

Accountability Report Card Summary 2022
Colorado

Colorado has a reasonably strong state whistleblower law:

- Scoring 66 out of a possible 100 points; and
- Ranking 13th out of 51 (50 states and the District of Columbia).

Colorado has moderately broad coverage (18 out of 33 possible points) with a high degree of usability (27 out of 33) and strong remedies (21 out of 33).

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Colorado Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale
State Employee Protection- C.R.S. 24-50.5-101 *et seq.* (1979)

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	0 points
6. Communication of scientific opinion or alteration of technical findings	5 points	0 points
7. Breaches of professional ethical canons	5 points	3 points ²

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	0 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>18 points</u>

¹ The statute provides that the “disclosure of information” by the state employee whistleblower to any person refers to any action, policy, regulation, practice, or procedure, including, but not limited to, matters concerning the waste of public funds, abuse of authority, or mismanagement of any state agency. This leaves open the possibility that state employees might disclose other types of actions, including violations of state law or regulations. By enacting the statute, the legislative assembly intended to encourage disclosure of actions which are not in the public interest. C.R.S. 24-50.5-101, -102.

² While the State Employee Protection statute does not explicitly identify breaches of ethics as a proper subject for disclosure, the introduction declares that “the people of Colorado are entitled to information about the workings of state government in order to reduce the waste and mismanagement of public funds, to reduce abuses in government authority, and to prevent illegal and unethical practices.” C.R.S. § 24-50.5-101.

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	24 points ³

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	3 points	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	1 point ⁴
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 ⁵
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 ⁶

³ The State Employee Protection Act states that “disclosure of information” means the written provision of evidence to any person or the testimony before any committee of the General Assembly. C.R.S. § 24-50.5-102(2).

⁴ Whenever the state personnel board finds that a disclosure of information concerning a waste of public funds or mismanagement of a state agency has occurred, a copy of its investigation report should be sent to the state auditor. The state auditor shall conduct a preliminary investigation to determine the need for an audit or management study. C.R.S. 24-50.5-106.

⁵ Statute provides that a state employee may file a written complaint to the state personnel board within 10 days after the employee knew or should have known of a disciplinary action. C.R.S. 24-50.5-104(1).

⁶ Colorado Medicaid False Claims Act, C.R.S. 25.5-4-303.5 *et seq.*

	<u>Maximum Score</u> 33 points	<u>Awarded Score</u> 27 Points
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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 ⁷
2. Opportunity for administrative challenge	4 points	4 points ⁸
3. Opportunities for court challenge	4 points	4 points ⁹
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/compensatory damages	3 points	3 points 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	2 points	0 points
11. Personnel actions against managers found to have retaliated	3 points	3 points ¹²
	<u>Maximum Score</u> 33 points	<u>Awarded Score</u> 21 points

⁷ The definition of “disciplinary action” includes actions which affect the state employee’s terms and conditions of employment. 24-50.5-102(1).

⁸ C.R.S. 24-50.5-104

⁹ An employee not in the state personnel system or any employee who is, but no reasonable basis was found for his/her charges, may bring a civil action in district court alleging a disciplinary action covered by the statute had taken place. If the employee prevails, he may recover damages, together with court costs, and the court may order such other relief as it deems appropriate. C.R.S. 24-50.5-105.

¹⁰ “The state personnel board shall order that the employee filing the complaint be reimbursed for any costs, including any court costs and attorney fees...incurred in the proceeding.” C.R.S. 24-50.5-104.

¹¹ If the employee prevails in court, he or she may recover damages, together with court costs.

¹² If the state personnel board finds that an appointing authority or a supervisor had violated the strictures against reprisal actions, these individuals shall be disciplined. Such actions may range from a suspension for a minimum of one week up to and including termination. C.R.S. 24-50.5-104(4).

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

Factor	Maximum Score	Awarded Score
Posting	1 point	0 points

Total Points

100 Points

66 points

State Legislation Protecting State Employee Whistleblowers (updated July 2022)

State: Colorado

Statute: State Employee Protection- C.R.S. 24-50.5-101 to -108 (1979)

Provisions: The Colorado general assembly declares that the people of Colorado are entitled to information about the workings of state government in order to reduce waste and mismanagement of public funds, to reduce abuses in government authority, and to prevent illegal and unethical practices. Further, the General Assembly declares that the employees of the State of Colorado are citizens first and have a right and a responsibility to behave as good citizens in our common efforts to provide sound management of government affairs. To help achieve these objectives, the general assembly declares that state employees should be encouraged to disclose information on actions of state agencies that are not in the public interest and that legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official.

The term “disclosure of information” means the written provision of evidence to any person, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure, including, but not limited to, the waste of public funds, abuse of authority, or mismanagement of any state agency. The disclosure need not be in writing, and the evidence may be provided in oral or verbal disclosures. *Ward v. Indus. Comm'n*, 699 P.2d 960 (Colo. 1985). No appointing authority or supervisor shall initiate or administer any disciplinary action against an employee on account of the employee’s disclosure of information, unless the employee discloses information that (1) he knows to be false or who discloses information with disregard for its truth or falsity; (2) comes from public records, which are closed for inspection pursuant to statute; or (3) is confidential under any provision of law. Additionally, employees must make a good faith effort to provide to his supervisor, appointing authority, or member of the general assembly the information to be disclosed prior to the time of its disclosure. “Disciplinary action: means any direct or indirect form, or the threat, of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, etc.

An employee may file a written complaint with the state personnel board within ten (10) days after the employee knew or should have known of a disciplinary action alleging a violation of the conduct protected under the statute. The affected state agency shall submit a written response to the complaint within forty-five days after the date the complaint was filed with the state personnel board, and a hearing will be held within ninety days of the receipt by the board of the state agency’s response. If after a hearing the board determines that a violation of the statute has occurred, the state personnel board shall order the appropriate relief including, but not limited to, reinstatement, back pay, restoration of lost service credit, and expungement of the records of the employee. In addition, the board shall order that the employee should be reimbursed for any costs, including court costs and attorney fees, if any, incurred in the proceeding. Whenever the

personnel board determines that a violation of the statute has occurred, the appointing authority or supervisor shall be disciplined. An employee who filed a complaint and no reasonable basis was found for the charges may bring a civil action in district court alleging a violation of the statute. If the employee prevails, he may recover damages, together with court costs, and the court may award such relief as it deems appropriate.

C.R.S. 24-50.5-103

“(1) Except as provided in subsection (2) of this section, an appointing authority or supervisor shall not initiate or administer any disciplinary action against an employee on account of the employee's disclosure of information. This subsection (1) does not apply to an employee who discloses: (a) Information that he or she knows to be false or who discloses information with disregard for the truth or falsity of the information; (b) Information from public records that are closed to public inspection pursuant to section 24-72-204; or (c) without lawful authority, information that is confidential under any other provision of law or closed to public inspection under section 24-72-204 (2) (a) (I) and (2) (a) (VIII). (2) An employee who wishes to disclose information under the protection of this article is obligated to make a good-faith effort to provide to his or her supervisor or appointing authority or member of the general assembly the information to be disclosed prior to the time of its disclosure.”