including public media	24 points	24 points <sup>4</sup>

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

2. Any state executive or legislative body or person employed by such entities	4 points	0 points
3. Testimony in any official proceeding	4 points	0 points
4. Any state or federal law enforcement or investigative body or entity or its employees	3points	0 points
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 <sup>5</sup> 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 <sup>6</sup>
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)	2 points <sup>7</sup>
	<b><u>Maximum Score</u></b> <b>33 points</b>	<b><u>Awarded Score</u></b> <b>29 points</b>

<sup>4</sup> May disclose information to a public employer or any third party. N. M. S. A. 1978, § 10-16C-3(A).

<sup>5</sup> The State Inspector general is authorized but not required to investigate employee disclosures.

<sup>6</sup> “civil action pursuant to the Whistleblower Protection Act shall be forever barred unless the action is filed within two years from the date on which the retaliatory action occurred.” N. M. S. A. 1978, § 10-16C-6.

<sup>7</sup> N. M. S. A. 1978, § 27-14-9



## **State Legislation Protecting State Employee Whistleblowers (updated June 2018)**

### **State-** New Mexico

**Statute-** Whistleblower Protection Act, N.M. Stat. Ann. § 10-16C-1 to -6 (2012); Governmental Conduct Act, N.M. Stat. Ann. § 10-16-1 to 7 (2012); Fraud Against Taxpayers Act, N.M. Stat. Ann. § 44-9-1 to -11 (2012); Occupational Health and Safety, N.M. Stat. Ann. § 50-9-1 to -9 (2012)

**Provisions-** The Whistleblower Protection Act was passed in 2010. The public employee whistleblower statute prohibits retaliation for disclosures to an employer or any third party that reveal “a practice, procedure, action or failure to act on the part of a public employer that: (1) violates a federal law, a federal regulation, a state law, a state administrative rule or a law of any political subdivision of the state; (2) constitutes malfeasance in public office; or (3) constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public. It also prohibits retaliation against a public employee who provides information to, or testifies before, a public body as part of an investigation, hearing or inquiry into an unlawful or improper act; or who objects to or refuses to participate in an activity, policy or practice that constitutes an unlawful or improper act. “Retaliatory action” means taking any discriminatory or adverse employment action against a public employee in the terms and conditions of public employment.

The statute is enforced by civil suit, with a 2-year statute of limitations. If the suit is successful, the court may order the public employee relief in the form of actual damages, reinstatement with the same seniority status that the employee would have had but for the violation, two times the amount of back pay with interest on the back pay and compensation for any special damage sustained as a result of the violation. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee. The employer may claim the affirmative defense that the personnel action taken was due to the employee's misconduct, the employee's poor job performance, a reduction in work force or other legitimate business purpose unrelated to conduct prohibited pursuant to the Whistleblower Protection Act.

The remedies provided for in the Whistleblower Protection Act are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law. Nothing in the Whistleblower Protection Act precludes civil actions or criminal sanctions for libel, slander or other civil or criminal claims against a person who files a false claim under that act. Every public employer shall post in a conspicuous place notices that set forth the provisions of the Whistleblower Protection Act.

New Mexico also has a Medicaid False Claims Act, which allows qui tam suits.

Under New Mexico Fraud Against Taxpayers Act N.M. Stat. Ann. § 44-9-11,

A. An employer shall not make, adopt or enforce a rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency or

from acting in furtherance of a fraud against taxpayers action, including investigating, initiating, testifying or assisting in an action filed or to be filed pursuant to the Fraud Against Taxpayers Act.

B. An employer shall not discharge, demote, suspend, threaten, harass, deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the lawful acts of the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a fraud against taxpayers action, including investigating, initiating, testifying or assisting in an action filed or to be filed pursuant to the Fraud Against Taxpayers Act.

C. An employer that violates Subsection B of this section shall be liable to the employee for all relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the violation, two times the amount of back pay with interest on the back pay, compensation for any special damage sustained as a result of the violation and, if appropriate, punitive damages. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee. An employee may bring an action pursuant to this section in any court of competent jurisdiction

Under N.M. Stat. Ann. § 50-9-25,

A. No person or employer shall discharge or in any manner discriminate against any employee because the employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to the Occupational Health and Safety Act or has testified or is about to testify in any such proceeding or because of the exercise by the employee on behalf of himself or others of any right afforded by the Occupational Health and Safety Act.

B. Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty days after such alleged violation occurs, file a complaint with the secretary, in writing and acknowledged by the employee, alleging such discrimination. Upon receipt of the complaint, the secretary shall cause such investigation to be made as he deems appropriate. Within sixty days of the receipt of a complaint filed under this section, the secretary shall notify the complainant of his determination. If, upon such investigation, the secretary determines that the provisions of this section have been violated, he shall file a petition in the district court for the political subdivision in which the alleged violation occurred to restrain the violation of Subsection A of this section and for other appropriate relief including rehiring or reinstatement of the employee to his former position with back pay