



**2021 ANNUAL
REPORT TO THE
LEGISLATURE**

**WHISTLEBLOWER
RETALIATION
COMPLAINTS**

Prepared by

State Personnel Board

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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, 2022

Introduction

Government Code section 19683, subdivision (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, 2021, through December 31, 2021.

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, 2012, and 2013.

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 accepted cases for investigation or schedule an informal hearing before a hearing officer. Effective August 18, 2010, the SPB’s regulations concerning the whistleblower statutes were revised as part of a broader revision to SPB’s regulations. Effective January 1, 2018, SPB’s regulations were revised again. The revisions require that an appeal from sustained allegations of whistleblower retaliation be assigned to an evidentiary hearing before an administrative law judge.

Information

Whistleblowing is defined as disclosing information that an employee reasonably believes is evidence of an improper governmental activity, or refusing to obey an illegal order or directive. The term “employee” includes current employees, former employees, and applicants for state employment. Employees of state agencies, community

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 repealed as of January 1, 2000, Whistleblower Retaliation Reports have been produced on an annual basis beginning with the calendar year 2000.

colleges, the California Supreme Court, courts of appeal, superior courts, and the Administrative Office of the Courts are protected from retaliation due to whistleblowing.

Three agencies play major roles in investigating whistleblower retaliation, the California State Auditor (CSA), the Office of the Inspector General (OIG), and the SPB.

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

OIG's specific responsibility for 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. In 2021, OIG did not forward any investigative findings to the SPB.

SPB is the adjudicatory body that hears and decides whistleblower retaliation complaints filed by employees whom have alleged being subjected to an unlawful personnel action for disclosing an improper governmental activity or refusing to obey an illegal order or directive.

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

- An employee files a complaint.
- The complaint states a prima facie case of retaliation.
- The complaint 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 are provided.
- The complainant provides a sworn statement, under penalty of perjury, that the contents of the complaint are true.

SPB does not accept filed complaints 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 or California State University).

Complaint Activity

In calendar year 2021, 35 whistleblower retaliation complaints were filed with the SPB. In 2020, 35 complaints were filed, in 2019, 52 complaints were filed, and in 2018, 39 complaints were filed.

Of the 35 complaints filed in 2021, six complaints were accepted, representing an acceptance rate of 17 percent. This is an increase compared to the acceptance rate of 11 percent in 2020.

Of the 29 complaints that were not accepted, 19 complainants (66%) chose not to amend following the SPB’s dismissal of their complaint with leave to amend; thereby voluntarily ending the process. This is an above-average rate of non-amendment compared to previous years: 2020: 58%, 2019: 74%, 2018: 38%, 2017: 48%, and 2016: 51%. The rate of non-amendment affects the annual acceptance rate. All complaints that were accepted in 2020 and 2021 had been dismissed with leave to amend and amended prior to acceptance.

Of the six complaints accepted, two were referred to the informal hearing process, one was assigned to an investigation using the SPB’s investigatory hearing process, two were assigned to an evidentiary hearing, and one was consolidated with a disciplinary appeal and set for an evidentiary hearing. Three whistleblower complainants withdrew their complaints following the SPB’s acceptance. Two complaints were dismissed following hearing and one complaint was withdrawn after a hearing.

In 2021, the SPB reported that three 2020 complaints remained pending. One complaint was dismissed following an SPB investigatory hearing. One complaint was withdrawn by the Complainant prior to a pending evidentiary hearing. Finally, one complaint was dismissed when the SPB accepted an ALJ’s proposed decision following an evidentiary hearing.

