



## APPEALS RESOURCE GUIDE

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Prepared by

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# SECTION I

## GENERAL OVERVIEW

## **INTRODUCTION**

This guide provides a general overview of the various appeals and complaints which may be filed with the Appeals Division of the State Personnel Board (SPB). This guide does not supersede existing civil service laws and rules. Applicable laws and rules governing the SPB and the State Civil Service may be found on SPB's website ([www.spb.ca.gov](http://www.spb.ca.gov)). Further, this guide is not intended to provide legal advice. 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. However, some matters must first be filed with the hiring authority before it is filed with SPB. The obligation to file with the hiring authority first is stated for the appropriate appeal or complaint listed in Section II and Section III of this guide.

## **HOW TO FILE AN APPEAL OR COMPLAINT**

### **1. Contents and Filing Methods for the Appeal or Complaint**

All appeals and complaints must comply with California Code of Regulations, title 2, section 52.4; the appeal or complaint 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 online can be found at this link:

[http://www.spb.ca.gov/appeals/appeals\\_information.aspx](http://www.spb.ca.gov/appeals/appeals_information.aspx)

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](mailto:appeals@spb.ca.gov). A delivery receipt will be sent

automatically upon successful filing. 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. 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<br>or<br>In-Person | State Personnel Board<br>Appeals Division<br>801 Capitol Mall,<br>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. An appeal or complaint is considered “filed” on the date the appeal or complaint is received by the Appeals Division and not the date it was sent. If a document is received during non-business hours, it is considered filed on the following business day. Business hours are typically Monday through Friday, from 8:00 a.m.–5:00 p.m.

There are different filing deadlines depending on the type of appeal or complaint. The following information provides the time for filing an appeal or complaint with the Appeals Division.

- Appeals from disciplinary action filed pursuant to the provisions of Government Code sections 19575, shall be filed within 30 days after the effective date of the notice of adverse action.
- Appeals from disciplinary action filed pursuant to the provisions of Education Code section 89539, subdivision (a), or Government Code section 19590, subdivision (c), shall be within 30 days of the employee's receipt of the notice of adverse action.
- Appeals from rejection during probationary period filed pursuant to the provisions of Government Code section 19175 shall be filed within 15 days of the effective date of the notice of rejection during probationary period.
- Appeals from non-punitive transfer, demotion or termination filed pursuant to the provisions of Government Code section 19585 shall be filed within 30 days after the effective date of the notice of non-punitive action.

- Appeals from medical transfer, demotion or termination filed pursuant to the provisions of Government Code section 19253.5, subdivision (f), shall be filed within 15 days of service of the notice of medical action.
- Appeals from Career Executive Assignment termination filed pursuant to the provisions of Government Code section 19889.2 shall be filed within 30 days of the employee's receipt of the notice of termination.
- Complaints of whistleblower retaliation filed pursuant to the provisions of Education Code section 87164 or Government Code sections 8547.8 and 19683, shall be filed within one year from the most recent act of reprisal complained about.
- Requests-to-File-Charges filed pursuant to the provisions of Government Code section 19583.5 shall be filed within one year of the event or events upon which the appeal is based.
- Appeals from constructive medical transfer, suspension, demotion, or termination shall be filed within 30 days of the employee being notified that he or she would not be permitted to resume the duties of their position.
- Appeals from the following types of cases shall be filed within 30 days of the effective date of the action:
  - (i) Termination of appointment from the Limited Examination and Appointment Program (LEAP), and
  - (ii) Termination or automatic resignation from a Permanent Intermittent appointment.
- Appeals from pre-employment medical disqualification, pre-employment psychological disqualification, and pre-employment drug test failure, shall be filed within 30 days of the date of service of the notice of disqualification.
- Appeals from improprieties in the civil service examination process shall be filed as follows:
  - (i) Appeals from qualification appraisal interviews shall be filed within 30 days of the date that examination results are mailed to the Appellant, and
  - (ii) Appeals from written examinations shall be filed within 30 days of the date that examination results are mailed to the Appellant.
- Petitions to Set Aside Resignation pursuant to Education Code section 89542 shall be filed within 30 days after the last date upon which services to the state university or college are rendered, or the date the resignation is tendered, whichever is later.



