

# **Rights and Options upon Termination of an Exempt or CEA Appointment**



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# Eligibility to Take Promotional Examinations:

## Executive Branch Exempt Employees

Government Code Section 18992 provides eligibility for Executive Branch Exempt employees who meet the following criteria to participate in promotional examinations, including Career Executive Assignment (CEA) examinations:

1. They are non-elected exempt employees; and
2. Their salaries are not set by statute (for the most part salaries set by statute include Agency Secretaries and Department Directors). Refer to Government Code Section 11550 et seq.; and
3. They have been employed as an executive branch exempt employee for at least two consecutive years. (The two consecutive years do not have to be current); and
4. They have been appointed pursuant to subsections (c), (e), (f), (g), (i), or (m) of Section 4 of Article VII of the Constitution; and
5. They are currently employed in the executive branch exempt appointment.

An executive branch employee who resigns or is released from service may take promotional examinations, including CEA examinations for one year following their resignation or release.

Executive branch employees retain eligibility on promotional lists as follows:

Individuals shall maintain promotional list eligibility for the life of the list.

(As with civil service employees, the individual' name is removed from the list when he or she receives a permanent civil service appointment in that class.)

## Government Code

Section 18992. (a) Notwithstanding any other provision of law or rule, persons holding, for two or more consecutive years, non-elected exempt positions in the executive branch of **government** as defined in subdivisions (c), (e), (f), (g), (i), and (m)<sup>1</sup> of Section 4 of Article VII of the Constitution and excluding those positions for which the salaries are set by statute, shall be eligible to apply for promotional civil service examinations, including, but not limited to, examinations for career executive assignments for which they meet the minimum qualifications as prescribed by the class specification. Persons receiving passing scores shall have their names placed on promotional lists resulting from these examinations or otherwise gain eligibility for appointment. In evaluating minimum qualifications, related exempt experience shall be considered state civil service experience in a class deemed comparable by the State Personnel Board, based on the duties and responsibilities assigned.

(b) In cases where promotional examinations are given by more than one department for the same classification, the employee shall select one department in which to compete. Once this selection is made, it cannot be changed for the duration of the promotional list established from the examination in which the employee participated. Employees may transfer list eligibility between departments in the same manner as provided for civil service employees.

(c) Employees who meet the requirements of this section and who resign or are released from exempt employment of the executive branch of government shall be eligible to take promotional civil service examinations, including examinations for career executive assignments, for one year following their resignation or release in accordance with subdivisions (a) and (b).

(d) An employee who establishes eligibility on a promotional civil service list, either pursuant to subdivision (c) or prior to having resigned or having been released in a manner to which subdivision (c) would apply, shall maintain that eligibility for the duration of that particular list.

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<sup>1</sup> These subdivisions are:

(c) Officers elected by the people and a deputy and an employee selected by each elected officer.

(e) A deputy or employee selected by each board or commission either appointed by the Governor or authorized by statute.

(f) State officers directly appointed by the Governor with or without the consent or confirmation of the Senate and the employees of the Governor's office, and the employees of the Lieutenant Governor's office directly appointed or employed by the Lieutenant Governor.

(g) A deputy or employee selected by each officer, except members of boards and commissions, exempted under Section 4(f).

(i) The teaching staff of schools under the jurisdiction of the Department of Education or the Superintendent of Public Instruction.

(m) In addition to positions exempted by other provisions of this section, the Attorney General may appoint or employ six deputies or employees, the Public Utilities Commission may appoint or employ one deputy or employee, and the Legislative Counsel may appoint or employ two deputies or employees.

# **Eligibility to Take Promotional Examinations:**

## **CEA Employees with No Prior Permanent Civil Service Status**

**(Prior executive branch exempt employees  
that became CEA employees pursuant to  
Government Code Sections 18990 or 18992.)**

Government Code Section 18993 provides authority for CEA employees that have no former civil service position to take promotional examinations under the following circumstances:

For as long as the employee remains in the CEA position, he or she may take promotional examinations for any class for which they meet the minimum qualifications for the department where they are serving the CEA.

When the CEA has been terminated, he or she is entitled to take deferred examinations for any promotional eligible list for his or her department in existence at the time of the appointment termination if he or she meets the minimum qualifications specified for the promotional examination. The employee must request the deferred examination within 10 calendar days of the CEA termination and the department shall administer the deferred examination within 30 days of the date of the request.

## Government Code

**Section 18993.** (a) Notwithstanding any other provision of law, a legislative or non-elected exempt executive branch employee who is appointed to a career executive assignment pursuant to Section 18990 or 18992, shall be eligible to compete in his or her department's promotional examinations for which he or she meets the minimum qualifications. When such an employee's career executive assignment is terminated by the appointing power, he or she shall have the right to request a deferred examination for any promotional eligible list for his or her department in existence at the time of the appointment termination if he or she meets the minimum qualifications specified for the promotional examination.

(b) A request for a deferred examination pursuant to subdivision (a) shall be made no later than 10 days after the effective date of the termination of the career executive assignment. The department shall administer the deferred examination within 30 days of the date of the request.

