



## **ANNUAL REPORT**

### **TO THE GOVERNOR AND THE LEGISLATURE**

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

January 1, 2002 through December 31, 2002

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Prepared By The

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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, 2003**

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<sup>1</sup>, 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 (SPB) for the calendar year of January 1, 2002 through December 31, 2002.

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 investigating complaints of whistleblower retaliation. In 1987, the law was amended to include the requirement that a complaint of improper governmental activity first be filed with the Joint Legislative Audit Committee before a complaint of retaliation was filed with the SPB; that complaints be filed with the SPB within 12 months of the most recent act of reprisal; and that any person who intentionally engaged 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 SPB to the Governor and the Legislature on complaints of whistleblower retaliation.

Effective January 1, 2000, the law was amended to expand the protections granted to whistleblowers. The requirement that complaints of improper governmental activity first be filed with the Joint Legislative Audit Committee before a complaint of retaliation was filed with the SPB was deleted. Other amendments made it easier for a whistleblower to file a complaint and included, as protected disclosure, the refusal to obey an illegal order. The amendments also changed the burden of proof in adverse actions. If any employee subject to adverse action demonstrates that their whistleblowing activity was

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<sup>1</sup>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 in 2000 and in each subsequent year.

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.

It is likely that the dramatic increase in whistleblower retaliation complaint filings, from seven in 1999 to 48 in 2002, can be largely attributed to the easing of filing requirements effective in 2000, coupled with a growing awareness among state employees and applicants of the statutes and administrative processes that afford them protection from retaliation. SPB staff continue to receive inquiries from state employees who have questions as to whether their situation qualifies them for protection under the California Whistleblower Protection Act, thereby indicating an awareness of their rights under the law.

In the year 2001, the SPB added a "Frequently Asked Questions" section on whistleblower appeals to our internet Web site. In October of 2001, a new section was added to Section 87164 of the Education Code relating to whistleblower protection. This language amended the Reporting by Community College Employees of Improper Governmental Activities Act to include procedures for the investigation and determination of retaliation complaints by the SPB.

#### Information

Effective August 14, 2002, the SPB's regulations to implement the whistleblower laws were added to the California Code of Regulations, Title 2. These new regulations:

1. Set forth the filing requirements that a state or community college employee or applicant for state or community college employment must adhere to when filing a whistleblower retaliation complaint with SPB.
2. Set forth the process and timelines for responding to whistleblower retaliation complaints.
3. Set forth the discovery process for whistleblower retaliation complaints.
4. Set forth the requirements for decisions concerning whistleblower retaliation complaints, including the remedies available to complaining parties.
5. Set forth the appeal rights for all parties to a whistleblower retaliation complaint.

Also for the first time in 2002, two cases involving community college employees alleging whistleblower retaliation were filed with the SPB.

Complaint Activity

**I. Whistleblower Appeals filed  
Between January 1, 2002 and December 31, 2002**

Appeal Accepted	Appeal Not Accepted <sup>2</sup>	Appeal Withdrawn	Total Filed
32	10	6	48

**II. Disposition of Whistleblower Appeals Accepted  
Between January 1, 2002 and December 31, 2002**

Granted	Denied	Stipulation Approved	Pending Decision	Total
1	12	5	14	32

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<sup>2</sup> Appeal Not Accepted – Filed appeals are considered not accepted when (a) there is a No Grounds/No Prima Facie Case; (b) the complainant failed to provide required information timely after the State Personnel Board's request of same (No Timely Response); or (c) there is no jurisdiction. The State Personnel Board is considered to have jurisdiction in Whistleblower Retaliation cases when all of the requirements listed below are met:

