

NOTICE OF EFFECTIVE DATE OF REGULATION CHANGE

California Code of Regulations Title 2, Administration Division 1, Administrative Personnel

DATE: April 15, 2003

TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND
MEMBERS OF THE GOVERNOR'S CABINET

SUBJECT: AMENDMENT OF RULE 321—EXTENSION OF PROBATIONARY
PERIODS

This memorandum is to advise you that the proposed revision of § 321 in Title 2 of the California Code of Regulations (CCR), as described in the State Personnel Board's (SPB) Notice of Proposed Amendment of Regulation and Statement of Reasons dated December 20, 2002, became effective on March 24, 2003. A copy of the final regulation is attached. This final regulation will be published in the CCR, Title 2, Division 1, § 321.

Subsection (c) of Rule 321 clarifies the maximum extension as defined by the State Personnel Board in *Mike Dorri* (2002) SPB Dec. No. 02-05, which held that an employee's probationary period cannot be extended beyond five working days to comply with the notice requirements for a rejection set forth in Board Rule 52.3.

New Subsection (d) of Rule 321 codifies the process requirements of Government Code (GC) § 19170, as amended by Stats. 2002 c. 236 (Assembly Bill 1950). These new provisions allow for an Agreement extending the probationary period for not more than six months to allow for evaluation of an employee who has been provided with a reasonable accommodation. Such an Agreement, between the department and the employee, must be approved by SPB, and received by SPB prior to the end of the employee's probationary period. This is necessary to prevent rejection of the employee before the Agreement can be reviewed and acted upon by SPB.

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CONTACT PERSON:

Please direct inquiries regarding extensions of probationary periods to Rosie Jauregui at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010 or (916) 653-1827, TDD (916) 653-1498. Inquiries regarding preparation of the Agreement may be directed to Elise S. Rose, Chief Counsel, at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010 or (916) 653-1403, TDD (916) 653-1498.

Mike Willihnganz
Chief, Policy Division

Attachment: Text of Final Regulation

§ 321. Extension of Probationary Periods.

(a) In the event a probationer has not, during a prescribed calendar length of the probationary period, worked the hours set forth below, probation will automatically be extended until the probationer has worked the required number of hours.

(1) 840 if serving a six months' probationary period; or

(2) 1260 if serving a nine months' probationary period; or

(3) 1680 if serving a one year probationary period.

Vacation, sick leave, military leave or other leave of absence, compensating time off, suspension or other separations, including separations subsequently voided or otherwise set aside, shall not be considered working time.

The board shall be notified of an extension under this section.

(b) If a probationer has had a continuous period of absence of 60 or more working days and upon return from such absence the appointing power determines that the remaining portion of the probationary period is insufficient to evaluate that probationer's current performance the appointing power may extend the probationary period with the approval of the executive officer. The length of such extension shall be determined by the length of the completed portion of the probationary period at the beginning of the probationer's absence as follows:

(1) If up to one-third of the minimum number of hours required for the probationary period was worked, the remainder of the probationary period plus the extension shall not exceed the minimum number of hours required for the original probationary period.

(2) If over one-third but not more than two-thirds of the minimum number of hours required for completion of the probationary period was worked, the remainder of the probationary period plus the extension shall not exceed two-thirds of the minimum number of hours required to complete the original probationary period.

(3) If over two-thirds of the minimum number of hours required to complete the probationary period was worked, the remainder of the probationary period plus the extension shall not exceed one-third of the minimum number of hours required to complete the original probationary period.

(c) The probationary period may be extended for a maximum of five working days in order to comply with notice requirements as set forth in Section 52.3 for rejection during probation.

(d) Pursuant to Government Code Section 19170, an appointing power and an employee, who alleges that he/she has a disability as defined in Government Code Section 12926, may submit a written agreement for approval by the board, that would extend the employee's probationary period within his/her existing classification for up to six months to provide a reasonable accommodation to the employee as follows:

(1) The agreement shall describe the period of the extension, beginning and ending dates, and how the extended probationary period will allow the employee to demonstrate, before the extended probationary period ends, the ability to satisfactorily perform the essential functions of the position with the reasonable accommodation. The written agreement must be received by the board for review prior to the end of the employee's probationary period.

(2) If the employee's probationary period will end during the board's review, the board will automatically extend the probationary period until a determination is made to approve or disapprove the agreement. This period of time is inclusive of the extension time requested by the department. If the board does not approve the agreement, the board will extend the employee's probationary period by an additional ten working days from the date of service of the board's determination, to allow the appointing power sufficient time to proceed with a rejection during probation. This ten working day extension is in addition to that provided under subsection (c) above.

(e) Prior to the completion of the probationary period, the appointing power shall notify the employee in writing that the probationary period is being extended under this rule and of the length of the extension. Employees whose probationary periods are extended under this rule must also, over the entire course of their original and extended probationary periods, meet the minimum service requirements specified in subsection (a) above. The State Personnel Board shall notify the employee and the appointing power in writing of its decision to approve or disapprove any agreement reached pursuant to subsection (d) above.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19170 and 19173, Government Code.