

**State of California
Office of Administrative Law**

In re:
State Personnel Board

Regulatory Action:

Title 02, California Code of Regulations

Adopt sections:

Amend sections: 52.4, 243.2, 243.3, 243.5,
243.6

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

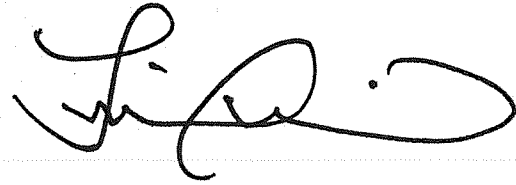
Government Code Section 11349.3

OAL Matter Number: 2022-0713-04

OAL Matter Type: Regular Resubmittal (SR)

This rulemaking action by the State Personnel Board seeks to clarify the appeal procedures applicable to voided appointments and orders for reimbursement of compensation.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2022.



Date: August 22, 2022

Lindsey S. McNeill
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Suzanne Ambrose, Executive
Officer

Copy: Lori Gillihan

RESUBMITTAL

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATIONS SUBMISSION

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-Z2020-1027-04	REGULATORY ACTION NUMBER 2022-0713-04	EMERGENCY NUMBER SR
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ENDORSED - FILED
In the office of the Secretary of State
of the State of California

AUG 22 2022

1:43 pm

For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

OFFICE OF ADMIN. LAW
2022 JUL 13 PM3:14

OFFICE OF ADMIN. LAW
2022 JUL 13 PM3:14

AGENCY WITH RULEMAKING AUTHORITY California State Personnel Board	AGENCY FILE NUMBER (If any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Appeals Process Reimbursement	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) <i>2021-1014-035</i>
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	ADOPT
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	AMEND
52.4, 243.2, 243.3, 243.5, 243.6	REPEAL
TITLE(S) 2	

3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
	<input type="checkbox"/> File & Print
	<input type="checkbox"/> Print Only
	<input type="checkbox"/> Other (Specify)

LM per agency request 8/22/22

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
May 28, 2021 - June 14, 2021, July 22, 2021 - August 6, 2021, March 9, 2022, - March 24, 2022, April 29, 2022 - May 16, 2022

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify)

LM per agency request 8/22/22

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)

7. CONTACT PERSON Lori Gillihan	TELEPHONE NUMBER 916-651-1043	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) lori.gillihan@spb.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
AUG 22 2022
Office of Administrative Law

SIGNATURE OF AGENCY HEAD OR DESIGNEE Suzanne M. Ambrose	DATE 7/6/2022
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TYPED NAME AND TITLE OF SIGNATORY Suzanne M. Ambrose, Executive Officer
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FINAL TEXT FOR BOARD APPROVAL

TITLE 2. ADMINISTRATION Division 1. Administrative Personnel Chapter 1. State Personnel Board Subchapter 1.2. Hearings and Appeals Article 2. Filing with the Board

§ 52.4. Requirements and Method of Delivery for Filing Appeals and Complaints with the Board.

Appeals filed with the Board shall be subject to the following:

- (a) All appeals and complaints shall be in writing.
- (b) Except as otherwise provided in these Regulations, each appeal and complaint shall be filed with the Appeals Division and shall:
 - (1) Identify the name, address, and telephone number of the Appellant or Complainant;
 - (2) If different than the Appellant or Complainant, identify the name, address, and telephone number of the person filing the appeal or complaint, including the State Bar number if the person filing the appeal or complaint is an attorney;
 - (3) Except as provided in Government Code section 19575, state the facts that form the basis for appeal or complaint; and
 - (4) Identify all Respondents known to the Appellant or Complainant including, for individually-named Respondents, first and last name, job title, and business address.
- (c) Unless the appeal or complaint names some other Respondent, the Appellant's or Complainant's appointing power shall be considered the only Respondent.
- (d) The Appeals Division shall mail or serve a copy of the appeal or complaint to or on the Respondent(s).
- (e) Time Limitations for Filing Appeals or Complaints with the Board.

