



2011 ANNUAL REPORT TO THE LEGISLATURE

WHISTLEBLOWER RETALIATION COMPLAINTS

Prepared by

State Personnel Board

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June 2012



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

June 30, 2012

Introduction

Government Code section 19683(f) provides, “In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by public employees, the State Personnel Board, by June 30 of each year¹, 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, 2011 through December 31, 2011.

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.

Amendments to the whistleblower retaliation protections were made in 1987, 2000, 2001, 2004 and 2011. In 2002, SPB adopted regulations to implement the whistleblower retaliation laws.

Effective March 8, 2006, the SPB’s regulations were revised to include the requirement that the Executive Officer refer cases for investigation or schedule an informal hearing before an administrative law judge. Effective August 18, 2010, the SPB’s regulations on whistleblower laws were revised as part of a broader revision to SPB’s regulations.

Information

Whistleblowing is defined as either disclosing information that a state or community college employee, or applicant for state or community college employment, reasonably believes is evidence of an improper governmental activity, or refusing to obey an illegal order or directive.

Three agencies play major roles in whistleblower retaliation, the Bureau of State Audits (BSA), the Office of the Inspector General (OIG), and the SPB.

¹ Six reports were produced between 1987 and 1992. In 1992, Chapter 710 legislation (Government Code section 7550.5) instituted a moratorium on most reports to the Legislature. The moratorium was renewed in 1994 and 1996, and became inoperative on October 1, 1999. After the moratorium was finally repealed as of January 1, 2000, Whistleblower Retaliation Reports were again produced for calendar years 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010 and 2011.

BSA accepts complaints in reference to improper governmental activities. BSA is the investigative agency that has jurisdiction to investigate the underlying improper governmental activity.

OIG's specific responsibility in whistleblower retaliation complaints is to investigate complaints of retaliation against those who report misconduct on the part of state correctional agencies and employees. OIG may, with the approval of the complaining employee, forward its investigative findings to the SPB for the purpose of bringing disciplinary action against an employee who is found to have violated the retaliation provisions when the department fails to do so. As an independent agency, OIG reports to the Governor. OIG also provides impartial analysis and policy recommendations to the Governor, the Legislature, and correctional administrators.

SPB is the adjudicatory body that hears and decides whistleblower retaliation complaints filed by state civil service or community college employees; employees of the Supreme Court, Courts of Appeal, Superior Courts, or the Administrative Office of the Courts; or applicants, whom have alleged being subjected to an improper personnel action for disclosing improper governmental activity or refusing to obey an illegal order or directive.

The SPB has jurisdiction in whistleblower retaliation cases when all of the requirements listed below are met:

- A state or community college applicant or employee or employee of the Supreme Court, Courts of Appeal, Superior Courts, or the Administrative Office of the Courts files the complaint. "Employee" includes any former employee who met the above criteria during his or her employment.
- The complaint states a prima facie case of retaliation.
- The appeal is filed within one year of the most recent act of reprisal.
- The names and business addresses of each individual and entity alleged to have committed reprisal or retaliatory acts.
- A sworn statement, under penalty of perjury, that the contents of the complaint are true.

SPB does not accept filed appeals when any of the above requirements are not met or the SPB does not have jurisdiction over the employing entity (e.g. University of California, California State University).

Complaint Activity

In calendar year 2011, 62 whistleblower retaliation complaints were filed, which is approximately a 27% increase from 2010 (49 complaints received). Of the 62 complaints filed in 2011, 12 of those complaints were accepted. Of those 12 cases accepted, none were "granted," 9 were "dismissed," and 3 were consolidated with a pending formal evidentiary hearing before an Administrative Law Judge (ALJ).

