



SPECIAL INVESTIGATION

**Additional Appointments
of
Supervisory and Managerial Employees**

California Department of Social Services

Prepared By:
State Personnel Board
Compliance Review Division
May 16, 2013

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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the board's decisions, rules, policies, and consultation.

In addition, the SPB may review an appointing authority's personnel practices to ensure compliance with civil service laws, rules, and policies. The four major areas of review are examinations, appointments, equal employment opportunity (EEO), and personal services contracts.

The SPB may also conduct special investigations of an appointing authority's personnel practices to ensure compliance with civil service laws, rules, and policies. Special investigations may be initiated in response to a specific request or when SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

In response to a request by the Legislature, the SPB conducted a special investigation into the Department of Social Services (DSS)'s personnel policies and practices related to supervisory and/or managerial employees who held an additional appointment in a rank-and-file position on January 11, 2013. On that date, DSS had 101 managers/supervisors who held 103 additional appointments as rank-and-file employees. Two employees held two additional appointments bringing the total number of additional appointments to 103.

Regardless of whether an appointment is an additional appointment, civil service laws and rules apply to the appointment, unless the appointment is expressly exempted from civil service. Generally, those laws and rules require hiring departments to ensure a competitive and fair selection process that includes advertising for the position; determining whether an eligible list for the classification exists; collecting applications; and conducting hiring interviews.

In addition, an appointment by way of transfer or reinstatement must be determined by candidate performance in selection procedures, including, but not limited to, hiring

interviews, reference checks, background checks, and/or any other procedures assessing job-related qualifications. Selection procedures must be designed and administered to select those individuals who best meet the selection need.

DSS did not ensure a competitive and fair selection process for any of the rank-and-file positions filled by supervisors and/or managers that included advertising, determining if eligible lists for rank-and-file classifications existed, or conducting hiring interviews. In addition, the DSS appointed supervisors and/or managers to the additional appointments as rank-and-file employees without determining their performance in a selection procedure. As such, the additional appointments did not comply with civil service laws and rules or merit principles. Therefore, corrective action should be ordered.

It is recommended that DSS verify the effective dates for all the additional appointments and report to California Department of Human Resources (CalHR) its findings. The DSS and CalHR should work cooperatively to determine whether any of the additional appointments may be voided or otherwise resolved.

In addition, while departments are currently prohibited from appointing managers and supervisors to additional appointments (CalHR's Policy Memo 2013-015), this policy could be changed or modified in the future. Accordingly, it is recommended that DSS review, and if necessary, update its personnel policies and procedures to ensure that all additional appointments, regardless of the funding source, comply with civil service laws and rules, and merit principles, unless the additional appointment is expressly exempt from civil service. DSS should also ensure that its personnel policies and procedures include a minimum two-year retention requirement for all hiring documents, including documents related to employees placed in additional appointments. Further, DSS should provide its personnel managers and staff with information and/or training on the laws, rules, and policies related to additional appointments and retention of hiring documents.

The DSS must comply with the afore-stated recommendations within 60 days of the Board's Resolution and submit to the SPB a written report of compliance.

BACKGROUND

Section 350 of the SPB's Personnel Management Policy and Procedures Manual on "Appointments and Status" (300-911 (1/79) Rev. 10/30/86) states, in pertinent part, that an additional appointment is subject to civil service laws and rules, as follows:

Additional appointment is the term used when a State civil service employee is appointed to a second position in State service. The term is descriptive only since the fact that an appointment is held as an additional appointment does not change the civil service law and rule provisions that would otherwise apply to it.

¶...¶

There are no laws or rules that relate specifically to additional appointments. The authorities for making additional appointments are the same as for making any other appointment. These include the provisions on list appointments, transfers, reinstatements, etc. For example, an Office Assistant II who was reachable on the promotional list for Stenographer could receive an additional appointment as a Stenographer in the same manner as any other reachable eligible.

