

Accountability Report Card Summary 2018
New Hampshire

New Hampshire has a comprehensive state whistleblower law:

- Scoring 70 out of a possible 100 points;
- Ranking 8th out of 51 (50 states and the District of Columbia).

New Hampshire's statute has poor coverage (22 out of 33 possible points) with good usability (29 out of 33) and average remedies (18 out of 33), plus the one bonus point awarded for employee notification of rights.

New Hampshire's' full Whistleblower Report Card
Narrative summary of New Hampshire law

page 2
page 5

New Hampshire Accountability Index Report card

Coverage, Usability & Strength — Rating on a 100 Point Scale-
 Whistleblowers’ Protection Act- N.H. Rev. Stat. Ann. § 275-E:1-7 (2012)
 State Employee Freedom of Expression- N.H. Rev. Stat. Ann. § 98-E:1-4 (2012)
 Workers’ Right to Know Act N.H. Rev. Stat. Ann. 277-A:6, 7 (2012)

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	3 Points ²
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	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>22 Points</u>

¹ N.H. Rev. Stat. § 275-E:2(a)

² N.H. Rev. Stat. 275-E:9 (expanding protection to disclosures regarding gross mismanagement, abuse of authority, waste of funds, and risk to public health and safety).

³ No employer may harass or discriminate against an employee who objects or refuses to participate in any activity which they could reasonably believe to be in violation of the law. N.H. Rev. Stat. § 275-E:2(b)

⁴ N.H. Rev. Stat. § 275-E:5

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	24 Points ⁵

Or does the statute only protect disclosures made to –

2. Any state executive or legislative body or person employed by such entities	4 points	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 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> 33 points	<u>Awarded Score</u> 29 points

⁵ “No governmental entity shall threaten, discipline, demote, fire, transfer, reassign, or discriminate against a public employee who files a complaint with the department of labor or otherwise discloses or threatens to disclose activities.” NH ST 275-E:9.

⁶ Employee may bring a civil suit within 3 years of the alleged retaliatory action. N.H. Rev. Stat. § 275-E:2.

⁷ N.H. Rev. Stat. § 167:61-e (2011) (applies to Medicaid fraud only).

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 ⁸
2. Opportunity for administrative challenge	4 points	4 Points ⁹
3. Opportunities for court challenge	4 points	4 Points ¹⁰
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 ¹¹
7. Actual/compensatory damages	3 points	0 Points
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	0 Points
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>18 Points</u>

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

Factor	Maximum Score	Awarded Score
Posting	1 point	1 Point ¹³

⁸ N.H. Rev. Stat. § 275-E:2, E:9.

⁹ All whistleblowers must first make a reasonable attempt to challenge retaliatory action through any grievance procedure or similar process at his place of employment. Subsequently, he may obtain a hearing from the Commissioner of Labor, or his/her designee. N.H. Rev. Stat. § 275-E:4.; Any employee, prospective employee or employee representative who believes that he has been discharged, disciplined, or otherwise discriminated against by an employer pursuant to paragraph I shall, within 30 days of such violation, or 30 days after he first obtains knowledge of such violation, file a complaint with the commissioner of labor alleging such discrimination. N.H. Rev. Stat. Ann. § 277-A:7,

¹⁰ N.H. Rev. Stat. § 275-E:2(II).

¹¹ Commission of Labor can order reinstatement, back pay, fringe benefits and seniority rights. § 275-E:4.

¹² The Commissioner can order appropriate injunctive relief. § 275-E:4.

¹³ RSA§ 275-E:7 (2011).

Total

Points 100

70 Points

State Legislation Protecting State Employee Whistleblowers (updated June 2018)

State- New Hampshire

Statutes- Whistleblowers' Protection Act- N.H. Rev. Stat. Ann. § 275-E:1-7 (2012);
State Employee Freedom of Expression- N.H. Rev. Stat. Ann. § 98-E:1-4 (2012);
Workers' Right to Know Act N.H. Rev. Stat. Ann. 277-A:6, 7 (2012)

Provisions- The New Hampshire Whistleblowers' Protection Act applies to both private and public sector employees. No employer shall harass, abuse, intimidate, discharge, threaten, or otherwise discriminate against any employee regarding terms and conditions of employment because: (a) the employee, in good faith, reports or causes to be reported, verbally or in writing, what the employee has reasonable cause to believe is a violation of any law or rule adopted under the laws of this state, a political subdivision of this state, or the United States; or (b) the employee objects to or refuses to participate in any activity that the employee, in good faith, believes is a violation of the law; or (c) the employee, in good faith, participates, verbally or in writing, in an investigation, hearing, or inquiry conducted by any governmental entity, including a court action, which concerns allegations that the employer has violated any law or rule adopted under the laws of this state, a political subdivision of this state, or the United States. A disclosure made by a public employee regarding gross mismanagement, abuse of authority, waste of funds, or risk to public health and safety is also protected.

The statute does not prescribe to whom the employee is to disclose a violation of Federal or New Hampshire law. While it appears that the best option is to disclose the information to the Department of Labor, and that they will eventually handle the allegation no matter what, the statute purposefully leaves open the option for disclosure to any other entity.

An employee who alleges that he has been discriminated against due to their protected disclosure, and who has first made a reasonable effort to maintain or restore his or her rights through any grievance procedure or similar process available at his place of employment, may obtain a hearing with the commissioner of labor or the commissioner's designee. Following such a hearing, the official shall render a judgment on such matter, and shall order, as the official deems appropriate, reinstatement of the employee, the payment of back pay, fringe benefits and seniority rights, any appropriate injunctive relief, or any combination of these remedies. This official's decision may be appealed to the courts. Additionally, the statute sets out a statute of limitations of 3 years for an employee to bring a complaint in court.

This statute shall not be interpreted to diminish or impair the rights of any person under any collective bargaining agreement or any common law rights. Every employer shall post notices as required by the Commissioner of Labor to keep its employees informed about their protections and obligations under the whistleblower statute.

The State Employee Freedom of Expression Act provides that a person employed as a public employee in any capacity shall have a full right to publicly discuss and give opinions as an individual on all matters concerning any government entity and its policies.

Under N.H. Rev. Stat. Ann. § 277-A:7,

No employer shall discharge or cause to be discharged or otherwise discipline or in any manner discriminate against any employee, prospective employee or employee representative because that person has filed any complaint or has instituted or caused to be instituted any proceeding related to the provisions of this chapter, or has exercised any right provided in this chapter.

Any employee, prospective employee or employee representative who believes that he has been discharged, disciplined, or otherwise discriminated against by an employer pursuant to paragraph I shall, within 30 days of such violation, or 30 days after he first obtains knowledge of such violation, file a complaint with the commissioner of labor alleging such discrimination. Upon receipt of such a complaint, the commissioner shall conduct an investigation as he deems appropriate. If, upon investigation, the commissioner determines the allegation to have substance, he may refer the matter to the attorney general for appropriate action.