



APPEALS RESOURCE GUIDE

State Personnel Board

801 Capitol Mall
Sacramento, CA 95814

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TABLE OF CONTENTS

SECTION I: GENERAL OVERVIEW

The State Personnel Board	2
State Personnel Board Jurisdiction.....	2
How to File an Appeal	3
Timelines	4
The Appeals Process	5
Accommodations for Persons with Disabilities	8
Remedies	9
Withdrawal of Action/Appeal.....	9
Contact SPB.....	9

SECTION II: STATE CIVIL SERVICE – EVIDENTIARY APPEALS

Adverse Action/Disciplinary Action	11
Lesser Adverse Action.....	13
Rejection During Probationary Period	14
Medical Termination/Demotion/Transfer.....	15
Adverse Action/Termination of Privileges for Physicians under the Authority of the California Correctional Health Care Services division of the California Department of Corrections and Rehabilitation Adult Institutions	16
Constructive Medical Termination	17
Non-punitive Termination/Demotion/Transfer (License Revocation/Restriction).....	18
Termination of Limited-Term/Seasonal/Temporary Authorization Appointment (Liberty Interest/Name-Clearing Hearing)	19
Termination of Limited Examination and Appointment Program (LEAP) Appointment.....	20
Termination of Career Executive Assignment (CEA) Appointment.....	22
Termination/Automatic Resignation of Permanent Intermittent Employee.....	23
Discrimination Complaint/Denial of Reasonable Accommodation	24
Whistleblower Retaliation Complaint	26

SECTION III: PETITION FOR BACK PAY

Petition for Back Pay Hearings	29
--------------------------------------	----

SECTION IV: STATE CIVIL SERVICE – MERIT APPEALS

Request to File Charges	31
Examination Appeal.....	32
Withhold From Certification	36
Voided Appointment	37
Medical/Psychological Disqualification/Failure of Pre-employment Drug Test ..	38
Merit Issue Complaint.....	39
Dismissed Employee's Request to Take Civil Service Examination	41
Out-of-Class Claim (Examination)	42

SECTION V: CALIFORNIA STATE UNIVERSITY (CSU) APPEALS

Dismissal, Demotion, Suspension, Medical Action	44
Request for Reinstatement After Automatic Resignation (AWOL)/AWOL Separation	45
Petition to Set Aside Resignation	46

SECTION VI: PETITIONS FOR REHEARING

Petition for Rehearing.....	48
-----------------------------	----

SECTION VII: APPEALS DIVISION RECORDS REQUESTS

Records Request	50
Writs of Mandamus	52

SECTION I

GENERAL OVERVIEW

INTRODUCTION

This guide provides a general overview and summary of state civil service laws and regulations relating to the various appeals and complaints which may be filed with the Appeals Division of the State Personnel Board (SPB). It is not a policy statement, provides no limitations on rights or privileges related to civil service laws and regulations, may not be comprehensive, and does not supersede or constitute laws or regulations. It is intended simply to put in plain language the laws and regulations related to filing appeals with the SPB.

The reader must review and follow the relevant statutory and regulatory authority, including, but not limited to, the Civil Service Act and California Code of Regulations, title 2. Some of the applicable laws and rules governing the SPB and the state civil service may be found on SPB's website (www.spb.ca.gov).

This guide may not be up to date, as laws and regulations constantly change. Further, this guide is not intended to provide legal advice. It is not legal authority. All legal questions should be directed to union representatives, agency legal departments, or private counsel, as appropriate.

THE STATE PERSONNEL BOARD

The SPB was established in 1934 to administer the civil service system and ensure that state employment is based on merit and free from political patronage. The SPB's authority derives from Article VII, section 3 of the California Constitution. The SPB investigates or adjudicates appeals and complaints filed by employees, applicants, and members of the public alleging violations of civil service laws. Laws governing the state civil service begin at section 18500 of the Government Code. SPB's regulations interpreting applicable provisions of the Civil Service Act are contained in California Code of Regulations, title 2, section 1 through 549.95.

APPEALS AND COMPLAINTS FALLING WITHIN THE STATE PERSONNEL BOARD JURISDICTION

- Adverse Action
- Rejection During Probationary Period
- Termination, Demotion, or Transfer based upon a medical condition
- Hiring Authority has Constructively Terminated an Individual due to a Medical Condition
- Termination, Demotion, or Transfer for Non-Punitive Reasons (License Registration or Revocation)
- Termination of Appointment to Career Executive Assignment
- Termination or Automatic Resignation of Permanent Intermittent Employees
- Termination of Limited Examination and Appointment Program (LEAP) Appointment

- Dismissal, demotion, or suspension for cause taken by the California State University (CSU)
- Errors Committed by the Hiring or Testing Authority in Conducting an Examination
- Denial of Entry into Examination for Failure to Meet Minimum Qualifications
- Determination to Disallow Dismissed Civil Service Employee from taking Civil Service Examination
- Withhold from List Certification after Examination for Failure to Meet Minimum Qualifications (may include claim of out-of-class experience) Determination to Void Civil Service Appointment
- Disqualification due to Pre-Employment Medical or Psychological Examination
- Disqualification due to Failure of Pre-Employment Drug Test

The following complaints may be filed with the SPB:

- Complaint of Discrimination based upon Mental or Physical Disability or Medical Condition including Denial of Reasonable Accommodation
- Complaint of Harassment based upon Mental or Physical Disability or Medical Condition
- Complaint of Retaliation for Exercising One's Rights in Connection to Mental or Physical Disability or Medical Condition
- Complaint of Retaliation for Protected Disclosure (Whistleblower Retaliation Complaint)
- Complaint that a State Agency is violating the Civil Service Act (Merit Issue Complaint)
- Request to File Charges against a State Employee

Most appeals and complaints may be filed directly with the SPB Appeals Division. Check the laws and regulations related to the relevant complaint or appeal to determine if there are any requirements before an appeal or complaint may be filed with the SPB.

HOW TO FILE AN APPEAL OR COMPLAINT

1. Contents and Filing Methods for the Appeal or Complaint

California Code of Regulations, title 2, section 52.4, provides the general filing requirements for filing appeals and complaints with the SPB. There may be other requirements specified by the Government Code or the California Code of Regulations related to a specific complaint or appeal. You must review the Government Code and California Code of Regulation sections that apply to the appeal or complaint you submit to the SPB. (See e.g., Cal. Code Regs., tit. 2, §§ 52.7, 61, 64.5, 66.1, 67.2, 190, 243.6, 547.58.9, 548.49.)

In accordance with California Code of Regulations, section 52.4, an appeal or complaint submitted to the SPB must be in writing, identify the names and addresses of the parties, state the factual basis for the appeal or complaint, and specify the remedy or

relief to be sought. Failure to do so may result in the matter being rejected by the Appeals Division. To assist in processing your appeal or complaint, the appeal or complaint should also include a copy of any action or determination that the appeal or complaint arises from.

Appeals and complaints may be filed using the Appeals Online System (AOS), a web-based application that allows parties to file an appeal or complaint with SPB electronically. In order to file an appeal or complaint electronically, you must have a valid email address and telephone number. More information about filing an appeal can be found [online](#).

Additionally, an Appeal Form (SPB-101) is available through the above link on the SPB website to assist in meeting filing requirements. Upon completion, a party may attach the form to an email and send it to: appeals@spb.ca.gov. Appeals may also be hand-delivered, mailed, or faxed to the SPB Appeals Division.

However, whistleblower retaliation complaints must be filed via U.S. Mail or hand delivered. Online and electronic filing is not accepted for these matters.

Filing Method	Submit Appeal To
Online (AOS)	via online
Electronic (Email)	appeals@spb.ca.gov
Fax	(916) 654-6055
Mail or In-Person	State Personnel Board Appeals Division 801 Capitol Mall, Sacramento, CA 95814-4806

2. Time for Filing an Appeal or Complaint

Appeals must be filed with the SPB within the timeframes specified by civil service laws and regulations. Different filing deadlines apply to different types of appeals or complaints. An Appellant or Complainant must review the applicable Government Code sections and California Code of Regulations sections related to the appeal or complaint they wish to file to determine the appropriate filing deadlines. The following is a link to the [California Code of Regulations, title 2, Division 1](#) that will have many, but not all, filing deadlines.

Appeals or complaints delivered by electronic mail (e-mail), will be filed on the date received by the Board. Appeals or complaints delivered by the U.S. Postal Service are filed on the date received by the Board. An Appellant or Complainant may obtain proof of the filing of the appeal or complaint by submitting either an extra copy of the appeal or complaint or the first page only, with a self-addressed, return envelope, postage prepaid. The Appeals Division will return the copy marked with the date of filing. Appeals or complaints hand delivered to the Board during regular business hours will be

filed on the date received by the Board after the filing party has complied with applicable statutory and regulatory filing requirements.

Any Appellant or Complainant seeking to file an appeal or complaint beyond the time limits noted within the applicable California Code of Regulation section, must file a petition with the Chief ALJ or their designee demonstrating good cause as to why the appeal or complaint should be accepted. Upon good cause being shown, the Chief ALJ or their designee may allow an appeal or complaint, except as otherwise limited by statute, to be filed within 30 days after the end of the period in which the appeal or complaint should have been filed. "Good cause" is defined at California Code of Regulations, title 2, section 51.2, subdivision (v).

