



**2014 ANNUAL  
REPORT TO THE  
LEGISLATURE**

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**WHISTLEBLOWER  
RETALIATION  
COMPLAINTS**

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Prepared by

**State Personnel Board**

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**June 2015**



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

**June 30, 2015**

**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 year<sup>1</sup>, 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, 2014 through December 31, 2014.

**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.

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<sup>1</sup> 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, who 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 2014, 64 whistleblower retaliation complaints were filed with the SPB. This is more than a 40% increase from 2013, when the SPB received 44 whistleblower complaints. Of the 64 complaints filed in 2014, 40 of those complaints were accepted. Of the 40 cases accepted, 27 cases were assigned to the Informal Hearing Process and

13 were assigned for a full Evidentiary Hearing. For those cases assigned to the Informal Hearing Process, no closed cases were “granted”, 14 were “dismissed” following an informal hearing and the issuance of a Notice of Findings, and one was dismissed following investigation and the issuance of a Notice of Findings. Of the remaining 12 complaints in the Informal Hearing Process, one was withdrawn by the complainant, three settled prior to the issuance of a Notice of Findings, and eight remain open. For the 13 matters assigned for a full evidentiary hearing, two were withdrawn by the complainant, six settled before the evidentiary hearing, and five complaints remain open. Detailed information regarding complaint activity is provided below.

**SPB Whistleblower Retaliation Complaints Activity Report  
(January 2014 – December 2014)**

<b>Total Complaints Filed</b>	<b>Complaints Accepted</b>	<b>Complaints Not Accepted<sup>2</sup></b>
<b>64</b>	<b>40</b>	<b>24</b>

**1. Disposition of Whistleblower Complaints Administered Entirely in the Informal Hearing Process**

<b>Granted after Notice of Findings</b>	<b>Dismissed after Notice of Findings</b>	<b>Withdrawn</b>	<b>Stipulated Settlement Before Notice of Findings</b>	<b>Open Complaints</b>
<b>0</b>	<b>15</b>	<b>1</b>	<b>3</b>	<b>8</b>

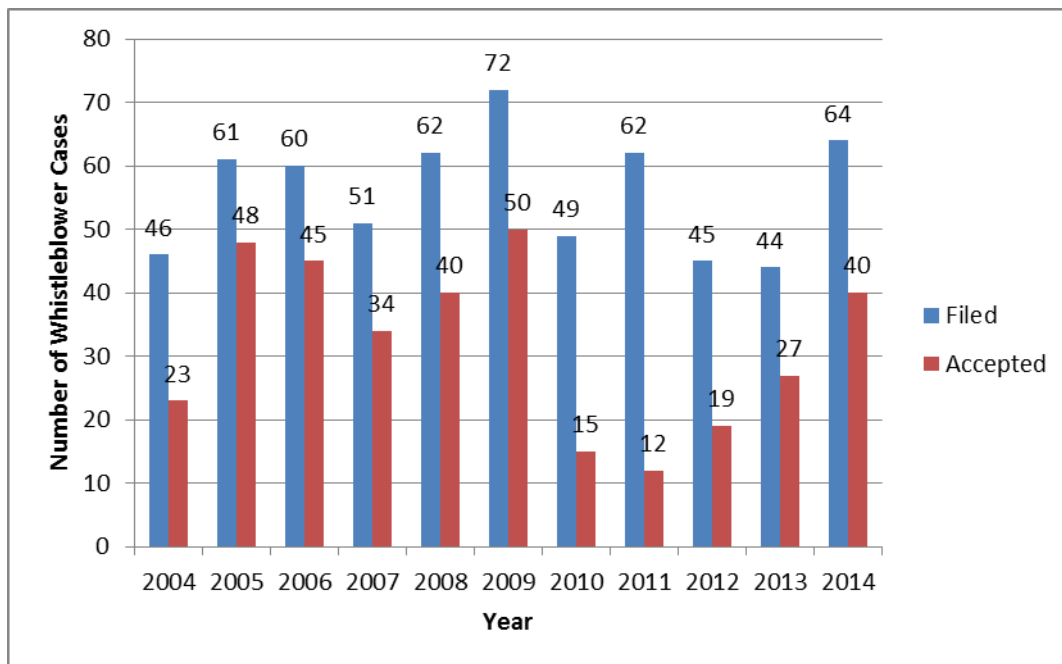
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<sup>2</sup> SPB does not accept filed appeals when: (a) The complaint fails to state a prima facie case of retaliation; (b) the complaint is not filed within one year of the most recent act of reprisal; (c) the complaint is not signed under penalty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

