



**2020 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 2021**



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

**June 30, 2021**

**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, 2020, through December 31, 2020.

**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

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

Of the 35 complaints filed in 2020, four complaints were accepted, representing an acceptance rate of 11 percent. This is a decrease compared to the acceptance rates of 17 percent in 2019 and 25 percent in 2018.

Of the 31 complaints that were not accepted, 18 complainants (58%) 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: 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 had been dismissed with leave to amend prior to acceptance.

Of the four complaints accepted, two were initially referred to the informal hearing process, one was assigned to an investigation using the SPB’s investigatory hearing process, and one was consolidated with a disciplinary appeal and set for an evidentiary hearing. Of the two complaints referred to the informal hearing process, one was dismissed after hearing and one was sustained. The sustained complaint is currently assigned to an evidentiary hearing regarding the Executive Officer’s notice of findings and the underlying complaint.

In 2020, the SPB reported that two 2019 complaints had pending evidentiary hearings. One complaint against the California Department of Public Health was sustained. As a result, an individual respondent received a 30-day suspension and was ordered to complete training courses. Further, leave credits used by the Complainant were restored. The other complaint was resolved by stipulated settlement agreement.

### **Whistleblower Retaliation Complaints Activity Report**

<b>Total Filed</b>	<b>Complaints Accepted</b>	<b>Complaints Not Accepted</b>
35	4	31

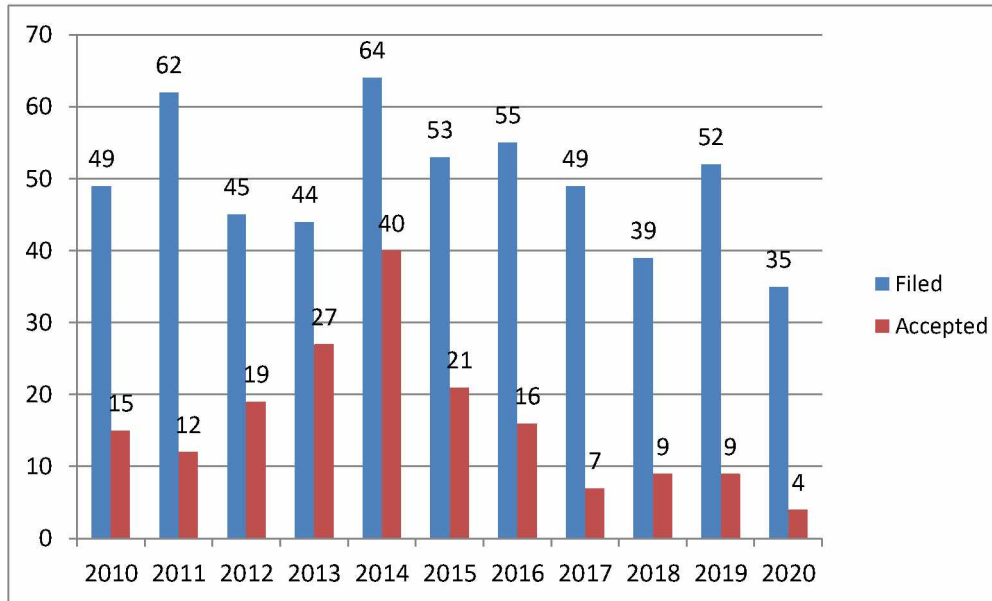
**I. Disposition of Whistleblower Complaints Administered within the Informal Hearing or Investigatory Processes**

<b>Sustained</b>	<b>Dismissed</b>	<b>Pending</b>
1	1	1

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

<b>Sustained</b>	<b>Dismissed</b>	<b>Pending</b>
0	0	1

### 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 2019/20, respondent agencies were assessed \$1895.00 for each whistleblower retaliation complaint filed and processed before the SPB.

In the 2018 and 2019 reports to the Legislature, 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. In 2020, the SPB received a whistleblower retaliation complaint against the Judicial Council and

a superior court. Because of the Judicial Council's refusal to reimburse the SPB for processing complaints, the SPB dismissed the complaint against the Judicial Council so that the whistleblower complainant would be free to pursue his claim in superior court without delay.

