

State of California Supervisor's Handbook



A Guide to Employee Conduct and Discipline

PREPARED BY

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 A Guide to Employee Conduct and Discipline

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I. EMPLOYEE DISCIPLINE IN CALIFORNIA STATE GOVERNMENT EMPLOYMENT

A. LEGAL BASIS FOR DISCIPLINE

Civil Service employment for the State of California is administered by two agencies. The Department of Personnel Administration (DPA) manages the nonmerit aspects of State employment (e.g., labor contract negotiations, statutory appeals,¹ salaries and benefits, and grievance administration). The State Personnel Board (SPB) manages the merit aspects of State employment (e.g., exams, administrative appeals,² appointments, and disciplinary hearings). These agencies ensure the personnel programs of the State government are administered in accordance with the California Government Code and other State and federal labor laws and regulations.

Government Code (GC) Title II, Division 5, Part 2, Chapter 7, Articles 1 and 2, Sections 19570-19593³ contain the California state law regarding State employee discipline and tenure of managerial employees. Collective Bargaining Agreements (CBA)⁴ contain the terms and conditions of employment for represented employees. If an employee is subject to the terms of a CBA, the CBA should always be consulted. If the GC and the CBA have different processes, the process identified in the CBA is controlling and should be used in lieu of the process identified by the GC. These and other laws and rules of DPA and SPB will be addressed in the relevant sections of this handbook.

In addition to the laws and rules developed by DPA and SPB, most departments have policies to guide and assist supervisors and employees. Check with the departmental Personnel Officer for information on departmental policies, procedures, and forms.

B. PREVENTIVE, CORRECTIVE, AND ADVERSE ACTIONS

It is the State employer's goal to hire employees who successfully perform their job duties and do not need to be disciplined. The State uses a progressive discipline system when employees' job performance is not successful. Normal steps in progressive discipline include preventive, corrective, and adverse actions.

1. Preventive Action

The first-line supervisor normally initiates preventive actions. These proactive steps assist employees in achieving acceptable performance on the job. Preventive actions are discussed in Section II.

¹The Statutory Appeals Manual that defines appeals to DPA is available at www.dpa.ca.gov.

²The Administrative Appeals Manual that defines appeals to SPB is available at www.spb.ca.gov.

³Appendix A: Relevant sections of the California Government Code.

⁴Current Collective Bargaining Agreements are available at www.dpa.ca.gov.

2. Corrective Action

Corrective actions may be initiated by the supervisor but are usually prepared with the assistance of the departmental Personnel Office. These are written or verbal actions taken to improve the employee's performance to an acceptable level or to prevent continued misconduct. Corrective actions are discussed in Section III.

3. Adverse Action

Adverse actions are disciplinary, legal actions taken in response to an employee's serious or continued failure to meet the rules of conduct as defined by GC 19572. These are the only reasons an adverse action may be taken against an employee. These actions are prepared by or with the assistance of the departmental Personnel Office and/or legal counsel. GC 19570 defines adverse action in California State Government employment as dismissal, demotion, suspension, or other disciplinary action. Adverse actions are discussed in Section IV.

C. OTHER PERSONNEL ACTIONS

In addition to adverse actions there are other personnel actions that may result in the termination of an employee's employment or restriction of their salary increase. These are not adverse actions because they are not taken in response to an employee's failure to meet the rules of conduct as defined by GC 19572. These include:

1. Rejection on Probation (Section V.A.)
2. Denial of Salary Adjustment or Range Change (Section V.B.)
3. Medical Action (Section V.C.)
4. Failure to Meet Minimum Qualifications (Section V.D.)
5. Automatic Resignation (Section V.E.; V.F.)
6. Separation of Nonpermanent Employees (Section V.G.)
7. Drug and Alcohol Testing (Section V.H.)
8. Informal Leave of Absence (Dock) (Section V.I.)

II. PREVENTIVE ACTIONS

A. BEFORE HIRING AN EMPLOYEE

To improve the likelihood that an employee will be able to successfully fulfill the duties of the job, management can:

- Verify that the applicant's skills and abilities are a good match for the position;
- Contact the applicant's prior employers to obtain information about the applicant's attitude, attendance, performance, abilities, and reason for leaving the prior employment;
- Ask questions on any problems that surface;
- Obtain a current State employee applicant's permission to review his/her official personnel folder (see Section VI.A.);
- Carefully review current State employees' personnel folders including Reports of Performance on Probation, performance appraisals, leave balances, and similar documents that address strengths and weaknesses; and
- Select employees and make hiring commitments only after thorough interviews and appropriate background checks.

B. EXPECTED EMPLOYEE CONDUCT

After hiring employees, ensure that employees are aware of acceptable and unacceptable conduct on and off the job as it pertains to their employment. Employees should be aware of GC 19572, which defines the causes for which an employee could be disciplined (see Section IV.B.). Standards of conduct may also be included in applicable CBAs. GC 19990 defines incompatible activities. Some employing agencies have additional written standards of conduct; these may be published in manuals, policies, and/or departmental notices or memoranda.

C. WORK DUTIES AND OBJECTIVES

Employees must know what their job duties are, how to perform them, and the performance standards by which they will be evaluated. Provide a duty statement for each employee that identifies both the essential and nonessential job functions. Discuss the statement and clarify the tasks required to perform each duty. At least annually, review the duty statement with the employee to ensure it still describes the employee's current assignment. Make modifications on the duty statement, if needed, and ensure the employee understands the expectations and duties as described and/or modified. If published performance standards exist for the employee's position, provide a written copy of the standards. Discuss when the

employee is expected to meet the standards. Discuss how and when the employee will be evaluated and what the consequences will be if the standards are not met. Document these discussions and provide a copy to the employee. Ask the employee to confirm receipt of the copy by signing the original document.

D. WORK ENVIRONMENT

Provide employees with good work environments including safe working locations free from environmental distractions (e.g., noise, smells, poor lighting). Give specific examples of strengths and areas that need improvement, and of work that exceeded or did not meet standards and expectations. Provide the resources needed to perform assigned duties successfully (e.g., tools, equipment, staff, materials). Foster safe and appropriate interpersonal relationships with coworkers and clients.

E. COMMUNICATION

Ensure employees have positive and respectful workplace communication. To improve communications, management can:

- Conduct regular and open discussions with supervisors on job-related issues;
- Actively consider employees' rights;
- Actively consider issues and concerns presented by employees, union job stewards, and employee representatives;
- Provide information on law or policy changes that affect the employees or their jobs;
- Provide privacy when performance or disciplinary discussions occur;
- Provide access to a grievance process as defined in the relevant CBA, DPA Rule 599.859,⁵ or the Peace Officer Bill of Rights.⁶
- Provide an opportunity to discuss problems or conflicts with supervisors and/or coworkers; and
- Provide access to higher-level supervisors if requested for conflict resolution.

⁵Appendix B: Relevant sections of the California Code of Regulations.

⁶Appendix C: Peace Officer Bill of Rights.

F. FEEDBACK ON JOB PERFORMANCE

Provide employees with critical, constructive, and comprehensive oral and written feedback regarding job performance through regular monitoring of their productivity and work load. Conduct performance evaluations at least three times during the employees' probationary periods and at least annually throughout their employment. The standard State forms titled Report of Performance for Probationary Employee (Std. 636) and Performance Appraisal Summary (Std. 637-Reverse) can be used for these purposes.⁷

G. TRAINING AND STAFF DEVELOPMENT

Provide adequate training and staff development for employees. At least annually assess employees' training needs required to accomplish their current jobs successfully. Ensure training needs are met within a reasonable time frame. Develop employees for increased responsibilities and future job opportunities through additional training, education, and/or assignments. The standard State form titled Individual Development Plan (Std. 637) can be used for this purpose.

H. FAIR AND IMPARTIAL SUPERVISION

Discuss infractions by a single employee only with that employee. Discuss infractions by a group of employees with only those employees in a group meeting. Document these discussions and provide copies to the employee(s). Follow meetings with consistent impartial enforcement of discipline. Be objective during disciplinary meetings. If needed to ensure objectivity, request assistance from management or the departmental Personnel Office. Do not allow infractions to accumulate before taking action.

I. EMPLOYEE ASSISTANCE PROGRAM

Make an informal referral to the Employee Assistance Program (EAP) (see Section III.D.5.). The EAP is a counseling service provided for State employees whose work appears to be negatively impacted by legal, financial, emotional, family, or substance abuse problems.⁸

⁷Appendix E: Standard Forms 636 and 637. Electronic forms available at www.dgs.ca.gov.

⁸EAP information and resources are available at www.dpa.ca.gov.

III. **CORRECTIVE ACTIONS**

Despite preventive actions, some employees will continue to perform poorly or engage in misconduct. An employee's problem behavior can undermine the morale of other employees and disrupt their work effort. Take steps to correctly identify the problem and gather relevant facts before deciding whether to take further action. Conduct and document appropriate preventive actions before proceeding to corrective action. If corrective action is taken, it should be at an appropriate level for the problem. The employee's rights must be observed. Contact the departmental Personnel Office regarding documentation requirements and to confirm that corrective action is appropriate.

A. **PROBLEM IDENTIFICATION**

Determine if an employee's conduct or performance is satisfactory. If unsatisfactory, clearly identify the specific act or omission that is not acceptable. Fully understand the nature and extent of a problem before deciding on a course of corrective action.

- What is the exact nature of the unsatisfactory conduct or performance?
- Did the employee understand the standards of conduct? (See Section II.B.)
- Was the employee capable of doing what was expected?
- Did the employee receive the necessary job training?
- Did the employee receive timely feedback on current performance?
- Under what conditions did the unsatisfactory conduct or performance occur?
- Were there any obstacles that prevented compliance?
- Were other individuals involved? Who are they?
- Is the unsatisfactory conduct or performance important? In other words, is the law, rule, or policy really necessary?
- Does the employee have previous history of similar incidents or infractions? How were they handled?
- Will this case require adverse action if corrective actions are not successful?
- Has the employee been notified throughout the process through proper documentation?

B. FACT GATHERING

Gather all the pertinent facts prior to taking corrective action. Keep a written and/or electronic record of all information gathered.

- Check for any written record pertaining to the current misconduct or performance problems.
- Gather evidence that will show the employee was aware of the applicable standards of conduct or performance including signed copies of documents received.
- Interview supervisors, witnesses, and other employees with knowledge of the misconduct or performance problem and/or have them provide a signed written statement of what occurred. Reconcile conflicting statements if possible. If employee witnesses are requested to provide information for an investigation, management has the legal authority to compel them to answer questions and to provide representation, if requested. A refusal to cooperate can subject that employee to disciplinary action for insubordination.
- Examine pertinent records or evidence for any information that may have a bearing on the case.
- Review the employee's official personnel file (see Section VI.A.) for evidence of prior misconduct or performance problems. A supervisor does not need a subordinate employee's approval to review the employee's official personnel file.⁹
- Review performance-rating forms including Performance Appraisal Summaries (Std. 637-Reverse) and Reports of Performance on Probationary Employee (Std. 636).
- Review time sheets and attendance records.
- Determine whether salary range changes or merit salary adjustments were approved or denied as evidence of satisfactory or unsatisfactory performance.
- Review any charts or other documents comparing the employee's work to published or established performance standards. If poor production is the problem, production records must show the employee's performance in comparison to the performance of other employees performing similar tasks during the same time period.

⁹Many Collective Bargaining Agreements specify that the official personnel file is available for inspection by the department head or designee in connection with supervising the employee. The employee's immediate supervisor is considered to be the designee.

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- Review training records demonstrating whether or not the employee received training in relevant areas, or was offered training but declined to participate.

C. INFORMAL CORRECTIVE ACTION OPTIONS

Once the preliminary steps outlined above have been completed, management can determine what action is appropriate to correct the identified problem. The range of actions includes:

1. Encouragement and Recognition

It may be that encouragement and recognition are all an employee needs to improve a performance problem. An employee who is attempting to correct a problem should be supported in the effort. When giving a new assignment, remind the employee of the good job he/she did on a similar task. When the employee's performance meets or exceeds expectations, recognize it with verbal praise or, if appropriate, with a letter of recognition to the official personnel file. Recognition should be timely to ensure it is associated with the accomplishment. Be specific with praise and deliver it in a way that supports the employee.

2. Verbal Instruction

Some employees will improve when given clear direction or a reminder concerning appropriate performance. Give the employee verbal instruction immediately preceding performance of the task in question so the instruction will be fresh in the employee's mind. For instance, when assigning a new task to an employee who has been missing deadlines, say, "Please note the due date on your calendar and inform me as soon as possible if you have any problem completing the assignment by that date." Keep a record of the due date and the instructions given. Follow up with an informal note to the employee confirming the verbal instructions.

3. Increased Monitoring

Closely monitor problem performance. Monitoring focuses attention on the problem and provides a chance for adjustments to be made quickly. Increased monitoring should be documented in the supervisory working file. Suggest a time to meet prior to the deadline to check progress. If performance improves, monitoring should be decreased.

4. Informal Counseling

If the problem persists, hold an informal meeting with the employee. Provide a private setting and schedule sufficient time to accommodate the discussion. Discuss the problem and potential consequences and provide the employee an opportunity to explain his/her viewpoint.

Remain open-minded and work with the employee to identify the reasons for the problem and plan a course of action to resolve it. Document what was covered at the informal verbal counseling session. Make a copy of the documentation for the employee. Request that the employee sign and acknowledge receipt of a copy.

An informal counseling session is not a corrective interview; it is considered routine business communication. Routine business communications are not subject to the grievance process nor are employees entitled to representation. However, if there is doubt regarding representation, it is prudent to err on the side of offering representation. If management allows an employee to be represented, be aware that it may set a precedent regarding future employee representation during routine business communications (see Section VI.B.; for peace officers see GC 3303[i]) (see Appendix C).

Focus on the employee's job performance during the discussion. If the underlying problem appears to be personal (e.g., marital, emotional, financial, substance abuse, etc.), do not provide advice on how to resolve the problem. If requested by the employee, consider adjusting the employee's work schedule, reducing his/her time base, or approving a short leave of absence.

5. Employee Assistance Program

The Employee Assistance Program (EAP) is a voluntary assessment, counseling, and referral program for State employees and their families. EAP provides assistance for emotional, personal, and stress concerns; marital and family issues; legal matters; financial and credit problems; dependent (child and elder) care issues; and alcohol and drug abuse problems including codependency.

If it appears an employee's personal problem is interfering with job performance, referral to EAP is recommended. Self-referral to EAP is preferred; the employee contacts the service provider directly. If the employee does not self-refer, management can make an informal or formal referral to EAP.

An informal referral is when management gives the employee a copy of the EAP brochure and recommends that the employee make an appointment with an EAP counselor. A formal referral is when management contacts the EAP directly and requests an appointment for the employee. Review the Supervisor's Handbook on EAP¹⁰ prior to making a referral. Document both the referral and any noticeable changes in the employee's performance.

¹⁰The Supervisor's Handbook on EAP is available at www.dpa.ca.gov.

D. FORMAL CORRECTIVE INTERVIEW

When preventive and informal corrective actions fail to resolve the problem, a stronger corrective action may be needed. This is a critical point in progressive discipline. The situation has become so serious that a change must take place either in the employee's conduct or performance or in his/her status with the organization. A corrective interview is warranted to put the employee on notice.¹¹ Ideally the interview will result in the employee's improved performance. If not, it will serve as a link in the chain of progressive discipline.

To conduct a corrective interview, meet with the employee and describe the changes that must be made. Establish a time frame for compliance and specify the consequences for failing to comply. Assess whether the employee understands the requirements for the job and has the necessary skills and motivation to correct the problem. Communicate clear expectations to the employee.

An employee has a right to representation at a corrective interview if there is (1) a likelihood the discussion may result in formal adverse action, or (2) the significant purpose of the meeting is to gather facts to support adverse action (see Section VI.B.). Generally a corrective interview is not grievable although certain CBAs provide a grievance right to covered employees.

¹¹Appendix D-1: Sample format for Corrective Interview.

Following is a checklist of ideas to increase the likelihood of a successful interview:

✓	Ensure privacy for the interview.
✓	Allow ample time.
✓	Plan in advance what to cover during the interview and note it for reference during the interview.
✓	Tailor the approach to the individual since different people react differently.
✓	Clearly and specifically state management's understanding of the problem.
✓	Keep the discussion job related and focus on correcting work performance, not personality traits.
✓	Do not lose control of the situation, retaliate, be angry, vengeful, vague, or uncertain.
✓	Use examples and relate them to standards of performance including quality and quantity standards that may be implicit.
✓	Stick to the subject; do not get sidetracked from the main issue.
✓	Maintain the seriousness of the situation.
✓	Respect the employee's dignity and right to a viewpoint.
✓	Listen with an open mind to the employee's point of view and be willing to consider reasonable changes or accommodations that might solve the problem.
✓	Do not continue with a prolonged discussion of one example.
✓	Accept responsibility for any part in which management shares fault.
✓	Establish a plan for correction, specifying the acceptable level of performance to be maintained.
✓	Set a clear deadline for the required change and a time frame for follow up.
✓	Do not discourage the employee from taking the matter up through the proper chain of command.
✓	Verbally summarize the meeting with the employee making sure the purposes of the discussion have been met.
✓	Conduct a follow-up discussion and review progress with the employee on the agreed date.
✓	Make a note in the record when the employee has made the required change.

After the interview, prepare a written corrective counseling memorandum summarizing the key points of the corrective interview.¹² An effective memo will:

- Advise the employee of the deficiency.
- Inform the employee what corrective action is necessary and suggest how to achieve it.
- Instruct the employee when the corrective action is expected to take place within a specified reasonable time frame.
- Warn the employee that failure to improve will result in formal adverse action.

Give the corrective counseling memorandum to the employee and ask the employee to acknowledge receipt of the memo by signing and returning a copy. If the employee declines to sign, indicate the declination on the file copy of the memorandum. Give a copy of the corrective counseling memorandum to the next level of management. Place the signed copy in the employee's official personnel file. Corrective counseling memoranda are retained in the employee's official personnel file for a reasonable amount of time not to exceed one year, then purged. Advise the employee to consult with the Personnel Office regarding the department's document purging practices.

A corrective interview is not an adverse action. There are no changes in the employee's employment status and the employee's rights and privileges have not been abridged. Therefore a copy of the corrective counseling memorandum is not filed with SPB. Consult applicable CBAs to see whether they contain specific restrictions on the types of materials that may be retained or time frames for their retention.

¹²Appendix D-2: Sample format for Corrective Counseling Memorandum.

IV. ADVERSE ACTIONS

If the employee does not respond to preventive and corrective actions, initiate formal adverse action. A successful supervisor recognizes when formal action is appropriate and is willing to undertake it. Adverse action is the final phase in the progressive discipline process. The laws governing adverse actions are found in GC 19570-19593 (see Appendix A).

A. BEFORE TAKING ADVERSE ACTION

Adverse actions are not grievable but may be appealed to SPB. Departments must be prepared to defend the action in a hearing at SPB. Because an adverse action can impact an employee's job status, the authority to take action is delegated to certain levels of management.

There are many levels of adverse action (see Section IV.D.). The process for initiating a formal Notice of Adverse Action is consistent regardless of the level of the action taken. The supervisor's role is to document the need for an action and make a recommendation when corrective and preventive measures have failed. Usually the departmental Personnel Officer will coordinate legal assistance in preparing the case and providing representation in any appeal to SPB.

1. Conditions Needed to Establish Cause

Ensure there is sufficient cause for the discipline prior to taking adverse action against an employee. If the cause for the action is not legally sufficient, or if management has acted arbitrarily, capriciously, or discriminatorily, the adverse action may be overturned on appeal. The following conditions must be met to establish cause:

- a. The rules or standards the employee has violated must bear a reasonable relationship to the employee's specific job and/or the goals and mission of the department.
- b. The employee must have clear knowledge of the rules or standards he/she is charged with violating preferably supported by signed documentation indicating the employee received copies of the rules and standards.
- c. The rules or standards must be equitably enforced. Do not single out one employee where other employees have not been disciplined for similar conduct. If enforcement has been lax in the past, put the employees on notice that the rule or standard will now be enforced. Give employees a reasonable opportunity to comply before anyone is disciplined for a violation.

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- d. Except in cases of most serious misconduct where an employee may be deemed to know he/she will be subject to adverse action, there should be evidence that the employee was warned about the consequences of violating the rule or standard, and was given an opportunity to comply.
 - e. If adverse action is taken for an employee's conduct off the job, there must be either a clear connection between the misconduct and the employee's ability to effectively perform the duties of his/her position, or the misconduct must be of such a nature that, if known to the public, it could discredit either the employee or the department.
 - f. There must be a thorough, objective investigation by management to determine whether the misconduct occurred as alleged.
 - g. There must be sufficient legally admissible evidence to support that the misconduct occurred as alleged.
 - h. The level of the action must be appropriate to the nature of the offense, taking into account the particular employee's position, length of service, and prior work history, along with any aggravating or mitigating factors.

2. Other Considerations Prior To Taking Action

Prior to filing a Notice of Adverse Action, verify that the following items have been addressed:

- a. For represented employees, determine whether the appropriate CBA distinguishes between major and minor discipline and what appeal rights the employee has for the various types of actions. Provide alternative dispute resolution, if appropriate. For nonrepresented employees, a limited Investigatory Hearing Process may be provided for lesser adverse actions (SPB Rules 52 and 52.6).
- b. If the employee is in Work Week Group E (formerly Work Week Group 4C) and is exempt from the Fair Labor Standards Act,¹³ salary reductions may not be taken and suspensions may only be imposed in increments of five-day workweeks.
- c. If the action is appealed, the burden of proof is on the department to support the action by a preponderance of evidence in a hearing in front of SPB. Ensure witnesses are

¹³Fair Labor Standards Act Manual available at www.dpa.ca.gov.

available and evidence is sufficient to support the proposed action. Consider that:

- Direct testimony is required to support findings on key issues;
 - Written declarations or statements are not sufficient;
 - Witnesses must be legally available (e.g., State employees directed to testify, other persons who are subject to subpoena);
 - Depositions are available only under certain narrow circumstances; and
 - All supporting materials must be made available to employee (see Section VI.C.2).
- d. The statute of limitations is generally three years from act of misconduct or from the discovery of fraud. For peace officers subject to the Peace Officers' Bill of Rights,¹⁴ the statute of limitations is generally one year from the discovery of misconduct by a person authorized to initiate investigation.
- e. Consider the impact of pending civil litigation, criminal proceedings or other unique circumstances on the proposed adverse action.
- For suspension: Can the workplace tolerate the employee's absence from work for a period of time?
 - For demotion: Is there an appropriate vacant position to which the employee can demote?
 - For serious misconduct: Is administrative leave needed pending the effective date of action?
 - When future reinstatement is anticipated: What plans need to be made?
- f. If an employee has already been disciplined for misconduct, the department cannot take further adverse action against the employee for the same misconduct unless the employee was clearly notified that the department reserved the right to bring further adverse action. For example: "Your conduct on this occasion was unacceptable and will not be tolerated by this

¹⁴Appendix C: Peace Officer Bill of Rights.

department. If you engage in similar conduct in the future, the department may take adverse action against you based on the incidents cited in this memorandum, as well as any future incidents.”

B. ACTUAL CAUSE FOR DISCIPLINE

The acts or omissions charged in a Notice of Adverse Action must fall under one or more of the subsections of GC 19572 to constitute cause for discipline. The appropriate cause or causes must be specified in the Notice of Adverse Action or the charge will be dismissed. Following are descriptions of each cause identified in GC 19572:

(a) Fraud in securing appointment.

Includes falsification of information on an application or health questionnaire to such an extent that an employee would not otherwise have qualified for the job, or omission of required information pertaining to criminal or adverse work history; also covers cheating on examinations or using other illegal means to obtain employment.

(b) Incompetency.

When an employee is incapable, through lack of skill, education, training, ability, or effort, of performing the duties of the position within an acceptable range of performance.

(c) Inefficiency.

Includes continuous (more than one instance) failure to meet an acceptable level of productivity maintained by those in similar positions. Also includes repeated acts of carelessness, indifference or laziness resulting in unreasonable delays, poor work product, waste, expense or unnecessary effort, and repeated excessive absenteeism resulting in serious harm to the public service.

(d) Inexcusable neglect of duty.

Includes an employee’s unjustified, intentional, or grossly negligent failure to perform a known official duty.

(e) Insubordination.

An employee’s mutinous or disrespectful conduct where the employee intentionally or willfully refused to obey an order a supervisor is entitled to give and have obeyed. Includes an employee’s failure to submit to authority by intentionally ignoring or disobeying a direct order. Also consider subsection (o) on “willful disobedience.”

(f) Dishonesty.

An employee's intentional untruthful statements, fabricated excuses, falsification of reports or other documents, stealing, cheating, defrauding, embezzling, or obtaining property or money under false pretenses. If conduct occurs off-duty there must be a clear connection to the employment. For peace officers there is an automatic connection between off-duty conduct and employment.

(g) Drunkenness on duty.

Applies to an employee who is under the influence of alcohol on work premises during working hours, even if the drinking took place off work premises and not on working time. Requires objective evidence of impairment such as symptoms of intoxication or presumptive evidence from blood alcohol level as determined by a urinalysis. Requires more than an odor of alcohol.

(h) Intemperance.

The use of intoxicating liquor on- or off-duty that causes an inability to properly attend to job duties. Includes excessive conduct arising out of the use of intoxicating liquor. This subsection does not include angry outbursts or other demonstrations of behavioral excess except where tied to the use of intoxicating liquor.

(i) Addiction to the use of controlled substances.

Includes an employee's current use of illegal drugs. Past addiction is a protected disability under the Americans with Disabilities Act and the Fair Employment and Housing Act (FEHA) and is not grounds for discipline.

(j) Inexcusable absence without leave.

An employee's unauthorized or unexcused absence for any duration, including repeated tardiness. "Leave" refers to permission, not leave credits (e.g., sick leave, vacation). Unauthorized absence for five consecutive working days or longer may result in an automatic resignation for Absence Without Leave (see Section V.E.).

(k) Conviction of a felony or conviction of a misdemeanor involving moral turpitude.

