

SUMMARY OF PUBLIC COMMENTS FOR SECOND 15-DAY PUBLIC COMMENT PERIOD AND THE BOARD'S RESPONSES

I.

Introduction

The State Personnel Board (Board) proposes to adopt, amend, and repeal sections 151.5 et seq. of Title 2, Chapter 1, of the Code of Regulations (CCR). A second 15-day public comment period on this rulemaking action was held from November 21, 2019, through December 5, 2019. The comments received during the second 15-day public comment period were taken under submission and considered. A summary of those comments and the Board's responses are below.

II.

Summary of Written Comments from Logan Buchan, Unit Manager, Examination Services Unit, Human Resources – Office of Workforce Planning, for California Department of Corrections and Rehabilitation (CDCR).

Comment 1:

Update made to Regulation 170 (Civil Service Examinations and Announcements)

In regards to the update made to Regulation 170. Civil Service Examinations and Announcements, where the exact city(ies) was added to be included on the examination announcement for any in-person exam. The CDCR administers most in-person exams (written examinations and Qualifications Appraisal Panel interviews) whereby applications are accepted during a specific filing period and all qualified candidates are scheduled to compete. The CDCR schedules locations throughout the state, based on the home or work location of the candidate pool, after applications have been received. Scheduling candidates in this manner is beneficial because we work to ensure that there is the least amount of impact to travel and time off for the candidate pool.

In most cases, especially for exams administered on an open basis, the CDCR does not know where the majority of the candidate pool will be located, thereby making it difficult

to schedule locations ahead of time. Putting the exact cities will require that locations are secured prior to announcing the examination, which entails scheduling overflow test sites to account for all potential candidates and providing some test sites payment upfront. When a smaller number of candidates are received than expected, it creates more work to cancel test sites and cancel payments. Additionally, if it is discovered that the majority of the candidate pool is located in a city other than one that was secured prior and indicated on the examination announcement, it will mean more travel time and time off for those candidates. Furthermore, if the CDCR does not secure a location in a certain city and list the city on the examination announcement, it could deter candidates from applying. The CDCR's current process would ensure a location is secured within a reasonable amount of travel time of every candidate, which is difficult to try to estimate before releasing an examination announcement. The CDCR asks that this be taken into consideration.

Response 1:

Government Code section 18933 requires that examination announcements include the date and "place" of the examination. Subdivision (b)(1) of proposed section 170 reiterates this requirement. This has been a historical requirement.

III.

Summary of Written Comments from California Department of Human Resources (CalHR).

Comment 1:

Article 8. Examinations

§ 170. Civil Service Examinations and Announcements.

CalHR asks should "cities" be used instead of "where" in subdivision (b)(2) since that verbiage is used in subdivision (b)(1)? CalHR also suggests changing "several parts" to "components" in subdivision (b)(7).

Response 1:

Subdivision (b)(1) refers to cut off dates for continuous file exams, whereas (b)(2) refers to required notice of location for in person exams. Therefore, we will not make the first suggested change. However, we will make the suggested change from "several parts" to "components" in subdivision (b)(7) for consistency and clarity.

Comment 2:

§ 174. Applications for Civil Service Examinations.

Regarding proposed subdivision (d), CalHR asks if we are requiring that all applicants include employment history on the STD 678? Or can a department still accept a STD 678 without employment history with an attached resume? Do they have an option?

Response 2:

We are allowing departments the discretion to proceed without the employment history fields completed on the STD 678 if a resume is attached. Additional amendments have been made for purposes of clarification.

Comment 3:

§ 249.1. Advertising For Job Vacancies.

Regarding proposed subdivision (d), CalHR asks whether “Equal Employment Opportunity” should be used instead of “affirmative action”?

Response 3:

Government Code section 19232 requires each state agency to develop and implement an affirmative action plan for individuals with a disability. We will keep the term “affirmative action” to be consistent with the law.

Comment 4:

§ 434. Involuntary Transfers.

If the intent is to maintain the current practice, consistent with the PMPPM and attached memo, we highly recommend having the term “current class” changed to “from class” for CCR 434(c)(1) since the current and proposed transfer regulations require transfer eligibility be determined by the “from class”.

Response 4:

The suggested change has been made.

Comment 5:

§ 439.2. Training and Development Classification.

We want to point out that the current 438 (b)(1) for T&D Assignments is specific to employees who can voluntarily transfer and the proposed CCR 439.2(a)(2) uses the term “current class” which could provide additional classes to which the employees can accept a T&D Assignment, but could not voluntarily transfer to. This is a different intent than the current practice.

Response 5:

The suggested change has been made.

IV.

Summary of Written Comments from Olivia Trejo, Section Chief, For California Department of Consumer Affairs (DCA), Office of Human Resources.

Comment 1:

Proposed 249.1 (b) (Advertising for Job Vacancies)

DCA believes the change from “encouraged” to “required” will be an added workload burden to our staff and we propose this section be removed altogether. There would be no feasible way to determine eligible departmental employees, as a result, all departmental employees would have to be notified. Our department posts 70-100 job postings per month, with new postings published almost every business day. This would cause additional daily workload, and emails to all departmental staff would become excessive. Our department is comprised of approximately 37 different agency codes and have very board/committee/commission specific classifications that do not always cross over to other programs. Furthermore, our OHR office does not have access to send department wide emails (some of our programs are on different servers), we are reliant on our Office of Information Technology and their schedule. This could delay the release of postings and ultimately recruitment efforts by a couple of days. We also have various field offices throughout the state so coordinating with them on posting announcements on their bulletin boards would add additional workload and require coordination amongst several department personnel and monitoring to ensure announcements are removed once the final file date has passed. Other than posting on CalHR’s CalCareers site, we feel that employees have the responsibility to seek out vacancies they are interested in.