APPEALS PROCESSES

Appeals and complaints are generally reviewed within two weeks of receipt to determine that the matter falls within SPB's jurisdiction and was properly filed. If the appeal is accepted, the matter will be assigned a case number and an acknowledgement packet may be served on the parties. The acknowledgment packet generally contains information concerning the next steps in the case.

Parties are required to notify the Appeals Division of any change in address or any change in representation. (See Cal. Code Regs. tit. 2, §§ 52.2 and 52.9.) Parties may use the Contact Update Form (SPB-102) available under the Appeals link on the SPB website to notify the Appeals Division of changes in address or representation.

Depending on the type of appeal or complaint, the matter filed with the SPB may be assigned to an investigation by SPB staff, an informal hearing before a staff hearing officer, or an evidentiary hearing before an Administrative Law Judge (ALJ). California Code of Regulations, title 2, section 53.4 provides that the SPB may assign any appeal to any appropriate process. Parties may be represented by legal counsel or any other person or organization of the party's choice. (Cal. Code Regs., tit. 2, § 52.9). An Appellant may also choose to represent themselves.

1. Investigative Review

Appeals Division staff conduct investigative reviews by evaluating documentary or other information deemed relevant to the appeal or complaint. Staff may interview witnesses, subpoena documents, and take official notice of laws or facts. Parties to the appeal or complaint do not conduct discovery or call and examine witnesses. Depending upon the type of appeal or complaint, staff will prepare a proposed decision to be presented to the Board for review and adoption or other action or prepare a determination for the parties at the conclusion of the investigative review.

Unless otherwise assigned, challenges to examination results, rejection of application for state civil service employment based upon minimum qualifications, certification withholds, appeals of layoff review findings under Government Code section 19798, and

merit issue complaints will be assigned to investigative review. (Cal. Code Regs., tit. 2 § 53.2.)

2. Informal Hearing

At an informal hearing, a staff hearing officer conducts all or nearly all of the examination of witnesses. The staff hearing officer has the sole discretion whether to allow parties the opportunity to call and examine witnesses. Parties may also submit declarations signed under penalty of perjury. Informal Hearings are scheduled for two hours, except that informal hearings for complaints of whistleblower retaliation are scheduled for four hours. Following the hearing, the staff hearing officer will prepare a proposed decision for review and adoption or other action by the Board.

Unless otherwise assigned, appeals from psychological and medical disqualification and voided civil service appointments will be assigned to the informal hearing process. Additionally, appeals from a denial by the California Department of Human Resources (CalHR) or the Executive Officer for permission to take a civil service examination after dismissal from state service (Cal. Code Regs., tit. 2, §§ 211, 211.2), and whistleblower retaliation complaints that are not consolidated with other appeals will also be assigned to the informal hearing process. (Cal. Code Regs., tit. 2, § 53.1.)

3. Evidentiary Hearings

Evidentiary hearings are conducted by ALJ's in accordance with Government Code, section 11513. (Gov. Code, § 19578.) Parties provide opening and closing arguments, call witnesses for examination and cross-examination, and introduce physical and documentary evidence. Most appeals from discipline and other forms of adverse action are referred to a full evidentiary hearing. However, lesser forms of discipline or rejections during probation may be heard in an abbreviated hearing called Investigatory Hearing (see below.) At the conclusion of the hearing, the ALJ will prepare a proposed decision for review and adoption or other action by the Board. For more information regarding the hearing process, please visit the link titled Evidentiary Appeals FAQ under the Appeals tab of the SPB website.

Appeal of an adverse action under Government Code section 19575 or 19590, will generally be assigned to the evidentiary hearing process if the penalty imposed is greater than a suspension without pay for five days or a one-step reduction in pay for four months. Complaints accepted in accordance with California Code of Regulation, title 2, section 64.6 involving discrimination, harassment, or retaliation based upon medical condition or mental or physical disability, or the denial of a reasonable accommodation for a physical or mental disability will also generally be assigned to the evidentiary hearing process. The Chief ALJ, Executive Officer, or the Board may assign any appropriate appeal to the evidentiary hearing process. (Cal. Code Regs., tit. 2, § 53.3.)

a. Investigatory Hearings

Investigatory Hearings are conducted by the ALJ's. They are limited to six hours, each party receiving three hours for their case. Specific information concerning the allotment of time may be found at California Code of Regulations, title 2, section 55.2. The formal rules of evidence are relaxed, and parties may introduce declarations as testimony. However, the better practice to establish facts critical to the case is live testimony. At the conclusion of the hearing, the ALJ will prepare a short form proposed decision for review and adoption or other action by the Board. (See Cal. Code Regs., tit. 2, § 55.2.)

Unless otherwise required by law, or otherwise assigned, appeals of rejections during probationary period and appeals of an adverse action where the penalty imposed is an official reprimand or other penalty equal to or less than a suspension without pay for five days or equal to or less than a one-step reduction in pay for four months will also be assigned to the investigatory hearing process. (Cal. Code Regs., tit. 2 § 53.2.)

b. Prehearing and Settlement Conference

Most evidentiary matters are calendared for a prehearing and settlement conference (Conference). California Code of Regulations, title 2, section 57.1 provides the procedures relative to the prehearing and settlement conference and must be reviewed carefully. These two-hour Conferences offer the parties an opportunity to meet and negotiate a possible settlement of their case with the assistance of an ALJ.

Parties are required to file with the SPB and serve on the opposing party a prehearing and settlement conference statement (Statement) 12 calendar days prior to the date of their Conference. These Statements assist the parties and their counsel as well as the assigned ALJ to fully understand the issues and complexion of the case. This allows for the most efficient use of the two-hour conference. Pursuant to California Code of Regulations, title 2, section 57.1 the Statement shall contain the following:

- (1) The identification by SPB Case Number of all appeals or complaints pending before the Appeals Division or the board, arising out of the same transaction, occurrence, or series of transactions or occurrences.
- (2) A brief summary of any stipulated facts.
- (3) Identification of affirmative defenses to any claim.
- (4) A current estimate of the time necessary to try the case.
- (5) The identity of each witness each party may call at the hearing, the subject matter on which the witness is expected to present evidence, and a summary of each witness's expected testimony. Parties are not required to disclose any witness that will be called for rebuttal or impeachment purposes.
- (6) The identity of any witness who may be called to testify who is an inmate of any correctional facility. In addition, at the discretion of the Chief

ALJ, such individuals may be required to testify via closed circuit television, or by other electronic means.

(7) The name and address of each expert witness each party intends to call at the hearing, together with a brief statement of the opinion each expert is expected to give, and a copy of the current resume or curriculum vitae of each expert witness.

(8) A list of documentary exhibits each party intends to present at the hearing, and a description of any physical or demonstrative evidence. Parties are not required to disclose exhibits that will be used for rebuttal or impeachment purposes.

(9) A concise statement of any significant evidentiary issues to assist the ALJ in conducting the hearing.

(10) Dates of unavailability of the parties, counsel, and witnesses.

(11) If Respondent knows or should know that a portion or all of the hearing will be held by videoconference, dates of unavailability of Respondent's videoconferencing equipment.

Failure to follow the requirements associated with filing a prehearing and settlement conference statement may result in the exclusion of evidence at the evidentiary hearing. Parties may also amend their prehearing and settlement conference statement provided they establish good cause for doing so. For more information, refer to California Code of Regulations, title 2, section 57.1.

Appearance at the Conference is mandatory. Failure of any party to appear and/or proceed at the Conference shall be deemed a withdrawal of the appeal or action unless the hearing is continued for good cause. (Cal. Code Regs., tit. 2, § 57.1, subds. (c), (l).)

Should settlement not be reached at the conclusion of the Conference, the ALJ will set the matter for an evidentiary hearing with the exception of rejections during probation, which are set for a one-day investigatory hearing.

c. Subpoenas

Parties may subpoena witnesses and relevant documents to the evidentiary or investigatory hearing in accordance with California Code of Regulations, title 2, section 59.3. If an Appellant is not represented by an attorney, he or she must contact the SPB within a reasonable amount of time before the hearing to obtain subpoenas executed by the Chief ALJ or a designated ALJ.

Under limited circumstances, a witness who resides more than 100 miles from the location of the hearing may be subpoenaed to attend the hearing. In order to obtain a "statewide subpoena," a party must submit a completed subpoena accompanied by a declaration or affidavit which details the materiality (necessity) for that person's appearance at the hearing. The appropriate form of subpoena (SPB-76) may be found under the Appeals tab located on the SPB website.

ACCOMMODATION FOR PERSONS WITH DISABILITIES

Participants in any administrative adjudication before the SPB who are disabled may request reasonable accommodation as provided for under California Code of Regulations, title 2, section 58.8. Please review section 58.8 for the requirements and procedures necessary to obtain reasonable accommodation. In addition, SPB provides a request form (SPB 105) under the Appeals tab located on the SPB website.

REMEDIES

The SPB has broad remedial authority when determining the outcome of an appeal or a complaint. Depending on the type of appeal or complaint, remedies may include but are not limited to reinstatement, back salary, benefits and interest, change in work assignment, or modification of an examination score. The SPB also has the ability to grant compensatory damages in complaints alleging discrimination or retaliation. However, the SPB does not have authority to award attorney's fees, issue monetary sanctions for contempt, or punitive damages.