Section 350 also addresses two areas of “particular concern” regarding the good faith of an additional appointment:

1. The intent of the appointment must not be to circumvent the full-time appointment process; for example, making two part-time appointments of an individual who is eligible for part-time, but not full-time employment.
2. The intent of the appointment must not be to circumvent the overtime provisions.

Additionally, to ensure the proper use of additional appointments, Section 350 provides these examples: an additional appointment “to a distinctly different employment situation than the employee’s initial appointment; typically, this would involve appointment to a different class, department or State facility.”

The following departments had supervisors and/or managers who held additional appointments in rank-and-file positions within the same department on January 11, 2013:

Department	Count
California Department of Consumer Affairs	1
California Department of Corrections and Rehabilitation	227
California Department of Education	2
California Department of Food and Agriculture	2

California Department of Forestry and Fire Protection	1
California Department of Motor Vehicles	2
California Department of State Hospitals	173
California Department of Social Services	101
California Public Employees' Retirement System	56
California Department of Veterans Affairs	2
Employment Development Department (CUIAB)	4
Total	571

Source: State Controller's Office

The Legislature requested that SPB and CalHR review those additional appointments.¹ In order to provide a comprehensive review in the most expeditious manner, CalHR focused on compliance with classification, compensation and labor laws, rules, and policies, while SPB focused on compliance with civil service laws, rules, and policies.

This report contains only the results from the SPB's review.

SCOPE AND METHODOLOGY

The scope of this special investigation was limited to reviewing the DSS's 103 additional appointments involving 101 managerial/supervisory employees to additional rank-and-file positions held on January 11, 2013, within the same department. The primary objective of the review was to determine if DSS's personnel practices complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

On March 8, 2013, a letter and material request form was sent to DSS to compile documentation needed for the investigation. The SPB held an entrance conference with DSS on March 12, 2013, to explain the special investigation process.

The SPB examined the documentation that DSS provided, which included notice of personnel actions, memoranda and emails from staff requesting additional appointments to avoid overtime, State Controller's Office payment history printouts, and

¹ In January 2013, CalHR issued Policy Memo 2013-007 to Personnel Management Liaisons (PML) prohibiting departments from processing any new additional appointments. On April 25, 2013, CalHR issued Policy Memo 2013-015 instructing that effective immediately departments were no longer authorized to make any additional appointments for managers and supervisors. Policy Memo 2013-015 also sets forth options departments can consider in lieu of appointing managers and supervisors to additional positions.

duty statements of the additional appointments. The SPB also interviewed appropriate DSS staff as required.

DSS was provided a copy of the SPB's draft report and was given until April 24, 2013, to submit a written response. The SPB received and carefully reviewed the department's response, which is attached.

FINDINGS

DSS is federally funded through the Social Security Administration. Effective in November 2010, the Social Security Administration imposed a hiring freeze; consequently, DSS was unable to fill vacancies to reduce the excessive backlog of disability cases. DSS suggests that the DESA I's possessed specialized skills essential to assisting with the reduction of the backlog without requiring the training of new staff.

According to the documentation provided, DSS has utilized additional appointments for these classifications dating back to April 1, 1998 and as recent as January 1, 2013. During the investigation, SPB identified five appointments that were made within the last twelve months.

The following table lists the supervisory/managerial classifications and rank-and-file classifications held simultaneously by employees working for DSS on January 11, 2013:

Managerial/Supervisory Classification	Rank-and-File Classification	Number
Disability Evaluation Services Administrator I	Disability Evaluation Analyst III	98
Disability Evaluation Services Administrator II	Disability Evaluation Analyst III	4
Disability Evaluation Services Administrator III	Disability Evaluation Analyst III	1
Total:		103

The additional appointments were made to the permanent and intermittent time bases while listing the basis for eligibility as reinstatement, transfer, or unknown due to lack of personnel documentation provided. The following table lists the appointment types, tenure, and time base for the additional appointments:

Number	Appointment Type	Tenure (Status)	Time Base
80	Reinstatement	Permanent	Intermittent
13	Transfer	Permanent	Intermittent
10	Unknown	Permanent	Intermittent
103	Total		