- Appeals from Automatic Resignation for Absence without Leave pursuant to Education Code section 89541 shall be filed within 90 days of the effective date of such separation. If the appointing authority has notified the employee of the automatic resignation, any request for reinstatement must be filed within 15 days of the service of notice of separation.
- Appeals from Withhold from Certification and Voided Appointment shall be filed within 30 days of the date that the Notice of Withhold from Certification or Notice of Voided Appointment is mailed to the Appellant.
- Any Appellant who is entitled to salary, pursuant to Government Code sections 19584, 19180, 19253.5, and 19585, may file a complaint with the Board for back pay, if Respondent has not restored the Appellant's salary, with appropriate interest, and, if appropriate, the reinstatement of all relevant benefits.
- In all other cases, the appeal or complaint shall be filed within 30 days after the event upon which the appeal or complaint is based.

If an appeal or complaint is not timely filed, it will be dismissed unless the filing party can present good cause (legally justifiable reason) for the late filing. "Good cause" is defined at California Code of Regulations, title 2, section 51.2, subdivision (v). If good cause is shown, the appeal or complaint may be filed within 30 days after the original filing period unless prohibited by law.

## **APPEALS PROCESSES**

Appeals and complaints are generally reviewed within one week of receipt to determine that the matter falls within SPB's jurisdiction and was properly filed. Once accepted, the matter will be assigned a case number and an acknowledgement packet will be served on the parties and their representatives. The acknowledgment packet contains critical information concerning the next steps in their 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). 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 him or herself.

### **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 which a court would take judicial notice of. No hearing is conducted. 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 determination to be presented to the Board for review and adoption or other action or prepare a final decision for the parties at the conclusion of the investigative review.

### **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.

### **3. Evidentiary Hearings**

Evidentiary hearings are conducted by ALJ's. Parties provide opening and closing arguments, call witnesses for examination and cross-examination, and introduce physical and documentary evidence. The introduction of evidence is generally subject to the rules of evidence contained in the California Evidence Code. 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.

#### **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.

#### **b. Prehearing and Settlement Conference**

Most evidentiary matters are calendared for a prehearing and settlement conference (Conference). 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) 10 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.

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 pursuant to California Code of Regulations, title 2, section 57.1, subdivision (c). 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, subd. (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. 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 been given 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. Upon receipt, the Appeals Division will immediately vacate all hearing dates and close the case.

## **CONTACT SPB**

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

| <b>Inquiries</b>  | <b>Telephone Numbers</b>         |
|---|----------------------------------|
| General Information / Appeal Status                                   | (916) 653-0544<br>(916) 653-0799 |
| Transcripts, Recordings, Documents,<br>Administrative Record Requests | (916) 651-8645                   |
| Fax Line  | (916) 654-6055                   |
| TDD <sup>1</sup>  | (916) 653-1498                   |
| Interpreters  | (916) 653-5505                   |

Additional information may be found on SPB's website at [www.spb.ca.gov](http://www.spb.ca.gov)

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<sup>1</sup> 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, sections 51.1–52.10, 53.3,  
and 56.1–60.3

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 24 legal 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 copies of the materials upon which the adverse action is based. When the employee receives the notice of the proposed adverse action, he/she has the right to respond verbally or in writing to the department regarding the charges prior to their effective date. An informal Skelly meeting is generally held at which time the employee may present his or her 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 days<sup>1</sup> after the effective date of the adverse action. The filing date is based upon the date the appeal is received at SPB headquarters.

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)<sup>2</sup>; the employee has the burden of proving any affirmative defenses he or she 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.

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<sup>1</sup> All days are calendar days unless otherwise specified.

<sup>2</sup> If the employee is managerial and the adverse action is taken pursuant to Government Code section 19590, the employee bears the burden of proof to set aside the action based on fraud, bad faith, or lack of substantial evidence, and the statement of reasons (facts) set forth in the notice of adverse action is presumed true. (See Gov. Code, §§ 19590-19593).

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 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: **Lesser Adverse Action Appeals**

Authority: Government Code sections 18670–18683, 19576; and California Code of Regulations, title 2, sections 51.1–52.10, 53.2 and 55.2

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 in order to conduct their case. (See Cal. Code of Regs., tit. 2, § 55.2). The formal rules of evidence and procedures do not apply. For example, sworn declarations are not deemed hearsay and are admissible in support of factual findings.

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 action, 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; California Code of Regulations, title 2, sections 51.1–52.10, 53.2, 55.2, 57.1 and 321–327

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.<sup>3</sup> 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.

