

ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE

WHISTLEBLOWER RETALIATION COMPLAINTS

COMPLAINTS OF RETALIATION FOR THE
DISCLOSURE OF INFORMATION BY PUBLIC
EMPLOYEES

January 1, 2009 through December 31, 2009

Prepared By The

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June 2010



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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, 2010

Introduction

Government Code section 19683(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, 2009 through December 31, 2009.

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, and 2004. 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.

Information

Whistleblowing is defined as either disclosing information that a state or community college employee, or applicant for state or community college employment, 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 After the moratorium was finally repealed as of January 1, 2000, Whistleblower Retaliation Reports were again produced for calendar years 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2008.

Three agencies play major roles in whistleblower retaliation, the Bureau of State Audits (BSA), the Office of the Inspector General (OIG) and the SPB. Additionally, the Governor's Office has recently launched the website Waste Watchers (<http://wastewatchers.ca.gov>), which allows individuals to report waste and abuse in state government. Reports and complaints made on this site are protected by Whistleblower Protection Law and the site provides links to the three major agencies involved with whistleblower retaliation investigations (BSA, OIG and SPB).

BSA accepts complaints in reference to improper governmental activities. BSA is the 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 complaints of whistleblower retaliation by state civil service or community college employees or applicants who allege being subject to or threatened with 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 files the complaint.
- The complaint states a prima facie case of retaliation.
- The complaint is filed within one year of the most recent act or reprisal.
- A perjury statement is included with the complaint.

Complaint Activity

In calendar year 2009, 72 whistleblower retaliation complaints were filed, which is a 16% increase from 2008 (62 complaints received). Of the 72 complaints filed in 2009, 44 of those complaints were accepted.

Of those 44 cases accepted, 23 cases were "dismissed," 3 were withdrawn and 1 was settled by stipulated agreement. Of the remaining 17 open cases, 8 are pending a formal evidentiary hearing before an Administrative Law Judge (ALJ), 4 are pending oral argument before the five member board, and 5 are scheduled for an informal hearing before a staff hearing officer. The following chart provides a year over year comparison of whistleblower retaliation complaints filed with SPB.