WITHDRAWAL OF ACTION/APPEAL

For a variety of reasons, an Appellant or Department may wish to withdraw their action or appeal. Should a party wish to exercise this provision, they may electronically file a Withdraw of Action/Appeal Form (SPB-104) with the SPB. With respect to disciplinary actions and appeals, upon receipt, the Appeals Division will immediately vacate all hearing dates and close the case. With other types of appeals and complaints, the SPB will review the request to withdraw to determine the appropriate action.

CONTACT SPB

Parties may contact the SPB with general questions and/or appeal/complaint inquiries at the following numbers:

Inquiries	Contact
General Information / Appeal Status	(916) 653-0799 appeals@spb.ca.gov
Transcripts, Recordings, Documents, Administrative Record Requests	https://spbca.nextrequest.com/requests
Fax Line	(916) 654-6055
TDD ¹	(916) 653-1498

Additional information may be found on SPB's website at <https://www.spb.ca.gov/>.

¹ Telecommunication Devices for the Deaf can only be accessed by telephones equipped with a TDD device.

SECTION II

STATE CIVIL SERVICE EVIDENTIARY APPEALS

Action: **Adverse Action/Disciplinary Action**

Authority: Government Code sections 18670–18683 and 19570–19593;
[California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: Within 30 Days after Effective Date

Adverse actions are formal disciplinary measures taken against state civil service employees. They include dismissals, suspensions, demotions, reductions in salary, disciplinary transfers, and formal/official reprimands. An employee may be disciplined under any of the causes for discipline as set forth in Government Code section 19572.

When a department takes adverse action against an employee, it must give the employee at least five working days' written notice before the action takes effect and the notice must include copies of the materials upon which the adverse action is based.¹ When the employee receives notice of the proposed adverse action, they have the right to respond verbally or in writing to the department regarding the charges prior to their effective date. An informal *Skelly*² meeting is generally held at which time the employee may present their response to the proposed adverse action. After the *Skelly* meeting, the department may continue with, modify, or withdraw the proposed adverse action. If the proposed adverse action is not withdrawn as a result of the *Skelly* meeting, the state civil service employee may file an appeal with the SPB Appeals Division within 30-calendar days³ after the effective date of the adverse action. The filing date is based upon the date the appeal is received at SPB headquarters.

If the penalty imposed is greater than a suspension without pay for five days or a one-step reduction in pay for four months, SPB will schedule the adverse action appeal for a prehearing settlement conference before an ALJ. If the matter is not resolved, an evidentiary hearing before an ALJ will be scheduled. During that hearing, the department has the burden of proving the charges by a preponderance of the evidence (i.e. the department must show that it is more likely than not that the alleged misconduct occurred); the employee has the burden of proving any affirmative defenses they may raise. The ALJ will review the evidence that is presented to determine whether: (1) the department proved the factual acts or omissions as alleged in the notice of adverse action; (2) if so, whether those acts or omissions constitute legal cause for discipline; and (3) whether the penalty that the department imposed is just and proper for the proven misconduct. The ALJ will prepare a proposed decision based upon the evidentiary record. That proposed decision may sustain the action, modify the penalty, revoke the action, and/or restore the employee to the position and/or employment list. The proposed decision will be reviewed by the five-member Board at one of its monthly

¹ Adverse actions against managerial employees have different notice requirements, filing and appeal deadlines, and are evaluated under a different evidentiary standard. For information regarding disciplinary actions and appeals related to managerial employees, see Government Code, sections 19590 to 19593.

² *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194 (*Skelly*).

³ All days are calendar days unless otherwise specified.

meetings. The Board may adopt the proposed decision, modify (lower) the penalty, reject the decision, and/or remand the decision to the ALJ for further findings. If the Board rejects the proposed decision, the parties will be given an opportunity to purchase the transcript, file written argument, and present oral argument to the Board. The Board will then issue its own decision in the case.

Action: **Lesser Adverse Action Appeals**

Authority: Government Code sections 18670–18683, 19576; Code of Civil Procedure section 2015.5; and [California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: Within 30 Days after Effective Date

Government Code section 19576 provides that appeals filed in adverse actions where the penalty imposed is an official reprimand, a suspension without pay for five days or less, or a one-step reduction in pay for four months or less, may be reviewed by the SPB through investigation with or without hearing. Pursuant to California Code of Regulations, title 2, section 53.2, subdivision (b), SPB normally assigns these matters to an Investigatory Hearing.

An Investigatory Hearing limits each party to three hours to present their case. (See Cal. Code of Regs., tit. 2, § 55.2.) Evidentiary rules are relaxed. For example, sworn declarations, though technically hearsay, may be admitted and relied upon by the presiding officer to make a finding of fact.

The ALJ will prepare and submit a short form proposed decision to the Board based upon the evidentiary record. Just as in other appeals from adverse actions, the ALJ may sustain the action, modify the penalty, revoke the action, and/or restore the employee to the position and/or employment list. The proposed decision will be reviewed by the five-member Board at one of its monthly meetings. The Board may adopt the proposed decision, modify (lower) the penalty, reject the decision, and/or remand the decision to the ALJ for further findings. If the Board rejects the proposed decision, the parties will be given an opportunity to purchase the transcript, file written argument, and present oral argument to the Board at a public meeting. The Board will then issue its own decision in the case.

Action: **Rejection during Probationary Period**

Authority: Government Code sections 18670–18683 and 19170–19180; Code of Civil Procedure section 2015.5; [California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: Within 15 Days of the Effective Date

A department may reject an employee during the probationary period for reasons relating to the probationer's qualifications; the good of the service; and/or failure to demonstrate merit, efficiency, fitness, and moral responsibility. The department must give the employee written notice of rejection at least five working days before its effective date and copies of the materials upon which the rejection is based. The notice of rejection must be served prior to the conclusion of the probationary period, but the probationary period may be extended to allow for the 5-working days' notice required by the *Skelly* rule. The employee may appeal the rejection to the SPB Appeals Division within 15 days of its effective date.

Rejections during probation are part of the selection and examination process within the State civil service system. They are not considered to be discipline or adverse actions. SPB will schedule the rejection during probation appeal for a prehearing settlement conference before an ALJ. If the matter is not resolved, an investigatory hearing before an ALJ will be scheduled.⁴ The facts set forth in the notice of rejection will be presumed to be true and the employee will bear the burden of either disproving the allegations and/or proving that the rejection was based on fraud, discrimination, or bad faith.

Following consideration of the appeal, a proposed decision will be prepared, which will be reviewed by the Board in the same manner as it reviews proposed decisions in adverse action appeals.

⁴ Pursuant to Government Code section 19175, the SPB may investigate an appeal from rejection during probation, with or without hearing.

Action: **Medical Termination/Demotion/Transfer**

Authority: Government Code sections 18670–18683 and 19253.5; [California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: Within 15 Days of Service of the Notice on the Employee

A department may require an employee to submit to a medical examination known as a “fitness for duty” evaluation to determine their ability to perform the job. If the results of the evaluation demonstrate that an employee is unable to perform the duties of their present position, the employee may be medically demoted or transferred to another position within the department. If the employee is not able to perform the duties of *any* position within the department, and the employee is not eligible for or waives disability retirement, the department may medically terminate the employee.⁵

The department must give written notice of the medical action and the reasons for it at least 15 days before its effective date. The employee may appeal this medical action to the SPB Appeals Division *within 15 days of service of the written notice of the medical action*. SPB will schedule the medical action appeal for a prehearing settlement conference before an ALJ. If the matter is not resolved, an evidentiary hearing before an ALJ will be scheduled. During the hearing, the department must show by a preponderance of the evidence that it was proper to take the medical action.

Following consideration of the appeal, a proposed decision will be prepared, which will be reviewed by the Board in the same manner as it reviews proposed decisions in adverse action appeals.

⁵ If the employee is eligible for and does not waive disability retirement, the department cannot medically terminate the employee. Instead, the department must file for disability retirement on the employee’s behalf with the Public Employees’ Retirement System (PERS). (Gov. Code, § 19253.5, subd. (i)(1).)

Action: **Adverse Action/Termination of Privileges for Physicians⁶ under the authority of the California Correctional Health Care Services division of the California Department of Corrections and Rehabilitation Adult Institutions**

Authority: *Marciano Plata, et al. v. Edmund G. Brown, Jr., et al.* (Case No. 01-cv-01351-TEH)⁷

Filing Deadline: Within 30 days of service of the Notice of Final Proposed Action

Pursuant to federal court order dated May 23, 2008, in *Marciano Plata, et al. v. Edmund G. Brown, Jr., et al.* (Case No. 01-cv-01351-TEH), medical privileges are a condition of employment for CDCR physicians involved with the care and treatment of inmates incarcerated in CDCR adult institutions. As a result of this order and a subsequent order dated July 9, 2008, a CDCR physician's privileges may be suspended, revoked, or restricted for failing to meet appropriate standards for the delivery of medical services to inmates.

CDCR physicians who have their privileges suspended, revoked, or restricted may submit an appeal to the SPB in writing within 30 calendar days of service of the Notice of Final Proposed Action. A copy of the appeal must also be sent to the California Correctional Health Care Services (CCHCS) at P.O. Box 588500, Elk Grove, CA 95758. Failing to timely appeal may waive the physician's right to challenge the Final Proposed Action in any forum, including in front of the judicial review committee (JRC), the SPB, or any court of law.

