

TITLE 2. DEPARTMENT OF HUMAN RESOURCES

Notice of Proposed Rulemaking

The Department of Human Resources (Department) proposes to adopt regulations to provide standards and parameters for the administration of merit personnel management systems in Local Agencies, as mandated by state and federal law, for employees working in certain social services programs. Simultaneously, the Department proposes to repeal the existing regulations previously adopted by the State Personnel Board (SPB).

In repealing the current regulations and adopting the proposed regulations, the Department is implementing one element of Governor's Reorganization Plan Number One of 2011 (GRP 1). GRP 1 created the Department and vested it with the powers and duties of the former Department of Personnel Administration (DPA) and certain operations of the State Personnel Board (SPB). Among the functions transferred to the Department is responsibility for oversight of merit systems for Local Agencies, "Where such merit systems of employment are required by statute or regulation as a condition of a state-funded program or a federal grant-in-aid program established under federal laws, including, but not limited to: the Social Security Act, as amended; the Public Health Services Act; and the Federal Civil Defense Act, as amended." (Gov. Code, § 19800, and following.) This transfer of responsibility was effective January 1, 2014. The Program is known as the Merit Services System (MSS).

The federal laws referenced condition federal financial participation in certain programs, including CalWORKS, Medi-Cal, and Child Support enforcement, on the state and local agencies that administer those programs using a merit-based personnel system. (Administrative Personnel, 5 C.F.R. §§ 900.601-900.605)

Written Comment Period

The Department has submitted this notice of publication with a requested publication date of October 23, 2015. The written comment period will, therefore, extend from October 23, 2015 until December 7, 2015.

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.

Authority and Reference

Government Code section 19800 vests in the Department the jurisdiction and responsibility to establish and maintain merit-based personnel standards and to administer merit systems for local governments where such merit systems are required as a condition of receiving federal funding for certain specified programs, including the Social Security Act, as amended, The Public Health Service Act, and the Federal Civil Defense Act, as amended. Government Code section 19801 explicitly specifies that, for the administration of such programs, the Department shall, “by regulation, establish and maintain personnel standards on a merit basis for local agencies . . . necessary for proper and efficient administration, and to ensure state conformity with applicable federal requirements.”

The proposed regulations make specific Government Code sections 19802 through 19811. These statutes require specific actions of the Department including those listed below.

Allows any local agency to establish its own merit system and determine the personnel standards applicable to its employees, but for those local agency employees administering state and federally supported programs pursuant to Government Code section 19800, the local system and standards shall be subject to review and approval by the Department. (Government Code section 19802)

Allows the Department to waive administration of all or part of a local agency’s merit system after it approves the personnel standards established pursuant to a legally binding memorandum of understanding negotiated between a local agency and its employee organizations. (Government Code section 19802.5)

Allows the Department to delegate to another state department the administration of the employee standards for those local agencies not administering their own merit systems. (Government Code section 19803)

Requires the Department to hear and decide appeals of local agency decisions affecting the employment rights of persons covered by these statutes. (Government Code section 19803)

States that the Department shall exercise no authority, in implementing these statutes, with respect to the selection, tenure of office, and compensation of any individual employed in accordance with established standards. (Government Code section 19804)

Requires the Department to establish and administer procedures, including provisions for investigations and hearings, to determine whether a local agency merit system is in conformity with the standards established by the Department. (Government Code section 19805)

Requires the Department to notify the appropriate state and local agency if after conducting a hearing, the Department determines that the local agency's merit system is not in conformity with the Department's personnel standards. (Government Code section 19806)

Requires local agencies to provide information and reports related to merit system administration as required by the Department. (Government Code section 19808)

Informative Digest/Policy Statement Overview

This rulemaking action will establish clear, updated, and streamlined guidelines for Local Agencies in the operation of merit personnel systems for employees in positions covered by the federal requirements.

The current state regulations proposed for repeal were adopted prior to a revision to the federal standards in 1983. These federal standards specifically avoid mandating any particular actions as part of a local merit system, but rather establish high level characteristics of such a system, leaving the details of the operation to the state and local governments engaged in program administration. The proposed regulations adopt the federal regulatory approach, and establish principles and procedures that will ensure a merit-based personnel system, while respecting the autonomy, authority, and competence of local agencies to operate pursuant to their own merit-based personnel systems.

The current state regulations divide Local Agencies into two categories, and establish detailed prescriptive standards of operation for each type. The existing state regulations are prescriptive in nature, controlling Local Agency personnel operations for a limited class of employees, and forcing Local Agencies to administer two separate personnel systems: one for the employees of the covered programs, and one for all other employees. As a result, Local Agencies complained about the complexity of the dual systems, confusion among staff and affected employees, and unfair results between employees who may be working side-by-side.

