



2012 ANNUAL REPORT TO THE LEGISLATURE

WHISTLEBLOWER RETALIATION COMPLAINTS

Prepared by

State Personnel Board

801 Capitol Mall
Sacramento, CA 95814

Patricia Clarey, President
Kimiko Burton, Vice President
Maeley Tom, Member
Richard Costigan, Member
Lauri Shanahan, Member

Suzanne M. Ambrose, Executive Officer

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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, 2013

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, 2012 through December 31, 2012.

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, 2010, 2011, and 2012. 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 an employee or applicant of a state agency, a community college, the California Supreme Court, a court of appeal, a superior court, or the Administrative Office of the Courts, reasonably believes is evidence of an improper governmental activity, or refusing to obey an illegal order or directive.

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.

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

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 2012, 45 whistleblower retaliation complaints were filed, which is approximately a 27% decrease from 2011 (62 complaints received). Of the 45 complaints filed in 2012, 19 of those complaints were accepted. Of the nineteen (19)

cases accepted, four (4) were “granted,” eight (8) were “dismissed,” and four (4) were settled, and three (3) are pending a decision. A detailed complaint activity chart appears on page 5.

**SPB Whistleblower Retaliation Complaints
Activity Report
(January 2012 – December 2012)**

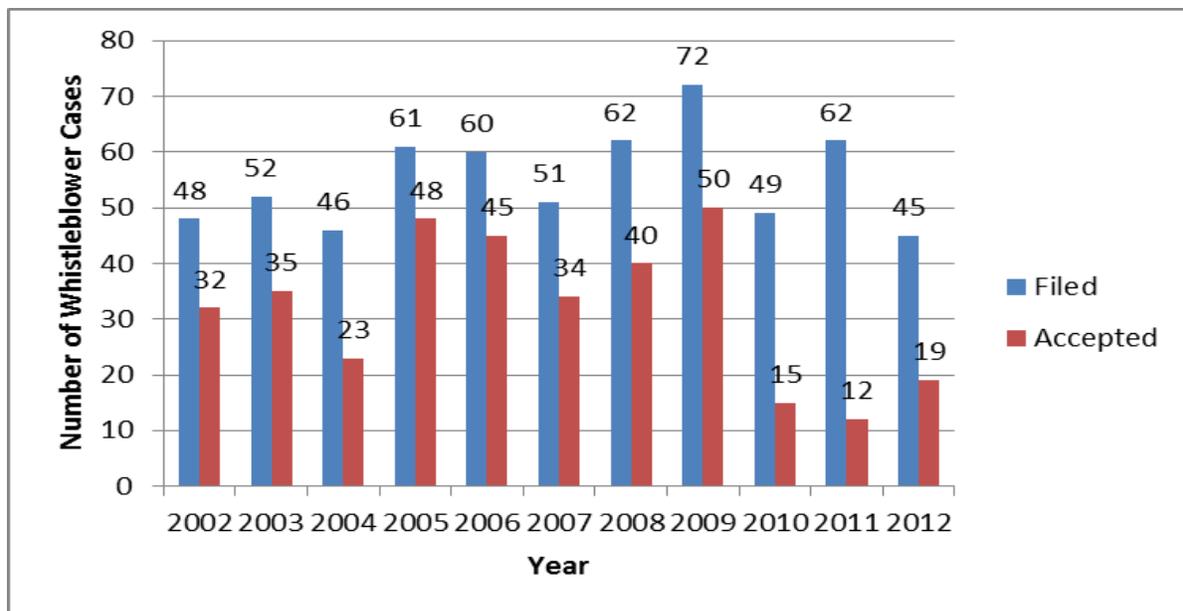
I. Whistleblower Appeals filed

| Total Filed | Appeals Not Accepted ² | Appeals Accepted |
|-------------|-----------------------------------|------------------|
| 45 | 26 | 19 |

II. Disposition of Whistleblower Appeals Accepted

| Accepted | Denied/Dismissed | Granted | Settled | Pending Decision | Pending Hearing |
|----------|------------------|---------|---------|------------------|-----------------|
| 19 | 8 | 4 | 4 | 3 | 0 |

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 2012**

| | Number | Appeal Date | Case Status | Department | Consolidated³ | RDAT⁴ | Formal/Informal Hearing |
|----|---------------|--------------------|---|--------------------------------|---------------------------------|-------------------------|--------------------------------|
| 1 | 12-0041 | 1/10/12 | Failure To Meet Prima Facie Case | Corrections and Rehabilitation | N/A | No | N/A |
| 2 | 12-0085 | 1/20/12 | Failure To Meet Prima Facie Case | Transportation | N/A | No | N/A |
| 3 | 12-0118 | 1/27/12 | Closed – No Jurisdiction | CA State University | N/A | No | N/A |
| 4 | 12-0224 | 2/16/12 | Closed – Settled | Mental Health | N/A | Yes | Informal |
| 5 | 12-0298 | 3/02/12 | Closed – Notice of Findings (Dismissed) | CA Community Colleges | N/A | Yes | Informal |
| 6 | 12-0306 | 3/5/12 | Failure To Meet Prima Facie Case | Corrections and Rehabilitation | N/A | Yes | N/A |
| 7 | 12-0339 | 3/7/12 | Failure To Meet Prima Facie Case | Motor Vehicles | N/A | No | N/A |
| 8 | 12-0588 | 4/26/12 | Closed – Notice of Findings (Dismissed) | CA Community Colleges | N/A | Yes | N/A |
| 9 | 12-0611 | 5/2/12 | Closed – No Jurisdiction | CA State University | N/A | No | N/A |
| 10 | 12-0647 | 5/2/12 | Closed – Settled | CA Community Colleges | N/A | Yes | 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 other Whistleblower Retaliation Complaint appeal.
⁴ RDAT: indicates whether complainant requested disciplinary action be taken.