Such appeals are heard before an ALJ and a JRC.⁸ The procedures for conducting hearings regarding medical privileges are derived from the Business and Professions code. Given the complexity of these proceedings, details are not provided in this document. A complete description of the process is available at the California Correctional Health Care Services website.⁹

⁶ Physician does not include psychiatrist.

⁷ See also CDCR/CCHCS Health Care Operations Manual, section 1.4.12.

⁸ After a *voir dire* process is conducted, the final JRC is comprised of three independent and impartial physicians credentialed by the California Medical Association Institute for Medical Quality (IMQ).

⁹ <https://cchcs.ca.gov/wp-content/uploads/sites/60/HC/HCDOM-ch01-art4.12.pdf>. As of May 30, 2024.

Action: **Constructive Medical Termination**

Authority: Government Code sections 18670–18683 and 19253.5;
[California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: Within 30 Days after the Constructive Medical Termination Occurs

If a department, for asserted medical reasons, refuses to allow an employee to work, but has not served the employee with a formal notice of medical termination, the employee may challenge the department's action by filing a constructive medical termination appeal with the SPB. For example, an employee may file a constructive medical termination appeal when a department refuses to reinstate the employee to their position after PERS has denied an application for disability retirement or after the employee's treating physician has released the employee for duty. A claim for constructive medical termination must be supported by medical documentation demonstrating that the employee is willing, able, and ready to return to work. Under some circumstances, an employee may also want to consider filing a complaint of discrimination based upon disability and the failure to provide reasonable accommodation.

An appeal from constructive medical termination must be filed with the SPB Appeals Division within 30 days of the employee being notified that they would not be permitted to resume the duties of their position. SPB will schedule the constructive medical action appeal for a prehearing settlement conference before an ALJ. If the matter is not resolved, an evidentiary hearing before an ALJ will be scheduled. During the hearing, the employee will have the burden of proving by a preponderance of the evidence that they were constructively medically terminated.

After reviewing all the evidence presented during the evidentiary hearing, the ALJ will prepare a proposed decision, which will be reviewed by the Board at one of its regularly scheduled monthly Board meetings.

Action: **Non-punitive Termination/Demotion/Transfer
(License Revocation/Restriction)**

Authority: Government Code sections 18670-18683 and 19585;
[California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: Within 30 Days of the Effective Date

A department may non-punitively terminate, demote, or transfer an employee who fails to meet a requirement for continuing employment. This usually occurs when the minimum qualifications for a position require a driver's or occupational license, certificate, registration, or other professional qualification and the employee has the license, certificate, registration, or qualification revoked or restricted. A non-punitive action is not considered to be discipline or an adverse action.

The department must provide written notice to the employee at least five days before the non-punitive termination, demotion, or transfer. Within 30 days of the effective date, the employee may file an appeal with the SPB Appeals Division. SPB will schedule the non-punitive action appeal for a prehearing settlement conference before an ALJ. If the matter is not resolved, an evidentiary hearing before an ALJ will be scheduled. During the evidentiary hearing, the department will have the burden of proving that the employee failed to meet a requirement for continuing employment, and the employee will have the burden of proving that the non-punitive termination was improper.

After reviewing all the evidence presented during the evidentiary hearing, the ALJ will prepare a proposed decision, which will be reviewed by the Board at one of its regularly scheduled monthly Board meetings.

If the Board sustains a non-punitive termination, the employee may apply for reinstatement with the department in the event they obtain the appropriate license or certification. However, reinstatement by the department is permissive, and not mandatory.

Action: **Termination of Limited-Term/Seasonal/Temporary Authorization Appointment (Liberty Interest/Name-Clearing Hearing)**

Authority: Government Code sections 19058–19101; [California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: Filed With the Appointing Authority within Five-Business Days of the Effective Date of the Notice of Termination

If a department terminates an employee's limited term, seasonal, or temporary authorization appointment "with fault" or "with cause" for allegedly wrongful behavior that might stigmatize the employee's reputation, seriously impair the employee's opportunity to earn a living, or seriously damage the employee's standing in the community, the employee has a right to file a request for a limited name-clearing hearing with their appointing authority. The sole purpose of the name-clearing hearing is to give the employee an opportunity to rebut the charges and remove the stigma. Reinstatement and back salary are not available as remedies in this instance. The request for a limited name-clearing hearing must be filed within five business days of the effective date of the notice of the termination of the appointment.

The name-clearing hearing will be conducted by a neutral, impartial representative of the appointing authority. During the hearing, the employee bears the burden of proving that the "with fault" or "with cause" designation is improper. After reviewing all the evidence that is presented at the hearing, the impartial decision-maker will determine whether the "with fault" or "with cause" designation will be removed and the termination will reflect that it was without fault. However, the termination of the employee's appointment will remain in effect.

An employee whose limited term, seasonal, or temporary authorization appointment is either terminated without fault or is terminated with fault for a reason that does not stigmatize the employee is not entitled to a name-clearing hearing.

The SPB does not conduct name-clearing hearings and does not review the decisions reached in the name-clearing hearing conducted by the appointing authority.

Action: **Termination of Limited Examination and Appointment Program (LEAP) Appointment**

Authority: Government Code sections 18670–18683, 19230, and 19240–19244; [California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: Within 30 Days after Effective Date

An employee appointed under the Limited Examination and Appointment Program (LEAP) may file an appeal with the Board for the following reasons:

1. Refusal to certify eligibility to participate in LEAP.
2. Rejection of the application to participate in LEAP, including participation in a LEAP-internship program.
3. Disqualification by an interview panel or as a result of any other method used to select a candidate for the examination appointment.
4. Denial of a request for reasonable accommodation during the LEAP-internship program or job examination period.
5. Termination of the examination appointment during the job examination period.

This section will discuss number 5, LEAP appeals from termination of the examination appointment during the job examination period.

LEAP appeals challenging a refusal to certify eligibility to participate in LEAP, rejection of an application to participate in LEAP, and disqualification of the applicant may be reviewed by the SPB as an “Appeal from Examination” or as a “Merit Issue Complaint,” depending on the facts presented in the appeal. An Appellant submitting a LEAP appeal based on 1-3 above should refer to the “Appeal from Examination” and “Merit Issue Complaint” sections below. LEAP appeals regarding the denial of a reasonable accommodation, are discussed below under the section “Complaint of Discrimination/Harassment/Retaliation on the Basis of Mental and Physical Disability and Medical Condition/Denial of Reasonable Accommodation.”

A LEAP appointment may be terminated during the LEAP job examination period or within 30 days after the examination period ends for failure to meet conditions for appointment; failure to satisfactorily demonstrate the level of knowledge, skill, and ability required; for other reasons relating to the candidate's qualifications; for the good of the service; or for failure to demonstrate merit, efficiency, fitness, including medical condition, or moral responsibility.

A department must give written notice to the employee at least five working days before the effective date of the termination of a LEAP appointment. The action is presumed to

be true and free from fraud or bad faith. When the LEAP employee receives the notice, they have a right to respond to the department. If the employee chooses not to respond to the department, or if after response the department does not alter the proposed action, the LEAP candidate may file an appeal with the SPB Appeals Division within 30 days of the effective date of the action.

The SPB will schedule the LEAP termination action appeal for a prehearing settlement conference before an ALJ. If the matter is not resolved, an evidentiary hearing before an ALJ will be scheduled. During the hearing, the employee bears the burden of proof, similar to an appeal from rejection during probation, to establish that the appointing power took the action in bad faith or engaged in fraud, or that no substantial evidence supported the action.

After reviewing all the evidence presented during the evidentiary hearing, the ALJ will prepare a proposed decision, which will be reviewed by the Board at one of its regularly scheduled monthly Board meetings.

If the Board determines that the Appellant satisfied their burden, the Board will take appropriate action including, but not limited to, certifying the Appellant as eligible to participate or continue to participate in LEAP or in a LEAP-internship program or reinstating the Appellant to the position in which the Appellant was serving a job examination period. If the Appellant is reinstated, backpay may be awarded.

Action: **Termination of Career Executive Assignment (CEA) Appointment**

Authority: Government Code sections 19889–19889.4; [California Code of Regulations, title 2, Division 1, Chapter 1](#); [California Code of Regulations, title 2, Division 1, Chapter 3, subchapter 2](#)

Filing Deadline: Within 30 Days of the Employees Receipt of the Notice

A Career Executive Assignment (CEA) is a high-level administrative position of a policy-influencing character. An employee who is appointed as a CEA does not obtain permanent status in that appointment. If a CEA appointment is terminated, the employee's appeal rights are limited. Before serving a written notice of termination, the department must inform the CEA employee of its proposed action and allow them the opportunity to discuss the termination. The department must serve the CEA employee with written notice stating the reasons for termination 20 days before its effective date and must send a copy of the notice to CalHR.

Within 30 days of the receipt of the notice of termination, the CEA employee may file an appeal with the SPB Appeals Division on the grounds that the termination was based on grounds prohibited by FEHA,¹⁰ and Government Code, sections 19680 through 19735. The SPB will schedule the CEA termination action appeal for a prehearing settlement conference before an ALJ. If the matter is not resolved, an evidentiary hearing before an ALJ will be scheduled, during which the employee bears the burden of proving that the CEA termination was for prohibited reasons.

