

Accountability Report Card Summary 2018
New Jersey

New Jersey has an uneven state whistleblower law:

- Scoring 68 out of a possible 100 points; and
- Ranking 12th out of 51 (50 states and the District of Columbia).

New Jersey has a very narrow statute (12 out of 33 possible points) with good usability (26 out of 33) and strong remedies (29 out of 33) plus the one bonus point awarded for employee notification of rights.

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

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New Jersey Accountability Index Report Card

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

Conscientious Employee Protection Act- N.J. Stat. §§ 34:19-1 to -14 (2012)

Public Employee’s Occupational Safety and Health Act- N.J. Stat. §§ 34:6A-25 to -50

Employee Protection Against Reprisals N.J. Stat. § 11A:2-24 (2012);

New Jersey False Claims Act, N.J. Stat. § 2A:32C-1 to -11. (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	0 Points
3. Abuse of authority (including violations of agency policy)	3 points	0 Points
4. Waste of public funds or resources	3 points	3 Points ²
5. Danger to health and/or public safety and/or environment	5 points	2 Points ³
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 ⁴
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	0 Points ⁵
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>12 Points</u>

¹ Employee may disclose information about an activity that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law. N.J.S.A. 34:19-3(a)(1).

² An appointing authority shall not take or threaten to take any action against an employee in the career, senior executive or unclassified service in retaliation for an employee's lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority. N.J. S.A § 11A:2-24

³ Disclosure of workplace health and safety violations are covered. N.J.S.A. 34:6A-45(a).

⁴ May object or refuse to participate in activities the employee reasonably believes are illegal or fraudulent. N.J.S.A. 34:19-3(c).

⁵ If state employee institutes a court action, he waives his rights and remedies under a collective bargaining agreement, any other contract, a State law, rule or regulation or under the common law. N.J.S.A. 34:19-8.

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 ⁶
3. Testimony in any official proceeding	4 points	4 Points ⁷
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	3 Points ⁸
5. Any federal or non-state governmental entity	3 points	3 Points
6. Co-workers or supervisors within the scope of duty	3 points	3 Points
7. Anyone as provided in paragraphs 2 thru 6 (above) without prior disclosure to another state official or supervisor	3 points	0 Points ⁹

Does the state law –

8. Require an investigation by state auditor or other investigative entity of whistleblower disclosures	1 point	1 Point ¹⁰
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 ¹¹

⁶ Disclosures may be made to a supervisor or any public body, meaning “(1) the United States Congress, and State legislature, or any popularly-elected local governmental body, or any member or employee; (2) any federal, State, or local judiciary, or any member or employee thereof, or any grand or petit jury; (3) any federal, State, or local regulatory, administrative, or public agency or authority, or instrumentality thereof; (4) any federal, State, or local law enforcement agency, prosecutorial office, or police or peace officer; (5) any federal, State or local department of an executive branch of government; or (6) any division, board, bureau, office, committee or commission of any of the public bodies described.” N.J.S.A. 34:19-2(c).

⁷ N.J.S.A. 34:19-3(b).

⁸ Workplace health and safety complaints are specifically protected.

⁹ Must provide supervisor with notice and an opportunity to correct. N.J. Stat. Ann. § 34:19-4.

¹⁰ Mandatory investigations are limited to workplace health and safety violations.

¹¹ Employees have one year to file a complaint. N.J.S.A. § 34:19-5. A civil action under this act¹ may not be brought: a. More than six years after the date on which the violation of the act is committed; or

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 ¹²
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>26 Points</u>

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	4 Points
3. Opportunities for court challenge	4 points	4 Points
4. Trial by jury	3 points	3 Points ¹³
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 ¹⁴
7 Actual/compensatory damages	3 points	3 Points ¹⁵
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 ¹⁶
11. Personnel actions against managers found to have retaliated	3 points	3 Points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>29 Points</u>

b. More than three years after the date when facts material to the right of action are known or reasonably should have been known by the State official charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

¹² N.J.S.A. § 2A:32C-1. New Jersey False Claims Act which provides for a cause of action for fraud against the State, as well as appropriate protections for Qui Tam whistleblowers.

¹³ N.J.S.A. 34:19-5.

¹⁴ Court may order “an injunction to restrain any violation of this act which is continuing at the time that the court issues its order; the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position; the reinstatement of full fringe benefits and seniority rights; the compensation for all lost wages, benefits and other remuneration; and the payment by the employer of reasonable costs, and attorney's fees.” N.J.S.A. 34:19-5.

¹⁵ All remedies available in common law tort actions are available to prevailing plaintiffs. N.J.S.A. 34:19-5.

