

Accountability Report Card Summary 2022
Hawaii

Hawaii has an average state whistleblower law:

- Scoring only 58 out of a possible 100 points; and
- Ranking 26th out of 51 (50 states and the District of Columbia).

Hawaii has narrow coverage (10 out of 33 possible points) with a high degree of usability (23 out of 33) and good remedies (24 out of 33) plus one bonus point awarded for employee notification of rights.

Hawaii's full Whistleblower Report Card
Narrative summary of Hawaii's law

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Hawaii Accountability Index Report card

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

Whistleblowers' Protection Act- Haw. Rev. Stat. Ann. § 378-61 to -69 (1987)

Qui Tam Actions or Recovery of False Claims to the Counties, Haw. Rev. Stat. Ann. § 46-177 (2001)

Qui Tam Actions or Recovery of False Claims to the State; Haw. Rev. Stat. Ann. § 661-27 (2000)

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	0 points
4. Waste of public funds or resources	3 points	0 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	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 point ³
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>10 points</u>

¹ A public employer may not discriminate against an employee for disclosing information regarding the violation of any” law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States.” 2011 Hi. ALS 166 § 4 (specifically protecting disclosures made by public employees).

² Adding the 3 points, because the intent of the Hawaii Legislature in passing 2011 Hi. ALS 166 was to encourage disclosures by public employees. “The legislature finds that public employees may possess information about improper activities such as waste, fraud, and misconduct occurring in state and local government, but may not report the information because of fear of retaliation by their supervisors. Greater protection for public employees is necessary to encourage them to come forward with information that will help ensure the efficiency and integrity of state and local government.” 2011 Hi. ALS 166 § 1.

³ While whistleblower protection will not be construed to diminish rights under collective bargaining agreements, whichever provides the greater rights and remedies shall take precedence. HRS § 378-66.

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 ⁴
3. Testimony in any official proceeding	4 points	4 points ⁵
4. Any state or federal law enforcement or investigative body or entity or its employees	4 points	4 points ⁶
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)	3 points ⁷
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 ⁸
	<u>Maximum Score</u> 33 points	<u>Awarded Score</u> 23 points

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

⁴ HRS § 378-61(1), (2).

⁵ HRS § 378-62(2).

⁶ HRS § 378-61(5).

⁷ “A person who alleges a violation of this part may bring a civil action for appropriate injunctive relief, or actual damages, or both within two years after the occurrence of the alleged violation of this part.” HRS § 378-63(a)

⁸ Both HRS § 661-27 (2012) (claims to the State) and HRS § 46-177 (2012) (claims to the counties) provide for awards to qui tam plaintiffs.

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 ⁹
2. Opportunity for administrative challenge	4 points	4 points
3. Opportunities for court challenge	4 points	4 points ¹⁰
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
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	3 points	3 points ¹¹
11. Personnel actions against managers found to have retaliated	2 points	0 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>24 points</u>

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

Factor	Maximum Score	Awarded Score
Posting	1 point	1 point ¹²

Totals

100 points

58 points

⁹ "A public employer shall not discharge, threaten, or otherwise discriminate against a public employee regarding the public employee's compensation, terms, conditions, location, or privileges of employment." 2011 Hi. ALS 166 § 4. *See also* HRS § 378-62.

¹⁰ If the court action provided by the statute is superior to the administration mechanism available under a collective bargaining agreement, the employee should file a court action.

¹¹ A person or public employer violating the employee's protected rights shall be fined not less than \$500 or more than \$5,000 for each violation. HRS § 378-65.

¹² HRS § 378-68 (2012). "Every public employer shall post notices pertaining to the application of sections 378- and 396-8(e), as shall be prescribed by the department of labor and industrial relations, in conspicuous places in every workplace." 2011 Hi. ALS 166 § 4(b). In the amendments of 2012, the department of labor and industrial relations have the obligation to notify any complainant of their rights under this statute upon receipt of their complaint. 2011 Hi. ALS 166 § 2.

State Legislation Protecting State Employee Whistleblowers (updated July 2022)

State: Hawaii

Statute: Whistleblowers' Protection Act—Haw. Rev. Stat. Ann. § 378-61 to -69 (1987) Qui Tam Actions or Recovery of False Claims to the Counties, Haw. Rev. Stat. Ann. § 46-177 (2001) Qui Tam Actions or Recovery of False Claims to the State; Haw. Rev. Stat. Ann. § 661-27 (2000).

Provisions- Hawaii has a general whistleblowers' statute that applies to both private and public employees. In 2011, it was amended to incorporate more explicitly public employees. An employee is defined to include a person employed by a state or its political subdivision. An employer shall not discharge, threaten, or otherwise discriminate against an employee concerning the terms and conditions of his/her employment because (1) the employee, or a person acting on the employee's behalf, reports, or is about to report, to a public body, verbally or in writing, a violation or suspected violation of (i) a state or federal law, rule, regulation, or ordinance; or, (ii) a contract executed by the State or the United States, unless the employee knows the report to be false; or (2) an employee is asked by a public body to participate in an investigation, hearing, or inquiry held by that body, or a court action. The intent of the legislature in protecting disclosures made by public employees was to encourage people to come forward with information about improper activities such as waste, fraud, and misconduct occurring in state and local government, so as to help ensure the efficiency and integrity of state and local government.

The term "public body" includes to (1) a state officer, employee, or a body in the executive branch of state government; (2) a member, employee, or agency or other entity of the legislative branch of the state government; (3) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body; (4) a law enforcement agency or any member or employee of such agency; or (5) the judiciary or any member or employee of the judiciary.

A person who alleges a violation of this statute may bring a civil action for injunctive relief, or actual damages, or both within 2 years after the occurrence of the violation. "Damages" means damages for injury or loss caused by each violation, including reasonable attorney fees. A court shall order, as the court considers appropriate, reinstatement of the employee, payment of back wages, full reinstatement of fringe benefits, actual damages, or any combination of these remedies. A court may also award the complainant all or portion of the litigation costs, if it deems it appropriate. A person who violates this part shall be fined not less than \$500 not more than \$5,000 for each violation.

The statute shall not diminish or impair any rights of any person under any collective bargaining agreement. Where such an agreement provides an employee rights or remedies superior to those in this statute, such contract rights shall supersede and take precedence of the rights, remedies, and procedures in this statute. When the reverse is true, the rights and remedies under the statute shall supersede and take precedence over

what is provided in the collective bargaining agreement. In the event of a conflict between the terms and provisions of this statute and any other law on the subject, the more beneficial provisions favoring the employee shall prevail. The employer is obligated to provide notice to their employees of their rights under the whistleblower statute. Also, whenever a complaint is made, they must provide the employee with additional notice of their rights. Qui tam plaintiffs may be rewarded by the counties or the State for coming forward with information.