

Accountability Report Card Summary 2022
Michigan

Michigan has a below average state whistleblower law:

- Scoring 47 out of a possible 100 points; and
- Ranking 42nd out of 51 (50 states and the District of Columbia).

Michigan's statute has rather incomplete coverage (9 out of 33 possible points) with a fair degree of usability (18 out of 33) and fair remedies (19 out of 33) plus the one bonus point awarded for employee notification of rights.

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

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Michigan Accountability Index Report card

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

Whistleblowers’ Protection Act- Mich. Comp. Laws Serv. § 15.361-69 (1980)

Occupational Safety and Health Act- Mich. Comp. Laws Serv. § 408.1065 (1970)

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	2 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	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>9 points</u>

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

¹ State employee may report a violation, or suspected violation of a law, rule or regulation of the state or the United States to a public body. MCLS § 15.362.

² Disclosures regarding safety and health violations are covered by the Occupational Safety and Health Act. MCL § 408.1065.

³ MCL § 15.366.

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
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)	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)	2 points ⁷
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>18 points</u>

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

Does the statute provide for –

Factor	Maximum Points	Awarded Points
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⁴ MCLS § 15.361(d) (defining public body).

⁵ Disclosures are protected if the employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action. MCLS § 15.362.

⁶ Civil action must be brought within 90 days after the occurrence of the alleged violation of the act. MCL § 15.363.

⁷ Qui tam suit is limited to medical assistance obtained through fraud or kickbacks and bribes.

1. Prohibition on retaliatory actions affecting a state employee's terms and conditions of employment		4 points	4 points ⁸
2. Opportunity for administrative challenge		4 points	0 points
3. Opportunities for court challenge		4 points	4 points
4. Trial by jury		3 points	0 points ⁹
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/compensatory damages		3 points	3 points ¹¹
8. Interim relief, injunction or stay of personnel actions		3 points	3 points ¹²
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 ¹³
11. Personnel actions against managers found to have retaliated		3 points	0 points
		<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>19 points</u>

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

Factor	Maximum Score	Awarded Score
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⁸ Employer may not “discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment” because they made a protected disclosure. MCLS § 15.362

⁹ Whistleblower Protection Act does not mention the right to trial by jury.

¹⁰ MCL § 15.364.

¹¹ Employee bringing the complaint may seek and be awarded actual damages. MCL § 15.363(1), .364.

¹² Court can order injunctive relief. MCL § 15.363(1).

¹³ A person who violates the reprisal restrictions in the act shall be liable for a civil fine of not more than \$500. MCL § 15.365.

Posting	1 point	1 point ¹⁴
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Totals

100 points

47 points

¹⁴ MCL § 15.368

State Legislation Protecting State Employee Whistleblowers (updated July 2022)

State: Michigan

Statute: Whistleblowers' Protection Act- Mich. Comp. Laws Serv. § 15.361-69 (1980); Occupational Safety and Health Act- Mich. Comp. Laws Serv. § 408.1065 (1970).

Provisions: The Whistleblowers' Protection Act applies to state employees, except state classified civil service employees. A State employer is prohibited from discharging, threatening, or otherwise discriminating against a state employee regarding the compensation, terms, conditions, locations or privileges of employment because the employee reports, or is about to report, verbally or in writing a violation or suspected violation of a law, regulation or rule, or the employee is requested by a public body to participate in an investigation, hearing, inquiry, or a court action. These disclosures can be made to a public body. This term includes persons in the executive branch of state government; bodies, members or employees of the legislative branch of state government; a law enforcement agency or any member or employee thereof; or the judiciary or any member of employee thereof.

A person who claims the act has been violated may bring a civil action for appropriate injunctive relief or actual damages, or both, within 90 days after the occurrence of the alleged violation of the act. Relief may also include costs of litigation such as reasonable attorney fees, reinstatement of the employee, the payment of back wages, or full reinstatement of fringe benefits and seniority rights.

A person who violates this act shall be liable for a civil fine of not more than \$500.00. The rights under this statute do not interfere with or diminish any rights under a collective bargaining agreement. The employer is required to provide notice to the public employee of their rights and obligations under the statute.

The Occupational Safety and Health Act statute protects public state employees who disclose a violation of the statute. An employer may not discharge or discriminate against an employee because that employee has filed a complaint, instituted a cause of action, or testified about a right afforded by the Act. An employee who believes he has been discharged or discriminated against may file a complaint with the Department of Labor alleging discrimination within 30 days after the violation occurs. Procedures for the Labor Department complaint are detailed in the statute.