

**ANNUAL REPORT TO
THE GOVERNOR AND THE
LEGISLATURE**

**COMPLAINTS OF RETALIATION FOR THE
DISCLOSURE OF INFORMATION BY PUBLIC
EMPLOYEES (WHISTLEBLOWER RETALIATION)**

STATE PERSONNEL BOARD

**Florence Bos, President
Ron Alvarado, Vice President
Richard Carpenter, Member
William Elkins, Member
Sean Harrigan, Member**

Walter Vaughn, Executive Officer

AUGUST 18, 2000

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Introduction

The law (Government Code Section 19683 [f]) provides that, "In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigation of reprisals or retaliation for the disclosure of information by public employees, the State Personnel Board, by June 30 of each year, 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 was prepared by the State Personnel Board pursuant to the requirements of this law and includes complaints filed during the period August 1, 1999, through July 31, 2000.

Background

Protection for state employees from retaliation for having reported improper governmental activities was first provided in 1985. At that time, the State Personnel Board was assigned responsibility for investigation of complaints of whistleblower retaliation. In 1987, the law was amended and changes included the requirement that a complaint of improper governmental activity shall first be filed with the Joint Legislative Audit Committee before a complaint of retaliation is filed with the State Personnel Board, that complaints be filed with the State Personnel Board within 12 months of the most recent act of reprisal, and that any person who intentionally engages in acts of reprisal is subject to a fine not to exceed \$10,000 and imprisonment in the county jail for up to a period of one year as determined by the courts. The changes also instituted the requirement of an annual report from the State Personnel Board to the Governor and the Legislature on complaints of whistleblower retaliation. In 1999, the law was amended to delete the requirement that complaints of improper governmental activity first be filed with the Joint Legislative Audit Committee. The amendment changes the filing body to the State Auditor or with the Inspector General, pursuant to Section 6129 of the Penal Code. Effective January 1, 2000, the law was amended to expand the protections granted to whistleblowers. The amendments make it

easier for a whistleblower to file a complaint and include, as protected disclosure, the refusal to obey an illegal order. The amendments also change the burden of proof in adverse actions. If an employee subject to adverse action demonstrates that their whistleblowing activity was a contributing factor in the appointing power's bringing the action, the burden is imposed upon the appointing power to prove by clear and convincing evidence that it would have brought the action even if the employee had not blown the whistle.

Complaint Activity

The following table shows complaints alleging whistleblower retaliation filed with the State Personnel Board during the period August 1, 1999 through July 31, 2000:

Date Filed	Department	Complaint	Status
09/07/99	Trade and Commerce	Harassment	Complaint closed; no sworn statement ¹
10/20/99	Cal Expo	Adverse Action	Pending – additional hearing Days
12/07/99	PIA/CDC	CEA Termination	Continued at appellant's Request
12/14/99	DPR	Not Promoted	Pending – additional hearing day
01/14/00	CDC	Harassment	Pending – additional hearing day
01/18/00	DMV	Adverse Action	Not scheduled at appellant's request
01/31/00	DPR	Harassment	Pending – additional hearing day
02/07/00	CDC	Forced Resignation	Pending – additional hearing day
02/09/00	CDC	Harassment	Pending – additional hearing day
03/27/00	DCA	Harassment	Complaint withdrawn
04/04/00	CDC	Harassment	Pending – additional hearing day
04/26/00	CYA	Adverse Action	Pending - additional hearing day

Final disposition of the above complaints will be provided in our next report.

¹ Government Code Section 8547.8 (a) requires a sworn statement that the contents of the complaint are true, or are believed to be true under penalty of perjury. This complaint was closed because complainant did not provide the required sworn statement after (s)he was asked to do so.