Recruitment and Selection Departments must have recruitment strategies designed to be “as broad and inclusive as necessary to ensure the identification of an appropriate candidate group.” (Merit Selection Manual [MSM], § 1100, p. 1100.2 (Oct. 2003); Cal. Code Reg., tit. 2, § 50.) Generally, the typical steps a department takes after determining that approval to fill a vacant position has been secured include: determining whether there is an eligible list for the classification; determining whether an eligible list is necessary to fill the position; advertising the position, which may include certifying the eligible list; receiving applications, and if no applications are received, re-advertising the position with increased recruitment efforts; screening applications to determine which candidates meet minimum qualification requirements and are eligible for appointment; and conducting hiring interviews. (MSM, § 1200, pp. 1200.7-1200.8; Cal. Code Reg., tit. 2, § 50.)

SPB rules require that appointments to positions in state civil service by way of transfer or reinstatement be made on the “basis of merit and fitness, defined exclusively as the consideration of each individual’s job-related qualifications for a position...as determined by candidate performance in selection procedures, including, but not limited to, hiring interviews, reference checks, background checks, and/or any other procedures, which assess job-related qualifications” (Cal. Code Reg., tit. 2, § 250, subd. (a).)

In addition, “Where the appointment of an employee has been made and accepted in good faith, but where such appointment would not have been made but for some mistake of law or fact which if known to the parties would have rendered the appointment unlawful when made, the board may declare the appointment void from the beginning if such action is taken within one year after the appointment.” (Gov. Code, § 19257.5.)

Further, Government Code section 12946 states, in pertinent part:

“It shall be an unlawful practice for employers, labor organizations, and employment agencies subject to the provisions of this part to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of two years after the date of the employment action taken....”

In addition, all applications for a state civil service position must be maintained and preserved on file for at least two years. (Cal. Code Reg., tit. 2, §174.)

Upon careful review of DSS documents, it was determined that the files lacked the documents showing that DSS engaged in any of the aforementioned selection procedures. Additionally, the documentation DSS provided did not contain job announcements, current applications, screening criteria for accepting applications, or rating criteria for the hiring interview process.

The additional positions were funded through DSS’s temporary help blanket fund; which does not alleviate the need for a competitive hiring process. Civil service laws and rules apply to all appointments, unless expressly exempted from civil service, regardless of how the positions are funded (i.e., funded through DSS’s regular/on-going position budget or funded through DSS’s temporary help position budget).

SPB recommends that DSS verify the effective dates for all the additional appointments and report to CalHR its findings. DSS and CalHR should work cooperatively to determine whether any of the additional appointments may be voided or otherwise resolved.

It is further recommended that DSS review current recruitment efforts for filling positions in specialized programs or areas where recruitment is problematic. To assure recruitment efforts meet merit principles, DSS should review, and if necessary, develop an updated recruitment plan, which may include utilizing career fairs at local educational institutions and/or web-based job announcements.

In addition, while departments are currently prohibited from appointing managers and supervisors to additional appointments (CalHR’s Policy Memo 2013-015), this policy could be changed or modified in the future. Accordingly, it is recommended that DSS review, and if necessary, update its personnel policies and procedures to ensure that all additional appointments, regardless of the funding source, comply with civil service laws

and rules, and merit principles, unless the additional appointment is expressly exempt from civil service. DSS should also ensure that its personnel policies and procedures include a minimum two-year retention requirement for all hiring documents, including documents related to employees placed in additional appointments. Further, DSS should provide its personnel managers and staff with information and/or training on the laws, rules, and policies related to additional appointments and retention of hiring documents.

DEPARTMENTAL RESPONSE

See Attachment 1.

SPB REPLY

In its written response, DSS concurs and understands the SPB's findings and recommendations. DSS will update its additional appointment hiring practices and documentation to ensure civil service laws and merit selection principles are properly followed in the future should the prohibition on additional appointments be repealed or modified.