**SPB Whistleblower Retaliation Complaints Activity Report
(January 2009 – December 2009)**

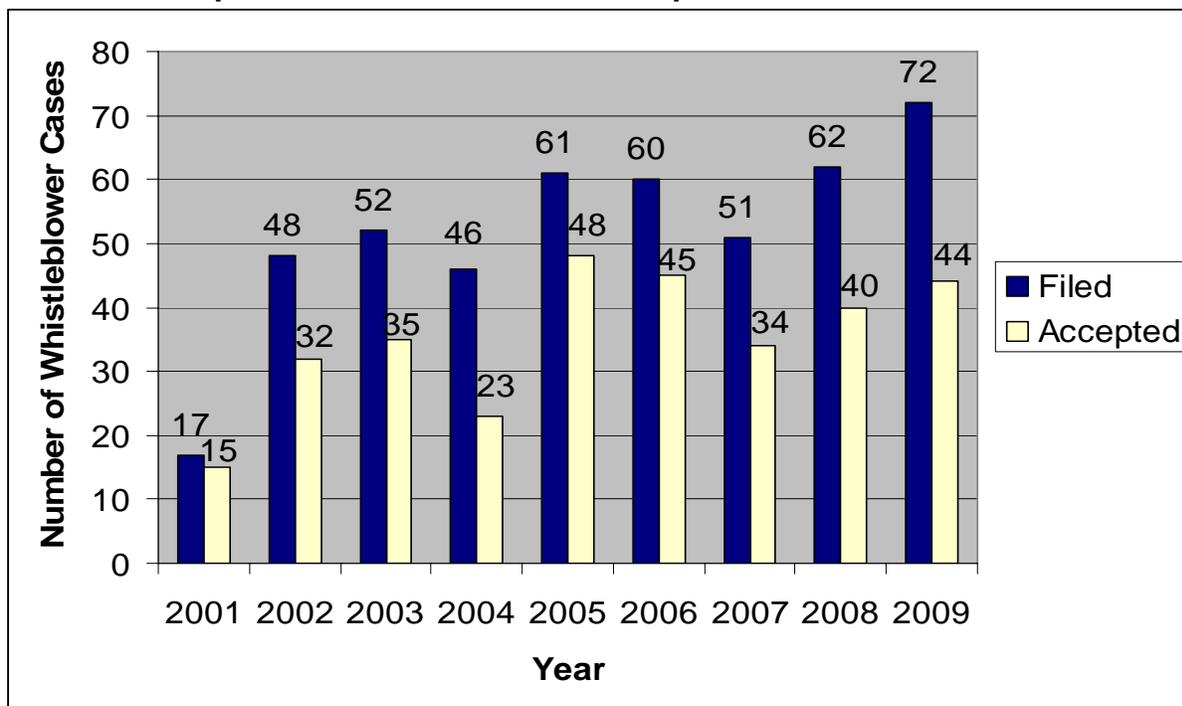
I. Whistleblower Complaints Filed

Total Filed	Appeals Not Accepted ²	Appeals Accepted
72	28	44

II. Disposition of Whistleblower Complaints Accepted

Denied/ Dismissed	Pending Decision	Stipulated Agreement	Withdrawn	Total
23	17	1	3	44

III. Comparison of Whistleblower Complaints Filed Each Year



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).

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2009**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Formal/Informal Hearing
1	04-2902EP	6/1/2009	Closed – Denied by Board	Justice	N/A	Y	Formal
2	06-1942A	7/21/2009	Pending Board Action	Feather River Community College	N/A	Y	Formal
3	06-1979A	7/21/2009	Pending Board Action	Feather River Community College	N/A	Y	Formal
4	06-2186A	7/21/2009	Pending Board Action	Feather River Community College	N/A	Y	Formal
5	07-1710EA	3/23/2009	Closed – Denied by Board	Mental Health	N/A	N	Formal
6	07-4323EA	12/8/2009	Pending Board Action	Employment Development Department	N/A	N	Formal
7	08-1083EP	9/24/2009	Closed – Notice of Findings (Dismissed)	Agricultural Labor Relations Board	N/A	Y	Formal
8	09-0002	1/6/2009	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	N	N/A
9	09-0065E	1/7/2009	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	Y	Formal
10	09-0279	1/27/2009	Closed – Notice of Findings (Dismissed)	Kern Community College District	N/A	Y	Formal
11	09-0309N	1/27/2009	Closed – No Jurisdiction	CSU - Cal State University	N/A	N	N/A
12	09-0315	1/29/2009	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	Y	Formal

³ AA: Whistleblower Retaliation Complaint consolidated with prior Adverse Action appeal.
DC: Whistleblower Retaliation Complaint consolidated with prior Discrimination Complaint appeal.
RA: Whistleblower Retaliation Complaint consolidated with prior Reasonable Accommodation Complaint Appeal.
WB: Whistleblower Retaliation Complaint consolidated with prior Whistleblower Retaliation Complaint appeal.

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

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Calendar Year 2009**

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13	09-0489E	2/9/2009	Closed – Notice of Findings (Dismissed)	Transportation	N/A	Y	Formal
14	09-0523N	2/17/2009	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	Y	N/A
15	09-0607EN	2/18/2009	Closed – Appeal Withdrawn	Corrections and Rehabilitation	DC - 08-1697 & 09-0691	N	N/A
16	09-0632E	2/24/2009	Closed – Notice of Findings (Dismissed)	Public Health	N/A	N	Formal
17	09-0687	3/3/2009	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	N	N/A
18	09-0925E	3/8/2009	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	N	Formal
19	09-0942E	3/10/2009	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	N	Formal
20	09-0943E	3/16/2009	Closed – Notice of Findings (Dismissed)	Highway Patrol	N/A	Y	Formal
21	09-0980	3/17/2009	Closed – Appeal Withdrawn	Corrections and Rehabilitation	N/A	N	N/A
22	09-1012	3/24/2009	Closed – Notice of Findings (Dismissed)	Public Health	N/A	Y	Formal
23	09-1053	3/29/2009	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	Y	N/A
24	09-1302	4/13/2009	Closed – No Prima Facie Case	Corrections and Rehabilitation	AA - 08-5748	N	Informal

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25	09-1366N	4/1/2009	Closed – No Jurisdiction	Veterans Affairs	N/A	Y	N/A
26	09-1805E	5/8/2009	Pending Evidentiary Hearing	Corrections and Rehabilitation	AA - 09-1166	N	Formal
27	09-1869	5/11/2009	Pending Proposed Recommendation	Food and Agriculture	N/A	Y	Formal
28	09-1907	5/8/2009	Pending Evidentiary Hearing	Corrections and Rehabilitation	N/A	Y	Formal
29	09-1922	5/20/2009	Closed – No Prima Facie Case	Environmental Protection Agency	N/A	N	Formal
30	09-2082N	6/2/2009	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	N	N/A
31	09-2199N	6/8/2009	Closed – Appeal Withdrawn	Technology Services	N/A	N	N/A
32	09-2200	6/5/2009	Pending Evidentiary Hearing	Corrections and Rehabilitation	N/A	N	Informal
33	09-2248	6/10/2009	Pending Evidentiary Hearing	Corrections and Rehabilitation	DC – 09-3121	Y	Formal
34	09-2289N	6/16/2009	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	N	Formal
35	09-2335N	6/17/2009	Closed – Notice of Findings (Dismissed)	Emergency Management Agency	N/A	N	Formal
36	09-2361N	6/19/2009	Closed – Notice of Findings (Dismissed)	Transportation	N/A	Y	Formal