## 2. Disposition of Whistleblower Complaints Removed to the Evidentiary Hearing Process

Granted after Evidentiary Hearing	Dismissed after Evidentiary Hearing	Withdrawn	Stipulated Settlement Before Evidentiary Hearing	Open Complaints
0	0	2	6	5

**Comparison of Whistleblower Appeals filed each Year**



<sup>2</sup> 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 2014**

	<b>Number</b>	<b>Appeal Date</b>	<b>Case Status</b>	<b>Department</b>	<b>Consolidated<sup>3</sup></b>	<b>RDAT<sup>4</sup></b>	<b>Informal/Evidentiary Hearing</b>
1	14-0046W	1/13/14	Closed – No Prima Facie Case	State Hospitals	N/A	Yes	N/A
2	14-0076W	1/17/14	Closed – No Prima Facie Case	CalFire	N/A	No	N/A
3	14-0134W	1/27/14	Closed – No Prima Facie Case	Veterans Affairs	N/A	No	N/A
4	14-0217W	2/12/14	Closed – Investigated; Notice of Findings (Dismissed)	Health Benefit Exchange	N/A	Yes	N/A
5	14-0255W	2/18/14	Closed – No Prima Facie Case	Community College	N/A	Yes	N/A
6	14-0276W	2/24/14	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	No	N/A
7	14-0333W	2/18/14	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	No	N/A
8	14-0353W	3/07/14	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	Yes	Informal
9	14-0390W	3/12/14	Closed - Stipulated Settlement	State Compensation Insurance Fund	N/A	No	Informal
10	14-0392W	3/13/14	Closed – Notice of Findings (Dismissed)	Veterans Affairs	N/A	Yes	Informal

<sup>3</sup> 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.  
WB: Whistleblower Retaliation Complaint consolidated with other Whistleblower Retaliation Complaint.  
<sup>4</sup> RDAT: indicates whether complainant requested disciplinary action be taken.

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Filed with SPB  
Calendar Year 2014**

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11	14-0474W	3/25/14	Closed – No Prima Facie Case	State Hospitals	N/A	Yes	N/A
12	14-0481W	3/25/14	Closed – Notice of Findings (Dismissed)	Community College	N/A	No	Informal
13	14-0536W	4/02/14	Closed – Notice of Findings (Dismissed)	Social Services	N/A	Yes	Informal
14	14-0538WE	4/02/14	Closed - Stipulated Settlement	Corrections and Rehabilitation	13-1543 (AA)	No	N/A
15	14-0541W	4/03/14	Closed – Notice of Findings (Dismissed)	Health and Human services Agency and Department of Community Services and Development	N/A	Yes	Informal
16	14-0636W	4/16/14	Closed - Stipulated Settlement	Public Health	N/A	Yes	N/A
17	14-0656W	4/21/14	Closed – Notice of Findings (Dismissed)	Conservation	N/A	Yes	Informal
18	14-0673W	4/14/14	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	No	N/A
19	14-0705W	4/25/14	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	Yes	N/A
20	14-0706W	4/24/14	Closed – No Prima Facie Case	CalFire	N/A	No	N/A

