

Accountability Report Card Summary 2018
Rhode Island

Rhode Island has an unbalanced state whistleblower law:

- Scoring 58 out of a possible 100;
- Ranking 26th out of 51 (50 states and the District of Columbia).

Rhode Island has poor coverage (8 of 33 possible points) with a high degree of usability (28 out of 33) and fair remedies (21 out of 33), plus the one bonus point awarded for employee notification of rights.

Rhode Island's full Whistleblower Report Card
Narrative summary of Rhode Island law

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Rhode Island Accountability Index Report card

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

Rhode Island Whistleblowers' Protection Act- 28 R.I. Gen. Laws § 50-1 to -9 (2012)

State False Claims Act- 9 R.I. Gen. Laws Ann. § 1.1-1 to -9 (2016)

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 | 0 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 ² |
| 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 ³ |
| | <u>Maximum Score</u> <u>33 points</u> | <u>Awarded Score</u> <u>8 Points</u> |

¹ Statute protects the disclosure of “a violation which the employee knows or reasonably believes has occurred or is about to occur, of a law or regulation or rule promulgated under the law of this state, a political subdivision of this state, or the United States, unless the employee knows or has reason to know that the report is false.” Gen.Laws 1956, § 28-50-3.

² Gen.Laws 1956, § 28-50-3.

³ Gen.Laws 1956, § 28-50-6.

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 ⁴ |
| 3. Testimony in any official proceeding | 4 points | 4 Points ⁵ |
| 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 | 3 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 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) | 5 Points ⁷ |
| | <u>Maximum Score</u> 33 points | <u>Awarded Score</u> 28 Points |

⁴ Disclosures made to any public body, meaning any state office, agency, law enforcement, the judiciary, or any federal agency, or to a supervisor are protected. Gen.Laws 1956, § 28-50-3, as clarified by the definitions in § 28-50-2.

⁵ Gen.Laws 1956, § 28-50-3(2).

⁶ Three years. Gen.Laws 1956, § 28-50-4(a).

⁷ State False Claims Act- R.I. Gen. Laws Ann. § 9-1.1-1 *et seq.*

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 |
| 3. Opportunities for court challenge | 4 points | 4 Points |
| 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 ⁹ |
| 7. Actual/compensatory damages | 3 points | 3 Points ¹⁰ |
| 8. Interim relief, injunction or stay of personnel actions | 3 points | 3 Points ¹¹ |
| 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>21 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 |

Total Points

100 Points

58 Points

⁸ Gen.Laws 1956, § 28-50-3.

⁹ Gen.Laws 1956, § 28-50-5.

¹⁰ Actual damages. Gen.Laws 1956, § 28-50-4.

¹¹ Gen.Laws 1956, § 28-50-4.

¹² Gen.Laws 1956, § 28-50-8.

State Legislation Protecting State Employee Whistleblowers (updated June 2018)

State- Rhode Island

Statute - Rhode Island Whistleblowers' Protection Act- 28 R.I. Gen. Laws § 50-1 to -9 (2012); State False Claims Act- 9 R.I. Gen. Laws Ann. § 1.1-1 to -9 (2016)

Provisions –

The Rhode Island Whistleblowers' Protection Act applies to both public and private employers. Under the law, an employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because: (1) an employee reports or is about to report to a public body, verbally or in writing, a violation of a federal or state law, regulation, or rule, which the employee knows or reasonable believes has occurred or is about to occur, unless the employee knows or has reason to know that the report is false; (2) an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or in a court action; (3) an employee refuses to violate or assist in violating a federal or state law, rule or regulation; or (4) the employee reports verbally or in writing to the employer or to the employee's supervisor a violation of a federal or state law, regulation or rule, which the employee knows or reasonable believes has occurred or is about to occur. In the latter case, if the report is verbally made, the employee must establish by clear and convincing evidence that the report was made.

Disclosures may be made to a "Public body," which includes (1) a state officer, employee, department, authority, or other bodies in the executive branch of state government; (2) a member, employee, agency, commission and another body in the legislative branch of state government; (3) a law enforcement agency or any member or employee thereof; (3) the judiciary and any member or employee of the judiciary; (4) any other body created by the state or which is primarily funded by or through the state, or any member or employee of such body; or (5) any federal agency. Disclosures may also be made to an employer or supervisor. "Supervisor" means any individual to whom an employer has given the authority to direct the work performance of the affected employee, or any individual who has the authority to take corrective action regarding the violation of a law about which the employee complains.

A person who alleges a violation of the act may bring a civil action for injunctive relief, or actual damages, or both within 3 years after the occurrence of the alleged violation. As the court considers appropriate, it shall order reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. Also, if considered appropriate, a court may award the plaintiff all or part of the costs of litigation, including attorneys' fees.

The statute shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement. Employers must notify employees of their protections and obligations under the Whistleblower statute.

The State False Claims Act imposes liability on any person who (1) knowingly presents, or causes to be presented a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; (3) conspires to commit a violation of subdivisions 9-1.1-3 (1), (2), (3), (4), (5), (6) or (7); (4) has possession, custody, or control of property or money used, or to be used, by the state and knowingly delivers, or causes to be delivered, less property than all of that money or property; (5) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, makes or delivers the receipt without completely knowing that the information on the receipt is true; (6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state, or a member of the guard, who lawfully may not sell or pledge the property; or (7) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state; is liable to the state for a civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than eleven thousand dollars (\$11,000), plus three (3) times the amount of damages which the state sustains because of the act of that person. A person violating this subsection (a) shall also be liable to the state for the costs of a civil action brought to recover any such penalty or damages.

“Claim” means any request or demand, whether under a contract or otherwise, for money or property and whether or not the state has title to the money or property, that: (i) is presented to an officer, employee, or agent of the state; or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or advance a state program or interest, and if the state: (A) provides or has provided any portion of the money or property requested or demanded; or (B) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and (iii) does not include requests or demands for money or property that the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or property.

Any employee, contractor, agent, or associated others who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section, or other efforts to stop one or more violations of this subsection including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee, contractor, agent or associated others whole. Such relief shall include reinstatement with the same seniority status such employee, contractor, agent or associated others would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee, contractor, agent

or associated others may bring an action in the appropriate superior court for the relief provided in this subsection 9-1.1-4(g).