An employee's conviction of any felony, or any misdemeanor involving moral turpitude, constitutes the basis for discipline. The conviction may be based on a plea or verdict of guilty or a plea of *nolo contendere*. There is no requirement for a clear connection between the offense and employment.

(l) Immorality.

This subsection is considered to be too subjective; use of this section is not recommended.

(m) Discourteous treatment of the public or other employees.

Includes rudeness, swearing, yelling, belligerence, fighting, assaultive behavior or other disruptive conduct while on-duty, or while off-duty if it bears a rational relationship to the employment and can result in harm to the public service. Also includes use of insulting, offensive, abusive, or inappropriate language not rising to the level of discrimination or harassment; tardiness; unauthorized absenteeism; or other inconsiderate conduct that adversely affects others.

(n) Improper political activity.

Political activity conducted in such a way that it appears to be under the authority of the department. Includes an employee's private political activity conducted on State time or with State resources. Be aware of issues that could impact an employee's United States Constitution First Amendment Rights.

(o) Willful disobedience.

When an employee knowingly and intentionally violates a direct command or prohibition including instructions, directives, orders, rules, laws, regulations, policies or procedures, etc., whether or not in writing. Also consider subsection (e) on "insubordination."

(p) Misuse of state property.

Includes use or theft of State property or time for other than its intended purpose, often for the employee's personal gain. Grossly abusing or mishandling State property, but not mere carelessness if the property is being used for its intended purpose.

(q) Violation of this part or [State Personnel] Board rule.

Use of this subsection is prohibited by SPB precedential decisions.

(r) Violation of the prohibitions set forth in accordance with Section 19990.

When an employee violates a department's incompatible activities statement. Includes acts not listed on the department's statement if the act is inherently incompatible with department policy.

(s) Refusal to take and subscribe any oath or affirmation that is required by law in connection with the employment.

Refusal of an employee to take the required loyalty oath or to be sworn in when required to testify as a witness.

- (t) Other failure of good behavior either during or outside of duty hours that is of such a nature that it causes discredit to the appointing authority or the person's employment.

Any conduct by an employee, either on- or off-duty, that could easily disrupt or impair the public service or has the potential for causing discredit to the department if it were known by members of the public. Includes committing criminal acts that bear rational relationships to the employment. The focus is on the potential for destructive consequences, not on whether the conduct is intentional. For peace officers the connection to employment is presumed for off-duty criminal conduct.

- (u) Any negligence, recklessness, or intentional act that results in the death of a patient of a State hospital serving the mentally disabled or the developmentally disabled.

This subsection is intended to be applicable to State hospital employees or other State employees who commit acts resulting in the death of a patient, including simple negligence.

- (v) The use during duty hours, for training or target practice, of any material that is not authorized therefore by the appointing power.

Use of unauthorized weapons, ammunition, training materials, or targets during on-duty training and target practice.

- (w) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, disability, marital status, sex, or age, against the public or other employees while acting in the capacity of a State employee.

Covers all acts of unlawful discrimination and harassment by an employee against a member of a protected group, under the auspices of State employment. Acts could be against employees or members of the public. SPB applies the legal standards set forth under Title VII¹⁵ and the Fair Employment and Housing Act.¹⁶

- (x) Unlawful retaliation against any other State officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this State or the United States occurring on the job or directly related thereto.

¹⁵Title VII Civil Rights Act information is available at www.eeoc.gov.

¹⁶The California Fair Employment and Housing Act is available at www.dfeh.ca.gov.

Gives “whistleblower” protection to anyone for good faith reports of wrongdoing related to the employment; prevents retaliation by an employee against anyone who complains about misconduct against a coworker, or files a work-related discrimination or harassment claim. Documentation is required that a complaint was filed.

C. DETERMINING THE APPROPRIATE PENALTY

The departmental Personnel Office usually takes the lead in determining the appropriate action to take. The appropriate penalty depends upon the seriousness of the misconduct, whether progressive discipline has been taken in the past, and other mitigating or aggravating circumstances. The penalty should relate to the seriousness of the employee’s misconduct in relation to his/her particular position and employment record with the State and should have a deterrent effect as well as serving as a punishment for the offense.

Anticipate the impact on the workplace taking into account the work load, coverage issues, interruption of services, and similar factors. In determining the level of action, consider the following factors:

1. Any disciplinary action taken against a State civil service employee must be “just and proper” under the circumstances GC 19582. In *Skelly v. SPB* (1975) (15 Cal.3d 194), the California Supreme Court set forth the following factors that must be considered when determining the appropriateness of the penalty in each case:

a. The extent to which the employee’s conduct resulted in, or if repeated is likely to result in, harm to the public service.

Harm may be actual or potential and includes such things as adverse publicity, actual or potential harm to reputation, impact on other employees, financial impact, and actual or potential liability.

b. The circumstances surrounding the misconduct.

The presence or absence of mitigating and aggravating factors including length of service, prior work record, the amount of progressive discipline, and the circumstances surrounding the particular incident.

c. The likelihood of recurrence of the conduct.

The employee’s past response to progressive discipline including improvement or lack of improvement, rehabilitative efforts including drug and/or alcohol treatment, EAP and/or counseling, and the employee’s attitude, remorse, or defiance.

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2. SPB considers its Precedential Decisions¹⁷ and the presence or absence of progressive discipline in determining the appropriateness of the penalty under the circumstances of each case.
 - a. The purpose of progressive discipline is to provide an opportunity to learn from mistakes and to take steps to improve, prior to the imposition of harsh discipline. (Manayao, SPB 93-14).
 - b. For performance-based problems, the employee must have been given a sequence of written warnings and lesser disciplinary actions prior to dismissal. (Nelson, SPB 92-07).
 - c. Dismissal or other serious discipline may be warranted without prior warning if the misconduct is sufficiently egregious. (Virga, SPB 96-05).

D. TYPES OF ACTIONS

Since all of the above factors must be considered in each case, it is reasonable to expect that similarly situated employees will receive essentially the same penalty for similar misconduct. However, the level of penalty imposed on a particular employee need not be exactly the same as that imposed on another employee for similar misconduct as long as the penalty is not clearly out of line. One or a combination of the following penalties may be selected. There may be restrictions on the application of certain suspensions or reductions in pay for some classifications. All actions listed below are prepared, served, and filed as a Notice of Adverse Action (see Section VII.).

1. Official Letter of Reprimand

Utilize a Letter of Reprimand for a moderately serious first offense where the employee is presumed to know the rules or standards, or where informal preventive and corrective measures have been unsuccessful. A Letter of Reprimand is the lowest level of formal adverse action and is considered a “minor adverse action” under certain CBAs or “lesser adverse action” for nonrepresented employees (SPB Rules 52 and 52.6). A Letter of Reprimand does not result in a monetary penalty. The Letter of Reprimand may remain in an employee’s official personnel folder for no more than three years from the effective date of the action (GC 19589).

2. Reduction in Salary

A reduction in salary may be appropriate when the misconduct warrants more than a Letter of Reprimand but it is either not necessary to remove the employee from the work site or would create

¹⁷SPB Precedential Decisions are available at www.spb.ca.gov.

an operational hardship to do so. A 5% pay reduction for one pay period is roughly equivalent to a one-day suspension without pay. The percent reduction is determined after considering the seriousness of the offense and all other factors.

Through a reduction in salary, the employee's pay is reduced by a specified percentage for a specified period of time or number of pay periods. A reduction in salary is usually not more than 12 pay periods if the employee would then be eligible for a Merit Salary Adjustment. Any percentage reduction is appropriate but it cannot take the salary below the minimum salary for the employee's classification. The employee's salary returns to the previous level after the specified length of time or pay periods have elapsed.

3. Suspension Without Pay

A suspension without pay is a temporary separation. The employee is prohibited from working for a specified period of time. His/her salary is withheld for the period of the suspension. A suspension is appropriate when it is desirable to have the employee removed from the work site. The employee's position remains vacant during the period of discipline.

The suspension may be calculated in hours, calendar days, working days, weeks, months, or pay periods. The duration of the suspension is determined after considering the seriousness of the offense and all other factors including CBAs and the Fair Labor Standards Act. A suspension may have more of a deterrent effect than a reduction in pay since the discipline is more likely to be visible to other employees.

4. Demotion to a Lower Classification

Demotion to a lower classification is appropriate when an employee's service is valuable but the employee is not working at an acceptable level in his/her current classification. A demotion can only occur when there is a classification for which the employee is qualified, a position is available, and the employee can be expected to do a satisfactory job at the lower level. An employee may be demoted to any pay rate in a lower classification.

The demotion may be for a specified period of time or may be indefinite. If the demotion is for a specified time period, the employee is reinstated to his/her former classification at the end of the time period. If the demotion is indefinite, the employee is eligible to seek promotion out of the demoted-to classification.

When determining the demoted-to classification, be aware that if the employee did not have previous permanent status in demoted-to classification, a probationary period must be served. If the employee is rejected on probation, the employee has mandatory return rights to the former (demoted-from) classification.

5. Dismissal From State Service

When misconduct is so serious that an employee's continued employment cannot be tolerated, or where all reasonable efforts at progressive discipline have failed, dismissal may be the only option. A dismissal is the most serious adverse action and results in an employee's permanent separation from State service.

Once dismissed, an employee's name is removed from any California state civil service employment lists and the employee may not take examinations or be hired for future State employment without specific approval from SPB. An employee who concurrently holds more than one State position will be simultaneously dismissed from all positions when dismissed from one (SPB Rule 211).

The employee will receive compensation for all overtime accumulated up to the date of dismissal. If the employee has any unused vacation as of the date of dismissal, he/she will receive a lump-sum payment for the accumulated balance. With limited exceptions, such payments will be made immediately.¹⁸

If the employee's actions have resulted in a loss of State funds and/or property, obtain legal advice prior to releasing the lump-sum payment. Withholding payment to recoup lost funds or property may constitute prejudgment attachment and may be inappropriate.

6. Other Disciplinary Action: Mandatory Transfer

Adverse action is defined as "dismissal, demotion, suspension, or other disciplinary action." A transfer for disciplinary reasons by means of an adverse action qualifies as "other" adverse action when all due process requirements for adverse actions are met. (GC 19570; DeHart, SPB 94-22; Ramallo, SPB 95-19).

E. PREPARING THE WRITTEN ADVERSE ACTION

1. Required Elements

In addition to notifying the employee, the Notice of Adverse Action will be used by the Administrative Law Judge to determine if the action meets the legal requirements. The evidence presented at the hearing will determine if the action will be upheld, modified, or reversed.

The Notice of Adverse Action should represent the case completely and should be laid-out correctly and legally.¹⁹ Departments may have internal policies that include a format for the Notice of Adverse Action.

¹⁸California Labor Code Section 201.

¹⁹Appendix D-3: Sample format for Notice of Adverse Action.

SPB Rule 52.3 and GC 19574 require all Notices of Adverse Action to include:

- a. Nature of the action.
- b. Effective date.
- c. Statement of reasons (see Section IV.E.2.).
- d. List of charges and legal causes (see Section IV.B.).
- e. Right to representation (see Section VI.B.).
- f. Right to Skelly response (see Section VI.C.).
- g. Appeal rights (see Section VI.E.).
- h. Materials on which the action is based (see Sections VI.C.2.).

2. Statement of Facts, Acts and Omissions

The key to any personnel action is the statement of facts, acts and omissions, or reasons for the action. The reasons must be readily understandable and sufficiently specific to put the employee on notice as to what he/she did or did not do that gave rise to the action. The allegations must be as specific as possible as to time, place, acts or omissions, and witnesses.

- a. When did the acts or omissions occur? Useful tools in determining dates and times include sign-in sheets, schedules, attendance reports, significant events (holidays, anniversaries, events in the news), weather, or seasons. Include relevant dates, times, or time periods such as:
 - “On or about June 26 . . . ”
 - “At approximately 10:00 A.M. . . . ”
 - “During the week of June 26 through 30 . . . ”
 - “Sometime during the night shift on August 1 . . . ”
- b. Where did they occur? Include relevant locations where the acts or omissions occurred such as:
 - “In your workshop on the second floor of Building C . . . ”
 - “Near the corner of 8th Street and Capitol Avenue . . . ”

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- “Approximately ten feet from the water cooler in the main lunchroom”
 - “On Interstate Highway 5 near the Walnut Grove off-ramp”
- c. Who was involved? Identify individuals, by name where possible, who may have witnessed the acts or omissions, such as:
- “In front of your supervisor, Bill Bailey”
 - “You struck your coworker, Jean Jones”
 - “While speaking on the telephone next to Office Assistant, Ray Roberts, you incorrectly informed an unidentified member of the public that”
 - “In the presence of Terry Thomas and Dick Davis, among others”
- d. What happened? Describe the act or omission accurately and concisely, such as:
- “After receiving detailed instructions, you failed to complete the engineering project by the critical deadline of July 8, resulting in a fine being imposed against the department in the approximate amount of \$10,000.”
 - “You provoked a loud argument with your coworker, Karl Kraft, telling him, ‘You’re so damned stupid, you don’t know your left foot from your right!’ or words to that effect.”
 - “You inappropriately touched Mary Martin when you put your hand in the hip pocket of her jeans, at the same time grabbing her breast with your other hand.”

3. Practical Tips for Preparing Written Notices of Adverse Action

- a. Prepare the notice in an easy-to-read format with reasonable-sized type and distinct sections and paragraphs.
- b. Organize the notice with numbered pages, sequentially numbered or lettered sections and paragraphs, facts in chronological or other logical order, and appropriate headings.

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- c. Be concise. Include all relevant facts and information but avoid run-on narratives. Do not include unnecessary or irrelevant detail. Focus on what the employee did or did not do that gave rise to the action.
- d. Include all legally-required information:
- Nature of the action.
 - Effective date.
 - Statement of reasons.
 - List of charges and legal causes.
 - Right to representation.
 - Right to Skelly Response.
 - Appeal rights.
 - Materials on which the action is based.
- e. Include all necessary identifying information:
- Employee's official name.
 - Employee's social security number.
 - Employee's work and home addresses.
 - Employee's classification.
 - The department.
- f. Include, if applicable:
- Employee's unofficial names.
 - Employee's time base if less than full time.
 - Employee's specific work location.
 - Mandatory reinstatement rights (for rejections on probation or medical actions).

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- g. Plead the facts, not the evidence. Say, “You left your work site ten minutes before the end of your scheduled shift.” Do not say, “Joe Jones saw you leaving the work site ten minutes before the end of your scheduled shift, and Mary Max overheard Joe tell you, ‘See you tomorrow’.”
- h. Avoid extended descriptions of lengthy conversations. Describe the essence of relevant conversations. Quote only pertinent statements or key admissions by the employee.
- i. Add brief scene-setting language, if needed, to make sense of the factual allegations. For example: “As a dispatcher in a center with 24-hour coverage, it is critical for you to arrive at work on time. If you are late, the dispatcher from the previous shift must be held over, requiring the department to incur unnecessary overtime costs. Despite your knowledge of the importance of arriving on time, you have repeatedly been late on the following occasions:”
- j. Include a brief statement of the problems or consequences caused by the employee’s action to establish harm to the public service:
- “Your outburst not only upset your coworkers and disrupted the office for several minutes, but was witnessed by a member of the public who happened to be at the public counter.”
 - “Your frequent tardiness and unexcused absences require your coworkers to assume a share of your work load in addition to their own.”
- k. Use flexible terms to avoid technical errors such as “on or about” when referring to dates or times, or “words to that effect” following quotations.
- l. Identify specific written rules, policies, or procedures that have allegedly been violated and include a copy with supporting materials.
- m. Define acronyms such as Monthly Statistical Reporting System (MSRS).
- n. Do not identify the legal cause for each charge – the comprehensive list of causes contained elsewhere in the notice of action is sufficient and preferable.
- o. Do not include acts or omissions that do not constitute at least one of the legal causes for the action.

F. REMOVING EMPLOYEE FROM THE JOB WHILE INVESTIGATION IS PENDING

If the employee's misconduct is so serious that the employee's continued presence at the work site could cause problems, the employee may be placed on paid administrative leave. Per GC 19991.10, this leave may be for up to five working days pending the conclusion of the investigation, subject to extension if approved by DPA.

Consult with the department Personnel Officer before placing an employee on administrative leave. The employee must be notified in writing²⁰ and may be instructed to remain away from the work premises and/or to remain available at a specified location during working hours.

If the misconduct is of a type described in GC 19574.5, an employee may be placed on administrative leave for up to 15 calendar days. If an adverse action is brought before the leave expires and is ultimately sustained, the leave will be unpaid.

²⁰Appendix D-4: Sample format for Notice of Administrative Leave.

V. OTHER PERSONNEL ACTIONS

There are several forms of personnel actions that are distinguishable from formal adverse actions. These are not adverse actions because the employee has not violated the rules of conduct as defined by GC 19572. Be familiar with the various types of personnel actions so appropriate choices may be made on how to proceed in a given case.

A. REJECTION DURING PROBATIONARY PERIOD

The probationary period is considered the last phase of the selection process. Carefully consider a rejection on probation since the consequences to the employee may be serious. However, do not reject a probationary employee if the performance, conduct, capacity, moral responsibility, or integrity of the probationer is unsatisfactory.

A rejected probationer may appeal the rejection to SPB (GC 19175). A rejected probationer with permanent status will have return rights to his/her prior position. A rejected probationer who has no return rights will be separated from State service.

1. Reasons for Rejection During Probationary Period

A probationer may be rejected for reasons relating to qualifications, the good of the service, or failure to demonstrate merit, efficiency, fitness, and moral responsibility and not necessarily for any specific misconduct or wrongdoing. These grounds for rejection during probation are extremely broad and there is no need to establish cause for discipline such as is required for an adverse action (GC 19572). The department must nevertheless be able to demonstrate a legitimate factual basis for the rejection (GC 19573; Donald, SPB 02-10).

2. Reports of Performance for Probationary Employees

During the probationary period, bring any problems with performance to the probationer's attention and discuss them in a timely manner. Provide suggestions for improvement. Prepare Reports of Performance on Probationary Employees (ROP)²¹ on schedule and write a plan of action to help improve performance and provide training opportunities. Generally, the first ROP should specify deficiencies, any examples of unsatisfactory performance, and any areas needing improvement. If the employee has not achieved a satisfactory level of improvement by the time the second ROP is prepared, use the second ROP to clearly inform the employee that continued failure to improve will result in a rejection during probation.

²¹Appendix E: Standard Form 636. Electronic forms are available at www.dgs.ca.gov.

3. Opportunity to Correct Deficiencies

Failure to give regular ROPs at the proper time intervals may jeopardize a rejection on probation action. The rejection may be overturned if the probationer has not been given specific notice and a reasonable opportunity to correct deficiencies.

4. Time Limits

Certain strict time limits must be met for a rejection on probation. This action must take effect prior to the end of probation. A probationer may be rejected at any time prior to the expiration of the probationary period, even prior to the first formal ROP. It is not necessary to wait for the end of the probationary period to reject a probationer if he/she engages in serious misconduct or clearly demonstrates an inability to do the job despite being given an opportunity to remediate deficiencies.

In all cases where a rejection is contemplated, the process should be initiated no later than a month prior to the end of the probationary period so time limits can be met. Once the probationary period has expired, the employee automatically gains permanent status and cannot be dismissed except for cause.

A Notice of Rejection During Probationary Period must be served on the probationer at least five working days prior to the effective date of the rejection (i.e., at least five working days prior to the end of the probationary period). The probationary period may be extended for a period of no more than five working days to cover this notice requirement.

5. Preparing and Serving a Notice of Rejection During Probationary Period

The Notice of Rejection During Probationary Period²² is prepared, served, and filed in the same manner as a Notice of Adverse Action with certain key differences, such as appeal time limits and information on return rights.

6. Burden of Proof on Appeal

Employees can appeal a Notice of Rejection During Probationary Period. When a rejected probationer appeals, the employee bears the burden of proving there was no substantial evidence to support the reasons for the rejection, or that the rejection was made in fraud or bad faith (GC 19175).

²²Appendix D-5: Sample Notice of Rejection During Probationary Period.

It is much more difficult for a department to prove cause for dismissal than to support its reasons for a rejection during probation. If an adverse action for dismissal is appealed to SPB, the department bears the burden of proving by a preponderance of the evidence that cause exists. If a department believes the probationer will not be a satisfactory employee, reject the employee on probation instead of allowing the employee to gain permanent status.

7. Dismissal of Probationary Employee from State Service

A probationary employee can also be dismissed from State service by means of a formal adverse action if there is sufficient cause. If an offense is so serious that it would support the dismissal of a permanent employee, a dismissal action should be considered. If the probationary employee would otherwise have return rights to another position, serve the employee with a Notice of Rejection During Probationary Period pertaining to the current assignment and a Notice of Adverse Action for dismissal from the position to which he/she would otherwise return.

8. Settlement of Actions for Rejection During Probationary Period

Actions for Rejection During Probationary Period may be settled by means of a stipulated settlement agreement in the same manner as adverse actions. It may be in the best interest of both the employee and the department for the employee to voluntarily resign from the probationary appointment rather than have a rejection on record. If misconduct is involved, the employee may be required to agree not to reapply to the department in the future in exchange for withdrawing the rejection. All final settlements should be in writing, signed by the parties, and filed with SPB (see Section VIII.A.).

B. DENIAL OF SALARY ADJUSTMENT OR RANGE CHANGE

A supervisor has the discretion to either grant or deny some forms of salary adjustment based on an employee's performance. Employees who are appointed to designated classifications at the minimum salary rate may be eligible for a Special In-Grade Salary Adjustment (SISA) after successful completion of a specified period (e.g., six months) (DPA Rule 599.685). An employee who has passed probation may be eligible for an annual Merit Salary Adjustment (MSA) until the top of the salary range is reached (DPA Rule 599.683). Some classifications have alternate salary ranges; an employee may progress from the lowest to the highest salary in the range via an alternate range change (DPA Rule 599.681).

Carefully evaluate each employee's performance to determine whether a salary adjustment is warranted. The granting of a salary adjustment is a strong indication that the employee is performing satisfactorily. If a salary adjustment is approved when an employee's performance is unsatisfactory, it becomes difficult to use any documentation of poor performance prior to the

salary adjustment effective date to support a future adverse action. When the salary adjustment is granted, the supervisor is certifying that the employee's performance has met the standards of efficiency up to that date.

The denial of a salary adjustment is not an adverse action. It is evidence that an employee is not performing satisfactorily and may constitute a step in the progressive discipline chain if an adverse action becomes necessary. Ensure that the denial of a salary adjustment is consistent with documentation of the employee's performance. A denial of a salary adjustment should not be the first indication an employee has that there are problems. An employee is entitled to written notice²³ of the reasons for the denial during the pay period preceding the period in which the pay increase would otherwise become effective.

Employees have limited appeal rights in cases where discretionary salary adjustments are denied. The denial of an alternate range change may be grieved through the departmental grievance process or in accordance with an applicable CBA. Time limits and appeal rights contained in the CBA will be controlling. Where there is no CBA, an employee who has been denied an MSA has ten days within which to request reconsideration and, after exhausting that process, an additional 15 days to appeal to DPA. The denial will be sustained if DPA finds there is substantial evidence for the employer's action.

If an MSA is denied, the matter should not be revisited for at least three months (DPA Rule 599.684). When an alternate range change is denied, the employee may be retained at the lower salary range for a reasonable time period after which his/her performance must be reevaluated. If improvement has been made, the range change should then be recommended; if performance continues to be unsatisfactory, adverse action should be considered.

C. MEDICAL ACTIONS

Medical actions are nondisciplinary and should never be used as a substitute for appropriate discipline. Formal medical actions include the transfer, demotion, termination, or application for disability retirement on behalf of a permanent or probationary employee who has become temporarily or permanently incapacitated from performing the work of his/her position with or without reasonable accommodation (GC 19253.5). For information on disability leave benefits and medical actions, refer to the Disability Leave Manual.²⁴

Prior to taking formal medical action or applying for disability retirement on an employee's behalf, the department must follow the correct protocol to obtain information on the employee's physical and/or mental capacity to perform the duties of his/her current position. If it is determined the employee is unable to perform the duties of his/her current position, the department must engage in

²³Appendices D-6A and D-6B: Sample format for Denial of SISA or MSA.

²⁴Disability Leave Manual is available at www.dpa.ca.gov.

an interactive process to develop an appropriate plan²⁵ to address the employee's medical issues (GC 12900 et seq.; Fair Employment and Housing Act).

If the department determines that the employee must be transferred, demoted, or terminated for medical reasons, or a disability retirement application filed on an employee's behalf, a written notice of the intended action must be served on the employee.²⁶ The notice must allow a 15-working day period within which the employee may respond to the department at a Skelly hearing before the action becomes effective (SPB Rule 52.3).

The Notice of Medical Action must inform the employee that he/she may appeal the action by filing a written appeal with SPB no later than 15 calendar days after service of the notice (GC 19253.5[f]). It must also contain an explanation of the conditions for reinstatement. SPB may sustain, disapprove, or modify the demotion, transfer, or termination. The employee may be entitled to receive back pay if the action is not sustained.

An employee who has been demoted, transferred, or terminated for medical reasons has indefinite mandatory rights to reinstatement. Upon the request of the department or the petition of the employee, SPB Medical Officer will determine whether the employee is still incapacitated for duty. If the Medical Officer determines that the employee is able to return to work, the employee has a mandatory right to be reinstated to a vacant position in his/her former department and in the same classification from which the employee was demoted, transferred, or terminated. If there is no vacant position at the former department in the employee's former class, the employee has a mandatory right to be reinstated to a vacant position in a comparable classification or a lower related classification within that department (GC 19253.5[h]).

If an employee has received a disability retirement from the California Public Employees Retirement System (CalPERS), the employee has the right to return to a position in his/her former classification if CalPERS determines that the employee is no longer incapacitated for employment in that classification. CalPERS must release the employee from retirement status. If there is a dispute regarding PERS' determination, the employee may appeal (CalPERS Rules 555.1-555.4).²⁷

D. FAILURE TO MEET MINIMUM QUALIFICATIONS FOR EMPLOYMENT

When the only cause for action against a probationary or permanent employee is failure to meet an SPB minimum qualification for employment as specified in the employee's classification specification, a department may terminate, demote, or transfer the employee. Any action taken under this section is considered nondisciplinary and is not applicable to cases where

²⁵Appendix D-7: Sample format for Medical Options Letter and Discussion Checklist.