¹⁶ The court may order a civil fine and/or punitive damages. N.J.S.A. 34:19-5.

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

Factor	Maximum Score	Awarded Score
Posting	1 point	1 Point ¹⁷
<u>Total Points</u>	<u>100 Points</u>	<u>68 Points</u>

¹⁷ N.J.S.A. 34:19-7

State Legislation Protecting State Employee Whistleblowers (updated June 2018)

State- New Jersey

Statute- Conscientious Employee Protection Act- N.J. Stat. §§ 34:19-1 to -14 (2012); Public Employee's Occupational Safety and Health Act- N.J. Stat. §§ 34:6A-25 to -50; Employee Protection Against Reprisals N.J. Stat. § 11A:2-24 (2012); New Jersey False Claims Act, N.J. Stat. § 2A:32C-1 to -11. (2012)

Provisions- The New Jersey Conscientious Employee Protection Act (CEPA) applies to both private and public employees. An employer shall not retaliate against an employee or licensed site professional because he/she discloses or threatens to disclose to their supervisor or a public body an activity or policy that the employee reasonably believes is in violation of a law, or rule or regulation promulgated pursuant to law, or is fraudulent or criminal. Retaliation is not permitted against an employee who testifies or provides information to any public body conducting an investigation into a violation of law, or a rule or regulation promulgated pursuant to law, by the employer. An employee may object or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of a law, is fraudulent or criminal, or is incompatible with a clear mandate of public policy concerning the public health, safety, or welfare or protection of the environment. "Retaliatory action" means the discharge, suspension, or demotion of any employee, or other adverse employment action affecting his/hers terms and conditions of employment.

Disclosures may be made to a public body, meaning the any employee or member of the Federal and New Jersey executive branch, legislature, or judiciary, any regulatory, administrative or public agency or authority, law enforcement agency, prosecutorial office, or police or peace officer, and any division, board, bureau, office, committee or commission of any of the previously described public bodies. The employee must bring the matter to the attention of a supervisor by written notice and afford the employer a reasonable opportunity to correct the matter. This prior disclosure shall not be required when the employee is reasonably certain that the matter is known to one or more supervisors or where the employee fears physical harm as a result of the disclosure and the situation is an emergency.

Upon a violation of CEPA provisions, an employee may bring a civil action in court within one year of the retaliatory action. Either party to the action may request a trial by jury. All remedies available in common law tort actions shall be available to a prevailing plaintiff, in addition to any legal or equitable relief provided by the statute or any other statute. Where appropriate, the court shall order injunctive relief, reinstatement of the employee, full fringe benefits and seniority rights, compensation for lost wages, benefits, and other remuneration, and reasonable costs and attorneys' fees. In addition, the court or jury may assess a civil fine of not more than \$10,000 for the first violation and \$20,000 for each subsequent violation, and provide for punitive damages. The filing of a suit under the statute shall be deemed a waiver of the rights and remedies available under any

other contract, collective bargaining agreement, State law, rule or regulation or under the common law.

The New Jersey Public Employee's Occupational Safety and Health Act prohibits discrimination or discipline against any employee because such employee filed a complaint, instituted an action, or testified about a violation of standards for the occupational safety and health of public employees. An employee who believes he has been discriminated against may file a complaint with the commissioner within 180 days from the employee's first knowledge of the violation. The commissioner shall investigate the claim as he deems appropriate. If the commissioner finds for the employee, he is entitled to all appropriate relief, including rehiring or reinstatement to his former position with back pay and reasonable legal costs.

Under N.J. Stat. § 11A:2-24 An appointing authority shall not take or threaten to take any action against an employee in the career, senior executive or unclassified service in retaliation for an employee's lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority. An employee who is the subject of a reprisal action by an appointing authority for the lawful disclosure of information may appeal such action to the Civil Service Commission.

Under New Jersey False Claims Act, N.J. Stat. § 2A:32C-10,

a. No employer shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a State or law enforcement agency or from acting to further a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed under this act.¹

b. No employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a State or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this act.

c. An employer who violates subsection b. of this section shall be liable for all relief necessary to make the employee whole, including reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate, punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorney's fees associated with an action brought under this section. An employee may bring an action in the Superior Court for the relief provided in this subsection.

d. An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by his employer because of participation in conduct which directly or indirectly resulted in a false claim being submitted to the State shall be entitled to the remedies under subsection c. of this section if, and only if, both of the following occurred:

(1) The employee voluntarily disclosed information to a State or law enforcement agency or acts in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed.

(2) The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the fraudulent activity in the first place.