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# Blowing the Whistle



ALTHOUGH THE CALIFORNIA LABOR CODE STATES that no employees can be fired for whistleblowing activities (see Cal. Labor Code § 1102.5), specific rules apply to people who work for the state itself. Among these is the California Whistleblower Protection Act (Cal. Gov.

Code §§ 8547–8547.13), a robust law that nonetheless has limitations and administrative hurdles.

The primary intent of the CWPA is to ensure that state employees are free to report waste, fraud, abuse of authority, violations of law, or threats to public health “without fear of retribution.” (§ 8547.1.) It covers only state employees, not local government employees. (§ 8547.8; and *State Bd. of Chiropractic Examiners v. Superior Court*, 45 Cal. 4th 963, 967–968 (2009).) The act extends to employees of any state agency and of California State University (CSU) and the University of California (UC), to appointees of the governor and legislative appointees, to court employees, and to former employees of any of these entities.

## ADMINISTRATIVE CLAIMS

Before an aggrieved state employee files suit, he or she must file an administrative claim. If the case involves a state agency, a complaint must first be filed with the State Personnel Board (SPB) within one year of the retaliatory act. (Although the statute uses the word “may” and not “shall,” the courts have interpreted the administrative filing to be a mandatory prerequisite to litigation. (§ 8547.8(a) & (c); and *Hood v. Hacienda La Puente USD*, 65 Cal. App. 4th 435 (1998).))

Once the administrative complaint is filed, the SPB will investigate and issue findings. (§ 8547.8.) But findings

that go against the employee do not preclude subsequent legal proceedings (*Chiropractic Examiners*, 45 Cal. 4th at 976). Thus, the injured employee may seek relief through the courts without fear of being bound by an adverse administrative determination.

The rules are somewhat different for the state’s university systems, whose employees must first submit written claims to their supervisor. (§§ 8547.10 & 8547.12.) Like other state workers, CSU employees may sue civilly even if that administrative decision is adverse (*Runyon v. Bd. of Trustees of Calif. State Univ.*, 48 Cal. 4th 760, 769–770 (2010)).

However, for UC employees a civil suit in court is unavailable as long as the university’s own internal dispute-resolution process is completed in a timely fashion (*Miklosy v. Regents of Univ. of Calif.*, 44 Cal. 4th 876, 888 (2008)). According to *Miklosy*, this protocol is reasonable because of “the University’s unique status as a self-governing institution, and the Legislature’s consequent desire to preserve the University’s autonomy.” (*Miklosy*, 44 Cal. 4th at 898.)

## MONETARY DAMAGES

Filing a complaint with the SPB or university supervisor is not the only administrative requirement for state-employed whistleblowers. The Government Claims Act (§§ 810–996.6) stipulates that no one can sue a state entity for money damages unless they have already sub-

mitted a claim to the Victim Compensation and Government Claims Board within one year of the alleged injury. (§§ 910, 911.2, & 915.) This requirement gives the governmental entity an opportunity to conduct an early investigation, settle just claims before litigation, and properly defend itself against unjust claims (*Gehman v. Superior Court*, 96 Cal. App. 3d 257, 262 (1979)).

The claims board has 45 days to respond to a claim. (§ 912.4.) If the claim is rejected, the injured party has six months to file a lawsuit; but if the claim is deemed denied because there was no timely administrative response, the claimant has two years from the date of injury to file a lawsuit. (§§ 945.4 & 945.6.)

Appellate rulings have not clarified whether a state employee who submits a whistleblower retaliation claim to the SPB must also submit one to the claims board. However, at least one unpublished decision holds that the two requirements are independent, so that both kinds of administrative claims must be filed (*Bollinger v. Dep’t of Corr. & Rehabilitation*, 2006 WL 1280676).

Because of the legislative exception for whistleblower claims against UC, those employees need not follow the administrative procedures outlined in the Government Claims Act. (§ 905.6.) Nevertheless, the best approach remains one of caution: An employee who is entitled to sue for damages under the CWPA should submit administrative filings to both the SPB and the claims board.

No attorney should tackle a claim under the CWPA without a working knowledge of these procedural requirements. ☉

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