



DATE: May 1, 2008

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

SUBJECT: LIST APPOINTMENT AFTER A TRANSFER APPOINTMENT

The purpose of this memorandum is to provide notice to state departments, agencies, and employee organizations that, notwithstanding the provisions of Government Code § 18935(b), the Board will allow an employee who transferred into a class to take an examination for and later receive a list appointment to the same or lower class. Employees, who take an examination under such circumstances must, however, meet the minimum qualifications and be reachable on the resulting list.

AUTHORITIES

Article VII, Section 1, subdivision (b) of the California Constitution requires that permanent appointment and promotion in the state civil service be based on merit ascertained by competitive examination.

Government Code § 18900, subdivision (a) provides, in part that "Eligible lists shall be established as a result of free competitive examinations open to persons who lawfully may be appointed to any position within the class for which these examinations are held and who meet the minimum qualifications..."

Government Code § 18935, subdivision (b) provides that:

The board may refuse to examine or, after examination, may refuse to declare as an eligible or may withhold or withdraw from certification, prior to appointment, anyone who comes under any of the following categories:

(b) At the time of examination has permanent status in a position of equal or higher class than the examination or position for which he or she applies.
(emphasis added)

CONSIDERATIONS

Over the years, the State Personnel Board (SPB) has issued differing policy statements with respect to whether it should exercise its discretion under Government Code § 18935(b) to preclude an employee from receiving a list appointment after transfer.

California's civil service system is established on the constitutional principle that employees should be appointed based on merit as ascertained by competitive examination. Given that guiding principle, SPB sees no reason at this time to preclude employees who have transferred into a position from taking open and/or promotional examinations to attain list eligibility. List eligibility provides the employee with certain advantages should the employee desire another position in state service even if they already have status in class(es) at the same or higher level. Examinations must, of course, be merit-based, competitive, and based upon a bona fide operational need.

SALARY

Pursuant to the provisions of Title 2, California Code of Regulations (2CCR) § 599.674 (a) under the Department of Personnel Administration (DPA), an employee who receives a list appointment (A01) after transfer to the same class (A02), will not receive any additional salary increase as there is no range differential between the maximum salary rates.

CONTACTS

Questions regarding appointments after transfer may be directed to Denise Masuhara, Appointment Consultation Unit, at SPB, dmasuhara@spb.ca.gov, (916) 657-2904.

Questions regarding salary may be directed to the Personnel Services Branch (PSB) at DPA, PSB@dpa.ca.gov, (916) 323-3343.

SUZANNE M. AMBROSE
Executive Officer