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<sup>3</sup> 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, sections 51.1–52.10, 53.3, 56.1–60.3, and 446

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 his/her ability to perform the job. If the results of the evaluation demonstrate that an employee is unable to perform the duties of his/her 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.<sup>4</sup>

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.

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<sup>4</sup> If the employee is eligible for and does not waive disability retirement, the department cannot medically terminate the employee. Instead, the department may file for disability retirement on the employee’s behalf with the Public Employees’ Retirement System (PERS).

Action: **Adverse Action/Termination of Privileges for Physicians<sup>5</sup> in 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)

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 be appealed to the SPB within 30 calendar days of service of the Notice of Final Proposed Action. Such appeals are heard before an ALJ and a judicial review committee<sup>6</sup> (JRC). 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: [http://www.cphcs.ca.gov/docs/court/Clinical\\_Compency\\_Court\\_Ordered\\_Process\\_20080904.pdf](http://www.cphcs.ca.gov/docs/court/Clinical_Compency_Court_Ordered_Process_20080904.pdf)<sup>7</sup>

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<sup>5</sup> Physician does not include psychiatrist.

<sup>6</sup> After a *voir dire* process is conducted, the final JRC is comprised of three independent and impartial physicians credentialed by the Institute for Medical Quality (IMQ).

<sup>7</sup> Link active as of January 6, 2017.

Action: **Constructive Medical Termination**

Authority: Government Code sections 18670–18683 and 19253.5; California Code of Regulations, title 2, sections 51.1–52.10, 53.3, 56.1–60.3, and 446

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 his or her 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 he or she 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 he or she was 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, sections 51.1–52.10 and 446

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, for example, when an employee's driver's or occupational license, certificate, registration, or other professional qualification is revoked or restricted and that license, certificate, registration or qualification is a minimum qualification for the job. 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 18670–18683 and 19058–19101; California Code of Regulations, title 2, sections 51.1–52.10, 63.1, 265, 281, and 282

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 his or her 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 and 19240–19244; California Code of Regulations, title 2, sections 51.1–52.10 and 547.50–547.57

Filing Deadline: Within 30 Days after Effective Date

An employee appointed under the Limited Examination and Appointment Program (LEAP) may be terminated during the LEAP job examination period 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 LEAP appointment may also be terminated for these same reasons within 30 days after the exam period ends.

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. When the LEAP employee receives the notice, he/she has a right to respond to the department. If the department does not alter the proposed action after receiving the employee's response, the LEAP candidate may file an appeal with the SPB Appeals Division within 30 days after receipt of the notice of termination. 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.

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

Authority: Government Code sections 19889–19889.4; California Code of Regulations, title 2, sections 548–548.155 and 599.990–599.995

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

A Career Executive Assignment (CEA) appointment is made to a position requiring a high level of discretion and policy. As a result, an employee who is appointed as a CEA does not obtain permanent status in that appointment. If that 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 him/her 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. The department must send a copy of the notice of termination 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 age, sex, sexual orientation, marital status, race, color, national origin, ancestry, disability, religion, religious opinions and affiliations, and political affiliations or opinions. 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 discriminatory or political 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.

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

Authority: Government Code sections 19100.5–19101, and 19996.1; California Code of Regulations, title 2, sections 448 and 599.828

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 his/her 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 he or she had a satisfactory reason for being absent, the rules were improperly applied to separate him/her, and he or she is 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 599.898, a PI employee who waives three requests by the department to report to work is considered to have automatically resigned without fault from his/her position, unless he/she was 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 and 19702; and California Code of Regulations, title 2, sections 10, 64.1–64.6

Filing Deadline: Filed with appointing authority within one year of the discriminatory act (with an extension of 90 days in limited circumstances). Complaint with 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.

Please note that, as of January 1, 2013, the SPB accepts only complaints of discrimination, harassment, and retaliation on the basis of mental disability, physical disability, and medical condition, and denials of reasonable accommodation from State civil service employees and applicants. (Gov. Code, § 19702, added by Statute 2012, chapter 360 section 69.) (In order to file a discrimination complaint on a different protected basis with another governmental agency, please see “Other Agency Filing,” below.)

If a State civil service employee or applicant reasonably believes he or she has been discriminated against because of his or her mental disability, physical disability, or medical condition, or has been denied a reasonable accommodation, he or she must first file a written complaint with the appointing power’s Equal Employment Opportunity 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, describe the alleged discriminatory incident(s), 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 employee or applicant must include sufficient copies of the complaint and any attachments for the SPB to serve on each entity and person alleged to have engaged in discriminatory conduct and against whom damages and/or disciplinary action is sought. The SPB complaint must also include a copy of the discrimination complaint filed with the appointing power, together with a copy of the appointing power's decision. The complaint must also be 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 Department of Fair Employment and Housing (DFEH) 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 DFEH, as well as with the SPB.

