

Accountability Report Card Summary 2022
Minnesota

Minnesota has an above average state whistleblower law:

- Scoring 61 out of a possible 100 points; and
- Ranking 18th out of 51 (50 states and the District of Columbia).

Minnesota's statute has limited coverage (16 out of 33 possible points) with a good degree of usability (25 out of 33) and fair remedies (19 out of 33), plus the one bonus point awarded for employee notification of rights.

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

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Minnesota Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale
 Employment, Notice of Termination- Minn. Stat. Ann. § 181.931-937 (1987)
 Occupational Health and Safety- Minn. Stat. Ann. § 182.669 (1973)
 False Claims Against the State- Minn. Stat. Ann. § 15C.01-.16 (2009)

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	3 points ²
6. Communication of scientific opinion or alteration of technical findings	5 points	5 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 ³
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 ⁴
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>16 points</u>

¹ An employer shall not take any adverse action because: (1) the employee, or a person acting on behalf of the employee, in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law. Minn. Stat. § 181.932(1)

² The employee may report violations of health standards, situations that put the public at risk, and findings of a scientific or technical study that the employee, in good faith, believes to be truthful and accurate, including reports to a governmental body or law enforcement official. Minn. Stat. § 181.932(4), (5).

³ Minn. Stat. § 181.932(3).

⁴ Minn. Stat. § 181.932 Subd. 4.

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

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 ⁵
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	3 points	3 points
5. Any federal or non-state governmental entity	3 points	3 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
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 ⁸
	<u>Maximum Score</u>	<u>Awarded Score</u>

⁵ Disclosures may be made to any government body or law enforcement official. Minn. Stat. § 181.932(1)

⁶ Minn. Stat. § 181.932(2).

⁷ While there is no statute of limitations in the statute, under Minnesota law the applicable statute of limitations is 2-years.

⁸ If the prosecuting attorney or a person who brought an action under section 15C.05 prevails in or settles an action under this chapter, the court may authorize the prosecuting attorney or person to recover reasonable costs, reasonable attorney fees, and the reasonable fees of expert consultants and expert witnesses. M.S.A Section 15C.12

	<u>33 points</u>	<u>25 points</u>
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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
2. Opportunity for administrative challenge	4 points	0 points
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/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
Posting	1 point	1 point ¹⁴

Totals

100 points

61 points

⁹ Minn. Stat. § 181.935

¹⁰ Minn. Stat. § 181.935(c).

¹¹ Minn. Stat. § 181.935(c).

¹² Minn. Stat. § 181.935(a).

¹³ \$25 per day civil penalty, not to exceed \$750 per employee for failure to provide written reason for employee’s involuntary termination. Minn. Stat. § 181.935(b).

¹⁴ The Department of Labor and Industry shall promulgate rules for notification of employees by employers of an employee's rights. Minn. Stat. § 181.934.

State Legislation Protecting State Employee Whistleblowers (updated July 2022)

State: Minnesota

Statute: Employment, Notice of Termination- Minn. Stat. Ann. § 181.931-937 (1987); Occupational Health and Safety- Minn. Stat. Ann. § 182.669 (1973); False Claims Against the State- Minn. Stat. Ann. § 15C.01-.16 (2009).

Provisions: The Notice of Termination statute applies to both private and public employees who act as whistleblowers. An employer shall not take any adverse action involving the employee's terms and conditions of employment because: (1) the employee in good faith, reports a violation or planned violation of any federal or state law or rule, including common law; (2) the employee is requested by a public body or office to participate in an investigation, hearing, or inquiry; (3) the employee refuses an employer's order to perform an act the employee has an objective basis in fact to believe violates any state or federal law or regulation and the employee informs the employer that the order is being refused for that reason; (4) the employee, in good faith, reports a situation in which the quality of health care provided by a health care facility or provider violates standard established by federal or state law or (5) the employee communicates the finding of a scientific or technical study that the employee, in good faith, believes to be truthful and accurate, including reports to a government body or law enforcement official. Disclosures may be made to any government body or law enforcement official.

In addition to any remedies otherwise provided by law, an employees injured by a violation of this statute may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief as determined by the court. Moreover, the court may order reinstatement, back-pay, restoration of loss of service credit, if appropriate, compensatory damages and the expungement of any adverse records of an employee who was the subject of the alleged acts of misconduct.

The protections under this statute do not interfere with or diminish collective bargaining rights. The employer must provide notice to their employees of their rights and obligations under this statute.

The Occupational Health and Safety Act gives a state employee who believes he or she has been retaliated against by any person because the employee disclosed a violation or potential violation may file a complaint with the commissioner within thirty days alleging the discriminatory act. Upon receipt, the commissioner shall cause an investigation to be made. If the commissioner determines that a discriminatory act was committed against an employee, they shall refer the matter to the Office of Administrative Hearings.

Under M.S.A. § 15C.14:

(a) An employer must not adopt or enforce any rule or policy forbidding an employee to disclose information to the state, a political subdivision, or a law enforcement agency, or

to act in furtherance of an action under this chapter, including investigation for, bringing, or testifying in the action.

(b) An employer must not discharge, demote, suspend, threaten, harass, deny promotion to, or otherwise discriminate against an employee in the terms or conditions of employment because of lawful acts done by the employee on the employee's behalf or on behalf of others in disclosing information to the state, a political subdivision, or a law enforcement agency in furtherance of an action under this chapter, including investigation for bringing or testifying in the action.

(c) An employer who violates this section is liable to the affected employee in a civil action for damages and other relief, including reinstatement, twice the amount of lost compensation, interest on the lost compensation, any special damage sustained as a result of the discrimination, and punitive damages if appropriate. The employer is also liable for expenses recoverable under section 15C.12, including costs and attorney fees.