



**2013 ANNUAL
REPORT TO THE
LEGISLATURE**

**WHISTLEBLOWER
RETALIATION
COMPLAINTS**

Prepared by

State Personnel Board

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June 2014



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

June 30, 2014

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, 2013 through December 31, 2013.

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 cases for investigation or schedule an informal hearing before an administrative law judge. Effective August 18, 2010, the SPB’s regulations concerning the whistleblower statutes 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 have been produced on an annual basis beginning with the calendar year 2000.

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 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 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, California State University).

Complaint Activity

In calendar year 2013, 44 whistleblower retaliation complaints were filed with the SPB. This is almost unchanged from 2012, when the SPB received 45 whistleblower complaints. Of the 44 complaints filed in 2013, 27 of those complaints were accepted. Of the twenty-seven (27) cases accepted, two (2) were "granted" and eleven (11) were

“dismissed” following an informal hearing. Of the remaining fourteen (14) complaints, six (6) were consolidated with other appeals or set for a full evidentiary hearing, seven (7) were withdrawn, and one (1) settled before the informal hearing. Of those cases that were consolidated or set for a full evidentiary hearing, four (4) were settled by the parties. A detailed complaint activity chart appears on page 5.

SPB Whistleblower Retaliation Complaints Activity Report (January 2013 – December 2013)

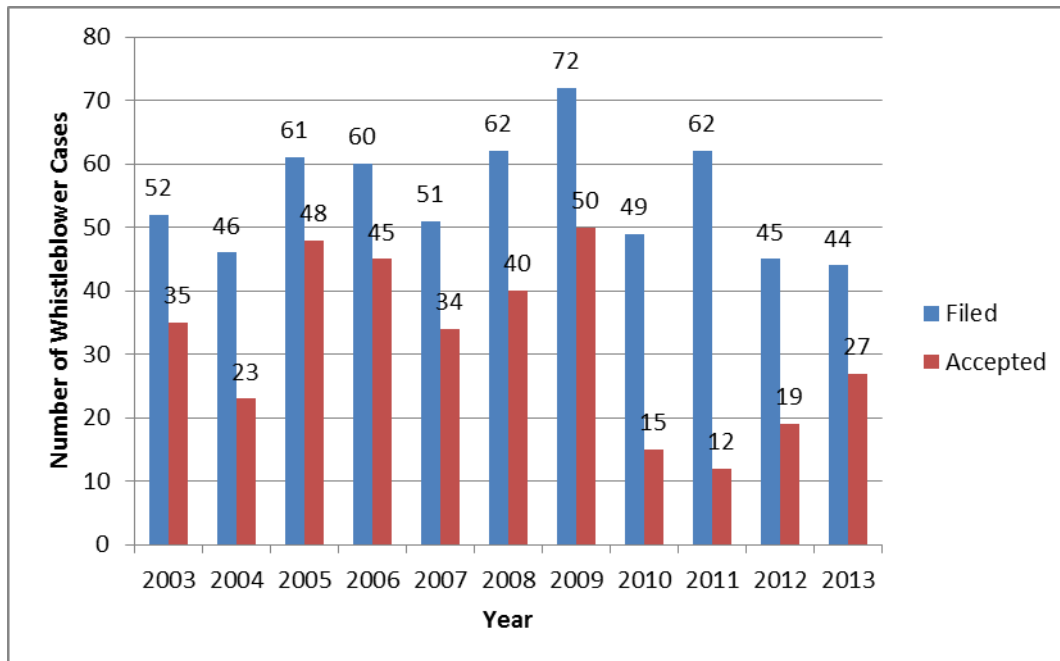
I. Whistleblower Appeals filed

Total Filed	Appeals Accepted	Appeals Not Accepted ²
44	27	17

II. Disposition of Whistleblower Appeals Accepted

Granted	Dismissed	Consolidated/ Evidentiary Hearing	Withdrawn	Settled Prior to IH
2	11	6	7	1

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 under 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 2013**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Formal/Informal Hearing
1	13-0135	2/08/13	Closed – Appeal Withdrawn	Corrections and Rehabilitation	N/A	No	N/A
2	13-0136	2/08/13	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	No	Informal
3	13-0162	2/13/13	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	No	N/A
4	13-0164	2/19/13	Closed – Appeal Withdrawn	State Hospitals	N/A	Yes	N/A
5	13-0178	2/21/13	Closed – Notice of Findings (Dismissed)	State Hospitals	N/A	Yes	Informal
6	13-0236	3/01/13	Closed – Notice of Findings (Granted)	Water Resources	N/A	Yes	Informal
7	13-0281	3/08/13	Closed – No Prima Facie Case	Ohlone Community College District	N/A	No	N/A
8	13-0304	3/11/13	Closed – No Prima Facie Case	Employment Development	N/A	No	N/A
9	13-0366	3/28/13	Closed – Appeal Withdrawn	State Hospitals	N/A	Yes	N/A
10	13-0424	4/09/13	Closed – No Prima Facie Case	Transportation	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.
E: Converted to formal evidentiary hearing.

