

States Upgrading Whistleblower Protections in 2011

I. Four states adopted major improvements in their whistleblower laws for state employees:

Connecticut

- Employees may testify and provide assistance in official hearings and other proceedings
- Employers must provide notice of employees' rights under the whistleblower statute
- Expiration dates for claims lengthened
 - Rebuttable presumption that personnel action was taken as a result of a protected disclosure will last for two years (was one year)
 - Employee now has 90 days to file a complaint regarding the adverse personnel action (was 30 days)
- "Protected disclosure" now includes internal disclosures and testimony in an official proceeding
- Bill protects all good faith disclosures
- Additional changes
 - Investigators may reject the information provided by a whistleblower, and not investigate the claim
 - May now only file one complaint regarding a retaliatory personnel action, and may not add subsequent retaliatory incidents
 - The new legislation eliminates the ability of the whistleblower to file a retaliation complaint with the Attorney General

Hawaii

- New legislation added two sections which more specifically define and protect public employees and public employers
- Declared legislative intent to expand the whistleblower statute and protect additional disclosures
- Upon receipt of a complaint, the Department of Labor and Industrial Relations shall inform the complainant of their rights

New Hampshire

- Repealed and re-enacted another version of a section of the whistleblower act
- Added two sections regarding the complaint investigation process
- Expands protections to cover employees who refuse to comply with an illegal order
- Expands scope: now protected disclosure about gross mismanagement, waste of public funds, property or manpower, abuse of authority, or a danger to public health and safety.

Tennessee

- New section provides for switching the burden of proof on the defendant upon a prima facie showing by the plaintiff of a retaliatory discharge

II. Six states adopted minor expansion of whistleblower coverage or protection:

Arizona

- Extended the definition of public employee to cover law enforcement

Kansas

- Established the Kansas Streamlining Government Commission
- Tasked with the independent review of agencies and other government entities
- Can receive complaints

Missouri

- Employees must now file a complaint with the Administrative Hearing Commission rather than the state personnel advisory board

Nevada

- Created the Personnel Commission to receive appeals of an allegedly retaliatory personnel actions

Rhode Island

- Employee no longer has to show by clear and convincing evidence that he or she or a person acting on his or her behalf was about to report to a public body, verbally or in writing, a violation, which the employee knew or reasonably believed had occurred or was about to occur, of a law of this state, a political subdivision of this state, or the United States.

Virginia

- Created the Office of the State Inspector General