After reviewing all the evidence presented during the evidentiary hearing, the ALJ will prepare a proposed decision, which will be reviewed by the Board at one of its regularly scheduled monthly Board meetings.

¹⁰ See Gov. Code, § 12940; Gov. Code, §§ 12900, et seq.

Action: **Termination/Automatic Resignation of Permanent Intermittent Employee**

Authority: Government Code sections 18552, 18575, and 19100.5–19101;
[California Code of Regulations, title 2, Division 1, Chapter 1](#)
[California Code of Regulations, title 2, Division 1, Chapter 3, subchapter 1, article 18](#)

Filing Deadline: Within 30 days after Effective Date

A permanent intermittent (PI) employee does not have a defined time base and may only work up to a fixed number of hours per year. A PI whose continuity of employment is interrupted by a non-work period extending beyond one year is considered to have automatically resigned without fault from their position. Such separations are limited to non-work periods not covered by approved leave, whether with or without pay. However, the Board has ruled that departments cannot fail to call a PI employee into work for one year and then invoke the automatic resignation provision. Appeals for reinstatement must be filed with the SPB Appeals Division within 30 days of receipt of notice of separation by automatic resignation.

An appeal from a termination of a PI appointment will be scheduled for a Prehearing and Settlement Conference. If the matter is not resolved, an evidentiary hearing before an ALJ will be scheduled. During the hearing before the ALJ, the PI employee bears the burden of proving they had a satisfactory reason for being absent, the rules were improperly applied to separate them, and they are ready, willing and able to resume employment. After reviewing the evidence, the ALJ will prepare a proposed decision, which will be reviewed by the Board at one of its regularly scheduled monthly Board meetings. If the Board decides to revoke the PI employee's termination, the PI may be reinstated to the employment list, but is not entitled to back salary or future scheduling.

Under CalHR Rule 599.828, a PI employee who waives three requests by the department to report to work is considered to have automatically resigned without fault from their position, unless they were unable to come to work due to illness or other good reason. Automatic resignations under this rule are heard by CalHR, and not SPB. Appeals for reinstatement from automatic resignation under this rule must be filed with CalHR within 30 days of notice of separation by automatic resignation.

- Action: **Complaint of Discrimination/Harassment/Retaliation on the Basis of Mental and Physical Disability and Medical Condition/Denial of Reasonable Accommodation**
- Authority: Government Code sections 12940 et seq. (Fair Employment and Housing Act (FEHA)), 18675, 19701, 19702, and 19702.3; and [California Code of Regulations, title 2, Division 1, Chapter 1](#)
- Filing Deadline: Filed with appointing authority within one year of the discriminatory act (with an extension of 90 days in limited circumstances). Complaint filed with the SPB within 30 days from the date the appointing authority served its response, or, if the appointing authority has failed to provide a decision within 90 days of the complaint being filed, no later than 150 days from the date the complaint was filed with the appointing authority.

If a State civil service employee or applicant, including those under the Limited Examination and Appointment Program (LEAP), reasonably believes they have been discriminated against or been denied protected leave because of their mental disability, physical disability, or medical condition, or have been denied a reasonable accommodation, they must first file a written complaint with the appointing power's Equal Employment Opportunity (EEO) Office or other office or individual designated by the appointing power to investigate such complaints, prior to filing a discrimination complaint with the SPB. The appointing power shall provide the employee or applicant a written decision within 90 days of the complaint being filed. The employee or applicant has 30 days from the date the decision rendered by the appointing power was served on the employee or applicant to file their complaint of discrimination with the SPB.

However, if the appointing authority does not respond within 90 days of the complaint being filed, the employee or applicant may then file a discrimination complaint with the SPB. The complaint must be filed no more than 150 days after the employee or applicant filed the complaint with the appointing power.

The complaint must be in writing, clearly identify the facts that form the basis for appeal, identify the parties involved including their business address, describe the alleged discriminatory incident(s) or denial of reasonable accommodation, and the date(s) of occurrence, and all information, including documents and attachments that the employee or applicant possesses that shows that the mental disability, physical disability, or medical condition of the employee or applicant was a factor in the allegedly wrongful discriminatory conduct and/or how the employee or applicant request was denied a reasonable accommodation. The SPB complaint must also include a copy of the complaint filed with the appointing power, together with a copy of the appointing power's decision. If the appointing power failed to provide a written decision or other response to the complaint within 90 days, the complainant must state that as well. The

complaint must also specify the relief or remedies sought and is limited to a maximum of 15 pages of double-spaced typed or printed text.

Other Agency Filing

Under federal and state laws and rules, the U.S. Equal Employment Opportunity Commission (EEOC) and the California Civil Rights Department (CCRD) also regulate EEO laws and investigate and render decisions on discrimination or retaliation complaints. A State employee or applicant may file a complaint of discrimination, harassment, or retaliation on the basis of mental disability, physical disability, or medical condition, or denial of reasonable accommodation with the EEOC or CCRD, as well as with the SPB.

To file a [complaint](#) or contact the CCRD, please call (800) 884-1684 or email the CCRD at contact.center@calcivilrights.ca.gov. Information on how to file a charge of employment discrimination with the EEOC can be found at the EEOC [website](#).

Complaints alleging discrimination or retaliation based on physical/mental disability, or denial of a reasonable accommodation are referred to an evidentiary hearing before an ALJ, who will prepare a proposed decision. In such hearings, the employee/applicant bears the burden of proving discrimination or unreasonable denial of reasonable accommodation.

A complaint may also be consolidated with a pending adverse action, rejection during probation, or medical action involving the same parties. An employee may also allege discrimination or retaliation as an affirmative defense during an evidentiary hearing in an adverse action, rejection during probation or medical action appeal.

Proposed decisions in discrimination, retaliation, or denial of reasonable accommodation complaints are reviewed by the Board at regularly scheduled Board meetings. Should the Board sustain a finding of discrimination, retaliation, or unreasonable denial of a reasonable accommodation request, the Board may order the complainant to be hired or reinstated, may award backpay and/or compensatory damages, may order that the appointing authority grant the appellant's request for reasonable accommodation, and other relief intended to cause the discrimination to cease and desist.

Action: **Whistleblower/Retaliation Complaint**

Authority: Government Code sections 995.3, 8547–8547.15, 18670–18673, 18935 and 19683–19683.5; Code of Civil Procedure section 2015.5; Penal Code sections 289.6 and 6129; [California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: Within 12 Months of Latest Act of Reprisal/Retaliation

It is illegal for state officers and employees to retaliate against a state civil service employee or applicant for state civil service appointment for reporting improper governmental activity or for refusing to obey an illegal order. If an employee/applicant has been subject to retaliation because they have made a protected disclosure and/or refused to obey an illegal order, they may file a whistleblower retaliation complaint with the SPB.

An employee or applicant for employment who files a written complaint with their supervisor, manager, or any other agency officer designated for that purpose by the agency, alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts may also file a complaint with the SPB. Retaliation complaints must be filed with the SPB Appeals Division within 12 months from the most recent act of reprisal. A complaint of retaliation must be accompanied by a written sworn statement. The complaint must describe the specific retaliatory act(s); the date(s) of the act(s); and the reason the complainant believes that the act(s) occurred in retaliation for the complainant's having made a protected disclosure or having refused to obey an illegal order. The complaint should also state either when the protected disclosure was made, or when and who issued the illegal order.

All whistleblower retaliation complaints are reviewed to determine if SPB has jurisdiction to hear them. Whistleblower retaliation complaints are reviewed in accordance with the procedures set forth in Government Code section 19683. A whistleblower retaliation complaint may be consolidated with another appeal pending before the Board between the same parties, including an adverse action, medical action, or rejection during probation. An appellant may also raise whistleblower retaliation as an affirmative defense during an evidentiary hearing in an adverse action, medical action, or rejection during probation appeal.

If the whistleblower retaliation complaint is not consolidated with another pending action, an SPB hearing officer will conduct an informal hearing into the allegations. After the informal hearing is concluded, the hearing officer will prepare a proposed Notice of Findings to be reviewed by the SPB's Executive Officer.

After review by the Executive Officer, the Notice of Findings will be issued. If the Notice of Findings concludes that the appointing power, supervisor, or manager engaged in illegal whistleblower retaliation, the appointing power, supervisor, or manager may

request a hearing regarding the Notice of Findings within 30 days of the issuance of the Notice of Findings. If the Board grants the request for an evidentiary hearing before an ALJ, the employee/applicant will bear the burden of establishing, by a preponderance of the evidence that making protected disclosures and/or refusing to obey an illegal order was a “contributing factor” in the department’s adverse employment action against the employee/applicant. If they meet that burden, the burden will then shift to the employer to establish by “clear and convincing evidence” that it did not retaliate against the applicant or employee and that the adverse employment action occurred for legitimate, independent reasons.

If a whistleblower retaliation appeal is heard by an ALJ, the ALJ will prepare a proposed decision that will be reviewed by the Board at a regularly scheduled Board meeting.