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37	09-2462N	6/25/2009	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	N	N/A
38	09-2507E	6/30/2009	Pending Proposed Recommendation	Developmental Services	N/A	N	Formal
39	09-2545	6/16/2009	Pending Evidentiary Hearing	Emergency Medical Services Authority	N/A	N	Formal
40	09-2589N	7/8/2009	Closed – Stipulation	Corrections and Rehabilitation	N/A	N	Formal
41	09-2636N	7/12/2009	Closed – No Prima Facie Case	Industrial Relations	AA - 08-4145	Y	N/A
42	09-2706N	7/14/2009	Closed – No Jurisdiction	Corrections and Rehabilitation	N/A	N	N/A
43	09-2720N	7/20/2009	Closed – No Prima Facie Case	Forestry and Fire Protection	N/A	Y	N/A
44	09-2838	7/17/2009	Pending Proposed Recommendation	Corrections and Rehabilitation	AA - 09-1964 & 09-0444	Y	Formal
45	09-2840N	7/29/2009	Closed – No Jurisdiction	Social Services	N/A	Y	N/A
46	09-2910N	7/6/2009	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	Y	Formal
47	09-2983N	8/10/2009	Closed – No Prima Facie Case	General Services	N/A	Y	N/A
48	09-3035N	8/17/2009	Closed – Notice of Findings (Dismissed)	California Community Colleges, Chancellor's Office	N/A	N	Formal

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49	09-3037E	8/18/2009	Pending Evidentiary Hearing	Public Employees Retirement System - Personnel	AA - 08-4777	Y	Formal
50	09-3046N	8/5/2009	Closed - Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	Y	Formal
51	09-3075N	8/17/2009	Closed – No Jurisdiction	Pittsburg Unified School District	N/A	N	N/A
52	09-3092E	8/11/2009	Closed – Notice of Findings (Dismissed)	Highway Patrol	N/A	Y	Formal
53	09-3096N	8/18/2009	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	N	N/A
54	09-3100	8/13/2009	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	Y	Formal
55	09-3170E	8/22/2009	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	Y	Formal
56	09-3254N	9/8/2009	Closed – No Prima Facie Case	Transportation	N/A	N	Informal
57	09-3321N	9/10/2009	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	N	Informal
58	09-3342N	9/14/2009	Closed – No Jurisdiction	CSU - Cal State University	N/A	Y	N/A
59	09-3347N	9/15/2009	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	Y	Informal
60	09-6002N	9/16/2009	Closed – Notice of Findings (Dismissed)	Forestry and Fire Protection	N/A	N	Formal

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61	09-6173	10/8/2009	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	N	Informal
62	09-6240N	10/12/2009	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	N	Informal
63	09-6413E	10/28/2009	Pending Evidentiary Hearing	Mental Health	AA - 09-6228	N	Formal
64	09-6681N	11/18/2009	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	N	N/A
65	09-6801N	12/1/2009	Closed – No Prima Facie Case	Motor Vehicles	N/A	Y	N/A
66	09-6815	12/4/2009	Pending Evidentiary Hearing	Mental Health	N/A	Y	Formal
67	09-6820N	12/8/2009	Pending Proposed Recommendation	Corrections and Rehabilitation	N/A	N	Informal
68	09-6859N	6/10/2009	Closed – No Prima Facie Case	Apple Valley Community College	N/A	N	Informal
69	09-6871N	12/14/2009	Closed – No Jurisdiction	Administrative Office of the Courts	N/A	N	N/A
70	09-6985N	12/17/2009	Pending Proposed Recommendation	Consumer Affairs	N/A	Y	Informal
71	09-7010N	12/22/2009	Closed – No Prima Facie Case	Justice	N/A	N	N/A
72	09-7092N	12/28/2009	Closed – No Jurisdiction	Bay Area Regional Transit	N/A	N	N/A

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