

SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES

I.

Introduction

The State Personnel Board (Board) proposes to amend section 66.1 of Title 2, Chapter 1, of the California Code of Regulations (CCR). A 45-day public comment period on this rulemaking action was held from March 19, 2021 through May 3, 2021. A public hearing was held on May 4, 2021. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board's responses are below.

II.

Summary of Written Comments from Kris Octabiano, California Association of Professional Scientists (CAPS).

Comment I:

§66.1

The CAPS recommend expanding the one-year time period employees have to file a merit issue complaint (MIC) to an open amount of time. The CAPS believes imposing a one-year timeframe for MIC's would prevent employees from asserting a right to review the issue in fear of a failure during their probationary period.

Response I.

The Board thanks and appreciates CAPS for its feedback to this regulatory package.

The intent of creating a one-year limit was to ensure that all agencies were operating within the same period of limitations and the affected employee is provided a reasonable timeframe for bringing such complaints forward. The Board maintains that a one-year timeframe is both reasonable and necessary to achieve fair administration of the merit civil service system. For example, any proposed timeframe longer than a year risks compromising relevant evidence that may prove the validity of the complaint. Likewise, complainants should pursue a known violation of Board regulation or policy

with reasonable diligence in order to support the fair and equitable administration of the merit civil service system.

The CAP's concern that employees serving in a probationary period will not file a merit issue complaint out of fear that they may be rejected on probation does not in and of itself justify a limitless timeframe, or even extended timeframe, because the unintended consequence may be the loss of crucial evidence which may protect those party to the complaint. As such, a limitless timeframe may ultimately produce a misadministration of Board regulation or policy thereby harming the complainant, state agency, and/or the merit civil service system as a whole.

Moreover, current statute and Board regulations mandate that the reasons for a rejection on probation are directly related to the probationer's qualifications, the good of the service, or the probationer's failure to demonstrate merit, efficiency, fitness and moral responsibility. (Gov. Code, § 19173.) If an employee asserts that their rejection on probation is unrelated to their qualifications, work performance and/or conduct, the employee may file an appeal with the Board in order to determine if there was substantial evidence to support the reason or reasons for rejection, or that the rejection was made in fraud or bad faith. (Gov. Code, § 19175.) As such, current statutes and Board regulations, including an appeals process, protect employees from "bad faith" rejections on probations thereby freeing affected employees to file merit issue complaints without fear of retaliation.

However, after further review, the Board finds that it is unreasonable to assume that new employees and/or state employees possess sufficient knowledge of the complex salary structure and rules, regulations and/or policies related to compensation in order to file a complaint within one year. Additionally, errors in compensation are not typically prone to the loss of evidence like merit violations, since the records are readily available. As such, the Board will extend the period of limitation to three years in those instances where the merit issue complaint is directly related to compensation.

III.

Summary of Written Comments from W. Keith Mack, President, Professional Engineers in California Government (PECG).

Comment II.

§66.1

PECG believes that the proposed one-year timeframe will punish new hires in state service. In their first year, new employees either are unaware that they have been inappropriately placed in a range beneath their qualification and experience level, or they are fearful of filing a Merit Issue Complaint because it will generate negative attention from their superiors during probation. Additionally, PECG has had instances where a mistake was not found until well after the hire date. In one particular instance, an employee spent years at a lower range and could not advance their career due to an oversight in applicable experience.

Response II.

Please see Section II, Comment I, Response I.

IV.

Summary of Written Comments from Melinda Williams, Attorney III, Department of Water Resources (DWR).

Comment III.

§ 66.1

The DWR believes that the Board should change the references to creating a departmental policy in 66.1(b) to instead require that each state agency establish procedures to address merit issue complaints.

Response III.

DWR's suggestion is reasonable, and therefore, will be incorporated into the regulation.

Comment IV.

§ 66.1(b)

DWR believes that, if the intent of this regulation is to ensure complainants are informed of the right to appeal to the SPB after an agency denial/response, then the second sentence of 66.1(b) should be revised to state: "The procedures shall include provisions to inform employees of their right to challenge any denial of a merit issue complaint with the Appeals Division and the timeline for doing so."

However, if the intent is also to inform complainants of the right to appeal to the SPB in the event of no response, then the complainant should be informed of their appeal rights at the time they file any MIC. If that is the intent, then DWR proposes the language be revised to state: “The procedures shall include that, at the time a merit issue complaint is received by a State agency, it must inform the complainant of their right to challenge any denial or failure to respond by filing a complaint with the Appeals Division. This shall also include the 66.1(c) timelines for doing so.”

Response IV.

DWR's suggestion is reasonable, and therefore, will be incorporated into the regulation.

Comment V.

§66.1(c)

DWR recommends adopting clarifying language to section 66.1(c) to give employees a clear direction for filing Merit Issue Complaints. The regulations do not specifically state that a complainant first make an internal MIC before making a complaint to the SPB

Response V.

DWR's suggestion is reasonable, and therefore, will be incorporated into the regulation.

Comment VI:

§ 66.1(c)

DWR proposes that section 66.1(c) be amended to state: “Merit Issue Complaints shall first be filed with the state agency within one year of the alleged violation of regulation or policy in the hiring and selection process.” This change promotes consistent language usage throughout the regulation subsections.

Response VI.

DWR's suggestion is reasonable; and therefore, will be incorporated into the regulation.

Comment VII:

§ 66.1(c)

DWR proposes that the last sentence in section 66.1(c) be moved to be the second sentence of this section, since it is assumed an agency has an obligation to respond to a complaint which will trigger the 30-day deadline to file any further appeal with the Board if denied. The time limits for filing a SPB complaint after no agency response would then logically follow. Since the Board is rewriting its regulations, this is the opportunity to get the logical sequence corrected.

Response VI.

DWR's suggestions are reasonable, and therefore, will be incorporated into the regulation.

Conclusion

The Board appreciates the comments and feedback it received regarding this proposed regulation. The modified text with the changes clearly indicated are available to the public as stated in the Notice of Modification to Text of Proposed Regulation.