

Accountability Report Card Summary 2022
Kansas

Kansas has a fair state whistleblower law:

- Scoring only 56 out of a possible 100 points; and
- Ranking 31st out of 51 (50 states and the District of Columbia).

Kansas has below average coverage (12 out of 33 possible points) with a very good degree of usability (25 out of 33) and fair remedies (18 out of 33), with one bonus point for employee notice of whistleblower rights.

Kansas' full Whistleblower Report Card
Narrative summary of Kansas' law

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Kansas Accountability Index Report card

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

Kansas Whistleblower Act- Kan. Stat. Ann. § 75-2973 (1984); Kansas False Claims Act-
Kan. Stat. Ann. § 75-7506 (2009); Unlawful Acts Against Witnesses and Litigants, Kan.
Stat. Ann. § 44-615 (2004).

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	0 points
5. Danger to health and/or public safety and/or environment	5 points	5 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	0 points
9. Prohibition on “gag orders” to prevent employee disclosures	1 point	1 point ³
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	0 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>12 points</u>

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

Do the laws protect disclosures made to –

¹ K.S.A. § 75-2973(d)(1).

² Disclosures of matters of public concern, including “matters relating to the public health, safety and welfare either specifically or generally,” are protected. K.S.A. § 75-2973(c).

³ No supervisor or appointing authority of any state agency shall prohibit any employee of the state agency from discussing the operations of the state agency or other matters of public concern, including matters relating to the public health, safety and welfare either specifically or generally, with any member of the legislature or any auditing agency. K.S.A. § 75-2973(c)

Factor	Maximum Points	Awarded Points
1. Any person or organization, including public media	24 points	24 points ⁴

Or does the statute protect disclosures made to –

2. Any state executive or legislative body or person employed by such entities	6 points	0 points
3. Testimony in any official proceeding	5 points	0 points ⁵
4. Any state or federal law enforcement or investigative body or entity or its employees	5 points	0 points
5. Any federal or non-state governmental entity	4 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	0 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)	1 point ⁶
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> <u>33 points</u>	<u>Awarded Score</u> <u>25 points</u>

⁴ No state agency supervisor or appointing authority may prohibit an employee of the state agency from reporting any violation of federal or state laws or rules and regulations to any person, agency or organization. K.S.A. § 75-2973(d)(1)

⁵ It shall be unlawful for any person, firm or corporation to discharge any employee or to discriminate in any way against any employee because of the fact that any such employee may testify as a witness before the secretary of labor, or shall sign any complaint or shall be in any way instrumental in bringing to the attention of the secretary of labor any matter of controversy between employers and employees as provided herein. K.S.A § 44-615 (2012).

⁶ A Kansas state classified employee may appeal to the state civil service board a disciplinary action within 90 days after the alleged disciplinary action. A Kansas state employee in the unclassified service may bring a court action within 90 days of the alleged violation of the whistleblower act.

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 ⁷
2. Opportunity for administrative challenge	4 points	4 points ⁸
3. Opportunities for court challenge	4 points	4 points ⁹
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 ¹⁰
7. Actual/constructive damages	3 points	0 points
8. Interim relief, injunction or stay of personnel actions	3 points	0 points
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	3 points ¹¹
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>18 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

56 points

⁷ "Disciplinary action" means any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal or withholding of work. K.S.A. § 75-2973(b)(2).

⁸ K.S.A. § 75-2973(f)

⁹ K.S.A. § 75-2973(f), (h). K.S.A § 75-7506

¹⁰ State personnel board may order certain make whole remedies as they see fit.

¹¹ If the state personnel board finds a violation of the act, it may require that the violator be suspended on leave without pay for not more than 30 days. In case of repeated or willful violations, the board may require that the violator forfeit his/her position as a state officer or employee for a period of not more than 2 years.

¹² "Each state agency shall prominently post a copy of this act in locations where it can reasonably be expected to come to the attention of all employees of the state agency." Kan. Stat. Ann. § 75-2973(g).

State Legislation Protecting State Employee Whistleblowers (updated July 2022)

State: Kansas

Statute: Kansas Whistleblower Act- Kan. Stat. Ann. § 75-2973 (1984), Kansas False Claims Act, Kan. Stat. Ann. § 75-7506 (2009); Unlawful Acts Against Witnesses and Litigants, Kan. Stat. Ann. § 44-615 (2004).

Provisions: No supervisor or appointing authority of any state agency shall (1) prohibit an employee of the state agency from discussing the operations of the state agency or other matters of public concern, including matters relating to the public health, safety, and welfare, either specifically or generally with any member of the Kansas legislature or any auditing agency; (2) prohibit any employee of a state agency from reporting any violation of state or federal rules and regulations to any person, agency, or organization; or (3) require any employee to give notice to the supervisor or appointing authority prior to making any such report.

Any officer or employee of a state agency who is in the classified service and has permanent status under the Kansas civil service act may file a complaint with the state civil service board to allege that a disciplinary action was taken against the officer or employee in violation of this act. "Disciplinary action" means an action concerning the officer's or employee's employment with the state agency, including dismissal, demotion, transfer, reprimand, or other similar actions. The complaint should be filed within 90 days after the alleged disciplinary action. If the board finds that the disciplinary action was unreasonable, the board will modify or reverse the agency's action and shall order such relief as the board finds appropriate. If the board finds a violation of the act, it may require that the violator be suspended on leave without pay for not more than 30 days. In case of repeated or willful violations, the board may require that the violator forfeit his/her position as a state officer or employee for a period of not more than 2 years. The board may award the winning party all, or a portion, of the costs of the proceedings, including reasonable attorneys' fees and witness fees. If the board does not find that the disciplinary action was taken in violation of this statute, the employee may file an appeal in court.

An officer or employee who is in the unclassified service under the Kansas civil service act who alleges that disciplinary action has been taken in violation of this section may bring an action pursuant to the act for judicial review within 90 days after the occurrence of the alleged violation. The court may award the prevailing party all or a portion of the costs of the action, including reasonable attorneys' fees and witness fees.

This statute does NOT (1) prohibit a supervisor or appointing authority from requiring that an employee inform them of legislative or auditing agency requests for information; (2) permit an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and regulations and policies pertaining to leaves, unless the employee is requested by a legislator or legislative committee; (3) authorize an employee to represent the employee's personal opinions as the opinions of a state agency; or (4) prohibit disciplinary action of an employee who discloses information which the

employee knows or should know to be false, exempt from required disclosure under the open records act, or confidential under statute or court rule. Employers must prominently post a copy of this act to provide notice of the public employees rights and obligations under this statute.

Under Kan. Stat. Ann. 75-7506 (2009), Any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner retaliated against in the terms and conditions of employment by such employee's employer because of lawful acts undertaken in good faith by the employee on behalf of the employee or others, in furtherance of an action under this act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this act, shall be entitled to all relief necessary to make the employee whole. An employee may bring an action in the appropriate district court for the relief provided in this section. This section shall not be construed to create any private cause of action for violations of this act and is limited to the remedies expressly created by this section related to employment retaliation.

Under Kan. Stat. Ann. § 44-615, It shall be unlawful for any person, firm or corporation to discharge any employee or to discriminate in any way against any employee because of the fact that any such employee may testify as a witness before the secretary of labor, or shall sign any complaint or shall be in any way instrumental in bringing to the attention of the secretary of labor any matter of controversy between employers and employees as provided herein.