It is further recommended that within 60 days of the Board's Resolution, DSS comply with the afore-stated recommendations and submit to the SPB a written report of compliance.

The SPB appreciates the professionalism and cooperation of DSS during this special investigation.

ATTACHMENT 1



STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



April 24, 2013

TO: JIM MURRAY, Division Chief
State Personnel Board, Compliance Review Division

FROM: SUZANNE LARSEN, Personnel Chief
Human Resource Services Branch

SUBJECT: RESPONSE TO SPECIAL INVESTIGATION

This is the California Department of Social Services' (CDSS) response to the State Personnel Board's (SPB) Special Investigation report and findings related to Additional Appointments of Supervisory and Managerial Employees to Disability Evaluation Analyst IIIs (DEA III) which was provided to us on Monday, April 22, 2013.

The CDSS is fully committed to adhering to civil service merit selection principles. The Department will take immediate action to separate the 96 additional DEA III appointments identified in the report and will verify the effective dates of the five additional appointments made within the last 12 months and report this information to the Board. Additionally, CDSS will begin efforts to update our policies and procedures to ensure all future civil service additional appointments comply with civil service laws, rules and merit principles. The CDSS will ensure proper documentation of these efforts is retained in our working files.

The CDSS has utilized the additional appointment process periodically for over 15 years to address a continuous back log of disability cases. Due to state and federal hiring freezes over the years, CDSS' Disability Determination Service Division (DDSD) was - with limited exceptions - unable to fill vacant positions with permanent full time staff. The use of the dual appointment process in conjunction with the authorization of overtime for Disability Evaluation Analysts not in dual positions was utilized to reduce backlogs and wait time for the delivery of services to California's disabled population.

The Department has found the DEA III dual positions to be a valuable tool to increase our workload capacity. Eliminating the use of DDS additional appointments will cause federal benefits to be delayed for disabled Californians. Eligible claimants may face significant hardships while awaiting Supplemental Security Income benefits to be approved.

The CDSS understands the recommendations in the Special Investigation report and will immediately update our additional appointment hiring procedures and documentation to ensure civil service merit selection principles are properly followed in the future, process the necessary separations and provide confirmation of appointment dates in compliance with this Special Investigation. No additional appointments will be made until these policies and procedures are in place, unless the appointment is expressly exempt from civil service.

If you have questions or need additional information, please contact Suzanne Larsen, Personnel Officer in the Human Resource Services Branch, at (916) 657-3298 or Suzanne.Larsen@dss.ca.gov.

**BOARD RESOLUTION ADOPTING
SPECIAL INVESTIGATION REPORT AND FINDINGS BY SPB
COMPLIANCE REVIEW DIVISION OVER ADDITIONAL APPOINTMENTS OF
SUPERVISORIAL AND MANAGERIAL EMPLOYEES IN
THE CALIFORNIA DEPARTMENT OF SOCIAL SERVICES**

WHEREAS, the State Personnel Board (SPB or the Board) at its duly noticed meeting of May 16, 2013, carefully reviewed and considered the attached Special Investigation Report submitted by SPB's Compliance Review Division concerning additional appointments of supervisorial and managerial employees in the California Department of Social Services.

WHEREAS, the Report was prepared following a special investigation that was conducted in response to the Legislature's request to examine whether the practice of appointing supervisorial and/or managerial employees in additional rank-and-file positions within the California Department of Social Services violates civil service laws.

WHEREAS, each Report details the background, scope and methodology of the review, the findings and recommendations, and the affected department's response.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Report, including all findings and recommendations contained therein, and authorizes the issuance of the Report to the Legislature in response to its request for review. A true copy of the Report shall be attached to this Board Resolution and the adoption of the Board Resolution shall be reflected in the record of the meeting and the Board's minutes.

* * * * *

The foregoing Board Resolution was made and adopted by the State Personnel Board during its meeting on May 16, 2013, as reflected in the record of the meeting and Board minutes.



SUZANNE M. AMBROSE
Executive Officer