

INITIAL STATEMENT OF REASONS
Title 2, Chapter 1, California Code of Regulations
Amend Section 321

The State Personnel Board (Board) proposes to amend section 321 of Title 2, Chapter 1, of the Code of Regulations (CCR).

SPECIFIC PURPOSE OF EACH REGULATORY ACTION

The specific purpose of each adoption, amendment, and repeal, and the rationale for the determination that these regulatory actions are reasonably necessary to carry out the purposes for which these actions are proposed, together with a description of the problems, administrative requirements, or other conditions or circumstances that each action is intended to address, is as follows:

The proposed amendments to Section 321 of Title 2, Chapter 1, Article 1 of the CCR is intended to clarify and simplify the rules for extending probationary periods where the probationer has not worked the requisite hours or is continuously absent from work for a specified period of time. The proposed amendments are also intended to provide a consistent, uniform, and fair procedure.

The proposed changes to section 321, subdivisions (a) and (b) are nonsubstantive, stylistic and technical changes for improved clarity and consistency with other Board regulations. The proposed changes maintain 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 types of leaves of absence not considered working time are not changed.

For purposes of transparency and notice, the proposed changes to section 321, subdivision (c) requires that where a probationary period is automatically extended the probationer shall be notified in writing of the extension.

The provisions of section 321, subdivision (b) currently require the approval of the Executive Officer to extend the probationary period where the probationer has had a continuous period of absence of 60 or more working days, and, upon return from such absence, the appointing power determines that the remaining portion of the probationary period is insufficient to evaluate the probationer's performance. Subdivision (b) also creates a calculation for determining the length of the extension that depends upon the fraction of time the probationer has worked, e.g., up to one-third of the minimum number of hours required or over one-third but not more than two-thirds of the minimum number of hours required.

Initial Statement of Reasons Amendments to Section 321

These proposed changes strike current subdivision (b) as unnecessarily complicated and add subdivision (d) in its place, with the intent to clarify and simplify the extension calculation. The proposed provisions of subdivision (d) changes the “continuous period of absence of 60 or more working days” to “a period of time that is one-third or more of the length of the probationary period.” This proposed change better reflects the varying lengths of time for probationary periods, i.e., six, nine, or twelve months. In addition, the changes simplify the calculation by making one-third of the six-month probationary period equal to 280 hours; one-third of the nine-month probationary period equal to 420 hours; and one-third the one-year probationary period equal to 560 hours. The proposed changes also clarify and make more precise the length of the extension period: the appointing power must find that the automatic extension provides insufficient time to properly evaluate the probationer’s job performance and the extension of the probationary period cannot exceed the length of time, calculated in hours, that the probationer was continuously absent.

In addition, the proposed amendments are intended to ensure proper oversight, transparency, and adequate notice to a probationer where appointing powers seek to extend the probationary period under the provisions of proposed subdivision (d). Proposed section 321, subdivision (e) requires the appointing power to submit to the California Department of Human Resources (the Department) and serve on the probationer a written request for extension of the probationary period that includes specified information, e.g., the length of the applicable probationary period, the dates of the probationer’s continuous absence, and hours of work missed on each of those dates. Further, the proposed changes require that service on the Department and probationer be at least 10 calendar days prior to the expiration of the probationary period. The probationer is provided five calendar days to submit a written response to the Department. After submission of all documents, the proposed changes require the Department to promptly prepare for and submit to the Executive Officer a written evaluation of the request with a recommendation of action. As is currently in the rule, the proposed amendments allow for a maximum of five working days in order to comply with the notice requirements set forth in section 52.5, concerning rejections during probation.

The proposed changes strike the provisions in current section 321, subdivision (d), which concern a situation in which a probationer with a disability and the appointing power submit a written agreement for approval by the Board to extend the probationary period for up to six months to provide reasonable accommodation. In its place, the proposed changes add subdivision (h). Proposed subdivision (h) contains the same requirements for the written agreement and the six-month limit for the extension as the current rule. The changes are primarily stylistic and technical for clarity and consistency.

Section 321, subdivision (e) is stricken as no longer necessary given the other proposed amendments to the regulation.

CONSIDERATION OF ALTERNATIVES

The Board has initially determined that no reasonable alternatives it has considered or that have been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purposes for which the instant action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.