



2019 ANNUAL REPORT TO THE LEGISLATURE

WHISTLEBLOWER RETALIATION COMPLAINTS

Prepared by

State Personnel Board

801 Capitol Mall
Sacramento, CA 95814

Lauri Shanahan, President
Shawnda Westly, V.P. and CalPERS Representative
Kathy Baldree, Member
Kimiko Burton, Member
Mona Pasquil Rogers, Member

Suzanne M. Ambrose, Executive Officer

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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, 2020

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 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, 2019 through December 31, 2019.

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 cases for investigation or schedule an informal hearing before an administrative law judge. 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 will 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

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 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 2019, 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 improper personnel action for disclosing an 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:

- 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 2019, 52 whistleblower retaliation complaints were filed with the SPB. In 2018, 39 complaints were filed and in 2017, 49 complaints were filed.

Of the 52 complaints filed in 2019, 9 complaints were accepted, representing an acceptance rate of 17 percent. This is a decrease over the acceptance rate of 25 percent in 2018 and an increase over the 2017 acceptance rate of 14 percent.

Of the 43 complaints that were not accepted, 32 complainants (74 percent) chose not to amend following the SPB’s dismissal of their complaint with leave to amend; thereby voluntarily ending the process. This is a much higher rate of non-amendment compared to previous years: 2018 – 38%; 2017 – 48%; and 2016 – 51%. The rate of non-amendment affects the annual acceptance rate. All complaints that were accepted in 2019 had been dismissed with leave to amend prior to acceptance. In 2018, nine out of ten accepted complaints had been dismissed with leave to amend prior to acceptance.

Of the nine complaints accepted, seven were initially referred to the informal hearing process, one was assigned for an evidentiary hearing, and one was consolidated with a disciplinary appeal and set for an evidentiary hearing. Of the seven referred to the informal hearing process, five were dismissed after hearing, one was withdrawn prior to informal hearing, and one was withdrawn following an informal hearing. Prior to the withdrawal following the informal hearing, the Executive Officer had assigned the matter for further investigation via an evidentiary hearing. Both complaints that were assigned for an evidentiary hearing (without first undergoing the informal hearing process) remain pending and have been delayed due to COVID-19.

SPB Whistleblower Retaliation Complaints Activity Report

Total Filed	Complaints Accepted	Complaints Not Accepted
52	9	43

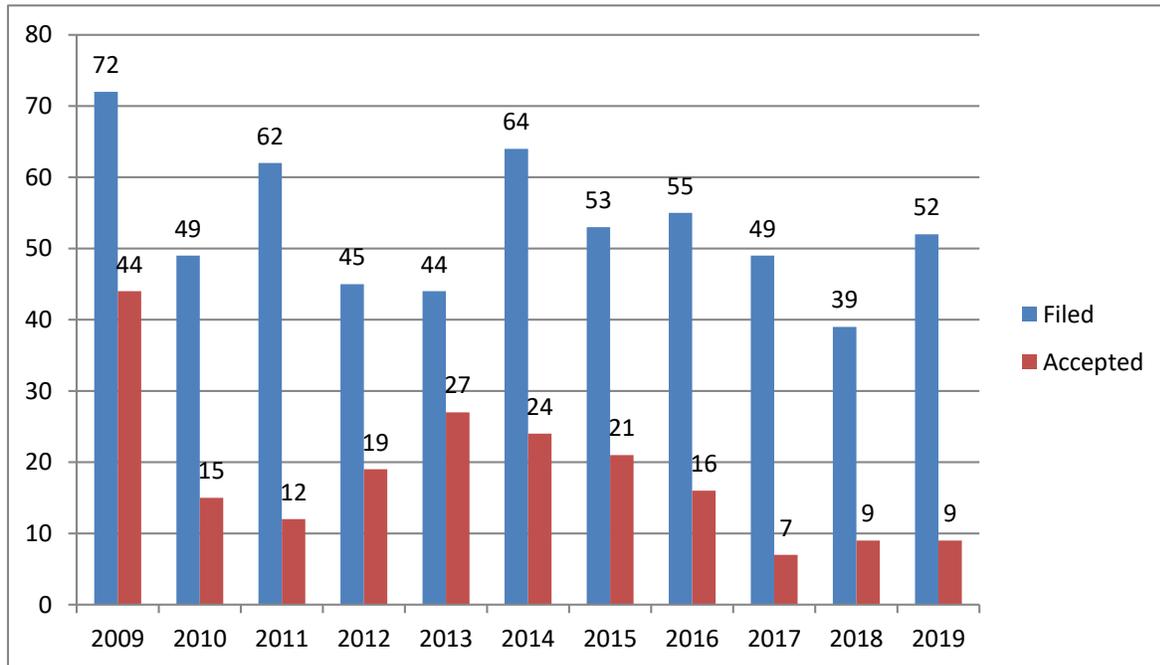
I. Disposition of Whistleblower Complaints Administered within the Informal Hearing Process

Granted	Dismissed	Withdrawn
0	5	2

II. Disposition of Whistleblower Complaints Administered within the Evidentiary Hearing Process

Granted	Dismissed	Pending
0	0	2

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. 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.

Pursuant to 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 2018/19, respondent agencies were assessed \$1717.00 for each whistleblower retaliation complaint filed and processed before the SPB.

In the 2018 report 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 a whistleblower retaliation complaint. 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 2019, the SPB received a whistleblower retaliation complaint against the Judicial Council. 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.

The SPB renews its request that the legislature amend the Government Code to require that the courts or Judicial Council reimburse the SPB for costs incurred in processing whistleblower retaliation complaints filed against the courts.

