

**Accountability Report Card Summary 2022**  
**Kentucky**

Kentucky has a fair state whistleblower law:

- Scoring 54 out of a possible 100 points; and
- Ranking 34<sup>th</sup> out of 51 (50 states and the District of Columbia).

Kentucky statute has fair coverage (21 out of 33 possible points) with an average degree of usability (15 out of 33) and average remedies (18 out of 33).

***Kentucky's full Whistleblower Report Card***  
***Narrative summary of Kentucky's law***

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**Kentucky Accountability Index Report card**

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

Ky. Rev. Stat. § 61.101-.103 (1986);

Occupational Health and Safety, Ky. Rev. Stat. § 338.121-161 (1986).

**A. Breadth of Coverage (33 points possible from 10 factors).**

Does the statute cover disclosures of –

<b>Factor</b>	<b>Maximum Points</b>	<b>Awarded Points</b>
1. Violation of state or federal law, rules or regulations	6 points	6 points <sup>1</sup>
2. Gross mismanagement	3 points	3 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	5 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	1 point <sup>2</sup> f
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	0 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>

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

Do the laws protect disclosures made to –

<sup>1</sup> Protected disclosure include information regarding “violation of any law, statute, executive order, administrative regulation, mandate, rule, or ordinance of the United States or the Commonwealth of Kentucky, or any facts or information relative to actual or suspected mismanagement, waste, fraud, abuse of authority, or a substantial and specific danger to public health or safety.” KRS § 61.102(1).

<sup>2</sup> “No state employer shall use or threaten to use any official authority or influence, in any manner whatsoever, which tends to deter, coerce, or discriminate against any state employee who in good faith reports” a potential violation, as defined further in the statute. KRS § 61.102(1).

<b>Factor</b>	<b>Maximum Points</b>	<b>Awarded Points</b>
1. Any person or organization, including public media	24 points	0 points
<b>Or</b> 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>
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
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 <sup>5</sup>

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 <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)	0 points
	<b><u>Maximum Score</u></b> <b>33 points</b>	<b><u>Awarded Score</u></b> <b>15 points</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>
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<sup>3</sup> Disclosures may be made to the “Kentucky Legislative Ethics Commission, the Attorney General, the Auditor of Public Accounts, the General Assembly of the Commonwealth of Kentucky or any of its members or employees, the Legislative Research Commission or any of its committees, members or employees, the judiciary or any member or employee of the judiciary, any law enforcement agency or its employees, or any other appropriate body or authority.” KRS § 61.102(1)

<sup>4</sup> Any employee who testifies in an official proceeding shall be afforded the same protections and rights as the employee who makes a protected disclosure. KRS § 61.103(4).

<sup>5</sup> No employer shall require any employee to give notice prior to making such a report, disclosure, or divulgence. § 61.102(1).

<sup>6</sup> Whistleblower may bring a civil action within 90 days after the occurrence of the alleged violation. KRS § 61.103. Under the Occupational Safety and Health statute, an employee may report discrimination with a reasonable time.

1. Prohibition on retaliatory actions affecting a state employee's terms and conditions of employment	4 points	3 points <sup>7</sup>
2. Opportunity for administrative challenge	4 points	4 points
3. Opportunities for court challenge	4 points	4 points <sup>8</sup>
4. Trial by jury	3 points	0 points
5. Burden shifting upon prima facie showing.	1 point	1 point <sup>9</sup>
6. Make whole remedies (court costs, attorney fees, back pay; restoration of benefits, etc.)	3 points	1 point <sup>10</sup>
7. Actual/compensatory damages	3 points	0 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	2 points	2 points
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>18 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	0 point

**Totals**

**100 points**

**54 points**

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

**State:** Kentucky

**Statute:** Protection for Public Employees, Ky. Rev. Stat. § 61.101-.103 (1986);

<sup>7</sup> Reprisals or use of official authority are prohibited but they are not linked to terms and conditions of employment – reprisal is never defined. Under the Occupational Safety and Health statute, retaliatory actions are prohibited against any employee who has filed a complaint, instituted an investigation, or testified based on any right afforded by the statute.

<sup>8</sup> “Employees alleging a violation of KRS 61.102(1) or (2) may bring a civil action for appropriate injunctive relief or punitive damages, or both, within ninety (90) days after the occurrence of the alleged violation.” KRS § 61.103

<sup>9</sup> KRS § 61.103(3).

<sup>10</sup> Occupational Safety and Health statute contains make-whole remedies.

Occupational Health and Safety Statute, Ky. Rev. Stat. § 338.121-161 (1986).

**Provisions:** No employer shall subject to reprisal, or use or threaten to use any official authority or influence which tends to deter, coerce, or discriminate against any state employee who in good faith reports an actual or suspected violation of any federal or Kentucky law, statute, executive order, administrative regulation, mandate, rule or ordinance, or a mismanagement, waste, fraud, abuse of authority, or a substantial and specific danger to public health and safety. Disclosures may be made to the Kentucky Legislative Ethics Commission, the Attorney General, the Auditor of Public Accounts, the General Assembly of the Commonwealth of Kentucky or any of its members or employees, the judiciary or any member or employee of the judiciary, or any law enforcement agency or its employees. No employer shall require any employee to give notice prior to making such a report, disclosure, or divulgence.

No employer shall subject to reprisal or discriminate against any person who supports, aids, or substantiates any employee who makes public any wrongdoing. These prohibitions shall not be construed as preventing an employer from requiring an employee inform him of an official request made to an agency for information, or the substance of testimony made, or to be made, by the employee to legislators on behalf of the agency. These prohibitions do not bar disciplinary or punitive action of an employee if an employee discloses information which he knows to be false or which he discloses with reckless disregard for its truth or falsity, is exempt from disclosure under statute, or confidential under any other provision of law.

Notwithstanding the administrative remedies available under Kentucky law, an employee alleging an employer's violation of the prohibition against reprisal and discrimination may bring a civil action for injunctive relief or punitive damages, or both, within 90 days after the occurrence of the alleged violation. An employee must show that a *prima facie* case of reprisal has been established by a preponderance of the evidence and that the disclosure was a contributing factor in the personnel action. Once such a case is made, the burden of proof shall be on the employer to prove by clear and convincing evidence that the disclosure was not a material fact in the personnel action. Any employee who testifies in an official proceeding shall be afforded the same protections and rights as the employee who makes a disclosure under this statute.

Relevant provisions of the Occupational Health and Safety Statute concern the violation of the occupational health and safety statute by employers. An employee who believes there has been a violation of the statute may request an inspection by giving notice to the executive director. An employer may not discharge or discriminate against an employee because the employee has filed any complaint or institute any proceeding or has or will testify because of the exercise by such employee on of any right afforded by the Occupational Health and Safety code. Any employee who believes he or she has been discriminated against may, within a reasonable time of such violation, file a complaint with the executive director.