

KNOW *your* RIGHTS

OVERVIEW OF CIVIL SERVICE PROTECTIONS FOR EXCLUDED EMPLOYEES

A civil service position is a protected property right. The California Supreme Court has long recognized that once obtaining permanent status, a state employee has a property interest in their employment.

Article VII of the California Constitution establishes a merit based system of civil service employment for state government. Under Article VII, the State Personnel Board enforces the merit aspects of the Civil Service Act, including prescribing probationary periods and reviewing disciplinary actions.

The Merit System

You have a right to be hired and promoted on the basis of job-related qualifications alone. A competitive examination and application process followed by an interview are the first two steps. The third and final step is successfully completing the prescribed probationary period.

The Probationary Period

During the probationary period, your property rights are not fully vested.

- » Service of a probationary period is usually required when a civil service employee is appointed or promoted into a new position.
- » Because a rejection does not deprive an employee of a property interest, the state has wide latitude to reject a probationer for business reasons.
- » Your right to appeal a rejection during probation is limited to circumstances where you can show that the department acted in bad faith.

- » If you held a previous civil service position, you likely have mandatory rights to reinstate to a former position.

Permanent Position

Once you pass probation, your civil service position becomes permanent. Permanent civil service employees are entitled to due process if they are subject to discipline, including impacts on their pay and classification.

In order to take a punitive action against a permanent employee in a civil service position, the State as the employer must provide “just cause” for the discipline and afford the impacted employee due process.

Progressive Discipline

In order to establish that a state employee has been provided sufficient due process, departments adhere to a process of progressive discipline. CalHR divides progressive discipline into two phases, “Corrective Phase” and “Formal Adverse Action” phase.

During the corrective phase, you have a right to be made aware of performance deficiencies and be given an opportunity to correct them.

During the “formal Adverse Action” phase, you have a right to respond to the appointing authority, i.e. your department and also appeal to the State Personnel Board.

As an excluded employee, you have a right to confer with ACSS should you perceive that you may be subject to progressive discipline and a right to representation if questioned about a matter that may lead to discipline.

Corrective Action

Corrective actions may include verbal discussions about expectations, written or verbal warnings and counseling or expectation memoranda.

- » Corrective actions are not considered adverse in nature because they do not impact your classification and pay, i.e. your property rights in your position.
- » You do not have a right to appeal a corrective action to the State Personnel Board.
- » You may submit a rebuttal. You may grieve a corrective action if you have evidence to suggest it constitutes a violation of law, regulation or policy.
- » When a written corrective action is placed in your Official Personnel File, it can have a negative impact on your ability to promote.
- » Non-compliance with a corrective action can also be used as a basis for a future punitive action.

Disciplinary Action

The State employer must provide due process before it can deprive you of property. As a civil service employee, your pay and your classification are your property.

Due process requires the appointing authority provide you with written notice, sufficient for you to understand the charges against you, at least five days prior to the effective date of the adverse action and an opportunity to respond to the charges at a Skelly Hearing before the adverse action takes effect.

You have a right to appeal to the State Personnel Board. You also have a right to inspect any and all evidence upon which the employer relied to take the adverse action.

Within thirty (30) days of the effective date of the adverse action, you may file an appeal with the State Personnel Board.

Once received your appeal is assigned a number and set for a Prehearing and Settlement Conference before an Administrative Law Judge.

If you do not reach a settlement with the employer during the settlement conference, your appeal is set for an evidentiary or investigatory hearing by the State Personnel Board.

After the hearing, the Administrative Law Judge (ALJ) and the State Personnel Board will issue a decision which may affirm, reverse or modify the adverse action and impose a lesser penalty.

**IF YOU HAVE A CAREER ISSUE,
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