

## INITIAL STATEMENT OF REASONS

<b><u>HEARING DATE(S):</u></b>	August 9, 2022 WebEx/Teleconference
<b><u>SUBJECT MATTER OF THE PROPOSED REGULATIONS:</u></b>	Training and Development Assignments
<b><u>SECTIONS AFFECTED:</u></b>	Title 2, Chapter 1, California Code of Regulations, Amend Sections 171.1, 237, 239.2 & 239.4)

In this rulemaking action, the State Personnel Board (Board) proposes to amend sections 171.1, 237, 239.2 & 239.4 of Title 2, Chapter 1 of the California Code of Regulations.

### **PURPOSE, NECESSITY, RATIONALE, AND BENEFITS OF REGULATORY ACTION:**

#### **Background:**

Existing California Code of Regulations, title 2, section 439.2, places unnecessary restrictions on training and development assignments to promotional classifications. Namely, section 439.2, subdivision (a)(3)(C), prohibits training and development assignments to a higher salary class that is in the same class series as the employee's current class. As such, appointing powers may not consider readily available, qualified and experienced candidates for training and development assignments. Instead, when the classification is deemed promotional, appointing powers may only consider applicants who do not currently serve in a position within the same class series as the training and development classification. As such, in many cases, current section 439.2 denies more qualified and experienced candidates, who have already demonstrated the knowledge, skills, abilities, and competencies to succeed in the training and development assignment, the same opportunity as lesser qualified candidates to obtain broader or more specialized competencies in order to improve their performance and prepare for future promotions. In short, the current restriction runs counter to the merit-based civil service system wherein qualified candidates should be able to fairly compete for opportunities that may advance their employment and unduly hinders the state's career development and upward mobility efforts.

Additionally, California Code of Regulations, title 2, sections 171.1 and 439.4 fail to address if time served in an out-of-class or training and development assignment may be credited as qualifying experience in the employee's current class and/or the class of the assignment.

Anticipated Benefits of Regulatory Action:

The anticipated benefits of this regulatory action include: 1) providing a broad, inclusive, and competitive hiring process for training and development assignments; 2) supporting the state's career development and upward mobility programs; and, 3) ensuring out-of-class or training and development assignments will as count as qualifying experience in both the employee's current class and the class of the assignment. As a result, the adoption of these regulations, will have a positive impact on the general health and welfare of California residents in that the benefits of this regulatory action create a fair, equitable, and consistent process for the civil service hiring process.

Discussion of Amendment:

The purpose of the proposed amendment to section 439.2 is to broaden which classifications may be considered for training and development assignments. Specifically, by eliminating section 439.2, subdivision (a)(3)(C), an employee will be able to apply to and serve in a training and development assignment to a higher salary class that is in the same class series as the employee's current class. The less-restrictive criteria ensures that qualified candidates are afforded the same employment opportunity to compete for and obtain broader or more specialized competencies in order to support their career development and upward mobility.

Additionally, the proposed amendments to section 171.1 and 439.4 will make explicit that time served in an out-of-class or training and development assignment will count as qualifying experience in both the employee's current class and the class of the assignment. Moreover, California Code of Regulations, title 2, section 437 has been amended to provide a definition for "current class" in order to coincide with the proposed amendment to section 439.4.

## **§ 171.1. Calculating the Amount of Time Required to Satisfy Minimum Qualifications for Experience.**

Language will be added to section 171.1 to clarify that, if the applicant is a state employee and the experience in question was gained in an out-of-class or training and development assignment, the applicant shall receive credit for qualifying experience in the employee's class of appointment

Furthermore, the terms "he/she" have been changed to "they" to further align with future State language.

Section 171.1, subdivision (a) now reads as:

(a) The time required shall have been in a full-time job or its part-time equivalent. A full-time job is the maximum number of hours a person can spend on a job without a requirement that ~~he or she~~ they be given overtime compensation or, where overtime is not applicable, the number of hours required for a person to receive full-time pay for the applicable work period.

