

SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES

I.

Introduction

The State Personnel Board (Board) proposes to adopt Section 13 and amend Sections 26, 78, 78.1, 249, 250, and 250.1 of Title 2, Chapter 1, of the Code of Regulations (CCR). A 45-day public comment period on this rulemaking action was held from June 25, 2021, through August 9th, 2021. A public hearing was held on August 10, 2021. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board's responses are below.

II.

Summary of Written Comments from, California Public Employees' Retirement System (CalPERS).

Comment I:

The CalPERS believes that using a numerically-based application screening criteria to score and compare candidates is necessary in order to demonstrate that the most qualified candidates are being selected for interview. As such, the CalPERS questions the Board's assertion that it is unnecessary for hiring managers to complete a numerical system to score applicants. The CalPERS believes using such methods as a screening matrix with documented relevant criteria has had a significant positive impact on their ability to demonstrate that their hires are merit-based, free of bias and align with our organization's Diversity, Equity, and Inclusion efforts.

Response I.

Proposed section 249 makes plain that the job-related information used to assess and compare applicants shall be applied in a consistent and equitable manner. As such, appointing powers must demonstrate and document what and how that job-related information was utilized to serve as a basis for selecting applicants to participate further in the hiring process. It is not clear how the proposed section 249 requirement conflicts with the CalPERS comments above.

Moreover, the proposed changes to section 249 do not prohibit an appointing power from

using numerically-based application screening criteria; however, it now makes clear that a numerically-based application screening criteria is not required in order to achieve compliance.

Overall, the proposed changes to section 249 should provide appointing powers the flexibility to create a dynamic hiring process that is less rigid, but still rooted in merit.

Comment II.

The CalPERS is concerned that the added flexibility to section 250, subdivision (c) making official personnel file (OPF) reviews discretionary, or a “best practice” as defined by section 13, will afford hiring managers the opportunity to skip this essential step in the hiring process. The CalPERS believes that by affording hiring managers the opportunity to skip this step, it may deter hiring managers in the future from conducting OPF reviews. CalPERS recommends the Board only use the term “should” and delete “best practice”.

Additionally, section 250, subdivision (e), requires a summary for the rationale behind why a hire is being made. The CalPERS believes it would make more sense to not modify section 249 and to keep the current standard criteria of measurement, because the summary could include bias from the hiring managers.

Response II.

A written summary is not required and does not replace hiring documentation demonstrating what tools or methods were used to assess and compare applicants. Section 250, subdivision (e), clearly states that the appointing power “may include a written memorandum summarizing and explaining the rationale of the appointing power’s hiring decision”. As such, this requirement is clearly discretionary.

However, the Board believes a written memorandum serves the appointing power well because it provides the appointing power the opportunity to review and explain the hiring methods used and ultimate rationale for the hire. If that memorandum includes bias by the hiring manager, as argued by the CalPERS, then this would also provide the appointing power with an opportunity to evaluate the hiring decision prior to approving the hiring decision and extending a job offer in order to ensure that the hiring decision was the result of a robust, merit-based process.

Comment III.

The CalPERS again questions the Board’s reasoning for not requiring hiring managers to document standard measurement criteria. The CalPERS asks how can departments require hiring managers to ensure relevant criteria has been developed for determining which candidates shall be selected for the hiring process? In section (h), subdivision (4), the CalPERS asks what is intended by “shall include a discussion of the job relatedness”? Additionally, the CalPERS asserts that discussions of the job relatedness as outlined in section (h), subdivision (4) could negate Diversity and Inclusion efforts.

Response III.

Proposed section 249 requires that appointing powers use job-related information to assess and compare applicants’ qualifications in a consistent and equitable manner. Likewise, section 250, subdivision (b), requires that the hiring process “shall be conducted by using job-related criteria,” and section 250.1, subdivision (h)(2), requires “that job-related criteria shall be developed to assess the fitness and qualifications of each candidate to perform the duties of the position in question to be filled”. As such, the proposed regulations still require that job-related information and/or criteria serve as the basis for evaluating applicants during the hiring process. The CalPERS’ assertion that the proposed regulations prohibit their ability to require hiring managers to develop relevant criteria for determining which candidates shall be selected for the hiring process is not accurate.

Additionally, the portion of subdivision (h)(4), referenced by CalPERS that requires a discussion of the job-relatedness and structure of the hiring process was not significantly changed in this rulemaking package. The proposed change of “interview process” to “hiring process” only makes section 250.1 consistent with the proposed changes to section 250, subdivision (b), which clarifies that the appointing power shall design and use at least one selection instrument or procedure to objectively and fairly assess each candidate’s qualifications to be successful in the position.

Conclusion

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