

Accountability Report Card Summary 2022
Nevada

Nevada has a protective state whistleblower law:

- Scoring 75 out of a possible 100 points.
- Ranking 3rd out of 51 (50 states and the District of Columbia).

Nevada's statute has below average coverage (18 out of 33 possible points) with great usability (32 out of 33) and average remedies (24 out of 33), plus the one bonus point for requiring notice to employees.

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

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Nevada Accountability Index Report card

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

Nev. Rev. Stat. Ann. § 281.611-671 (2019);

Labor – Occupational Safety and Health: N.R.S. § 618.445 (2020);

State Personnel System: Retention in and Separations from Service – Nev. Rev. Stat. Ann. § 284.383-405 (2017);

Submission of False Claims – Nev. Rev. Stat. Ann. §§ 357.210, .250 (2015).

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	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 ²
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>18 points</u>

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

¹ It is hereby declared to be the public policy of Nevada that a state officer or employee are encouraged to disclose, to the extent not expressly prohibited by law, improper governmental action, and it is the intent of the legislature to protect the rights of a state officer or employee who makes such a disclosure. “Improper governmental action” means any action taken by a state officer or employee in the performance of his or her official duties, whether or not the action is within the scope of his or her employment, which is (a) in violation of any state law or regulation; (b) in violation of a local ordinance; (c) an abuse of authority; (d) a substantial and specific danger to the public health and safety; or (e) a gross waste of public money. Nev. Rev. Stat. Ann. § 281.611

² It is a prohibited practice for a state officer or employee to use his/her official authority to seek to prevent a state employee from disclosing improper government action. Nev. Rev. Stat. Ann. § 281.631.

Do the laws protect disclosures made to –

Factor	Maximum Points	Awarded Points
1. Any person or organization, including public media	24 points	24 points ³

Or does the statute protect disclosures made to –

2. Any state executive or legislative body or person employed by such entities	4points	0 points
3. Testimony in any official proceeding	4 points	0 points
4. Any state or federal law enforcement or investigative body or entity or its employees	3 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	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)	3 points ⁴
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
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>32 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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³ The statute does not specify to whom information about improper government activity should be disclosed. It is the public policy of Nevada that a state officer or employee and a local governmental officer or employee are encouraged to disclose, to the extent not expressly prohibited by law, improper governmental action. Nev. Rev. Stat. Ann. § 281.621

⁴ A civil action must be filed within 3 years of the retaliatory employment action. Nev. Rev. Stat. Ann § 357.250(2) (2013).

1. Prohibition on retaliatory actions affecting a state employee's terms and conditions of employment	4 points	4 points ⁵
2. Opportunity for administrative challenge	4 points	4 points ⁶
3. Opportunities for court challenge	4 points	4 points ⁷
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 ⁸
7. Actual/compensatory damages	3 points	3 points ⁹
8. Interim relief, injunction or stay of personnel actions	3 points	3 points ¹⁰
9. Transfer preference for prevailing whistleblower or ban on blackballing	3 points	0 points
10. Punitive damages or other fines and penalties for willful and intentional actions	3 points	3 points ¹¹
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>24 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

75 points

⁵ Nev. Rev. Stat. Ann. § 281.611(b).

⁶ Nev. Rev. Stat. Ann. § 281.641.

⁷ Provided by Nev. Rev. Stat. Ann. § 284.390.

⁸ Nev. Rev. Stat. Ann. § 284.390 provides for reinstatement and back pay; An employer who violates subsection 2 of NRS 357.240 is liable to the affected employee in a civil action for all relief necessary to make the affected employee whole, including, without limitation, reinstatement with the same seniority as if the discrimination had not occurred or damages in lieu of reinstatement if appropriate, 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. Nev. Rev. Stat. Ann. § 357.250

⁹ Nev. Rev. Stat. Ann. § 357.250

¹⁰ Hearing officer may order a state employee to desist and refrain from engaging in a reprisal or retaliatory action. Nev. Rev. Stat. Ann. § 281.641(2).

¹¹ Nev. Rev. State. Ann. § 357.250 makes punitive damages available "if appropriate."

¹² Must provide written summary of the statute to each public employee. Nev. Rev. Stat. Ann. § 281.661.

State Legislation Protecting State Employee Whistleblowers (updated July 2022)

State: Nevada

Statutes: Nev. Rev. Stat. Ann. § 281.611-671 (2019); Labor – Occupational Safety and Health: N.R.S. § 618.445 (2020); State Personnel System: Retention in and Separations from Service – Nev. Rev. Stat. Ann. § 284.383-405 (2017); Submission of False Claims, –Nev. Rev. Stat. Ann. §§ 357.210, .250 (2015).

