

Accountability Report Card Summary 2018
Vermont

Vermont has a general whistleblower statute for state government employees. It also separately provides protection for reports of work health and safety violations and improper quality of patient care in hospitals or nursing homes.

- Scoring 71 out of a possible 100;
- Ranking 7th out of 51 (50 states and the District of Columbia).

Vermont has good coverage (20 of 33 possible points) with a high degree of usability (27 out of 33) and robust remedies (23 out of 33), plus the one bonus point awarded for employee notification of rights.

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

page 2
page 6

Vermont Accountability Index Report card

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

Whistleblower protection – State Employees – Vt. Stat. Ann. tit. 3, § 971-78 (2012);
Occupational Health and Safety- Employee’s Rights- Vt. Stat. Ann. tit. 21, § 231 (2012)
Vermont False Claims Act- Vt. Stat. Ann. tit. 32, § 630-40 (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	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
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	1 point ³

¹ A state agency, department, appointing authority, official, or employee shall not engage in retaliatory action against a state employee because the state employee refuses to comply with an illegal order or engages in any of the following: (1) providing to a public body a good faith report or good faith testimony that alleges an entity of state government, a state employee or official, or a person providing services to the state under contract has engaged in a violation of law or in waste, fraud, abuse of authority, or a threat to the health of employees, the public, or persons under the care of the state, or (2) assisting or participating in a proceeding to enforce the provisions of this subchapter. Vt. Stat. Ann. tit. 3, § 973(a)

² No state agency, department, appointing authority, or employee shall attempt to restrict or interfere with a state employee’s ability to engage in any of the protected activity. Vt. Stat. Ann. tit. 3, § 973(b)

³ Nothing in this subchapter shall be deemed to diminish the rights, privileges, or remedies of a state employee under other federal or state law or under any collective bargaining agreement or employment contract. Vt. Stat. Ann. tit. 3, § 975(a)

	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>20 Points</u>
--	--	--

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 only 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 a follow-up investigation by state auditor or other investigative entity of whistleblower disclosures	1 point	0 points
--	---------	----------

⁴ “Public body” means: (A) a department head or employee specifically designated or assigned to receive a complaint that constitutes protected activity under this chapter; (B) a board or commission of state government; (C) the Vermont state auditor; (D) a state or federal agency that oversees the activities of a state agency; (E) a law enforcement officer; (F) federal or state court, grand jury, petit jury, law enforcement agency, or prosecutorial office; (G) the general assembly or United States Congress; or (H) an agency officer or employee when acting within the scope of his or her duties. Vt. Stat. Ann. tit. 3, § 972(3)

⁵ No state agency shall require any state employee to discuss or disclose his or her testimony, or intended testimony, prior to an employee's appearance to testify before the general assembly if he or she is not testifying on behalf of an entity of state government. Vt. Stat. Ann. tit. 3, § 973(c)

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 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> <u>33 points</u>	<u>Awarded Score</u> <u>27 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 ⁸
2. Opportunity for administrative challenge	4 points	4 points ⁹
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 ¹⁰
7. Actual/compensatory damages	3 Points	3 points
8. Interim relief, injunction or stay of personnel actions	3 points	3 points

⁶ An action alleging a violation of this subchapter brought under a grievance procedure or similar process shall be brought within the period allowed by that process or procedure. An action brought in superior court shall be brought within 180 days of the date of the alleged retaliatory action. Vt. Stat. Ann. tit. 3, § 978.

⁷ 32 V.S.A. § 630, *et seq.* (2016). Vermont False Claims Act.

⁸ “Retaliatory action” includes any adverse performance or disciplinary action, including discharge, suspension, reprimand, demotion, denial of promotion, imposition of a performance warning period, or involuntary transfer or reassignment that is given in retaliation for the state employee’s involvement in a protected activity. Vt. Stat. Ann. tit. 3, § 972(4)

⁹ May pursue either administrative challenge or challenge in court.

¹⁰ A state employee who brings a claim in superior court may be awarded the following remedies: (1) reinstatement of the employee to the same position, seniority, and work location held prior to the retaliatory action; (2) back pay, lost wages, benefits, and other remuneration; (3) in the event of a showing of a willful, intentional, and egregious violation of this subchapter, an amount up to the amount of back pay in addition to the actual back pay; (4) other compensatory damages; (5) interest on back pay; (6) appropriate injunctive relief; and (7) reasonable costs and attorney’s fees. Vt. Stat. Ann. tit. 3, § 976.

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
11. Personnel actions against managers found to have retaliated	3 points	0 points
	<u>Maximum Score</u> 33 points	<u>Awarded Score</u> 23 Points

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

Factor	Maximum Score	Awarded Score
Posting	1 point	1 point ¹¹

Total Points

100 Points

71 points

¹¹ Every state agency and department shall distribute a copy of this law by August 1, 2008, and shall post and display notices of state employee protection under this subchapter in a prominent and accessible location in the workplace. Vt. Stat. Ann. tit. 3, § 977.

