

**Accountability Report Card Summary 2018**  
**West Virginia**

West Virginia has a relatively balanced state whistleblower law:

- Scoring 57 out of a possible 100;
- Ranking 29<sup>th</sup> out of 51 (50 states and the District of Columbia).

West Virginia has limited coverage (17 of 33 possible points) with an average degree of usability (17 out of 33) and fair remedies (22 out of 33) plus the one bonus point awarded for employee notification of rights.

*West Virginia's full Whistleblower Report Card*  
*Narrative summary of West Virginia law*

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**West Virginia Accountability Index Report card**  
 Coverage, Usability & Strength — Rating on a 100 Point Scale  
 The Whistle-Blower Law - W. Va. Code § 6C-1-1 to -8 (2012);  
 Occupational Health and Safety- W.Va. Code § 21-3A-13

**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	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
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	5 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 <sup>3</sup>
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>17 points</u></b>

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

<sup>1</sup> No employer may discharge, threaten or otherwise discriminate or retaliate against an employee by changing the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report to the employer or appropriate authority an instance of wrongdoing or waste. W. Va. Code Ann. § 6C-1-3(a). “Waste” means conduct or omissions which result in substantial misuse or loss of funds or resources, and “wrongdoing” means a violation which is not of a merely technical or minimal nature of a federal or state statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer. W. Va. Code Ann. § 6C-1-2(f), (h).

<sup>2</sup> Disclosures of occupational health and safety violations are covered. W.Va. Code § 21-3A-13.

<sup>3</sup> The provisions of this article shall not be construed to....impair the rights of any person under a collective bargaining or other labor management agreement. W. Va. Code Ann. § 6C-1-7.

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	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	2 points <sup>4</sup>
3. Testimony in any official proceeding	4 points	4 points <sup>5</sup>
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 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	3 points <sup>6</sup>
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)	2 points <sup>7</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)	0 points
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>17 points</u></b>

<sup>4</sup> “Appropriate authority” means a federal, state, county or municipal government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the office of the attorney general, the office of the state auditor, the commission on special investigations, the Legislature and committees of the Legislature having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste. W. Va. Code Ann. § 6C-1-2(a).

<sup>5</sup> W. Va. Code, § 6C-1-3(b).

<sup>6</sup> Employee may disclose to one of the employee's superiors, to an agent of the employer or to an appropriate authority. W. Va. Code § 6C-1-2(g)

<sup>7</sup> A person who alleges that he is a victim of a violation of this article may bring a civil action within one hundred eighty days after the occurrence of the alleged violation. W. Va. Code Ann. § 6C-1-4(a).

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

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	4 points
2. Opportunity for administrative challenge	4 points	0 points
3. Opportunities for court challenge	4 points	4 points <sup>8</sup>
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 <sup>9</sup>
7. Actual and/or compensatory damages	3 points	3 points
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 <sup>10</sup>
11. Personnel actions against managers found to have retaliated	3 points	3 points <sup>11</sup>
	<b><u>Maximum Score</u></b> <b>33 points</b>	<b><u>Awarded Score</u></b> <b>22 points</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	1 point <sup>12</sup>

<sup>8</sup> A person who alleges that he is a victim of a violation of this article may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both. W. Va. Code Ann. § 6C-1-4(a).

<sup>9</sup> A court shall order as appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, all or a portion of the costs of litigation, or a combination of these remedies. W. Va. Code Ann. § 6C-1-5.

<sup>10</sup> A person who, as an employer or under color of an employer's authority, violates this article is liable for a civil fine of not more than five hundred dollars. W. Va. Code Ann. § 6C-1-6.

<sup>11</sup> If the court specifically finds that the person, while in the employment of the state or a political subdivision, committed a violation of section three of this article with the intent to discourage the disclosure of information, the court may order the person's suspension from public service for not more than six months. W. Va. Code Ann. § 6C-1-6.

<sup>12</sup> An employer shall post notices and use other appropriate means to notify employees and keep them informed of protections and obligations. W. Va. Code Ann. § 6C-1-8.

**Totals**

**100 points**

**57 points**

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

**State-** West Virginia

**Statute-** The Whistle-Blower Law - W. Va. Code § 6C-1-1 to -8 (2012); Occupational Health and Safety- W.Va. Code § 21-3A-13

### **Provisions-**

The Whistle-blower law defines a “whistle-blower” as someone who witnesses or has evidence of wrongdoing or waste while employed with a public body and who makes a good faith report of, or testifies to, the wrongdoing or waste, verbally or in writing, to one of the employee’s superiors, to an agent of the employer, or to an appropriate authority. “Wrongdoing” means a violation which is not of a merely technical or minimal nature of a federal or state statute or regulation, or of a code of conduct or ethics designed to protect the interest of the public or the employer. “Waste” means an employer or employee’s conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from federal or state sources.

An “appropriate authority” refers to a federal or state government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics or waste; or a member, officer, agent, representative or supervisory employee of such an entity. The report must be made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true. No employer may discharge, threaten, or otherwise discriminate or retaliate against an employee by changing the terms and conditions of employment because (i) the employee or a person acting on behalf or direction of such employee, makes a good faith report or is about to report to the employer or appropriate authority an instance of wrongdoing or waste; or because (ii) the employee is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.

A person who alleges that he was discriminated or retaliated against may bring a civil action for appropriate injunctive relief or damages, or both, within 180 days after the occurrence of such conduct. The employee must show by the preponderance of the evidence that, prior to the alleged reprisal, that a protected disclosure was made. It shall be a defense to such civil action if the defendant proves by a preponderance of the evidence that the action complained of occurred for separate and legitimate reasons, which are not merely pre-textual.

In rendering judgment for the complainant, a court shall order, as appropriate, reinstatement of the employee, payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. Also, the court may award all or a portion of the costs of the litigation, including reasonable attorney and witness fees.

A person, who, is an employer or under color of an employer's authority, violates this statute, is liable for a civil fine of not more than \$500. If the court specifically finds that such a person, while in employment of the state, committed a violation with the intent to discourage the disclosure of information, the court may order such person's suspension from public service for not more than 6 months. The statute shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing, or inquiry held by appropriate authority or impair the rights of any person under a collective bargaining or other labor management agreement. An employer shall post notices and use other appropriate means to notify employees and keep them informed of protections and obligations set forth in the provisions of this article.

The second statute provides that no employer may discharge or discriminate in any manner against any employee because the employee files a complaint, institutes a proceeding, or testifies about a workplace safety violation. It applies to "public employee(s) of the state, or any state agency." An employee who feels he has been discriminated against in this manner may file a complaint within 30 days. Relief includes reinstatement and back pay.