If the above cannot be accommodated, DCA asks that the word “eligible” be removed and change “inform” to “notice”.

Response 1:

The intent behind subdivision (b) is to inform current employees of other job opportunities within their own department. We are allowing departments the discretion to determine the most effective method. The suggestion to remove the word “eligible” seems counter to the department’s concern with noticing as it actually broadens the notice requirement, rather than narrowing it. Therefore, we will not make this change. Departments, however, are free to notice all employees if they so choose. We will, however, change “inform” to “notice.”

Comment 2:

Proposed 425 (Definitions)

Including the language “current class” within subdivision (g) is misleading and should be reworded for clarity. Subdivision (h) defines “current class” as the classification of the position currently held by the employee. Not all “current classes” are considered “from classes” for the purposes of transfers. Staff may interpret that, as long as an employee progresses through a deep class after a transfer, then we can take the transfer eligibility (TE) amount from the deep class/range for future transfers, rather than always defaulting back to the highest list appointment.

Response 2:

We understand your concern that deep class transfers should not be compounded when determining transfer eligibility. We believe that this can be clarified through policy.

V.

Summary of Written Comments from Allen Chancey, Chief, For the California Department of Health Care Services (DHCS), Classification of Performance Services Section.

Comment 1:

Article 19.1 Temporary Assignments or Loans

§439.2. Training and Development Classification.

In regards to subdivision (a)(1), DHCS states that the intent of a T&D assignment is to gain experience for appointment to a different classification outside of an employee’s current occupational area. If an employee is competitive in a selection process for a position which is the same classification as their current classification, they would be appointed to the position via a lateral transfer, not placed on a T&D. A T&D to the same classification is contrary to the concept of a T&D assignment. DHCS recommends removing this first criterion for a T&D.

Response 1:

We have broadened the scope of T&D’s to include an assignment in someone’s current class while performing different duties to allow for future career growth. An example could be an Associate Governmental Program Analyst with a contracts background accepting a T&D to a budget office to learn budgets.

Comment 2:

§440.1. Eligibility for Temporary Assignments to Meet Compelling Program or Management Needs.

Regarding subdivision (a), DHCS recommends that this be returned closer to the original version which read that a compelling management need assignment (CMNA) is “limited to employees who have permanent status in their current classification or those employees who have probationary status in their current classification who have previously attained permanent status with no break in service due to a permanent separation.” A probationer who has never obtained status in state civil service should be evaluated during their probationary period for the appointment they received, not placed on a CMNA. This is a long-held standard which DHCS recommends be retained in these regulatory changes.

In addition, regarding subdivision (b), DHCS states an employee is performing assignments which are within the scope of their current classification (whether on probation or not), then there is no need for a CMNA. The concept of a CMNA is that there is an urgent need for the performance of a special project or assignment that cannot be accomplished under normal staffing procedures or which are necessary to prevent/alleviate a significant negative impact on departmental operations. The intent is to allow departments to meet these needs by temporarily reassigning staff who possess needed skills, but whose current classification does not cover the work to be performed. Because it does not align with the concept of a CMNA, DHCS recommends striking the first sentence of subsection (b).

Secondly, although referenced here, there does not currently exist any authority under Section 321 to extend the probationary period under the circumstance of being placed on a CMNA. The wording of this proposed regulation seems to assume that the probationer is “appointed” to a CMNA and then “returned” to their appointment classification. However, this is inaccurate. An employee on a CMNA is not appointed to another classification, they remain in their current classification (there is no new “appointment” of any kind). Since the employee remains in their current classification, the time worked by a probationer during a CMNA continues to count toward meeting the required hours pursuant to Section 321. DHCS would recommend either striking the remainder of subsection (b), or provide for regulatory changes to Section 321 to allow for an extension of probation if a probationer is temporarily assigned to a CMNA.

Response 2:

The suggested change of limiting CMNAs to only those employees with prior permanent status is declined. The intent of removing this restriction was to broaden departments’ candidate pools for these special assignments. SPB disagrees that Rule 321 does not apply. If a probationary employee is redirected to a CMNA, Rule 321 would allow for an extension of the probationary period where warranted.

Comment 3:

§440.2. Advertising for Available Temporary Assignments to Meet Compelling Program or Management Needs.

DHCS respectfully does not agree with the addition of Sections 440.2 and 440.3. As mentioned above, there is no appointment to a CMNA. It is a temporary assignment of existing staff to perform a critical project for which they have specific skills to accomplish despite the fact that it may fall outside of the normal scope of their current classification. Advertising for a CMNA, conducting a full competitive process, and documenting a CMNA similar to an actual appointment is contrary to the concept of the CMNA as an option for departments to temporarily assign staff to meet these types of urgent needs. There is no vacant position to be advertised or for which to compete. The time and effort spent to advertise, interview, and “appoint” someone for a CMNA could potentially result in departments being unable to accomplish its urgent programmatic need. The unnecessary additional requirement of creating a competitive process for a temporary assignment is impractical and would, essentially, remove departments’ ability to appropriately address their urgent needs.

Lastly, if SPB is purposely attempting to make a significant change to require an appointment with competitive process for CMNAs, DHCS finds the proposed regulations unclear as to the rationale of the 3-day advertising period, where the CMNA would be advertised (since CalCareers is designed to advertise vacant positions), and how “eligible candidates” would be identified to ensure notice is fair. However, DHCS recommends striking proposed Sections 440.2 and 440.3 altogether.

Response 3:

The intent is to provide notice to employees whose expertise or specialized competencies may not be known to management and open up opportunities to all eligible employees.

V.

Conclusion

The Board appreciates the feedback it received regarding this proposed regulatory package. The modified text with the changes clearly indicated are available to the public as stated in the Notice of Modification to Text of Proposed Regulation.