State Legislation Protecting State Employee Whistleblowers (updated June 2018)

State- Vermont

Statutes- Whistleblower protection – State Employees – Vt. Stat. Ann. tit. 3, § 971-78 (2012); Occupational Health and Safety- Employee’s Rights- Vt. Stat. Ann. tit. 21, § 231 (2012); Vermont False Claims Act- Vt. Stat. Ann. tit. 32, § 630-40 (2016).

Provisions- Vermont’s whistleblower protection statute for state government employees contains states the intent that state employees, as trustees and servants of the people, shall be free to report, in good faith and with candor, waste, fraud, abuse of authority, violations of law, or a threat to the health of employees, the public, or persons under the care of the state without fear of reprisal, intimidation, or retaliation. The statute prohibits a state agency or official from engaging in a retaliatory action against a state employee because the state employee refuses to comply with an illegal order or provides to a public body a good faith report or testimony that alleges an entity or official of state government, or a person providing services to the state under contract, has engaged in a violation of law or in waste, fraud, abuse of authority, or a threat to the health of employees, the public, or persons under the care of the state. A state employee may not be subject to retaliatory action for assisting or participating in a proceeding to enforce the provisions of this subchapter. Disclosures may be made to a department head or employee specifically designated or assigned to receive a complaint that constitutes protected activity under this chapter, a board or commission of state government, the Vermont state auditor, a state or federal agency that oversees the activities of a state agency, a law enforcement officer, a federal or state court, grand jury, petit jury, law enforcement agency, or prosecutorial office, the general assembly or the United States Congress, an officer or employee of a state entity when acting within the scope of his or her duties. In order to establish a claim of retaliation based upon the refusal to follow an illegal order, the employee shall assert at the time of the refusal his or her good faith and reasonable belief that the order is illegal.

No state agency, department, appointing authority, official, or employee shall attempt to restrict or interfere with, in any manner, a state employee's ability to engage in any protected activity described. No state agency, department, appointing authority, or manager shall require any state employee to discuss or disclose his or her testimony, or intended testimony, prior to an employee's appearance to testify before the general assembly if he or she is not testifying on behalf of an entity of state government.

Nothing in this subchapter shall be deemed to diminish the rights, privileges, or remedies of a state employee under other federal or state law or under any collective bargaining agreement or employment contract. A state employee who files a claim of retaliation for protected activity with the Vermont labor relations board may not bring such a claim in superior court, and a state employee who files a claim under this subchapter in superior court may not bring a claim of retaliation for protected activity under a grievance procedure or similar process available to the employee. An action alleging a violation of this subchapter brought under a grievance procedure or similar process shall be brought

within the period allowed by that process or procedure. An action brought in superior court shall be brought within 180 days of the date of the alleged retaliatory action. The court may award the employee: reinstatement to the same position, seniority, and work location held prior to the retaliatory action; back pay, lost wages, benefits, and other remuneration; in the event of a showing of a willful, intentional, and egregious violation of this subchapter, an amount up to the amount of back pay in addition to the actual back pay; other compensatory damages; interest on back pay; appropriate injunctive relief; and reasonable costs and attorney's fees.

No employee may divulge information that is confidential under state or federal law, and must indicate that they are not speaking on behalf of the state or state agency. An act by which an employee divulges such information shall not be considered protected activity under this section. Every state agency and department must distribute and post notices of state employee protection under this subchapter in a prominent and accessible location in the workplace.

In addition, Vermont provides whistleblower protection to public employees who have found their employers violation the Occupational Health and Safety Code.

Under this statute, no person shall discharge or in any way discriminate against an employee because that employee has filed a complaint, instituted an action, or testified about any right afforded by the Occupational Health and Safety Code. Moreover, an employee who believes he or she has been retaliated against may within 30 days of such discrimination file a complaint with commissioner. The commissioner shall cause an investigation and take appropriate action. Possible relief includes rehiring or reinstatement with back pay.

Finally, the Vermont False Claims Act provides that: Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent 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 a person associated with the employee, contractor, or agent in furtherance of an action under section 632 of this chapter, or other efforts to stop one or more violations of this chapter.

(b) Notwithstanding any law to the contrary, relief under subsection (a) of this section shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, two 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 attorney's fees. An employee, contractor, or agent may bring an action in the Civil Division of the Superior Court or any other appropriate court for the relief provided in this section.

(c) No employer shall make, adopt, or enforce any rule, regulation, or policy preventing an employee, contractor, or agent from disclosing information to a government or law enforcement agency or from acting to further efforts to stop one or more violations of this

chapter. No employer shall require as a condition of employment, during the term of employment or at the termination of employment that any employee, contractor, or agent agree to, accept, or sign an agreement that limits or denies the rights of such employee, contractor, or agent to bring an action or provide information to a government or law enforcement agency pursuant to this chapter. Any such agreement shall be void.

(d) A civil action under this section may not be brought more than three years after the date when the retaliation occurred and became known to the employee, contractor, or agent.

“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: (A) is presented to an officer, employee, or agent of the State; or (B) 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 to advance a State program or interest, and if the State: (i) provides or has provided any portion of the money or property that is requested or demanded, or (ii) will reimburse directly or indirectly such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded. A claim shall not include a request or demand 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.