

**Accountability Report Card Summary 2022**  
**Arkansas**

Arkansas has an average whistleblower law:

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

Arkansas has moderately broad coverage (18 out of 33 possible points) with average usability (21 out of 33) and stronger remedies (20 out of 33), as well as 1 bonus point for required notice to public employees.

*Arkansas's full Whistleblower Report Card*                      *page 2*  
*Narrative summary of Arkansas's law*                              *page 5*

**Arkansas Accountability Index Report card**

Coverage, Usability & Strength — Rating on a 100 Point Scale  
 Arkansas Whistle-Blower Act, Ark. Code Ann. § 21-1-601 to -610 (1999)  
 Ark. Code Ann. § 16-123-108 (1995)

**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
2. Gross mismanagement	3 points	0 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	5 points <sup>1</sup>

Does the statute provide –

8. Employee may refuse to carry out illegal or improper orders	1 point	1 point <sup>2</sup>
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
	<b><u>Maximum Score 33 points</u></b>	<b><u>Awarded Score 18 points</u></b>

**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 <sup>3</sup>
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<sup>1</sup> Violation" means an infraction or a breach which is not of a merely technical or minimal nature of a state statute or regulation, of a political subdivision ordinance or regulation, or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer. A.C.A. § 21-1-602(6).

<sup>2</sup> A.C.A. § 21-1-603(d)

<sup>3</sup> A.C.A. § 21-1-602(2)(A)(ii). Appropriate authority includes any “member, officer, agent, investigator, auditor, representative or supervisory employee of the body, agency, or organization.”

3. Testimony in any official proceeding	4 points	4 points <sup>4</sup>
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 points <sup>5</sup>
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	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 point <sup>6</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)	5 points
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>21 points</u></b>

**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
4. Trial by jury	3 points	0 points
5. Burden shifting upon prima facie showing.	1 point	1 points <sup>7</sup>
6. Make whole remedies (court costs, attorney fees, back pay; restoration of benefits, etc.)	3 points	3 points <sup>8</sup>

<sup>4</sup> A.C.A. § 21-1-603(c). An employer may not take adverse action because the employee participates in a “hearing, court proceeding, legislative or other inquiry, or any form of administrative review.”

<sup>5</sup> A.C.A. § 21-1-602(2).

<sup>6</sup> Public employee may bring a civil action within 180 calendar days after the occurrence of the alleged violation of the statute. A.C.A. § 21-1-604(a).

<sup>7</sup> “The public employer must prove the existence of the public employee's misconduct unrelated to the communication by a preponderance of the evidence.” A.C.A. § 21-1-604(e)(2).

<sup>8</sup> Damages may include but are not limited to amounts representing “fringe benefits, retirement service credit, compensation for lost wages, benefits, and any other remuneration, and reasonable court costs and attorneys' fees.” A.C.A. § 21-1-604(d). *See also* A.C.A. § 21-1-605.

7. Actual/compensatory damages	3 points	3 points
8. Interim relief, injunction or stay of personnel actions	3 points	3 points <sup>9</sup>
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	0 points
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>20 points</u></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 points <sup>11</sup>

**Totals**

**100 points**

**60 points**

<sup>9</sup> A court may order “An injunction to restrain continued violation of the provisions of this subchapter.” § 21-1-605(1).

<sup>10</sup> Ark. Code Ann. § 16-123-107(b) (2012)

<sup>11</sup> Ark. Code Ann. § 21-1-608 (2015)

## **State Legislation Protecting State Employee Whistleblowers (updated July 2022)**

**State:** Arkansas

**Statute:** Arkansas Whistle-Blower Act, Ark. Code Ann. § 21-1-601 to -610 (1999); Arkansas Civil Rights Act of 1993, Ark. Code Ann. § 16-123-101 to 108 (1995).

**Provisions:** A public employer shall not take an adverse action against a public employee (1) because the public employee, or a person authorized to act on his/her behalf, communicates in good faith to an appropriate authority (i) the existence of the waste of public funds, property, or manpower, including federal funds, property or manpower administered or controlled by a public employer, or (ii) a violation or suspected violation of law, rule, or regulation adopted under state law, (2) because the employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review, or (3) because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation adopted under the authority of Arkansas laws or a political subdivision of the state, or (4) because of a report of a loss of public funds under § 25-1-124. A public employee does not have to inform the public employer of the waste or violation of law before notifying an appropriate authority. However, the communication to an appropriate authority shall be made at a time and in a manner which gives the public employer reasonable notice of the need to correct the waste and violation.