Provisions:

Under the Disclosure of Improper Governmental Action statute, the public policy of Nevada is declared to be that a state officer or employee is encouraged to disclose, to the extent not expressly prohibited by law, improper governmental action, and it is the intent of the legislature to protect the rights of a state officer or employee who makes such a disclosure. “Improper governmental action” means any action taken by a state officer or employee in the performance of his or her official duties, whether or not the action is within the scope of his or her employment, which is (a) in violation of any state law or regulation; (b) an abuse of authority; (c) a substantial and specific danger to the public health and safety; or (d) a gross waste of public money. The statute does not provide to whom such information should be disclosed, e.g. the legislature, a public body, inspector generals, supervisor or head of an agency.

A state officer or employee shall not directly or indirectly use his official authority or influence to intimidate, threaten, coerce, command or attempt to intimidate, threaten, coerce, command or influence another state officer or employee in an effort to interfere or prevent the disclosure of information concerning improper governmental action. If any reprisal or retaliatory action is taken against a state officer or employee who discloses information concerning improper governmental action within 2 years after the information is disclosed, the state officer or employee may file a written appeal with a hearing officer of the department of personnel for a determination of whether the action was a reprisal or retaliatory action. The statute contains a broad definition of “reprisal or retaliatory action,” which includes but is not limited to dismissal, demotion, suspension, transfer, reduction in pay, or the refusal to assign meaningful work. The employee must file a complaint within 10 days of the allegedly retaliatory action. A civil action may not be brought more than 3 years after the date of the allegedly retaliatory action.

Notice of internal administrative investigations allegations against employee must be provided “within 30 days after the date on which the appointing authority becomes aware, or reasonably should have become aware, of the allegations.”

If the appointing authority does not make a determination within 90 days after the employee is provided notice of the allegations or within any extended time period approved pursuant to subsection 2, the appointing authority shall not take any disciplinary action against the employee pursuant to NRS 284.385 which is based on those allegations.”

If the hearing officer determines that action taken was a reprisal or retaliatory action, he may issue an order directing the proper person to desist and refrain from engaging in such

action. The hearing officer shall file a copy of his decision with the governor or any other elected state officer who is responsible for the actions of that person. The hearing officer may not rule against the state officer or employee based on the person or persons to whom the improper governmental action was disclosed. Judicial review of administrative determination may be made under the State Personnel System statute.

A state officer or employee shall not use the provisions of the statute to harass another state officer or employee. These provisions are intended to be directory and preventative rather than punitive, and do not abrogate or decrease the effect of any provisions of the Nevada Revised Statutes which define crimes or prescribe punishments with respect to the conduct of state officers or employees.

Qui tam suits are permitted for public employees on the same terms as provided to private citizens under Nev. Rev. Stat. Ann. § 357.210. Under this provision, a plaintiff is entitled to at least 15% and no more than 25% of any recovery if the Attorney General intervenes in the action, and no more than 30% if the Attorney General does not intervene.

Under the Occupational Safety and Health statute, an employer shall not discharge or discriminate against an employee because the employee has filed a complaint, instituted a proceeding, or testified against the employer based on any right afforded by the chapter. If such an action is taken against an employee, the employee may file a complaint, after first notifying his employer and the division of his intention to file the complaint. The complaint must be filed within 30 days after the violation occurred. Upon receipt, the administrator shall cause an investigation as he deems appropriate. If he finds a violation, he shall bring an action in the name of the administrator in district court. Possible relief includes reinstatement and reimbursement for lost wages and work benefits.

Under Nev. Rev. Stat Ann. § 357.250, if an employee, contractor or agent is discharged, demoted, suspended, threatened, harassed or discriminated against in the terms and conditions of employment as a result of any lawful act in furtherance of an action brought pursuant to this chapter, he or she is entitled to all relief necessary to make him or her whole, including, without limitation, reinstatement with the same seniority as if the discharge, demotion, suspension, threat, harassment or discrimination had not occurred or damages in lieu of reinstatement if appropriate, twice the amount of lost compensation, interest on the lost compensation, any special damage sustained as a result of the discharge, demotion, suspension, threat, harassment or discrimination and punitive damages if appropriate. The employee, contractor or agent may also receive compensation for expenses recoverable pursuant to NRS 357.180, costs and attorney's fees.