

DATE: December 15, 2017

TO: ALL INTERESTED PARTIES

/s/ **SUZANNE M. AMBROSE**

FROM: Suzanne M. Ambrose
Executive Officer

SUBJECT: NOTICE OF PROPOSED REGULATIONS

Notice is hereby given that the State Personnel Board (Board) proposes to adopt the regulatory changes described below. The Board will consider any and all comments, objections, or recommendations that may be timely submitted regarding this proposed action.

PUBLIC HEARING

A public hearing regarding the proposed regulatory action will be held on February 1, 2018, at 10:00 a.m. in Room 150 at 801 Capitol Mall, Sacramento, California.

WRITTEN COMMENT PERIOD

The written comment period closes on January 29, 2018, at 5:00 p.m. Any interested party, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below.

Jeanne R. Wolfe
Senior Attorney
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814
Fax: (916) 653-4256
Email: jeanne.wolfe@spb.ca.gov

Comments must be received by the contact person no later than 5:00 p.m. on January 29, 2018.

AUTHORITY AND REFERENCE

The Board proposes to adopt the proposed action under the authority granted by the California Constitution, article VII, section 3, and Government Code sections 18502 and 18701 in order to implement, interpret, and make specific the provisions of California Constitution, article VII, section 3, and Government Code sections 19170 and 19173.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

A. Summary of Existing Laws and Regulations Related to the Proposed Action

The Board is a constitutional body responsible for enforcing California's civil service statutes and the merit principle in the state civil service system. (Cal. Const., art. VII, §§ 1, subd. (b) & 3; Gov. Code, § 18660.) In addition, the Board, by majority vote of all its members, prescribes probationary periods. (Cal. Const., art. VII, § 3.) By rule, the Board may (1) increase the length of individual probationary periods by adding periods of time to any periods of time an employee, while serving as a probationer, is absent from his or her position; and (2) require an additional probationary period not to exceed the length of the probationary period of the class in which the probationer was appointed when the probationary employee returns after an extended period of absence and the remainder of the probationary period is insufficient to evaluate his or her current performance. (Gov. Code, § 19170.)

Regulations adopted by the Board are exempt from the Administrative Procedure Act (APA), except as expressly specified. (Gov. Code, §§ 18211, 18215, & 18216.) The Board's regulations concerning selection, examinations, and classification may be adopted by the Board without public notice or comment; however, regulations related to selection and examinations shall be reasonably available to all interested parties. (Gov. Code, § 18213.) The rulemaking procedures set forth in Government Code section 18214 apply to the adoption of Board regulations concerning other matters.

In this instance, the subject matter of the proposed regulations relates to probation, which is the final step in the civil service selection process. (Merit Selection Manual (Oct. 2003) § 1200, p. 1200.2; Personnel Management Policy and Procedures Manual (Jan. 15, 1986) § 320, p. 1.) These regulations are thus exempt from the APA process; however, the Board finds that a public comment period would be appropriate for this regulatory package.

B. Comparable Federal Regulations or Statutes

The Board has conducted a review of federal regulations and statutes and determined there are no comparable federal regulations or statutes.

///

C. Policy Statement Overview

This proposed regulatory action concerns extensions of probationary periods where the probationer has not worked the required number of hours for the probationary period. The proposal maintains the same amount of hours that must be served for probation, depending upon the required length of the probationary period, i.e., 840 hours for a six-month probationary period, 1260 hours for a nine-month probationary period, and 1680 hours for a one-year probationary period. The proposal also maintains an automatic extension of the probationary period until the probationer has worked the required number of hours. Where an extension of the probationary period is needed to provide the probationer with reasonable accommodation, the proposed regulatory action maintains the current requirements but makes stylistic and technical changes for improved clarity and consistency.

In addition, the proposed regulatory action promotes fairness and transparency by requiring that where a probationary period is automatically extended the probationer shall be notified in writing of the extension. Where a probationer is continuously absent from work for a period of time that is one-third or more of the length of the probationary period and the appointing power finds that the automatic extension provides insufficient time to properly evaluate the probationer's job performance, the proposed action will simplify the one-third calculation by equating it to hours, e.g., one-third of the six-month probationary period equals 280 hours. The proposed regulatory action also simplifies the calculation for such an extension as not to exceed the length of time, calculated in hours, that the probationer was continuously absent.

Further, the proposed action clarifies the process the appointing power must follow where there is a continuous absence by a probationer. This change is also intended to promote a consistent, uniform, and fair procedure. The appointing power must submit to the California Department of Human Resources (the Department) a written request for the extension, as specified. After submission of all documents, the Department must promptly prepare for and submit to the Executive Officer a written evaluation of the request with a recommendation of whether to approve, modify, or deny the requested extension. Other changes to the regulation are stylistic and technical.

D. Evaluation of Consistency and Compatibility with Existing State Regulations

In reviewing other state regulations, the Board found that the instant regulatory proposal is consistent and compatible with existing state regulations.

DETERMINATION OF FISCAL IMPACT ON PUBLIC AGENCIES:

The Board has made the following initial determinations:

- Mandate on local agencies and school districts: None.

- Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Cost or savings to any State agency: This proposed regulatory package is intended to simplify, update, and make more efficient the procedures related to extensions of probationary periods. Therefore, the Board expects that any costs or savings to State agencies will be minimal, if any.
- Other nondiscretionary cost of savings imposed on local agencies: None.
- Cost or savings in federal funding to the State: None.

SIGNIFICANT EFFECT ON HOUSING COSTS:

None.

ECONOMIC IMPACT ON BUSINESS:

- Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.
- Effect on small business: The proposed regulations only set standards related to state civil service extension of probationary periods. Accordingly, it has been determined that the adoption of the proposed regulation would not affect small businesses in any way.

DESCRIPTION OF COST IMPACT:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF ECONOMIC IMPACT ASESMENT:

Adoption of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state's environment.

It is expected that the adoption of this regulatory package will have a positive impact on the general health and welfare of California residents in that the benefits of this

proposed regulatory action include simplifying and improving procedures related to the extension of probationary periods in state civil service.

CONTACT PERSONS:

Inquiries concerning the proposed regulatory action, including questions regarding procedure, comments, or the substance of the proposal, may be directed to:

Jeanne R. Wolfe
Senior Attorney
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814
Phone: (916) 653-1028
Fax: (916) 653-4256
Email: jeanne.wolfe@spb.ca.gov

In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Lori Gillihan
Chief, Policy and Compliance Review Division
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814
Phone: (916) 653-1028
Lori.Gillihan@spb.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Senior Attorney Wolfe at the above address.

AVAILABILITY OF RULEMAKING FILE:

The Board is maintaining a rulemaking file for the proposed regulatory action, which as of the date of this notice contains the following:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout and underline;
2. A copy of this notice and statement of reasons for the proposed adoption; and
3. Any factual information upon which the proposed rulemaking is based.

If written comments, data or other factual information, studies or reports are received, they will be added to the rulemaking file. The file is available for public inspection during normal working hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814, Fax: (916) 653-4256. Items 1 through 3 are also available on the Board's

website at www.spb.ca.gov under "What's New?" Copies may be obtained by contacting the person via the address, email, or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT:

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the person at the address indicated above. The Board will accept written comments only on the modified regulations for 15 days after the date on which they are made available to the public.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law and shall include a Final Statement of Reasons. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

AVAILABILITY OF DOCUMENTS ON THE INTERNET:

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed on the Board's website at www.spb.ca.gov under "What's New?"