# **Right of Return to Civil Service:**

## **Career Executive Assignment (CEA) Employees**

**A Summary  
and  
Copies of Current Laws & Regulations  
Pertaining to Those Rights**

## Summary C.E.A. Return Rights/Options

Government Code Section 19889.3 and Title 2, division 1, Chapter 1,  
Section 548.150 – 548.154, California Code of Regulations

Questions	Former Position 548.151	Improved Permissive Rights 548.152		Improved Mandatory Rights 548.153		
<b>Who is eligible?</b>	Every C.E.A. except former exempt employees who were employed in the C.E.A. position based on the provisions of Government Code Sections 18990 or 18992 and either: (1) have no prior permanent civil service status; or (2) have prior civil service permanent status and since that status have had a break in service due to a permanent separation.	Those C.E.A. employees that are eligible under the provisions of 548.151 and who have five or more years' State service which includes at least one year C.E.A. service.		Those C.E.A. employees that are eligible under the provisions of 548.151 and who have ten or more years of State service including at least three years of consecutive C.E.A. service under one appointing power that occurred entirely within six years of the current C.E.A. termination.		
<b>What am I entitled to?</b>	Mandatory Reinstatement	Permissive Reinstatement		Mandatory Reinstatement		
<b>To what classes/ level am I entitled?</b>	Former permanent or probationary position as defined in Rule 548.150  “ ‘Former position,’ ... means the last position an employee held as a probationer or permanent employee or a position that is at least at the same salary level and to which the appointing power could have transferred the employee.”	<p style="text-align: center;">One of the following two options:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center; vertical-align: top;"> <p style="text-align: center;">1</p> <p><u>Five years' State service including one year but less than three years C.E.A. service.</u> Any class at a salary level no more than two salary steps higher than the class of former position and at least two salary steps lower than C.E.A. level from which terminating.</p> </td> <td style="width: 50%; text-align: center; vertical-align: top;"> <p style="text-align: center;">2</p> <p><u>Five years' State service including three or more years C.E.A. service.</u> Any class that is at least two steps lower than the C.E.A. level from which terminating.</p> </td> </tr> </table>		<p style="text-align: center;">1</p> <p><u>Five years' State service including one year but less than three years C.E.A. service.</u> Any class at a salary level no more than two salary steps higher than the class of former position and at least two salary steps lower than C.E.A. level from which terminating.</p>	<p style="text-align: center;">2</p> <p><u>Five years' State service including three or more years C.E.A. service.</u> Any class that is at least two steps lower than the C.E.A. level from which terminating.</p>	Any class at least two salary steps lower than the lowest C.E.A. level served during the most recent qualifying three consecutive years of C.E.A. service under the appointing power and at least two steps lower than the C.E.A. level from which being terminated and above the level of the employee's former position. The class must be in the same occupational area(s) as the C.E.A. position(s) under the appointing power and the employee's prior service and C.E.A. experience combined must reasonably predict successful performance.
<p style="text-align: center;">1</p> <p><u>Five years' State service including one year but less than three years C.E.A. service.</u> Any class at a salary level no more than two salary steps higher than the class of former position and at least two salary steps lower than C.E.A. level from which terminating.</p>	<p style="text-align: center;">2</p> <p><u>Five years' State service including three or more years C.E.A. service.</u> Any class that is at least two steps lower than the C.E.A. level from which terminating.</p>					



## Summary C.E.A. Return Rights/Options

Government Code Section 19889.3 and Title 2, division 1, Chapter 1,  
Section 548.150 – 548.154, California Code of Regulations

Questions	Former Position 548.151	Improved Permissive Rights 548.152	Improved Mandatory Rights 548.153
<b>Must the position be vacant?</b>	No	Yes	Yes
<b>To what department?</b>	Department where employee last served as a permanent or probationary employee.	Any department.	Only the department where the employee served the qualifying three consecutive years of C.E.A. service.
<b>Are there any time limits?</b>	None.	Eligibility for appointment expires four years from the date of the C.E.A. termination.	Employee must request reinstatement in writing within 10 calendar days of receiving the notice of C.E.A. termination.
<b>Must I serve a probationary period?</b>	Cannot be required to serve a new probationary period. However, must complete any portion which was not completed when they left their former position.	Must serve new probationary period if reinstating to a class two or more salary steps higher than former position. Also must serve new probationary period if reinstating to a class less than two salary steps higher unless the department waives the probationary period.	Must serve new probationary period if reinstating to a class two or more salary steps higher than former position. Also must serve new probationary period if reinstating to a class less than two salary steps higher unless the department waives the probationary period.

- What does “permissive” reinstatement mean? Totally at the discretion of the appointing power.
- What is “C.E.A.” level? The C.E.A. category has five levels. These levels and the maximum salary for each level is described in Section 8.1 of the Civil Service Pay Scales. You must use the maximum salary assigned to the C.E.A. level to which the person was appointed and not the salary the individual is making, to determine reinstatement rights Government Codes.

## Government Code Sections

### Title 2, Division 5, Part 2.6, Chapter 2.5, Article 9

#### ELIGIBILITY FOR APPOINTMENT TO CEA POSITIONS AND RIGHTS UPON TERMINATION

**Section 19889.3.** (a) Eligibility for appointment to positions in the career executive assignment category shall be established as a result of competitive examination of the following persons who meet such minimum qualifications as the State Personnel Board may determine are requisite to the performance of high administrative and policy influencing functions:

(1) Persons with permanent status, or who previously had permanent status, in the civil service.

(2) Persons employed by the Legislature for two or more consecutive years, as described in Section 18990.

(3) Persons holding, for two or more consecutive years, nonelected exempt positions in the executive branch, as described in Section 18992.

(b) No person employed in a career executive assignment shall be deemed to acquire as a result of such service any rights to or status in positions governed by the provisions of this part relating to the civil service other than the category of career executive assignment, except as provided by State Personnel Board rule.

