

ANNUAL REPORT

TO THE GOVERNOR AND THE LEGISLATURE

WHISTLEBLOWER RETALIATION COMPLAINTS COMPLAINTS OF RETALIATION FOR THE DISCLOSURE OF INFORMATION BY PUBLIC EMPLOYEES

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June 2001



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

June 30, 2001

Introduction

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 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 prepared by the Board for the calendar year of January 1, 2000 through December 31, 2000.

Background

Protection for state employees from retaliation for having reported improper governmental activities was first provided in 1985. At that time, the Board was assigned responsibility for investigation of complaints of whistleblower retaliation.

In 1987, the law was amended and changed to include the requirement that a complaint of improper governmental activity be filed with the Joint Legislative Audit Committee before being filed with the Board; that the complaint be filed with the Board within 12 months of the most recent act of reprisal; and that any person who intentionally engages in acts of reprisal be subject to a fine not to exceed \$10,000 and imprisonment in the county jail for a period of one year as determined by the courts.

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 any 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.

Information

In the year 2001, the Board added a "Frequently asked questions" section(FAQ) on whistleblower appeals to our Internet web site.

The Board is currently in the process of drafting, with input from interested parties, proposed regulations to implement the whistleblower laws. The regulations propose the following:

The Board will, within ten working days of receipt of a complaint, notify all parties to the complaint whether the complaint has been accepted or not. If the complaint is accepted, the parties will be notified of that fact and the complaint will be assigned to a Board staff person for review.

The appointing power and any individually named employees will have the opportunity to submit a response to the complaint. The complaining employee or applicant will then be given an opportunity to reply to that response. In addition, staff may require production of any non-privileged relevant documents from any party to the complaint.

After reviewing all of the available information, staff will report its findings to the Board's Executive Officer who will, after appropriate review and consideration, issue a Notice of Findings concerning the complaint. The Notice of Findings will be issued within 60 working days of the Board acceptance of the complaint, and will specifically indicate whether any of the allegations of retaliation are supported by substantial evidence and, if so, what the appropriate remedy is under the circumstances. The Notice of Findings will also indicate what disciplinary action; if any is recommended against any individually named employee found to have violated the Whistleblower Protection Act. If no party to the action files an appeal of the Notice

of Findings, the Executive Officer's decision becomes the final decision in the matter.

Any individual or appointing power found by the Executive Officer to have engaged in retaliatory acts in violation of the Whistleblower Protection Act is entitled to a hearing before a Board Administrative Law Judge (ALJ). All such requests for hearing appeals must be filed within 30 days of the date of mailing of the Notice of Findings.

If the Notice of Findings dismisses the complaint, the complaining state employee or applicant may file a request with the five-member, the Board, for a hearing before a Board ALJ. The Board may grant or deny the request for a hearing. If the request for a hearing is denied, the Notice of Findings becomes the Board's final decision concerning the complaint. If the request for a hearing is granted, the matter will be assigned to a Board ALJ.

Complaint Activity

**I. Whistleblower Appeals filed
Between January 1, 2000 and December 31, 2000**

No Jurisdiction ¹	Appeal Withdrawn	Appeal Accepted	Total Filed
4	3	13	20

**II. Disposition of Whistleblower Appeals Accepted
Between January 1, 2000 and December 31, 2000**

Denied	Stipulation Approved	Pending Decision	Total
1	1	11	13

¹ Jurisdiction – The State Personnel Board is considered to have jurisdiction in Whistle blower cases when all of the requirements listed below are met:

- A. A perjury statement is included with the complaint
- B. The appeal is timely, filed within one year of the most recent act or reprisal
- C. The complaint is filed by a State Employee, or applicant for State employment

The number of cases received in the year 2000 increased from those received in the previous two years: 12 in 1999; 7 in 1998. While the number of cases increased in each of the last 3 years, the overall size of the caseload is still small and statistically doesn't describe a trend, considering the number of State Employees in state service.

Detail Listing Of Complaints Filed In The Calendar Year 2000

Appeal Date	Case #	Status	Department
01/31/00	00-0332	Case Closed Stipulation Approved	Parks & Recreation
02/07/00	00-0426	Case Closed Appeal Withdrawn	Corrections
03/27/00	00-1010	Case Closed Appeal Withdrawn	Consumer Affairs
07/24/00	00-3825	Case Closed Appeal Withdrawn	Consumer Affairs
02/14/00	00-0573	Case Closed No Jurisdiction	Transportation
03/07/00	00-0695	Case Closed No Jurisdiction	Youth Authority
03/25/00	00-0966	Case Closed No Jurisdiction	Youth Authority
11/27/00	00-3973	Case Closed No Jurisdiction	General Services
04/26/00	00-1517	Closed Case Denied	Youth Authority
01/18/00	00-0337	Off Pending Criminal Investigation	Motor Vehicle
01/14/00	00-0278	Off Calendar at the request of Appellant	Corrections
02/09/00	00-0434	Open	Corrections
03/25/00	00-1005	Open	Corrections
05/25/00	00-1847	Open	Corrections
06/14/00	00-1906	Open	Health Services
09/27/00	00-3302	Open	Corrections
12/28/01	00-4231	Open	Veterans Affair
12/21/01	00-4274	Open	Parks & Recreation
12/13/01	00-4263	Open	Forestry
12/22/01	00-4287	Open	Fair Employment