

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

**A. GENERAL INFORMATION**

1. Date

03/13/19

2. Department

California Department of Corrections and Rehabilitation

3. Organizational Placement (Division/Branch/Office Name)

Office of Legal Affairs

4. CEA Position Title

Chief Deputy General Counsel

5. Summary of proposed position description and how it relates to the program's mission or purpose. (2-3 sentences)

The CDCR proposes to allocate the above position to a CEA category within the Office of Legal Affairs (OLA), Employment Law Group. The Chief Deputy General Counsel (CDGC) will be responsible for supervising and managing the Employment Advocacy and Prosecution Team (EAPT), as well as the operation of the Vertical Advocacy Model implemented under the Federal Remedial Order in Madrid v. State of California which is associated with employee disciplinary matters and matters relating to the Department's internal affairs investigations. The CDGC, CEA will be responsible for revising the policies associated with Chapter 3, Article 22 "Employee Discipline", and in concurrence with any prospective revisions to Article 14 "Internal Affairs Investigations". Failure to develop revised, well constructed and defensible policies specific to the employee discipline process will result in increased departmental liability and litigation and open the Department up to further unnecessary scrutiny.

6. Reports to: (Class Title/Level)

Assistant Secretary Legal Affairs (General Counsel), Exempt

7. Relationship with Department Director (Select one)

- Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(Explain): The CDGC will develop, formulate, and implement policies related to all employee discipline programs which are under intense scrutiny by the Special Master, the Federal Court, legislature, media, and public. This position will attend regular meetings with the Office of the Inspector General, Bureau of Independent Review. The CDGC, CEA will provide legal insight on all issues related to administrative investigations and employee discipline.

8. Organizational Level (Select one)

- 1st
- 2nd
- 3rd
- 4th
- 5th (mega departments only - 17,001+ allocated positions)

## B. SUMMARY OF REQUEST

### 9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

The CDGC will be responsible for revising existing policies associated with Article 22 in concurrence with any prospective revisions to Article 14. Failure to develop revised, well constructed and defensible policies specific to the employee discipline process will result in increased departmental liability and litigation and open the Department up to further unnecessary scrutiny.

The CDGC will report directly to the General Counsel and will be responsible for supervising and managing the Employment Law Group, which includes the EAPT, Employee Relations Office (ERO) and the Public Records Act Team (PRAT) of the CDCR. The EAPT is responsible for the operation of the Vertical Advocacy Model implemented under the Federal Remedial Order in *Madrid v. State of California* and is associated with employee disciplinary matters and matters relating to the Department's internal affairs investigations, specifically as it applies to Article 22 and Article 14 of the Department Operations Manual (DOM).

The CDGC plans, assigns, directs and monitors the work of the EAPT legal staff including the litigation and administrative hearings occurring in Federal and State Courts and before the State Personnel Board and administrative law judges; recommends the hiring and termination of EAPT attorney's and office staff and provides information and projections of legal expenditures in support of the budgetary process.

The CDGC provides legal advice to the Secretary, executive staff, hiring authorities, and other staff on issues relating to employee discipline matters; formulates legal strategies, develops policies, and recommendations for management action. The CDGC provides direction to the EAPT Assistant Chief Counsels (ACC) and other professional staff for particular cases of a complex nature; interacts with program and legal management of CDCR, the Office of Attorney General (OAG), the Office of Inspector General (OIG), as well as other California state departments and other public and private entities.

The CDGC will be solely responsible for employee discipline matters within OLA as they relate to employee disciplinary investigations, disciplinary hearings before the State Personnel Board, and employee related legal matters related to Equal Employment Opportunity (EEO) and Fair Employment Housing Act, as well as the new SB 1421 unit developed to respond to the California Public Records Act (PRA).

The CDGC supervises the EEO attorneys, including the participation in mediations at the California Department of Fair Employment and Housing or the Federal Equal Employment Opportunity Commission; monitors all administrative operations of EAPT and approves legal correspondence and reports.

**B. SUMMARY OF REQUEST (continued)**

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- Program is directly related to department's primary mission and is critical to achieving the department's goals.
- Program is indirectly related to department's primary mission.
- Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: The mission of OLA is to offer quality legal advice to CDCR leadership and staff to help ensure that CDCR's operations are conducted effectively and consistent with legal requirements. Our attorneys anticipate legal issues and offer practical solutions, appropriately resolve legal disputes, and vigorously advocate CDCR's mission. OLA strives to be a valued and a trusted partner, recognized for expertise, innovation, and client service. The CDGC serves a critical position of influence within CDCR's leadership team and is directly related to the Department's primary mission of enhancing public safety through safe and secure incarceration of offenders, effective parole supervision and rehabilitative strategies to successfully reintegrate offenders into our communities.

The CDGC directly impacts legal services associated with employee disciplinary matters and matters relating to the Department's internal affairs investigations and is responsible for ensuring timely and appropriate discipline is litigated against those staff that fail to uphold the Department's vision of partnership in protecting the public from crime and victimization and the values of service, leadership, integrity, accountability, respect, trust and collaboration with stakeholders and our inmates.

This position is consistent with the Department's long-standing policies and priorities of ensuring public trust through transparency, and the federal remedial order in Madrid v. State of California, which ensures CDCR's internal affairs investigations are conducted timely and discipline is fairly and properly imposed prior to the public release of investigative, legal, and personnel records. Concluding internal affairs investigations and imposing discipline is necessary to safeguard the integrity of CDCR's operations, and the safety and security of its institutions.

The CDGC will also be responsible for revising the policies associated with Article 22 in concurrence with any prospective revisions to Article 14. Failure to develop revised, well constructed and defensible polices specific to the employee discipline process will result in increased departmental liability and litigation and open the Department up to further unnecessary scrutiny.

