

MEMORANDUM

DATE: July 7, 2023

TO: **ALL INTERESTED PARTIES**

/s/ **SUZANNE M. AMBROSE**

FROM: Suzanne M. Ambrose
Executive Officer

SUBJECT: NOTICE OF PROPOSED REGULATIONS

Notice is hereby given that the State Personnel Board (Board) proposes to repeal Section 262 and amend Sections 170, 249.1.1, 249.1.2, 249.2, 249.4, 321, 438, 438.1, 439.2, and 439.4 in order to clarify, streamline or, correct the deficiencies of, rules related to examinations, appointments, probationary periods, and temporary assignments or loans. (Cal. Code Regs., tit. 2, §§ 170, 249.1.1, 249.1.2, 249.2, 249.4, 262, 321, 438, 438.1, 439.2, 439.4.)

PUBLIC HEARING:

A public hearing regarding the proposed regulatory action will be held on August 22, 2023, at 10:00 a.m. via WebEx. In order to participate in the public hearing, please see the following options:

- Via Video (Online)

You may click, or copy and paste into your web browser, the following link:

<https://spb-meetings.webex.com/spb-meetings/j.php?MTID=m1624d72e54853119d883b6f69836b3d2>

Then enter the following information to gain access to the hearing:

Meeting Number: 2551 561 2136
Meeting password: B6kmEPiTS83

- Via Telephone

Notice of Proposed Regulations

[Date], 2023

Page 2

You may also participate by dialing the phone number first and then the participant code listed below:

Phone Number: +1-408-418-9388

Participant Code: 25515612136##

The telephonic conference to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make specific arrangements, if necessary.

WRITTEN COMMENT PERIOD:

Any interested party, or their duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below.

Michelle La Grandeur, Chief
Policy Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Email: michelle.lagrandeur@spb.ca.gov

The written comment period closes on August 22, 2023. Only written comments received by that time shall be reviewed and considered by the Board before it adopts, amends, or repeals a regulation.

AUTHORITY AND REFERENCE:

The Board proposes to repeal section 262 and amend sections 170, 249.1.1, 249.1.2, 249.2, 249.4, 321, 438, 438.1, 439.2, and 439.4 of Title 2, Chapter 1 of the California Code of Regulations pursuant to the authority vested in it by the California Constitution, article 7, section 3, and Government Code sections 18502, 18660, 18701, 19050, and 19050.8. The proposed regulation will implement, interpret, and make specific the provisions of the California Constitution, article 7, section 3, and Government Code sections 18500, 18930, 18933, 19050, 19050.8, 19170, 19173, and 19401.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The Board is a constitutional body responsible for enforcing California's civil service statutes. (Cal. Const., art. VII, §§ 1, subd. (b), & 3; Gov. Code, § 18660.) In addition, the Board, by majority vote of all its members, prescribes probationary periods and classifications, adopts other rules authorized by statute, and reviews disciplinary actions imposed against state employees. (*Ibid.*)

Regulations adopted by the Board are exempt from the Administrative Procedure Act, except as expressly specified. (Gov. Code, §§ 18211, 18215, & 18216.)

Section 170 is amended to require the posting of examination announcements for a minimum period of ten calendar days.

Section 249.1.1 is amended to require that job advertisements include the following: each classification being considered to fill a vacancy, the types of eligibility being considered to fill a vacancy, duty statements that most accurately reflect the duties to be fulfilled for each position being considered and, if the position is advertised as limited term, the expected duration of the appointment. Additionally, the section is amended to allow appointing authorities to advertise multiple vacant positions within different units on the same job advertisement as long as the positions are of the same classification.

Section 249.1.2 is amended to clarify that appointing powers shall not disqualify or reject applicants from the hiring process for non-job-related reasons, such as failing to complete non-job-related documents (e.g., department surveys, application package checklists).

Section 249.2 is amended to clarify that in addition to posting job vacancies on CalCareers, appointing powers may post job announcements on social media platforms, as well as career recruitment websites, career fairs, or other electronic means.

