

**Accountability Report Card Summary 2018**  
**Maine**

Maine has a relatively poor state whistleblower law:

- Scoring 53 out of a possible 100 points; and
- Ranking 36<sup>th</sup> out of 51 (50 states and the District of Columbia).

Maine's statute has fairly narrow coverage (13 out of 33 possible points) with a poor degree of usability (16 out of 33) and useful remedies (23 out of 33), plus the one bonus point awarded for employee notification of rights.

*Maine's full Whistleblower Report Card*                      *page 2*  
*Narrative summary of Maine's law*                              *page 5*

**Maine State Accountability Index Report card**

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

Whistleblowers’ Protection Act- Me. Rev. Stat. tit. 26, § 831-40 (2011)

5 M.R.S. § 4611-14 (2011) as amended by 2012 Me.Legis.Ch.613 (S.P.487) (L.D.1530)

**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 <sup>1</sup>
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	5 points <sup>2</sup>
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 <sup>3</sup>
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 <sup>4</sup>
	<b><u>Maximum Score</u></b> <b><u>33 points</u></b>	<b><u>Awarded Score</u></b> <b><u>13 points</u></b>

**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

<sup>1</sup> 26 M.R.S. § 833(1)(A).

<sup>2</sup> 26 M.R.S. § 833(1)(B).

<sup>3</sup> 26 M.R.S. § 833(1)(D)

<sup>4</sup> 26 M.R.S. § 837.

Or does the statute only protect disclosures made to –

2. Any state executive or legislative body or person employed by such entities	4 points	4 points <sup>5</sup>
3. Testimony in any official proceeding	4 points	4 points <sup>6</sup>
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 points <sup>7</sup>
5. Any federal or non-state governmental entity	3 points	3 points <sup>8</sup>
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 <sup>9</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)	2 points <sup>10</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>16 Points</b>

<sup>5</sup> 26 M.R.S. § 832(4)(A)-(B)

<sup>6</sup> Disclosure is protected if “the employee is requested to participate in an investigation, hearing, or inquiry held by a public body, or in a court action.” 26 M.R.S. § 833(1)(C).

<sup>7</sup> 26 M.R.S. § 832(4)(E)

<sup>8</sup> Can report to a “public body,” which includes “A county, municipal, village, intercounty, intercity or regional governing body, a council, school district or municipal corporation, or a board, department, commission, council, agency or any member or employee thereof.” Me. Rev. Stat. tit. 26, § 832(4)(C)

<sup>9</sup> The employee must first bring “the alleged violation, condition or practice to the attention of a person having supervisory authority” and provide the employer an opportunity to correct that violation. “Prior notice to an employer is not required if the employee has specific reason to believe that reports to the employer will not result in promptly correcting the violation, condition or practice.” 26 M.R.S. § 833(2).

<sup>10</sup> Complaint to Human Rights Commission must be made within 300 days of such act and must be filed in order to be able to file a court case. The time frame has remained the same in the 2012 amendments to 5 M.R.S.A. § 4611.

**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>
1. Prohibition on retaliatory actions affecting a state employee's terms and conditions of employment	4 points	4 points <sup>11</sup>
2. Opportunity for administrative challenge	4 points	4 points <sup>12</sup>
3. Opportunities for court challenge	4 points	4 points <sup>13</sup>
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
7 Actual/compensatory damages	3 points	3 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 <sup>14</sup>
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>23 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	1 point <sup>15</sup>

**Total Points**

**100 Points**

**50 Points**

<sup>11</sup> No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because of a protected disclosure. 26 M.R.S. § 833(1).

<sup>12</sup> Claims may be brought before the Maine Human Rights Commission. 26 M.R.S. § 834-A.

<sup>13</sup> The employee must exhaust administrative remedies with the Human Rights Commission, or the Human Rights Commission under certain circumstances will issue a right to sue letter to the whistleblower. 5 M.R.S. § 4612.

<sup>14</sup> Penalties for violation 26 M.R.S. § 836.

<sup>15</sup> 26 M.R.S. § 839.

## **State Legislation Protecting State Employee Whistleblowers (updated June 2018)**

### **State-** Maine

**Statute-** Whistleblowers' Protection Act- Me. Rev. Stat. tit. 26, § 831-40 (2011)  
5 M.R.S. § 4611-14 (2011) as amended by 2012 Me.Legis.Ch.613 (S.P.487) (L.D.1530)

**Provisions-** The Maine Whistleblowers' Protection Act applies to both public and private entities. Under the statute no employer may threaten or otherwise discriminate against an employee because the employee (1) acting in good faith reports, orally or in writing, to the employer or a public body what the employee has reasonable cause to believe is a violation of a federal or Maine law; (2) acting in good faith reports to the employer or a public body what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual; (3) is requested to participate in an investigation, hearing, or inquiry held by that public body, or in a court action; (4) acting in good faith has refused to engage in an activity that would be a violation of a federal or Maine law or would expose the employee or any individual to a condition that would result in serious injury or death. Disclosures may be made to public bodies, which includes an agency, board, commission, council, member or employee of the legislative branch of the Maine government.

The employee must first approach a supervising authority with the information, and permit the employer a reasonable opportunity to correct the illegal activity or dangerous condition. Such prior notice is not required if the employee has specific reason to believe that reports to the employer will not result in promptly correcting the violation, condition, or practice.

An employee who alleges a violation of that employee's rights under section 833, and who has complied with the requirements of section 833, subsection 2, may bring a complaint before the Maine Human Rights Commission for action under Title 5, section 4612. Alternatively, the complaint can go directly to a superior court, pursuant to Me. Rev. Stat. Ann. tit. 5, § 4621. *Palesky v. Topsham*, 614 A.2d 1307, 1992 Me. LEXIS 240 (Me. 1992). Court action must be started within 2 years of retaliatory act. A complaint to the Human Rights Commission must be made within 6 months of such act. Also, the Human Rights Commission under certain circumstances will issue a right to sue letter to the whistleblower as long as he has first filed a complaint with the Human Rights Commission. The statute shall not be construed to diminish or impair the rights of a person under a collective bargaining agreement, or, to derogate any common-law rights of an employee. Employer must provide employees with significant notice of their rights and obligations under the Whistleblowers' Protection Act.

The Maine whistleblower statute does not specify that there should be a trial by jury in court cases challenging a retaliatory action. However, Article 1, § 20 of the Maine Constitution provides that in all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced. This section provides a broad constitutional guarantee of a right

to a jury in all civil cases, except where, by the common law and Maine statutory law that existed prior to the adoption of the Maine Constitution in 1820, such cases were decided without a jury.

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