²⁶Appendix D-8: Sample format for Notice of Medical Action.

²⁷Appendix B: Relevant sections of the California Code of Regulations.

medical actions or disability retirement actions are appropriate (GC 19585; SPB Rule 446).

Minimum qualifications for continuing employment are limited to the acquisition or retention of specified licenses, certificates, registrations, or other professional qualifications, education, or eligibility for continuing employment or advancement to the fully qualified level within a particular classification series. Requirements do not include medical, physical ability, work, or academy performance standards. If an employee has filed a proper and timely application for renewal of a license, certificate, etc., the requirement is met until the application is denied, revoked, or suspended.

A department may use this section in lieu of adverse action or rejection during probation when failure to meet the requirement is the only cause for action. The burden of proof is on the department to substantiate the termination for failure to meet minimum qualifications of employment.

This section requires termination of employees who violate the Immigration Reform and Control Act of 1986, when failure to meet eligibility requirements is the only cause for action.

The employee must receive at least five working days written notice²⁸ of the intended action and has the right to appeal to SPB. The employee may be entitled to back pay and benefits if the action is not upheld upon appeal. Service of the notice is affected in the same manner as service of a Notice of Adverse Action and a Declaration of Service is required (see Section VII.).

When the requirements for continuing employment have been regained, an employee who has been terminated, demoted, or transferred has a permissive right to reinstatement to a vacant position in the classification he/she previously occupied, a lower classification in the same series, or another classification to which the employee could transfer or demote.

E. AUTOMATIC RESIGNATION FOR ABSENCE WITHOUT LEAVE

Unless superseded by a contrary CBA, an Absence Without Leave (AWOL) for five consecutive working days, whether voluntary or involuntary, is an automatic resignation from State service as of the last date on which the employee worked (GC 19996.2, the "AWOL Statute"). An automatic resignation under this statute is not a disciplinary action and does not preclude an employee from future State service.

When an employee has been AWOL for five consecutive workdays, it is recommended but not required that the department make a reasonable attempt to contact the employee before proceeding with an AWOL separation. An automatic resignation under this statute differs from an adverse action based on "unauthorized absence without leave" under GC 19572(j).

²⁸Appendix D-9: Sample format for Notice of Non-Disciplinary Separation.

1. Preparation and Service of Notice of AWOL Separation

The employee must be given advance written notice²⁹ and the supporting facts of the department's intent to invoke the AWOL statute. The notice must specify the dates of unauthorized absence that are claimed to constitute the automatic resignation and must inform the employee of his/her right to a Coleman Hearing. The notice is served in the same manner as a Notice of Adverse Action, and a Declaration of Service must be prepared and signed by the person serving the notice (see Section VII.).

2. Coleman Hearing

The California Supreme Court held that an employee is entitled to written notice of a department's intent to invoke the automatic resignation statute and the supporting facts. The employee is also entitled to an opportunity to appear before an impartial and disinterested decision maker to counter the claim of unauthorized absence. This informal due process proceeding is known as a Coleman Hearing.³⁰

The Coleman Hearing Officer is a neutral party before whom the employee can dispute the essential elements of the proposed automatic resignation action before it takes effect, including whether the employee's absence was for five consecutive working days and whether the absence was without leave. The Coleman Hearing Officer represents the department.

The Coleman officer may, depending on the employee's explanation for the absence:

- Invoke the AWOL statute (GC 19996.2), thus rendering the automatic resignation effective as of the last date the employee worked.
- Decide not to invoke the statute and permit the employee to return to work with no resignation on record.
- Invoke the statute as of the last date the employee worked but then permit the employee to reinstate at a later date. Under these circumstances, the employee will be deemed to have resigned for a specified period and the employee is not entitled to back pay for the period of the resignation.

²⁹Appendix D-10: Sample format for Notice of Absence Without Leave Separation.

³⁰Coleman v. DPA (1991) 52 Cal.3d 1102.

3. Appeal of AWOL Separation

An employee who has been given a written Notice of Separation under the AWOL statute may, within 15 days after service of the notice, file a written request for reinstatement with DPA.³¹ This right to seek reinstatement exists regardless of whether the employee has exercised the right to a Coleman Hearing.

Reinstatement may be granted only if the employee makes a satisfactory explanation to DPA as to the cause of the absence or failure to obtain leave, and DPA finds the employee is ready, able, and willing to resume the duties of the position or, if not, that the employee has obtained approval from the department for a leave of absence to commence upon reinstatement. An employee who is reinstated shall not be entitled to receive any back pay for the period of absence.

F. **AUTOMATIC RESIGNATION BY INTERMITTENT EMPLOYEES**

When an intermittent employee abandons his/her position, the employee automatically resigns from his/her position without fault. Abandonment of a position is presumed when the continuity of service is interrupted for longer than one year, and the interruption is not covered by an approved leave or other temporary separation.

Pay the employee all accumulated vacation, annual leave, and overtime as if the employee has separated from State service. The employee loses all accumulated sick leave and seniority credits (see SPB Rule 448; DPA Rule 599.827).

An intermittent employee who waives three consecutive requests to report for work may be automatically separated from the intermittent appointment provided that the waivers were not due to illness or other acceptable reasons. An employee must be given written notice of the proposed separation, setting forth the facts upon which the department relies including the dates of the three waivers and why any excuses offered are unacceptable. The employee must be given an opportunity for a Coleman Hearing unless an applicable CBA provision supersedes this procedure (GC 19996.2; DPA Rule 599.828).

G. **SEPARATION OF NONPERMANENT EMPLOYEES**

Nonpermanent employees include emergency appointments, temporary authorization (TAU) appointments (such as seasonal employees and retired annuitants), and limited-term employees.

1. Separation of TAU Employees Without Fault

A department may separate a temporary employee from State employment at any time. The separation may be for any

³¹The Statutory Appeals Manual that defines appeals to DPA is available at www.dpa.ca.gov.

nondiscriminatory reason such as reduced funding or work load. If a temporary employee is separated for reasons unrelated to performance, separating documentation is not normally required. This is called a separation “without fault.”

If a department decides to reduce its temporary staffing, all affected employees should be notified orally and in writing of their intended separations, the nondiscriminatory reasons for the staff reduction, and the method used to identify those selected for separation. Temporary employees who are separated without fault have no right to appeal the separation.

2. Separations of TAU Employees With Fault

When a temporary employee has performed unsatisfactorily or engaged in misconduct, he/she may be separated “with fault.” The consequence of a separation with fault is a blemish on the employee’s work record that may impact future State service. Although temporary employees are not entitled to the same notice and appeal rights as permanent employees, a separation with fault requires certain procedural protections.

Document the cause for a separation with fault during the period of employment. Where appropriate, first give the employee notice of the problem and an opportunity to correct it. If informal efforts are unsuccessful, the employee may be terminated after being given written notice of the reasons for the separation and its effective date. Include the employee’s appeal rights in the notice. A Declaration of Service must be forwarded to SPB along with the Notice of Termination With Fault.³²

Give the employee an opportunity to meet with a second level supervisor prior to the effective date of the separation to present a defense to the cause for termination. The employee is not entitled to a full Skelly hearing but merely an opportunity for discussion with someone at a higher level of authority than the person taking the action.

An employee may appeal the “with fault” designation to SPB within 30 calendar days from the effective date of the action. A “name clearance hearing” may be held to allow the employee to present evidence on why the “with fault” nature of the separation is incorrect. If the appeal is successful, the employee is not entitled to reinstatement but the “with fault” designation may be lifted and the separation becomes “without fault.”

³²Appendix D-11: Sample format for Notice of Termination With Fault (Temporary Employees).

3. Separation of Limited-Term Employees

A limited-term employee may be separated for any nondiscriminatory reason at any time prior to the expiration of the appointed term. Advise the employee either orally or in writing of the separation.

The employee has no right to appeal the action except on the grounds that other emergency or temporary employees in limited-term appointments remain employed in violation of SPB Rule 282. If other emergency or temporary employees remain employed in the same classification and same layoff subdivision as a limited-term employee, then the limited-term employee may only be separated for cause.

The department must be able to support the separation with cause as a "failure to demonstrate merit, efficiency, or moral responsibility." The employee may appeal a "for cause" termination to SPB and request a "name clearance hearing" similar to that available to temporary employees separated with fault. On a successful appeal, the only remedy is removal of the "for cause" designation; the employee is not entitled to reinstatement.

H. DRUG AND ALCOHOL TESTING

Due to the extremely sensitive nature of drug and alcohol testing, it should never be undertaken without consulting with legal counsel and the departmental Personnel Officer.

It is illegal for a State employee who is on duty or on standby to use, possess, or be under the influence of illegal drugs, or to be under the influence of alcohol to the extent the employee's ability to perform the job is impaired.³³ Substance testing is permitted only under certain narrowly prescribed circumstances when illegal drug or alcohol use is suspected (DPA Rules 599.960 through 599.966). Only employees in sensitive positions may be tested when there is a reasonable suspicion of a violation. The suspected employee's rights are closely guarded, and the actual testing may take place only under strict standards and procedures. Test results are released to a designated medical review officer, and records must be maintained only under the strictest confidentiality. Keep all medical files separate from other personnel files.

I. INFORMAL LEAVE OF ABSENCE (DOCK)

There are instances when an employee is absent from work and the department determines the employee should not be paid for that time. This occurs when an employee has an approved absence but does not have any available leave credits. It also occurs when an employee has an unapproved absence. To reduce the employee's pay for the absence, a department may grant an informal leave of absence without pay for a period not to exceed 11 working days in a 22-day pay period, 10 working days in a 21-day pay

³³Consistent with GC 19572 and the Governor's Executive Order D-58-86.

period, or 11 consecutive working days between pay periods (DPA Rule 599.785). The employee's pay is "docked" for the days or hours the employee was on leave. Such leave is not considered a disciplinary or adverse action.

VI. EMPLOYEE RIGHTS IN MATTERS RELATING TO ADVERSE ACTIONS

A. RIGHTS RELATIVE TO PERSONNEL FILES

Employees have a right to review their official personnel files. Some CBAs permit employee access to all information contained in a supervisor's file pertaining to the employee, and the file is always subject to subpoena or discovery in the event of litigation.

Each employee has one confidential official personnel file that is typically located in the department's Personnel Office. CBAs vary as to which other employee files are permitted, who maintains the files, where the files are located, what information can be included, and how long the information may be retained. Employees have legal rights relative to the content of and access to their files.

1. Official Personnel File

An official personnel file normally includes an application for employment, employment agreement, correction of records, personal data changes, transfers, salary changes, performance reviews, disciplinary memos, acknowledgment of receipt of an employee handbook, and key policies such as antiharassment policy, attendance records, and separation documentation. An official personnel file should not include confidential attorney-client privileged communications or confidential medical information.

2. Supervisory Working Files

Documentation regarding an employee's performance typically resides in a supervisory working file. The contents of supervisory working files may be limited according to the terms of a CBA. Normally included in this file is an ongoing record of the employee's performance, all duty statements (dated), reports of performance, notes on above or below standard performance, records of any corrective actions taken, EAP referrals, training plans, letters of commendation or complaint, and notes of absences or attendance patterns. It is not necessary to place information in the supervisory working file if it is already in the employee's official personnel file. The information may be used as a basis for performance appraisals and can serve as evidence in the event formal adverse action becomes necessary. All notes and records should be specific as to times and dates, participants, and subjects discussed.

3. Negative References

Some CBAs have provisions about handling negative references. Negative references are written comments about deficiencies in an employee's performance or conduct as well as records of corrective action discussions. If the employee is subject to a CBA with such

provisions, follow the provisions. If the employee is not subject to such provisions (i.e., the CBA does not address negative references or the employee is not subject to a CBA), it is recommended but not required that the negative reference be discussed with the employee. If the employee is a peace officer, refer to GC 3303(g) (see Appendix C). Request that the employee sign the negative reference prior to including it in the supervisory working file. If the employee declines to sign, make a notation to that effect then sign and date it before it is filed.

B. RIGHT TO REPRESENTATION

1. Determine if Employee Has Right to Representation

Uncertainties over the right to representation should generally be resolved in favor of representation since it will protect the employee and impose little burden on the department. When in doubt, contact the departmental Labor Relations staff for assistance in determining whether representation is appropriate.

State employees have a right to request representation at any supervisory meeting when a purpose of the meeting is to investigate facts to support possible adverse action. Peace officers' rights to representation are addressed in the Peace Officer Bill of Rights.³⁴

To determine if a purpose of the meeting is to investigate facts to support adverse action, the supervisor who initiates the meeting should evaluate all the surrounding facts and circumstances. The determination stems from the objective assessment of the facts rather than from the subjective opinions of the employee or supervisor. Despite the fact that a management-initiated interview may cause the employee to believe that adverse action might follow, the employee's subjective belief alone is not sufficient to invoke a right to representation.

Most State employees are not entitled to representation during routine business communications with management, including discussions relating to performance evaluations or counseling, training, job audits, and work-related instructions. Although performance counseling may include discussion of a performance improvement plan or corrective memo, those matters are not considered adverse actions that would entitle an employee to representation. However, such memos may be considered adverse actions for law enforcement personnel and therefore the employee would be entitled to representation.³⁵ Consult with the Labor Relations Office for clarification.

³⁴Appendix C: Peace Officer Bill of Rights.

³⁵Otto v. Los Angeles Unified School Dist. (2001) 89 Cal.App.4th 985.

It is a good practice to grant an employee's reasonable request for a representative if it will help facilitate the meeting. Where there is no right to representation, an employee's refusal to meet without a representative is insubordination and may constitute an independent ground for discipline.

General situations entitling an employee to representation include:

- Fact-finding discussions where adverse action is contemplated.
- Investigative interviews which are likely to result in adverse action.
- Skelly hearings (see Section VI.C.3.).
- SPB appeal hearings.

General situations where an employee is not entitled to representation include:

- Training discussions.
- Career development discussions.
- Performance appraisal discussions.
- Meetings with the sole purpose of informing an employee that adverse action is being taken, or of serving a Notice of Adverse Action.

2. Advise Employees on Representation Rights

When scheduling a meeting in which the employee is entitled to representation, inform the employee of the nature of the meeting and advise the employee of his/her right to representation.

When holding a meeting at which an employee is not entitled to representation, be aware that the meeting may change into one at which the employee is entitled to representation. If this occurs, inform the employee that adverse action may result and that he/she may seek representation if desired. If the employee requests representation, suspend and reschedule the meeting to allow representation. If the employee declines representation and chooses to go ahead with the meeting, carefully document that fact and proceed with the meeting. Request that the employee sign the documentation prior to the meeting.

3. Representation in Emergency Situations

In the extremely rare circumstance of a bona fide emergency, when an immediate investigation is required and representation is not reasonably available, an employee who would otherwise be entitled to representation may be informed that the right to representation is temporarily suspended. Immediately notify the departmental Labor Relations staff and make a reasonable effort to notify the appropriate union representative.

4. Who Can Represent the Employee

If an employee makes a reasonable request for a specific representative, honor the request if at all possible. If the chosen representative is unavailable at a scheduled meeting time but will be available within a reasonable time frame, postpone the meeting to accommodate the request. If the selected representative will not be available within a reasonable time and another representative is available, management has no obligation to postpone the meeting.

The representative may be the employee's choice of personal advisor, legal counsel, union representative, or any other individual, including a fellow employee. To avoid possible conflict of interest, a supervisory or management employee may not represent a rank-and-file employee nor may a rank-and-file employee represent a supervisory or management employee.

5. The Role of the Representative

The representative's role is to assist and advise the employee regarding the employee's rights during the investigatory meeting, not to negotiate or argue about the appropriateness of any possible action. The Skelly hearing and SPB appeal process are the proper forums for challenging an adverse action.

Investigative interviews are best handled with a spirit of cooperation between the supervisor, the employee, and the employee's representative. The representative and employee should be freely permitted to consult with each other, but if the representative or the employee becomes disruptive the meeting may be suspended. If the chosen representative refuses to cooperate, the employee may select another representative. If another representative is not reasonably available, the meeting may proceed without a representative. Notify the departmental Labor Relations staff of the disruption and/or change of representation, and carefully document the facts and circumstances.

6. Representation During Criminal Investigations

Before an employee is questioned by a peace officer concerning possible criminal conduct, he/she must be informed of the right to legal counsel.

C. RIGHT TO RESPOND TO PROPOSED ACTION

The case of *Skelly v. SPB* (1975) recognized a protected property interest or due process right in permanent civil service employment. Although the courts and SPB have since expanded the employee's due process rights, they are still called "Skelly Rights." These rights have been incorporated into SPB Rule 52.3. This rule states that prior to any adverse action, rejection during the probationary period, nonpunitive termination, demotion, or transfer under GC 19585, the department shall give the employee written notice of the proposed action at least five working days prior to the effective date of the proposed action. In the case of a medical action or application for disability retirement, the notice must be served at least 15 calendar days prior to the effective date (GC 19253.5[f]).

1. Notice of Proposed Action

Both SPB Rule 52.3 and GC 19574 address the requirements for a Notice of Adverse Action. The notice must include:

- A statement of the nature of the action;
- The reasons for such action;
- The effective date of the action;
- A copy of the charges for action;
- A statement of the reasons for the action in ordinary language;
- A copy of all materials upon which the action is based;
- Notice of the employee's right to be represented in proceedings under this section;
- Notice of the employee's right to respond to the representative of the appointing power (the Skelly Officer); and
- Notice of an employee's appeal rights to SPB.

2. Materials Upon Which Action is Based

The materials upon which the action is based must be served on the employee along with the written Notice of Adverse Action. If the materials are served late, the effective date of action should be

amended to allow at least five working days for the Skelly hearing (15 calendar days for medical actions and disability retirement applications). The materials are not filed with SPB at the time the Notice of Adverse Action is served but may later be offered as evidentiary exhibits at the appeal hearing.

The materials upon which the action is based include, where applicable:

- a. Complete investigation reports including those that would otherwise be designated as confidential such as Equal Employment Opportunity or internal affairs investigation reports. Investigation reports include:
 - Copies of all witness statements, both written and recorded, and any transcriptions that have been made.
 - Copies of all investigative notes contained in the report.
 - Copies of all exhibits contained in the report.
 - Both incriminating and exculpatory evidence.
- b. Documents of any kind including electronic mail.
- c. Recordings of any kind (e.g., audio, video, etc.).
- d. Computer records.
- e. Time records.
- f. Pertinent rules, policies, or procedures.
- g. Photographs.
- h. Other physical evidence.
- i. Medical reports.
- j. Does not include documents or portions of documents subject to a legally recognized evidentiary privilege (lawyer-client, physician-patient, priest-penitent, etc.).

3. The Skelly Hearing

The Skelly hearing is the employee's opportunity to respond orally to the department prior to the effective date of the action. At the hearing, the employee may reply to the charges and submit evidence to show why the action should be withdrawn or modified, or the penalty reduced. The hearing is presided over by the Skelly Officer. The Skelly Officer may be a departmental manager or other person who

knows the Skelly and disciplinary processes, and who is at least one organizational level above the employee's supervisor who initiated the action.³⁶

- a. The Skelly hearing is an informal proceeding and the employee has no right to call or cross-examine witnesses during the hearing. The employee is entitled to be represented at the Skelly hearing by an attorney, a union representative, or any other individual. However, a manager or supervisor may not represent a rank-and-file employee, nor may a rank-and-file employee represent a manager or supervisor.
- b. There are no legal restrictions on who can attend the hearing. However, attendance is usually limited to the Skelly Officer, the employee, the employee's representative, and a departmental attorney and/or a Personnel Office representative. Consider whether the presence of additional individuals would intimidate the employee or restrict the free exchange of information, thereby defeating the purpose of the Skelly hearing.
- c. The Skelly hearing should be held prior to the effective date of the action. If the Skelly Officer is unavailable within that time frame, the effective date of the action may be extended to accommodate the Skelly hearing by amending the action. If either the employee or his/her selected representative is not available within the designated time frame, the hearing may be postponed until after the effective date of the action, provided the employee waives the time limits and any right to back pay that might otherwise accrue if the action is subsequently withdrawn or modified at the Skelly hearing.
- d. Although the employee or representative may bring up a proposal for settlement of the action at the Skelly hearing, the Skelly Officer should not negotiate or agree to a settlement at that time. The Skelly Officer should instead note the terms of the proposal and inform the employee that a response will be forthcoming. The Skelly Officer should then consult with Staff Counsel to determine the appropriateness of the suggested settlement and to ensure that it is properly approved and documented before any commitment is made to the employee.

³⁶Skelly Officer training is available from SPB.

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- e. The law requires only that the Skelly Officer have authority to make a recommendation. It does not require the Skelly Officer to have final decision-making authority. In some departments, the Skelly Officer may make a recommendation to the department Director to sustain, modify, or revoke the action, and the Director has final authority to accept or reject the recommendation. In other departments, the Director has delegated to the Skelly Officer the authority to make the final decision.
 - f. There may be tactical reasons why an employee chooses to forego a Skelly hearing. A waiver of Skelly Rights does not constitute a waiver of the right to a formal appeal, and regardless of whether the employee exercises his/her Skelly Rights the action may still be appealed to SPB within 30 calendar days after the effective date of the action.

D. RIGHT TO DISCOVERY

1. Documents and Relevant Materials

An employee who has been served with a Notice of Adverse Action has certain discovery rights that are in addition to the Skelly Right to receive all materials upon which the action is based. These rights must be exercised at times and places that are reasonable for both the employee and the department.

The employee and his/her designated representative have the right to inspect any documents in the possession of or under the control of the department that are relevant to the adverse action or which may lead to the discovery of relevant evidence. They also have the right to interview other employees having knowledge of the acts or omissions upon which the adverse action is based.

2. Interviews of Other Employees

The department is required to make all reasonable efforts necessary to assure the cooperation of any other employees whom the disciplined employee or his/her representative may wish to interview. The interviews may be scheduled either during work or nonwork hours.

Interviewed employees should be reassured that they are protected by law against any sort of reprisal or retaliation for participating in a disciplinary action, on behalf of either a disciplined employee or the department.³⁷ An employee who has been contacted for an interview can refuse, or, if interviewed, has the right to have an attorney or employee representative present.

³⁷Appendix D-12: Sample format of Notice to Employees Regarding Participation in a Personnel Matter.

For interviews conducted during working hours, a private site should be made available, and the interviewed employees need not divulge the contents of the interviews to anyone, including their supervisors. Employees should not be docked for the time.

For interviews during nonwork hours, the employees are on their own time and the interviews may be held at locations other than the work premises.

E. RIGHT TO APPEAL

Regardless of whether an employee exercises his/her Skelly Rights, an adverse action may be appealed to SPB by filing a written answer within 30 calendar days after the effective date of the adverse action. The answer is deemed to be a denial of all the allegations in the notice and a request for an investigation or hearing.

F. RIGHT TO PETITION FOR WRIT OF MANDATE OR FILE CIVIL ACTION

If an employee is dissatisfied with SPB's decision following an appeal hearing, he/she has the right to petition a court for a writ of mandate or file a civil action after exhaustion of administrative remedies.

G. RIGHT TO VOLUNTARILY RESIGN

An employee has the absolute right to voluntarily resign at any time before the effective date of an adverse action, including an action for dismissal, without jeopardizing any rights or privileges of employment except to the position from which the employee resigns. If the employee initiates a discussion of resignation in lieu of an impending disciplinary action, he/she should be encouraged to consult with a representative and the departmental Personnel Officer for information on all the effects of a resignation.

Generally, if an employee resigns to avoid dismissal, there is no authority for proceeding with an adverse action. However, if the employee holds another California civil service position and/or the employee's name remains on any State employment list, the department may proceed with the action (GC 19571). A department may wish to proceed to ensure that the dismissal becomes part of the employee's official work history.

An employee should never be pressured to resign under threat of adverse action. If it is determined that an employee's resignation has been obtained by reason of mistake, fraud, duress, or undue influence, the employee has the right to be reinstated to his/her former job (GC 19996.1). To be reinstated under this section, the employee must file a petition with DPA to set aside the resignation within 30 days after the last date upon which services to the State are rendered or the date resignation is tendered to the department, whichever is later.

VII. PROCEDURES FOR SERVING AND FILING ADVERSE ACTIONS

In all cases a Notice of Adverse Action must be properly served on the employee to be effective and must be correctly filed with SPB.

A. SERVICE OF NOTICE

The signed Notice of Adverse Action, along with all supporting documents, must be served according to the mandated time frames³⁸ and other legal conditions (GC 18575). The notice must be served upon the employee in sufficient time to allow at least five working days before the effective date of the action for exercise of Skelly Rights.

Personal service is preferable. Service is accomplished when an individual who is over 18 years old and who is not a party to the pending action, personally hands the documents to the person to be served or that person's designated representative. Personal service is effective upon delivery.

To serve documents by mail, an individual who is 18 years or older and is not a party to the pending action encloses the documents in a sealed envelope addressed to the last known address of the person to be served, registered with return receipt requested, and deposits it into the United States mail with postage fully prepaid. The day of mailing is not counted toward the required notice period. Service is deemed effective:

- One day after the date of mailing if next-day mail delivery service is used.
- Five calendar days after the date of mailing if the address is within California.
- Ten calendar days after the date of mailing if the address is outside of California but within the United States.
- Twenty calendar days after the date of mailing if the address is outside of the United States.

When conducting service by registered mail, it is recommended that a duplicate of the documents also be sent via First Class United States mail in case the designated recipient refuses to sign for the registered mail.

B. DECLARATION OF SERVICE

The person who personally served the notice or deposited it in the United States mail must complete and sign a Declaration of Service.³⁹ The Declaration of Service is an official form signed under penalty of perjury by

³⁸Appendix F: Relevant sections of the California Code of Civil Procedure, Section 1013.

³⁹Appendix D-13: Sample format for Declaration of Service.

the individual who personally delivers the documents or deposits them into the mail, containing:

- A description of the documents being served. The declarant must personally view each document listed but does not need to read the documents in their entirety to verify that they were in fact the documents served. If documents are not personally viewed, the declarant can only attest that an envelope with unknown contents was served.
- The date and location where the documents were personally served.
- The date and location where the documents were mailed and the address to which they were mailed.
- The sworn affidavit of the individual who delivered or mailed the documents.