Section 249.4 is amended to clarify that verifying minimum qualifications shall be required if the classification requires an incumbent to possess valid licensure, certification, or similar credential, regardless of whether they are reemployment candidates or have mandatory reinstatement rights. The section is also amended to allow appointing powers to reverse withholds from employments lists as long as the reason(s) for the reversal are documented, candidates are notified of the reversal in writing and, if applicable, the candidates' eligibility are restored.

Section 262 is repealed to remove the requirement that an eligible candidate's record shall be removed from the eligibility list when the candidate waives three appointments in any given class.

Section 321 is amended to require appointing powers to notify probationers of the date their extended probationary period will end if it is being extended pursuant to subdivision (a). This section is also amended to clarify that "absences of five or more working days" that fall outside of absences already identified in Rule 321, subdivision (b), shall not be considered working time. Further amendments make clear that probationers shall be notified in writing of the reasons for the extension and shall also be notified of the date the extended probationary period will end if it is being extended pursuant to subdivision (d). Lastly, section 321 is amended to clarify that when the Executive Officer is reviewing

a request for extension and the probationary period will end during the review, the probationary period will be automatically extended until the Executive Officer's decision is issued.

Section 438 is amended to provide to an employee serving in a temporary assignment or loan, except when serving in a compelling management need assignment, the option to request in writing that their temporary loan or assignment be terminated prior to the anticipated end of the temporary assignment or loan and that the request shall be granted within a reasonable time period, not to exceed 10 working days, upon receipt.

Section 438.1 is amended to clarify that employees have no right of appeal to the Board or Executive Officer concerning temporary assignments or loans.

Section 439.2 is amended to ensure consistency in the terms used to determine the appropriate classifications that may be used for training and development assignments. The term "From class" will be updated to the term "current class," mirroring language in the subdivision (a)(1) of the section and already defined in section 437.

Section 439.4 is amended to require appointing powers to provide a written statement to employees certifying training and development experience within 30 calendar days of the completion and/or termination of their training and development assignment. Section 439.4 is also amended to clarify that employees may file an appeal with the Board from the appointing authority's denial of a request for use of training and development experience for meeting minimum qualifications in an examination pursuant to Rule 52.4.

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

FISCAL IMPACT ON PUBLIC AGENCIES:

- Mandate on local agencies and school districts: None.
- Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Cost or savings to any State agency: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the State: None

SIGNIFICANT EFFECT ON HOUSING COSTS:

None.

ECONOMIC IMPACT ON BUSINESS:

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

COST IMPACT ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action since the regulatory change only impacts the Board's examinations procedures.

RESULTS OF ECONOMIC IMPACT ASESMENT:

Adoption of these regulations will not:

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

The adoption of these regulations, however, will have a positive impact on the general health and welfare of California residents in that the benefits of this regulatory action create a fair, equitable, and consistent process for the civil service selection process.

CONSIDERATION OF ALTERNATIVES:

The Board must determine that no reasonable alternatives it has considered or that have been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purposes for which the instant action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS:

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

Michelle La Grandeur, Chief
Policy Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Phone: (916) 651-0924
Email: michelle.lagrandeur@spb.ca.gov

The backup contact person for these inquiries is:

Carlos Gomez, Analyst
Policy Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Phone: (916) 651-8350
Email: carlos.gomez@spb.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Compliance Review Division Chief, Michelle La Grandeur, at the above address.

AVAILABILITY OF RULEMAKING FILE:

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

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~ and underline;

2. A copy of this notice and initial statement of reasons for the proposed adoption;
and
3. Any factual information upon which the proposed rulemaking is based.

If written comments, data or other factual information, studies or reports are received, they will be added to the rulemaking file. The file is available for public inspection during normal working hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Items 1 through 3 are also available on the Board's website at www.spb.ca.gov under "What's New?" Copies may be obtained by contacting the person via the address, email, or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT:

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

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

AVAILABILITY OF DOCUMENTS ON THE INTERNET:

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