

Accountability Report Card Summary 2022
Arizona

Arizona has a relatively strong whistleblower law:

- Scoring only 60 out of a possible 100 points; and
- Ranking 20th out of 51 (50 states and the District of Columbia)

Arizona has moderately broad coverage (19 out of 33 possible points) with limited usability (15 out of 33) and strong remedies (26 out of 33).

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Arizona Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale
 Ariz. Rev. Stat. § 38-531 to -534 (1985); § 23-1501 (1996); § 23-425 (1972)

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	2 points ²
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 ³
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 ⁴
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>19 points</u>

¹ARS § 38-532(A).

² Reports of occupational health and safety violations are covered. A.R.S. § 23-425.

³ ARS § 23-1501(3)(c)(1), (d). An employer cannot terminate the employment relationship if the whistleblower employee refuses to commit an act or omission that would violate the Constitution of Arizona or the statutes of the state.

⁴ ARS § 23-1501, *Haggerty v. Am. Airlines, Inc.*, 102 Fed. Appx. 623 (9th Cir. 2004).

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	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 ⁵
3. Testimony in any official proceeding	4 points	1 points ⁶
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 points ⁷
5. Any federal or non-state governmental entity	3 points	1 point ⁸
6. Co-workers or supervisors within the scope of duty	3 points	3 points ⁹
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)	0 points ¹⁰

⁵ The Arizona Whistle-Blower Act provides that disclosure will be made to a public body, which is defined to include the state legislature or the governor.

⁶ The Occupational Health and Safety statute protects employees who testify based on a code violation.

⁷ 2011 Ariz. Sess. Laws 230

⁸ “Public body” in the Whistle-Blower Act includes federal law enforcement and the county attorney, the governing board of a community college district or school district, the board of supervisors of a county or an agency director, but this limited scope is not broad enough for the full 3 points.

⁹ Under the second statute disclosure could be made to the employer or a representative of the employer who the employee reasonably believes is in a managerial or supervisory position and has the authority to investigate the information provided and to take action to prevent further violations of the Arizona Constitution and the state’s statutes.

¹⁰ Only reference to a statute of limitations appears in the first statute. An administrative action must be started within 10 days of the effective action taken.

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
	<u>Maximum Score</u> 33 points	<u>Awarded Score</u> 15 points

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
2. Opportunity for administrative challenge	4 points	4 points
3. Opportunities for court challenge	4 points	4 points
4. Trial by jury	3 points	0 points ¹¹
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
7. Actual/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 for willful and intentional actions	3 points	3 points ¹²
11. Personnel actions against managers found to have retaliated	2 points	2 points ¹³
	<u>Maximum Score</u> 33 points	<u>Awarded Score</u> 26 points

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

Factor	Maximum Score	Awarded Score
Posting	1 point	0 points

¹¹ Neither statute mentions the right to trial by jury. However, the court actions permitted probably will involve issues that have traditionally been assigned to a jury to decide. We have not investigated whether the Arizona Constitution or other statutes provide for trial by jury in such court actions.

¹² Civil penalty of up to \$10,000.

¹³ Appropriate disciplinary action, including dismissal.

Totals

100 points

60 points

State Legislation Protecting State Employee Whistleblowers (updated July 2022)

State: Arizona

Statutes: Ariz. Rev. Stat. § 38-531 to -534 (1985); Ariz. Rev. Stat. § 23-1501 (1996).

Provisions: Arizona has two statutes that protect state employees from reprisal actions in whistleblower situations. The first, § 38- 531 to 534 (1985), the Arizona Whistle-Blower Act, provides an administrative mechanism for challenging such actions and authorizes court actions to provide injunctive relief. An Arizona court has held that a person may bring a suit under this statute without first exhausting administrative remedies. *Walters v. Maricopa County*, 195 Ariz. 476, 990 P.2d 677 (Ct. App. 1999). The second statute, § 23-1501 (2022), the Arizona Employment Protection Act, provides that an employee, whether a public or private sector employee, has a claim against an employer for termination of employment in certain whistleblower situations.