C. INCOMPLETE SERVICE OF NOTICE

If mailed documents are returned as undeliverable (e.g., “moved, no forwarding address”), a reasonable effort should be made to ascertain the individual’s current address. If a new address is located, service should again be attempted. A new Declaration of Service reflecting the new address must be completed. If the delay in service affects the effective date of the action, the Notice of Adverse Action must be changed to reflect the extended effective date.

If a new address is not located, forward a copy of the Notice of Adverse Action to SPB with a copy of the returned envelope, bearing evidence of its nondelivery, the Declaration of Service, and a letter detailing the efforts made to properly serve the individual.

D. FILING OF NOTICE

One copy of the Notice of Adverse Action and the original copy of the Declaration of Service must be filed with SPB within 15 calendar days after the effective date of the action. The employee may file a written appeal with SPB no later than 30 calendar days from the effective date of the action, or the action will become final (GC 19575).

VIII. AFTER THE ACTION IS FILED WITH SPB

A. CHANGES TO FILED ACTION

1. Amendments to Adverse Actions

After an adverse action has been served on an employee, the department has the right to amend or supplement the action for a variety of reasons. The amendment may be for the purpose of correcting errors or misinformation, to add additional charges or causes for discipline, or to reflect a reduction or modification of the penalty following a Skelly hearing.

Before an employee files an appeal with SPB, the department can amend the action simply by serving and filing a Notice of Amended Adverse Action setting forth the changes.⁴⁰ The amendment may simply be set forth in the Skelly Decision or may be a more formal Notice of Amended Adverse Action.

After an employee files an appeal, but before the case is submitted to SPB for decision, the action may be amended only with SPB's consent (GC 19575.5). Any substantive amendment that adversely affects the employee by altering the nature of the charges, adding new facts, furnishing new supporting materials, or increasing the penalty entitles the employee to a new five working day period within which to respond to the department, and a new Skelly hearing. The employee is entitled to restoration of full back pay and benefits for the period from the original effective date up to the amended effective date. However, the employee need not file a new appeal.

Copies of the amended action (either the Skelly Decision or formal notice) and an original Declaration of Service must be filed with SPB.

2. Settlements and Stipulated Agreements

Under certain circumstances, the department and the employee may agree to a settlement of the adverse action before the matter goes to hearing before SPB. Settlements are formalized in stipulated agreements. Settlements are favorable because they avoid the loss of productive time needed for witnesses and departmental representatives to prepare for and attend a hearing, and they avoid requiring employees to testify against a coworker. Settlements give the parties some control over the outcome and avoid the uncertainties and costs of litigating an appeal.

Stipulated agreements should always be in writing, signed by the parties and their respective attorneys or representatives. A "muzzle clause" cannot be included in a stipulated agreement. A "muzzle

⁴⁰Appendix D-14: Sample format for Notice of Amended Adverse Action.

clause” is a statement in which the department agrees not to reveal to other employers the circumstances of the employee’s separation in exchange for a settlement with the employee to resign in lieu of dismissal.

If a settlement is reached before the Notice of Adverse Action is filed with SPB, the written settlement agreement will have the force and legal effect of a contract between the parties and may be enforced through the courts by a breach of contract action. If the action has already been filed with the Board when the agreement is reached, SPB must approve the settlement agreement before it becomes final and binding on the parties, and it is then enforceable by SPB upon the request of either party.

3. Examples of Stipulated Agreements

a. Agreement to Modify an Action.

The parties may agree that the employee will withdraw an appeal in exchange for modification of the adverse action. For example, an employee may accept a pay reduction instead of a suspension. Or the employee may agree to withdraw an appeal if the department agrees to remove a formal Letter of Reprimand from the official personnel folder after one year. With this modification, the employee gets an acceptable level of discipline and the department gets a formal disciplinary action that may be useful as progressive discipline if the problem does not improve. Both parties avoid the cost, trauma, and uncertainty of a hearing.

b. Agreement to Modify or Withdraw an Action “On Condition.”

The parties may agree that an action will be amended or withdrawn if the employee agrees to certain conditions. For example, an employee whose work may be impacted by substance abuse agrees to successfully complete a substance abuse treatment program and consent to random substance testing for a specified period of time. In exchange, the department agrees to reduce the duration of the adverse action.

c. Agreements for Resignation and Withdrawal of an Action.

The parties may agree that the adverse action will be withdrawn if the employee resigns (see Section VI.G.). If a resignation is allowed in lieu of dismissal, the department may require the employee not to seek reemployment with the department in the future. An agreement not to seek future State service is probably unenforceable.

B. SPB APPEAL PROCESS

SPB Rules 51 et al., (see Appendix B), and the SPB Statutory Appeals Manual⁴¹ describe the adverse action appeal process, employee rights, and time frames. If the employee appeals the adverse action, SPB will set the matter for an administrative hearing at which the employee may be represented by counsel or any other person or organization of his/her choosing. The SPB decision will be final unless the employee applies for a rehearing (GC 19586).

C. FOLLOW-UP CASE MANAGEMENT

With the exception of dismissal, formal adverse action is the last stage in the disciplinary process. The objective of the disciplinary process is to correct problem behavior. Determine if it has been effective. Monitor the employee's performance. If there is a recurrence of the problem behavior, take timely and progressively stronger action.

⁴¹The SPB Statutory Appeals Manual is available at www.spb.ca.gov.

IX. MANAGERIAL EMPLOYEES

A "managerial employee" is defined as any employee having significant responsibilities for formulating or administering agency or departmental policies and programs or administering an agency or department (GC 3513[e]). An alternate procedure exists for disciplining designated managers who do not hold career executive appointments (GC 19590-19593).

APPENDIX A

RELEVANT SECTIONS of the CALIFORNIA GOVERNMENT CODE

NOTE: Statutes are subject to amendment at any time. The statutes contained in this appendix are current as of the publication date of this handbook, but cannot be relied upon as accurate after that date. For the most current version of a statute, refer to the California Government Code. An electronic version of the California Government Code is available at www.leginfo.ca.gov.

3513. As used in this chapter:

(a) "Employee organization" means any organization which includes employees of the state and which has as one of its primary purposes representing these employees in their relations with the state.

(b) "Recognized employee organization" means an employee organization which has been recognized by the state as the exclusive representative of the employees in an appropriate unit.

(c) "State employee" means any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the State Department of Education or the Superintendent of Public Instruction, except managerial employees, confidential employees, supervisory employees, employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the office of the Inspector General, employees of the board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, and intermittent athletic inspectors who are employees of the State Athletic Commission.

(d) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(e) "Managerial employee" means any employee having significant responsibilities for formulating or administering agency or departmental policies and programs or administering an agency or department.

(f) "Confidential employee" means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information contributing significantly to the development of management positions.

(g) "Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend this action, if, in connection with the foregoing, the exercise of this authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

(h) "Board" means the Public Employment Relations Board. The Educational Employment Relations Board established pursuant to Section 3541 shall be renamed the Public Employment Relations Board as provided in Section 3540. The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter.

(i) "Maintenance of membership" means that all employees who voluntarily are, or who voluntarily become, members of a recognized employee organization shall remain members of that employee organization in good standing for a period as agreed to by the parties pursuant to a memorandum of understanding, commencing with the effective date of the memorandum of understanding. A maintenance of membership provision shall not apply to any employee who within 30 days prior to the expiration of the memorandum of understanding withdraws from the employee organization by sending a signed withdrawal letter to the employee organization and a copy to the Controller's office.

(j) "State employer," or "employer," for the purposes of bargaining or meeting and conferring in good faith, means the Governor or his or her designated representatives.

(k) "Fair share fee" means the fee deducted by the state employer from the salary or wages of a state employee in an appropriate unit who does not become a member of and financially support the recognized employee organization. The fair share fee shall be used to defray the costs incurred by the recognized employee organization in fulfilling its duty to represent the employees in their employment relations with the state, and shall not exceed the standard initiation fee, membership dues, and general assessments of the recognized employee organization.

18575. Whenever any notice, paper, or other document, except a subpoena, is directed to be given to or served upon any person or state agency, such notice, paper, or document may be personally served or it may be served by mail to the last known residence or business address of the addressee. Unless otherwise specifically provided in this part the giving of notice of matters to be heard or considered by the board or the Department of Personnel Administration shall be governed by board or department rule.

Service by mail of the charges in a disciplinary proceeding, the notice of an employee's suspension, and the notice of a probationer's rejection is made by the enclosure of such charges or notice in a sealed envelope, addressed to the last known address of the person to be served, registered with return receipt requested, and the depositing of it in the United States mail with postage fully prepaid. Service is complete on mailing. Service by mail of any other notice, paper, or document is made in the manner provided by Sections 1012 and 1013 of the Code of Civil Procedure. Proof of service, either personal or by mail, shall be made by affidavit.

19173. (a) Any probationer may be rejected by the appointing power during the probationary period for reasons relating to the probationer's qualifications, the good of the service, or failure to demonstrate merit, efficiency, fitness, and moral responsibility, but he or she shall not be rejected for any cause constituting prohibited discrimination as set forth in Sections 19700 to 19703, inclusive.

(b) (1) A rejection during probationary period is effected by the service upon the probationer of a written notice of rejection which shall include: (A) an effective date for the rejection that shall not be later than the last day of the probationary period; and (B) a statement of the reasons for the rejection. Service of the notice shall be made prior to the effective date of the rejection, as defined by board rule for service of notices of adverse actions. Notice of rejection shall be served prior to the conclusion of the prescribed probationary period. The probationary period may be extended when necessary to provide the full notice period required by board rule. Within 15 days after the effective date of the rejection, a copy thereof shall be filed with the board.

(2) Effective January 1, 1996, notwithstanding paragraph (1), this paragraph shall only apply to state employees in State Bargaining Unit 5. A rejection during probationary period is effected by the service upon the probationer of a written notice of rejection that shall include: (A) an effective date for the rejection that shall not be later than the last day of the probationary period; and (B) a statement of the reasons for the rejection. Service of the notice shall be made prior to the effective date of the rejection. Notice of rejection shall be served prior to the conclusion of the prescribed probationary period. The probationary period may be extended when necessary to provide the full notice period required by board rule. Within 15 days after the effective date of the rejection, a copy thereof shall be filed with the board.

19173.1. (a) This section shall apply to state employees in State Bargaining Unit 8.

(b) Any probationer may be rejected by the appointing power during the probationary period for reasons relating to the probationer's qualifications, the good of the service, or failure to demonstrate merit, efficiency, and fitness.

(c) A rejection during probationary period is effected by the service upon the probationer of a written notice of rejection that shall include: (1) an effective date for the rejection that shall not be later than the last day of the probationary period; and (2) a statement of the reasons for the rejection. Service of the notice shall be made prior to the effective date of the rejection. Notice of rejection shall be served prior to the conclusion of the prescribed probationary period. The probationary period may be extended when necessary to provide the full notice period required by board rule. Within 15 days after the effective date of the rejection, a copy thereof shall be filed with the board.

19175. The board at the written request of a rejected probationer, filed within 15 calendar days of the effective date of rejection, may investigate with or without a hearing the reasons for rejection. After investigation, the board may do any of the following:

(a) Affirm the action of the appointing power.

(b) Modify the action of the appointing power.

(c) Restore the name of the rejected probationer to the employment list for certification to any position within the class; provided, that his or her name shall not be certified to the agency by which he or she was rejected, except with the concurrence of the appointing power of that agency.

(d) Restore him or her to the position from which he or she was rejected, but this shall be done only if the board determines, after a hearing, that there is no substantial evidence to support the reason or reasons for rejection, or that the rejection was made in fraud or bad faith. At the hearing, the rejected probationer shall have the burden of proof. Subject to rebuttal by the rejected probationer, it shall be presumed that the rejection was free from fraud and bad faith and that the statement of reasons therefore in the notice of rejection is true.

(e) Effective January 1, 1996, this section shall not apply to state employees in State Bargaining Unit 5.

(f) Except as provided in subdivision (g), this section shall not apply to state employees in State Bargaining Unit 11 who have been rejected on probation for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement.

(g) Whenever a written request is made under this section by a probationer in State Bargaining Unit 11 who has been rejected for positive drug test results and the memorandum of understanding for employees in State Bargaining Unit 11 has expired, the state employer shall follow the appeal procedures contained in the expired memorandum of understanding for state employees in State Bargaining Unit 11 until a successor agreement is negotiated between the Department of Personnel Administration and the exclusive representative.

19253.5. (a) In accordance with board rule, the appointing power may require an employee to submit to a medical examination by a physician or physicians designated by the appointing power to evaluate the capacity of the employee to perform the work of his or her position.

(b) Fees for the examination and for the services of medical specialists or technicians, if necessary, shall be paid by the state agency. The employee may submit medical or other evidence to the examining physician or to the appointing power. The examining physician shall make a written report of the examination to the appointing power. The appointing power shall provide a copy to the physician designated by the employee.

(c) When the appointing power, after considering the conclusions of the medical examination and other pertinent information, concludes that the employee is unable to perform the work of his or her present position, but is able to perform the work of another

position including one of less than full time, the appointing power may demote or transfer the employee to such a position.

Except as authorized by the Department of Personnel Administration under Section 19837, the employee demoted or transferred pursuant to this section shall receive the maximum of the salary range of the class to which he or she is demoted or transferred, provided that the salary is not greater than the salary he or she received at the time of his or her demotion or transfer.

(d) When the appointing power after considering the conclusions of the medical examination provided for by this section or medical reports from the employee's physician, and other pertinent information, concludes that the employee is unable to perform the work of his or her present position, or any other position in the agency, and the employee is not eligible or waives the right to retire for disability and elects to withdraw his or her retirement contributions or to permit his or her contributions to remain in the retirement fund with rights to service retirement, the appointing power may terminate the appointment of the employee.

(e) The appointing power may demote, transfer, or terminate an employee under this section without requiring the employee to submit to a medical examination when the appointing power relies upon a written statement submitted to the appointing power by the employee as to the employee's condition or upon medical reports submitted to the appointing power by the employee.

(f) The employee shall be given written notice of any demotion, transfer, or termination under this section at least 15 days prior to the effective date thereof. No later than 15 days after service of the notice, the employee may appeal the action of the appointing power to the board. The board, in accordance with its rules, shall hold a hearing. The board may sustain, disapprove, or modify the demotion, transfer, or termination.

(g) Whenever the board revokes or modifies a demotion, transfer, or termination, the board shall direct the payment of salary to the employee calculated on the same basis and using the same standards as provided in Section 19584.

(h) Upon the request of an appointing authority or the petition of the employee who was terminated, demoted, or transferred in accordance with this section, the employee shall be reinstated to an appropriate vacant position in the same class, in a comparable class or in a lower related class if it is determined by the board that the employee is no longer incapacitated for duty. Such a reinstatement to a position in a different agency may be made only with the concurrence of that agency. In approving or ordering the reinstatements, the board may require the satisfactory completion of a new probationary period. When the board finds the employee who was terminated, demoted, or transferred is no longer incapacitated for duty but there is no vacant position to which the employee appropriately can be appointed, the name of the employee shall be placed upon those reemployment lists that are determined to be appropriate by the board.

(i) (1) If the appointing power, after considering the conclusions of the medical examination provided for by this section or medical reports from the employee's physician and other pertinent information, concludes that the employee is unable to perform the work of his or her present position or any other position in the agency and the employee is eligible and does not waive the right to retire for disability, the appointing power shall file an application for disability retirement on the employee's behalf. The appointing power shall give the employee 15 days written notice of its intention to file such an application and a reasonable opportunity to respond to the appointing power prior to the appointing power's filing of the application. However, the appointing power's decision to file the application is final and is not appealable to the State Personnel Board.

(2) Notwithstanding Section 21153, upon filing the application for disability retirement, the appointing power may remove the employee from the job and place the employee on involuntary leave status. The employee may use any accrued leave eligible

during the period of the involuntary leave. If the employee's leave credits and programs are exhausted or if they do not provide benefits at least equal to the estimated retirement allowance, the appointing power shall pay the employee an additional temporary disability allowance so that the employee receives payment equal to the retirement allowance. The appointing power shall continue to make all employer contributions to the employee's health plans during the period of the involuntary leave.

(3) If the application for disability retirement is subsequently granted, the retirement system shall reimburse the appointing power for the temporary disability allowance which shall be deducted from any back disability retirement benefits otherwise payable to the employee. If the application is denied, the appointing power shall reinstate the employee to his or her position with back salary and benefits pursuant to subdivision (g), less any temporary disability allowance paid by the appointing power. The appointing power shall also restore any leave credits the employee used during the period of the involuntary leave.

19570. As used in this article "adverse action" means dismissal, demotion, suspension, or other disciplinary action. This article shall not apply to any adverse action affecting managerial employees subject to Article 2 (commencing with Section 19590), except as provided in Sections 19590.5, 19592, and 19592.2.

19570.1. Notwithstanding Section 19570, this section shall apply to state employees in State Bargaining Unit 8. As used in this article, "disciplinary action" means dismissal, demotion, suspension, or other disciplinary action. "Disciplinary action" does not include a written or oral reprimand taken against an employee. Reprimands may be considered for the purpose of progressive discipline. This article shall not apply to any disciplinary action affecting managerial employees subject to Article 2 (commencing with Section 19590), except as provided in Sections 19590.5, 19592, and 19592.2.

19571. In conformity with this article and the board rule, adverse action may be taken against any employee, or person whose name appears on any employment list for any cause for discipline specified in this article.

19572. Each of the following constitutes cause for discipline of an employee, or person whose name appears on any employment list:

- (a) Fraud in securing appointment.
- (b) Incompetency.
- (c) Inefficiency.
- (d) Inexcusable neglect of duty.
- (e) Insubordination.
- (f) Dishonesty.
- (g) Drunkenness on duty.
- (h) Intemperance.
- (i) Addiction to the use of controlled substances.
- (j) Inexcusable absence without leave.
- (k) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.
- (l) Immorality.
- (m) Discourteous treatment of the public or other employees.
- (n) Improper political activity.
- (o) Willful disobedience.

- (p) Misuse of state property.
- (q) Violation of this part or board rule.
- (r) Violation of the prohibitions set forth in accordance with Section 19990.
- (s) Refusal to take and subscribe any oath or affirmation which is required by law in connection with the employment.
- (t) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment.
- (u) Any negligence, recklessness, or intentional act which results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.
- (v) The use during duty hours, for training or target practice, of any material which is not authorized therefor by the appointing power.
- (w) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, disability, marital status, sex, or age, against the public or other employees while acting in the capacity of a state employee.
- (x) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.

19572.1. (a) Notwithstanding Section 19572, this section shall apply to state employees in State Bargaining Unit 8.

(b) Disciplinary actions pursuant to Section 19576.5 shall be for just cause or one or more of the following causes for discipline:

- (1) Fraud in securing appointment.
- (2) Incompetency.
- (3) Inefficiency.
- (4) Inexcusable neglect of duty.
- (5) Insubordination.
- (6) Dishonesty.
- (7) Drunkenness on duty.
- (8) Intemperance.
- (9) Addiction to the use of controlled substances.
- (10) Inexcusable absence without leave.
- (11) Conviction of a felony or conviction of a misdemeanor involving moral turpitude.

A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony of any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.

- (12) Immorality.
- (13) Discourteous treatment of the public or other employees.
- (14) Improper political activity.
- (15) Willful disobedience.
- (16) Misuse of state property.
- (17) Violation of this part or board rule.
- (18) Violation of the prohibitions set forth in accordance with Section 19990.
- (19) Refusal to take and subscribe any oath or affirmation that is required by law in connection with the employment.
- (20) Other failure of good behavior either during or outside of duty hours that is of such a nature that it causes discredit to the appointing authority of the person's employment.
- (21) Any negligence, recklessness, or intentional act that results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.

(22) The use during duty hours, for training or target practice, of any material that is not authorized therefor by the appointing power.

(23) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, disability, marital status, sex, or age, against the public or other employees while acting in the capacity of a state employee.

(24) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.

(c) If provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provision shall not become effective unless approved by the Legislature in the annual Budget Act.

19574. (a) The appointing power, or its authorized representative, may take adverse action against an employee for one or more of the causes for discipline specified in this article. Adverse action is valid only if a written notice is served on the employee prior to the effective date of the action, as defined by board rule. The notice shall be served upon the employee either personally or by mail and shall include: (1) A statement of the nature of the adverse action; (2) The effective date of the action; (3) A statement of the reasons therefor in ordinary language; (4) A statement advising the employee of the right to answer the notice orally or in writing; and (5) A statement advising the employee of the time within which an appeal must be filed. The notice shall be filed with the board not later than 15 calendar days after the effective date of the adverse action.

(b) Effective January 1, 1996, this subdivision shall apply only to state employees in State Bargaining Unit 5. This section shall not apply to discipline as defined by Section 19576.1.

(c) This subdivision shall apply only to state employees in State Bargaining Unit 8. This section shall not apply to minor discipline, as defined by Section 19576.5 or a memorandum of understanding.

(d) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

19574.1. (a) An employee who has been served with notice of adverse action, or a representative designated by the employee, shall have the right to inspect any documents in the possession of, or under the control of, the appointing power which are relevant to the adverse action taken or which would constitute "relevant evidence" as defined in Section 210 of the Evidence Code. The employee, or the designated representative, shall also have the right to interview other employees having knowledge of the acts or omissions upon which the adverse action was based. Interviews of other employees and inspection of documents shall be at times and places reasonable for the employee and for the appointing power.

(b) The appointing power shall make all reasonable efforts necessary to assure the cooperation of any other employees interviewed pursuant to this section.

(c) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum

of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

19574.2. (a) Any party claiming that his or her request for discovery pursuant to Section 19574.1 has not been complied with may serve and file a petition to compel discovery with the Hearing Office of the State Personnel Board, naming as respondent the party refusing or failing to comply with Section 19574.1. The petition shall state facts showing that the respondent party failed or refused to comply with Section 19574.1, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under Section 19574.1, and the ground or grounds of respondent's refusal so far as known to petitioner.

(b) The petition shall be served upon respondent party and filed within 14 days after the respondent party first evidenced his or her failure or refusal to comply with Section 19574.1 or within 30 days after the request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 15 days of the date set for commencement of the administrative hearing, except upon a petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reasons for the discovery, the diligence or lack of diligence of the moving party, whether the granting of the petition will delay the commencement of the administrative hearing on the date set, and the possible prejudice of the action to any party. The respondent shall have a right to file a written answer to the petition. Any answer shall be filed with the Hearing Office of the State Personnel Board and the petitioner within 15 days of service of the petition.

Unless otherwise stipulated by the parties and as provided by this section, the administrative law judge shall review the petition and any response filed by the respondent and issue a decision granting or denying the petition within 20 days after the filing of the petition. Nothing in this section shall preclude the administrative law judge from determining that an evidentiary hearing shall be conducted prior to the issuance of a decision on the petition. In the event that a hearing is ordered, the decision of the administrative law judge shall be issued within 20 days of the closing of the hearing.

A party aggrieved by the decision of the administrative law judge may, within 30 days of service of the decision, file a petition to compel discovery in the superior court for the county in which the administrative hearing will be held or in the county in which the headquarters of the appointing power is located. The petition shall be served on the respondent party.

(c) If from a reading of the petition the court is satisfied that the petition sets forth good cause for relief, the court shall issue an order to show cause directed to the respondent party; otherwise the court shall enter an order denying the petition. The order to show cause shall be served upon the respondent and his or her attorney of record in the administrative proceeding by personal delivery or certified mail and shall be returnable no earlier than 10 days from its issuance nor later than 30 days after the filing of the petition. The respondent party shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(d) The court may, in its discretion, order the administrative proceeding stayed during the pendency of the proceeding, and, if necessary, for a reasonable time thereafter to afford the parties time to comply with the court order.

(e) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under Section 19574.1, or is privileged against disclosure under Section 19574.1, the court may order lodged with it matters which are provided in subdivision (b) of Section 915

of the Evidence Code and shall examine the matters in accordance with the provisions thereof.

(f) The court shall decide the case on the matters examined by the court in camera, the papers filed by the parties, and any oral argument and additional evidence as the court may allow.

(g) Unless otherwise stipulated by the parties, the court shall no later than 45 days after the filing of the petition file its order denying or granting the petition; provided, however, that the court may on its own motion for good cause extend the time an additional 45 days. The order of the court shall be in writing setting forth the matters or parts the petitioner is entitled to discover under Section 19574.1. A copy of the order shall forthwith be served by mail by the clerk upon the parties. Where the order grants the petition in whole or in part, the order shall not become effective until 10 days after the date the order is served by the clerk. Where the order denies relief to the petitioning party, the order shall be effective on the date it is served by the clerk.

(h) The order of the superior court shall be final and, except for this subdivision, shall not be subject to review by appeal. A party aggrieved by the order, or any part thereof, may within 30 days after the service of the superior court's order serve and file in the district court of appeal for the district in which the superior court is located, a petition for a writ of mandamus to compel the superior court to set aside, or otherwise modify, its order. Where a review is sought from an order granting discovery, the order of the trial court and the administrative proceeding shall be stayed upon the filing of the petition for writ of mandamus; provided, however, that the court of appeal may dissolve or modify the stay thereafter, if it is in the public interest to do so. Where the review is sought from a denial of discovery, neither the trial court's order nor the administrative proceeding shall be stayed by the court of appeal except upon a clear showing of probable error.

(i) Where the superior court finds that a party or his or her attorney, without substantial justification, failed or refused to comply with Section 19574.1, or, without substantial justification, filed a petition to compel discovery pursuant to this section, or, without substantial justification, failed to comply with any order of court made pursuant to this section, the court may award court costs and reasonable attorney fees to the opposing party. Nothing in this subdivision shall limit the power of the superior court to compel obedience to its orders by contempt proceedings.

(j) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

19574.5. Pending investigation by the appointing power of accusations against an employee involving misappropriation of public funds or property, drug addiction, mistreatment of persons in a state institution, immorality, or acts which would constitute a felony or a misdemeanor involving moral turpitude, the appointing power may order the employee on leave of absence for not to exceed 15 days. The leave may be terminated by the appointing power by giving 48 hours' notice in writing to the employee.