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21	14-0745W	4/29/14	Closed – No Prima Facie Case	Employment Development Department	N/A	No	N/A
22	14-0747W	5/06/14	Closed – No Prima Facie Case	California Housing Finance Agency	N/A	No	N/A
23	14-0780W	5/08/14	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	No	Informal
24	14-0821W	5/13/14	Closed – No Prima Facie Case	State Hospitals	N/A	No	N/A
25	14-1011W	6/04/14	Closed – No Prima Facie Case	Industrial Relations	N/A	No	N/A
26	14-1014WEK	6/11/14	Open	Conservation	14-1170 (AA)	Yes	Evidentiary
27	14-1050W	6/16/14	Closed - Stipulated Settlement	Public Employees' Retirement System	N/A	Yes	N/A
28	14-1066WE	6/17/14	Closed – Complaint Withdrawn by Complainant	Conservation	14-1170 (AA)	Yes	N/A
29	14-1068W	6/17/14	Closed – No Prima Facie Case	Conservation	N/A	Yes	N/A
30	14-1089WE	6/19/14	Closed - Stipulated Settlement	Veterans Affairs	14-0283	No	N/A

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31	14-1142WE	6/24/14	Closed - Stipulated Settlement	Education	14-0803 (AA)	Yes	N/A
32	14-1191WEK	7/01/14	Open	Corrections and Rehabilitation	14-1211 and 14-1209 (AA)	Yes	Evidentiary
33	14-1277WEK	7/11/14	Open	Corrections and Rehabilitation	14-0721 (AA)	Yes	Evidentiary
34	14-1284WEK	7/18/14	Open	Transportation	14-1537	Yes	Evidentiary
35	14-1314WE	7/21/14	Closed – Complaint Withdrawn by Complainant	State Hospitals	N/A	Yes	N/A
36	14-1315WE	7/21/14	Open	Prison Industry Authority	N/A	Yes	Evidentiary
37	14-1340W	7/28/14	Closed – Notice of Findings (Dismissed)	General Services	N/A	Yes	Informal
38	14-1373WE	7/31/14	Closed - Stipulated Settlement	General Services	14-0967 (AA)	Yes	N/A
39	14-1444W	8/14/14	Closed – No Prima Facie Case	Commission on Teaching Credentialing	N/A	Yes	N/A
40	14-1489W	8/18/14	Closed – Notice of Findings (Dismissed)	Correctional Health Care Services	N/A	Yes	Informal

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41	14-1496W	8/20/14	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	No	N/A
42	14-1548WE	9/2/14	Closed - Stipulated Settlement	Corrections and Rehabilitation	14-1128 (E)	Yes	N/A
43	14-1579W	9/05/14	Closed – Notice of Findings (Dismissed)	State Hospitals	N/A	Yes	Informal
44	14-1586W	9/10/14	Open	CA Correctional Health Care Services	N/A	No	Informal
45	14-1593W	9/11/14	Closed – Notice of Findings (Dismissed)	CalRecycle	N/A	Yes	Informal
46	14-1618W	9/16/14	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	No	N/A
47	14-1693W	9/25/14	Open	Corrections and Rehabilitation	N/A	Yes	Informal
48	14-1719W	9/29/14	Closed – No Prima Facie Case	Developmental Services	N/A	Yes	N/A
49	14-1720W	9/29/14	Closed – Notice of Findings (Dismissed)	Employment Development	N/A	Yes	Informal
50	14-1813W	10/16/14	Open	Fair Employment and Housing	N/A	Yes	Informal

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Calendar Year 2014**

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51	14-1813W	10/16/14	Closed – No Prima Facie Case	Developmental Services	N/A	No	N/A
52	14-1823W	10/17/14	Closed – Complaint Withdrawn by Complainant	Education	N/A	Yes	N/A
53	14-1941W	10/31/14	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	Yes	N/A
54	14-1948W	11/03/14	Open	Developmental Services	N/A	Yes	Informal
55	14-1982W	11/10/14	Closed – Notice of Findings (Dismissed)	Managed Health Care	N/A	No	Informal
56	14-1992WEK	11/12/14	Closed - Stipulated Settlement	Developmental Services	14-1946 (DC)	Yes	Informal
57	14-2085W	11/24/14	Open	Industrial Relations	N/A	No	Informal
58	14-2088W	11/24/14	Closed – No Prima Facie Case	Consumer Affairs	N/A	No	N/A
59	14-2108W	11/25/14	Closed – No Prima Facie Case	Justice	N/A	No	N/A
60	14-2167W	12/09/14	Open	State Hospitals	N/A	Yes	Informal