Section 171.1, subdivision (h) now reads as:

(h) If the applicant is a state employee and the experience in question was gained in an out-of-class or training and development assignment, the applicant shall receive credit for qualifying experience in the employee's class of appointment and the class of the assignment.

## **§ 437. Definitions**

The Board's current regulations in Article 19.1 do not include a definition for "current class". Section 437 has been amended to provide a definition for "current class" in order to coincide with the proposed amendment to section 439.4.

Section 437, subdivision (j), now reads as:

(j) "Current class" means the classification of the position to which the employee has been appointed and holds prior to a training and development assignment.

## § 439.2. Training and Development Classification.

Language will be repealed in Section 439.2 in order to broaden which classifications may be considered for training and development assignments.

Section 439.2 now reads as:

- (a) Subject to the eligibility criteria of section 439.1, training and development assignments may be made to any of the following classifications:
- (1) The same classification as the employee's current classification, but a different position.
  - (2) A different classification with substantially the same salary range as the employee's "from" classification.
  - (3) A different classification with a promotional salary range provided that:

(A) The higher salaried class is the class in the employee's desired occupational area that will provide the appropriate training experience.

(B) There is not another class nearer in salary to the employee's current class that will provide the appropriate training experience. If such a class exists, that class shall be used for purposes of the training and development assignment.

~~(C) The higher salaried class is not in the same class series as the employee's current class, unless the training and development assignment involves an apprenticeship program approved by the Department of Industrial Relations, Division of Apprenticeship Standards.~~

(4) A different classification with a demotional salary range provided that the assignment to the lower class is not used where other action, such as voluntary demotion, medical demotion, corrective action, or disciplinary action, is relevant to the employee's situation.

(b) Subject to the eligibility criteria of section 439.1, training and development assignments may be made to any classifications without regard to section 439.2 (a) for training and development assignments involving an apprenticeship program approved by the Department of Industrial Relations, Division of Apprenticeship Standards.

### **§ 439.4. Completion of a Training and Development Assignment.**

Language will be added to section 439.4 to clarify that, if the applicant is a state employee and the experience in question was gained in a training and development assignment, the applicant shall receive credit for qualifying experience in the employee's class of appointment

Furthermore, the term "he/she" has been changed to "they" to further align with future State language.

Section 439.4, subdivision (b), now reads as:

(b) Notwithstanding subdivision (a), an employee who successfully completes a training and development assignment in a different position, regardless of whether the classification is the same or different or whether the appointing power is the same or different, may be appointed to the same position in which ~~he or she~~ they served the training and development assignment provided that all of the following apply:

Section 439.4, subdivision (d), now reads as:

(d) The experience and training earned in the training and development assignment may be used by the employee to satisfy minimum qualifications for a classification. The time spent in the training and development assignment shall be considered as qualifying experience in the employee's current class and the class of the training and development assignment.

### **ECONOMIC IMPACT ASSESSMENT:**

The proposed regulations set standards only related to the Board's examinations and temporary assignments procedures. Therefore, the adoption of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state's environment.

The adoption of these regulations, however, will have a positive impact on the general health and welfare of California residents in that the benefits of this regulatory action create a fair, equitable, and consistent process for the civil service hiring process.

**TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS:**

None.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT:**

This regulation does not mandate the use of specific technologies or equipment.

**EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS:**

Not applicable. The Board is not a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshall.

**SIGNIFICANT ECONOMIC IMPACT ON BUSINESS:**

The proposed regulation sets a standard only related to examinations and temporary assignments. Accordingly, it has been determined that the adoption of the proposed regulations would not have a significant, statewide adverse economic impact affecting California businesses, including the ability of California businesses to compete with businesses in other states.

**CONSIDERATION OF ALTERNATIVES**

The Board has initially determined that no reasonable alternatives it has considered or that have been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purposes for which the instant action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.