(c) The State Personnel Board shall provide by rule that an employee shall, if he or she so desires, at the termination of his or her appointment to a career executive assignment, be reinstated to a civil service position that is (1) not a career executive assignment and (2) that is at least at the same salary level as the last position that he or she held as a permanent or probationary employee. If the employee has completed a minimum of five years of state service, he or she may return to a position that is (1) at substantially the same salary level as the last position in which he or she had permanent or probationary status or (2) at a salary level that is at least two steps lower than that of the career executive position from which the employee is being terminated.

(d) A state entity that employs a person described in subdivision (a) in a career executive assignment shall notify the Controller of this person's employment status and the Controller shall forward this information to the board.

(e) For the purpose of this section, "employee" means a permanent employee, or an employee serving under another appointment who previously had permanent status and who, since such permanent status, has had no break in the continuity of his or her state service.

(f) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

**Section 19889.4.** Notwithstanding any other provision of law, any person who, prior to March 30, 1977, was reinstated to a career executive assignment position, or appointed to an exempt position, after a break in service, and who held such position on May 31, 1977, shall upon termination of such career executive assignment or exempt position have the right to return to the last regular civil service position in which the person had permanent status prior to such a break in service.

# California Code of Regulations

## **ARTICLE 15. Termination of Assignment**

### SEC. 548.136. Appeal From Termination.

Within 30 days after receipt of notice of termination of a career executive assignment, the affected employee may appeal to the State Personnel Board upon the grounds that the termination was effected for reasons of age, sex, sexual preference as prohibited by Governor's Executive Order B-54-79 (4/4/79), marital status, race, color, national origin, ancestry, disability as defined in Government Code Section 19231(a)(1), religion, or religious opinions and affiliations, political affiliation, or political opinions. After hearing the appeal, the board may affirm the action of the appointing power, or restore the affected employee to the career executive assignment.

## **ARTICLE 17. Reinstatement Following Termination**

### SEC. 548.150. Definition.

"Former position" for the purposes of this article, means the last position an employee held as a probationer or permanent employee or a position that is at least the same salary level and to which the appointing power could have transferred the employee.

### SEC. 548.151. Reinstatement To Former Position Following Termination.

An employee terminated from a Career Executive Assignment shall be reinstated to his or her former position unless the employee elects to be appointed to another position, offered by the appointing power, for which he or she is eligible.

### SEC. 548.152. Permissive Reinstatement.

An employee terminated from a Career Executive Assignment on or after January 1, 1981, after completing at least five years of state service may on or after the effective date of this rule be reinstated to a vacant position at the discretion of any appointing power within four years of such termination as follows:

1. Such employees who have completed at least one year but less than three years of career executive service may be reinstated to a position in a class that is not more than two steps higher in salary than the class in which the employee last served as a probationer or permanent employee, provided that such class is at least two steps lower in salary than the career executive level from which the employee is being terminated.

2. Such employees who have completed three or more years of career executive service may be reinstated to a position in any class that is at least two steps lower in salary than the career executive level from which the employee is being terminated. For employees who have separated from state service, reinstatement eligibility under this rule shall not extend beyond the employee's reinstatement eligibility under Government Code Section 19140.

### SEC. 548.153. Mandatory Reinstatement.

- (a) The reinstatement rights provided under this section apply only to employees who are terminated from a Career Executive Assignment on or after April 3, 1981, after completing

ten years of state service, including at least three consecutive years of career executive service under a single appointing power as specified in part (b) of this section, and who request reinstatement pursuant to this section, in writing, within ten days of receiving notice of the termination of their Career Executive Assignment.

(b) The three consecutive years of Career Executive service specified under part (a) must (1) have occurred entirely within six years of the effective date of the employee's termination from a career Executive Assignment, and (2) must terminate on or after January 1, 1981. For the purposes of meeting this service requirement, exempt service shall not affect otherwise qualifying career executive service.

(c) Reinstatements under this section shall be to the last appointing career executive service, as specified above.

(d) An eligible employee may request reinstatement to any general civil service level that is: (1) At least two steps lower in salary than the lowest Career Executive Assignment level and which the employee served during his/her qualifying period of career executive service under this section, provided that the requested level is at least two steps lower than the level from which the employee is being terminated; and (2) Above the level of the employee's former position. An employee may limit his/her reinstatement request under this section to positions that the employee could reasonably be expected to accept without a change in his/her place of residence.

(e) Upon receipt of such a request, the appointing power shall reinstate the employee to a position at the requested level and, if applicable, location that is:

(1) Vacant; and

(2) In the same occupational area(s) as the Career Executive Assignment(s) that the employee held under the appointing power, provided such employee possesses any license, certificate, or registration required for the class in which the employee is being reinstated and performance in the Career Executive Assignments(s) combined with the employee's prior employment history would reasonably predict successful performance in the lower level position. An employee's refusal to accept a position offered pursuant to these provisions shall constitute a waiver of the employee's rights under this section to be reinstated to or to receive reemployment list eligibility for other positions at the same level, but shall not otherwise impact the rights and eligibilities provided by this article.

(f) If the appointing power does not have a vacant position that can satisfy the employee's reinstatement requested under this section, the following actions shall occur:

(1) If the employee's reinstatement request is not limited to his/her current location, the employee's name shall be placed on the appointing power's departmental and local subdivisional reemployment list for any classes containing positions which, if vacant, would satisfy the employee's reinstatement request pursuant to this section. If the employee's reinstatement request is limited to his/her current location, the employee's name shall be placed on a subdivisional reemployment list covering that location for the classes indicated above. Departmental or subdivisional reemployment list eligibility granted under this section shall not result in the employee's name being placed on any general reemployment list. Subdivisional eligibilities may be changed with the concurrence of the employee and the appointing power.