Nevertheless, since the SPB no longer has the authority to accept discrimination complaints other than those based upon disability and medical condition or denial of reasonable accommodation, those employees or applicants wishing to file discrimination complaints on other protected basis may only file complaints with the EEOC or DFEH.

To file a complaint or contact the DFEH, please call (800) 884-1684 or email the DFEH at [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov). Information on how to file a charge of employment discrimination with the EEOC can be found at [www.eeoc.gov/employees/howtofile.cfm](http://www.eeoc.gov/employees/howtofile.cfm).

For current state employees, discrimination in exams; failure to hire; denial of promotion, transfer, or training; negative job assignments or performance evaluations; and adverse working conditions may also be appealed as grievances under the applicable collective bargaining agreements. Employees may file grievances concerning these actions under applicable SPB or CalHR rules.

### SPB Jurisdictional Review

All discrimination or retaliation complaints that are filed with SPB's Appeals Division are reviewed to determine if SPB has jurisdiction to accept the complaint. In order to determine whether it has jurisdiction to review a complaint, SPB reviews whether:

- the filing requirements have been met;
- the complaint was filed within the applicable time limits;
- the complainant is a member of a protected class (i.e. mentally disabled, physically disabled, has a medical condition, or denied reasonable accommodation);

- the complainant has standing to file (i.e., the complainant alleges direct harm/injury from discrimination); and if
- the complainant has stated a prima facie case (i.e., enough information demonstrating protected status may have been a factor in the direct harm/injury).

Discrimination complaints found to be within SPB jurisdiction are referred to an evidentiary hearing before an ALJ for decision. In such hearings, the employee/applicant bears the burden of proving discrimination.

A discrimination 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 or retaliation complaints are reviewed by the Board at regularly scheduled Board meetings. Should the Board sustain a finding of discrimination or retaliation, the Board may order the complainant to be hired or reinstated, may award backpay and/or compensatory damages, and other relief intended to cause the discrimination to cease and desist.

Action: **Whistleblower/Retaliation Complaint**

Authority: Government Code sections 995.3, 8546.8, 8547–8547.11, 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, sections 67.1–67.8

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 he/she has made a protected disclosure and/or refused to obey an illegal order, he/she may file a whistleblower retaliation 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 jurisdiction exists. 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 he/she meets 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, sections 51.2, 52.4, and 61

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 the Appellant's salary, with appropriate interest, and, if appropriate, the reinstatement of all relevant benefits.

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.

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 Conference. Prior to the parties' prehearing/settlement 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, subsection (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, sections 51.1–52.10

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.<sup>1</sup> 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. The individual must include sufficient copies of the request and all attachments in order for the SPB to serve the appointing authority and each employee against whom disciplinary action is sought.

All requests to file charges are investigated to determine if SPB jurisdiction exists. 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 make a recommendation to the Board as to whether the request should be granted or denied. The staff recommendation will be reviewed by the Board at a regularly scheduled Board meeting.

If the Board grants a request to file charges, the employee 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.

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<sup>1</sup> The law does not permit the filing of request to file charges by current wards or inmates of the California Department of Corrections and Rehabilitation or California Department of State Hospitals.

Action: **Examination Appeals (Individual, Group, Career Executive Assignment (CEA) and LEAP)**

Authority: California Constitution, Article VII, section I(b); Government Code sections 18670–18683, 18900, 18930.5, 18952, and 19244 (LEAP); California Code of Regulations, title 2, sections 51.1–53.1, 54.1, 56.4, and 548.30–548.52

Filing Deadline: Within 30 Days of the Date Examination Result is Mailed

When an examination competitor is notified that his/her civil service examination application is not accepted or a competitor contends that laws and/or rules were violated in an examination, the competitor may file an appeal with the SPB Appeals Division.

There are four grounds for which an appeal will be accepted as follows; (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 (excluding CEA and LEAP examinations). These reasons are further described below.