A “violation” means an infraction or breach, which is not merely technical or of a minimal nature, of a state statute or regulation or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer. “Waste” refers to a public employer’s conduct or omissions which result in substantial abuse, misuse, destruction, or loss of public funds, property, or manpower belonging to or derived from state or local political subdivision’s resources. An “appropriate authority” includes a state department, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste or a member, agent, investigator, auditor, representative or supervisory employee of such entities. Specific examples of “appropriate authority” include the office of the Attorney General and the Auditor of the State, the Arkansas Ethics Commission, the Legislative Joint Auditing Committee and the Division of Legislative Audit, and various prosecuting attorneys with the power to investigate violations of law and waste.

An employee lacks “good faith” if he does not have personal knowledge of the factual basis for the employee’s communication to an appropriate authority or when the employee knew or reasonably should have known that the communication of waste or violation of law was malicious, false, or frivolous. A public employee who alleges that an illegal adverse action has taken place may, within 180 calendar days of the violation, bring a civil action for injunctive relief or actual damages, or both.

A public employee alleging in a civil action that he or she was terminated from his or her position as the result of adverse action prohibited under Section 21-1-603 may request an expedited hearing on the issue of the public employee being reinstated to the public employee's position until the resolution of the civil action brought under this subchapter. (2) If at an expedited hearing the public employee demonstrates that a reasonable person would conclude that his or her termination was a result of adverse action prohibited under Section 21-1-603, the court shall order that the public employee be: (A) Reinstated to his or her position until the conclusion of the civil action brought under this subchapter; or (B) Reinstated to his or her positions and placed on paid administrative leave until the conclusion of the civil action brought under this subchapter.”

Sovereign immunity protects public officials against lawsuits by employees claiming they've been penalized for whistleblowing, given that they are representatives of the state and the state may not be made a defendant in court. Sovereign immunity cannot be waived by the Arkansas Whistle-blower Act.<sup>12</sup>

To prevail, the public employee must establish by a preponderance of the evidence that they have suffered an adverse action because they or a person acting on their behalf engaged in an activity protected under the Arkansas Whistle-Blower Act. The public employer shall have an affirmative defense if the adverse action taken against a public employee was due to employee misconduct, poor job performance, or a reduction in workforce unrelated to a communication. The public employer must prove the existence of the public employee's misconduct unrelated to the communication by a preponderance of the evidence.

Damages includes damages for a job-related injury or loss caused by each violation of the statute, including, but not limited to, fringe benefits, retirement service credit, compensation for lost wages, benefits, and other remuneration, and reasonable court costs and attorneys' fees. A court in rendering judgment under this subchapter may order any or all of the following remedies: (1) An injunction to restrain continued violation of the provisions of this subchapter; (2) The reinstatement of the public employee to the same position held before the adverse action or to an equivalent position; (3) The reinstatement of full fringe benefits and retirement service credit; (4) The compensation for lost wages, benefits, and any other remuneration; (5) The payment by the public employer of reasonable court costs and attorney's fees. While the court may order that reasonable attorney's fees and court costs be awarded to the employer if it determines that an action brought by an employee is without basis in law or fact, the employee shall not be assessed attorney's fees under this section if the public employee files a voluntary non-suit concerning the employer within sixty days of the determination that the employer would not be liable for damages.

The term “whistle-blower” refers to a person who witnesses or has evidence of waste or violation while employed with a public employer and who communicates in good faith or testifies to the waste or violation, verbally or in writing, to one of the employee's superiors, to an agent of the public employer, or to an appropriate authority, provided the

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<sup>12</sup> See *Harris v. Hutchinson*, 591 S.W.3d 778, 781 (Ark. 2020).

communication is made prior to any adverse action by the employer. A public employer shall use appropriate means to notify its public employees of their protection and obligations under this subchapter.

A state employee who discloses wrongdoing is eligible to receive a reward equal to 10% of any savings in state funds attributable to changes made based on the disclosure, but such an award is not to exceed \$12,500. If the state employer determines that an employee is not eligible for such an award, it must provide an explanation for its determination in its report of the disclosure and outcome. The state employee may appeal a finding that she or he is not eligible for the reward to the Arkansas State Claims Commission. If the amount of the reward would be in excess of \$12,500, it shall be referred to the General Assembly for an appropriation.

**Statute:** Arkansas Civil Rights Act of 1993, Ark. Code Ann. § 16-123-101 to -108 (1995).

**Provisions:** Ark. Code Ann. § 16-123-108 (1995)

(a) Retaliation. No person shall discriminate against any individual because such individual in good faith has opposed any act or practice made unlawful by this subchapter or because such individual in good faith made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Interference, Coercion, or Intimidation. It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this subchapter.

(c) Remedies and Procedures. The remedies and procedures available in § 16-123-107(b) shall be available to aggrieved persons for violations of subsections (a) and (b) of this section.