**SPB Whistleblower Retaliation Complaints
Activity Report
(January 2011 – December 2011)**

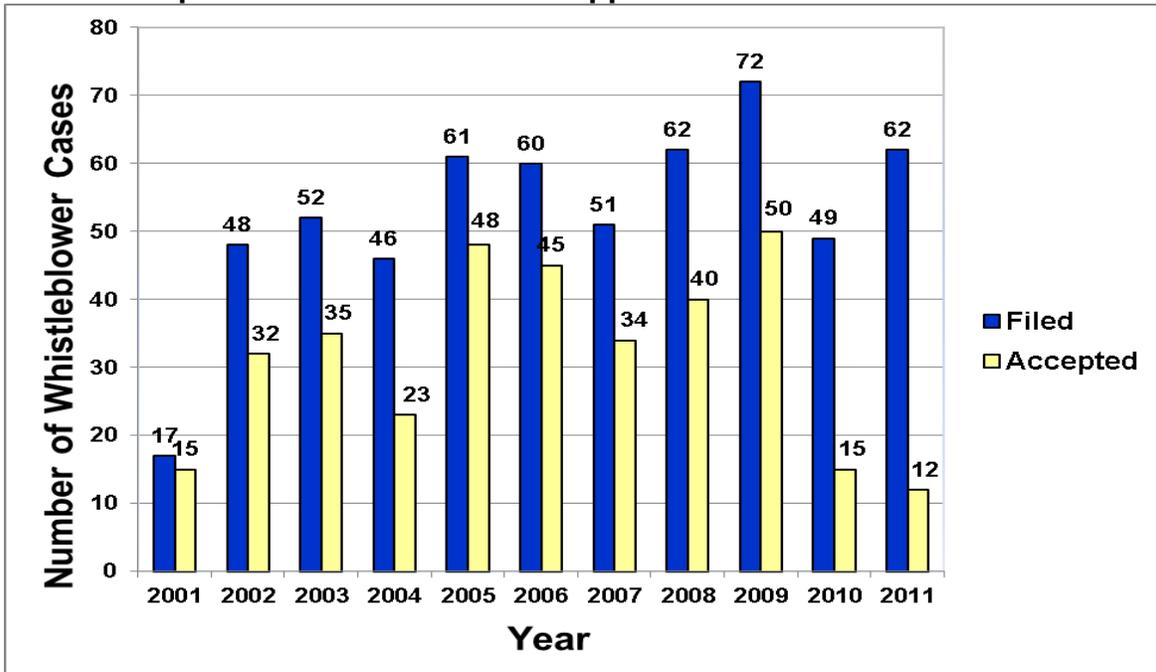
I. Whistleblower Appeals filed

Total Filed	Appeals Not Accepted ²	Appeals Accepted
62	50	12

II. Disposition of Whistleblower Appeals Accepted

Accepted	Denied/Dismissed	Pending Hearing	Stipulated Agreement	Withdrawn	Total
12	50	0	0	0	62

III. Comparison of Whistleblower Appeals filed each Year



² SPB does not accept filed appeals when: (a) The complaint fails to state a prima facie case of retaliation; (b) the complaint is not filed within one year of the most recent act of reprisal; (c) the complaint is not signed by penalty of perjury; or (d) the SPB does not have jurisdiction over the employing entity (e.g. University of California, California State University).

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2011**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Formal/Informal Hearing
1	11-0003	1/3/11	Closed – No Jurisdiction	Consumer Affairs	N/A	No	N/A
2	11-0002	1/4/11	Closed – No Jurisdiction	Developmental Affairs	N/A	Yes	N/A
3	11-0039	1/13/11	Closed – No Jurisdiction	CA Community Colleges	N/A	Yes	N/A
4	11-0007	1/19/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	No	N/A
5	11-0062	1/18/11	Closed – No Jurisdiction	CA Military Department	N/A	Yes	N/A
6	11-0248	2/4/11	Closed – No Jurisdiction	Transportation	N/A	No	N/A
7	11-0286	2/7/11	Closed – No Jurisdiction	Social Services	N/A	Yes	N/A
8	11-0258	1/6/11	Closed – No Jurisdiction	Administrative Office of the Courts	N/A	No	N/A
9	11-0304	2/4/11	Closed – No Jurisdiction	Wildlife Conservation Board	N/A	Yes	N/A
10	11-0364	2/14/11	Closed – No Jurisdiction	Developmental Services	N/A	No	N/A

³ AA: Whistleblower Retaliation Complaint consolidated with prior Adverse Action appeal.
DC: Whistleblower Retaliation Complaint consolidated with prior Discrimination Complaint appeal.
RA: Whistleblower Retaliation Complaint consolidated with prior Reasonable Accommodation Complaint Appeal.
WB: Whistleblower Retaliation Complaint consolidated with prior Whistleblower Retaliation Complaint appeal.
⁴ RDAT: indicates whether complainant requested disciplinary action be taken.

