

Accountability Report Card Summary 2022
Florida

Florida has a relatively strong state whistleblower law:

- Scoring only 69 out of a possible 100 points; and
- Ranking 10th out of 51 (50 states and the District of Columbia).

Florida has a fairly broad statute (22 out of 33 possible points) with a significant degree of usability (26 out of 33) and middling remedies (21 out of 33).

Florida's full Whistleblower Report Card *page 2*
Narrative summary of Florida's law *page 6*

Florida Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale
 The Whistle-blower’s Act- Fla. Stat. § 112.3187- 112.31901 (1986);
 Florida False Claims Act, Fla. Stat. § 68.081-68.09 (1994);
 General Labor Regulations F.S.A. § 448.101 (1991).

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 ²
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	5 Points ³
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 Points ⁴
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
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>22 Points</u>

¹ Protected information includes any disclosure of a “violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public’s health, safety, or welfare.” Fla. Stat. § 112.3187(5)(a).

² Protected information includes any disclosure of an “act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.” Fla. Stat. § 112.3187(5)(b).

³ Fla. Stat. § 112.3187(5)(a).

⁴ The statute protects employees who refuse to take actions prohibited in the Whistle-blowers Act. Fla. Stat. § 112.3187(7).

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	4 Points ⁶
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 Points
5. Any federal or non-state governmental entity	3 points	3 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	1 Point ⁷
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 ⁸

⁵ Fla. Stat. § 112.3187(6), (7).

⁶ The Florida False Claims Act, Fla. Stat. § 68.088. The Florida General labor F.S.A. § 448.102

⁷ The Florida Commission on Human Relations must “conduct informal fact finding regarding any allegation under this section, to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel action.” Fla. Stat. § 112.31895(2)(a).

⁸ Employee may bring court case within 180 days after receipt of Florida Commission on Human Rights termination of investigation or within 180 days after retaliatory action, after exhausting all contractual and administrative remedies. § 112.3187(8)(a) and (c) (2012); an employee who has been the object of a retaliatory personnel action in violation of this act may institute a civil action in a court of competent jurisdiction for relief as set forth in subsection (2) within 2 years after discovering that the alleged

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 ⁹
	<u>Maximum Score</u> 33 points	<u>Awarded Score</u> 26 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 ¹⁰
2. Opportunity for administrative challenge	4 points	4 Points ¹¹
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	3 Points ¹²
7. Actual/compensatory damages	3 points	3 points ¹³
8. Interim relief, injunction or stay of action	3 points	3 points ¹⁴
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	0 Points
	<u>Maximum Score</u>	<u>Awarded Score</u>

retaliatory personnel action was taken, or within 4 years after the personnel action was taken, whichever is earlier. § 448.103 (1)(a) (2012).

⁹ Florida False Claims Act, Fla. Stat. § 68.081 *et. seq.* (2011)

¹⁰ “An agency or independent contractor shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this section.” Fla. Stat. § 112.3187(4)(a).

¹¹ Employee may proceed with administrative remedies or civil action. Fla. Stat. § 112.3187(8)(a).

¹² Fla. Stat. § 112.3187(9)(b)-(d).

¹³ F.S.A. § 448.103 (2)(d)-(e)

¹⁴ Fla. Stat. § 112.3187(9)(e); F.S.A. § 448.103 (2)(a)

	<u>33 points</u>	<u>21 Points</u>
--	-------------------------	-------------------------

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

69 Points

State Legislation Protecting State Employee Whistleblowers (updated July 2022)

State: Florida

Statute: Florida Whistle-blower's Act- Fla. Stat. § 112.3187- § 112.31901 (1986); Florida False Claims Act, Fla. Stat. § 68.081-68.09 (1994).

Provisions: The Florida legislature intends to prevent agencies from taking retaliatory action against a state employee who (1) reports to an appropriate agency violations of law on the part of a public employer that create a substantial and specific danger to the public's health, safety, or welfare; or (2) discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee. The term "agency" includes any state executive, judicial, or legislative entity.

An agency shall not dismiss, discipline, or take any other adverse personnel action against a state employee for disclosing information that includes (1) any violation or suspected violation of any federal or state law, rule, or regulation committed by an employee or agent of an agency, which creates and presents a substantial and specific danger to the public's health, safety, or welfare; or, (2) any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency. Additionally, an employee may refuse to comply with an illegal order.

The information may be disclosed to any state agency or federal government entity with the authority to investigate, police, manage, or remedy the violation or act, including the Office of the Florida Chief Inspector General, a state of Florida's agency inspector general, or the employee designated as an agency inspector general, the Florida Commission on Human Relations, and the whistle-blower's hotline. These provisions are designed to protect employees and persons who disclose information on their own initiative in a written or signed complaint, and who are requested to participate in an investigation, hearing or other inquiry conducted by any state agency or federal government entity.

An employee who is subject to an adverse personnel action because he or she engaged in a protected activity may file a written complaint with the Florida Commission on Human Relations or the Office of the Chief Inspector General in the Executive Office of the Governor, whereupon there will be an investigation into the employee's claim. Not more than 60 days after a receipt from the Commission of a notice of termination of the investigation, the employee may file a complaint against the employer-agency with the Florida Public Employees Relations Commission. In the alternative, the employee may bring a civil action within 180 days of receipt of a notice of termination of the investigation by the Commission on Human Rights. Relief in any such action may include: reinstatement of the employee with full benefits, compensation for lost wages,

benefits or other lost remuneration, payment of reasonable costs, issuance of an injunction, or temporary reinstatement to the employee's former position or an equivalent position. The pursuit of a claim under the Whistle-blowers act does not preclude employee collective bargaining rights.

The Florida False Claims Act provides for qui tam lawsuits and potential for rewards for plaintiffs or others who come forward with information about violations. It also protects disclosures made in official proceedings or hearings.

Under the Florida General Labor regulations F.S.A. § 448.102, an employer may not take any retaliatory personnel action against an employee because the employee has:

(1) Disclosed, or threatened to disclose, to any appropriate governmental agency, under oath, in writing, an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation. However, this subsection does not apply unless the employee has, in writing, brought the activity, policy, or practice to the attention of a supervisor or the employer and has afforded the employer a reasonable opportunity to correct the activity, policy, or practice.

(2) Provided information to, or testified before, any appropriate governmental agency, person, or entity conducting an investigation, hearing, or inquiry into an alleged violation of a law, rule, or regulation by the employer.

(3) Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.

Furthermore, under F.S.A. § 448.103 (1)(a), an employee who has been the object of a retaliatory personnel action in violation of this act may institute a civil action in a court of competent jurisdiction for relief as set forth in subsection (2) within 2 years after discovering that the alleged retaliatory personnel action was taken, or within 4 years after the personnel action was taken, whichever is earlier.