(2) The reinstatement and reemployment provision outlined in parts (e) and (f)(1) of this section shall be applied in descending order to any lower general civil service levels under the appointing power that contain positions which meet the criteria outlined in parts (d) and (e)(2) of this section.

(g) If an employee cannot be placed in a vacant position pursuant to this section, the employee shall be reinstated to his or her former position.

SEC. 548.154. Sequence Of Reinstatement.

When two or more employees are simultaneously seeking reinstatement or reemployment to the same class pursuant to the rights provided under this article, the appointing power shall act in the following sequence.

(a) All employees exercising a mandatory return right to their former position shall be reinstated.

(b) Employees seeking mandatory reinstatement or reemployment pursuant to Section 548.153 to a position other than their former position shall be appointed in seniority order to any remaining positions, provided that persons on reemployment lists shall be appointed only as allowed by Government Code Section 19056.

(c) Employees seeking permissive reinstatement pursuant to Section 548.152 may be reinstated to any remaining vacant positions.

SEC. 548.155. Probationary Period.

An employee who is reinstated pursuant to Sections 548.152 or 548.153 shall be subject to the probationary period requirements specified in Section 322.

SEC. 599.988. Red Circle Rates.

An employee who has ten years of State service, one year of which is under C.E.A. appointment(s) and is terminated from a Career Executive Assignment, shall receive a red circle rate in accordance with standards set by the Department of Personnel Administration unless the termination was voluntary or based on unsatisfactory performance. If the termination was voluntary and performance satisfactory, a red circle is permissive.

The Department may, at the election of the employee, apply the provisions of this section to any employee who, prior to the effective date of this rule, was terminated from a Career Executive Assignment. The salaries of these employees may be adjusted on the effective date of this section for the remainder of the period of time the red circle rate could have been granted.

**ARTICLE 3. Termination Of Assignment**

SEC. 599.990. Notice Of Termination.

In terminating a career executive assignment principles of good personnel management shall be observed through conforming to the following procedures:

(a) The appointing power, in advance of service of written notice of termination of assignment, shall indicate to the employee its intention to terminate the assignment and the employee shall be privileged to discuss the termination with the appointing power.

(b) The appointing power shall serve the employee with written notice of termination of the assignment at least 20 days prior to the effective date of termination and a copy of such notice shall be furnished to the Department of Personnel Administration.

SEC. 599.992. Termination Upon Request Of Employee.

An employee serving in a career executive assignment may request the appointing power to terminate that assignment at any time, and such termination shall be made.

SEC. 599.993. Reduction In Force.

Whenever it is necessary or advisable to reduce the number of employees in positions where there are general civil service classes and career executive assignments, the appointing power may initiate either or both of the following:

(a) Terminate the assignment of one or more of the career executives as provided for in this Article without regard to the respective seniority of such incumbents as compared to general civil service employees, or

(b) Determine the relative seniority of employees in the general civil service classes. Lay off general civil service employees as provided by Government Code Sections 19997-19997.14 or terminate the career executive as provided for in this Article except that no general civil service employee shall be laid off as long as there is a career executive with less seniority.

SEC. 599.994. Seniority Credits.

Service in a career executive assignment shall be credited for seniority credits as if the service had been under a general civil service appointment. Credit for service in the career executive assignment category shall be earned as if the entire category were one class; the rate shall be on point per qualifying pay period.

**ARTICLE 4. Separations from State Service**

SEC. 599.995. Separation of Employee.

A person serving in a career executive assignment may be separated from state service through resignation, automatic resignation, dismissal, retirement, or for medical reasons under the provisions of Government Code Section 19253.5 in the same manner as is provided for other civil service employees. The career executive assignment of a person so separated shall be deemed to have been terminated, and the separation to have been from a position in the class in the general civil service in which the employee had permanent status.