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DC: Whistleblower Retaliation Complaint consolidated with prior Discrimination Complaint.  
E: Converted to formal evidentiary hearing.  
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61	14-2174W	12/08/14	Closed – No Prima Facie Case (No Jurisdiction)	Corrections and Rehabilitation	N/A	Yes	N/A
62	14-2230W	12/22/14	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	No	Informal
63	14-2294WK	12/31/14	Open	Developmental Services	14-2295WK	Yes	Informal
64	14-2295WK	12/31/14	Open	Developmental Services	14-2294WK	Yes	Informal

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DC: Whistleblower Retaliation Complaint consolidated with prior Discrimination Complaint.  
E: Converted to formal evidentiary hearing.  
WB: Whistleblower Retaliation Complaint consolidated with other Whistleblower Retaliation Complaint.  
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**Detailed Listing – Whistleblower Retaliation Complaints  
Filed with SPB  
Calendar Year 2014**

**2011 Whistleblower Retaliation Complaints Carried Over To Calendar Year 2012**

	<b>Number</b>	<b>Appeal Date</b>	<b>Case Status</b>	<b>Department</b>	<b>Consolidated<sup>3</sup></b>	<b>RDAT<sup>4</sup></b>	<b>Informal/Evidentiary Hearing</b>
1	11-0363WE	02/17/11	Dismissed – Board Sustained	Corrections and Rehabilitation	10-2676	Yes	Evidentiary
2	11-0739WE	03/28/11	Dismissed – Board Sustained	Commission of Teaching Credentials	10-5092	No	Evidentiary

**2012 Whistleblower Retaliation Complaints Carried Over To Calendar Year 2013**

	<b>Number</b>	<b>Appeal Date</b>	<b>Case Status</b>	<b>Department</b>	<b>Consolidated<sup>3</sup></b>	<b>RDAT<sup>4</sup></b>	<b>Informal/Evidentiary Hearing</b>
1	12-0720WE	05/18/12	Closed – Stipulated Settlement	Corrections and Rehabilitation	N/A	Yes	Evidentiary
2	12-0903WE	06/20/12	Closed – Stipulated Settlement	Employment Development	N/A	Yes	Evidentiary
3	12-0986WE	07/09/12	Closed – Stipulated Settlement	Fish and Wildlife	N/A	Yes	Evidentiary
4	12-0969WE	07/20/12	Closed – Stipulated Settlement	Public Health	N/A	Yes	Evidentiary

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DC: Whistleblower Retaliation Complaint consolidated with prior Discrimination Complaint.  
E: Converted to formal evidentiary hearing.  
WB: Whistleblower Retaliation Complaint consolidated with other Whistleblower Retaliation Complaint.  
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5	12-1249W	09/14/12	Closed - Notice of Findings (Dismissed)	Social Services	N/A	No	Informal
6	12-1284W	09/18/12	Closed – Notice of Findings (Dismissed)	Employment Development	N/A	Yes	Informal
7	12-1756W	12/04/12	Closed – Notice of Findings (Dismissed)	Forestry and Fire Protection	N/A	Yes	Informal
8	12-1749WE	12/06/12	Appeal Withdrawn by Complainant	Corrections and Rehabilitation	N/A	Yes	Evidentiary

**2013 Whistleblower Retaliation Complaints Carried Over To Calendar Year 2014**

	<b>Number</b>	<b>Appeal Date</b>	<b>Case Status</b>	<b>Department</b>	<b>Consolidated<sup>3</sup></b>	<b>RDAT<sup>4</sup></b>	<b>Informal/Evidentiary Hearing</b>
1	13-0736WE	06/19/13	Dismissed – Board Sustained	Commission on Peace Officer Standards & Training	13-0355 (AA)	Yes	Evidentiary
2	13-1593WE	12/10/13	Closed – Stipulated Settlement	Corrections and Rehabilitation	N/A	Yes	Evidentiary

<sup>3</sup> 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.  
WB: Whistleblower Retaliation Complaint consolidated with other Whistleblower Retaliation Complaint.  
<sup>4</sup> RDAT: indicates whether complainant requested disciplinary action be taken.