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

### Detailed Listing Of Complaints Filed In The Calendar Year 2002

	Appeal Date	Case #	Status	Department	Consolidated <sup>3</sup>	RTFC <sup>4</sup>
1	01/09/02	02-0022	Appeal Not Accepted: No Jurisdiction	Corrections	N	N
2	01/16/02	02-0276	Appeal Not Accepted: No Grounds/No Prima Facie	Corrections	N	Y
3	02/06/02	02-0782	Denied	Corrections	N	Y
4	02/06/02	02-0249E	Stipulation Approved	Education	Y – AA	N
5	02/07/02	02-0873	Denied	Employment Dev.	N	Y
6	02/09/02	02-0465	Appeal Withdrawn	Corrections	N	Y
7	02/15/02	02-0538	Appeal Not Accepted: No Grounds/No Prima Facie	Alcohol/Drug	N	N
8	02/23/02	02-0498	Initially Granted, Decision Pending re New Request	Parks & Rec.	N	N
9	03/08/02	02-0875E	Denied by Board	Pub. Util. Comm.	Y – AA	Y
10	03/28/02	02-1120	Denied	Equalization	N	Y
11	04/03/02	02-1122	Stipulation Approved	Conservation	N	N
12	04/10/02	02-1078E	Pending Decision	Transportation	Y – AA	N
13	04/12/02	02-1264E	Denied by Board	Fish and Game	Y – RA	N
14	04/23/02	02-1320	Pending Decision	Corrections	N	Y
15	05/03/02	02-1444	Appeal Withdrawn	Corrections	N	N
16	05/09/02	02-1604	Denied by Board (for No Jurisdiction after Acceptance)	Transportation	N	N

<sup>3</sup> AA: Whistleblower Retaliation Complaint consolidated with prior Adverse Action Appeal  
DC: Whistleblower Retaliation Complaint consolidated with prior Discrimination Complaint  
RA: Whistleblower Retaliation Complaint consolidated with prior Reasonable Accommodation Complaint. All such consolidated cases are brought before an Administrative Law Judge for an evidentiary hearing.

<sup>4</sup> Request to File Charges indicates whether complainant sought adverse action against individually named respondent(s).

	Appeal Date	Case #	Status	Department	Consolidated	RTFC
17	05/10/02	02-1546E	Stipulation Approved	Youth Authority	Y - AA	N
18	05/15/02	02-4287	Appeal Not Accepted: No Timely Response to SPB	Corrections	N	N
19	06/04/02	02-1869	Denied	Transportation	N	Y
20	06/07/02	02-1883	Appeal Not Accepted: No Timely Response to SPB	Prison Ind. Auth.	N	Y
21	06/13/02	02-1940E	Pending Decision	Corrections	Y - RA	N
22	06/16/02	02-1923E	Appeal Withdrawn	Kern. Comm. College Dist.	N	N
23	06/17/02	02-1979	Denied	Chiropractic Examiners	N	Y
24	06/20/02	02-2009	Pending Decision	Transportation	N	N
25	06/23/02	02-2010	Stipulation Approved	Franchise Tax Bd	Y - RA	Y
26	06/27/02	02-2006	Appeal Not Accepted: No Jurisdiction	Justice	N	N
27	06/29/02	02-2008	Denied	Corrections	N	Y
28	07/08/02	02-2336	Appeal Withdrawn	State Comp. Insur. Fund	Y - AA	Y
29	07/10/02	02-2167	Denied	Corrections	N	Y
30	07/29/02	02-2502	Dismissed	Corrections	N	Y
31	08/02/02	02-2587	Appeal Not Accepted: No Timely Response to SPB	Corrections	N	N
32	08/05/02	02-3354E	Stipulation Approved	Health Services	Y - AA	N
33	08/05/02	02-2569	Pending Decision	Mental Health	N	N
34	08/16/02	02/2902E	Appeal Withdrawn	Employment Dev.	Y - DC	Y
35	08/23/02	02-2951	Denied	Exposition & State Fair	N	Y
36	09/25/02	02-3356	Pending Decision	Social Services	N	Y

	Appeal Date	Case #	Status	Department	Consolidated	RTFC
37	10/02/02	02-3501	Pending Decision	Forestry & Fire Protection	N	Y
38	10/23/02	02-3766E	Pending Decision	Toxic Substances Control	Y - AA	N
39	11/12/02	02-3902	Appeal Withdrawn	Veterans Affairs	N	Y
40	11/18/02	02-4006E	Pending Decision	Publ. Util. Comm.	Y - AA	Y
41	11/21/02	02-4317	Appeal Not Accepted: No Timely Response to SPB	Corrections	N	N
42	11/25/02	02-3988	Appeal Not Accepted: No Timely Response to SPB	Transportation	N	N
43	11/29/02	02-4038	Appeal Not Accepted: No Timely Response to SPB	Managed Health Care	N	N
44	12/07/02	02-4089	Pending Decision	East Los Angeles College	N	Y
45	12/09/02	02-4094	Pending Decision	Veterans Affairs	N	Y
46	12/19/02	02-4308	Pending Decision	Highway Patrol	N	Y
47	12/24/02	02-4471E	Pending Decision	Transportation	N	Y
48	12/27/02	02-4310	Pending Decision	Consumer Affairs	N	N