

State of California

MEMORANDUM

Date: June 22, 1990
Reference Code: 90-25

To: PERSONNEL MANAGEMENT LIAISONS

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Employee Relations Officers and Personnel Officers

From: Department of Personnel Administration
Office of the Director

Subject: Notice of Modifications to Text of Proposed Regulations

Pursuant to the requirements of Government Code Section 11346.8, Subdivision (c), and Section 44 of Title 1 of the California Code of Regulations, the Department of Personnel Administration is providing notice of changes made to proposed regulation Section 599.854.4, which was the subject of a regulatory hearing on May 31, 1990. Additions to the originally proposed language are double underlined, and language which is proposed to be repealed appears in strikeout using a "_".

If you have any comments regarding the proposed changes, written comments must be submitted to the Department of Personnel Administration by 5:00 p.m. on July 13, 1990 to:

Robert L. Rutherford
Department of Personnel Administration
1515 'S' Street, North Building
Suite 400
Sacramento, CA 94244-2340

All written comments received by July 13, 1990, which pertain to the indicated changes will be reviewed and responded to by the Department's staff as part of the compilation of the rulemaking file. Please limit your comments to the modifications to the text which appear in either strikeout or double underlining.

UPDATED INFORMATIVE DIGEST:

There has been no change in the laws relating to the proposed regulations, or to the effect of the proposed regulations, from that stated in the Notice of Proposed Regulatory Action.



UPDATED INITIAL STATEMENT OF REASONS:

On April 3, 1990 the Department of Personnel Administration submitted to the Office of Administrative Law proposed regulations (599.854-599.854.4) covering the State Restriction of Appointments (SROA) Program. The original public review period for these regulations ended on May 31, 1990.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE ORIGINAL NOTICE PERIOD OF APRIL 9, 1990 THROUGH MAY 31, 1990:

Comment No. 1: Section 599.854.4(a)(b) exempts certain promotions-in-place from SROA review because there are instances in which there is no true vacancy that could be used to place a surplus employee. The representative for the State Employment Development Department stated that in this section the phrase "fully skilled level" was ambiguous since employees often promote-in-place to classifications other than those considered to be at the "fully skilled level". He also stated that the key consideration in granting an SROA exemption, in these cases, should be whether a true vacancy exists, regardless of the particular classification level involved.

Response: The Department agrees with the commenter and has amended Section 599.854.4(a)(6) as follows:

The first amendment is to delete the word "assignment" in Subsection (a)(6). It was decided that there is not enough of a distinction between the meaning of "position" and "assignment", from a classification perspective, so we recommend deleting "assignment".

The second amendment, also to Subsection (a)(6), is to delete the words "fully skilled" and replace them with "next higher" so that portion of (a)(6) reads: "...and the promotion is clearly identified as typical in cases where the employee has reached the ~~fully skilled~~ next higher level within a class series." This amendment will address the movement through a promotional series where the position has been reallocated to the next higher level and the incumbent is being promoted in place. It would not automatically exempt movements between class series, since such movements often raise more questions about whether a true promotion-in-place situation exists. The commenter has indicated his agreement with this approach.

Comment No. 2: The Employment Development Department representative also raised a question regarding Section 599.854.4(c), requesting that we add a mandatory exemption for affirmative action placements which have been identified in the appointing powers Affirmative Action Plan.

Response: The request that an exemption specifically focusing on an appointing powers Affirmative Action Program can be considered under the general provisions of Section 599.854.4(b).

As in the past, the appointing power may submit a written request, outlining the critical factors in the proposed affirmative action appointment, and explaining what the ramifications would be if the exemption request is not granted. Consideration can then be given to whether an SROA eligible could meet the appointing power's goals. In addition, balanced consideration can be given to the number of SROA eligibles needing placement, the appointing powers need to make affirmative action hires, and the total number of hiring opportunities available to the appointing power. Given the need for this case-by-case review of these requests, it is not appropriate to include them under subsection (c) which deals with appointments that automatically qualify for exemptions.

SECTION 599.854 SCOPE - NONREPRESENTED EMPLOYEES

In reviewing this section we have elected to make a nonsubstantive amendment to our definition of "a nonrepresented employee", to make it more consistent with Section 599.619. This amendment does not change the definition or intent of Section 599.854 as originally drafted, but simply makes it more compatible with the definition of a nonrepresented employee as provided in Section 599.619.

A nonelected officer or employee of the executive branch of government who is not a member of the civil service is not eligible for the SROA program.