SECTION III

PETITION FOR BACK PAY HEARINGS

Action: **Petition for Back Pay Hearing**

Authority: Government Code sections 19180, 19253.5, 19584, and 19585;
[California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: 1 year from the date that the Decision is adopted by the Board or within 30 days from the date an Order of Remand is entered granting Appellant's Writ of Mandate

Any Appellant who is entitled to salary, pursuant to Government Code sections 19180, 19253.5, 19584, and 19585, may file a claim with the Board for back pay, if Respondent has not restored Appellant's salary, with appropriate interest, and, if appropriate, the reinstatement of all relevant benefits. Such petitions shall comply with California Code of Regulations, title 2, section 61.

Any Respondent that is a party to a proceeding in which the Board has directed the payment of appropriate salary, benefits, and interest to an Appellant entitled to salary, pursuant to Government Code sections 19180, 19253.5, 19584, and 19585, may file a request for a back pay hearing, in the event that the parties are unable to agree with the salary, benefits, and interest, if any, due to Appellant.

The petition for back pay must be filed with the SPB within one year from the date that the decision is adopted by the Board or within 30 days from the date an Order of Remand is entered granting Appellant's Writ of Mandate and served upon the parties, pursuant to California Code of Regulations, title 2, section 52.4, subdivisions (e)(1)(R) and (e)(2), respectively.

If the back pay petition is timely filed, the opposing party shall file with the SPB an answer within 45 days of receipt of a back pay claim, pursuant to California Code of Regulations, title 2, section 61, subdivision (d).

A claim for back pay will be scheduled for a prehearing/settlement conference. Prior to the parties' conference, the parties shall meet and confer to determine the issues which remain unresolved and the facts to which the parties can stipulate. If the matter is not resolved at the conference, an evidentiary hearing before an ALJ will be scheduled.

During the Conference, the ALJ shall instruct the parties regarding the burden of proof for contested issues, consistent with California Code of Regulations, title 2, sections 57.1 and 61, subdivision (g).

SECTION IV

STATE CIVIL SERVICE MERIT APPEALS

Action: **Request to File Charges**

Authority: Government Code sections 18670–18683 and 19583.5; Code of Civil Procedure section 2015.5; [California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: Within One Year of Events Giving Rise to Request

An individual may file a request to file charges seeking adverse action against a State civil service employee for one or more of the causes for discipline set forth in Government Code section 19572.¹ All such requests must follow the procedures outlined in California Code of Regulations, title 2, section 52.7. Charges filed by a State employee shall not include issues covered by the State's employee grievance or other merit appeal processes until those appeal processes have been exhausted.

The written request must clearly state the legal cause for discipline as set forth in Government Code section 19572. The request must be in writing and contain a statement of proposed charges. Additionally, the request must be under penalty of perjury, limited to fifteen pages, and may be accompanied by sworn declarations based on personal knowledge. The request must describe the charges in sufficient factual detail to allow for an investigation and to enable the accused employee(s) to prepare a defense. The request must be filed with the SPB Appeals Division within one year of the actions alleged to warrant discipline.

All requests to file charges are investigated to determine if the SPB has jurisdiction. The SPB will provide copies of the request to the relevant department and the person against whom the charges are alleged and ask for responses to the request in writing.

SPB staff will conduct an investigatory review and then prepare a proposed decision, recommending to the Board as to whether the request should be granted or denied. The proposed decision will be reviewed by the Board at a regularly scheduled Board meeting.

If the Board grants a request to file charges, the employee(s) who is charged will be allowed to answer. The matter will be assigned to an ALJ, who will conduct an evidentiary hearing. The person/entity initiating the request bears the burden of proving, by a preponderance of the evidence, the factual allegations, legal causes, and penalty. At the conclusion of the evidentiary hearing, the ALJ will prepare a proposed decision, which will be reviewed by the Board at a regularly scheduled Board meeting.

¹ Current wards of the Division of Juvenile Justice, inmates of the California Department of Corrections and Rehabilitation, and patients of the California Department of State Hospitals are statutorily excluded from these provisions.

Action:	Examination Appeals
Authority:	California Constitution, article VII, section I; Government Code sections 18670–18683, 18900, 18930.5, 18952, and 19244 (LEAP); California Code of Regulations, title 2, Division 1, Chapter 1
Filing Deadline:	Within 30 Days of the Date Examination Result is Mailed. Online Examinations, within 30 Days of the Date the Results are Available to the Appellant. Refusal to Certify as Eligible, Rejection or Disqualification of LEAP Candidate, within 30 days of the Event upon which the Appeal is Based

An examination appeal may be submitted to the SPB Appeals Division by an applicant who competed in the examination or by an applicant who applied to compete in the examination but was not permitted to take the examination because the appointing power: rejected the application; asserted the application was received after the filing deadline; or asserted that the applicant did not meet the minimum qualifications to take the examination. SPB's Appeals Division will initially review a submitted examination appeal to determine whether it complies with California Code of Regulations, title 2, section 190, and was properly filed. If the appeal is accepted, SPB staff will conduct an investigatory review. If staff recommends a remedy, such as abolishing an eligibility list or the re-administration of an examination, staff will draft a proposed decision and submit it to the Board for review.

There are four grounds for which an examination may be challenged: (1) fraud; (2) discrimination; (3) erroneous interpretation or application of minimum qualifications (MQs); or (4) a significant irregularity in the examination process. Each requires supporting facts and evidence. These reasons are further described below.

Examination appeals must be filed within 30 days of the date the examination results are mailed to Appellant or if an online examination, within 30 days of the date the results are available to the appellant. The appeal should include a copy of the examining authority's determination.

Fraud

In order to establish a cause of action for fraud, the competitor shall provide evidence demonstrating the following:

- 1) a misrepresentation or a material omission of fact;
- 2) which was false and known to be false by the appointing power;
- 3) made for the purpose of inducing the competitor to rely upon the misrepresentation or material omission;
- 4) justifiable reliance of the competitor on the misrepresentation or material omission; and

5) resulting injury.

The SPB does not accept exam appeals based solely on an Appellant's belief that a competitor cheated in the examination. If cheating does occur, it should be brought to the attention of the testing department or CalHR. The names of persons found to have cheated may be removed from the certification list by CalHR or the examining agency.

Discrimination

California's Fair Employment and Housing Act (FEHA), prohibits discrimination on the basis of a protected class including race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, reproductive health, decision making, or military and veteran status.² Appeals alleging discrimination must establish a connection between the complained of activity and the individual's status as a member of a protected class.

Discrimination based on grounds such as geographic location or work unit would not be considered illegal discrimination under FEHA, thus would not be accepted as a discrimination examination appeal.

Erroneous Interpretation or Application of Minimum Qualifications

If an appeal is filed based on the rejection of an application due to the Appellant not meeting the minimum qualifications of a classification, then the Appellant must state why they believe their experience, and/or education meet the minimum qualifications and provide all supporting evidence establishing the same. If the Appellant is found to meet the minimum qualifications, they will be permitted to compete in the examination. The Appellant must show that they meet all the minimum qualifications. It is not sufficient for the appellant to show that they have the general qualifications and/or ability to perform the duties of the class.

The SPB considers "erroneous interpretation or application of minimum qualifications" to have occurred when an otherwise qualified applicant is not admitted to compete in the examination because the department or appointing authority erroneously determined the applicant does not meet the minimum qualifications. Once an Appellant is admitted to the examination, they must then compete with the other candidates in order to obtain a place on the eligible list.

The minimum qualifications are legal requirements that must be met by all job applicants before they are allowed to compete in State civil service examinations for the class. The Appeals Division staff is not empowered to change or modify these requirements.

Significant Irregularity

² See Gov. Code, § 12940; Gov. Code, §§ 12900, et seq.

Examinations for the establishment of an eligible list must be competitive and administered fairly to test and determine the qualifications, fitness, and ability of competitors to actually perform the duties of the class being examined. Departments have considerable flexibility in the methods by which an examination may be conducted. As such, there are a variety of examination tools currently being used including, but not limited to: Written, Promotional Readiness Evaluation, Work Sample, Supplemental Application, Performance-Structured Interview, Internet Based, Low-fidelity Simulations, Oral Interview, and In-basket Exercises.

A significant irregularity occurs when the examination is not administered as outlined on the bulletin, the examination method was not applied fairly to all competitors, or the examination does not test and determine the qualifications, fitness, and ability of the competitors to perform the duties of the classification(s) in the examination.

Remedies

If the Board grants the appeal, the Board may order remedies including, but not limited to, voiding the examination, abolishing the eligibility list, and/or voiding any appointments made therefrom.

Limited Examination and Appointment Program (LEAP) Examination

Applicants for, and candidates in, the LEAP examination process may appeal, in accordance with Board rule, any of the following actions:

- (1) Refusal to certify eligibility to participate in LEAP.
- (2) Rejection of the application to participate in LEAP, including participation in a LEAP-internship program.
- (3) Disqualification by an interview panel or as a result of any other method used to select a candidate for the examination appointment.
- (4) Denial of a request for reasonable accommodation during the LEAP-internship program or job examination period.
- (5) Termination of the examination appointment during the job examination period.

LEAP appeals based on the first three items above will be reviewed by the SPB to determine whether the appeal should be reviewed as an Examination Appeal, or as a Merit Issue Complaint.