The appeal must be in writing and state the facts, information, or circumstances upon which the appeal is based. A copy of the notice of examination results should be included with the appeal. The appeal must contain the appellant's name, mailing address, and telephone number where the appellant can be reached or a message can be left. If a copy of the examination results is not included, the appeal must specify the title of the exam, the date of the exam, and the name of the department conducting the exam. Appeals from both qualification appraisal interviews and written examinations must be filed within 30 days of the date the examination results are mailed to 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 usually must provide that evidence of the following:

- 1) misrepresentation (false representation, concealment, or non-disclosure of fact);
- 2) knowledge at the time of misrepresentation that the facts were false;
- 3) intent to defraud (i.e., to reduce reliance);
- 4) justifiable reliance; 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

Appeals alleging discrimination in the examination process require evidence that demonstrates illegal discrimination based on race, gender, color, religion, national origin, physical or mental disability, age, political affiliation, ancestry, marital status, sexual orientation, or political or religious opinion. The appeal must establish a connection between the complained of activity and the individual's status as a member of a protected class.

Appeals alleging discrimination based on reasons other than the individual status as a member of a protected class (such as alleged discrimination based on geographical location or work unit) will not be accepted.

## 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 he/she believes his/ her experience, and/or education meet the minimum qualifications. If the appellant is found to meet the minimum qualifications, he or she will be placed into the examination. The appellant must show that he or she meets all the minimum qualifications; it is not sufficient for the appellant to show that he or she has the general qualifications and/or ability to perform the duties of the class.

The SPB will consider "erroneous interpretation or application of minimum qualifications" to have occurred when there is an inaccurate analysis of the appellant's qualifications to compete in the examination and, as a result, an otherwise qualified applicant is not permitted to compete. Once an appellant is admitted to the examination, he/she 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

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 in accordance with the examination plan outlined on the bulletin or the examination method was not applied fairly to all competitors.

## Remedies

Appellants who are successful in the examination appeals process typically are granted one of the following remedies: entry into the examination; re-administration of the examination; or an "alternate score" (interview panel assigns alternate scores only when a candidate is eliminated from the examination for not meeting the minimum qualifications).

- Group Examination Appeals

This is an appeal filed by one or more competitors and, if the charges are found to be valid, the entire eligible list may be impacted. In such cases, the Board will consolidate the appeals and address the relevant issues. The mere fact that a large number of filers have appealed an examination does not, in itself, constitute a group appeal.

- Career Executive Assignment (CEA) Examination Appeals

Within 30 days after the "Report of Appointment to a CEA Position" is submitted to the executive officer, an employee who is otherwise eligible for appointment to the CEA category may appeal to the Board on the grounds of irregularity, fraud or discrimination in the conduct of the examination.

If, upon review of the record of the examination, the Board finds fraud or discrimination, it may cancel the examination and appointment and require the appointing power to repeat the competition. The Board may also order appropriate corrective action as a remedy.

If the Board finds irregularity in the conduct of the examination, the Board may cancel the appointment and/or order a new examination only if it is determined that the irregularity materially affected the appointment made as a result of the examination. Appeals based on a challenge of the qualifications of the person appointed as the result of an examination usually will be heard only upon the grounds that such person was not well qualified, and/or was not carefully selected.

## 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) a rejection of an application to participate in an examination; 2) a disqualification by an interview panel or by any other selection method used; or 3) a denial of a request for reasonable accommodation during the job examination period.

Action: **Withhold from Certification**

Authority: Government Code sections 18670–18683 and 18935; California Code of Regulations, title 2, sections 51.1–52.10, 172, 211 and 213.6

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 his/her name is being "withheld" from the employment list, he/she 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 jurisdiction has been established and sufficient facts are alleged to constitute grounds for the appeal. Most appeals are resolved through an investigative review. Following the investigative review, a decision with findings and a recommendation is prepared and reviewed by the Board.

Action: **Voided Appointment**

Authority: Government Code sections 18670–18683, 19257 and 19267.5; California Code of Regulations, title 2, sections 9, 51.1–52.10, 249, and 266–266.3

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

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 his/her appointment has been voided, he/she may file an appeal 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 determination rendered by CalHR or the appointing authority.

All appeals of voided appointments are investigated to determine if SPB jurisdiction has been established and if sufficient facts are alleged to constitute grounds for the appeal. Most appeals are resolved through an investigative review. In limited cases, the appeal is referred to an informal hearing before a staff hearing officer.

Following the investigative review or informal hearing, a 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(f), 18670–18683; California Code of Regulations, title 2, sections 51.1–52.10 and 599.968–599.979

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, he/she may file an appeal with the SPB Appeals Division. The appeal must state the job classification from which he/she was 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, he/she may appeal the disqualification. 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 jurisdiction has been established and sufficient facts are alleged 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 recommendation is prepared and reviewed by the Board.

