

Unlawful Appointment Process Handout for Non-Delegated Departments

Introduction

This pamphlet is intended to provide some basic information to departments and employees about the non-delegated unlawful appointment review process, which is governed by the California Department of Human Resources (CalHR) per Government Code section 19257.5. Unlawful appointments occur when the hiring of an individual does not comply with applicable civil service laws and regulations. Such appointments may result from administrative mistakes or misinformation, improperly clearing the employment list, or in rare cases, attempts to circumvent the state's civil service system.

Discovery of an Unlawful Appointment

When a non-delegated department discovers that an employee's appointment may be an unlawful appointment, the department shall immediately notify CalHR's Personnel Management Division (PMD).

The employee will continue to work in the position and continue to receive compensation until the employee is officially notified by CalHR via formal letter of the outcome of the investigation. The voiding of an unlawful appointment occurs only after all the facts are gathered and the employee is provided the opportunity to respond, as required by 2 CCR § 266 and § 266.2.

Between the time of discovery of a potential unlawful appointment and CalHR's final determination, the employee should not be:

- Sent home,
- Returned to their previous position, or
- Encouraged to relinquish their current position.

Investigation of Facts

When CalHR becomes aware of a potential unlawful appointment, the PMD analyst assigned to the non-delegated department in question conducts a review of the specific facts and relevant documents regarding the appointment, as well as the applicable civil service laws, regulations, and policies. This information is reviewed to determine the following:

1. The legality of the appointment.
2. Whether the employee and/or department acted in good faith when the appointment was offered and/or accepted.

Preliminary Determination

After reviewing all the facts, the PMD analyst at CalHR will send a preliminary letter of determination to the employee outlining the basis of the decision. CalHR will send a copy of this letter to the department. The department shall be available to discuss the preliminary letter with the employee and respond to any questions the employee may have regarding the pending action. The employee will have 15 calendar days to submit additional information before a final decision is made. CalHR will review any additional information submitted and re-evaluate the pending action before a final determination is made.

Final Determination

After the 15-day response period has passed and all documents have been considered, CalHR will send a final determination letter to the employee. If the investigation finds that the appointment is unlawful, the appointment will be voided. The department shall be available to discuss the decision letter with the employee, respond to any questions, and inform the employee of their reinstatement eligibility. If the employee has no former state service that can be considered for reinstatement purposes, the employee will be separated from state service.

Sometimes, after thorough investigation it is found that the appointment in question is legal, and in those cases, CalHR will send a letter outlining this determination to the employee and the department. The employee will continue working in the position.

Remedial Actions

When the investigation of an unlawful appointment shows that an employee accepted the appointment in good faith, the department will discuss remedial measures with the employee to mitigate the negative effects that the appointment termination may have on the employee (e.g., place the employee's name back on the employment list, etc.).

Cancellation of Status Related Rights

When an appointment is canceled, the status related to the appointment is nullified. This includes tenure in the appointment class, seniority credits, permissive reinstatement rights, eligibility to take promotional examinations, career credits, permanent or probationary status, service toward completion of the probationary period and any other status rights or eligibility stemming from the unlawful appointment.

Appeal Rights

If the appointment is deemed unlawful and voided, the employee may appeal after receiving the final determination letter from CalHR. Such appeals must be in writing, filed within 30 calendar days of receipt of the final decision to void the appointment, and addressed to the State Personnel Board (SPB),

Appeals Unit, 801 Capitol Mall MS # 22 Sacramento, CA 95814. More information about the appeal process can be found on the SPB website, www.spb.ca.gov.

Pay and Employee Benefits

In some cases, an employee whose appointment has been voided received a salary and employee benefits that he/she was not eligible to receive because of the unlawful nature of the appointment. These benefits may include vacation, sick leave, health benefits, retirement benefits, salary step advancement, service towards vacation accrual rates, etc. Government Code section 19275 allows employees who acted in good faith when accepting the appointment to retain the earned salary and benefits. However, if it is determined that the employee did not act in good faith when accepting the unlawful appointment, the state shall seek reimbursement from the employee for the compensation the employee received.

Employment History

Voided unlawful appointments will appear on the employee's employment history as a separation transaction from state service. If the employee has former state service that can be considered for reinstatement purposes, termination of the unlawful appointment will not break the continuity of state service because the employee will be reinstated to another appointment the day immediately following the termination of the unlawful appointment.

Questions

Departmental personnel offices will assist employees with any questions they may have regarding the appointment. Departments with questions should contact their CalHR PMD analyst.