Except as otherwise provided in the act or these regulations, every appeal or complaint shall:

- (1) be filed with the Appeals Division within the following time limits;
- (A) 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;
- (B) 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;
- (C) 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;
- (D) 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;
- (E) 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;
- (F) Appeals from a CEA 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;
- (G) 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;
- (H) 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;
- (I) 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;
- (J) 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;
- (K) 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;
- (L) Appeals from improprieties in the civil service examination process, including the CEA 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;

(ii) Appeals from written examinations shall be filed within 30 days of the date that examination results are mailed to the Appellant.

(iii) Appeals from online examinations shall be filed within 30 days of the date that the examination results are available to the Appellant.

(M) Petitions to Set Aside Resignations 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;

(N) 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;

(O) Appeals from disciplinary action, rejection during probationary period, medical transfer or termination, automatic resignation, layoff, refusal to hire from a re-employment list, or grievance involving discrimination or political affiliation, filed pursuant to the provisions of Government Code section 19800 - 19810, pertaining to Local Agencies, shall be filed in accordance with the provisions of Title 2, Division 5, Chapter 2, Article 8, Subarticle 1, section 17550.

(P) 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.

(Q) Appeals challenging a Voided Appointment, including the amount of any reimbursement ordered pursuant to section 243.3, subdivision (c), shall be filed within 30 days of the date that the Notice of Voided Appointment is mailed to the Appellant.

~~(Q)-(R)~~ Back pay claims and requests for back pay hearings, as described in section 61, shall be filed within one year of the date of the board's decision giving rise to the back pay obligation.

(2) 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.

(3) Any Appellant or complainant seeking to file an appeal or complaint beyond the time limits in this section, must file a petition with the Chief ALJ or his or her designee demonstrating good cause as to why the appeal or complaint should be accepted. Upon good cause being shown, the Chief ALJ or his or her designee may allow an appeal or complaint, except as otherwise limited by statute, to be filed within 30 days after the end of the period in which the appeal or complaint should have been filed.

(f) Methods of Delivery for Filing Appeals or Complaints with the Board.

(1) Appeals or complaints delivered by electronic mail (e-mail), will be filed on the date received by the Board.

(2) Appeals or complaints delivered by the U.S. Postal Service are filed on the date received by the Board. An Appellant or Complainant may obtain proof of the filing of the appeal or complaint by submitting either an extra copy of the appeal or complaint or the first page only, with a self-addressed, return envelope, postage prepaid. The Appeals Division shall return the copy marked with the date of filing.

(3) Appeals or complaints hand delivered to the Board during regular business hours will be filed on the date received by the Board after the filing party has complied with applicable statutory and regulatory filing requirements.

Note: Authority cited: Sections 18502 and 18701, Government Code. Reference: Sections 18675 and 19889.2, Government Code.

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1.3. Classifications, Examinations, and Appointments
Article 10. Appointments

§ 243.2. Correction of Unlawful Appointments.

(a) When the Board, Executive Officer, or Department determines that an appointment is unlawful, the Board, Executive Officer, or Department may take corrective action up to and including voiding the appointment under the following circumstances:

(1) The action to correct or void the appointment is taken within one year after the appointment; and

(A) The appointing power or employee or both the appointing power and employee did not acted in other than good faith in accordance with section 243; or

(B) The appointment was accepted and made in good faith by both the appointing power and employee; and the appointment would not have been made but for some mistake of law or fact that if known to the parties would have rendered the appointment unlawful when made.

(b) When the Board or Executive Officer determines that an appointment is unlawful and the appointment has been in effect for longer than one year, the Board or Executive Officer may take corrective action up to and including voiding the appointment under any or all of the following circumstances:

(1) The employee did not acted in other than good faith in accordance with section 243, subdivision (c).

(2) The appointing power did not acted in other than good faith in accordance with section 243, subdivision (b).

(3) The action(s) or omission(s) found to render the appointment(s) unlawful resulted in a selection process not based solely on merit or that significantly disadvantaged the other candidates.

