

## Side-by-Side Comparison of Vermont’s Whistleblower Protection Law and New Jersey’s CEPA

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### Key Definitions:

<b>New Jersey’s Conscientious Employee Protection Act (“CEPA”)</b>	<b>Vermont State Employees Labor Relations Act; Whistleblower Protection</b>
<ul style="list-style-type: none"> <li>• Defines employer to include both public and private employers.</li> <li>• Defines “public body” to include Congress, the N.J. legislature, elected local government bodies; the federal, N.J., or local judiciary; a federal, N.J., or local regulatory agency; a federal, N.J., or local law enforcement office or prosecutorial office; any department of federal, N.J., or local government; or any division, board, bureau, office, committee, or commission of one of the listed public bodies.               <ul style="list-style-type: none"> <li>○ Includes members or employees of Congress, the N.J. legislature, or the courts.</li> </ul> </li> <li>• Defines “retaliatory action” as the “discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.”</li> </ul>	<ul style="list-style-type: none"> <li>• Defines “employer” to include the State of Vermont, <u>excluding the Legislature and Judiciary</u>, the Office of the Defender General, the Vermont State Colleges, and the University of Vermont. (3 V.S.A. § 902)</li> <li>• Defines “public body” to include a department head or employee designated to receive a whistleblower complaint; a State board or commission; the State Auditor; a State or federal agency that oversees the activities of a State agency; a law enforcement officer; a federal or State court; the General Assembly; Congress; or an officer or employee of any of these bodies that is acting in their official capacity.</li> <li>• Defines “State employee” as a permanent or limited basis employee of the State.</li> <li>• Defines retaliatory action as “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 protected activity.”</li> </ul>

**Protected Actions:**

<b>New Jersey’s Conscientious Employee Protection Act (“CEPA”)</b>	<b>Vermont State Employees Labor Relations Act; Whistleblower Protection</b>
<ul style="list-style-type: none"><li>• Forbids an employer from retaliating against an employee if the employee:<ul style="list-style-type: none"><li>○ Discloses or threatens to disclose to a supervisor or public body an activity, policy, or practice the employee reasonably believes:<ul style="list-style-type: none"><li>▪ Violates a law or regulation (including deception of shareholder, investor, client, etc.)</li><li>▪ Constitutes improper quality of care</li><li>▪ Is fraudulent or criminal</li></ul></li><li>○ Provides information to or testifies before a public body investigating a violation of a law or regulation (including deception of shareholder, investor, client, etc.)</li><li>○ Objects to or refuses to participate in an activity the employee reasonably believes:<ul style="list-style-type: none"><li>▪ Violates a law or regulation (including deception of shareholder, investor, client, etc.)</li><li>▪ Is fraudulent or criminal</li><li>▪ “is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment”</li></ul></li></ul></li></ul>	<ul style="list-style-type: none"><li>• A State agency, department, official, or employee may not retaliate against an employee if the employee:<ul style="list-style-type: none"><li>○ Refuses to follow an illegal order.</li><li>○ Provides a good faith report or testimony that a State government entity, employee, official, or contractor “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.”</li><li>○ Assists or participates in a proceeding to enforce the whistleblower protections.</li></ul></li><li>• A State agency, department, official, or employee may not interfere with an employee’s ability to engage in the protected activities described above.</li><li>• A State agency, department, official, or employee may not require an employee to discuss or disclose his or her testimony if he or she is not testifying on behalf of an entity of State government.</li><li>• “No entity of state government may prohibit a state employee from engaging in discussion with a member of the General Assembly or from testifying before a legislative committee.”</li><li>• A State employee shall not be subject to retaliatory action “as a result of the employee providing information to a legislator or legislative committee.”</li></ul>

