

SAMPLE WHISTLEBLOWER RETALIATION COMPLAINT

NOTE: Although not required, the SPB encourages individuals who file a whistleblower retaliation complaint to utilize the format provided below to facilitate processing of their complaint.

SAMPLE

WHISTLEBLOWER RETALIATION COMPLAINT

Employee's Name
Classification
Mailing Address

I NATURE OF THE COMPLAINT

I have been retaliated against in my employment as a [Job Title] with the [Appointing Power], at [Work-Site Address], as a result of my having reported improper governmental activities [OR, as a result of my having refused to obey an illegal order or directive] [OR, as a result of my having reported improper governmental activities and for having refused to obey an illegal order or directive]. The entity [and/or persons] that have retaliated against me is as follows: [Identify the appointing power, if applicable, as well as each individual employee, by name and job title, if applicable]

II STATEMENT OF FACTS

[List in chronological or some other logical order, in consecutively numbered paragraphs, the following information: (1) the improper governmental activity you reported, or the illegal order or directive you refused to obey; (2) the date(s) you reported the improper governmental activity, or refused to obey the illegal order or directive; (3) the person(s) to whom you reported the improper governmental activity, or to whom you indicated you would not obey the illegal order or directive; (4) the acts of reprisal or retaliation you experienced as a result of your complaint(s) of improper governmental activity, or refusal(s) to obey an illegal order or directive; (5) the date on which you experienced each act of reprisal or retaliation; and (6) all information you possess that demonstrates each act of reprisal or retaliation occurred as a result of your report(s) of improper governmental activity, or your refusal(s) to obey an illegal order or directive.]

For example:

1. Between April 1, 1998 and continuing through to the present day, I have been employed as an Associate Budget Analyst with the California Department of

Corrections and Rehabilitation (CDCR or Department), at Corcoran State Prison (CSP), Corcoran, California. My duties in that capacity require me to, among other things, review and approve Travel Expense Claims (TEC), and review overtime usage. Prior to my whistleblowing, I had never received a written reprimand or a notice of adverse action by any supervisor or manager.

2. Sometime between April 15, 2011 and May 2, 2011, I verbally informed my immediate supervisor, Staff Services Manager I Arnold Supervisor (Supervisor), that Correctional Lieutenant Jane Doe (Doe) had submitted three separate TECs that contained fraudulent information. On one TEC, Doe requested reimbursement for 250 miles travel in her private vehicle, even though she had traveled in a state vehicle. On the second TEC, Doe claimed reimbursement for three days of per diem, but her trip had only lasted two days. On the third TEC, Doe claimed reimbursement for payment for an off-site training course, but the Department had paid for the course, not Doe. Supervisor informed me that he would look into the matter, and get back to me.
3. On May 7, 2011, Doe approached me while I was speaking to my co-worker, Sam Smith, an Associate Budget Analyst, and said, "Why are you trying to get me in trouble? I thought we were friends. No one, including you, is a saint. If you don't drop this whole TEC thing, I'll see to it that you live to regret trying to get me in trouble." Smith witnessed Doe's threat. (Exhibit 1, Smith Declaration.)
4. On that same date, I reported this conversation to Supervisor, but he only said that I shouldn't take the threat seriously, because Doe was just upset. When I asked what was being done about the false TECs, Supervisor told me not to worry about it, and that the matter had been "handled."

5. On June 10, 2011, I informed Supervisor by email that Correctional Officer John Johnson (Johnson) had, on May 15, 2011, claimed four hours of overtime, even though he had only worked one hour of overtime on that date. (Exhibit 2, 6/10/11 email to Supervisor.) Supervisor informed me that he would look into the matter, and get back to me. (Exhibit 3, 6/11/11 email from Supervisor.)
6. Having heard nothing from Supervisor regarding the Johnson matter, on July 6, 2011, I contacted his immediate supervisor, Staff Services Manager II Mary Manager (Manager) and told her what I had earlier reported to Supervisor. (Exhibit 4, 7/6/11 email to Manager.) Manager stated that she was unaware of the situation, and she would look into it and get back to me within the week. I also asked her what had ever happened about Doe's false TECs, but Manager told me that she knew nothing about that situation either. (Exhibit 5, 7/7/11 exchange of emails.)
7. On July 8, 2011, Supervisor called me into his office. After I entered, he closed the office door and, in an angry manner, accused me of "going behind his back" to Manager about Doe and Johnson. When I said that I was just trying to follow-up on those matters because he had never told me what had occurred, he yelled that I was not a "team player," that "everything was working out fine until I opened my big mouth," and that I had "needlessly gotten two good people in serious trouble over simple mistakes that anyone could have made." When I told him that I was just doing my job, he said, "We'll just see how long you have a job to do," and then told me to "get the hell out of his office."
8. On that same date, I emailed Manager what Supervisor had said. Manager told me she was going to refer the matter to Warden William Williams (Williams). (Exhibit 6, 7/8/11 emails to and from Manager.)