(c) Where corrective action includes voiding an appointment(s), the Board, Executive Officer, or Department, whichever has decided to take the action, may order the appointing power to void the appointment(s) and provide the affected employee(s) the right to respond to the appointing power, as set forth in section 243.5.

(d) The provisions herein shall not limit or restrict the authority to delegate powers and duties related to the correction of unlawful appointments, as expressed in section 37.

Note: Authority cited: Sections 18502, 18701 and 18660, Government Code. Reference: Cal. Const., Art. VII, §§ 1 and 3; and Sections 18502, 18654, 18710, 19050 and 19257.5, Government Code.

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1.3. Classifications, Examinations, and Appointments
Article 10. Appointments

§ 243.3. Compensation or Reimbursement for Voided Appointments.

(a) For purposes of this section, the meaning of compensation as defined in section 9 shall apply.

(b) An employee who accepted an appointment in good faith that is subsequently voided or corrected shall retain only the compensation provided for in section 9 of the Board's regulations. In all cases, compensation shall be corrected on a prospective basis.

(c) An employee who does not act in good faith in accordance with section 243, subdivision (c), when accepting an appointment that is subsequently voided or corrected shall reimburse all compensation resulting from the appointment. In the event of an appeal to the Board challenging the amount of reimbursement, the Board may require the employee to reimburse all or a portion of the compensation resulting from the appointment based upon the evidence presented.

~~(c) An employee who acts in ways other than in good faith when accepting an appointment that is subsequently voided or corrected shall reimburse all compensation resulting from the appointment. In the event of an appeal to the Board challenging the~~

~~amount of reimbursement, the Board may provide for less than full reimbursement of compensation based upon the evidence presented.~~

Note: Authority cited: Sections 18502 and 18701, Government Code. Reference: Cal. Const., Art. VII, § 3; and Section 19257, Government Code.

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1.3. Classifications, Examinations, and Appointments
Article 10. Appointments

§ 243.5. Right to Respond.

Unless otherwise ordered pursuant to section 243.2, subdivision (c), where corrective action of an unlawful appointment(s) is determined appropriate the Board, Executive Officer, or Department, whichever has decided to take the action, shall notify the affected employee(s) and appointing power of the proposed action at least 15 calendar days prior to the effective date of the proposed action. The notice shall state the reason(s) for the proposed action and notify the employee(s) and the appointing power of their right to respond, either verbally or in writing, within 15 calendar days of the date of the notice. The notice shall specify the amount of reimbursement ordered and inform the Appellant of their right to challenge the amount of reimbursement and/or the Voided Appointment itself pursuant to section 243.6, subdivision (a).

Note: Authority cited: Sections 18502 and 18701, Government Code. Reference: Section 18670, Government Code.

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1.3. Classifications, Examinations, and Appointments
Article 10. Appointments

§ 243.6. Right to Appeal or Reconsideration.

(a) When the Executive Officer or Department takes action to correct an unlawful appointment(s) that includes voiding the appointment(s) and/or requiring reimbursement of compensation pursuant to section 243.3, subdivision (c), the employee(s) and/or the appointing power may file a written appeal to the Board ~~within 30 calendar days of receipt of the final decision to take corrective action in accordance with section 52.4, subdivision (e)(1)(Q). Where the corrective action is taken solely as to the appointing power and does not impact the appointment, the appointing power may file a written appeal to the Board within 30 calendar days of receipt of the final decision to take corrective action.~~

(b) When the Board takes action to correct an unlawful appointment(s) that includes voiding the appointment(s) and/or requiring reimbursement of compensation pursuant to section 243.3, subdivision (c), the employee(s) and/or the appointing power may file a written petition for reconsideration to the Board within 30 calendar days of receipt of the final decision to take corrective action. Where the corrective action is taken solely as to the appointing power and does not impact the appointment, the appointing power may file a written petition for reconsideration to the Board within 30 calendar days of receipt of the final Board ~~decision to take corrective action.~~

Note: Authority cited: Section 18701, Government Code. Reference: Section 18670, 18654.5 and 18710, Government Code.