Questions concerning this memorandum should be directed to Robert L. Rutherford at (916) 324-0443, ATSS 454-0443.



Lillian J. Rowett
Chief Deputy Director

Attachment

DEPARTMENT OF PERSONNEL ADMINISTRATION

Article 20.5 State Restriction of Appointments

599.854 Scope-Nonrepresented Employees

(a) This article shall govern the Department of Personnel Administrations' program under Sections 19998 and 19998.1 of the Government Code to assist in the job placement of nonrepresented employees who may be facing layoff or demotion-in-lieu of layoff as those terms are used in Sections 19997 and 19997.8 of the Government Code. This program shall be known as the State Restriction of Appointments (SROA) Program. For the purposes of this article, a nonrepresented employee is: defined an employee excluded from the definition of State employee in Sections 3513(c) and 3522.1 of the Government Code; an employee designated as supervisory in Section 3522.1 of the Government Code.

(b) It is the intent of the SROA Program, to the extent that it is administratively feasible, to prevent the layoff and separation of skilled and experienced employees from State service.

(c) The SROA Program assists in placing affected employees by temporarily restricting the methods of appointment available to appointing powers. Employees on SROA lists are granted preferential consideration over all other types of appointments except appointments from reemployment lists and mandatory reinstatements.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820 of the Government Code. Reference: Section 19998 and 19998.1 of the Government Code.

DEPARTMENT OF PERSONNEL ADMINISTRATION

Article 20.5 State Restriction of Appointments

599.854.4 State Restriction of Appointments Program Exemptions-
Nonrepresented Employees

(a) The following types of appointments are not subject to the SROA Program and require no prior SROA approval, providing the criteria set forth below are met.

(1) The appointment is from a reemployment list.

(2) The appointment is a mandatory reinstatement to the same class, same agency.

(3) The appointment is an intra-agency transfer to the same class.

(4) The appointee is a retired annuitant, pursuant to Section 19144 of the Government Code.

(5) The appointment is to a full-time position from a reduced worktime position. This applies only to a permanent full-time employee who voluntarily reduced his/her time base under the Reduced Worktime Act (Section 19996.20 et seq.) and is returning to full-time work in the same class in the same agency.

(6) The appointment is a promotion in place; there is no true vacant position, there is no change of position, "assignment" or supervisory/subordinate relationship; and the promotion is clearly identified as typical in cases where the employee has reached the "fully skilled" next higher level within a class series. Promotions that do not meet this criteria are subject to the SROA Program.

(b) Special exemptions to the SROA Program must be requested in writing by the appointing power and approved in advance by the Department of Personnel Administration. Blanket exemptions will not be granted.

(c) The following types of appointments and extraordinary circumstances shall qualify for a special exemption to the SROA Program.

(1) Placement of a disabled worker to an appropriate class, as recommended and/or approved by a physician, for reasonable accommodation pursuant to Section 19230(c) of the Government Code. The exemption request requires a written request with a full explanation of the situation and a copy of the doctor's supporting statement.

(2) Voluntary employee transfers, between classes within an agency, are not restricted when they are made in conformance with a written plan, approved in advance by the Department of Personnel Administration.

(3) If an appointing power wishes to fill a vacancy in a SROA class, with an inter-agency transfer, the vacancy left in the other agency must be filled using the SROA program. Consideration will be given to the classes offered in the exchange, the salary relationship between the classes and the geographical location of the vacant position being offered.

These transactions must be approved by the Department of Personnel Administration prior to the transfer actually taking place.

(4) Emergency and Limited-Term appointments of less than nine months duration when there is no possibility of a permanent appointment.

(5) Limited Examination Appointment Program (LEAP) appointments. Before a LEAP eligible can be initially hired the appointing power must first request and receive approval for a SROA exemption. When a LEAP eligible has successfully completed the Temporary Authorization (State Personnel Board Rule 265) period the appointing power may make a permanent appointment for that person without requesting another SROA exemption.

(d) Requests for special exemptions based on critical hiring needs will be granted only when the appointing power has demonstrated that the SROA candidates do not have the knowledge, skills and background required for the position, or that the training period required to qualify the SROA candidate would be of such length that the effectiveness of a specific program would be jeopardized unless the exemption is granted.

NOTED: Authority cited: Sections 19815.4(d), 19816 and 19820 of the Government Code. Reference: Sections 19998 and 19998.1 of the Government Code.