# **Right of Return to Civil Service:**

**Executive Branch Exempt Employees –  
Previously Employed In a  
Civil Service Position**

**Summary  
and  
Copies of Current Laws Pertaining to Those Rights**

## Summary Exempt Return Rights/Options

	<b>Mandatory Reinstatement Former Position G.C. § 19141</b>	<b>Improved Permissive Appointment Eligibility G. C. § 19141.1(b)</b>	<b>Improved Mandatory Rights/Reinstatement G.C. § 19141.1(c)</b>		
<b>Who is eligible?</b>	All exempt employees who previously had permanent civil service status and since such status have had no break in service due to a permanent separation.	Those who have a right to return to their former position under the provisions of Government Code Section 19141 and have at least five years of State service and at least one year of exempt service. NOTE: "State service" includes both exempt and civil service.	Those who have a right to return to their former position under the provisions of Government Code Section 19141 and have ten years of State service including five years of civil service and at least three years of exempt service under a single appointing authority.		
<b>What are they Entitled?</b>	Mandatory Reinstatement	Eligibility to take certain deferred examinations.	Mandatory Reinstatement and eligibility to take deferred examinations.		
<b>Classes/ Level?</b>	Placement in their former position as defined in Government Code Section 18522 or a vacant position in any department, commission or State agency for which he or she is qualified at substantially the same level.	<p style="text-align: center;">One of the following two options:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top; padding: 5px;"> <p style="text-align: center;">1</p> <p><u>Five years of State service including at least one year but less than three years of exempt service.</u></p> <p>Any class for which a current eligible list exists at a salary range no more than two steps higher than the former position and for which he or she meets the minimum qualifications.</p> </td> <td style="width: 50%; vertical-align: top; padding: 5px;"> <p style="text-align: center;">2</p> <p><u>Five years of State service including three or more years of exempt service.</u></p> <p>Any class for which a current eligible list exists and that has a salary at least two steps lower than the exempt salary from which being terminated and for which he or she meets the minimum qualifications.</p> </td> </tr> </table>	<p style="text-align: center;">1</p> <p><u>Five years of State service including at least one year but less than three years of exempt service.</u></p> <p>Any class for which a current eligible list exists at a salary range no more than two steps higher than the former position and for which he or she meets the minimum qualifications.</p>	<p style="text-align: center;">2</p> <p><u>Five years of State service including three or more years of exempt service.</u></p> <p>Any class for which a current eligible list exists and that has a salary at least two steps lower than the exempt salary from which being terminated and for which he or she meets the minimum qualifications.</p>	Any class for which the employee has civil service eligibility under the appointing authority where the three consecutive years of exempt service were completed and that has a salary level at least two steps lower than the exempt salary level from which being terminated. In the absence of current eligibility (transfer, reinstatement, etc.), the employee is entitled to a deferred exam for classes meeting this criteria.
<p style="text-align: center;">1</p> <p><u>Five years of State service including at least one year but less than three years of exempt service.</u></p> <p>Any class for which a current eligible list exists at a salary range no more than two steps higher than the former position and for which he or she meets the minimum qualifications.</p>	<p style="text-align: center;">2</p> <p><u>Five years of State service including three or more years of exempt service.</u></p> <p>Any class for which a current eligible list exists and that has a salary at least two steps lower than the exempt salary from which being terminated and for which he or she meets the minimum qualifications.</p>				



## Summary Exempt Return Rights/Options

	<b>Mandatory Reinstatement Former Position G.C. § 19141</b>	<b>Improved Permissive Appointment Eligibility G. C. § 19141.1(b)</b>	<b>Improved Mandatory Rights/Reinstatement G.C. § 19141.1(c)</b>
<b>Vacant position only?</b>	No	N/A	Yes. If the employee obtains appointment eligibility within 2 years of the termination and a vacant position does not exist, he/she is entitled to specified reemployment list eligibility.
<b>Department?</b>	Department where employee last served as a permanent or probationary employee or at the discretion of the appointing power, any other department that has a vacant position at substantially the same level as the last permanent or probationary appointment.	Any department.	Department where the three consecutive years of exempt service were completed.
<b>Time Limit?</b>	Employee must request reinstatement in writing within 10 working days of the exempt termination.	Eligibility for a deferred exam expires four years from the date of exempt termination.	<ol style="list-style-type: none"> <li>1. Employee must request reinstatement in writing within 10 calendar days of exempt termination.</li> <li>2. Right to be placed on reemployment list expires 2 years from the date of the exempt termination.</li> </ol>
<b>Probationary Period?</b>	Cannot be required to serve a new probationary period. However, must complete any portion that was not completed when they left their former position.	If the employee is appointed from a list, the probationary period would be as required in SPB Rule 322.	Must serve new probationary period if reinstating to a class two or more salary steps higher than former position. Also must serve new probationary period if reinstating to a class less than two salary steps higher unless the department waives the probationary period.

# Constitution of the State of California

## ARTICLE 7

### Public Officers and Employees

SECTION 1. (a) The civil service includes every officer and employee of the State except as otherwise provided in this Constitution.

(b) In the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination.

SEC. 2. (a) There is a Personnel Board of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for 10-year terms and until their successors are appointed and qualified. Appointment to fill a vacancy is for the unexpired portion of the term. A member may be removed by concurrent resolution adopted by each house, two-thirds of the membership of each house concurring.

(b) The board annually shall elect one of its members as presiding officer.

(c) The board shall appoint and prescribe compensation for an executive officer who shall be a member of the civil service but not a member of the board.

SEC. 3. (a) The board shall enforce the civil service statutes and, by majority vote of all its members, shall prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions.

(b) The executive officer shall administer the civil service statutes under rules of the board.

SEC. 4. The following are exempt from civil service:

(a) Officers and employees appointed or employed by the Legislature, either house, or legislative committees.

(b) Officers and employees appointed or employed by councils, commissions or public corporations in the judicial branch or by a court of record or officer thereof.

(c) Officers elected by the people and a deputy and an employee selected by each elected officer.

(d) Members of boards and commissions.

(e) A deputy or employee selected by each board or commission either appointed by the Governor or authorized by statute.

(f) State officers directly appointed by the Governor with or without the consent or confirmation of the Senate and the employees of the Governor's office, and the employees of the Lieutenant Governor's office directly appointed or employed by the Lieutenant Governor.

(g) A deputy or employee selected by each officer, except members of boards and commissions, exempted under Section 4(f).

(h) Officers and employees of the University of California and the California State Colleges.

(i) The teaching staff of schools under the jurisdiction of the Department of Education or the Superintendent of Public Instruction.

(j) Member, inmate, and patient help in state homes, charitable or correctional institutions, and state facilities for mentally ill or retarded persons.

(k) Members of the militia while engaged in military service.

(l) Officers and employees of district agricultural associations employed less than 6 months in a calendar year.

(m) In addition to positions exempted by other provisions of this section, the Attorney General may appoint or employ six deputies or employees, the Public Utilities Commission may appoint or employ one deputy or employee, and the Legislative Counsel may appoint or employ two deputies or employees.