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2019**

	Number	Filing Date	Case Status	Department	Consolidated²	RDAT³	Informal/Evidentiary Hearing
1	19-0008W	1/2/2019	Closed - No Prima Facie Case	CDCR		Yes	
2	19-0025W	1/8/2019	Closed - No Prima Facie Case	California Community Colleges Chancellor's Office		No	
3	19-0065W	1/15/2019	Closed - No Prima Facie Case	Department of Education		Yes	
4	19-0068W	1/15/2019	Closed - No Prima Facie Case	Office of the State Public Defender		Yes	
5	19-0132W	1/24/2019	Closed - No Prima Facie Case	CDCR		No	
6	19-0175W	1/31/2019	Closed - Withdrawn after Acceptance	CDFA		Yes	Informal
7	19-0257W	2/19/2019	Closed - No Prima Facie Case	CDCR		Yes	
8	19-0264W	2/19/2019	Closed - No Prima Facie Case	DOR		No	
9	19-0277W	2/22/2019	Closed - No Prima Facie Case	California Community Colleges Chancellor's Office		Yes	

² 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.

³ RDAT: indicates whether complainant requested disciplinary action be taken.

**Detailed Listing – Whistleblower Retaliation Complaints
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	Number	Filing Date	Case Status	Department	Consolidated²	RDAT³	Informal/Evidentiary Hearing
10	19-0283W	2/25/2019	Closed - No Prima Facie Case	CDSS		Yes	
11	19-0350W	3/6/2019	Closed – Withdrawn after Dismissal With Leave to Amend	CDFA		Yes	
12	19-0450W	3/26/2019	Closed - No Prima Facie Case	DGS		No	
13	19-0451W	3/27/2019	Closed - No Prima Facie Case	CDCR		Yes	
14	19-0475W	3/29/2019	Closed - Notice of Findings (Dismissed)	DSH		No	Informal
15	19-0496W	3/27/2019	Closed - No Prima Facie Case	DSH		No	
16	19-0503W	4/3/2019	Closed - Withdrawn after Informal Hearing	CalVet		Yes	Informal
17	19-0521W	4/4/2019	Closed - No Prima Facie Case	DMV		No	
18	19-0770W	5/28/2019	Closed - Judicial Council non-Cooperation	Judicial Council		Yes	
19	19-0774W	5/29/2019	Closed - No Prima Facie Case	CHP		Yes	
20	19-0775W	5/29/2019	Closed - No Prima Facie Case	CHP		Yes	

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21	19-0777W	5/29/2019	Closed - No Prima Facie Case	CHP		Yes	
22	19-0879W	6/14/2019	Closed - Notice of Findings (Dismissed)	CHP		Yes	Informal
23	19-0911W	6/17/2019	Closed - No Prima Facie Case	DOT		Yes	
24	19-0916W	6/19/2019	Closed - No Prima Facie Case	DIR		Yes	
25	19-0917W	6/19/2019	Closed - No Prima Facie Case	DIR		Yes	
26	19-0918W	6/19/2019	Closed - No Prima Facie Case	DIR		Yes	
27	19-0945W	6/21/2019	Closed - No Prima Facie Case	CHP		Yes	
28	19-0959W	6/24/2019	Closed - No Prima Facie Case	State Treasurer's Office		Yes	
29	19-0965W	6/26/2019	Closed - No Prima Facie Case	CalVet		No	
30	19-0966W	6/26/2019	Closed - No Prima Facie Case	CalVet		No	
31	19-1062W	7/5/2019	Closed - No Prima Facie Case	DOT		Yes	

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32	19-1104W	7/17/2019	Closed - No Prima Facie Case	CDPH		No	
33	19-1139W	7/25/2019	Closed - No Prima Facie Case	Solano Community College District		Yes	
34	19-1126W	7/22/2019	Closed - Notice of Findings (Dismissed)	Los Angeles Community College District		Yes	Informal
35	19-1127W	7/22/2019	Closed - No Prima Facie Case	DOT		No	
36	19-1313W	8/27/2010	Closed - No Prima Facie Case	Bureau of Cannabis Control		Yes	
37	19-1380W	9/6/2019	Closed - No Prima Facie Case	DSH		No	
38	19-1428W	9/20/2019	Closed - No Prima Facie Case	Merced Community College District		Yes	
39	19-1524W	9/30/2019	Closed - No Prima Facie Case	CDCR		Yes	
40	19-1581W	10/7/2019	Closed - Notice of Findings (Dismissed)	Victor Valley Community College District		Yes	Informal
41	19-1611W	10/17/2019	Closed - No Prima Facie Case	CalOES		Yes	
42	19-1666W	10/28/2019	Closed - No Prima Facie Case	CDCR		Yes	

**Detailed Listing – Whistleblower Retaliation Complaints
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Calendar Year 2019**

	Number	Filing Date	Case Status	Department	Consolidated²	RDAT³	Informal/Evidentiary Hearing
43	19-1688W	10/31/2019	Closed - No Prima Facie Case	DOT		No	
44	19-1727W	11/8/2019	Closed - No Prima Facie Case	PIA		No	
45	19-1775W	11/18/2019	Closed - No Prima Facie Case	CDCR		Yes	
46	19-1780W	11/18/2019	Closed - No Prima Facie Case	Peralta Community College District		Yes	
47	19-1848W	11/27/2019	Closed - Notice of Findings (Dismissed)	CDFA		No	Informal
48	19-1876W	12/4/2019	Closed - No Prima Facie Case	CDCR		Yes	
49	19-1895W	12/9/2019	Open	DMV	19-1895WEK(AA)	Yes	Evidentiary
50	19-1919W	12/12/2019	Closed - No Prima Facie Case	CDCR		Yes	
51	19-1928W	12/13/2019	Open	CDPH	19-1928WEK(DC)	Yes	Evidentiary
52	19-1980W	12/26/2019	Closed - No Prima Facie Case	PIA		No	