

TITLE 2. DEPARTMENT OF HUMAN RESOURCES

NOTICE OF PROPOSED RULEMAKING

The Department of Human Resources (Department) proposes to adopt a regulation to provide clarity and specificity to section 18720.45 which was added to the Government Code by Senate Bill 1240. Section 18720.45, provides that state agencies shall use employment forms that require applicants for employment to disclose if they have previously entered into an agreement which prohibits the applicant from seeking or accepting subsequent employment with the state. The Department proposes to adopt the regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

I. PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

II. WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments may also be submitted by facsimile (FAX) at (916) 323-4723 or by email to nancy.craig@calhr.ca.gov. The written comment period begins on March 4, 2016 and closes at 5:00 p.m. on April 18, 2016. The Department will consider only comments received at the Department during that time. Submit comments to:

Nancy Craig
Legal Division
California Department of Human Resources
1515 S Street, North Building, Suite 500
Sacramento, CA 95811
Nancy.craig@calhr.ca.gov

III. AUTHORITY AND REFERENCE

The Department has authority to regulate in this area pursuant to Government Code section 19815.4, subd. (d) and Government Code section 18720. The proposed regulation implements, interprets, and makes specific section 18720.45 of the Government Code.

IV. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action will establish clear, updated, and specific guidance regarding what information must be requested from applicants on state employment forms.

Government Code section 18720.45, provides that employment forms used by state agencies shall require applicants to disclose whether the applicant has entered any agreement which prohibits the applicant from seeking or accepting subsequent employment with the state.

This proposed regulation will clarify and make specific section 18720.45. The Department interprets the statute to require applicants to disclose both prior agreements not to seek or accept employment with a particular agency as well as broader agreements not to seek or accept employment with any agency in the entire state civil service. This interpretation is supported by the law and good public policy. The Department has become aware that some employees and their exclusive representatives interpret section 18720.45 such that the applicant need only disclose those agreements in which the applicant agreed not to seek or accept employment with any agency in the entire state civil service. Under this interpretation, applicants need not disclose agreements not to return to a particular agency. Therefore, in order to provide clarity and transparency, and to prevent confusion as to when and under what circumstances applicants for a position must disclose a prior agreement not to seek or accept employment with the state, the Department is adopting this regulation to clarify and make more specific section 18720.45.

The proposed regulation clarifies that section 18720.45 requires disclosure of both types of agreements; those which include an agreement not to return to one particular agency as well as those that contain an agreement not to return to employment in state civil service as a whole. The proposed regulation mandates the exact questions and directions that must be included on employment forms to solicit the required information.

Under the proposed regulation, an applicant who previously entered into an agreement not to seek or accept employment anywhere in state civil service must disclose all such agreements. However, where an applicant agreed not to seek or accept employment with a particular agency, the proposed regulation limits the types of agreements that must be disclosed. Hence, where an applicant entered a prior agreement not to seek or accept employment with a particular agency, the applicant will only be required to disclose those agreements involving adverse actions, rejections during probation, and absence without leave (AWOL) separations.

By narrowing the types of agreements which must be disclosed when the employee agreed not to return to a particular agency, the regulation ensures that only those agreements that relate to the employee's work performance, including reliability are disclosed. For example, agreements pertaining only to an employee's medical condition or workers' compensation history do not reflect on the employee's work performance, including reliability, with the prior employer nor do such agreements predict ability to perform and be a good fit for a subsequent employer. Thus, the regulation does not require that those types of agreements be disclosed.

However, agreements involving adverse actions, rejections during probation and AWOL termination do provide other state agencies with relevant information regarding the employee's prior performance history, including reliability. Moreover, currently there is no mechanism in place in the state whereby state agencies other than the prior agency who entered the agreement, can obtain this information.

This same limitation is not necessary where an applicant agreed not to seek or accept employment with any agency in the state civil service as whole. In such cases, all agreements are relevant because the individual agreed never to return to any agency in the state.

The proposed regulation also defines "state agency" for the purpose of the regulation.

Anticipated Benefits of the Proposed Regulation:

These regulations will benefit applicants for employment, state agencies, and the state civil service overall. With the guidance provided by this regulation, applicants for employment will know precisely what information they are required to disclose regarding any previous agreements not to seek or accept employment with the state. The regulation will decrease the chance that such applicants fail to provide required information and the chance that they will provide unnecessary information. State agencies will receive relevant information regarding applicants' prior work history and reliability and will be able to make more informed hiring decisions. Specifically, they will be able to avoid unknowingly appointing individuals who had previously agreed to refrain from seeking or accepting employment with the state. Finally, the state service as a whole will benefit from a more transparent hiring process that enables better informed hiring decisions which will result in a stronger workforce.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The Department conducted a search of any regulations that would relate to this area and found that there are no existing state regulations that implement Government Code section 18720.45 and the requirement of state employment applicants to disclose prior agreements with the state. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

V. DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts:

None. The regulation merely interprets what information must be disclosed on applications for state employment.

Cost or savings to any state agency:

CalHR anticipates the costs resulting from this regulation will be negligible and absorbed within existing applicable budgets. The costs anticipated include the normal costs associated with

printing additional paper applications as well as the work hours required to design, develop, test, and deploy the changes in the ECOS system.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies:
None.

Cost or savings in federal funding to the state:
None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:
None. This regulation only affects the information that must be provided on applications for state employment.

Cost impacts on a representative private person or business:
The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Small Business Impact:
None. The proposed regulation affects only applicants for state employment and neither impacts nor applies to small businesses.

Impact on Reporting:
None. The proposed action does not require the making of any reports.

Effect on Housing Costs:
None.

VI. RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The proposed regulations specify and clarify what information must be required on an application for state employment. This proposal does not affect the creation or elimination of jobs within California. No new business will be created by and no existing businesses will be eliminated by this proposal. This proposal will not affect the expansion of existing businesses in California. The regulations do not have a direct impact on the health and welfare of California residents, worker safety, or the state's environment. However, the proposed regulations will indirectly benefit the health and welfare of California residents by increasing the information available to those selecting candidates for state employment, potentially resulting in a better working environment for state employees and greater efficiency and a higher quality of work produced by state employees.

VII. CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

VIII. CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Nancy Craig
Labor Relations Counsel
California Department of Human Resources
1515 S Street, North Building, Suite 500
Sacramento, CA 95811
Telephone: (916) 324-0512
E-mail: Nancy.Craig@calhr.ca.gov

The backup contact person for these inquiries is:

Frolan Aguilin
Deputy Chief Counsel
California Department of Human Resources
1515 S Street, North Building, Suite 500
Sacramento, CA 95811
Telephone: (916) 324-0512
E-mail: Frolan.Aguilin@calhr.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Nancy Craig at the above address.

IX. AVAILABILITY OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. Copies of the full text of the proposed action, the proposed regulation, as well as the Initial Statement of Reasons and other items in the rulemaking file are also available for viewing and download on the

Department's website at <http://www.calhr.ca.gov/Pages/public-notice.aspx>. Copies can also be obtained by contacting the Contact Person listed above.

X. AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may then adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Nancy Craig at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

XI. AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Nancy Craig at the above address.