SEC. 5. A temporary appointment may be made to a position for which there is no employment list. No person may serve in one or more positions under temporary appointment longer than 9 months in 12 consecutive months.

## Government Code Sections

Section 18522. "Position" means any office or employment in the "state civil service" as the phrase is defined in Section 1 of Article VII of the Constitution.

"Former position" means either of the following:

(a) A position in the classification to which an employee was last appointed as a probationer, permanent employee, or career executive, under the same appointing power where that position was held, and within a designated geographical, organizational, or functional subdivision of that state agency as determined appropriate by the board.

(b) With the concurrence of both the appointing power and the employee, a position in a different classification to which the same appointing power could have assigned such an employee in accordance with this part. However, the former position shall not include positions from which the employee has been separated through disciplinary action, rejected during a probationary period, terminated under Section 19889.3, or terminated, demoted, or transferred in accordance with Section 19253.5; or terminated on a non-punitive basis under Section 19585.

Section 19141. This section applies only to a permanent employee, or an employee who previously had permanent status and who, since that permanent status, has had no break in the continuity of his or her state service due to a permanent separation. As used in this section, "former position" is defined as in Section 18522, or, if the appointing power to which reinstatement is to be made and the employee agree, a vacant position in any department, commission, or state agency for which he or she is qualified at substantially the same level.

Within the periods of time specified below, an employee who vacates a civil service position to accept an appointment to an exempt position shall be reinstated to his or her former position at the termination either by the employee or appointing power of the exempt appointment, provided he or she (a) accepted the appointment without a break in the continuity of state service, and (b) requests in writing reinstatement of the appointing power of his or her former position within 10 working days after the effective date of the termination.

The reinstatement may be requested by the employee only within the following periods of time:

(a) At any time after the effective date of the exempt appointment if the employee was appointed under one of the following:

(1) Subdivision (a), (b), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the California Constitution.

(2) Section 2.1 of Article IX of the California Constitution.

(3) Section 22 of Article XX of the California Constitution.

(4) To an exempt position under the same appointing power as the former position even though a shorter period of time may be otherwise specified for that appointment.

(b) Within six months after the effective date of the exempt appointment if appointed under subdivision (h), (i), (k), or (l) of Section 4 of Article VII of the California Constitution.

(c) (1) Within four years after the effective date of an exempt appointment if appointed under any other authority.

An employee who vacates his or her civil service position to accept an assignment as a member, inmate, or patient helper under subdivision (j) of Section 4 of Article VII of the California Constitution shall not have a right to reinstatement.

An employee who is serving under an exempt appointment retains a right of reinstatement when he or she accepts an extension of that exempt appointment or accepts a new exempt appointment, provided the extension or new appointment is made within the specified reinstatement time limit and there is no break in the continuity of state service. The period for which that right is retained is for the period applicable to the extended or new exempt appointment as if that appointment had been made on the date of the initial exempt appointment.

When an employee exercises his or her right of reinstatement and returns to his or her former position, the service while under an exempt appointment shall be deemed to be time served in the former position for the purpose of determining his or her seniority and eligibility for merit salary increases.

If the termination of an exempt appointment is for a reason contained in Section 19997 and the employee does not have a right to reinstatement, he or she shall have his or her name placed on the departmental and general reemployment lists for the class of his or her former position.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 16. Within four years after the effective date of an exempt appointment if appointed under any other authority.

An employee who vacates his or her civil service position to accept an assignment as a member, inmate, or patient helper under subdivision (j) of Section 4 of Article VII of the California Constitution shall not have a right to reinstatement.

An employee who is serving under an exempt appointment retains a right of reinstatement when he or she accepts an extension of that exempt appointment or accepts a new exempt appointment, provided the extension or new appointment is made within the specified reinstatement time limit and there is no break in the continuity of state service. The period for which that right is retained is for the period applicable to the extended or new exempt appointment as if that appointment had been made on the date of the initial exempt appointment.

When an employee exercises his or her right of reinstatement and returns to his or her former position, the service while under an exempt appointment shall be deemed to be time served in the former position for the purpose of determining his or her eligibility for merit salary increases.

If the termination of an exempt appointment is for a reason contained in Section 19997 and the employee does not have a right to reinstatement, he or she shall have his or her name placed on the departmental and general reemployment lists for the class of his or her former position.

Section 19141.1. (a) This section applies only to a permanent employee, or an employee who previously had permanent status, and who has a reinstatement right pursuant to Section 19141. The State Personnel Board may adopt rules to implement this section.

(b) Within four years of the termination of an appointment in an exempt position, either by the employee or the appointing power, an employee who has completed a minimum of five years of state service experience and at least one year but less than three years of exempt

service shall be given an opportunity upon request to obtain civil service appointment eligibility, through a deferred examination, for any position offered by any appointing power in any class for which a current eligible list exists and which has a salary range up to two steps higher than the employee's former position. If the employee has three or more years of exempt service, the opportunity shall be provided for any class at least two salary steps below the employee's exempt salary level.

(c) At the termination of an exempt appointment, either by the employee or the appointing power, on or after January 1, 1987, an employee who has at least 10 years of state service including five years of civil service experience and at least three consecutive years of exempt service under a single appointing power and who requests reinstatement in writing within 10 days of the termination, shall be reinstated upon request to (1) his or her former position or (2) any vacant position for which the employee has civil service eligibility under the appointing power where the three years of service were completed and which is at least two salary steps below the employee's exempt salary level. In the absence of current list eligibility, an employee shall be entitled to a deferred examination for placement on a current eligible list for classes meeting the mandatory reinstatement criteria. If the employee obtains civil service appointment eligibility at any time within two years of the termination of the exempt appointment, and a vacant position in the appropriate class is not available, the employee's name shall be placed on the appointing power's departmental or subdivisional reemployment for any classes and locations which would satisfy the employee's reinstatement request. Departmental or subdivisional reemployment list eligibility granted under this section shall not result in placement on any general reemployment list.

