

Accountability Report Card Summary 2022
Louisiana

Louisiana has a below average state whistleblower law:

- Scoring 45 out of a possible 100 points; and
- Ranking 45th out of 51 (50 states and the District of Columbia).

Louisiana's statute has restricted coverage (10 out of 33 possible points) with a limited degree of usability (14 out of 33) and useful remedies (20 out of 33), with one bonus point for employee notice of whistleblower rights.

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

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

Code of Governmental Ethics - La. Rev. Stat. Ann. § 42:1169 (1979)

Interference with Individual Rights - La. Rev. Stat. Ann. § 23:967 (1997)

Hurricane Relief Programs Integrity Act - La. Rev. Stat. Ann. § 39:2163 (2006)

Public Employees Who Disclose Violations of Environmental Laws, Rules, or Regulations - La. Rev. Stat. Ann. § 30:2027 (1981).

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	1 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	2 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 point 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	0 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>10 points</u>

¹ Code of Governmental Ethics, La. R.S. 42:1169(A).

² The Code of Government Ethics also protects disclosures of “acts of impropriety,” but does not define the term. La. R.S. 42:1169(A), (B).

³ Report of threatened or actual environmental violations are covered. La. R.S. 30:2027 (2011).

⁴ La. R.S. § 23:967(A)(3).

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 ⁵ .

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
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	4 points	0 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

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

⁵ There are 2 Louisiana statutes protecting reprisals. The first covers a public employing reporting to an agency head or board, as well as to a person or entity of competent jurisdiction. The second statute provides for disclosures, but doesn't make clear to whom the disclosure is made. However, the employee must first advise the employer of the violation of law.

⁶ La. R.S. § 23:967(A)(2).

⁷ There are no statute of limitations in each of the two Louisiana whistleblower statutes. However, in *Nolan v Jefferson Parish Hosp. Serv. Dis. No. 2*, 870 So. 2d 236 (La. App. 2003), the court concluded that the cause of action was subject to the general one-year prescriptive period for delictual actions provided in La. Civ. Code Ann. art. 3492.

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 ⁸
	<u>Maximum Score</u> 33 points	<u>Awarded Score</u> 14 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 ⁹
2. Opportunity for administrative challenge	4 points	4 points ¹⁰
3. Opportunities for court challenge	4 points	4 points ¹¹
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 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	2 points ¹⁴
11. Personnel actions against managers found to have retaliated	3 points	0 points
	<u>Maximum Score</u>	<u>Awarded Score</u>

⁸ Qui tam actions may only be brought regarding medical assistance programs, and are limited to private citizens. The Hurricane Relief Programs Integrity Act offers protections for private employees in Qui tam actions but not to public employees.

⁹ La. R.S. 42:1169(A), (B).

¹⁰ La. R.S. 42:1169(B)(1).

¹¹ La. R.S. 42:1169(E).

¹² La. R.S. 42:1169(B)(2).

¹³ La. R.S. 23:967(C)(2).

¹⁴ The Code of Government Ethics states that “any employee...who violates this Section shall be subject to the same fines and penalties provided for other violations of this Chapter. In addition, if the board, following a public hearing, finds there is probable cause to believe that a person has violated a criminal law of this state...the board shall forward a copy of its findings to the district attorney of the parish in which the violation occurred for appropriate action.” La. R.S. 42:1169(D).

State Legislation Protecting State Employee Whistleblowers (updated July 2022)

State: Louisiana

Statute: Code of Governmental Ethics- La. Rev. Stat. Ann. § 42:1169 (1979)
Interference with Individual Rights - La. Rev. Stat. Ann. § 23:967 (1997)
Hurricane Relief Programs Integrity Act La. Rev. Stat. Ann. § 39:2163 (2006)
Public Employees Who Disclose Violations of Environmental Laws, Rules, or Regulations- La. Rev. Stat. Ann. § 30:2027 (1986).

Provisions: Louisiana has four statutes which together protect public employees' disclosure of information concerning wrongdoing from reprisal actions.

The Code of Governmental Ethics provides that any public employee who reports information which the employee reasonably believes is a violation of law within the jurisdiction of the board or a violation of any order, rule, or regulation issued under the Code of Government Ethics, or any other alleged acts of impropriety within any government entity, shall be free from discipline, reprisal, or threats of discipline or reprisal for reporting such acts of impropriety. Disclosures may be made to his agency head or the Louisiana personnel board.

In addition, any public employee who reports to a person or entity of competent jurisdiction information which he reasonable believes is a violation of any law or if any order, rule, or regulation issued in accordance with law or any other alleged acts of impropriety related to the scope or duties of public employment or public office within any branch of state government shall be free from discipline, reprisal, or threats of discipline or reprisal for reporting such acts of alleged impropriety.

In the event that any such public employee is suspended, demoted, or dismissed in violation of this statute, the employee shall report such action to the board. Any employee wrongfully dismissed, suspended, or demoted shall be entitled to receive any lost income and benefits for the period of any dismissal, suspension, or demotion. Any person who violates this statute is subject to the same fines and penalties provided for other violations of the Code of Governmental Ethics. The employee may also bring a civil action. The statute's provisions must be conspicuously posted in the workplace.

A miscellaneous provision of the Louisiana Workforce Investment Council statutes, La. Rev. Stat. Ann. § 23:967, applies to both state public and private employees. An employer shall not take reprisal against an employee who in good faith, and after advising the employer of the violation of law, (1) discloses or threatens to disclose a workplace act or practice in violation of state law, (2) provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into any violation of law, or (3) objects to, or refuses to, participate in an employment act or practice that is in violation of law. "Reprisal" includes firing, layoff, loss of benefits or any discriminatory action the court finds was taken as a result of an action by the employee that is protected under the statute.

An employee may commence a civil action against any employer who engages in a prohibited practice. If the court finds that the statute has been violated, the plaintiff may recover from the employer damages, including compensatory damages, back pay, benefits, reinstatement, reasonable attorney fees, and court costs.

The statute protecting disclosures regarding environmental quality, La. Rev. Stat. Ann. § 30:2027, applies to public employees who disclose violations of environmental laws, rules, and regulations. No employer may act in a retaliatory manner against an employee who in good faith (1) discloses or threatens to disclose an activity that the employee reasonably believes is in violation of an environmental law, rule or regulation or (2) provides information to or testifies about any environmental violation by the employer.

An employee against whom retaliatory action is taken may commence a civil action in a district court and shall recover from his employer triple damages resulting from the action taken against him and all court costs and attorney's fees if the court finds the statute has been violated.

Moreover, under the Hurricane Relief Programs Integrity Act – La. Rev. Stat. Ann. § 39:2163 (2006)

No employee shall be discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner in the terms and conditions of his employment because of any lawful act engaged in by the employee or on behalf of the employee in furtherance of any action taken pursuant to this Chapter in regard to a person from whom recovery is or could be sought. Such an employee may seek any and all relief for his injury to which he is entitled under state or federal law.

No individual shall be threatened, harassed, or discriminated against in any manner by a business organization, government agency, or other person because of any lawful act engaged in by the individual or on behalf of the individual in furtherance of any action taken pursuant to this Chapter in regard to a person from whom recovery is or could be sought. Such an individual may seek any and all relief for his injury to which he is entitled under state or federal law.