

Accountability Report Card Summary 2022
Alaska

Alaska has a relatively weak whistleblower law:

- Scoring only 51 out of a possible 100 points; and
- Ranking 38th out of 51 (50 states and the District of Columbia)

Alaska has moderately broad coverage (19 out of 33 possible points) with limited usability (17 out of 33) and weak remedies (14 out of 33).

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Alaska Accountability Index Report card

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

Alaska Whistleblower Act, Alaska Stat. §39.90.100 -150 (1989); § 24.60.035

Health, Safety, and Housing § 18.60.089. Prohibition against retribution; Standards of Conduct; Protection of Whistle Blowers, Alaska Stat. § 24.60.035 (1992).

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
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 points ²
	Maximum Score 33 points	Awarded Score 19 points

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

Do the laws protect disclosures made to –

¹ AS § 39.90.140

² AS § 39.90.100(c)(4)

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 ³
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	3 points ⁴
5. Any federal or non-state governmental entity	3 points	3 points ⁵
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)	3 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)	0 points
	Maximum Score 33 points	Awarded Score 17 points

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

Does the statute provide for –

³ AS § 39.90.100, § 39.90.140

⁴ AS § 39.90.100(a)(2)

⁵ AS § 39.90.100, § 39.90.140

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	0 points
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	2 points ⁶
7. Actual/compensatory damages	3 points	3 points
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	2 points	1 points ⁷
11. Personnel actions against managers found to have retaliated	3 points	0 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>14 points</u>

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

Factor	Maximum Score	Awarded Score
Posting	1 point	1 point
<u>Totals</u>	<u>100 points</u>	<u>51 Points</u>

⁶ Court can provide appropriate relief under both statutes, which might include make actual/compensatory damages.

⁷ There is a strong presumption against awarding punitive damages, although they are listed as a possible form of relief in AS § 39.90.120

State Legislation Protecting State Employee Whistleblowers

State: Alaska

Statute: Alaska Whistleblower Act, Alaska Stat. §39.90.100 -150 (1989).

Provisions: A public employer may not discharge, threaten, or otherwise discriminate again an employee regarding the employee's compensation, terms, conditions, or privileges of employment because (1) the employee, or a person acting on behalf of the employee, reports to a public body, or is about to report to a public body, a matter of public concern; or (2) the employee participates in a court action, an investigation, a hearing, or an inquiry held by a public body on a matter of public concern. The intent of the legislature in enacting the whistleblower statute was to discourage and remedy retaliation against whistleblowers by authorizing them to bring civil actions. *City of Fairbanks v. Rice*, 998 P.2d 419 (Alaska 2000).

The term "public body" includes an officer or agency of (a) the federal government, (b) the state, (c) a political subdivision of the state, including a municipality, a school district and a regional educational attendance area, (d) a public or quasi-public corporation or authority established by state law including the Alaska Railroad Corporation, and (e) the University of Alaska. A municipality is not required to comply with the provisions of the Act if the municipality has adopted an ordinance that provides protections for its employees and other persons that are substantially similar to the protections under the Alaska Whistleblower Act.

The employee is not entitled to receive the Act's protection unless the employee reasonably believes that the information reported is or is about to become a matter of public concern and reports such information in good faith. The term "matter of public concern" refers to (1) a violation of federal, state, or municipal law, regulation, or ordinance, (2) a danger to public health or safety, (3) gross mismanagement, a substantial waste of funds, or a clear abuse of authority, (4) a matter accepted for investigation by the office of the ombudsman under AS 24.55.100 or 24.55.320, or (5) interference or any failure to cooperate with an audit or other matter within the authority of Legislative Budget and Audit Committee. A complaint must rest on and discuss issues of public concern rather than personal conflicts, which do not implicate First Amendment protections. *Methvin v. Bartholomew*, 971 P.2d 151 (Alaska 1998). A person is entitled to the protections under the Whistleblower Act only if the matter of public concern (1) is not the result of conduct by the person seeking protection; or (2) is the result of conduct by the person that was required by the person's employer.

As part of its written personnel policy, a public employer may require that before initiating a report, the employee must submit a written report concerning the matter to his/her employer. However, such a report need not be submitted if the employee (1) reasonably believes that a report to the employer will not result in prompt action to remedy the matter of public concern; (2) believes with reasonably certainty that the activity, policy, or practice is already known to one or more supervisors; (3) reasonably believes that an emergency is involved; or, (4) reasonably fears reprisal or discrimination as a result of disclosure.

An employee who alleges a violation of the Act may bring a civil action and the court may award appropriate relief. This may be limited to compensatory damages as there is a strong presumption disfavoring punitive damage awards against government entities. *Alaska Hous. Fin. Corp. v. Salvucci*, 950 P.2d 1116 (Alaska 1997); *State v. Greenfield*, 950 P.2d 1128 (Alaska 1997). A person who violates or attempts to violate the provisions of the Act is also liable for a civil fine not exceeding \$10,000. Additionally, a person who attempts to prevent another person from making a report or participating in a matter under the Act with intent to impede or prevent a public inquiry on the matter is liable for a civil fine of not more than \$ 10,000.

An employer shall post notices and use other appropriate means to inform employees of their protections and obligations under the Alaska Whistleblower Act. The Act does not authorize the disclosure of any information that is legally required to be kept confidential, or, diminish or impair the rights of an employee under a collective bargaining agreement.

Statute: Legislature; Standards of Conduct; Protection of Whistle Blowers, Alaska Stat. § 24.60.035 (1992).

Provisions: A legislator or legislative employee may not, directly or indirectly, subject a person who reports to the committee or another government entity conduct the person reasonably believes is a violation of this chapter or another state law, to reprisal, harassment, or discrimination. A legislative employee who is discharged, disciplined, involuntarily transferred, or otherwise penalized by a legislator or another legislative employee in violation of this subsection may (1) bring a complaint before the committee; and (2) bring a separate civil action in the courts seeking damages, payment of back wages, reinstatement, or other relief.

Statute: Health, Safety, and Housing, Alaska Stat. § 18.60.089 (1973). Prohibition against retribution.

Provisions:

(a) A person may not discharge or discriminate against an employee because the employee has filed a complaint or instituted or caused to be instituted a proceeding related to the enforcement of occupational safety and health standards, or has testified or is expected to testify in a proceeding relating to occupational safety and health or because an employee has exercised personally or on behalf of others a right afforded under AS 18.60.010 - 18.60.105.

(b) An employee who has been discharged or discriminated against by a person in violation of this section may, within 30 days after the violation occurs, file a complaint with the commissioner alleging the discrimination. Upon receipt of the complaint, the commissioner shall investigate the matter as the commissioner considers appropriate. If, upon investigation, the commissioner determines that this section has been violated, the commissioner shall request the attorney general to bring an action in the superior court against the violator. The superior court has jurisdiction to restrain violations of (a) of this

section and to order all appropriate relief, including rehiring or reinstatement of the employee to the employee's former position with back pay.

(c) Within 90 days of the receipt of a complaint filed under this section, the commissioner shall notify the complainant of the determination under (b) of this section.