



2017 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, 2018

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, 2017 through December 31, 2017.

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 After the moratorium was repealed as of January 1, 2000, Whistleblower Retaliation Reports have been produced on an annual basis beginning with the calendar year 2000.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 or California State University).

Complaint Activity

In calendar year 2017, 49 whistleblower retaliation complaints were filed with the SPB. This is similar to calendar year 2016, when the SPB received 55 whistleblower retaliation complaints. Of the 49 complaints received in 2017, 7 complaints were accepted. Of the 42 complaints that were not accepted, 48 percent of complainants

chose not to amend their complaint following the SBP’s dismissal with leave to amend. This is similar to 2016, when 51 percent of complainants, whose complaints were not accepted, chose not to amend their retaliation complaints following dismissal with leave to amend. In this regard, 2016 and 2017 are in contrast to 2015, where 74 percent of complainants, whose complaints were not accepted, submitted amended complaints. This contrast may be indicative of a desire on behalf of whistleblower complainants to bypass the SPB informal hearing process in favor of pursuing their complaint in Superior Court or as an affirmative defense to pending discipline appeals.

Of the 7 complaints accepted, 6 were initially referred to the informal hearing process. One of the complaints was dismissed prior to the informal hearing. Two of the complaints were dismissed following an informal hearing and 2 were withdrawn prior to the informal hearing. One of the complaints referred to informal hearing was granted. This matter was settled by the parties after an evidentiary hearing was set. The final complaint was consolidated with an evidentiary appeal and set for evidentiary hearing.

**SPB Whistleblower Retaliation Complaints Activity Report
(January 2017 – December 2017)**

Total Filed	Complaints Accepted	Complaints Not Accepted ²
49	7	42

I. Disposition of Whistleblower Complaints Administered within the Informal Hearing Process

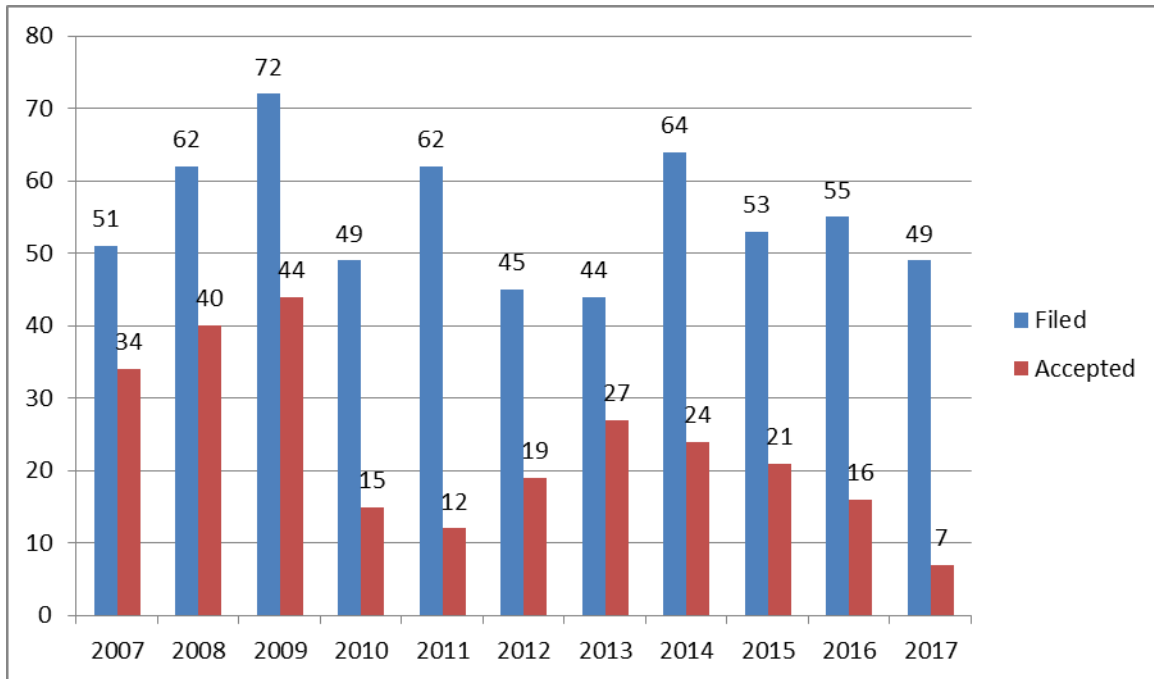
Granted	Dismissed	Withdrawn
1	3	2

II. Disposition of Whistleblower Complaints Administered within the Evidentiary Hearing Process

Granted	Dismissed	Settled
0	0	1

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).

