

Accountability Report Card Summary 2022
Indiana

Indiana has one of the worst whistleblower laws in the country:

- Scoring only 37 out of a possible 100 points; and
- Ranking 50th out of 51 (50 states and the District of Columbia).

Indiana has poor coverage (10 out of 33 possible points) with a modest degree of usability (17 out of 33) and inadequate remedies (10 out of 33).

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Indiana Accountability Index Report card

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

State Employees Bill of Rights – Ind. Code Ann. § 4-15-10-1 to -8 (1981)

False Claims and Whistleblower Protection – Ind. Code Ann. § 5-11-5.5-6 (2005)

Protection of employees reporting violations of federal, state, or local laws; disciplinary actions; procedure Ind. Code Ann. §36-1-8-8 (1988); §22-5-3-3 (2016)

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	0 points
3. Abuse of authority (including violations of agency policy)	3 points	0 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	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 ²
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>10 points</u>

B. Usability: Scope of Protection (33 points possible from 10 factors)

Do the laws protect disclosures made to –

¹ Any employee of a State agency may report in writing the existence of a violation of federal or state law or regulation, or the misuse of public resources, to a supervisor or inspector general. Ind. Code § 4-15-10-4(a).

² “Nothing in this chapter shall disparage, impair, or limit any other right or legal remedy of an employee. Ind.” Code § 4-15-10-6.

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	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	3 point ³
5. Any federal or non-state governmental entity	3 points	0 points
6. Co-workers or supervisors within the scope of duty	3 points	3 points ⁴
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 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)	5 points ⁶
	<u>Maximum Score</u> 33 points	<u>Awarded Score</u> 17 points

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

³ Burns Ind. Code Ann. § 4-15-10-4(a) (protecting disclosures made to inspector general).

⁴ Burns Ind. Code Ann. § 4-15-10-4(a) (protecting disclosures made to supervisor).

⁵ The statute contains no statute of limitations for filing complaints. However, other Indiana statutes provide statute of limitations for filing complaints. The applicable statutes of limitation are Indiana Code sections 34-11-2-1 (2 years for employment related actions), 34-11-2-11 (10 years for a contract in writing) and 34-11-2-4 (tort actions for harm to person or property).

⁶ Ind. Code § 5-11-5.5-6 (2011) (awards to initial complainant)

State Legislation Protecting State Employee Whistleblowers (updated July 2022)

State: Indiana

Statute: State Employees Bill of Rights – Ind. Code Ann. § 4-15-10-1 to -8 (1981); False Claims and Whistleblower Protection – Ind. Code Ann. § 5-11-5.5-6 (2005); Protection of employees reporting violations of federal, state, or local laws; disciplinary actions; procedure Ind. Code Ann. §36-1-8-8 (1988); §22-5-3-3 (2016).

Provisions: Indiana has a very limited whistleblower protection statute. Any employee of a State agency may report in writing the existence of a violation of federal or state law or regulation, or the misuse of public resources to a supervisor or the inspector general. The employee making the report may not be dismissed, have salary increases or employment related benefits withheld, be transferred or reassigned, be denied promotion, or be demoted. However, an employee must make a reasonable attempt to ascertain the correctness of any information to be furnished and may be subject to disciplinary actions for knowingly furnishing false information. An employer who knowingly or intentionally violates this provision commits a misdemeanor.

No employee shall suffer a penalty or threat of a penalty because he/she exercised rights under this statute. Nothing in the statute shall impair or limit any other right or legal remedy of an employee. Indiana has a false claims and whistleblower statute, which allows qui tam suits by individuals, who may be rewarded by a percentage of a recovery when a suit is successful.

Under §36-1-8-8

- (a) An employee of a political subdivision may report in writing the existence of:
- (1) a violation of a federal law or regulation;
 - (2) a violation of a state law or rule;
 - (3) a violation of an ordinance of a political subdivision; or
 - (4) the misuse of public resources;

first to a supervisor or appointing authority, unless the supervisor or appointing authority is the person whom the employee believes is committing the violation or misuse of public resources. In that case, the employee may report the violation or misuse of public resources in writing to either the supervisor or appointing authority or any official or agency entitled to receive a report from the state ethics commission. If a good faith effort is not made to correct the problem within a reasonable time, the employee may submit a written report of the incident to any person, agency, or organization.

- (b) For having made a report under subsection (a), an employee may not:
- (1) be dismissed from employment;
 - (2) have salary increases or employment related benefits withheld;
 - (3) be transferred or reassigned;
 - (4) be denied a promotion that the employee otherwise would have received; or

(5) be demoted.

(c) Notwithstanding subsections (a) and (b), an employee must make a reasonable attempt to ascertain the correctness of any information to be furnished and may be subject to disciplinary actions for knowingly furnishing false information, including suspension or dismissal, as determined by the employee's appointing authority or the appointing authority's designee. However, any employee disciplined under this subsection is entitled to process an appeal of the disciplinary action under the procedure set forth in any personnel policy or collective bargaining agreement adopted by the political subdivision.

(d) An employer who violates this section commits a Class A infraction.

Under §22-5-3-3

(a) An employee of a private employer that is under public contract may report in writing the existence of:

- (1) a violation of a federal law or regulation;
- (2) a violation of a state law or rule;
- (3) a violation of an ordinance of a political subdivision (as defined in IC 36-1-2-13); or
- (4) the misuse of public resources;

concerning the execution of public contract first to the private employer, unless the private employer is the person whom the employee believes is committing the violation or misuse of public resources. In that case, the employee may report the violation or misuse of public resources in writing to either the private employer or to any official or agency entitled to receive a report from the state ethics commission. If a good faith effort is not made to correct the problem within a reasonable time, the employee may submit a written report of the incident to any person, agency, or organization.

(b) For having made a report under subsection (a), an employee may not:

- (1) be dismissed from employment;
- (2) have salary increases or employment related benefits withheld;
- (3) be transferred or reassigned;
- (4) be denied a promotion that the employee otherwise would have received; or
- (5) be demoted.

(c) Notwithstanding subsections (a) through (b), an employee must make a reasonable attempt to ascertain the correctness of any information to be furnished and may be subject to disciplinary actions for knowingly furnishing false information, including suspension or dismissal, as determined by the employer. However, any employee disciplined under this subsection is entitled to process an appeal of the disciplinary action as a civil action in a court of general jurisdiction.

(d) An employer who violates this section commits a Class A infraction.