LEAP appeals alleging denial of a reasonable accommodation will be reviewed in the same manner as any other appeals alleging a denial of a reasonable accommodation and are discussed above under the section "Complaint of Discrimination/Harassment/Retaliation on the Basis of Mental and Physical Disability and Medical Condition/Denial of Reasonable Accommodation." Appeals concerning termination of the LEAP examination appointment are discussed above under the section "Termination of Limited Examination and Appointment Program (LEAP) Appointment."

In all LEAP appeals, the Appellant has the burden to establish that there was no substantial evidence to support the appointing authority's action or that the appointing authority's action was made in fraud or bad faith. Remedies may include certifying the Appellant as eligible to participate or continue participating in LEAP or in a LEAP-internship program, or restoring the Appellant's name to the LEAP referral list from which the Appellant received an examination appointment for the remaining period of their list eligibility.

Action: **Withhold from Certification**

Authority: Government Code sections 18670–18683 and 18935; California [California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: Within 30 Days of the Date Withhold is Mailed

If an applicant receives a passing score on a civil service examination but is subsequently notified that their name is being "withheld" from the employment list, they may appeal the action to the SPB Appeals Division.

The appeal must specify the employment list from which the name is withheld; the date notified of the action; the basis stated by the department for withholding the name; and the applicant's responses or rebuttal to the reason(s) stated by the department for taking the withhold action. Withhold appeals must be filed with the SPB Appeals Division within 30 days of the date the notice is mailed to the Appellant. The appeal should include a copy of the appointing authority's determination.

All withhold appeals are investigated to determine if SPB has jurisdiction and the appellant alleged sufficient facts to constitute grounds for the appeal. Following the investigative review, a proposed decision with findings and a recommendation is prepared and reviewed by the Board.

Action: **Voided Appointment**

Authority: Government Code sections 18670–18683, 19257 and 19257.5;
[California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: See Cal. Code Regs., tit. 2, § 52.4, subd. (e)(1)(Q)

An individual's appointment to a position in a civil service job classification may be voided because of fraud or irregularity in the appointment process, such as appointment from an expired employment list, or because minimum qualifications for the job are not met. If an individual is notified that their appointment has been voided, they may file an appeal with the SPB Appeals Division. For the appropriate time limitation for filing an appeal challenging a voided appointment, see California Code of Regulations, title 2, section 52.4, subdivision (e)(1)(Q). The appeal should include a copy of the determination rendered by CalHR or the appointing authority.

Following the investigative review or informal hearing, a proposed decision with findings and a recommendation is prepared and reviewed by the Board.

Action: **Medical/Psychological Disqualification; Failure of Pre-employment Drug Test**

Authority: Government Code sections 1031, subd. (f), 18670–18683, 19253.5; [California Code of Regulations, title 2, Division 1, Chapter 1](#); [California Code of Regulations, title 2, Division 1, Chapter 3, subchapter 3, article 30](#)

Filing Deadline: Within 30 Days from the Date of Service of the Notice

If an applicant or employee is medically disqualified or qualified with medical restrictions (e.g., may not climb ladders, lift more than 50 lbs., etc.) and disagrees with the medical evaluation, they may file an appeal with the SPB Appeals Division. The appeal must state the job classification from which they were medically disqualified or restricted and the basis for disagreement with the medical decision, such as conflicting or supplemental information from another physician indicating that the individual can perform the job duties; stable work history information; and/or participation in physical fitness or activities programs indicating the medical condition has not affected the person's ability to perform in similar work or life activities.

If the applicant or employee is disqualified from a law enforcement class for psychological reasons, they may appeal the disqualification if they have obtained a positive report from an outside qualified professional. The applicant must first complete CalHR's or the appointing authority's Psychology Screening Program's Dispute Resolution Process before filing an appeal with the SPB Appeals Division.

If the applicant fails a pre-employment drug test, the appeal is limited to the following grounds: the drug was obtained legally; there was a violation of the test protocol or chain-of-custody procedures; or there was another irregularity that invalidates the test results.

Appeals must be filed with the SPB Appeals Division within 30 days of the date of service of the notice of disqualification, restriction or failure of the drug test. All appeals shall be filed with a copy of the appointing authority's notice of disqualification or a notice of disqualification from the CalHR's Psychological Screening Program or State Medical Officer.

All appeals from medical/psychological disqualification or restriction and from failure of the pre-employment drug test are investigated to determine if SPB has jurisdiction and the Appellant alleged sufficient facts to constitute grounds for the appeal. Many appeals are resolved through investigation and/or written determination. If not, they are referred for an informal hearing before a staff hearing officer.

Following the informal hearing, a decision with findings and a proposed recommendation is prepared and reviewed by the Board.

Action:	Merit Issue Complaint
Authority:	Government Code sections 18670–18683; California Code of Regulations, title 2, Division 1, Chapter 1
Filing Deadline:	Must file with Department first; may file with SPB within 30 days after Department's denial of complaint or after 90 days have elapsed since the complaint was filed with the Department.

SPB laws and rules require that appointments and promotions within the State civil service be made on the basis of merit. Persons that have competed in an examination or selection process who wish to file a complaint that the State Civil Service Act or Board regulation or policy has been violated by a state agency, may submit a Merit Issue Complaint.

Merit issue complaints are complaints that the State Civil Service Act or Board regulation or policy has been violated by a state agency. This may include allegations that a state agency violated the prohibitions listed under Government Code, sections 19700, through 19706 (except 19702, discussed above under “Complaint of Discrimination/Harassment/Retaliation on the Basis of Mental and Physical Disability and Medical Condition/Denial of Reasonable Accommodation”) in the context of an appointment or selection process. Merit issue complaints may also include allegations concerning interference with promotional opportunities and disputes regarding the effective dates of appointments or promotions. The complaint must first be filed with the department responsible for the alleged act or decision and it must be filed within three years of the alleged violation.

Departments must respond to merit issue complaints within 90 days. An applicant or employee may appeal to the SPB Appeals Division within 30 days after (1) the department denies the complaint or (2) 90 days has expired without a decision from the department on the complaint. The appeal should include a copy of the department's decision, or, if no decision has been rendered by the department, then, a copy of the original merit issue complaint.

An appeal of a merit issue complaint filed with the Appeals Division must include evidence of having filed a formal written complaint with the department. It must also include the original complaint submitted to the department and identify the wrongdoing supported by factual evidence and documentation.

Persons not having competed in an examination or selection process who wish to file a complaint that the State Civil Service Act or Board regulation or policy has been violated by a state agency, may submit requests for review to the SPB's Compliance Review Division.

Limited Examination and Appointment Program (LEAP) Merit Issue Complaints

Applicants for, and candidates in, the LEAP examination process may appeal, in accordance with Board rule, any of the following actions: (1) Refusal to certify eligibility to participate in LEAP.

(2) Rejection of the application to participate in LEAP, including participation in a LEAP-internship program.

(3) Disqualification by an interview panel or as a result of any other method used to select a candidate for the examination appointment.

(4) Denial of a request for reasonable accommodation during the LEAP-internship program or job examination period.

(5) Termination of the examination appointment during the job examination period.

LEAP appeals based on the first three items above will be reviewed by the SPB to determine whether the appeal should be reviewed as an Examination Appeal, or as a Merit Issue Complaint.

LEAP appeals alleging denial of a reasonable accommodation will be reviewed in the same manner as any other appeals alleging a denial of a reasonable accommodation and are discussed above under the section "Complaint of Discrimination/Harassment/Retaliation on the Basis of Mental and Physical Disability and Medical Condition/Denial of Reasonable Accommodation." Appeals concerning termination of the LEAP examination appointment are discussed above under the section "Termination of Limited Examination and Appointment Program (LEAP) Appointment."

In all LEAP appeals, the Appellant has the burden to establish that there was no substantial evidence to support the appointing authority's action or that the appointing authority's action was made in fraud or bad faith. Remedies may include certifying the Appellant as eligible to participate or continue participating in LEAP or in a LEAP-internship program, or restoring the Appellant's name to the LEAP referral list from which the Appellant received an examination appointment for the remaining period of their list eligibility.

Action: **Dismissed Employee's Request to Take Civil Service Examination**

Authority: Government Code sections 18670–18683 and 18935;
[California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: Within 30 Days From the Date of Receipt of the Decision of SPB's Executive Officer or California Department of Human Resources Denying the Request

An employee dismissed from the State civil service is not permitted to take any state examination or be certified to any position in the State civil service without the consent of CalHR or the SPB Executive Officer, as set forth in California Code of Regulations, title 2, sections 211 and 211.2. Where the Board issues a decision or resolution concerning an adverse action dismissing an employee from state civil service and the Board sustains the dismissal, the dismissed employee must seek permission to participate in any future examination from SPB's Executive Officer. In all other dismissal cases, the dismissed employee must seek permission to participate in any future examinations from CalHR. If the Executive Officer or CalHR denies the request, the dismissed employee may appeal to the SPB Appeals Division within 30 days after receipt of the decision.

A proposed decision by the Appeals Division with findings and a recommendation is prepared and reviewed by the Board at a regularly scheduled Board meeting.

Action: **Out-of-Class Claim (Examination)**

Authority: Government Code sections 18670 – 18683, 19050.8;
[California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: Within 30 Days From the Date of Receipt of the Notice of Denial

California Code of Regulations, title 2, section 212 specifies procedures for approval of out-of-class work experience to meet the minimum qualifications for a civil service examination. The appointing authority's denial of such a request may be appealed to the SPB Appeals Division within 30 days of receipt of notice of the denial.