The proposal is to repeal the current regulations in total and adopt a more streamlined, flexible set of standards, as is consistent with and expressly permitted by federal law. Local Agencies that demonstrate compliance with federal requirements are permitted to operate all or selected elements of their personnel operation as they deem appropriate so long as the Department approves their system as compliant with federal regulations. The Department's

approach to administering personnel operations for a Local Agency that elects to have the Department do so is to rely upon and utilize standards and procedures in effect in that Local Agency, so that all employees are treated similarly, and as a result there is no longer duplication, confusion, or perceived unfairness.

The Department developed the proposed regulations with the assistance of representatives of local agencies and vetted the proposed regulations with interested parties.

Objectives and Anticipated Benefits of the Proposed Regulations

The proposed regulations modernize the administration of the federal and state merit system requirements to take advantage of the flexibility in program operations specifically authorized by the applicable federal laws. The proposed regulations allow the Local Agencies greater flexibility in administering their personnel management systems and integrate personnel operations for the covered employees with overall personnel operations for all other employees of a Local Agency. The proposed regulations recognize the competency and authority of Local Agencies to administer their own operations pursuant to their duly adopted municipal laws and rules.

The proposed regulations address the complaints of Local Agencies regarding the difficulty of understanding and administering personnel management systems under two different standards; one local and one imposed by the current regulations for a limited number of employees.

The proposed regulations permit Local Agencies to request the Department's approval to operate their own duly adopted personnel rules and policies for employees covered by the federal rules in the same manner as for other employees, continuing a practice of the SPB under the current regulations. For Local Agencies who elect to have the Department administer a personnel system for them, the proposed regulations describe the Department's duties and the standards to be followed.

For those Local Agencies previously approved to operate their personnel system for covered employees as for all employees, the proposed regulations provide more certainty in their operations by adding a process for resolving and finalizing disputed audit results. As such, the Local Agencies will have a level of certainty in their operations that is lacking under the current regulations.

The proposed regulations change the standard of proof in disciplinary hearings, on appeal from an action affecting an employee's position or salary, from substantial evidence to preponderance of the evidence, consistent with due process considerations given the property right impacted by such an action. The proposed regulations expand the availability of appeal for employees who are rejected on probation. The proposed regulations also modify the manner in

which seniority is calculated for employees in the event of a reduction in force so that all local employees are treated in a similar manner, but the benefits some employees may have acquired under the current regulations are maintained.

The proposed regulations are consistent with federal requirements.

Determination of Inconsistency/Incompatibility with Existing State Regulations

The state statutes and regulations relating to the requirement that state and local agencies administering certain federal programs must utilize a merit-based personnel system are discrete and do not overlap with any existing state regulations. There is no overlap between the proposed regulations and any other provision given the simultaneous repeal of the current regulations previously adopted by the SPB prior to modification of the federal regulations.

Disclosures Regarding the Proposed Action

The Department has made the following initial determinations:

Mandate on local agencies and school districts:

None. The proposed regulations do not require Local Agencies to incur any new expenses. Some Local Agencies may see savings in the future if they are currently operating a separate personnel system for Program employees and are subsequently granted approval to utilize their existing Local Agency personnel system for program employees as for other employees.

Cost or savings to any state agency:

Unknown. These regulations do not increase or save any state funding. However, by providing for more discretion, flexibility and clarity to the Local Agencies, the Department may realize savings in the future.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:

None. The proposed regulations provide greater flexibility to Local Agencies than do the existing regulations. No additional costs are imposed on Local Agencies by these regulations.

Other nondiscretionary cost or savings imposed on local agencies:

None.

Cost or savings in federal funding to the state:

None. Federal funding will not be affected by the adoption of the proposed regulations. Per federal regulations, a copy of the proposed regulations will be forwarded to the oversight agency, the Office of Personnel Management, as an informational item.

Effect on Housing Costs:

None.

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 complying with the proposed action.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Impact on Reporting:

None. The proposed action does not require the making of any reports.

Impact on Small Business:

None, because the regulations proposed do not apply to business, but only apply to Local Agency personnel operations for a limited number of positions statewide.

Results of the Economic Impact Analysis/Assessment

Because the proposed regulations are adopted to replace existing regulations, no jobs are created or eliminated by this regulatory action. No business is created or 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, as stated above under "Objectives and Anticipated Benefits of the Proposed Regulations," the proposed regulations will benefit the health and welfare of California residents by providing local agencies administering state and federal programs with greater control, flexibility, and consistency in the administration of their merit based personnel systems.

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.

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Availability of Statement of Reasons, Text of Proposed Regulations, and Rulemaking File

Copies of the full text of the proposed action, both the current regulations and the proposed regulations, as well as the Initial Statement of Reasons and other items in the rulemaking file are 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.

After the public comment period has closed, the Department will make available through the same means any substantial changes to the proposed regulatory text for at least 15 days prior to further action. The final text of the regulations, if modified, along with the Final Statement of Reasons, and any other documentation accumulated during the comment period or created by the Department thereafter will be available to all interested parties through the website and by contacting the Contact Person listed above.