

2007 ANNUAL REPORT TO THE LEGISLATURE

DISCRIMINATION COMPLAINT ACTIVITY IN STATE CIVIL SERVICE

Prepared by

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I. Purpose of Report

Government Code §19702.5(c), requires the State Personnel Board (SPB) to report annually to the Legislature on formal discrimination complaints and appeals against each appointing authority in the State civil service. The Discrimination Complaint System (DCS) is the source for data included in this report. The DCS enables the SPB to collect information on formal departmental discrimination complaint activities. The SPB's Appeals Division provides discrimination appeals information. Information submitted in this report includes data reported between January 1, 2007 and December 31, 2007.

II. The Discrimination Complaint Process

Prior to filing a discrimination appeal with the SPB, State civil service employees and applicants for State civil service employment must first file a discrimination complaint with their employing department, in an effort to resolve the complaint at the lowest level.¹ Informal complaints and grievances are filed directly with the employing department. However, the SPB does not require an employee or applicant for employment to first file a complaint with the employing department in those situations where the complaint alleges discrimination by the Department Director, Department Executive Officer, or where the employee or applicant can demonstrate that it would have been futile to first file the complaint with the department. In addition, any employee or applicant for employment who alleges that he or she has been retaliated against for having complained about discrimination or harassment may file a retaliation complaint directly with the SPB.²

A department's Equal Employment Opportunity (EEO) Officer has the overall responsibility for managing the department's internal discrimination complaint process, though the process must conform to certain minimum requirements established by the SPB. This process may involve both an informal and formal component. It is important to note that prior to filing a formal discrimination complaint with the department, individuals are encouraged to seek informal resolution of their complaint through their EEO Counselors. EEO Counselors should attempt to quickly gather information about the complaint and resolve the problem in an expeditious manner.³ This informal resolution process should not exceed the timeframe indicated by the department's discrimination complaint review process.

If a complaint cannot be resolved through the informal process, or if the complainant chooses to bypass the informal process, the complainant has the right to file a formal discrimination complaint with the employing department. Upon filing a formal complaint, the EEO Officer may assign the complaint to an EEO Investigator for formal investigation. The EEO Officer should provide the complainant with a report or summary of the investigation findings.

¹ Title 2, CA Code of Regulations §54.2

² Government Code §19702(h)

³ Title 2, CA Code of Regulations §54.2

II. The Discrimination Complaint Process (continued)

Departments must advise the complainant of their rights in the complaint process, including their right to file an appeal of the department's decision with the SPB. If a complainant is dissatisfied with the department's response, or if the department fails to provide a timely response to the complaint, the complainant may file a formal written discrimination appeal with the SPB within 30 days after the event upon which the complaint is based.⁴

III. The State Personnel Board Appeals Process

Discrimination appeals filed with the SPB are reviewed to determine if all prerequisites for filing an appeal with the SPB have been satisfied, including whether the appellant first filed a complaint with the department. If the appeal is accepted, it is scheduled for a pre-hearing/settlement conference (PHSC) before an Administrative Law Judge (ALJ). During the PHSC, the ALJ will explore potential settlement with the parties. If the matter cannot be resolved through settlement, the ALJ will schedule an Evidentiary Hearing based upon the availability of the parties and the SPB Hearing Calendar. The SPB utilizes the same legal standards employed by state and federal courts when reviewing discrimination appeals. After the completion of the hearing, the ALJ issues a proposed decision for review by the five-member State Personnel Board (Board).

The Board may adopt the proposed decision, modify it in part, revoke the proposed decision, or schedule the matter for an oral argument. If the Board adopts the proposed decision, the ALJ's findings of fact and conclusions of law become the Board's decision. If the Board modifies the proposed decision, only specified provisions of the ALJ's findings of fact and conclusions of law become the Board's decision. If the Board rejects or revokes the proposed decision, the parties may be permitted to be heard by the Board itself. The Board will thereafter issue its decision in the case based on the entire administrative record.

Either the appellant or respondent may file a Petition for Rehearing within 30 days of receipt of the Board's decision.⁵ Either party may also file a petition for a Writ of Mandate with the Superior Court.⁶

IV. Summary of Findings for Formal Discrimination Complaints

A. Formal Discrimination Complaints Received

In 2007, 1,055 (84.47%) formal discrimination complaints were filed ([Table 1](#)). The total number of formal complaints decreased by 483 (31.40%) compared to data reported in the *2006 Annual Report to the Legislature on Discrimination Complaint Activity* ([Table 8 of the 2006 Report](#)).