- Action: **Merit Issue Complaint**
- Authority: Government Code sections 18670–18683; California Code of Regulations, title 2, sections 51.1–52.10, 66.1, 548.61
- Filing Deadline: Must file with Department first; may file with SPB within 30 days after Department’s denial of complaint or after 90 days has elapsed from the date 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. Merit issue complaints include, but are not necessarily limited to, interference with promotional opportunities; disputes regarding the effective dates of appointments or promotions; and applicability of alternate salary ranges. Additionally, an employee who believes they have been discriminated against within the State civil service because of political affiliation or opinion may also file a merit issue complaint. The complaint must first be filed with the department responsible for the alleged act or decision. The personnel office should be contacted regarding the time for filing a merit issue complaint and the agency’s levels of review.

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) the 90 days expires without a department's decision on the complaint. The appeal should include a copy of the appointing authority's decision, or, if no decision has been rendered by the department, then, a copy of the original merit issue complaint.

All merit issue complaints are investigated to determine if SPB jurisdiction has been established and sufficient facts are alleged to constitute grounds for the appeal. Many complaints are resolved through investigation and/or written determination.

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

Authority: Government Code sections 18670–18683 and 18935; California Code of Regulations, title 2, sections 51.1–52.10 and 211

Filing Deadline: Within 30 Days From the Date of Receipt of the Decision of the 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 as set forth in California Code of Regulations, title 2, section 211. If CalHR denies the request, the dismissed employee may appeal to the SPB Appeals Division within 30 days after receipt of the decision.

All requests to test, or for certification, are investigated to determine if SPB jurisdiction has been established and sufficient facts are alleged to constitute grounds for the appeal. Many appeals are resolved through investigation and/or written determination. If not, they are referred to an informal hearing before a staff hearing officer.

Following the informal hearing, a decision 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; California Code of Regulations, title 2, sections 51.1 - 52.10 and 212

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 jurisdiction has been established and sufficient facts are alleged 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 his/her 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 his designee, and served on the employee. The CSU employee must file an appeal with the SPB Appeals Division within 30 days upon receiving the final determination.<sup>1</sup> 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.

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<sup>1</sup> CSU employees may also appeal a medical action with DFEH 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 he/she worked. When the CSU employee receives notice of his/her automatic resignation, he/she 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, he/she must file a written appeal for reinstatement with the SPB Appeals Division within 90 days of the effective date of separation. An informal *Coleman* 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 his/her absence and failure to obtain leave, and indicates that he/she is 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 his/her 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. The same procedures are used as in state civil service employee petitions to set aside resignations appealed to CalHR. If the resignation is set aside, the employee is reinstated to his/her former position and paid back salary.

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; SPB rules 51.1–52.10

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 request to file charges may challenge the Board's written decision by filing a petition for rehearing.

The Board will grant a petition for rehearing only if the requesting party shows 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; and/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 filed timely, 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. If the petition is denied, the SPB decision will become final. 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, that precedential decision will be vacated and will no longer be considered precedential.

## SECTION VII

# APPEALS DIVISION RECORDS REQUESTS

Action: **Requests for Records**

Authority: Public Records Act, Government Code sections 6250-6276.48

Requests for public records directed to the Board may only seek those records in the possession of the Board. (Gov. Code, § 6253). The request must reasonably identify the records being sought. Confidential information as defined in the Public Records Act will be redacted. Requests for records will be processed in the order in which they are received.

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, § 6253, subd. (c)).

The requestor shall bear the total cost of producing the entire record to include, but is not limited to, the cost to construct the record, the cost to produce the hearing transcript, and the cost of any programming and computer services, if necessary, to produce the record. An invoice for the production of the records will be provided when the records are compiled. However, subsequent costs to produce a copy of a record already in the possession of the Board may be charged at \$0.10 per page. (Gov. Code, § 6253.9, subd. (2)(b)). 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 at: [www.spb.ca.gov](http://www.spb.ca.gov).

To file a records request please submit a Records Request form available at: [www.spb.ca.gov](http://www.spb.ca.gov).

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 utilizing the Records Request form located at [http://spb.ca.gov/appeals/forms\\_reports.aspx](http://spb.ca.gov/appeals/forms_reports.aspx).

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, section 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.