Whistleblower Retaliation Complaints Activity Report

Total Filed	Complaints Accepted	Complaints Not Accepted
35	6	29

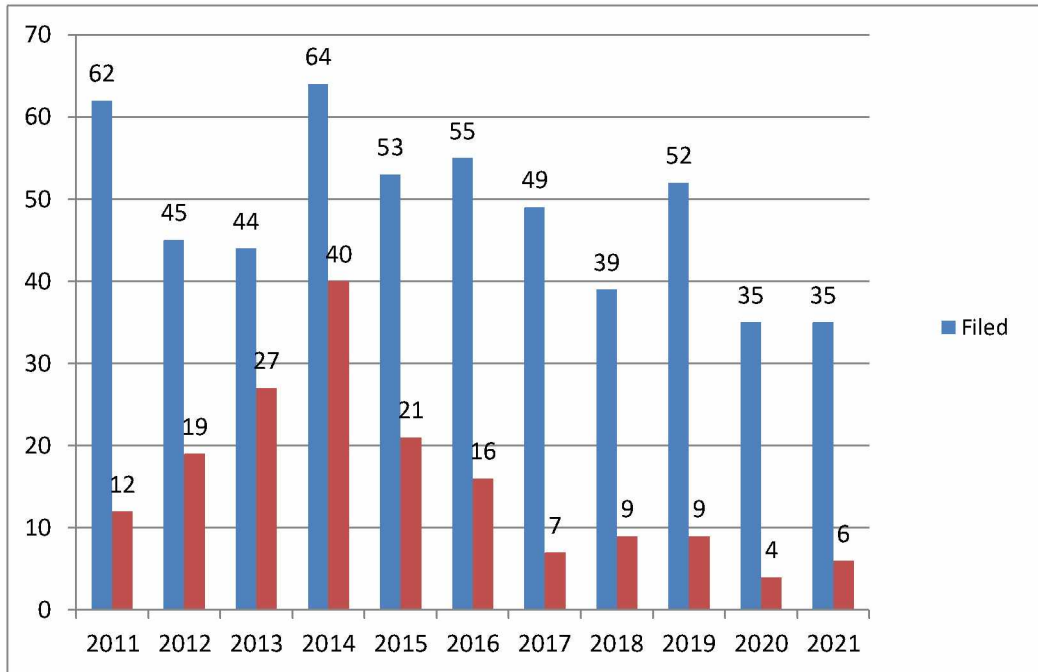
I. Disposition of Whistleblower Complaints Administered within the Informal Hearing or Investigatory Processes

Sustained	Dismissed	Withdrawn	Pending
0	2	1	0

II. Disposition of Whistleblower Complaints Assigned Directly to the Evidentiary Hearing Process

Sustained	Dismissed	Withdrawn	Pending
0	1	2	0

III. Comparison of Whistleblower Complaints Over the Past Decade



IV. Special Concerns Regarding Complaints against the California Court System

In 2010, Government Code section 8547.13 was added to the California Whistleblower Protection Act to extend protections to employees of the Supreme Court, a court of appeal, a superior court, or the Judicial Council. An employee of the courts may file a written complaint with the SPB within 12 months of the most recent retaliation. The SPB shall investigate any such complaint in accordance with the procedures of the California Whistleblower Protection Act. Following the investigation, the SPB makes a recommendation to the judicial hiring entity regarding whether retaliation resulted in an adverse action as to the employee, and if so, what steps should be taken to remedy the situation.

Under Government Code section 18671.1, all costs incurred by the SPB Appeals Division are to be reimbursed by government agencies pursuant to statutes administered by the SPB or by interagency agreement. In Fiscal Year 2020/21, respondent agencies were assessed \$2297.00 for each whistleblower retaliation complaint filed and processed before the SPB.

In the last three reports, the SPB informed the Legislature that neither the Judicial Council nor a named superior court would agree to provide reimbursement to the SPB for processing whistleblower retaliation complaints. The SPB suggested that the Legislature should consider amending the Government Code to require the Judicial Council or the courts to reimburse the SPB for costs incurred in processing whistleblower retaliation complaints filed against the court system.

Although the SPB did not receive a whistleblower complaint against the Judicial Council or a California court in 2021, if the Judicial Council persists in its refusal to reimburse the SPB for costs associated with whistleblower retaliation complaints filed against it, complainants will be left without an administrative avenue for relief.