⁴ RDAT: indicates whether complainant requested disciplinary action be taken.

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Calendar Year 2013**

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11	13-0427	4/11/13	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	No	N/A
12	13-0439	4/15/13	Closed – No Prima Facie Case	Transportation	N/A	No	N/A
13	13-0488	4/23/13	Closed – No Prima Facie Case	State Compensation Insurance Fund	N/A	No	N/A
14	13-0598	5/17/13	Closed – Appeal Withdrawn	Tehama Joint Community College District	N/A	No	N/A
15	13-0630	5/24/13	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	No	N/A
16	13-0648	5/30/13	Closed – Appeal Withdrawn	Corrections and Rehabilitation	N/A	Yes	N/A
17	13-0707	6/12/13	Closed – Notice of Findings (Dismissed)	Health Care Services	N/A	Yes	Informal
18	13-0736	6/19/13	Open – Pending Board Action	Commission on Peace Officer Standards & Training	AA - 13-0355	Yes	Formal
19	13-0759	6/25/13	Closed – Notice of Findings (Dismissed)	Transportation	N/A	No	Informal
20	13-0799	7/05/13	Closed – Notice of Findings (Granted)	State Hospitals	N/A	Yes	Informal

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21	13-0801	7/08/13	Closed – No Prima Facie Case	Motor Vehicles	N/A	No	N/A
22	13-0857	7/15/13	Closed – No Prima Facie Case	CA Exposition and State Fair	N/A	No	N/A
23	13-0883	7/24/13	Closed - Stipulation	Transportation	AA - 13-0896	Yes	N/A
24	13-0890	7/23/13	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	Yes	N/A
25	13-0955	8/09/13	Closed - Stipulation	Transportation	AA - 13-0971	Yes	N/A
26	13-1006	8/19/13	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	Yes	Informal
27	13-1020	8/22/13	Closed – Notice of Findings (Dismissed)	San Jose Evergreen Community College District	N/A	No	Informal
28	13-1029	8/26/13	Closed – Notice of Findings (Dismissed)	Southwestern Community College District	N/A	Yes	Informal
29	13-1038	8/27/13	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	No	N/A
30	13-1055	9/03/13	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	No	N/A

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31	13-1110	9/11/13	Closed – Notice of Findings (Dismissed)	Transportation	N/A	Yes	Informal
32	13-1112	9/11/13	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	Yes	N/A
33	13-1148	9/13/13	Closed – Appeal Withdrawn	City College of San Francisco	N/A	Yes	N/A
34	13-1151	9/16/13	Closed – No Prima Facie Case	Forestry and Fire Protection	N/A	Yes	N/A
35	13-1208	9/20/13	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	No	N/A
36	13-1309	10/11/13	Closed - Stipulation	Parks and Recreation	N/A	No	N/A
37	13-1311	10/13/13	Closed – No Prima Facie Case	Forestry and Fire Protection	N/A	No	N/A
38	13-1319	10/15/13	Closed - Stipulation	Public Employees' Retirement System	AA - 13-0767	Yes	N/A
39	13-1373	10/30/13	Closed – Notice of Findings (Dismissed)	Transportation	N/A	Yes	Informal
40	13-1525	12/02/13	Closed – Appeal Withdrawn	Corrections and Rehabilitation	N/A	Yes	N/A

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41	13-1572	12/06/13	Closed - Stipulation	State Hospitals	AA - 13-0785	No	N/A
42	13-1593	12/10/13	Closed – Pending Evidentiary Hearing	Corrections and Rehabilitation	E - 13-1593W	Yes	Formal
43	13-1612	12/11/13	Closed – Notice of Findings (Dismissed)	General Services	N/A	Yes	Informal
44	13-1653	12/18/13	Closed – Notice of Findings (Dismissed)	Developmental Services	N/A	Yes	Informal

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