If an employee cannot be placed in a vacant position pursuant to this section, the employee shall be reinstated to his or her former position.

Section 19141.3. (a) Notwithstanding Section 19141, this section shall apply only to state employees in State Bargaining Unit 19.

(b) This section applies only to a permanent employee, or an employee who previously had permanent status and who, since that permanent status, has had no break in the continuity of his or her state service due to a permanent separation. As used in this section, "former position" is defined as in Section 18522, or, if the appointing power to which reinstatement is to be made and the employee agree, a vacant position in any department, commission, or state agency for which he or she is qualified at substantially the same level.

(c) Within the periods of time specified below, an employee who vacates a civil service position to accept an appointment to an exempt position shall be reinstated to his or her former position at the termination either by the employee or appointing power of the exempt appointment, provided he or she (1) accepted the appointment without a break in the continuity of state service, and (2) requests in writing reinstatement of the appointing power of his or her former position within 10 working days after the effective date of the termination.

(d) The reinstatement may be requested by the employee only within the following periods of time:

(1) At any time after the effective date of the exempt appointment if the employee was appointed under one of the following:

(A) Subdivision (a), (b), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the California Constitution.

(B) Section 2.1 of Article IX of the California Constitution.

(C) Section 22 of Article XX of the California Constitution.

(D) To an exempt position under the same appointing power as the former position even though a shorter period of time may be otherwise specified for that appointment.

(2) Within six months after the effective date of the exempt appointment if appointed under subdivision (h), (i), (k), or (l) of Section 4 of Article VII of the California Constitution.

(3) (1) Within four years after the effective date of an exempt appointment if appointed under any other authority.

(e) An employee who vacates his or her civil service position to accept an assignment as a member, inmate, or patient helper under subdivision (j) of Section 4 of Article VII of the California Constitution shall not have a right to reinstatement.

(f) An employee who is serving under an exempt appointment retains a right of reinstatement when he or she accepts an extension of that exempt appointment or accepts a new exempt appointment, provided the extension or new appointment is made within the specified reinstatement time limit and there is no break in the continuity of state service. The period for which that right is retained is for the period applicable to the extended or new exempt appointment as if that appointment had been made on the date of the initial exempt appointment.

(g) When an employee exercises his or her right of reinstatement and returns to his or her former position, the service while under an exempt appointment shall be deemed to be time served in the former position for the purpose of determining his or her eligibility for merit salary increases.

(h) If the termination of an exempt appointment is for a reason contained in Section 19997 and the employee does not have a right to reinstatement, he or she shall have his or her name placed on the departmental and general reemployment lists for the class of his or her former position.

Section 19142. (a) Every person accepts and holds a position in the state civil service subject to mandatory reinstatement of another person.

(b) (1) Upon reinstatement of a person any necessary separations are effected under the provisions of Section 19997.3 governing layoff and demotion except that (A) an employee who is not to be separated from state service need not receive advance notification as provided in Section 19997.13, and (B) seniority shall not be counted as provided in Section 19997.3 when this would result in the layoff of the person who has the reinstatement right. Under such a circumstance, qualifying service in classes at substantially the same or higher salary level is the only state service that shall be counted for purposes of determining who is to be separated.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 16. Upon reinstatement of a person any necessary separations are effected under Section 19997.3 governing layoff and demotion except that an employee who is not to be separated from state service need not receive advance notification as provided in Section 19997.13.

Section 19142.2. (a) Notwithstanding Section 19142, this section shall apply only to state employees in State Bargaining Unit 19.

(b) Every person accepts and holds a position in the state civil service subject to mandatory reinstatement of another person.

(c) Upon reinstatement of a person, any necessary separations are effected under Section 19997.43 governing layoff and demotion except that an employee who is not to be separated from state service need not receive advance notification as provided in Section 19997.53.



# **Civil Service Appointment Salaries**

## **Following an Executive Branch Exempt Appointment**

Appointing authorities may request/approve Hiring Above-Minimums (HAMs) for former exempt employees appointed to a civil service class when they are reinstated based on (1) eligibility obtained by a prior permanent civil service appointment (2) list eligibility obtained pursuant to G.C. Section 18992 or (3) list eligibility obtained pursuant to G. C. Section 19141.1 or (4) list eligibility obtained pursuant to the regular open examination process.

The salary received upon appointment to civil service shall be comparable with that which they received in the exempt appointment. For example: An employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment not to exceed the maximum of the civil service class.

If appointed from a promotional exam, the salary received upon appointment shall be in accordance with Department of Personnel Administration (DPA) salary rules. A salary determination is completed comparing the maximum salary rate of the former exempt class and the maximum salary rate of the civil service class to determine the applicable salary and anniversary regulations. If there is a promotional relationship between the class, the employee may receive a promotional increase upon movement to the civil service classification.

## **Following a CEA Appointment**

### **Red Circle Rate Criteria**

This is a rate of pay authorized to facilitate an employee's adjustment to a lower salary. A red circle rate may be authorized to (1) a former CEA appointee who is reinstating to a civil service classification or (2) a CEA appointee who is being reduced to a lower CEA salary rate.