⁴ Title 2, CA Code of Regulations, §51.2

⁵ Government Code §19586; Title 2, CA Code of Regulations §51.7

⁶ Code of Civil Procedure, §1094.5

IV. Summary of Findings for Formal Discrimination Complaints (continued)

B. Formal Discrimination Complaint Types

When entering formal discrimination complaints data into the Discrimination Complaint System, departments have the option to select more than one type of discrimination for each case entered.

In 2007, there were 1,376 types of formal discrimination complaints. The top 5 formal discrimination complaint types were:

Top 5 Formal Discrimination Complaint Types	Formal Discrimination Complaints	
	No.	%
Retaliation	287	20.86%
Sexual Harassment	275	20.00%
Race	219	15.92%
Sex	161	11.70%
Disability	116	8.43%

(From Table 2)

C. Formal Discrimination Complaint Dispositions

In 2007, 708 (67.11%) formal discrimination complaints were closed statewide (Table 1). Of the 708 formal discrimination complaints closed: in 250 (34.58%) cases, discrimination was not found after a full investigation; in 191 (26.42%) cases, no prima facie case was established; in 140 (19.36%) cases, the allegations were not based on protected group status; in 52 (7.19%) cases, discrimination was found; in 40 (5.53%) cases, the complaints were withdrawn or not pursued by the complainant; in 26 (3.60%) cases, no remedy was possible so no investigation was conducted; and 24 (3.32%) cases were resolved through mutual agreement. (Table 3)

D. Length of Time to Resolve Formal Discrimination Complaints

In 2007, the average length of time for departments to resolve a formal discrimination complaint was 153 days (Table 5), a 32.02% increase, compared to the average 104 days reported in the *2006 Annual Report to the Legislature on Discrimination Complaint Activity* (Table 5 of the 2006 Report). Of the 708 formal discrimination complaints closed (Table 1), 177 (25%) complaints (Table 5) exceeded the 180-day timeframe for processing, a 37.28% increase from the 111 complaints reported in the *2006 Annual Report to the Legislature on Discrimination Complaint Activity* (Table 5 of the 2006 Report).

V. Summary of Findings for Discrimination Appeals

A. Discrimination Appeals Received

In 2007, 194 (15.53%) discrimination appeals were filed with the SPB (Table 1). The total number of appeals decreased by 15 (7.18%) compared to data reported in the 2006 Annual Report to the Legislature on Discrimination Complaint Activity (Table 8 of the 2006 Report).

B. Discrimination Appeal Types

In the SPB Appeals data capture system, staff have the option to select only one type of discrimination for each appeal, resulting in 194 types of discrimination in 2007 (Table 2). In 2007, the top 5 complaint appeal types were:

Top 5 Discrimination Appeal Types	Discrimination Appeals	
	No.	%
Reasonable Accommodation	70	36.08%
Multiple Areas	44	22.68%
Retaliation	33	17.01%
Sexual Harassment	13	6.70%
Race	7	3.61%

(From Table 2)

C. Discrimination Appeal Outcomes

In 2007, 136 (70.10%) discrimination appeals were closed statewide (Table 1). Of the 136 discrimination appeals closed: 53 (27.32%) were withdrawn; 33 (17.01%) were closed due to the complainant's untimely response to the SPB⁷; 25 (12.89%) were settled; 11 (5.67%) cases were opened in error; 11 (5.67%) were dismissed, rejected, or denied; 2 (1.03%) were changed to a non-evidentiary appeal or were non-jurisdictional and 1 (0.52%) appeal was granted. (Table 4)

D. Length of Time to Resolve Discrimination Appeals

In 2007, the average length of time for the SPB to resolve a discrimination appeal was 327 days (Table 6). Of the 136 (70.10%) discrimination appeals closed, all were resolved within a 6-month period. Of the 58 (29.90%) cases pending, all exceeded the 6-month timeframe. Data was not available for comparison with the 2006 Annual Report to the Legislature on Discrimination Complaint Activity.

⁷ This outcome results from the appellant failing to respond to the SPB's request for additional information within a 14-day period.