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2021**

	Number	Filing Date	Case Status	Department	Consolidated²	RDAT³	Hearing Type
1	21-0044W	1/15/2021	Closed – No Prima Facie Case	CDPH		Yes	
2	21-0066WEK	2/9/2021	Closed – Proposed Decision (Dismissed)	CPUC	20-1228EK (VA)	No	Evidentiary
3	21-0089W	1/28/2021	Closed – No Prima Facie Case	CARB		Yes	
4	21-0092W	1/29/2021	Closed – No Prima Facie Case	CDCR		No	
5	21-0125W	2/8/2021	Closed – No Prima Facie Case	CDCR		Yes	
6	21-0134W	2/4/2021	Closed – No Prima Facie Case	DGS		Yes	
7	21-0184W	1/28/2021	Closed – No Prima Facie Case	CalFire		No	
8	21-0239W	3/8/2021	Closed – No Prima Facie Case	CDCR		No	

² AA: Whistleblower Retaliation Complaint consolidated with prior Adverse Action appeal.
DC: Whistleblower Retaliation Complaint consolidated with prior Discrimination Complaint.
E: Converted to formal evidentiary hearing.
VA: Whistleblower Retaliation Complaint consolidated with prior Voided Appointment appeal.
WB: Whistleblower Retaliation Complaint consolidated with other Whistleblower Retaliation Complaint.

³ RDAT: indicates whether complainant requested disciplinary action be taken.

**Detailed Listing – Whistleblower Retaliation Complaints
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	Number	Filing Date	Case Status	Department	Consolidated²	RDAT³	Hearing Type
9	21-0264W	3/15/2021	Closed – No Prima Facie Case	SCO		Yes	
10	21-0309W	3/26/2021	Closed – No Prima Facie Case	CHP		Yes	
11	21-0356W	4/5/2021	Closed – Notice of Findings (Dismissed)	CDCR		Yes	Informal
12	21-0387W	4/6/2021	Closed – No Prima Facie Case	CDCR		Yes	
13	21-0388W	4/7/2021	Closed – Notice of Findings (Dismissed)	Caltrans		No	Informal
14	21-0389WE	4/13/2021	Closed – Withdrawn	CDCR	21-0681K (AA)	Yes	Evidentiary
15	21-0390W	4/13/2021	Closed – No Prima Facie Case	CDCR		Yes	
16	21-0391W	4/13/2021	Closed – No Prima Facie Case	CDCR		Yes	
17	21-0427W	4/23/2021	Closed – No Prima Facie Case	DSH		No	
18	21-0518W	5/7/2021	Closed – No Prima Facie Case	FTB		Yes	
19	21-0602W	6/3/2021	Closed – No Prima Facie Case	CDCR		Yes	

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	Number	Filing Date	Case Status	Department	Consolidated²	RDAT³	Hearing Type
20	21-0606W	6/1/2021	Closed – No Prima Facie Case	CDSS		Yes	
21	21-0607W	6/3/2021	Closed – No Prima Facie Case	CDCR		Yes	
22	21-0651W	6/14/2021	Closed – No Prima Facie Case	CDCR		Yes	
23	21-0666W	6/22/2021	Closed – No Prima Facie Case	DGS		Yes	
24	21-0885W	8/17/2021	Closed – No Prima Facie Case	CDCR		Yes	
25	21-0894W	8/16/2021	Closed – No Prima Facie Case	CDCR		Yes	
26	21-0992WE	9/17/2021	Closed - Withdrawn	CDCR	21-0992WE (E)	No	
27	21-1013W	9/24/2021	Closed – No Prima Facie Case	OAH		No	
28	21-1124W	10/22/2021	Closed – No Prima Facie Case	CDCR		Yes	
29	21-1162W	11/2/2021	Closed – Withdrawn	Housing and Community Development		No	
30	21-1194W	11/8/2021	Closed – Withdrawn	CalPIA		Yes	

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Calendar Year 2021**

	Number	Filing Date	Case Status	Department	Consolidated²	RDAT³	Hearing Type
31	21-1221W	11/17/2021	Closed – No Prima Facie Case	Contra Costa Community College District		No	
32	21-1222W	11/17/2021	Closed – No Prima Facie Case	Contra Costa Community College District	20-1636K (AA)	Yes	
33	21-1223W	11/17/2021	Closed – No Prima Facie Case	Contra Costa Community College District		No	
34	21-1240W	11/22/2021	Closed – No Prima Facie Case	CDCR		Yes	
35	21-1383W	12/31/2021	Closed – No Prima Facie Case	CDCR		Yes	