**Limitations on Employee Protections for Whistleblower Activity**

<b>New Jersey’s Conscientious Employee Protection Act (“CEPA”)</b>	<b>Vermont State Employees Labor Relations Act; Whistleblower Protection</b>
<ul style="list-style-type: none"> <li>• An employee is not entitled to the whistleblower protections for providing information or testimony to a public body unless the employee provided written notice of the activity that is in violation of the law to a supervisor and gave the employer a reasonable opportunity to correct the issue.                             <ul style="list-style-type: none"> <li>○ However, disclosure is not required if the employee is reasonably certain that the issue is known to the supervisor or the employee reasonably fears physical harm as a result of the disclosure and it is an emergency situation.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• To establish a claim of retaliation based upon the refusal to follow an illegal order, an employee must assert a good faith and reasonable belief that the order is illegal when he or she refuses to follow it.</li> <li>• During testimony to the General Assembly, an employee must be clear that he or she is not testifying on behalf of an entity of State government.</li> <li>• An employee may not reveal confidential information during testimony to the General Assembly.</li> <li>• An employee must request time off and provide as much notice as is reasonably possible if he or she will miss work to testify before the General Assembly.</li> </ul>

**Enforcement and Preemption**

<b>New Jersey’s Conscientious Employee Protection Act (“CEPA”)</b>	<b>Vermont State Employees Labor Relations Act; Whistleblower Protection</b>
<ul style="list-style-type: none"> <li>• CEPA does not diminish rights under any other federal or state law or regulation, or under any collective bargaining agreement or employment contract.                             <ul style="list-style-type: none"> <li>○ However, taking action under CEPA waives alternative rights or remedies provided by contract, state law or regulation, or at common law.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Does not diminish the rights or remedies of a State employee under federal or State law, or under any collective bargaining agreement or employment contract.                             <ul style="list-style-type: none"> <li>○ However, State employee may only bring one action to enforce his or her rights in either Superior Court or through a grievance procedure.</li> </ul> </li> </ul>

## **Remedies for a Violation**

<b>New Jersey’s Conscientious Employee Protection Act (“CEPA”)</b>	<b>Vermont State Employees Labor Relations Act; Whistleblower Protection</b>
<ul style="list-style-type: none"><li>• Allows an employee that has been retaliated against to bring a civil action within one year.</li><li>• An employee that prevails may be granted the following remedies:<ul style="list-style-type: none"><li>○ Any remedy available in a common law tort action (i.e. defamation, intentional infliction of emotional distress, negligent hiring, invasion of privacy, etc.).</li><li>○ Injunctive relief.</li><li>○ Reinstatement in the same or an equivalent position.</li><li>○ Reinstatement of fringe benefits and seniority rights.</li><li>○ Compensation for lost wages and benefits.</li><li>○ Costs and attorney’s fees.</li><li>○ Punitive damages (court may consider damage caused by employer’s actions to others when determining damages).</li></ul></li><li>• Court may also order a civil fine of up to \$10,000 for a first violation and up to \$20,000 for a subsequent violation.</li><li>• Court may award an employer costs and attorney’s fees if the employee filed the civil action without a basis in law or fact.<ul style="list-style-type: none"><li>○ No costs and attorney’s fees awarded to employer if employee dismisses the lawsuit within a reasonable time after determining employer is not liable.</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Allows employee to bring a civil action within 180 days of violation, or a grievance within the time permitted by the collective bargaining agreement (15 days).</li><li>• An employee that brings a civil action in Superior Court may be awarded the following remedies.<ul style="list-style-type: none"><li>○ Reinstatement in same position, seniority, and work location.</li><li>○ Back pay, lost wages, and benefits,</li><li>○ If the violation of the employee’s rights was willful, intentional, and egregious, an additional amount up to the amount of back pay awarded.</li><li>○ Compensatory damages.</li><li>○ Interest on back pay.</li><li>○ Injunctive relief.</li><li>○ Costs and attorney’s fees.</li></ul></li></ul>

**Posting and Notice Requirements**

<b>New Jersey’s Conscientious Employee Protection Act (“CEPA”)</b>	<b>Vermont State Employees Labor Relations Act; Whistleblower Protection</b>
<ul style="list-style-type: none"><li>• An employer must conspicuously display and annually distribute a notice regarding the employees’ protections, rights, obligations, and procedures under CEPA.<ul style="list-style-type: none"><li>○ May provide written or electronic notice.</li><li>○ Notice must be in English, Spanish, and, at employer’s discretion, another language spoken by a majority of the employees.</li><li>○ Commissioner of Labor will provide copies of notice to employer.</li><li>○ Requirement does not apply to employers with 10 or fewer employees.</li></ul></li></ul>	<ul style="list-style-type: none"><li>• “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.”</li></ul>