



ANNUAL REPORT

TO THE GOVERNOR AND THE LEGISLATURE

WHISTLEBLOWER RETALIATION COMPLAINTS COMPLAINTS OF RETALIATION FOR THE DISCLOSURE OF INFORMATION BY PUBLIC EMPLOYEES

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**ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE
COMPLAINTS OF RETALIATION FOR THE DISCLOSURE OF INFORMATION BY
PUBLIC EMPLOYEES (WHISTLEBLOWER RETALIATION)**

June 30, 2002

Introduction

Government Code Section 19683 (F) provides that, "In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigation of reprisals or retaliation for the disclosure of information by public employees, the Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section." This report is prepared by the State Personnel Board (SPB) for the calendar year of January 1, 2001, through December 31, 2001.

Background

Protection for state employees from retaliation for having reported improper governmental activities was first provided in 1985. At that time, the SPB was assigned responsibility for investigation of complaints of whistleblower retaliation.

In 1987, the law was amended and changed to include the requirement that a complaint of improper governmental activity be filed with the Joint Legislative Audit Committee before being filed with the SPB; that the complaint be filed with the SPB within 12 months of the most recent act of reprisal; and that any person who intentionally engages in acts of reprisal be subject to a fine not to exceed \$10,000 and imprisonment in the county jail for a period of one year as determined by the courts.

Effective January 1, 2000, the law was amended to expand the protections granted to whistleblowers. The amendments make it easier for a whistleblower to file a complaint and include, as protected disclosure, the refusal to obey an illegal order. The amendments also change the burden of proof in adverse actions. If any employee subject to adverse action demonstrates that their whistleblowing activity was a contributing factor in the appointing power's bringing the action, the burden is imposed upon the appointing power to prove by clear and convincing evidence that it would have brought the action even if the employee had not blown the whistle.

In October of 2001, a new section was added to Section 87164 of the Education Code relating to whistleblower protection. This language amended the Reporting by

Community College Employees of Improper Governmental Activities Act to include procedures for the investigation and determination of retaliation complaints by the SPB. As of the time period contained in this report, no cases involving community college employees alleging whistleblower retaliation have been filed with the SPB.

Information

In the year 2001, the SPB added a "Frequently Asked Questions" section (FAQ) on whistleblower appeals to our Internet Web site to answer questions regarding who can file, what constitutes an improper employment action based on whistleblowing activities, etc.

The SPB has drafted, with input from interested parties, proposed regulations to implement the whistleblower laws. These regulations are designed to codify the process for filing, processing, hearing, and deciding complaints of whistleblower retaliation in state service. They are additionally designed to inform complaining and responding parties of the standards and procedures utilized by SPB in processing whistleblower retaliation complaints, including the ability of the parties to conduct discovery, to respond to the allegations, and the time frame for the Executive Officer to issue a Notice of Findings concerning the complaint. They are also intended to inform the parties of what disciplinary actions may be taken against individuals who are found to have engaged in impermissible retaliation.

The public comment period for written comments will close on June 3, 2002, at 5:00 p.m.

The SPB is proposing to add Sections 56 through 56.6 to Title 2 of the California Code of Regulations in order to:

1. Set forth the filing requirements that a state or community college employee or applicant for state or community college employment must adhere to when filing a whistleblower retaliation complaint with SPB.
2. Set forth the process and timelines for responding to whistleblower retaliation complaints.
3. Set forth the discovery process for whistleblower retaliation complaints.
4. Set forth the requirements for decisions concerning whistleblower retaliation complaints, including the remedies available to complaining parties.
5. Set forth the appeal rights for all parties to a whistleblower retaliation complaint.

Complaint Activity

**I. Whistleblower Appeals filed
Between January 1, 2001, and December 31, 2001**

Appeal Withdrawn	Appeal Accepted	Total Filed
2	15	17

**II. Disposition of Whistleblower Appeals Accepted
Between January 1, 2001 and December 31, 2001**

Denied	Stipulation Approved	Pending Decision	Total
6	1	8	15

The number of cases received in the year 2001 decreased from those received in the year 2000: 20 cases; and increased from those received in the year 1999: 7 cases.

Detailed Listing Of Complaints Filed In The Calendar Year 2001

Appeal Date	Case #	Department	Decision/status
01/24/01	01-0154	Corrections	Denied by Exec. Officer
02/06/01	01-0262	Forestry & Fire Prot.	Denied by Exec. Officer
02/20/01	01-0706	Corrections	Denied by Exec. Officer
02/23/01	01-0545	Motor Vehicles	Appeal W/D
03/05/01	01-0690	Corrections	Denied by Exec. Officer
04/02/01	01-1006	Transportation	Appeal W/D
06/22/01	01-1870	Corrections	Pending Decision
07/11/01	01-2173	Forestry & Fire Prot.	Denied by Exec. Officer
07/20/01	01-2183E	Youth Authority	Stip, Exec. Officer Adopted
07/30/01	01-2336E	Corrections	Combined W/Adverse Action Pending Hearing
08/06/01	01-2388	Corrections	Pending Hearing
08/24/01	01-2783	Veterans Affairs	Denied by Exec. Officer
08/29/01	01-2736	Prison Indus.Auth.	Pending Decision
10/22/01	01-3415E	Industrial Relations	Pending Decision
11/05/01	01-3638	Fish & Game	Pending Decision
11/21/01	01-3749	Corrections	Pending Decision
12/26/01	01-4146E	Corrections	Pending Hearing