VI. Data Collection

Data included in the report was obtained from the DCS and the SPB Appeals Division and is attached in the following tables:

- Table 1: Formal Discrimination Complaints and Appeals by Department
- Table 2: Types of Formal Discrimination Complaints and Appeals
- Table 3: Disposition of Closed Formal Discrimination Complaints as Reported by Departments
- Table 4: Outcome of Closed Discrimination Appeals Filed with the SPB
- Table 5: Length of Time to Resolve Formal Discrimination Complaints as Reported by Departments
- Table 6: Length of Time to Resolve Discrimination Appeals Filed with the SPB

Table 1: Formal Discrimination Complaints and Appeals by Department⁸

Department	Formal Discrimination Complaints		Discrimination Appeals	
	Opened	Closed	Opened	Closed
Alcohol and Drug Programs, Department of	2	0	0	0
Alcohol Beverage Control, Department of	0	3	0	0
Child Support Services, Department of	3	3	1	1
Conservation, Department of	1	2	0	0
Conservation Corps, California	19	16	1	1
Consumer Affairs, Department of	11	6	5	4
Corrections and Rehabilitation, Department of	543	328	57	33
Developmental Services, Department of	16	18	8	7
<i>Agnews Developmental Center</i>	1	0	0	0
<i>Canyon Springs</i>	2	0	0	0
<i>Fairview Developmental Center</i>	6	5	0	0
<i>Lanerman Developmental Center</i>	3	0	0	0
<i>Porterville Developmental Center</i>	14	18	0	0
<i>Sierra Vista Small Facility</i>	0	0	0	0
<i>Sonoma Developmental Center</i>	6	10	0	0
Education, Department of	0	0	4	4
Emergency Services, Office of	0	0	0	0
Employment Development Department	13	16	14	12
Energy Resources Conservation and Development Commission, California	0	0	1	1
Equalization, Board of	11	7	1	1
Exposition and State Fair, California	1	1	1	1
Fair Employment and Housing, Department of	4	6	1	1
Fish and Game, Department of	16	15	0	0
Food and Agriculture, Department of	2	0	1	0
Forestry and Fire Protection, Department of	25	20	2	2
Franchise Tax Board	0	0	7	3
General Services, Department of	13	8	1	1
Health and Human Services Agency	0	0	1	1
Health Services, Department of	10	3	2	2
Highway Patrol, California	14	2	3	2
Horse Racing Board, California	0	0	1	0
Industrial Relations, Department of	6	0	1	1
Insurance, Department of	1	1	0	0
Justice, Department of	5	7	8	7
Legislative Counsel Bureau	0	0	0	0
Managed Health Care, Department of	3	1	1	0

⁸ Closed complaints include cases opened in current as well as previous years.

**Table 1: Formal Discrimination Complaints and Appeals by Department⁹
(continued)**

Department	Formal Discrimination Complaints		Discrimination Appeals	
	Opened	Closed	Opened	Closed
Mental Health, Department of	3	2	3	2
<i>Atascadero State Hospital</i>	3	2	0	0
<i>Metropolitan State Hospital</i>	5	0	0	0
<i>Napa State Hospital</i>	12	5	0	0
<i>Patton State Hospital</i>	7	4	0	0
<i>Salinas Valley Psychiatric Program</i>	0	5	0	0
Motor Vehicles, Department of	61	50	4	0
Parks and Recreation, Department of	4	0	0	0
Pesticide Regulation, Department of	3	0	0	0
Public Employees Retirement System	2	0	0	0
Public Health, California Department of	14	6	5	3
Public Utilities Commission, California	0	0	1	1
Real Estate, Department of	2	0	1	0
Real Estate Appraisers, Office of	0	0	0	0
Rehabilitation, Department of	6	0	6	4
Secretary of State	1	0	0	0
Social Services, Department of	17	9	3	2
State Compensation Insurance Fund	42	22	6	6
State Controller, Office of the	0	0	2	2
State Personnel Board	5	0	0	0
State Publishing, Office of	0	0	1	1
State Teachers Retirement System	0	0	4	2
State Water Resources Control Board	1	1	1	1
Statewide Health Planning and Development, Office of	0	0	1	1
Stephen P. Teale Consolidated Data Center	1	1	0	0
Student Aid Commission, California	0	0	1	0
Systems Integration, Office of	0	0	2	2
Toxic Substances Control, Department of	2	2	0	0
Transportation, Department of	92	88	21	16
Unemployment Insurance Appeals Board	1	0	2	1
Veterans Affairs, Department of	2	1	0	0
Victims Compensation and Government Claims Board	0	0	0	0
Water Resources, Department of	18	14	1	1
Not Specified	0	0	7	6
Totals	1055	708	194	136

⁹ Closed complaints include cases opened in current as well as previous years.