### **Legal Authority**

The Department of Personnel Administration (DPA) Rule 599.988 mandates a red circle rate for an employee who has ten years of State service, one of which is under a CEA appointment and who is terminated from a CEA, if the termination was not voluntary nor based on unsatisfactory performance. DPA Rule 599.988 also allows the permissive granting of a red circle rate to an employee who meets the preceding criteria and who voluntarily terminates the CEA appointment. The red circle rate is based upon CEA salary rate received from which termination occurs, less 5 percent.

Government Code Section 13332.05 describes the intent of the Legislature in granting funds for CEA red circle rates:

“No funds may be encumbered for paying a civil service employee a salary which is above the maximum of the salary range of the employee’s present classification for a period of more than 90 calendar days following termination of a career executive assignment appointment. The intent of the Legislature in permitting payment above the maximum of the salary range for the 90-day period is to facilitate the employee’s adjustment to a lower salary level. The provisions of this section shall not apply with respect to an employee who accepted any career executive assignment appointment on or after June 20, 1976, and before July 1, 1977, and any employee meeting that requirement, who is otherwise eligible, shall receive a salary rate pursuant to the provision of Rule 548.25, adopted by State Personnel Board on May 18, 1976, based upon the highest career executive assignment level held by the employee during that period.”  
[Note: State Personnel Board Rule 548.25 was repealed August 28, 1985 and renumbered Department of Personnel Administration Rule 599.988.]

### **90-Day Red Circle Rate**

A 90-day red circle rate is 90 calendar days and applies to an employee being terminated from a CEA appointment, or who is being reduced to a lower CEA salary rate, and who does not have a bona fide CEA appointment within the “window period” of June 20, 1976 through June 30, 1977.

The employee must meet the criteria listed below:

- a. Have at least ten years of total State service; and
- b. Have at least one year of total CEA service. CEA time served immediately before and after an exempt or a civil service appointment shall be qualifying for meeting the one-year requirement. However, time served in an exempt appointment shall not count towards the one-year total CEA service requirement.

An employee who meets the above criteria shall be eligible for a salary rate above the maximum of the class to which the employee is mandatorily reinstated. The red circle rate is based upon the last CEA salary rate received from which termination occurs, less 5 percent. The department to which the employee is reinstated requests and pays for the red circle rate.

### **Extended Red Circle Rate**

An extended red circle rate applies to an employee being terminated from a CEA appointment where any CEA appointment was accepted within the “window period” of June 20, 1976 through June 30, 1977. The employee must meet the criteria listed below:

- a. Termination is not voluntary nor is it based on unsatisfactory performance; and
- b. The employee had a bona fide appointment during the “window period” of June 20, 1976 through June 30, 1977; and
- c. CEA service has been continuous since the qualifying “window period” appointment.

An employee who meets the above criteria shall be eligible for a salary rate above the maximum of the class (red circle rate) to which the employee is being mandatorily reinstated. The red

circle rate is based upon the highest CEA held by such employee during the “window period,” less 5 percent. The extended red circle rate will be in effect until absorbed by any salary changes.

The eligibility for an extended red circle rate based on any “window period” appointment may be used only once. An employee who received a “window period” appointment, and who has since received an appointment to a regular civil service class no longer qualifies for an extended red circle rate.

## **Payment of Annual Leave or Vacation Balances**

As a state employee, annual leave or vacation balances usually transfer with the individual from position to position regardless of the department worked for. Payment for annual leave or vacation balances can only be made when you leave state service or move to a position where credits are not earned nor used. (The latter are positions whose salaries are set in statute, usually agency secretaries and department directors.) Since civil service positions earn vacation or annual leave, any balance will be transferred for use in the new position.

## Government Code Sections

**Section 19839.** (a) Upon separation from service without fault on his or her part, a person is entitled to a lump-sum payment as of the time of separation for any unused or accumulated vacation or annual leave or for any time off to which he or she is entitled by reason of previous overtime work where compensating time off for overtime work is provided for by the appointing power or by rules of the department. This sum shall be computed by projecting the accumulated time on a calendar basis so that the lump sum will equal the amount which the employee would have been paid had he or she taken the time off but not separated from the service.

(b) Persons separated from service through fault of their own are entitled to a lump-sum payment for compensating time off for overtime work, and in addition, the portion, if any, of unused vacation or annual leave as the department may determine. The computation of this sum shall be based on actual accumulated time without projection as provided in subdivision (a).

(c) Lump-sum payment for vacation or annual leave shall not be made to a person who separates from a position for the purpose of accepting another position in the state service except upon movement to a position in which vacation credits or annual leave are neither accrued nor used. However, a lump-sum payment shall not be made to a person who returns to a position in the same class and agency within 15 working days of the date of his or her resignation.

(d) Except for payment authorized or excluded under subdivision (c), an employee who returns to state service during the period through which his or her lump-sum payment was computed may refund the amount of lump-sum payment which exceeds his or her break in service and have the balance of credits restored as though he or she had remained in state service and taken the time off.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

**Section 19839.5.** Unless in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, every department shall calculate and forward to the Controller a request for payment of all undisputed amounts due under Section 19839 within 25 days of the date of separation of the employee.

## **Civil Service Appointment Salaries Following a Legislative Exempt Appointment**

Appointing authorities may request/approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to the State Personnel Board Government Code Section 18990. The salary received upon appointment to civil service shall be in accordance with existing DPA salary rules. A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulations. Since legislative employees are typically compensated at a higher rate of pay they will be allowed to retain the rate last received not to exceed the maximum of the civil service class.