If adverse action is not taken on or before the date such a leave is terminated, the leave shall be with pay.

If adverse action is taken on or before the date such leave is terminated, the adverse action may be taken retroactive to any date on or after the date the employee went on leave. Notwithstanding the provisions of Section 19574, the adverse action, under such

circumstances, shall be valid if written notice is served upon the employee and filed with the board not later than 15 calendar days after the employee is notified of the adverse action.

19575. (a) The employee has 30 calendar days after the effective date of the adverse action to file with the board a written answer to the notice of adverse action. The answer shall be deemed to be a denial of all of the allegations of the notice of adverse action not expressly admitted and a request for hearing or investigation as provided in this article. With the consent of the board or its authorized representative an amended answer may subsequently be filed. If the employee fails to answer within the time specified or after answer withdraws his or her appeal the adverse action taken by the appointing power shall be final. A copy of the employee's answer and of any amended answer shall promptly be given by the board to the appointing power.

(b) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

19575.5. At any time before an employee's appeal is submitted to the board or its authorized representative for decision, the appointing power may with the consent of the board or its authorized representative serve on the employee and file with the board an amended or supplemental notice of adverse action. If the amended or supplemental notice presents new causes or allegations the employee shall be afforded a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further answer unless the board or its authorized representative so orders. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental causes or allegations may be made orally at the hearing or investigation and shall be noted in the record.

19576. Whenever an answer is filed by an employee who has been suspended without pay for five days or less or who has received a formal reprimand or up to a one-step reduction in pay for four months or less the board or its authorized representative shall make an investigation with or without a hearing as it deems necessary; however, in the event an employee receives one of these actions under subdivision (r) of Section 19572 for behavior or acts outside of duty hours, he shall, if he files an answer to the action, be afforded a hearing; or if he receives one of the cited actions in more than three instances in any 12-month period, he shall upon each additional action within the same 12-month period be afforded a hearing if he files an answer to the action.

If the provisions of this section concerning whether a hearing should be held are in conflict with the provisions of a memorandum of understanding reached pursuant to the State Employer-Employee Relations Act (SEERA), commencing with Section 3512, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19576.1. Effective January 1, 1996, notwithstanding Section 19576, this section shall apply only to state employees in State Bargaining Unit 5.

Whenever an answer is filed by an employee who has been suspended without pay for five days or less or who has received a formal reprimand or up to a five percent reduction in

pay for five months or less, the Department of Personnel Administration or its authorized representative shall make an investigation, with or without a hearing, as it deems necessary. However, if he or she receives one of the cited actions in more than three instances in any 12-month period, he or she, upon each additional action within the same 12-month period, shall be afforded a hearing before the State Personnel Board if he or she files an answer to the action.

The Department of Personnel Administration shall not have the above authority with regard to formal reprimands. Formal reprimands shall not be appealable by the receiving employee by any means, except that the State Personnel Board, pursuant to its constitutional authority, shall maintain its right to review all formal reprimands. Formal reprimands shall remain available for use by the appointing authorities for the purpose of progressive discipline.

Disciplinary action taken pursuant to this section is not subject to Sections 19180, 19574.1, 19574.2, 19575, 19575.5, 19579, 19580, 19581, 19581.5, 19582, 19583, and 19587, or to State Personnel Board Rules 51.1 to 51.9, inclusive, 52, and 52.1 to 52.5, inclusive.

Notwithstanding any other law or rule, if the provisions of this section are in conflict with the provisions of the memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19576.5. Notwithstanding Section 19576, this section applies only to state employees in State Bargaining Unit 8.

(a) Minor discipline is a suspension without pay for five days or less or up to a 5-percent reduction in pay for five months or less. Whenever an answer is filed by an employee who is subject to minor discipline, and the memorandum of understanding for state employees in State Bargaining Unit 8 has expired, the state employer shall follow the minor discipline appeal procedures contained in the expired memorandum of understanding for state employees in State Bargaining Unit 8 until a successor agreement is negotiated between the Department of Personnel Administration and the exclusive representative. However, if an employee receives one of the cited actions in more than three instances in any 12-month period, he or she shall, upon each additional action within the same 12-month period, be afforded a hearing before the State Personnel Board if he or she files an answer to the action.

(b) The State Personnel Board shall not have the authority stated in subdivision (a) with regard to written or oral reprimands. Reprimands shall not be grievable or appealable by the receiving employee by any means. Rejections on probation shall not be grievable or appealable by the receiving employee by any means except as provided in Section 19175.1.

(c) The appointing power shall not impose any discipline in a manner that is inconsistent with "salary basis test" against an employee employed in an executive, administrative, or professional capacity and whose duties exempt him or her from the wage and hour provisions of the federal Fair Labor Standards Act as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. Sec. 213(a)(1)), and in Part 54 of Title 29 of the Code of Federal Regulations, as defined and delimited on the effective date of this section, and as those provisions may be amended in the future by the Administrator of the Wage and Hour Division of the United States Department of Labor.

(d) Disciplinary action taken pursuant to this section shall not be subject to any of the following provisions: Sections 19180, 19574.1, 19574.2, 19575, 19575.5, 19579, 19580,

19581, 19581.5, 19582, 19583, and 19587, and State Personnel Board Rules 51.1 to 51.9, inclusive, 52, and 52.1 to 52.5, inclusive.

(e) Notwithstanding any other law or rule, if any provision of this section is in conflict with any provision of the memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(f) If the State Personnel Board establishes regulations to implement this section, the regulations shall be consistent with the expired memorandum of understanding for state employees in State Bargaining Unit 8 and the Ralph C. Dills Act (Part 10.3 (commencing with Section 3512) of Division 4 of Title 1).

19576.6. This section shall apply only to state employees in State Bargaining Unit 11 who have been disciplined for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement.

(a) Notwithstanding Section 19576, the State Personnel Board shall not have the authority stated in subdivision (a) of that section.

(b) Whenever an answer is filed by an employee and the memorandum of understanding for employees in State Bargaining Unit 11 has expired, the state employer shall follow the appeal procedures contained in the expired memorandum of understanding for state employees in State Bargaining Unit 11 until a successor agreement is negotiated between the Department of Personnel Administration and the exclusive representative.

(c) Notwithstanding any other law or rule, if the provisions of this section are in conflict with the provisions of the memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19578. (a) Except as provided in Section 19576, whenever an answer is filed to an adverse action, the board or its authorized representative shall within a reasonable time hold a hearing. The board shall notify the parties of the time and place of the hearing. The hearing shall be conducted in accordance with the provisions of Section 11513 of the Government Code, except that the employee and other persons may be examined as provided in Section 19580, and the parties may submit all proper and competent evidence against or in support of the causes.

(b) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

19579. Failure of either party (the employee, the employer, or their representatives) to proceed at the hearing shall be deemed a withdrawal of the action or appeal, unless the hearing is continued by mutual agreement of the parties, or upon showing of good cause.

19580. Either by deposition or at the hearing the employee may be examined and may examine or cause any person to be examined under Section 776 of the Evidence Code.

19581. The board or its authorized representative shall issue subpoenas for witnesses for the employee upon his written request and at his cost. The board or its authorized representative may require such costs to be prepaid.

19581.5. Prior to the scheduling of a contested adverse action or rejection on probation for hearing, the board may require or any party may request a prehearing or settlement conference. The administrative law judge presiding over the settlement conference shall not preside over any subsequent hearing on the contested adverse action or rejection on probation unless agreed to by both parties.

19582. (a) Hearings may be held by the board, or by any authorized representative, but the board shall render the decision that in its judgment is just and proper.

During a hearing, after the appointing authority has completed the opening statement or the presentation of evidence, the employee, without waiving his or her right to offer evidence in the event the motion is not granted, may move for a dismissal of the charges.

If it appears that the evidence presented supports the granting of the motion as to some but not all of the issues involved in the action, the board or the authorized representative shall grant the motion as to those issues and the action shall proceed as to the issues remaining. Despite the granting of the motion, no judgment shall be entered prior to a final determination of the action on the remaining issues, and shall be subject to final review and approval by the board.

(b) If a contested case is heard by an authorized representative, he or she shall prepare a proposed decision in a form that may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the board as a public record and furnished to each party within 10 days after the proposed decision is filed with the board. The board itself may adopt the proposed decision in its entirety, may remand the proposed decision, or may reduce the adverse action set forth therein and adopt the balance of the proposed decision.

(c) If the proposed decision is not remanded or adopted as provided in subdivision (b), each party shall be notified of the action, and the board itself may decide the case upon the record, including the transcript, with or without taking any additional evidence, or may refer the case to the same or another authorized representative to take additional evidence. If the case is so assigned to an authorized representative, he or she shall prepare a proposed decision as provided in subdivision (b) upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the proposed decision shall be furnished to each party. The board itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present oral and written argument before the board itself. If additional oral evidence is introduced before the board itself, no board member may vote unless he or she heard the additional oral evidence.

(d) In arriving at a decision or a proposed decision, the board or its authorized representative may consider any prior suspension or suspensions of the appellant by authority of any appointing power, or any prior proceedings under this article.

(e) The decision shall be in writing and contain findings of fact and the adverse action, if any. The findings may be stated in the language of the pleadings or by reference thereto. Copies of the decision shall be served on the parties personally or by mail.

(f) This section shall not apply to minor discipline, as defined in a memorandum of understanding or by Section 19576.5, for state employees in State Bargaining Unit 8.

(g) This section shall not apply to state employees in State Bargaining Unit 11 who have been disciplined for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement.

(h) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

19582.1. Notwithstanding Section 19582, this section shall apply to state employees in State Bargaining Unit 8.

(a) The board's review of decisions of minor discipline, as defined by a memorandum of understanding or by Section 19576.5, shall be limited to either adopting the penalty of the proposed decision or revoking the disciplinary action in its entirety.

(b) The board's review of decisions of discipline, including minor discipline, shall not impose any discipline against an employee that would jeopardize the employee's status under the federal Fair Labor Standards Act, as set forth pursuant to Section 13 (a)(1) of The Fair Labor Standards Act of 1938, as amended (Title 29, Section 213 (a)(1), United States Code) and in Part 54 of Title 29 of the Code of Federal Regulations, as defined and delimited on the effective date of this section and as those provisions maybe amended in the future.

(c) If provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provision shall not become effective unless approved by the Legislature in the annual Budget Act.

19582.5. The board may designate certain of its decisions as precedents. Decisions of the board are subject to Section 11425.60. The board may provide by rule for the reconsideration of a previously issued decision to determine whether or not it shall be designated as a precedent decision. All decisions designated as precedents shall be published in a manner determined by the board.

19582.51. Effective January 1, 1996, notwithstanding Section 19582.5, this section shall only apply to state employees in State Bargaining Unit 5. The board may designate certain of its decisions as precedents. Precedential decisions shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3. The board may provide by rule for the reconsideration of a previously issued decision to determine whether or not it shall be designated as a precedent decision. All decisions designated as precedents shall be published in a manner determined by the board.

For purposes of this section, decisions reached pursuant to Section 19576.1 are not subject to board precedential decision. Arbitrators shall not be bound by board precedential decisions, and the board may not adopt an arbitrator's decision as a precedential decision.

19582.6. (a) Notwithstanding Section 19582.5, this section shall apply only to state employees in State Bargaining Unit 8.

(b) The board may designate certain of its decisions as precedents. Precedential decisions shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3. The board may provide by rule for the reconsideration of a previously issued decision to determine whether or not it shall be designated as a precedent decision. All decisions designated as precedents shall be published in a manner determined by the board.

(c) For the purpose of this section, a decision reached pursuant to Section 19576.2 is not subject to board precedential decision, and the board may not adopt that decision as a precedential decision.

19583. (a) The board shall render a decision within a reasonable time after the hearing or investigation. The adverse action taken by the appointing power shall stand unless modified or revoked by the board. If the board finds that the cause or causes for which the adverse action was imposed were insufficient or not sustained, or that the employee was justified in the course of conduct upon which the causes were based, it may modify or revoke the adverse action and it may order the employee returned to his or her position with appropriate restoration of backpay and lost benefits either as of the date of the adverse action or as of such later date as it may specify. The decision of the board shall be entered upon the minutes of the board and the official roster.

(b) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

19583.1. Dismissal of an employee from the service shall, unless otherwise ordered by the board:

(a) Constitute a dismissal as of the same date from any and all positions which the employee may hold in the state civil service.

(b) Result in the automatic removal of the employee's name from any and all employment lists on which it may appear.

(c) Terminate the salary of the employee as of the date of dismissal except that he shall be paid any unpaid salary, and paid for any and all unused and accumulated vacation and any and all accumulated compensating time off or overtime to his credit as of the date of dismissal.

19583.5. (a) Any person, except for a current ward or inmate of the California Youth Authority or the Department of Corrections, with the consent of the board or the appointing power may file charges against an employee requesting that adverse action be taken for one or more causes for discipline specified in this article. Charges filed by a person who is a state employee shall not include issues covered by the state's employee grievance or other merit appeals processes. Any request of the board to file charges pursuant to this section shall be filed within one year of the event or events that led to the filing. The employee against whom the charges are filed shall have a right to answer as provided in this article. In all of these cases, a hearing shall be conducted in accord with this article and if the board finds that the charges are true it shall have the power to take any adverse action as in its judgment is just and proper. An employee who has sought to bring a charge or an adverse action against another employee using the grievance process, shall first exhaust that administrative process prior to bringing the case to the board.

(b) This section shall not be construed to supersede Section 19682.

19583.51. (a) Effective January 1, 1996, notwithstanding Section 19583.5, this section shall only apply to state employees in State Bargaining Unit 5. Any person, except for a current ward or inmate of the California Youth Authority or the Department of Corrections, with the consent of the board or the appointing power may file charges against an employee requesting that adverse action be taken for one or more causes for discipline specified in this article. Any request of the board to file charges pursuant to this section shall be filed within one year of the event or events that led to the filing. The employee against whom the charges are filed shall have a right to answer as provided in this article. In all of these cases, a hearing shall be conducted in accordance with this article and if the board finds that the charges are true it shall have the power to take any adverse action as in its judgment is just and proper.

(b) This section shall not be construed to supersede Section 19682.

(c) Any adverse action, as defined by Section 19576.1, that results from a request to file charges pursuant to this section, is subject to the appeal procedures in Section 19576.1.

19584. Whenever the board revokes or modifies an adverse action and orders that the employee be returned to his or her position, it shall direct the payment of salary and all interest accrued thereto, and the reinstatement of all benefits that otherwise would have normally accrued. "Salary" shall include salary, as defined in Section 18000, salary adjustments and shift differential, and other special salary compensations, if sufficiently predictable. Benefits shall include, but shall not be limited to, retirement, medical, dental, and seniority benefits pursuant to memoranda of understanding for that classification of employee to the employee for that period of time as the board finds the adverse action was improperly in effect.

Salary shall not be authorized or paid for any portion of a period of adverse action that the employee was not ready, able, and willing to perform the duties of his or her position, whether the adverse action is valid or not or the causes on which it is based state facts sufficient to constitute cause for discipline.

From any such salary due there shall be deducted compensation that the employee earned, or might reasonably have earned, during any period commencing more than six months after the initial date of the suspension.

19585. (a) This section shall apply to permanent and probationary employees and may be used in lieu of adverse action and rejection during probation when the only cause for action against an employee is his or her failure to meet a requirement for continuing employment, as provided in this section. This section shall not apply to cases subject to the provisions of termination or demotion for medical reasons or retirement for disability.

(b) An appointing power may terminate, demote, or transfer an employee who fails to meet the requirement for continuing employment that is prescribed by the board on or after January 1, 1986, in the specification for the classification to which the employee is appointed. Notwithstanding the foregoing, as prescribed by Article 11 (commencing with Section 19991) of Chapter 1 of Part 2.6, the appointing power may grant the employee a leave of absence in lieu of one of the actions specified above. In prescribing requirements for continuing employment, the board may specify standards to ensure that the requirements are consistently applied. The board may also specify when separation from a position for failure to meet requirements for continuing employment also constitutes separation from former positions that the employee held in other classifications that have the same or greater requirements for continuing employment.

(c) The federal Immigration Reform and Control Act of 1986 requires termination of an employee for failure to meet the employment eligibility requirements of that act, and if this is the only cause for action against that employee, the termination shall be carried out

pursuant to this section. If a person fails to meet the employment eligibility requirements of the federal Immigration Reform and Control Act of 1986, that information, when used under this section, except for purposes of the appeals process, shall be confidential, as provided in the federal Immigration Reform and Control Act of 1986.

(d) For the purposes of this section, requirements for continuing employment shall be limited to the acquisition or retention of specified licenses, certificates, registrations, or other professional qualifications, education, or eligibility for continuing employment or advancement to the fully qualified level within a particular class series. The board shall prescribe procedures to ensure that employees affected by the requirements are informed of them. Requirements for continuing employment that are established for the purposes of this section shall not include medical, physical ability, work, or academy performance standards.

(e) For the purposes of this section, an employee who has filed a proper and timely application for renewal of a required license, registration, or certificate shall be considered as having maintained the license, registration, or certificate unless it is subsequently denied, revoked, or suspended.

(f) The employee shall receive at least five days' written notice of termination, demotion, or transfer and shall have the right to appeal the action to the board.

(g) When the requirements for continuing employment have been regained, terminated, demoted, or transferred employees may be reinstated pursuant to Section 19140.

(h) Any action under this section shall be considered nondisciplinary for the purposes of the State Civil Service Act and board rules.

(i) Whenever the board revokes or modifies a termination, demotion, or transfer under this section, the board shall direct the payment of salary and benefits to the employee calculated on the same basis and using the same standards as provided in Section 19584.

19586. Within 30 days after the day a copy of the decision rendered by the board in a proceeding under this article is served by the board upon the parties to the decision, either party may petition the board for rehearing of the decision. The petition for rehearing shall be in writing and shall contain all of the grounds upon which a rehearing should be granted.

Within 30 days after the filing of a petition for rehearing with the board, the board shall cause notice thereof to be served upon the other parties to the proceeding by mailing to each a copy of the petition for rehearing. The other parties to the proceeding shall have 20 calendar days from the date of service of a copy of the petition for rehearing to file with the board and serve upon the petitioner a response to the petition for rehearing.

Within 60 days after service of notice of filing of a petition for rehearing, the board shall either grant or deny the petition in whole or in part. Failure to act upon a petition for rehearing within this 60-day period is a denial of the petition.

19587. If the petition for rehearing is granted, the matter shall be set down for rehearing by the board or its authorized representative. If the matter is set for hearing before an authorized representative, the hearing shall be conducted as to the matters on which granted in substantially the same manner and under like rules of procedure as an original hearing upon charges under this article. If the matter is set for hearing before the board itself, the board may provide the parties with an opportunity to provide written or oral argument and may decide the case upon the record, including the transcript, with or without taking additional evidence.

19588. The right to petition a court for writ of mandate, or to bring or maintain any action or proceeding based on or related to any civil service law of this State or the administration thereof shall not be affected by the failure to apply for rehearing by filing written petition therefor with the board.

19589. Letters of reprimand shall be removed from the personnel file of the state employee and destroyed not later than three years from the date the letters were issued.

19590. Notwithstanding Article 1 (commencing with Section 19570), persons who have been designated as managerial employees under Section 3513 from the beginning of their current appointment, but whose positions are not in the career executive category, shall hold their appointments subject to the following adverse action process:

(a) The employee may be demoted, dismissed, or otherwise disciplined under this section for any of the causes specified in Section 19572, but shall not be disciplined for any cause constituting prohibited discrimination as set forth in Sections 19700 to 19703, inclusive.

(b) At least 20 days prior to the effective date of the disciplinary action, the appointing power shall give the employee written notice of the proposed action setting forth the reasons for the action, the effective date of the action, the right of the employee to answer the notice orally or in writing within 10 days of receipt of notice, and the employee's appeal rights. Within 15 days after the effective date of the disciplinary action, a copy thereof shall be filed with the board.

(c) The board, at the written request of a disciplined managerial employee filed within 30 days of the employee's receipt of the notice of the disciplinary action, may investigate with or without a hearing the reasons for the action.

If the adverse action taken against the employee was a disciplinary action other than demotion or dismissal, the board shall, after the investigation or hearing, affirm, reduce, or overturn the action of the appointing power.

If the adverse action taken against the employee was a demotion or dismissal from state civil service, the board shall, after the investigation or hearing and subject to Section 19592.5, affirm or reduce the action, restore the employee to the position from which he or she was demoted, or reinstate the employee to the position from which he or she was dismissed or to a position to which he or she could have transferred.

The decision of the board to modify the action of the appointing power pursuant to this subdivision shall be taken only if the board determines, after investigation or hearing, that there is no substantial evidence to support the reason or reasons for disciplinary action, or that the disciplinary action was made in fraud or bad faith. In any such proceeding, the disciplined managerial employee shall have the burden of proof. Subject to rebuttal by the employee, it shall be presumed that the action was free from fraud and bad faith and that the statement of reasons in the notice of disciplinary action is true.

19590.5. Notwithstanding Section 19590, a managerial employee who, without a subsequent break in service due to a permanent separation, has previously served with permanent status in a nonmanagerial state civil service position, may be dismissed from state service only as provided in Article 1 (commencing with Section 19570). Similarly, a managerial employee who has served in a state civil service managerial position for a combined period of at least 12 months, may be dismissed from state service only as provided in Article 1 (commencing with Section 19570). Section 19590 shall apply, however, to a dismissal action against a managerial employee who does not have previous permanent status as described in this section, if the dismissal action is taken during the first year of his or her service in a state civil service managerial position or positions.

19591. Any employee demoted pursuant to Section 19590 shall, as specified by Section 19140.5, have the right to be reinstated to his or her former civil service position.

19592. When action is taken under this article, the provisions of this article and related board rule shall constitute the entire disciplinary action and review process, except that the

provisions of Sections 19574.1, 19583.5, and 19584 shall also apply in a manner consistent with the provisions of this article.

19592.2. Pending investigation by the appointing power of accusations against an employee involving any of the causes for discipline specified in Section 19572, the appointing power may order the employee on leave of absence for not to exceed 15 days. The leave may be terminated by the appointing power by giving 48 hours' notice in writing to the employee.

If adverse action is not taken on or before the date the leave is terminated, the leave shall be with pay.

If adverse action is taken on or before the date the leave is terminated, the adverse action may be taken retroactive to any date on or after the date the employee went on leave. The adverse action, under these circumstances, shall be valid if written notice is served upon the employee and filed with the board not later than 15 calendar days after the employee is notified of the adverse action.

19592.5. Notwithstanding any other provisions of law, when a demotion action is taken against a managerial employee who was hired from outside of state civil service pursuant to Section 18930, and the action is taken during the first year of his or her service in a state civil service managerial position or positions, he or she may only transfer, reinstate, be reduced in class or demoted to other positions designated as managerial.

19593. This article shall not apply to managerial appointments that took effect prior to January 1, 1984, or in subsequent appointments, except that it shall apply when the provisions of this part and board rule would have required the employee to serve a new probationary period in a subsequent appointment. Where service of a new probationary period would have been discretionary on the part of the appointing power, the appointing power may either apply the provisions of this article to the new appointment, or require the employee to serve the probationary period previously prescribed for the class by the State Personnel Board, or appoint the employee with no new probationary period.

19990. A state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.

Each appointing power shall determine, subject to approval of the department, those activities which, for employees under its jurisdiction, are inconsistent, incompatible or in conflict with their duties as state officers or employees. Activities and enterprises deemed to fall in these categories shall include, but not be limited to, all of the following:

(a) Using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain or advantage or the private gain of another.

(b) Using state time, facilities, equipment, or supplies for private gain or advantage.

(c) Using, or having access to, confidential information available by virtue of state employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized.

(d) Receiving or accepting money or any other consideration from anyone other than the state for the performance of his or her duties as a state officer or employee.

(e) Performance of an act in other than his or her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee.

(f) Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who

is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by the appointing authority under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee.

(g) Subject to any other laws, rules, or regulations as pertain thereto, not devoting his or her full time, attention, and efforts to his or her state office or employment during his or her hours of duty as a state officer or employee.

The department shall adopt rules governing the application of this section. The rules shall include provision for notice to employees prior to the determination of proscribed activities and for appeal by employees from such a determination and from its application to an employee. Until the department adopts rules governing the application of this section, as amended in the 1985-86 Regular Session of the Legislature, existing procedures shall remain in full force and effect.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19991.10. Where there exists no statutory authority to grant a paid leave of absence, no paid leave of absence shall exceed five working days without prior approval of the department. This section shall not be construed to provide or create any classification of paid leave of absence.

For the purposes of this section, a paid leave of absence does not include a paid leave authorized by Sections 1230.1, 3518.5, 3522.7, 19252, 19253.5, 19775, 19775.1, 19848, 19853, 19854, 19858.1, 19859, 19863, 19871, 19886.1, 19991.3, and 19991.7 of this code or Section 4800 of the Labor Code.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19996.1. (a) Resignations from the state civil service are subject to department rules. A resignation, except as provided in this section, does not jeopardize any rights and privileges of the employee except those pertaining to the position from which he or she resigns. A written resignation may expressly waive all or any rights or privileges provided for by this chapter, including but not limited to, accumulated vacation, and in such event the records of the department shall be made to conform therewith. No resignation shall be set aside on the ground that it was given or obtained pursuant to or by reason of mistake, fraud, duress, undue influence or that for any other reason it was not the free, voluntary and binding act of the person resigning, unless a petition to set it aside is filed with the department within 30 days after the last date upon which services to the state are rendered or the date the resignation is tendered to the appointing power, whichever is later. In the event a resignation is set aside pursuant to this section, the person resigning shall be reinstated to his or her former position and paid his or her salary for the period he or she was removed from state service as the result of such resignation. From any such salary due there shall be deducted compensation that the employee earned, or might reasonably have earned, during any period commencing more than six months after the initial date of resignation.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19996.2. (a) Absence without leave, whether voluntary or involuntary, for five consecutive working days is an automatic resignation from state service, as of the last date on which the employee worked.