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 2020**

	<b>Number</b>	<b>Filing Date</b>	<b>Case Status</b>	<b>Department</b>	<b>Consolidated<sup>2</sup></b>	<b>RDAT<sup>3</sup></b>	<b>Hearing Type</b>
1	20-0017W	1/6/2020	Closed – No Prima Facie Case	Parks and Recreation		Yes	
2	20-0024W	1/6/2020	Closed – No Prima Facie Case	Caltrans		No	
3	20-0113W	1/27/2020	Closed – No Prima Facie Case	CDCR		Yes	
4	20-0133W	1/27/2020	Closed – No Prima Facie Case	CAL FIRE		No	
5	20-0161W	2/4/2020	Closed – No Prima Facie Case	Housing and Community Development		Yes	
6	20-0352W	3/11/2020	Closed – Withdrawn	Caltrans		Yes	
7	20-0358W	3/11/2020	Closed – No Prima Facie Case	CDCR		No	
8	20-0445W	4/1/2020	Closed – No Prima Facie Case	Department of Rehabilitation		No	
9	20-0656W	5/8/2020	Closed – No Prima Facie Case	FPPC		Yes	

<sup>2</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>3</sup> RDAT: indicates whether complainant requested disciplinary action be taken.

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10	20-0671W	5/8/2020	Closed – No Prima Facie Case	DOE		Yes	
11	20-0675W	5/11/2020	Closed – No Prima Facie Case	CDCR		No	
12	20-0699W	5/19/2020	Closed – No Prima Facie Case	DIR		No	
13	20-0716W	5/7/2020	Closed – No Prima Facie Case	CDCR		No	
14	20-0762W	5/18/2020	Closed – Notice of Findings (Dismissed)	CDCR		Yes	Informal
15	20-0768W	6/5/2020	Open – Notice of Findings (Sustained)	CDPH		Yes	Informal & Evidentiary (Pending)
16	20-0796W	6/10/2020	Closed – No Prima Facie Case	Los Angeles Community College District		No	
17	20-0818W	6/11/2020	Closed – No Prima Facie Case	CDCR		Yes	
18	20-0856W	6/25/2020	Closed – No Prima Facie Case	CDTFA		Yes	
19	20-0887W	7/2/2020	Closed – No Prima Facie Case	CDCR		No	
20	20-1034W	8/5/2020	Closed – No Prima Facie Case	CPIA		No	



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21	20-1050W	8/12/2020	Closed – Judicial Council non-Cooperation	Butte County Superior Court		Yes	
22	20-1163W	8/31/2020	Closed – No Prima Facie Case	DSH		Yes	
23	20-1164W	8/31/2020	Closed – No Prima Facie Case	Caltrans		No	
24	20-1240W	9/11/2020	Closed – No Prima Facie Case	32nd District Agricultural Association		No	
25	20-1269W	9/21/2020	Closed – No Prima Facie Case	CDPH		Yes	
26	20-1345W	10/9/2020	Closed – No Prima Facie Case	CDCR		No	
27	20-1374W	10/13/2020	Closed – No Prima Facie Case	DGS		Yes	
28	20-1378W	10/14/2020	Closed – No Prima Facie Case	CDCR		Yes	
29	20-1391W	10/16/2020	Closed – No Prima Facie Case	CalVet		Yes	
30	20-1413W	10/28/2020	Closed – No Prima Facie Case	SCIF		Yes	
31	20-1437W	10/27/2020	Closed – No Prima Facie Case	CPUC		No	

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32	20-1442WEK	11/6/2020	Accepted/Consolidated	CDCR	20-1636K (AA)	No	Evidentiary (Pending)
33	20-1455W	11/24/2020	Closed – No Prima Facie Case	Caltrans		No	
34	20-1458W	11/12/2020	Closed – No Prima Facie Case	CalPERS		Yes	
35	20-1565W	12/8/2020	Open	CDCR		Yes	Investigatory (Pending)