9. On July 9, 2011, Doe telephoned me at my home and told me that she was going to do everything in her power to see that I was fired.
10. On August 2, 2011, Supervisor called me into his office and gave me a written counseling memorandum, which indicated that I had not been processing my assignments in a timely manner, but it did not provide any specifics. The memorandum also stated that I would be disciplined if my performance did not improve. The memorandum further indicated that Supervisor would no longer permit me to work a modified work schedule, where I was permitted to arrive at work 10 to 15 minutes past my regularly scheduled start time (provided I made up the time at the end of the day) in order to accommodate my child's day care schedule. (Exhibit 7, 8/2/11 counseling memorandum.)
11. I refused to sign the counseling memorandum, because the accusations concerning my work performance were patently false. The fact that the counseling memorandum provides no specifics and that I have never received any reprimands before I made my complaints demonstrates that it is retaliatory. I have consistently received above-average to outstanding performance evaluations, and my most recent performance evaluation for 2010 rated me as "outstanding" overall. (Exhibit 8, Copies of my Performance Evaluations for 2007, 2008, and 2009.)
12. On that same date, I complained to Manager about Supervisor's actions. Once again, she told me that she would refer the matter to Warden Williams. Despite Manager's frequent assertions that she would refer the matter to Warden Williams, I was never contacted by anyone as a result of these

referrals. Accordingly, I believe that Manager ignored my complaints.

13. Shortly after this incident, I began to experience a great deal of emotional trauma as a result of Supervisor's and Doe's actions, and Manager's inaction. Because of this, I sought treatment from a psychologist through my Health Care Provider. (Exhibit 9, Evaluations of Dr. Lee, dated August 5, 15, September 7, 14, and October 1, 15, 2010.)
14. On September 5, 2010, Supervisor gave me an early performance evaluation for 2011, where I was rated as "standard" and "needs improvement." His stated reasons for downgrading my evaluation was because I was not completing my assignments in a timely manner, refused to accept instruction, and was regularly late for work. He also told me that my merit salary increase had been denied due to my poor performance. (Exhibit 10, 2011 Performance Evaluation, and Exhibit 11, denial of merit salary increase.) However, Supervisor once again failed to provide examples of assignments I was allegedly not completing in a timely matter or evidence that I was regularly late for work.
15. As I left Supervisor's office, Doe was standing outside. As I walked past her, she said, "See what happens when you try to screw around with other people's lives."
16. It is my belief that Supervisor, in collusion with Doe, retaliated against me because I reported Doe's fraudulent TECs to Manager. That retaliation included:
 - (A) Supervisor's discontinuance of my modified work schedule.
 - (B) The unfavorable early 2011 performance evaluation I received from Supervisor.
 - (C) The denial of my merit salary increase for 2012.
17. It is also my belief that Manager approved of the above-listed retaliatory acts

because she failed to take any action to correct these threats and improper personnel actions, even though I had specifically informed her of those improper actions.

III DAMAGES AND RELIEF REQUESTED

[You must specify all damages and relief you are seeking (e.g., backpay, benefits, transfer, promotion, reinstatement, emotional distress).]

For example:

1. I am requesting that my merit salary increase for 2012 be approved, and that I receive all additional money I would have received, plus interest, from the date of denial until the present.
2. I am requesting that I be transferred to an Associate Budget Analyst position at the Substance Abuse Treatment Facility, Corcoran, California.
3. I am requesting that the counseling memorandum, be expunged from all Department records and files.
4. I am requesting that the 2011 Performance Appraisal be expunged from all department records and files.
5. I am requesting that I again be permitted to work a modified work schedule to accommodate my child's day care schedule.

IV DISCIPLINARY ACTION REQUESTED

[If you wish disciplinary action to be taken against any individual, you must specifically identify that individual, and clearly state the facts constituting the cause or causes for adverse action in such detail as is reasonably necessary to enable the accused employee to prepare a defense to those allegations. You should also indicate what

specific discipline you want imposed on each such individual, and you must include the business address of each individual.]

- (1) I am requesting that disciplinary action be taken against Staff Services Manager I Arnold Supervisor. His business address is: [List business address].
- (2) I am requesting that disciplinary action be taken against Correctional Lieutenant Jane Doe. Her business address is: [List business address].
- (3) I am requesting that disciplinary action be taken against Staff Services Manager II Mary Manager. Her business address is: [List business address].

**V.
SWORN STATEMENT**

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Dated: _____

Name/Title

Enclosures: Exhibits and Supporting Materials

[You must include all documents in your possession, custody, or control that support your contention that you have been retaliated against as a result of your having reported improper governmental activities, or for your having refused to obey an illegal order or directive. This includes any witness declarations or affidavits that you can obtain, because you will not have the opportunity to conduct written discovery prior to an informal hearing .]