## **B. SUMMARY OF REQUEST (continued)**

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

Pursuant to a recommendation of the Special Master in the Madrid v. State of California class action lawsuit, the Federal Court issued an order requiring the Department to implement a vertical prosecution model for prosecuting employee discipline. Under that model, attorneys are actively involved in all phases of employee disciplinary proceedings. The average number of active delegated cases is 920 with an average of 1,349 individual subjects annually.

The establishment of the CDGC is appropriate to the effective and consistent operation of CDCR's organizational structure and critical to the specialized workload specific to the employee disciplinary process and internal affairs investigations, reporting directly to the General Counsel and indirectly to the Secretary of the Department.

On September 30, 2018, Governor Brown signed into law Senate Bill (SB) 1421 "Peace officers: release of records". This bill amends Sections 832.7 and 832.8 of the Penal Code, making peace officer and custodial officer investigation and personnel records available for public inspection, pursuant to the PRA, when those records relate to reports, investigations, and findings of officer-involved incidents, including discharge of a firearm at a person; use of force resulting in death or great-bodily-injury (GBI); and sustained findings of sexual assault and acts of dishonesty directly relating to the reporting, investigation, or prosecution of crime, or misconduct by a fellow officer.

Currently, administrative investigations involving peace officers must be concluded, and peace officers notified of proposed discipline within one-year from the date of discovery of an allegation of misconduct pursuant to the Public Safety Officer Procedural Bill of Rights Act (POBRA), Government Code (GC) Section 3304(d)(1). This bill requires CDCR to release Office of Internal Affairs (OIA) investigation records and EAPT legal records for peace officer discipline cases involving use of force resulting in death or GBI, and discharges of firearms at a person, within 180 days of the discovery of a triggering incident, unless there is a related criminal investigation.

SB 1421 will also require CDCR to respond to PRA requests from the public for peace officer investigative and legal records related to high profile investigations and disciplinary proceedings (i.e., use of force, discharge of firearms, sexual assault, and dishonesty). These PRA requests made to both OIA and EAPT will need to be reviewed by an experienced attorney who has authority to access confidential peace officer investigative and legal records maintained by OIA and EAPT, make legal determinations regarding the proper records to be disclosed, identification of portions of the records containing confidential and personal information required to be redacted by this bill, and to consult with OIA regarding PRA requests for investigative records. The increase in volume of workload necessitates the addition of staff attorneys and an Associate General Counsel to supervise them. The Employment Law Group has expanded to another full unit to meet the new and increased workload in the timely processing of PRA requests and the requisite enhanced time-line of standard disciplinary litigation.

In order to avoid disclosure of facts that could alter witness recollection, dissuade witness cooperation, undermine the integrity of OIA investigations, and compromise the Department's disciplinary processes set forth in DOM, Chapter 3, Article 22, CDCR believes it is necessary to complete all internal affairs investigations and impose final discipline for cases specified in this bill.

The establishment of the CDGC is necessary to ensure CDCR's compliance with DOM, Chapter 3, Article 22 and SB 1421 and Assembly Bill (AB) 2327 "Peace officers: misconduct: employment" and will greatly reduce CDCR's liability, costs, and litigation resulting from non-compliance.

### **C. ROLE IN POLICY INFLUENCE**

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

The CDGC will provide legal insight on all issues related to the review and prosecution of employee disciplinary matters. This position will have significant program responsibility and render broad management advice which will significantly impact a wide spectrum of departmental policies. The CDGC will be responsible for the development and formulation, in collaboration with CDCR programming, in implementation of policies in all programs within the Department which are under intense scrutiny by the federal court, legislature, media, public and the OIG. Consequently, the responsibilities of this position are viewed as "high administrative and policy influencing" and entail broad responsibility for policy creation, implementation and the constant evolution thereof.

The CDGC will be responsible for revising the policies associated with Article 22 in concurrence with any prospective revisions to Article 14. Failure to develop revised, well constructed and defensible policies specific to the employee discipline process will result in increased departmental liability and litigation and open the Department up to further unnecessary scrutiny. The establishment of the CDGC is necessary to ensure CDCR's compliance with DOM, Chapter 3, Article 22 and SB 1421 and AB 2327 and will greatly reduce CDCR's liability, costs, and litigation resulting from non-compliance.

The CDGC will be the primary policy maker for ongoing operations within the Employment Law Group.

**C. ROLE IN POLICY INFLUENCE (continued)**

**13. What is the CEA position's scope and nature of decision-making authority?**

The scope of the decision making authority of the CDGC is broad, sensitive, and impacts numerous stakeholders including the OAG, OIG and various state and federal courts. The CDGC will work closely with and coordinate with executive and program management to ensure the management of litigation, employee investigations, employee discipline and further assure public safety is addressed and accounted for within the Department.

This position will be equivalent to the existing Governor's Office (GO) appointed Chief Deputy General Counsels who are responsible for the management and direct operations of the Enterprise (Class Action) Law Group and the Operations Law Group which have a direct impact in the creation and development of regulatory proposals, and their intended implementation.

Through policy creation and administration, the CDGC will provide policy direction to EAPT programs and hiring authorities within the Department to ensure statewide standardization of participating in the formulation of Internal Affairs and EAPT Team policy and procedures. In addition, the CDGC will provide ongoing guidance within these program areas.

**14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?**

The CDGC will work directly with the General Counsel on program management and policy development, interpretation and implementation within the OLA. This position will assist the General Counsel in developing responses to evolving legal challenges to the Department and its implementation of programs. The CDGC will also assist the General Counsel in advising and development of policy matters for the Department as a whole as well as providing guidance and leadership to high level and executive leadership.