A permanent or probationary employee may within 90 days of the effective date of such separation, file a written request with the department for reinstatement; provided, that if the appointing power has notified the employee of his or her automatic resignation, any request for reinstatement must be made in writing and filed within 15 days of the service of notice of separation. Service of notice shall be made as provided in Section 18575 and is complete on mailing. Reinstatement may be granted only if the employee makes a satisfactory explanation to the department as to the cause of his or her absence and his or her failure to obtain leave therefor, and the department finds that he or she is ready, able, and willing to resume the discharge of the duties of his or her position or, if not, that he or she has obtained the consent of his or her appointing power to a leave of absence to commence upon reinstatement.

An employee so reinstated shall not be paid salary for the period of his or her absence or separation or for any portion thereof.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

APPENDIX B

RELEVANT SECTIONS of the CALIFORNIA CODE OF REGULATIONS

NOTE: Regulations are subject to amendment at any time. The regulations contained in this appendix are current as of the publication date of this handbook, but cannot be relied upon as accurate after that date. For the most current version of a regulation, refer to the California Code of Regulations. An electronic version of the California Government Code is available at www.oal.ca.gov.

STATE PERSONNEL BOARD (SPB) RULES

SECTION 51. Scope of Article.

The regulations in this article shall apply to all appellants and respondents and all appeal hearings conducted by the board or its designees.

SECTION 51.1. Definitions.

Unless the context requires otherwise, the following definitions shall apply to regulations in this article.

(a) "Administrative law judge" means a person employed by the board to conduct evidentiary hearings under this article.

(b) "Adverse action" means an action taken by an appointing power to discipline an employee and includes formal reprimand, suspension, reduction-in-salary, demotion and dismissal.

(c) "Appeal" means any written request for relief or review filed as provided in these regulations and includes "application," "petition," "protest," and "complaint."

(d) "Appeals division" means the appeals division of the board.

(e) "Appellant" means the person, or organization filing any appeal.

(f) "Hearing office" means the hearing office of the board.

(g) "Notice" means a written notice indicating the taking of an adverse action or rejection during probationary period.

(h) "Party or parties" means the appellant and the respondent and/or their representatives.

(i) "Rejection during probationary period" or "rejection" means an action to remove an employee from a probationary appointment.

(j) "Respondent" means the person or state agency from whose action or decision the appellant is seeking relief.

SECTION 51.2. Requirements for Filing Appeals with the Board.

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

(a) All appeals shall be written.

(b) Except for appeals that are automatically assigned to the hearing office pursuant to Section 52(a), each appeal shall:

(1) clearly identify the facts that form the basis for appeal;

(2) identify all respondents known to the appellant.

(c) Unless the appeal names some other respondent, the appellant's appointing power shall be considered the only respondent.

(d) The appeals division shall mail or serve a copy of the appeal to or on the respondent.

(e) Except as otherwise provided in the act or these regulations, every appeal shall:

(1) be filed with the board, or the appointing power if required by Section 53.1, within 30 days after the appellant has been served with the notice, report, or document from which the appeal is taken.

(2) If there has been no service and none is required, the appeal shall be filed within 30 days after the event upon which the appeal is based.

(3) Upon good cause being shown, the executive officer may allow an appeal, except as otherwise limited by statute, to be filed within 30 days after the end of the period in which the appeal should have been filed.

SECTION 51.3. Assignment of Appeal to Appropriate Review Process.

(a) The executive officer or his or her designee shall determine the appropriate review process for each appeal, as follows:

(1) The general merit system appeals process shall be used for appeals described by Section 53.

(2) The hearing office process shall be used for appeals described in section 52 or when any portion of an appeal is described in Section 52.

(3) The discrimination complaint process described in Section 54 shall be used for appeals of appointing power actions other than those covered by parts (1) and (2).

(b) This section shall not restrict the board's ability to recall any appeal for hearing and investigation by it.

SECTION 51.4. Hearings are Public.

Every appeal hearing, including the hearing of an adverse action appeal, shall be public.

SECTION 51.5. Right to Representation.

Any party may be represented by counsel or any other person or organization of the party's choice in any hearing or investigation conducted pursuant to this article.

SECTION 51.6. When Decisions Become Final.

Unless a proper application for rehearing is made pursuant to Government Code Section 19586, every board decision shall become final 30 days after service by the board of a copy of such decision upon the parties to the proceeding in which the decision is rendered.

SECTION 51.7. Petitioning for Rehearing.

Either the appellant or the respondent may file a petition for a rehearing of an appeal decision under the provisions of sections 19586 and 19587 of the Government Code.

Action on petitions for rehearing shall be taken within 60 days of the service specified in section 19586 of the Government Code.

SECTION 51.9. Request to File Charges Against State Employees.

A request of the board for consent to file charges under Government Code Section 19583.5 shall be in writing and shall be accompanied by the proposed charges. The statement of proposed charges shall be a sworn statement. The statement shall clearly state the facts constituting the cause or causes for adverse action in such detail as is reasonably necessary to enable the accused employee to prepare a defense thereto. Where it does not appear that the material facts alleged are within the personal knowledge of the complainant, the board may require the complainant to present supporting affidavits from persons having actual knowledge of the facts before acting upon the request. Once the board has approved a request to file charges, any alleged failure to follow the procedure described above shall not invalidate subsequent proceedings.

SECTION 52. Appeals Assigned to the Administrative Law Judge Evidentiary/ Investigatory Hearing Processes.

(a) The following shall be assigned to the full evidentiary hearing process:

(1) Approved requests to file charges under Government Code Section 19583.5.

(2) Appeal of adverse action pursuant to Government Code Section 19575 by an employee covered by the Ralph C. Dills Act (Ch. 10.3)(commencing with Section 351) Div. 4 Title 1.

(3) Appeal of an adverse action pursuant to Government Code section 19575 or 19590 by an employee excluded from the Ralph C. Dills Act (Ch. 10.3)(commencing with Section 3512) Div. 4 Title 1. where the penalty imposed is greater than a suspension without pay for five days or a one step reduction in pay for four months.

(4) Appeal of rejection during probationary period; or

(5) Any other appeal deemed appropriate by the executive officer, the board or its president.

(b) The following shall be assigned to the Investigatory Hearing Process:

Appeal of adverse action pursuant to Government Code section 19575 or 19590 by an employee excluded from the Ralph C. Dills Act (Ch. 10.3) (commencing with Section 3512) Div. 4 Title 1, where the penalty imposed is an official reprimand or other penalty equal to or less than a suspension without pay for five days or equal to or less than a one-step reduction in pay for four months.

(c) In any case, when a proceeding has been assigned to the administrative law judge evidentiary/investigatory hearing process, the administrative law judge is fully authorized and empowered to grant or refuse extensions of time, to set such proceedings for a full evidentiary hearing or investigatory hearing in every such proceeding as provided herein. The administrative law judge is authorized to conduct a full evidentiary hearing in an appeal defined in subdivision (b) above upon mutual agreement of the parties or, upon motion by one of the parties, if the administrative law judge is also fully authorized and empowered to perform any and all other acts in connection with such proceedings that may be authorized by law or these regulations.

(d) The assignment of a case under the provisions of (a) and (b) shall not preclude the board from recalling the proceedings for hearing by the board.

SECTION 52.1. Exclusion of Witnesses.

Upon the motion of any party, including the parties to an adverse action proceeding, the administrative law judge shall have the authority to exclude from the hearing room any witnesses not at the time under examination; but a party to the proceeding, or the party's counsel or other person representing a party, shall not be excluded. When a state agency is a party it is entitled to the presence of one other officer or employee in addition to its counsel or representative.

SECTION 52.2. Dismissal of Appeals not Brought to Hearing.

Any appeal assigned to the hearing officer shall be dismissed unless it is brought to hearing within three years after such appeal was filed with board except where the parties have filed a written stipulation specifically extending said three-year period.

SECTION 52.3. Right to Respond to Proposed Action.

(a) At least five working days before the effective date of a proposed adverse action, rejection during the probationary period, or non-punitive termination, demotion, or transfer under Government Code section 19585, the appointing power, as defined in Government Code Section 18524, or an authorized representative of the appointing power shall give the employee written notice of the proposed action. At least 15 calendar days before the effective date of a medical termination, demotion, or transfer under Government Code section 19253.5 or an application for disability retirement filed pursuant to Government Code section 19253.5(i)(1), the appointing power or an authorized representative of the appointing power shall give the employee written notice of the proposed action. The notice shall include:

(1) the reasons for such action,

(2) a copy of the charges for adverse action,

- (3) a copy of all materials upon which the action is based,
- (4) notice of the employee's right to be represented in proceedings under this section, and
- (5) notice of the employee's right to respond to the person specified in subsection (b).

(b) The person whom the employee is to respond to in subsection (a)(5) shall be above the organizational level of the employee's supervisor who initiated the action unless that person is the employee's appointing power in which case the appointing power may respond to the employee or designate another person to respond.

(c) The procedure specified in this section shall apply only to the final notice of proposed action.

SECTION 52.4. Expedited Hearings.

Within ten days after filing an appeal from a dismissal, an appellant may file with the board and serve upon the respondent a written request that the hearing on the appeal be expedited for good cause. Appellant's request shall include documentary evidence and/or sworn declarations in support of the appellant's position. Within seven days after service of appellant's request, respondent shall file its written response to that request and serve that response upon the appellant. Appellant's request may be granted if either the respondent concurs in the request or the administrative law judge determines that good cause exists. The administrative law judge may impose such orders for expedited discovery as the administrative law judge may deem necessary or appropriate. If appellant's request is granted, the matter will be set for hearing within 15 days. The administrative law judge shall prepare the proposed decision within five working days of the hearing for submittal to the board at its next meeting.

SECTION 52.5. Appeal Continuances.

Continuances shall be granted only upon a showing of good cause or mutual agreement between the parties. When the acts or omissions that lead to an adverse action or rejection also lead to criminal charges being filed against the appellant, continuances shall be granted when the parties mutually concur to allow for completion of the criminal proceedings.

SECTION 52.6. Investigatory Hearing Process for Lesser Adverse Actions.

(a) Failure of any party to proceed at the investigatory hearing shall be deemed a withdrawal of the action or appeal, unless the investigatory hearing is continued for good cause.

(b) One hundred eighty (180) minutes will be calendared for the investigatory hearing. Each party will be allotted a total of ninety (90) minutes to be allocated at that party's discretion for presentation of its case, including examination and cross examination of witnesses, presentation of declarations, documentary evidence, and exhibits, and presentation of arguments. While use of the time allotted is at each party's discretion, the suggested format for the hearing is as follows: 5 minutes each for opening statements, 60 minutes each to call witnesses and present declarations, documentary evidence and exhibits, 15 minutes each for cross examination of the opposing party's witnesses, and 10 minutes each for closing arguments.

(c) The administrative law judge has discretion to ask clarifying questions of the witnesses or the parties at the conclusion of each party's case-in-chief and has sole discretion to extend additional time to each of the parties.

(d) The administrative law judge is not bound by common law/statutory rules of evidence or by technical or formal rules of procedure, except as set forth herein, but shall conduct the investigatory hearing in such a manner as necessary to reach a just and proper decision. Relevant evidence will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(e) Declarations/affidavits made under penalty of perjury will be admissible even though they are technically hearsay, and may be relied upon by the administrative law judge to make a finding of fact. Other hearsay is admissible, but cannot be relied upon by the authorized representative to make a finding of fact unless it would be admissible over objection in a civil proceeding or unless corroborated either by witness testimony and/or a declaration or affidavit made under penalty of perjury. The foundation for admitting the declarations/affidavits or other written hearsay may be laid in a declaration/affidavit.

(f) The administrative law judge shall prepare a short-form proposed decision which would be forwarded to the Board within 15 calendar days of the investigatory hearing. The decision will include enough information to allow the Board to exercise its constitutional authority to review disciplinary actions, such as (a) introduction; (b) factual allegations sustained and not sustained, referring to the Notice of Adverse Action; (c) legal causes and not sustained referring to the Notice of Adverse Action and any other applicable legal authority; and (e) any finding of fact that the authorized representative decides is necessary to highlight.

(g) Absent Board rejection of proposed decision, each case would be opened and closed in no more than ninety (90) calendar days.

(h) It is the intent of the Board that any finding of fact or law, judgment, conclusion, or final order made by an administrative law judge, pursuant to this process shall not be conclusive or binding in any separate or subsequent action or proceeding, and shall not be used as evidence in any separate or subsequent action or proceeding, between an individual and his or per present or prior employer brought before an arbitrator, court or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts. Any decision rendered pursuant to subdivision (f) above may be cited for purposes of providing progressive discipline.

SECTION 211. Eligibility.

If an employee is dismissed from State employment by adverse action or as a result of disciplinary proceedings, that employee shall not thereafter be permitted to take any state civil service examination or be certified to any position in the state civil service without the consent of the executive officer. If such an employee subsequently attains permanent status in the state civil service, the executive officer may grant a continuing waiver of this requirement which may apply to all subsequent examinations for which that employee applies or to those for specified occupations. In all other cases, the executive officer shall determine whether to refuse to examine or, after examination, to declare or certify as eligible anyone for any of the reasons set forth in section 18935 of the act.

Persons denied permission to compete or be certified under this section may appeal in writing to the Board within 30 days of notification.

SECTION 282. Termination.

A limited-term employee may be separated at any time prior to the expiration of the term for which appointed by advising the employee either orally or in writing of the separation; provided, however, a limited-term employee may not be separated except for cause, if emergency or temporary employees in limited-term positions remain employed in the same class and the same layoff subdivision. If separated for cause, the appointing power shall give the employee, on or before the date of separation, written notice setting forth the reasons therefor. Within 30 days after the effective date of separation cause, a copy of the notice shall be sent with the report of separation to the executive officer. The employee has no appeal from the action of the appointing power in terminating the limited-term employment except on the grounds that temporary or emergency employees remain employed in violation of this section.

The executive officer shall not again certify for limited-term employment in the same class the name of a person who has been separated for cause unless, after investigation, it is determined by the executive officer that the reason for separation should not bar the person from such further employment.

Cause as used in this rule shall include failure to demonstrate merit, efficiency, fitness, and moral responsibility.

SECTION 324. Duty to Reject Probationer.

If the conduct, capacity, moral responsibility, or integrity of the probationer is found to be unsatisfactory, it shall be the duty of the appointing power to reject that probationer from the position.

SECTION 446. Temporary and Permanent Separations.

Temporary separations from state service shall include all types of leave of absence including leave under Section 599.785, military leave, suspension, termination for medical reasons, termination of permanent or probationary employee by layoff, termination by displacement, and disability retirement. Permanent separations from state service shall include dismissal; resignation; automatic resignation (AWOL); rejection during probationary period; termination for failure to meet conditions of employment; termination of limited-term, temporary authorization, emergency, Career Executive Assignment, or exempt appointment; and service retirement.

SECTION 448. Automatic Resignation of Intermittent Employees.

(a) An intermittent employee whose continuity of employment in a position is interrupted by a nonwork period that extends longer than one year may be considered to have automatically resigned from the position without fault as of one year from the last day the employee was on pay status subject to the restrictions in subsection (b).

(b) separations are restricted to:

(1) nonwork periods not covered by a paid leave, a formal leave of absence without pay or other temporary separation and,

(2) those circumstances which create a presumption that the employee has abandoned his or her position.

PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS) RULES

SECTION 555.1. Right of Appeal.

Any applicant dissatisfied with the action of the Executive Officer on his application, other than his referral of the matter for hearing, may appeal such action to the Board by filing a written notice of such appeal at the offices of the Board within thirty days of the date of the mailing to him by the Executive Officer, at his most recent address of record, of notice of the action and right of appeal. An appeal shall contain a statement of the facts and the law forming the basis for appeal. Upon a satisfactory showing of good cause, the Executive Officer may grant additional time not to exceed 30 days, within which to file such appeal.

SECTION 555.2. Statement of Issues.

Any applicant filing an appeal shall be entitled to a hearing, and upon the filing of an appeal in accordance with these rules, or upon the Executive Officer's referral of any question for hearing, the Executive Officer shall execute a statement of issues. Such action of the Executive Officer shall not preclude the Board from recalling the proceedings for its review or hearing.

SECTION 555.3. Accusation.

Any member whose retirement for disability has been requested by his employer shall be entitled to a hearing. The Executive Officer, upon determination that a member shall be retired for disability on such application, shall file an accusation and serve a copy thereof on the member and his employer.

SECTION 555.4. Hearings.

All hearings shall be conducted in accordance with the provisions of Chapter 5, Part 1, Division 3, Title 2 of the Government Code. Each case shall be heard by the hearing officer alone. All proposed decisions of hearing officers shall be referred to the Board. The Executive Officer is hereby authorized and empowered to take, in the name and on behalf of the Board, any action which the Board is authorized or directed by law to take with respect to procedural and jurisdictional matters in connection with any case in which a statement of issues or accusation has been filed.

DEPARTMENT OF PERSONNEL ADMINISTRATION (DPA) RULES

SECTION 599.665. Attendance Records.

Each appointing power shall keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. Such records shall be kept in the form and manner prescribed by the Department of Finance in connection with its powers to devise, install and supervise a modern and complete accounting system for state agencies.

SECTION 599.681. Movement Between Alternate Ranges.

Unless otherwise authorized by the Director of the Department of Personnel Administration when an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges and shall retain the salary adjustment anniversary date.

SECTION 599.683. Merit Salary Adjustment.

If the appointing authority certifies in the manner prescribed by the Director of the Department of Personnel Administration that the employee has met the standards of efficiency required for the position, the employee who is not paid at the maximum step of the salary range shall receive a merit salary adjustment equivalent to one step in the salary range provided that rate does not exceed the maximum salary rate effective on the first of the monthly pay period next following completion of:

(a) Twelve months of qualifying service after:

(1) appointment; or

(2) last merit salary adjustment; or

(3) last special in-grade salary adjustment; or

(4) movement between classes which resulted in a salary increase of one or more steps;

or

(b) The number of months of qualifying service as provided by Department of Personnel Administration after movement between classes which resulted in a salary increase of less than one step. The Department of Personnel Administration shall provide that the number of months of qualifying service be proportionately reduced from 12 to the number of months that will permit the employee to receive approximately the same annual salary the employee would have received with a one-step increase.

SECTION 599.684. Appeal from Merit Salary Adjustment Action.

When an employee has not met the standards of efficiency required for the position, the supervisor shall so certify in the manner prescribed by the Director of the Department of Personnel Administration or the Department of Personnel Administration and shall recommend that the merit salary adjustment not be granted. In such cases, the adjustment shall not normally be considered again in less than three months. An employee whose merit salary adjustment will not be recommended by the supervisor shall be informed of the reasons for such action before the certification is made by the supervisor. Within 10 days after the employee is informed that the merit salary adjustment will not be recommended, the employee may file a written request with the appointing power for reconsideration under the agency's Grievance Procedure. The employee may appeal to the Department of Personnel Administration within 15 days after having exhausted the departmental remedy as herein specified. In such appeal the determination of the appointing power to withhold a merit salary adjustment shall be sustained if supported by substantial evidence.

SECTION 599.685. Special In-Grade Salary Adjustment.

If the appointing authority certifies in the manner prescribed by the Director of the Department of Personnel Administration that the employee has met the standards of efficiency required for the position, the employee who is paid at the minimum step of the salary range in a class designated by the Department of Personnel Administration may receive a special in-grade salary adjustment to the second step of the salary range effective on the first of the monthly pay period next following completion of:

(a) six months of qualifying service after the appointment; or

(b) as otherwise may be provided by the Department of Personnel Administration. When movement between classes to the minimum step results in a salary increase of less than one step, the Department of Personnel Administration shall provide that the months of qualifying service be proportionately reduced from 6 to the number of months of qualifying service that will permit the employee to receive approximately the same annual salary the employee would have received upon appointment to the minimum step with a one-step increase.

SECTION 599.785. Informal Leave of Absence (Dock).

The appointing power may grant an informal leave of absence without pay for a period not to exceed 11 working days in a 22- day pay period or 10 working days in a 21-day pay period or 11 consecutive working days between pay periods. A holiday is counted as a working day. The appointing power shall not grant paid absences to break the continuity of a leave of absence without pay.

SECTION 599.827. Continuity of Intermittent Employment.

An intermittent employee whose continuity of employment in the State service is interrupted by a nonwork period that is not covered by paid absence or formal leave of absence without pay, or other temporary separation immediately following the work period and that extends longer than one year shall be paid a lump sum payment for all accumulated vacation or overtime credits as though separated from State service and shall lose all accumulated sick leave and seniority credits.

SECTION 599.828. Automatic Resignation of Intermittent Employees.

In addition to the provisions of Government Code Section 19996.2, an intermittent employee who waives three requests by the employing department to report for work may

be automatically separated from the intermittent appointment, provided that no waiver shall be counted if the employee was unable to come to work due to illness or other good reason (i.e., a reason that is acceptable to the appointing power).

SECTION 599.859. Grievance and Appeal Procedure – Excluded Employees.

For the purposes of this section an excluded employee is defined in section 3527(b) of the Government Code.

(a) The purpose of grievance and appeal procedures is to provide for the prompt review and resolution of issues either formally or informally at the lowest possible level.

(b) Definitions.

(1) "Grievance." A grievance is a dispute of one or more excluded employees involving the application or interpretation of a statute, regulation, policy or practice which falls under the jurisdiction of the Director, Department of Personnel Administration.

(2) "Non-Merit Statutory Appeal." A non-merit, statutory appeal is: an appeal of transfer in accordance with sections 19994.2-19994.4 of the Government Code; a petition to set aside resignation in accordance with section 19996.1; and appeal for reinstatement after automatic resignation (AWOL) in accordance with section 19996.2; or an appeal of layoff in accordance with section 19997.14.

(c) Grievance Procedures. Each appointing power may establish in writing a procedure for the resolution of grievances of its excluded employees and any such procedure shall be subject to the review and approval by the Director. However unless such a procedure is established, the appointing power shall follow the standard grievance procedure prescribed by the Director in subsection (d).

(d) Standard Grievance Procedure. Each party involved in a grievance shall attempt to resolve the grievance promptly. Every effort should be made to complete required actions within the time limits contained in the grievance procedure. However, with the mutual consent of the parties, the time limit for any step may be extended.

(1) A grievance procedure shall consist of as few levels of review as practicable; however, no procedure shall provide for more than four levels of review.

(2) Informal Discussion. The excluded employee or the excluded employee's representative shall discuss the grievance with the excluded employee's immediate supervisor. If the grievance is not settled within five (5) work days, a written grievance may be filed.

(3) Formal Grievance--Level 1. A formal grievance may be filed no later than ten (10) work days after the event or circumstances occasioning the grievance. The first level of review shall respond to the grievance in writing within ten (10) work days after the receipt of the formal grievance.

(4) Formal Grievance--Level 2. The grievant may appeal the decision of the first level within ten (10) work days after receipt of the response. Within fifteen (15) work days after receipt of the appealed grievance, the person designated by the appointing power as the second level of review shall respond in writing to the grievance.

(5) Formal Grievance--Level 3. The grievant may appeal the decision of the second level without ten (10) work days after receipt of the response to the appointing power or his/her designee. Within fifteen (15) work days after receipt of the appeal, the appointing power or his/her designee shall respond in writing to the grievance.

(6) Formal Grievance--Level 4. The grievant may appeal the decision of the third level within ten (10) work days after receipt of the response to the Director, Department of Personnel Administration or his/her designee. Within twenty (20) work days the Director, or his/her designee shall respond in writing to the grievance.

(e) Forms. The Director shall prescribe a standard excluded employee grievance form and any additional forms to be used in processing grievances.

(f) Representation. The excluded employee and his/her representative, recognized by the Director in accordance with the provisions of Section 599.857, may be authorized a reasonable amount of work time, as determined by the appointing power and approved by the Director, to prepare and present a grievance.

(g) Non-Merit Statutory Appeals.

(1) Disputes regarding appeals of layoff, appeals of transfer, petitions to set aside resignation, appeals for reinstatement after automatic resignation shall be filed in writing directly with the Director. Such appeals shall be filed in accordance with specific time limits proscribed by applicable statute.

(2) Such appeal may be assigned to a hearing officer for hearing or investigation. The hearing officer is the authorized representative of the Director and is fully authorized and empowered to grant or refuse extensions of time, to set such proceeding for hearing, to conduct a hearing or investigation in every such proceeding, and to perform any and all other acts in connection with such proceeding that may be authorized by law or by this article.

(3) Rehearing. Within thirty (30) days after service of a copy of the decision any party may file a written petition for rehearing with the Director. Within thirty (30) days after such filing, the Director shall serve a copy of the petition upon the other parties to the proceeding. Within sixty (60) days after service of the petition for rehearing, the Director shall either grant or deny the petition in whole or in part. Failure to act upon a petition for rehearing within the ninety (90) day period is a denial of petition. If a rehearing is granted, the Director may rehear the case itself on all the pertinent parts of the record of the prior hearing and such additional evidence and argument as may be permitted by the Director.

(4) Decision Becomes Final When. Unless a proper application for rehearing is made in accordance with subsection (g)(3), every decision shall become final 30 days after service by the Director of a copy of such decision upon the parties to the proceeding in which the decision is rendered.

SECTION 599.960. General Policy.

(a) It is the purpose of this article to help ensure that the State workplace is free from the effects of drug and alcohol abuse. These provisions shall be in addition to and shall not be construed as a required prerequisite to or as replacing, limiting or setting standards for any other types of provisions available under law to serve this purpose, including employee assistance, adverse action and medical examination.

(b) Consistent with Government Code Section 19572 and Governor's Executive Order D-58-86, no State employee who is on duty or on standby for duty shall:

(1) Use, possess, or be under the influence of illegal or unauthorized drugs or other illegal mind-altering substances; or

(2) Use or be under the influence of alcohol to any extent that would impede the employee's ability to perform his or her duties safely and effectively.

(c) Employees serving in sensitive positions shall be subject to drug and alcohol testing, hereinafter referred to as substance testing, as provided in this Article when there is reasonable suspicion that the employee has violated subsection (b). In addition, when such an employee has already been found in violation of subsection (b) through the adverse action or medical examination processes under the Civil Service Act (Government Code Section 19253.5; Government Code Sections 19570-19593), as a result of substance testing under this article, or by the employee's own admission, the employee may be required to submit to periodic substance testing as a condition of remaining in or returning to State employment. Unless otherwise provided in the settlement of an adverse action the period for this testing shall not exceed one year.