III. Comparison of Whistleblower Appeals filed each Year



**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2017**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
1	17-0168W	2/6/2017	Closed - No Prima Facie Case	CDCR		No	
2	17-0252W	2/21/2017	Closed - No Prima Facie Case	CDCR		Yes	
3	17-0282W	2/28/2017	Closed - No Prima Facie Case	DHS		No	
4	17-0410W	3/29/2017	Closed - No Prima Facie Case	DFEH		No	
5	17-0430W	3/27/2017	Closed - No Prima Facie Case	Lottery		No	
6	17-0450W	4/10/2017	Closed – Notice of Findings (Dismissed)	DIR		Yes	Informal
7	17-0481W	4/3/2017	Closed - No Prima Facie Case	CDCR		Yes	
8	17-0484W	4/3/2017	Closed - No Prima Facie Case	DMV		Yes	

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.
WB: Whistleblower Retaliation Complaint consolidated with other Whistleblower Retaliation Complaint.

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

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2017**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
9	17-0823W	6/1/2017	Closed - No Prima Facie Case	DOE		Yes	
10	17-0873W	6/5/2017	Closed - No Prima Facie Case	CDCR		No	
11	17-0874W	6/5/2017	Closed - No Prima Facie Case	CDCR		No	
12	17-0905W	6/12/2017	Closed - No Prima Facie Case	CDCR		Yes	
13	17-0929W	6/13/2017	Closed - No Prima Facie Case	CDCR		No	
14	17-0981W	6/28/2017	Closed - Notice of Findings (Granted)	CDCR		Yes	Informal
15	17-1010W	7/3/2017	Closed – Executive Order	DOC		Yes	Informal
16	17-1023W	7/5/2017	Closed - No Prima Facie Case	EDD		No	
17	17-1028W	7/10/2017	Closed - No Prima Facie Case	DOE		Yes	
18	17-1103W	7/18/2017	Closed - No Prima Facie Case	CDCR		Yes	

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2017**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
19	17-1119W	7/21/2017	Closed - No Prima Facie Case	CalPERS		Yes	
20	17-1159W	7/28/2017	Closed - No Prima Facie Case	EDD		Yes	
21	17-1160W	7/31/2017	Closed - No Prima Facie Case	DOF		Yes	
22	17-1207W	8/9/2017	Closed - No Prima Facie Case	CDCR		No	
23	17-1221W	8/11/2017	Closed - Withdrawn	ABC		Yes	
24	17-1218W	8/11/2017	Closed - No Prima Facie Case	CDCR		Yes	
25	17-1223W	8/11/2017	Closed - No Prima Facie Case	PERB		Yes	
26	17-1266W	8/17/2017	Closed - No Prima Facie Case	PIA		No	
27	17-1364W	9/1/2017	Closed - No Prima Facie Case	CalVet		Yes	
28	17-1365W	9/1/2017	Closed - No Prima Facie Case	CalVet		Yes	

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2017**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
29	17-1366W	9/1/2017	Closed - No Prima Facie Case	CalVet		Yes	
30	17-1391W	9/8/2017	Closed - No Prima Facie Case	EDD		Yes	
31	17-1396W	9/8/2017	Closed – Notice of Findings (Dismissed)	CDCR		Yes	Informal
32	17-1443W	9/15/2017	Closed - No Prima Facie Case	CEC		No	
33	17-1472W	9/20/2017	Closed - No Prima Facie Case	CDCR		Yes	
34	17-1476W	9/21/2017	Closed - No Prima Facie Case	CPUC		No	
35	17-1535W	10/2/2017	Closed - No Prima Facie Case	CalVet		Yes	
36	17-1536W	10/2/2017	Closed - Withdrawn	CDCR		Yes	Informal
37	17-1581W	10/5/2017	Closed - No Prima Facie Case	CDCR		No	
38	17-1621W	10/13/2017	Closed - No Prima Facie Case	CalFire		No	

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2017**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
39	17-1697W	10/24/2017	Open	CDTFA/BOE	17-1697WEK AA	Yes	Evidentiary
40	17-1698W	10/24/2017	Closed - No Prima Facie Case	DSH		No	
41	17-1799W	11/13/2017	Closed - Withdrawn	DWR		Yes	Informal
42	17-1802W	11/13/2017	Closed - No Prima Facie Case	Cal Lottery		No	
43	17-1840W	11/17/2017	Closed - No Prima Facie Case	Cal Lottery		No	
44	17-1841W	11/16/2017	Closed - Withdrawn	CUIAB		Yes	
45	17-1910W	12/14/2017	Closed - No Prima Facie Case	DTSC		Yes	
46	17-1970W	11/27/2017	Closed - No Prima Facie Case	CDPH		No	
47	17-1942W	12/11/2017	Closed - No Prima Facie Case	CalPers		No	
48	17-1973W	12/11/2017	Closed - No Prima Facie Case	EDD		Yes	

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2017**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
49	17-1975W	12/11/2017	Closed - No Prima Facie Case	DOT		Yes	