Table 2: Types of Formal Discrimination Complaints and Appeals^{10 11}

Types	Formal Discrimination Complaints	Discrimination Appeals	Totals	
			No.	%
Age	86	1	87	5.54%
Ancestry	30	0	30	1.91%
Color	53	0	53	3.38%
Disability	116	5	121	7.71%
Marital Status	22	0	22	1.40%
Multiple Areas	0	44	44	2.80%
National Origin	52	1	53	3.38%
Political Affiliation	15	0	15	0.96%
Race	219	7	226	14.39%
Reasonable Accommodation	0	70	70	4.46%
Religion	29	1	30	1.91%
Retaliation	287	33	320	20.38%
Sex	161	3	164	10.45%
Sexual Harassment	275	13	288	18.34%
Sexual Orientation	30	0	30	1.91%
Veteran Status	1	0	1	0.06%
Other	0	8	8	0.51%
Not Specified	0	8	8	0.51%
Totals	1376	194	1570	

¹⁰ Closed complaints include cases opened in current as well as previous years.¹¹ Percentages may not total 100% due to rounding.

Table 3: Disposition of Closed Formal Discrimination Complaints as Reported by Departments¹²

Disposition	Formal Complaints	
	No.	%
Discrimination Not Found	250	34.58%
No Prima Facie Case Established	191	26.42%
Allegations Not Based on Protected Group Status	140	19.36%
Discrimination Found	52	7.19%
No Remedy Possible	26	3.60%
Complaint Withdrawn	40	5.53%
Resolved by Mutual Agreement	24	3.32%
TOTAL	723	

Table 4: Outcome of Closed Discrimination Appeals Filed with the SPB¹¹

Outcome	Discrimination Appeals	
	No.	%
Pending	58	29.90%
Withdrawn	53	27.32%
Closed due to Untimely Response to the State Personnel Board	33	17.01%
Settled	25	12.89%
Case Opened in Error	11	5.67%
Dismissed, Rejected, or Denied	11	5.67%
Changed to Non-Evidentiary Case or Non-Jurisdictional	2	1.03%
Appeal Granted	1	0.52%
TOTAL	194	

¹² Percentages may not total 100% due to rounding.

Table 5: Length of Time to Resolve Formal Discrimination Complaints as Reported by Departments

Departments	Formal Complaints			Average Length of Time for Resolution
	0-89 Days	90-179 Days	180+ Days	
Alcohol Beverage Control, Department of	0	1	2	186
Child Support Services, Department of	2	1	0	90
Conservation, Department of	0	0	2	267
Conservation Corps, California	9	5	2	86
Consumer Affairs, Department of	2	2	2	128
Corrections and Rehabilitation, Department of	248	46	34	74
Developmental Services, Department of	5	8	5	143
<i>Fairview Developmental Center</i>	2	1	2	167
<i>Porterville Developmental Center</i>	4	4	10	323
<i>Sonoma Developmental Center</i>	5	5	0	93
Employment Development Department	6	8	2	92
Equalization, Board of	3	2	2	191
Exposition and State Fair, California	0	0	1	532
Fair Employment and Housing, Department of	4	1	1	88
Fish and Game, Department of	4	2	9	265
Forestry and Fire Protection, Department of	9	7	4	118
General Services, Department of	4	1	3	144
Health Services, Department of	2	1	0	30
Highway Patrol, California	2	0	0	74
Insurance, Department of	1	0	0	13
Justice, Department of	1	1	5	212
Managed Health Care, Department of	0	1	0	108
Mental Health, Department of	2	0	0	27
<i>Atascadero State Hospital</i>	2	0	0	44
<i>Napa State Hospital</i>	5	0	0	39
<i>Patton State Hospital</i>	3	1	0	66
<i>Salinas Valley Psychiatric Program</i>	1	3	1	147
Motor Vehicles, Department of	41	8	1	37
Public Health, Department of	1	3	2	157
Social Services, Department of	7	1	1	86
State Compensation Insurance Fund	19	2	1	46
State Water Resources Control Board	0	1	0	91
Stephen P. Teale Data Center	0	0	1	182

Table 5: Length of Time to Resolve Formal Discrimination Complaints as Reported by Departments (continued)

Departments	Formal Complaints			
	0-89 Days	90-179 Days	180+ Days	Average Length of Time for Resolution
Toxic Substances Control, Department of	0	2	0	112
Transportation, Department of	6	3	79	370
Veterans Affairs, Department of	0	0	1	707
Water Resources, Department of	6	4	4	127
Totals	406	125	177	153

Table 6: Length of Time to Resolve Discrimination Appeals Filed with the SPB

Discrimination Appeals			
0-89 Days	90-179 Days	180+ Days	Average Length of Time for Resolution
11	17	166	327