(d) No employee shall perform duties which, because of drugs taken under a legal prescription, the employee cannot perform without posing a threat to the health or safety of the employee or others. Employees whose job performance is so restricted may be subject to reassignment, medical examination or other actions specified by applicable statutes and regulations.

(e) To protect the public and ensure the safety and security of its correctional institutions, the State must ensure that its peace officers do not use illegal drugs, or misuse prescription drugs, unauthorized or other illegal mind altering substances under any circumstances, and are not under the influence of alcohol while on the job. Consistent with a peace officer's sworn oath to uphold the laws of the State of California, all excluded and exempt State employees who are peace officers under Part 2, Title 3, Chapter 4.5, Section 830.5 of the Penal Code, will be subject to random drug and alcohol testing pursuant to this article.

(f) For purposes of this Article, an excluded State employee is an employee as defined in Section 3527(b) of the Government Code; an exempt State employee is an officer or employee of the executive branch of government who is not a member of the civil service.

SECTION 599.961. Sensitive Positions.

(a) For the purposes of this Article, sensitive positions are peace officer positions, as defined by Part 2, Title 3, Chapter 4.5, Section 830.5 of the Penal Code, and other positions in which drug or alcohol affected performance could clearly endanger the health and safety of others. These other positions have the following general characteristics:

(1) Their duties involve a greater than normal level of trust, responsibility for or impact on the health and safety of others; and

(2) errors in judgment, inattentiveness or diminished coordination, dexterity or composure while performing their duties could clearly result in mistakes that would endanger the health and safety of others; and

(3) employees in these positions work with such independence, or, perform such tasks that it cannot be safely assumed that mistakes such as those described in (2) could be prevented by a supervisor or another employee.

(b) Filled positions shall be identified as sensitive through the following process:

(1) Subject to Department of Personnel Administration approval, each appointing power shall identify the positions under his/her jurisdiction that meet the standards in (a).

(2) The employees serving in the identified positions and, where applicable, their union representatives, shall receive an initial notice that the position has been identified as sensitive and shall be given 30 days to respond.

(3) After considering responses to the initial notice and meeting with employee representatives as required by the Ralph C. Dills Act (Government Code Sections 3512-3524), the Department of Personnel Administration shall issue a final notice to the employees serving in the positions that have been identified as sensitive. This notice shall include a description of the provisions of this article. Existing practices in this area shall not change for any position until 60 days after the final notice concerning it is issued.

(c) Vacant positions shall be identified as sensitive through the procedures specified in (b), including those procedures involving employee organizations, except that the employee notification provisions as stated in (b)(2) and (b)(3) shall not apply.

(d) Once a position has been designated sensitive, the appointing power shall take measures to reasonably and likely ensure that future appointees to it are aware that it is sensitive and are informed of the provisions of this article.

SECTION 599.962. Reasonable Suspicion.

(a) Reasonable suspicion is the good faith belief based on specific articulable facts or evidence that an employee may have violated the policy prescribed in section 599.960(b) and that substance testing could reveal evidence related to that violation.

(b) For the purposes of this Article, reasonable suspicion will exist only after the appointing power or his/her designee has considered the facts and/or evidence in the particular case and agrees that they constitute a finding of reasonable suspicion. A designee shall be an individual other than the suspected employee's immediate supervisor and other than the person who made the initial observation leading to the question of reasonable suspicion. The designee shall be a person who is authorized to act for the appointing power in carrying out this Article and who is thoroughly familiar with its provisions and procedures.

(c) After it has been confirmed by the designee the facts and/or evidence upon which the reasonable suspicion is based shall be documented in writing. A copy of this shall be given to the affected employee.

SECTION 599.963. Testing Process and Standards.

Substance testing under this Article shall comply with the following standards and procedures:

(a) The drug testing process shall be one that is scientifically proven to be at least as accurate and valid as urinalysis using an immunoassay screening test, with all positive screening results being confirmed utilizing gas chromatography/mass spectrometry before a sample is considered positive. The alcohol testing process shall be one that is scientifically proven to be at least as accurate and valid as (1) urinalysis using an enzymatic assay screening test, with all positive screening results being confirmed using gas chromatography before a sample is considered positive or (2) breath sample testing using breath alcohol analyzing instruments which meet the State Department of Health Services standards specified in Title 17, Division 1, Chapter 2, Subchapter 1, Group 8, Article 7, Sections 1221.2 and 1221.3 of the California Code of Regulations.

(b) Substances to be tested for shall include the following:

- (1) Amphetamines and Methamphetamines
- (2) Cocaine
- (3) Marijuana/Cannabinoids (THC)
- (4) Opiates (narcotics)
- (5) Phencyclidine (PCP)
- (6) Barbiturates
- (7) Benzodiazepines
- (8) Methaqualone
- (9) Alcohol

In addition, with the approval of the department testing may be conducted for other controlled substances when the appointing power reasonably suspects the use of other substances.

(c) After consulting with expert staff of the laboratory or laboratories selected to perform the testing under this Article, the department shall set test cutoff levels that will identify positive test samples while minimizing false positive test results.

(d) Notwithstanding (c), the Department shall use cutoff levels for substances listed in (b)(1) through (5) as established in SAMHSA, Mandatory Guidelines for Federal Workplace Drug Testing Programs, Subpart B, Section 2.4, Part (e) and Part (f), 59 FR 29916 dated June 9, 1994, and 62 FR 51118 dated September 30, 1997. For Alcohol (b)(9) the Department shall use the Federal Motor Carrier Safety Administration alcohol concentration cutoff level as described in Part 382 - Controlled Substances and Alcohol Use and Testing, Section 201, 49 CFR dated July 25, 1995.

(e) Test samples will be collected in a clinical setting such as a laboratory collection station, doctor's office, hospital or clinic or in another setting approved by the department on the basis that it provides for at least an equally secure and professional collection process. The department shall specify procedures to ensure that true samples are obtained.

(f) The Department shall use chain of custody procedures similar to those used by SAMHSA to ensure that a strict chain of custody is maintained for the sample from the time it is taken, through the testing process, to its final disposition. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or sample is handled or transferred and identifying every individual in the chain of custody.

(g) Drug tests shall be performed by a commercial laboratory that is certified by SAMHSA (pursuant to Mandatory Guidelines for Federal Workplace Drug Testing Program, Federal Register, Vol. 53, No. 69 or which meets the standards used by the College of American Pathologists (CAP) to accredit laboratories for forensic urine drug testing (Standards for Accreditation, Forensic Urine Drug Testing Laboratories, College of American Pathologists).

(h) For random substance testing under this article, the department will use a scientifically valid method such as a random number table or a computer based random number generator that is matched with Social Security numbers, payroll identification numbers, or other comparable identifying numbers. A number not to exceed thirty-five percent of managers, supervisors, and exempt employees who are subject to random substance testing will be randomly selected for substance testing annually.

SECTION 599.964. Employee Rights.

(a) Employees subject to random testing shall be noticed at least thirty days prior to implementation of the testing program that they will be subject to random substance testing. The notice shall include information explaining the substance abuse testing procedures to be followed.

(b) Employees suspected of violating the policy prescribed in section 599.960 shall be entitled to representation during any interrogative interviews with the affected employee that could lead to a decision by the appointing power to take adverse action against the employee, regardless of whether these interviews occur before or after the sample is taken. Employees shall also be entitled to representation in any discussion with the Medical Review Officer that occur under section 599.965.

(c) The sample collection process shall include the opportunity for the employee to provide information about factors other than illegal drug use, such as taking legally prescribed medication, that could cause a positive test result. At the employee's option, this information may be submitted in a sealed envelope to be opened only by the Medical Review Officer if the test result is positive.

(d) The employee shall receive a full copy of any test results and related documentation of the testing process.

(e) All confirmed positive samples shall be retained by the testing laboratory in secure frozen storage for one year following the test or until the sample is no longer needed for appeal proceedings or litigation, whichever is longer. At the employee's request and expense the sample may be retested by that laboratory or another laboratory of the employee's choice.

SECTION 599.965. Medical Review Officer.

Subject to the Department of Personnel Administration approval, each appointing power shall designate one or more Medical Review Officers, who shall be licensed physicians who meet federal SAMHSA requirements as described in 59 FR 29908, Mandatory Guidelines For Federal Workplace Drug Testing Programs, Subpart A, Section 1.2 Definitions, dated June 9, 1994 to have the appropriate medical training to interpret and evaluate an

individual's confirmed positive test result, to receive test results from the laboratory. Upon receiving results, the Medical Review Officer shall:

- (a) Review the results and determine if the standards and procedures required by this Article have been followed.
- (b) For positive results interview the affected employee to determine if factors other than illegal drug use may have caused the result.
- (c) Consider any assertions by the affected employee of irregularities in the sample collection and testing process.
- (d) Based on the above, provide a written explanation of the test results to the appointing power or his/her designee. The employee shall also receive a copy of this explanation.

SECTION 599.966. Records; Confidentiality.

As prescribed by the director, each appointing power shall maintain records of the circumstances and results of any employee testing under this Article. These records, and any other information pertaining to an employee's drug or alcohol test, shall be considered confidential and shall be released to:

- (a) The employee who was tested or other individuals designated in writing by that employee.
- (b) The appointing power's Medical Review Officer.
- (c) The Department of Personnel Administration as needed for the effective Administration of the Article.
- (d) Individuals who need the records or information to:
 - (1) Properly supervise or assign the employee.
 - (2) Determine, or assist in determining, what action the appointing power should take in response to the test results.
 - (3) Respond to appeals or litigation arising from the drug test or related actions.

APPENDIX C

SECTIONS 3300 to 3312 of the CALIFORNIA GOVERNMENT CODE

Commonly Referred to as the Peace Officer Bill of Rights (POBR)

NOTE: Statutes are subject to amendment at any time. The statutes contained in this appendix are current as of the publication date of this handbook, but cannot be relied upon as accurate after that date. For the most current version of a statute, refer to the California Government Code. An electronic version of the California Government Code is available at www.leginfo.ca.gov.

SECTION 3300. This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act

SECTION 3301. For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

SECTION 3302. (a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

SECTION 3303. When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press

or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

SECTION 3304. (a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefore and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons."

Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

(d) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

(1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(2) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(3) If the investigation is a multi-jurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(4) If the investigation involves more than one employee and requires a reasonable extension.

(5) If the investigation involves an employee who is incapacitated or otherwise unavailable.

(6) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

(7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(8) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

(e) Where a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.

(f) If, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing

of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.

(g) Notwithstanding the one-year time period specified in subdivision (c), an investigation may be reopened against a public safety officer if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exist:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the public safety officer's predisciplinary response or procedure.

(h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision (e) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.

SECTION 3304.5. An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.

SECTION 3305. No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

SECTION 3306. A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

SECTION 3306.5. (a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a public safety officer, during usual business hours, with no loss of compensation to the officer, permit that officer to inspect personnel files that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each public safety officer's personnel file or a true and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a request therefor by the officer.

(c) If, after examination of the officer's personnel file, the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the officer.

(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the

employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer.

SECTION 3307. (a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take, or did not take, a lie detector test, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take, or was subjected to, a lie detector test.

(b) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

SECTION 3307.5. (a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

(b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars (\$500) per day commencing two working days after the date of receipt of the notification to cease and desist.

SECTION 3308. No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

SECTION 3309. No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

SECTION 3309.5. (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(c) (1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the parties attorney, or both pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a public safety department, as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.

(d) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the officer whose right or protection was denied, the public safety department shall also be liable for the amount of the actual damages.

Notwithstanding these provisions, a public safety department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the public safety department and the contractor, a "hold harmless" or similar provision that protects the public safety department from liability for the actions of the contractor. An individual shall not be liable for any act for which a public safety department is liable under this section.

SECTION 3310. Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

SECTION 3311. Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

SECTION 3312. Notwithstanding any other provision of law, the employer of a public safety officer may not take any punitive action against an officer for wearing a pin or displaying any other item containing the American flag, unless the employer gives the officer written notice that includes all of the following:

(a) A statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag.

(b) A citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates.

(c) A statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.

APPENDIX D

SAMPLE FORMATS

APPENDIX D-01: SAMPLE FORMAT FOR CORRECTIVE INTERVIEW

SUPERVISOR'S RECORD OF CORRECTIVE INTERVIEW WITH [EMPLOYEE NAME] ON [DATE]

What behavior needs correction? *Complete this section in advance of the interview. Note specific instances and discuss each with employee.*

- 1.
- 2.
- 3.

What specific actions will the employee take to correct this behavior? *Complete this section at time of interview.*

- | | |
|----|----------|
| 1. | By when? |
| 2. | By when? |
| 3. | By when? |

The employee will be assisted in making the required changes in the following ways:

- 1.
- 2.
- 3.

If these matters are not corrected satisfactorily, further action will be considered.

SUPERVISOR

DATE

State of California

MEMORANDUM

TO: Employee Name DATE:
 Location

FROM: Department

SUBJECT: Record of Corrective Interview on [date]

This memorandum will confirm our discussion on [date], when I met with you to discuss some of the problems you have had recently in meeting your job requirements.

We discussed the following specific problem areas:

1. Several times you have failed to meet reasonable deadlines for completing projects. On Monday [date] I assigned you a typing project with a deadline of Friday [date] at noon, which would give me time to review it and get it in Friday's 4:00 P.M. mail. You turned in the project at 3:30 P.M., leaving me insufficient time to review it, so it did not go out until the following Monday. In addition, you have a regular report due to me on the 5th and 20th of each month. On [date] and [date], you neglected to get the reports in on time despite repeated reminders. At our discussion you stated that you had received priority assignments from other department personnel that prevented you from meeting your deadlines in these instances.
2. On [dates] you reported to work from 20 minutes to an hour late without calling the office in advance to inform me you would be delayed as is required by department policy. At our discussion you explained that your son has recently developed a habit of dawdling in the morning, which in turn causes you to be late to work.
3. Despite repeated verbal warnings you continue to leave your post unattended without notifying your coworkers when you will be away from your desk or coordinating with them so they can cover your phones. The most recent instance occurred on the morning of our discussion at 10:00 A.M. when you took your morning break without telling Marie you were leaving. She had to repeatedly interrupt her rush-photocopying project to answer your phone. Had you coordinated with her, you could have postponed your break for 15 minutes until her rush project was completed.

During our discussion we reached an agreement that you will immediately take the following steps to correct these problems:

1. You will turn in your completed work to me by the assigned deadline. If for some reason it appears you will be unable to meet the deadline, you will inform me immediately so that appropriate steps may be taken to either reassess the deadline or alleviate your work load. Further, if you receive an assignment from another department employee, you are to inform me so that I can decide if your priorities should be shifted. You will not take it upon yourself to decide which of the conflicting assignments takes precedence.
2. You will observe your starting time of 8:00 A.M. It is your responsibility to structure your personal time and take care of family obligations in a manner that will enable you to meet your work commitments. In the event of an emergency when you cannot avoid being late, you must observe department policy and call in prior to your starting time to notify me of your circumstances. A copy of the policy is attached for your review.
3. You will notify your coworkers when you leave your post for more than a few moments, and will coordinate with them prior to leaving the office for your breaks so your phones will be covered. You have agreed that you are capable of adhering to this policy without having to be constantly reminded.

I am addressing these problems with you at this time to assist you in correcting them. If these problems should continue, we reserve the right to address the matters referred to herein, and any other occurrences, by way of further corrective or adverse action.

If you are experiencing personal problems that may be contributing to these work issues, I recommend that you contact the Employee Assistance Program for information and assistance.

 SUPERVISOR

 DATE

I acknowledge that this memo was discussed with me and I received a copy of it on [date].

 EMPLOYEE

 DATE

cc: Personnel File

APPENDIX D-03: SAMPLE FORMAT FOR NOTICE OF ADVERSE ACTION

Employee's Name
Classification
Work address
Home address

Social Security Number

You are hereby notified that, pursuant to Government Code Section 19574, adverse action is being taken against you as follows:

**I
NATURE OF THE ACTION**

You are hereby [dismissed or suspended or formally reprimanded] in your position as [classification].

OR

You are hereby demoted from your position as [classification] to the position of [classification].

OR

Your salary is hereby reduced [%] for a period of [months or pay periods] in your position as [classification].

OR

Combinations of the above, for example:

You are hereby suspended in your position as [classification] for a period of 30 days, and thereafter demoted from your position as [classification] to the position of [classification],

**II
EFFECTIVE DATE**

This [dismissal or demotion or formal reprimand] shall be effective on [date].

OR

This [demotion or suspension or salary reduction] shall be effective at the [start or close] of business on [date], and shall end at the [start or close] of business on [date], for a total of [working days or calendar days or weeks/months or pay periods].

OR

Combinations of the above, for example:

This suspension shall be effective at the [start or close] of business on [date], and shall end at the [start or close] of business on [date], and the demotion shall thereafter be effective at the [start or close] of business on [date].

**III
STATEMENT OF CAUSES**

This adverse action is being taken against you for the causes set forth in the following subsections of Government Code Section 19572:

List all applicable causes specified in Government Code Section 19572, including one or more of the following with the exception of those marked with an asterisk (), which are disfavored.*

- (a) Fraud in securing appointment.
- (b) Incompetency.
- (c) Inefficiency.
- (d) Inexcusable neglect of duty.
- (e) Insubordination.
- (f) Dishonesty.
- (g) Drunkenness on duty.
- (h) Intemperance.
- (i) Addiction to the use of controlled substances.*
- (j) Inexcusable absence without leave.
- (k) Conviction of a felony or conviction of a misdemeanor involving moral turpitude.
- (l) Immorality.*
- (m) Discourteous treatment of the public or other employees.
- (n) Improper political activity.
- (o) Willful disobedience.
- (p) Misuse of state property.
- (q) Violation of this part or board rule.*

- (r) Violation of prohibitions in accordance with Section 19990.
- (s) Refusal to take and subscribe oath or affirmation.
- (t) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment.
- (u) Any negligence, recklessness, or intentional act which results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.
- (v) The use during duty hours, for training or target practice, of any material which is not authorized therefore by the appointing power.
- (w) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, disability, marital status, sex, or age, against the public or other employees while acting in the capacity of a state employee.
- (x) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.

* These sections are no longer used.

**IV
STATEMENT OF FACTS**

List in chronological or some other logical order, in consecutively numbered paragraphs, the employee's specific acts or omissions giving rise to the adverse action, including relevant names, locations, and dates, such as the following examples.

1. On or about February 1, [year], you left your duty post at approximately 3:30 P.M., one-half hour before the end of your scheduled shift, without having obtained approval from your supervisor, Sue Smart, or advising anyone that you were leaving. As a result of your actions, your post was unattended for half an hour and traffic was not monitored, resulting in a potential safety hazard.
2. On or about March 16, [year], when your supervisor met with you to discuss recent performance problems, you became argumentative and verbally abusive, calling her a "nit-wit" and loudly stating words to the effect that, "You're always on my case - why don't you get a life!" You then abruptly left the meeting, slamming the door on your way out. You failed to return to your post for the remainder of your scheduled shift, and further failed to notify anyone concerning your absence. Your conduct was viewed by other employees, and caused an upset in the workplace.
3. From January until the present, you have failed, on numerous occasions, to arrive by 7:00 A.M. which is the starting time for your scheduled shift, including on or about the following specific occasions:

January 23	16 minutes late
February 3	10 minutes late
February 4	35 minutes late
February 18	9 minutes late
February 22	45 minutes late
March 8	11 minutes late
March 15	16 minutes late
March 23	8 minutes late

Your failure to arrive on time has had a serious negative impact on the morale of your coworkers, since they are required to cover for you when you are late and cannot begin their own work until you arrive.

**V
NOTICE AND PROGRESSIVE DISCIPLINE**

List in numbered paragraphs any items that are relevant to the issues of progressive discipline and level of penalty, including such things as prior adverse actions, informal discipline, relevant counseling sessions, Employee Assistance Program referrals, MSA denials, poor performance evaluations, relevant trainings, etc., such as the following examples.

1. On or about [date], you received an adverse action (formal reprimand) for violations of Government Code Section 19572 (d) and (j) for leaving your post without authorization and for several instances of tardiness.
2. On or about [date], you were counseled by your supervisor, Sue Smart, about the need to obtain prior supervisory approval to leave before the end of your shift, and were reminded of the need to arrive in time to start work at 7:00 A.M. At that time, you were given a copy of the Department policy concerning the correct procedure for obtaining leave.
3. On or about [date], you were given a Supervisory Referral to the Employee Assistance Program in an effort to address any personal problems that might be contributing to your tardiness.

VI

APPEAL RIGHTS

1. Right to Respond to Appointing Power.

In accordance with State Personnel Board Rule 52.3 (Skelly Rule), you are entitled to at least five (5) working days within which to respond to this notice. You may respond orally or in writing prior to [date], which is the effective date of this action. If you wish to respond you may do so to:

- Name of individual at least one level above the person taking the action
- Title
- Address
- Telephone number

You are entitled to a reasonable amount of State time to prepare your response to the charges. You are not entitled to a formal hearing with examination of witnesses at this stage of the proceedings. However, another may represent you in presenting your response. The appointing power may sustain, amend, modify, or revoke the adverse action in whole or in part.

2. Right to Appeal to the State Personnel Board.

If applicable, list other appeal rights pursuant to the applicable collective bargaining agreement.

Regardless of whether you respond to these charges to the appointing power, you are advised that you have the right to file a written answer to this notice with the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814, not later than thirty (30) calendar days after the effective date of this action. An answer shall be deemed to be a request for hearing or investigation as provided in Section 19575 of the Government Code. If you answer as provided, the Board or its authorized representative shall, within a reasonable time, hold a hearing and shall notify the parties of the time and place thereof. If you fail to answer within the time specified, the adverse action taken by the appointing power shall become final.

You are responsible for notifying the State Personnel Board and your appointing power of any changes in your address that occur after the effective date of this adverse action.

3. Right to Inspect Documents.

Copies of any documents or other materials giving rise to this adverse action are attached for your inspection. This documentation is not being provided to the State Personnel Board in advance of any appeal hearing that may be scheduled.

Name, Title	Date
-------------	------

cc:

Enclosures: List of Supporting Materials, with supporting materials



LIST OF SUPPORTING MATERIALS

The following materials, consisting of all materials upon which this adverse action is based, are attached and served herewith:

Number and describe each attachment briefly.

State of California

MEMORANDUM

TO: Employee Name **DATE:**
Location

FROM: Department

SUBJECT: Notice of Administrative Leave

Pursuant to Government Code Section 19991.10 you are hereby placed on paid administrative leave effective [date] through [date].

During this time you are not to report to the work site unless specifically directed to do so by [name of supervisor]. During regular business hours you are to remain available and you must notify your supervisor whenever you will be at a location other than your residence.

If you have any questions, please contact me at [phone number].

SUPERVISOR DATE

cc: Personnel Analyst

APPENDIX D-05: SAMPLE FORMAT FOR NOTICE OF REJECTION DURING PROBATIONARY PERIOD

Employee's Name
Civil Service Classification
Work address
Home address

Social Security Number

You are hereby notified that, pursuant to Government Code Section 19173, you are rejected during your probationary period from your position as [classification].

If extension of probationary period for up to five working days is needed to provide employee with full five working days' Skelly notice required by SPB Rule 52.3, include the following.

Pursuant to Government Code Section 19173 and State Personnel Board Rule 321(c), your probationary period is extended to [date] in order to provide you with the full notice period required by State Personnel Board Rule 52.3.

I

EFFECTIVE DATE

The effective date may be any date prior to expiration of the probationary period, including extension of up to five working days to provide full five working days' Skelly notice required by SPB Rule 52.3.

This rejection during probation shall be effective at the start of business on [date].

II

STATEMENT OF CAUSES

Your rejection is for reasons relating to your qualifications, the good of the service, and failure to demonstrate merit, efficiency, fitness and moral responsibility.

III

STATEMENT OF FACTS, ACTS AND OMISSIONS

List in chronological or some other logical order, in consecutively numbered paragraphs, the employee's specific acts or omissions giving rise to the rejection, including relevant names, locations, and dates, such as the following examples.

1. You have failed to satisfactorily complete tasks that were assigned to you, including the following:
 - (a) On or about April 3, [year], you failed to complete an assigned task to review and purge all the case files that were stored in the file room. Your supervisor originally assigned the task on February 25, [year], with a due date of March 15, [year]. When you failed to meet the assigned deadline, your supervisor extended it to April 3, [year].
 - (b) On or about April 20, [year], you failed to turn in a summary of cases as had been assigned by your supervisor on April 1, [year]. When asked about your reason for failing to complete the assignment, you stated, "I just forgot about it," or words to that effect. As a result of your failure to complete this assignment, another employee had to work overtime to complete the project, and the Section was late in submitting a required report to management.
2. You have repeatedly failed to report for work by your scheduled starting time, including on or about the following specific occasions:

February 12	10 minutes late
February 28	23 minutes late
March 6	16 minutes late
April 6	10 minutes late
3. When your supervisor counseled you about your tardiness on April 6, [year], you became defensive and argumentative, loudly telling him, "Get off my back!" or words to that effect. Your outburst was witnessed by other employees and had a disruptive effect on the workplace for the remainder of the day.

IV

NOTICE AND PROGRESSIVE DISCIPLINE

List in numbered paragraphs any items that are relevant to the issues of notice and progressive discipline, including such things as Reports on Probation, counseling sessions, trainings, EAP referrals, etc., such as the following examples.

1. On several occasions in [months, years] your supervisor informally counseled you about the need to meet work deadlines, and about your defensive attitude.

2. On or about [date] you were given a First Report of Performance in which you were rated as "Improvement Needed" in the categories of Knowledge, Skill, and Work Habits. Your overall rating was "Improvement Needed." Your supervisor specifically discussed with you the need to arrive at work on time and meet deadlines, and warned you that failure to demonstrate substantial improvement could result in your rejection during probation.
3. On or about [date] you were given a memorandum in which your supervisor counseled you about your failure to meet required deadlines, warning you that your performance was unacceptable.