The Arizona Whistle-Blower Act provides that it is a prohibited personnel practice for a state employee who has control over personnel actions to take reprisal against a state employee who discloses information of a matter of public concern to a public body, which the employee reasonably believes evidences: (1) a violation of any law, or (2) mismanagement, a gross waste of monies, or an abuse of authority. The Arizona Employment Protection Act has a more limited scope and applies to public and private sector employees. It provides that an employee has a claim for termination of employment if the termination was in retaliation for, among other things: (1) the employee's refusal to commit an act or omission that would violate the Constitution and laws of Arizona, and, (2) the disclosure by the employee, in a reasonable manner, that he/she has information or a reasonable belief that the employer or its employee, has violated, is violating, or will violate the Constitution or statutes of Arizona.

The Arizona Whistle-Blower Act provides that it is a prohibited personnel practice for a state employee who has control over personnel actions to take reprisal against a state employee who discloses information of a matter of public concern to a public body, which the employee reasonably believes evidences: (1) a violation of any law, or (2) mismanagement, a gross waste of monies, or an abuse of authority. The disclosure by the public employee shall be in writing and contain the date of disclosure, the employee's name, the nature of the matter of public concern, and the date(s) when the matter(s) occurred. The statute contains no requirement that the employee first disclose his concern to his employer or any supervisor. The term "public body is defined to include the state attorney general, the state legislature, the governor, a federal, state or local law enforcement agency and the county attorney.

A state employee may file a complaint with an appropriate independent personnel board and claim that the reprisal against him is a result of his disclosure of information to a public body. If a prohibited personnel practice is found to have occurred, the personnel action taken shall be rescinded and lost pay and benefits will be restored. The state employee may also bring a civil action seeking injunctive relief and, if successful, may

recover attorneys' fees, costs, back pay, general and special damages, and full reinstatement to the employee's position. If reprisal is taken because the employees disclosed information in a manner prohibited by law or that was confidential by law, this action does not constitute a prohibited personnel practice. An employee who knowingly commits a prohibited personnel practice shall be ordered by the state personnel board to pay a civil penalty of up to \$10,000 and may be subjected to appropriate disciplinary action, including dismissal. A court may award reasonable attorney fees of up to \$10,000 to an employee who prevails in a whistleblower action.

The Arizona Employment Protection Act has a more limited scope and applies to public and private sector employees. It provides that an employee has a claim for termination of employment if the termination was in retaliation for, among other things: (1) the employee's refusal to commit an act or omission that would violate the Constitution and laws of Arizona, and, (2) the disclosure by the employee, in a reasonable manner, that he/she has information or a reasonable belief that the employer or its employee, has violated, is violating, or will violate the Constitution or statutes of Arizona, to either the employer, or to a representative of the employer, who the employee reasonably believes is in a managerial or supervisory position and has the authority to investigate and to take action to prevent further violations, or to an employee of a public body or political subdivision of the state, or an agency of a political body or political subdivision. The term "public body" is not specifically defined in the second statute. The claim for wrongful termination can be brought in Arizona courts and tort damages provided if the employee prevails.

Statute: Ariz. Rev. Stat. § 23-425 (1972)

The third statute appears in the Occupation Health and Safety chapter of Arizona's statutes. It protects all employees, including state and local government workers (Ariz. Rev. Stat. §23-401). The statute provides that no employer may discharge or in any way discriminate against an employee because he has filed a complaint, instituted an action, or testified against such employer regarding an occupational health and safety violation. The Occupational Health and Safety code covers things such as exposure to asbestos and other forms of particulate matter. The statute provides that an action for discrimination may be brought within 30 days of the violation and that the commission shall investigate and return a decision within 90 days. Possible relief includes rehiring or reinstatement to former position with back pay.