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11	11-0363	2/17/11	Pending Decision	Corrections and Rehabilitation	10-2676	Yes	Formal
12	11-0362	2/22/11	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	Yes	Informal
13	11-0404	2/23/11	Closed – Proposed Decision (Dismissed)	Corrections and Rehabilitation	10-2551	Yes	Formal
14	11-0468	3/1/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	No	N/A
15	11-0486	3/4/11	Closed – No Jurisdiction	Public Health	N/A	Yes	N/A
16	11-0508	3/8/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	No	N/A
17	11-0541	3/8/11	Closed – No Jurisdiction	Water Resources	N/A	Yes	N/A
18	11-0660	3/22/11	Closed – Notice of Findings (Dismissal)	Transportation	N/A	Yes	Informal
19	11-0739	3/28/11	Pending Decision	Commission on Teacher Credentialing	10-5092	No	Formal
20	11-0750	4/5/11	Closed – No Jurisdiction	Veterans Affairs	N/A	Yes	N/A

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21	11-0820	4/8/11	Closed – No Jurisdiction	General Services	N/A	No	N/A
22	11-0843	4/11/11	Closed – No Jurisdiction	Forestry and Fire Protection	N/A	No	N/A
23	11-0914	4/19/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	No	N/A
24	11-1043	5/4/11	Closed – Notice of Finding (Dismissal)	Resource Recycling and Recovery	N/A	Yes	Informal
25	11-1044	5/9/11	Closed – No Jurisdiction	Industrial Relations	N/A	Yes	N/A
26	11-1081	4/21/11	Closed – No Jurisdiction	CA Community Colleges	N/A	Yes	N/A
27	11-1117	5/2/11	Closed – No Jurisdiction	Developmental Services	N/A	No	N/A
28	11-1135	5/10/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	Yes	N/A
29	11-1158	5/24/11	Closed – No Jurisdiction	Veterans Affairs	N/A	No	N/A
30	11-1219	5/26/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	No	N/A

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31	11-1225	5/31/11	Closed – Notice of Findings (Dismissed)	Public Health	N/A	Yes	Informal
32	11-1231	5/26/11	Closed – No Jurisdiction	Employment Development Department	N/A	No	N/A
33	11-1241	6/2/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	No	N/A
34	11-1254	6/6/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	No	N/A
35	11-1352	6/20/11	Closed – No Jurisdiction	Industrial Relations	N/A	Yes	N/A
36	11-1349	6/20/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	No	N/A
37	11-1365	6/21/11	Closed – No Jurisdiction	Veterans Affairs	N/A	Yes	N/A
38	11-1417	6/28/11	Closed – No Jurisdiction	CA Science Center	N/A	No	N/A
39	11-1443	7/7/11	Closed – No Jurisdiction	Industrial Relations	N/A	No	N/A
40	11-1526	7/6/11	Closed – No Jurisdiction	State Compensation Insurance Fund	N/A	No	N/A

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41	11-1559	7/13/11	Closed – No Jurisdiction	Public Health	N/A	No	N/A
42	11-1557	7/12/11	Closed – Notice of Findings (Dismissal)	Health Care Services	N/A	Yes	Informal
43	11-1577	7/19/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	Yes	N/A
44	11-1603	7/18/11	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	No	Informal
45	11-1631	7/26/11	Closed – No Jurisdiction	Administrative Office of the Courts	N/A	No	N/A
46	11-1652	8/1/11	Closed – No Jurisdiction	Transportation	N/A	Yes	N/A
47	11-1743	8/1/11	Closed – No Jurisdiction	CA Highway Patrol	N/A	No	N/A
48	11-1887	9/2/11	Closed – No Jurisdiction	CA military Department	N/A	No	N/A
49	11-1897	9/6/11	Closed – Notice of Findings (Dismissal)	Mental Health	N/A	Yes	Informal
50	11-1958	9/16/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	Yes	N/A

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51	11-1985	9/20/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	Yes	N/A
52	11-2077	10/10/11	Closed – Notice of Findings (Dismissal)	Corrections and Rehabilitation	N/A	Yes	Informal
53	11-2137	10/20/11	Closed – No Jurisdiction	Water Resources	N/A	No	N/A
54	11-2147	10/19/11	Closed – No Jurisdiction	Mental Health	N/A	No	N/A
55	11-2192	10/19/11	Closed – No Jurisdiction	Fish and Game	N/A	Yes	N/A
56	11-2285	11/10/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	Yes	N/A
57	11-2312	11/14/11	Closed – No Jurisdiction	CA Community Colleges	N/A	Yes	N/A
58	11-2293	11/15/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	No	N/A
59	11-2349	11/28/11	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	No	N/A

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60	11-2425	12/8/11	Closed – No Jurisdiction	Financial Institutions	N/A	No	N/A
61	11-2488	12/15/11	Closed – No Jurisdiction	Transportation	N/A	Yes	N/A
62	10-5098 ⁵	9/20/11	Closed – Notice of Findings (Dismissal)	Alcohol and Drug Programs	N/A	Yes	Informal

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⁵ This matter was originally opened as a discrimination complaint and not included in the 2010 Annual Whistleblower Retaliation Report. In 2011, this matter was converted to a whistleblower matter and is therefore included in this 2011 annual report.