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| 11 | 12-0663 | 5/04/12 | Closed – Notice of Findings (Dismissed) | CA Community Colleges | N/A | No | Informal |
| 12 | 12-0652 | 5/08/12 | Failure To Meet Prima Facie Case | Corrections and Rehabilitation | N/A | Yes | N/A |
| 13 | 12-0670 | 5/10/12 | Failure To Meet Prima Facie Case | Food and Agriculture | N/A | No | N/A |
| 14 | 12-0702 | 5/15/12 | Failure To Meet Prima Facie Case | Corrections and Rehabilitation | N/A | Yes | N/A |
| 15 | 12-0715 | 5/18/12 | Failure To Meet Prima Facie Case | Corrections and Rehabilitation | N/A | Yes | N/A |
| 16 | 12-0720 | 5/18/12 | Closed – Notice of Findings (Granted) | Corrections and Rehabilitation | N/A | Yes | Informal |
| 17 | 12-0751 | 5/25/12 | Closed – Withdrawn | Public Health | N/A | Yes | N/A |
| 18 | 12-0768 | 5/30/12 | Failure To Meet Prima Facie Case | Corrections and Rehabilitation | N/A | No | N/A |
| 19 | 12-0778 | 6/01/12 | Closed – Notice of Findings (Dismissed) | Transportation | WB - 12-0791 | Yes | Informal |
| 20 | 12-0791 | 6/01/12 | Closed – Notice of Findings (Dismissed) | Transportation | WB - 12-0778 | Yes | Informal |

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| 21 | 12-0885 | 6/15/12 | Closed – Notice of Findings (Dismissed) | Military | N/A | No | Informal |
| 22 | 12-0903 | 6/20/12 | Closed – Notice of Findings (Granted) | Employment Development | N/A | Yes | Informal |
| 23 | 12-0930 | 6/26/12 | Closed – Settled | CA Exposition and State Fair | N/A | Yes | N/A |
| 24 | 12-0931 | 6/26/12 | Failure To Meet Prima Facie Case | Mental Health | N/A | Yes | N/A |
| 25 | 12-0982 | 7/06/12 | Failure To Meet Prima Facie Case | Forestry and Fire Protection | N/A | No | N/A |
| 26 | 12-1022 | 7/06/12 | Failure To Meet Prima Facie Case | Industrial Relations | N/A | No | N/A |
| 27 | 12-0986 | 7/09/12 | Closed – Settled | Fish and Game | N/A | Yes | Informal |
| 28 | 12-0996 | 7/09/12 | Closed – Notice of Findings (Dismissed) | Public Utilities Commission | N/A | Yes | Informal |
| 29 | 12-1069 | 7/20/12 | Closed – Notice of Findings (Granted) | Public Health | N/A | Yes | Informal |
| 30 | 12-1120 | 7/30/12 | Closed – Notice of Findings (Dismissed) | Developmental Services | N/A | Yes | Informal |

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|----|---------------|--------------------|----------------------------------|---|---------------------------------|-------------------------|--------------------------------|
| 31 | 12-1179 | 8/13/12 | Failure To Meet Prima Facie Case | CA Community Colleges Chancellor's Office | N/A | Yes | N/A |
| 32 | 12-1267 | 9/04/12 | Failure To Meet Prima Facie Case | Social Services | N/A | Yes | N/A |
| 33 | 12-1264 | 9/06/12 | Failure To Meet Prima Facie Case | Corrections and Rehabilitation | N/A | Yes | N/A |
| 34 | 12-1249 | 9/14/12 | Pending Decision | Social Services | N/A | No | Informal |
| 35 | 12-1284 | 9/18/12 | Pending Decision | Employment Development | N/A | Yes | Informal |
| 36 | 12-1375 | 9/24/12 | Failure To Meet Prima Facie Case | Air Resources Board | N/A | No | N/A |
| 37 | 12-1377 | 9/26/12 | Failure To Meet Prima Facie Case | Office of Inspector General | N/A | No | N/A |
| 38 | 12-1510 | 10/12/12 | Failure To Meet Prima Facie Case | Corrections and Rehabilitation | N/A | No | N/A |
| 39 | 12-1534 | 10/12/12 | Failure To Meet Prima Facie Case | Corrections and Rehabilitation | N/A | No | N/A |
| 40 | 12-1592 | 10/31/12 | Failure To Meet Prima Facie Case | Corrections and Rehabilitation | N/A | No | N/A |

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|----|---------------|--------------------|---------------------------------------|--------------------------------|---------------------------------|-------------------------|--------------------------------|
| 41 | 12-1797 | 11/09/12 | Failure To Meet Prima Facie Case | Parks and Recreation | N/A | No | N/A |
| 42 | 12-1756 | 12/04/12 | Pending Decision | Forestry and Fire Protection | N/A | Yes | Informal |
| 43 | 12-1757 | 12/05/12 | Failure To Meet Prima Facie Case | Highway Patrol | N/A | Yes | N/A |
| 44 | 12-1749 | 12/06/12 | Closed – Notice of Findings (Granted) | Corrections and Rehabilitation | N/A | Yes | Informal |
| 45 | 12-1753 | 12/06/12 | Failure To Meet Prima Facie Case | Corrections and Rehabilitation | N/A | No | N/A |

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