Appeals involving the performance of out-of-class experience must be documented in accordance with section 212. A presumption is made that a person in a class is performing at least the minimum duties and responsibilities of the class as outlined in the specification. The Board will not consider any other duties not assigned to the classification unless the appellant produces a properly authorized Training and Development (T&D) assignment as established under SPB rules, or a valid out-of-class certification by the proper authority within the department.

All requests to use out-of-class experience in a civil service exam are investigated to determine if SPB has jurisdiction and if the Appellant alleged sufficient facts to constitute grounds for the appeal. Most appeals are resolved through investigative review and/or written determination.

SECTION V

CALIFORNIA STATE UNIVERSITY (CSU) APPEALS

Action: **Dismissal, Demotion, Suspension, Medical Action**

Authority: Education Code sections 89535–89540

Filing Deadline: 30 Days after Service

Discipline by dismissal, demotion or suspension may be taken against employees of the California State University (CSU). Education Code section 89535 sets forth the following nine legal causes for discipline of CSU employees:

- (a) Immoral conduct.
- (b) Unprofessional conduct.
- (c) Dishonesty.
- (d) Incompetency.
- (e) Addiction to the use of controlled substances.
- (f) Failure or refusal to perform the normal and reasonable duties of the position.
- (g) Conviction of a felony or conviction of any misdemeanor involving moral turpitude.
- (h) Fraud in securing appointment.
- (i) Drunkenness on duty.

Under the Education Code, a CSU employee who is physically or mentally unfit for their position may be suspended, demoted or dismissed under the same procedures used for disciplinary actions.

Notices of dismissal, demotion, or suspension for cause of a CSU employee, including a lack of physical and mental fitness, must be in writing, signed by the Chancellor or their designee, and served on the employee. The notice must include a statement of causes, the facts in support of the action, the penalty and the effective date, and notice to the employee of their right to answer and request a hearing before the SPB within 30 days of being served with the notice.¹

The appeal may claim that the required procedure was not followed; there are no grounds for the action; the penalty is excessive, unreasonable, or discriminatory; the employee did not do the acts or omissions alleged, and/or that the acts or omissions were justified.

The hearing follows the same procedures as in state civil service appeals. Proposed decisions are reviewed by the Board as in appeals from adverse action.

¹ CSU employees may also appeal a medical action with CRD on discriminatory grounds.

Action: **Request for Reinstatement After Automatic Resignation as Absent Without Leave (AWOL) / AWOL Separation**

Authority: Education Code section 89541

Filing Deadline: 15 Days/90 Days After Service/Effective Date

A CSU employee who is voluntarily or involuntarily absent without leave (AWOL) for five-consecutive working days is considered to have automatically resigned from service as of the last day they worked. When the CSU employee receives notice of their automatic resignation, they must request reinstatement in writing from the SPB Appeals Division within 15 days of service of the notice. If the employee does not receive written notice, they must file a written appeal for reinstatement with the SPB Appeals Division within 90 days of the effective date of separation. An informal hearing is available to the CSU employee, similar to AWOL separations of state civil service employees appealed to CalHR.

The Board may grant reinstatement only if the CSU employee provides a satisfactory explanation for their absence and failure to obtain leave, and indicates that they are ready, able, and willing to return to work or has obtained the campus' approval for a leave of absence.

The employee is not entitled to back salary even if reinstated and bears the burden of proving all three grounds for reinstatement.

Proposed decisions are prepared and reviewed by the Board as in appeals from adverse actions.

Action: **Petition to Set Aside Resignation**

Authority: Education Code section 89542

Filing Deadlines: 30 Days After Last Date Worked/Submitted

A CSU employee may petition to set aside their oral or written resignation on the grounds of mistake, fraud, duress, undue influence, or any other reason alleging it was not a free, voluntary and binding act. A petition to set aside the resignation must be filed with the SPB Appeals Division within 30 days from the last day worked or the date of submitting the resignation, whichever is later.

The employee bears the burden of proving that the resignation should be set aside.

Proposed decisions are prepared and reviewed by the Board as in appeals from adverse action.

SECTION VI

PETITIONS FOR REHEARING

Action: **Petition for Rehearing**

Authority: Government Code sections 19586 and 19587;
[California Code of Regulations, title 2, Division 1, Chapter 1](#)

Filing Deadline: 30 Days after Service of Decision

A party dissatisfied with the Board's decision in an appeal from adverse action, non-punitive termination, or a final decision concerning charges filed against a civil service employee in accordance with Government Code, section 19583.5¹ may challenge the Board's written decision by filing a petition for rehearing.

The Board may consider granting a petition for rehearing on grounds including, but not limited to, that due process was denied in the original hearing; new and compelling information now exists that was not available at the time of the original hearing; factual findings were made and/or omitted in error; or the decision contains legal errors.

The petition for rehearing must be filed with the SPB Appeals Division within 30 days of service of the SPB decision. If the petition is not timely filed, the decision becomes final. If the petition is filed timely, the opposing party will be asked to file a response. The petition will be forwarded to the SPB for review and decision at a regularly scheduled Board meeting.

The SPB has 90 days to act once it has received the petition. If it does not act within 90 days, the petition will be deemed denied. A petition for rehearing need not be filed to exhaust administrative remedies.

If the petition is granted, the transcript of the hearing will be ordered, and the parties may be afforded an opportunity to purchase the transcript, file written argument, and present oral argument. After reviewing the record and the written and oral arguments of the parties, the Board will issue a new decision. If the SPB grants a petition for rehearing of a precedential decision, the Board may decide to remove its precedential status.

¹ The Board's decision to grant or deny consent to file charges against a civil service employee is not subject to a petition for rehearing.

SECTION VII

APPEALS DIVISION RECORDS REQUESTS

Action: **Requests for Records**

Authority: Public Records Act, Government Code sections 7920.000 – 7931.000

“Public records” include any writing owned, used or maintained by the SPB in the conduct of its official business. Writings include information recorded or stored on paper, electronic media, or audio or visual tapes. (Gov. Code, § 7922.530.) Requests for public records will be processed in the order in which they are received. Requests for public records may be made through its Web Portal: <https://spbca.nextrequest.com/>

Requests for public records directed to the Board may only seek those records in the possession of the Board. (Gov. Code, § 7322.535). The request must reasonably identify the records being sought. The SPB will not provide confidential records or information, or records or information exempt from disclosure under express provisions of the Public Records Act and other laws. (See e.g. Gov. Code, §§ 7930.000-7930.215.) Disclosable records may be redacted to protect such information.

In order to enable the SPB to respond promptly to public records requests, requestors should provide specific information about the records they seek. Requests for appeals files in specific cases should include the name of the appellant or complainant and case number, if known. When a record cannot be identified by name or case number, the requestor should attempt to be as specific as possible in describing the record, based on its content, and date or approximate date of creation if possible. If known, requestors should indicate the division of the SPB that created and maintains the records. Where a request is not sufficiently specific, Board staff will assist the requester to identify the requested records, describe how the records are maintained or the physical location of the record, and provide suggestions of how to overcome practical barriers to disclosure.

A requestor will be notified in writing within 10 days whether the requested documents may be disclosed, but in unusual circumstances, this may be extended to 14 days. (Gov. Code, § 7922.535, subd. (b).) When possible, the SPB will make the records available in electronic format through its Web Portal. (Gov. Code, § 7922.570.) The cost of duplication of an electronic record will be limited to the direct cost of producing a copy of a record in an electronic format. Additionally, the requestor shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when the SPB would be required to produce a copy of an electronic record and the record is one that would require data compilation, extraction, or programming to produce the record. (Gov. Code, § 7922.575.) Paper copies of records will also be subject to a cost of \$.10 per page.

The SPB will also charge a reasonable fee for the preparation, production, and dissemination of a transcript of a hearing. (Gov. Code, § 18683.) An invoice for the production of the records will be provided when the records are compiled. However, subsequent costs to produce a paper copy of a record already in the possession of the

Board may be charged at \$0.10 per page. A compact disc (CD) containing digital records and/or recorded hearings is charged at \$5.00 per CD.

Please do not send payment before receiving an invoice.

Guidelines for access to State Personnel Board Public Records are available on SPB's [website](#).

Records requests may also be made by submitting a Records Request form available on SPB's [website](#).

Action: **Writs of Mandamus; Administrative Record**

Authority: Code of Civil Procedure section 1094.5

Parties requiring the administrative record from a matter decided by the Board in order to pursue a writ in the Superior Court may make such a request through the [SPB's Public Records Web Portal](#).

A complete administrative record from an evidentiary, informal, or investigatory hearing shall include any pleadings, motions, notices, orders, proposed decisions, final decision, evidence marked for identification and offered for introduction into the record, whether admitted or rejected, transcriptions of all recorded proceedings, and other written communication addressing substantive issues pertinent to the case. The administrative record shall not include any evidence that a party has withdrawn. (Cal. Code of Regs., tit. 2, § 51.4.)

The total cost of producing the Administrative Record shall be borne by the petitioner. (Code Civ. Proc., § 1094.5 subd. (a).)

A written Estimate of Costs for the production of the records will be provided within 10 days of the request. Upon receipt of payment, the Administrative Record will be compiled and delivered.