V
APPEAL RIGHTS

1. Right to Respond to Appointing Power.

In accordance with State Personnel Board Rule 52.3, you are entitled to a minimum of five (5) working days within which to respond to this notice. You may respond orally or in writing prior to [date], which is the effective date of this rejection. If you wish to respond, you may do so to:

Name of individual at least one level above the person taking the action
 Title
 Address
 Telephone number

You are entitled to a reasonable amount of State time to prepare your response to the charges. You are not entitled to a formal hearing with examination of witnesses at this stage of the proceedings. However, another may represent you in presenting your response. The appointing power may amend, modify, or revoke the rejection in whole or in part.

2. Right to Appeal to the State Personnel Board.

Regardless of whether you respond to these charges to the appointing power, you are advised that you have the right to file a written answer to this notice with the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814, within fifteen (15) calendar days after the effective date of the rejection. An answer shall be deemed to be a request for a hearing or investigation as provided in Section 19175 of the Government Code. If you answer as provided, the Board or its authorized representative shall, within a reasonable time, hold a hearing and shall notify the parties of the time and place thereof. If you fail to answer within the time specified, the rejection shall become final.

You are responsible for notifying the State Personnel Board and your appointing power of any changes in your address that occur after the effective date of this rejection.

It is the current work site's responsibility to determine the employee's return rights and inform the receiving agency or work site of the rejection. If employee transferred or promoted from a civil service position in which he or she had permanent status, include information on return rights, as follows.

3. Return Right to Former Position.

Pursuant to the provisions of Government Code Section 19140.5, you have a right to return to your former position in the [name of employing agency, or former work site if within the same agency]. If you wish to exercise that right, you must contact [Personnel Officer or other designated person] and request that you be reinstated. Your request must be made within ten (10) working days after the effective date of the rejection.

4. Right to Inspect Documents.

Copies of any documents or other materials giving rise to this rejection are attached for your inspection. This documentation is not being provided to the State Personnel Board in advance of any appeal hearing, which may be scheduled.

Name and Title	Date
----------------	------

Enclosures: List of Supporting Materials, with supporting materials



LIST OF SUPPORTING MATERIALS

The following materials, consisting of all materials upon which this rejection during probationary period is based, are attached and served herewith:

Number and describe each attachment briefly.

APPENDIX D-6A: SAMPLE FORMAT FOR DENIAL OF SISA

State of California

MEMORANDUM

TO: Employee Name DATE:
Location
FROM: Department
SUBJECT: Denial of Special In-grade Salary Adjustment (SISA)

Your job performance does not meet the standards of quality and quantity expected at this stage of experience in your position. I have therefore recommended that your Special In-grade Salary Adjustment, which would otherwise be effective with the [month/year] pay period, not be granted.

Specific examples of your unsatisfactory performance include the following:

List specific examples.

This denial will be reconsidered within the next six months.

Name and Title Date
cc: Personnel Transactions
Personnel File

APPENDIX D-6B: SAMPLE FORMAT FOR DENIAL OF MSA

State of California

MEMORANDUM

TO: Employee Name DATE:
Location
FROM: Department
SUBJECT: Denial of Merit Salary Adjustment (MSA)

Your job performance does not meet the standards of quality and quantity expected at this stage of experience in your position. I have therefore recommended that your Merit Salary Adjustment, which would otherwise be effective with the [month/year] pay period, not be granted.

Specific examples of your unsatisfactory performance include the following:

List specific examples.

Your appeal rights are as follows:

Specify the employee's appeal rights. Refer to appropriate collective bargaining agreement or, if none, to DPA Rule 599.684.

Your Merit Salary Adjustment will be reconsidered no sooner than [3 months] and no later than the end of the calendar year.

Name and Title Date
cc: Personnel Transactions
Personnel File

APPENDIX D-07: SAMPLE FORMAT MEDICAL OPTIONS AND DISCUSSION CHECKLIST

Employee's Name
Social Security Number
Civil Service Classification
Department
Work address
Home address

To: [Name of Employee]

The department is in receipt of the [date] medical report of [doctor's name] which indicates that you are unable to perform the duties of your current position as a [classification]. Therefore the following information is being provided for you to let you know of the various options that may be available to you. We invite you to engage with us in an interactive process to begin to develop an appropriate plan for resolving the issues raised in this report.

Please contact me by [date] to set up a meeting to discuss these options. A failure to do so may result in the department selecting an option for you.

1. Return to Work

- a. Full Duty: You may be able to return to work as a [classification] performing full duty with no restrictions, if you provide a full medical release, in writing, from your treating physician. This medical release must be provided prior to your return to work.
- b. Reasonable Accommodation: If you believe that you are disabled and that a reasonable accommodation would enable you to perform the essential functions of your current position/classification or of another classification, for which you meet the minimum qualifications, you may request a reasonable accommodation. If you are qualified and would like to pursue an alternate placement to another classification, a list of current job vacancies will be provided to you. You may indicate which positions you are interested in and you will be given an opportunity to demonstrate your qualifications for those positions.

This option may be effectuated through a medical transfer/demotion pursuant to Government Code Section 19253.5.

- c. Medical Transfer/Demotion: If you are unable to perform the work of your current position, but are able to perform the work of another position in the department, you may be able to medically transfer or medically demote to such a position. If at a later date you are no longer incapacitated for duty in your original position, under most circumstances, you would have a mandatory right to reinstatement to that classification or an equivalent classification. This option is available through the provisions of Government Code Section 19253.5.

2. Temporary Leave

- a. Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA): If you qualify, you may request a leave of absence under either of these statutes. Both allow qualified employees to take up to 12 weeks of unpaid leave each year when they, or a qualified family member, have a serious health condition. You may be able to utilize existing leave credits. These statutes require that the employer maintain an employee's health, dental, and vision coverage during such leave.
- b. Pregnancy Disability Leave: If you are unable to perform in your current position due to a disability related to pregnancy, you may be entitled to unpaid leave. Accrued leave credits may be available to supplement this leave.
- c. Medical Leave of Absence: You may request an unpaid medical leave of absence for up to one year. Under this option, the employer is not required to maintain an employee's health, dental, and vision coverage. You may choose to pay for these benefits yourself.
- d. Leave Balances: You may be able to utilize existing leave balances, including a request for catastrophic leave.
- e. Temporary Assignment: A temporary assignment or loan of employees within an agency or between agencies not to exceed two years may be available to facilitate your return to work. You would have a mandatory right to return to your former position should this option be exercised.

- f. Non-Industrial Disability Insurance (NDI): If you have a nonindustrial health condition, or a denied Workers' Compensation claim, which prevents you from working you may be entitled to NDI benefits. The Employment Development Department (EDD) administers the NDI benefit. Your doctor must provide medical substantiation of your health condition in order for EDD to determine your eligibility for NDI benefits. While on NDI, health, dental, and vision benefits are covered.
- g. Temporary Total Disability/Industrial Disability Leave/Vocational Rehabilitation: If you are industrially injured you may be entitled to Temporary Total Disability benefits, Industrial Disability Leave benefits, or if eligible and approved as a Qualified Injured Worker in a Workers' Compensation case, Vocational Rehabilitation (VR) benefits. The VR benefit is administered through the State Compensation Insurance Fund (SCIF). Continuation of health care benefits may be available. To determine your eligibility, please contact the SCIF VR coordinator or your Workers' Compensation attorney.

3. Separation from State Service

- a. Disability Retirement: If you are unable to return to work due to your health condition, you may apply for disability retirement with CalPERS. Disability retirement is considered a temporary separation from State service. Health benefits are available through CalPERS while you are on retirement status. If, after you are approved for disability retirement and, at a later date, it is determined that you are able to return to work as a [JOB TITLE], you will have mandatory rights to reinstatement to [JOB TITLE].

While you await the determination of your disability retirement application from CalPERS, you may use your existing leave credits, request FMLA/CFRA leave, or request a medical leave of absence. If you are eligible you may also apply for service retirement pending approval of your disability retirement.
- b. Service Retirement: If you are eligible, you may apply for service retirement with CalPERS. A service retirement is a permanent separation from State service. Health benefits are available through CalPERS while you are on retirement. You would retain permissive reinstatement rights to State service.
- c. Voluntary Resignation: You may choose to voluntarily resign from State service. You will retain permissive reinstatement rights. You may be able to purchase health, dental, and vision benefits.

These options may not include all available legal options. If you have any other options that you would like to discuss, please let me know. During our meeting, you may also request mediation through the State Personnel Board's State Employee Mediation Program. If we agree to mediate, the issues will be discussed in a confidential forum and an impartial, trained mediator will assist us in finding a mutually acceptable resolution.

If you do not respond to this letter or we are unable to reach a resolution, we may pursue one of the following options.

- 1. If you are able to work in an alternate classification, we may medically transfer or demote you to a currently vacant position for which you meet the minimum qualifications. We will make an effort to place you in the highest paying vacant position for which you are qualified, which is not promotional and which meets your medical restrictions.
- 2. If you are unable to perform the work of your present position and no position is available to which you could be medically transferred or demoted, we may pursue one of the following options.
 - a. Disability Retirement: If you have not pursued disability retirement but are eligible to apply, we may file on your behalf. While the application is pending, you may utilize your existing leave credits until exhausted. If you exhaust all of your leave credits prior to CalPERS determination, you will be paid by the department an interim disability allowance equal to the estimated amount of the disability retirement benefit to which you would be entitled. Should CalPERS grant the disability retirement application, you would begin to receive the disability retirement allotment directly from CalPERS.

If the disability retirement application is denied, you have a right to return to work, with back pay, less the interim disability allowance received during the pendency of the application.

APPENDIX D-08: SAMPLE FORMAT FOR NOTICE OF MEDICAL ACTION

Employee's Name
Civil Service Classification
Work address
Home address

Social Security Number

You are hereby notified that, pursuant to Government Code Section 19253.5, a medical action is being taken as follows:

**I
NATURE OF THE ACTION**

You are hereby terminated for medical reasons from your position as [classification].

OR

You are hereby demoted for medical reasons from your position as [current classification] to the position of [new classification].

OR

You are hereby transferred for medical reasons in your position as [current classification] at [current location] to the position of [current classification] at [new location and/or new time base].

**II
EFFECTIVE DATE**

This medical [termination or demotion or transfer] will be effective at the [start or close] of business on [date at least 15 calendar days after the date of service of the notice].

**III
STATEMENT OF CAUSES AND FACTS**

[For medical termination:] The appointing power has considered the conclusion(s) of medical examination(s) and other pertinent information and has determined that you are unable to safely and efficiently perform the essential job duties of your current classification or any other classification in the department. You [are not eligible for disability retirement OR have waived the right to retire for disability and have either elected to withdraw your retirement contributions or to permit those contributions to remain in the retirement fund with rights to service retirement].

OR

[For medical demotion:] The appointing power has considered the conclusion(s) of medical examination(s) and other pertinent information and has determined that you are unable to safely and efficiently perform the essential job duties of your current classification but are able to safely and efficiently perform the essential job duties of another classification.

OR

[For medical transfer:] The appointing power has considered the conclusion(s) of medical examination(s) and other pertinent information and has determined that you are unable to safely and efficiently perform the essential job duties of your current classification at your current [work location and/or time base] but are able to safely and efficiently perform them at a different [location and/or time base].

**IV
APPEAL RIGHTS**

1. Right to Respond to Appointing Power.

In accordance with State Personnel Board Rule 52.3 (Skelly Rule), you are entitled to at least 15 (fifteen) calendar days within which to respond to this Notice of Medical Action. You may respond orally or in writing prior to [date] which is the effective date of the action. If you wish to respond, you may do so to:

Name of individual at least one level above the person taking the action
Title
Address

Telephone Number

You are entitled to a reasonable amount of State time to prepare your response. You are not entitled to a formal hearing with examination of witnesses at this stage of the proceedings. However, you may be represented by another in presenting your response. The appointing power may amend, modify or revoke the medical action.

2. Right to Appeal to the State Personnel Board.

Regardless of whether you respond to the appointing power, you are advised that you have the right to file a written answer to this Notice with the State Personnel Board, Appeals Division, 801 Capitol Mall, Sacramento, CA 95814, not later than fifteen (15) calendar days after service of this notice. An answer shall be deemed to be a request for a hearing as provided in Section 19253.5(f) of the Government Code. If you fail to answer within the time specified, the medical action taken by the appointing power shall become final.

You are responsible for notifying the State Personnel Board and the appointing power of any changes in your address that occur after the effective date of this medical action.

3. Right to Inspect Documents.

Copies of any documents or other materials giving rise to this medical action are attached for your inspection. This documentation is not being provided to the State Personnel Board in advance of any appeal hearing that may be scheduled.

V
REINSTATEMENT RIGHTS

Pursuant to Government Code Section 19253.5(h), you have indefinite mandatory reinstatement rights. Your reinstatement rights are dependent upon your medical condition, the determination of the State Personnel Board Medical Officer, and your ability to meet all essential qualifying requirements for the classification to which you seek reinstatement. At such time as you believe you should be reinstated, you may petition the State Personnel Board to reinstate you by filing a written request with the State Personnel Board Medical Officer, 801 Capitol Mall, Sacramento, CA 95814. The State Personnel Board may reinstate you to your current classification, a comparable classification, or a lower-related classification, and may require you to complete a new probationary period. If it is determined that there is no vacant position to which you appropriately can be appointed, your name shall be placed upon such reemployment lists as the State Personnel Board determines to be appropriate.

NAME	DATE
Attachments: Supporting materials	



LIST OF SUPPORTING MATERIALS

The following materials, consisting of all materials upon which this medical action is based, are attached and served herewith:

List any relevant medical reports obtained by the department with employee's consent, any relevant medical reports that employee submitted to the department, written statements made by employee concerning his/her medical condition, all relevant medical authorizations signed by employee, and employee's current duty statement and class specifications.

Employee's Name
Civil Service Classification
Work address
Home address

Social Security Number

You are hereby notified that, pursuant to Government Code Section 19585, you are nonpunitively [terminated or demoted or transferred] from your position as [classification].

I
EFFECTIVE DATE

This [termination or demotion or transfer] shall be effective on [date].

II
STATEMENT OF CAUSES

This [termination or demotion or transfer] is for your failure to meet a requirement for continuing employment as prescribed in the class specifications for the position of [classification]. This action for failure to meet a requirement for continuing employment is nondisciplinary.

III
STATEMENT OF FACTS

List the specific requirement of the classification that is not met, for example:

Minimum qualifications for the position of [classification] require possession of a valid California driver's license. As of May 3, [year] you did not possess a valid California driver's license.

IV
REINSTATEMENT RIGHTS

As an employee who has been nonpunitively [terminated or demoted or transferred] from your position, you do not have a mandatory right to return to your former position. However, when the requirement for continuing employment is regained, you may be permissively reinstated to your position.

V
APPEAL RIGHTS

1. Right to Respond to Appointing Power.

In accordance with State Personnel Board Rule 52.3, you are entitled to a minimum of five (5) working days within which to respond to this notice. You may respond orally or in writing prior to [date], which is the effective date of this action. If you wish to respond, you may do so to:

Name of individual at least one level above the person taking the action
Title
Address
Telephone number

You are entitled to a reasonable amount of state time to prepare your response to the charges. You are not entitled to a formal hearing with examination of witnesses at this stage of the proceedings. However, another may represent you in presenting your response. The appointing power may amend, modify, or revoke the rejection in whole or in part.

2. Right to Appeal to the State Personnel Board.

You are advised that you have the right to file a written answer to this notice with the State Personnel Board, Appeals Division, 801 Capitol Mall, Sacramento, CA 95814, not later than thirty (30) calendar days after service of this notice. If this notice was personally served on you, the effective date of service is the date it was given to you. If service was made on you through the mail, service was effective on the date of mailing as ascertained by the postmark. An answer shall be deemed to be a request for a hearing or investigation as provided in Section 51.2 of Title 2 of the California Code of Regulations. If you file an answer as provided, the Board or its authorized representative shall, within a reasonable

APPENDIX D-10: SAMPLE FORMAT FOR NOTICE OF ABSENCE WITHOUT LEAVE (AWOL) SEPARATION

Employee's Name
Social Security Number
Civil Service Classification
Department
Work address
Home address

TO: [Name of Employee]

Re: **Notice of Separation Under Government Code Section 19996.2**

Please take notice that, effective [a date in the future reasonably calculated to give the employee notice and an opportunity to respond], the department intends to invoke the provisions of Government Code Section 19996.2 (the "AWOL Statute") because you have been absent without leave for at least five (5) consecutive working days.

You have been absent from [date] through [date] and the absence was without leave. *List inclusive dates of absence.*

If you disagree with these facts, you may request an informal hearing to be held prior to [the date the AWOL statute will be invoked]. To request an informal hearing, contact:

Name (at least one level above the person taking the action)
Title
Address
Telephone

At the informal hearing, you will have an opportunity to explain why you disagree with the department's intent to invoke the AWOL Statute. If the AWOL Statute is invoked, you will be deemed to have resigned effective [date], the last date you worked.

Regardless of whether you respond to the appointing power, you still have the right to file a written appeal with the Department of Personnel Administration, 1515 "S" Street, North Building, Suite 400, Sacramento, CA 95814-7243, within 15 calendar days after service of this notice. An appeal is deemed to be a request for reinstatement without back pay, as set forth in Government Code Section 19996.2. If you file a timely appeal, the Department of Personnel Administration or its authorized representative shall hold a hearing on your appeal within a reasonable time.

DATE

NAME, TITLE

cc: Personnel File

State of California

MEMORANDUM

TO: Employee Name DATE:
Location

FROM: Department

SUBJECT: Notice of Termination With Fault

As a result of the actions/reasons listed below, your appointment as a [classification] is terminated with fault effective [date].

Give narrative summary of the acts, omissions, or other reasons for the termination. Do not use legal causes for Adverse Action per Government Code Section 19572.

If you would like the opportunity to meet with [employee's second-level supervisor or other appropriate manager] to discuss the circumstances of this termination, please contact him/her prior to [date], the effective date of your separation.

As a temporary employee, you may appeal your termination with fault in writing to the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814, within 30 calendar days of the effective date of your termination. An Administrative Law Judge will make a determination as to whether the nature of the charges entitles you to a hearing. However, the only remedy that can be provided in the event of a successful appeal of a termination with fault is the removal of the "fault" designation from your record; you will not be entitled to return to your former position.

If you have any questions regarding this matter, please contact me at [phone number].

SUPERVISOR

DATE

cc: Personnel Officer
Personnel File

APPENDIX D-12: SAMPLE FORMAT FOR NOTICE TO EMPLOYEES REGARDING
PARTICIPATION IN A PERSONNEL MATTER

State of California

MEMORANDUM

TO: Employee Name DATE:
Location

FROM: Department

SUBJECT: Participation in a Personnel Matter

It has come to our attention that you may be contacted by [employee] or his/her [attorney or representative] concerning a personnel matter.

Please be advised that you are free to speak with the employee or the [attorney or representative], if you choose to do so, at appropriate times and places, without fear of any type of reprisal or retaliation. You may make arrangements to speak with the employee or the [attorney or representative] on your own time, or, if arranged through your supervisor, during working hours. Interviews during working hours will be conducted in a private setting on work premises. The contents of the interview need not be discussed with anyone, including your supervisor.

You are protected by law against any sort of reprisal or retaliation for either exercising your right to speak with the employee or [attorney or representative], or for declining to do so. If you have any reason to believe you are being retaliated against, or are fearful of such retaliation, please notify [Department Manager or Administrative Officer] immediately.

SUPERVISOR

DATE

APPENDIX D-13: SAMPLE FORMAT FOR DECLARATION OF SERVICE

I, [name of person serving notice], declare:

- I am, and was at the time of the service of the attached paper, over the age of 18 years and not a party to the proceedings involved.

- On [date], I served the attached:

- _____ Notice of Adverse Action
- _____ Notice of Amended Adverse Action
- _____ Notice of Rejection During Probationary Period
- _____ Notice of Medical Action
- _____ Notice of Non-Punitive Action
- _____ Other: _____

On [name of employee served] as follows:

- _____ By Personal Service, by personally delivering to and leaving with the employee a copy at the address set forth below.
- _____ By Service by Mail, by placing a true copy in a sealed envelope addressed to the last known address of the employee at the address set forth below, and depositing the envelope in the United States Mail, registered, with return receipt requested and postage thereon fully prepaid, at [city and state where posted].

Address of party served: [Address where personal service is made or mailing address used.]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on [date] at [city and state].

[Signature of person signing notice]

APPENDIX D-14: SAMPLE FORMAT FOR NOTICE OF AMENDED ADVERSE ACTION

Employee's Name
Social Security Number
Civil Service Classification
Department
Work address
Home address

TO: [Name of Employee]

Pursuant to Government Code Section 19575.5, the Notice of Adverse Action dated [date] is hereby amended as follows:

List all relevant changes

1. Section I, NATURE OF THE ADVERSE ACTION, is amended to read:

You are hereby [new penalty] in your position as [classification].

2. Section II, EFFECTIVE DATE OF THIS ADVERSE ACTION, is amended to read:

This [nature of the action] shall be effective at the start of business on [new effective date].

3. Section III, STATEMENT OF CAUSES, paragraph B, is amended to read:

List new causes under Government Code Section 19572.

4. Section IV, STATEMENT OF FACTS, is amended to read:

List new Statement of Facts.

5. Section V, OTHER MATTERS, is amended to read:

List new Other Matters.

6. Section VI, APPEAL RIGHTS, is amended in the following respects:

Indicate any changes or corrections to the original Notice.

In all other respects, the original Notice of Adverse Action dated [date] is reaffirmed.

NAME OF PERSON SIGNING ORIGINAL NOTICE OF
ADVERSE ACTION

DATE

cc: Department Personnel File

APPENDIX E

RELEVANT STANDARD STATE FORMS

Report of Performance for Probationary Employee (STD. 636):

<http://www.documents.dgs.ca.gov/osp/pdf/std636.pdf>

Individual Development Plan for Future Job Performance of Permanent Employees (STD. 637)
Performance Appraisal Summary of Past Job Performance of Permanent
Employees (STD. 637)

<http://www.documents.dgs.ca.gov/osp/pdf/std637.pdf>

APPENDIX F

RELEVANT SECTIONS of the CALIFORNIA CODE of CIVIL PROCEDURE

NOTE: *Statutes are subject to amendment at any time. The statutes contained in this appendix are current as of the publication date of this handbook, but cannot be relied upon as accurate after that date. For the most current version of a statute, refer to the California Government Code. An electronic version of the California Government Code is available at www.leginfo.ca.gov.*

SECTION 1013.

(a) In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(b) The copy of the notice or other paper served by mail pursuant to this chapter shall bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing.

(c) In case of service by Express Mail, the notice or other paper must be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with Express Mail postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by Express Mail; otherwise at that party's place of residence. In case of service by another method of delivery providing for overnight delivery, the notice or other paper must be deposited in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service; otherwise at that party's place of residence. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document served by Express Mail or other method of delivery providing for overnight delivery shall be extended by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(d) The copy of the notice or other paper served by Express Mail or another means of delivery providing for overnight delivery pursuant to this chapter shall bear a notation of the date and place of deposit or be accompanied by an unsigned copy of the affidavit or certificate of deposit.

(e) Service by facsimile transmission shall be permitted only where the parties agree and a written confirmation of that agreement is made. The Judicial Council may adopt rules implementing the service of documents by facsimile transmission and may provide a form for the confirmation of the agreement required by this subdivision. In case of service by facsimile transmission, the notice or other paper must be transmitted to a facsimile machine

maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause and served on the party making the service. The service is complete at the time of transmission, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended, after service by facsimile transmission, by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(f) The copy of the notice or other paper served by facsimile transmission pursuant to this chapter shall bear a notation of the date and place of transmission and the facsimile telephone number to which transmitted or be accompanied by an unsigned copy of the affidavit or certificate of transmission which shall contain the facsimile telephone number to which the notice or other paper was transmitted.

(g) Subdivisions (b), (d), and (f) are directory.

SECTION 1013a. Proof of service by mail may be made by one of the following methods:

(1) An affidavit setting forth the exact title of the document served and filed in the cause, showing the name and residence or business address of the person making the service, showing that he or she is a resident of or employed in the county where the mailing occurs, that he or she is over the age of 18 years and not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid.

(2) A certificate setting forth the exact title of the document served and filed in the cause, showing the name and business address of the person making the service, showing that he or she is an active member of the State Bar of California and is not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid.

(3) An affidavit setting forth the exact title of the document served and filed in the cause, showing (A) the name and residence or business address of the person making the service, (B) that he or she is a resident of, or employed in, the county where the mailing occurs, (C) that he or she is over the age of 18 years and not a party to the cause, (D) that he or she is readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service, (E) that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business, (F) the name and address of the person served as shown on the envelope, and the date and place of business where the correspondence was placed for deposit in the United States Postal Service, and (G) that the envelope was sealed and placed for collection and mailing on that date following ordinary business practices. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in the affidavit.

(4) In case of service by the clerk of a court of record, a certificate by that clerk setting forth the exact title of the document served and filed in the cause, showing the name of the clerk and the name of the court of which he or she is the clerk, and that he or she is not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid. This

form of proof is sufficient for service of process in which the clerk or deputy clerk signing the certificate places the document for collection and mailing on the date shown thereon, so as to cause it to be mailed in an envelope so sealed and so addressed on that date following standard court practices. Service made pursuant to this paragraph, upon motion of a party served and a finding of good cause by the court, shall be deemed to have occurred on the date of postage cancellation or postage meter imprint as shown on the envelope if that date is more than one day after the date of deposit for mailing contained in the certificate.

APPENDIX G

ACRONYMS USED IN THIS DOCUMENT

ACRONYM	DESCRIPTION
AWOL	Absent without Leave
CalPERS	California Public Employees Retirement System
CBA	Collective Bargaining Agreement
DPA	Department of Personnel Administration
EAP	Employee Assistance Program
FLSA	Fair Labor Standards Act
GC	Government Code
MSA	Merit Salary Adjustment
ROP	Report of Performance on Probationary Employee
SISA	Special In-Grade Salary Adjustment
SPB	State Personnel Board
Std.	Standard State Form
TAU	Temporary Authorization