# Exempt Positions and Appointments

**Definition**

The Governor has authority to designate certain positions as exempt from civil service and determine the distribution in the executive agencies of deputies or employees selected pursuant to subdivision (g) of Section 4 of Article VII of the California Constitution by civil-service-exempt officers appointed by the governor pursuant to subdivision (f) of Section 4 of Article VII of the California Constitution.

**Authority and Entitlement**

Article VII, Section 4 of the State Constitution provides thirteen different types of Constitutional exempt authorities, listed from “a” to “m”. The **exempt authority** is identified by the letter of the subsection in Section 4 and it specifies the appointing power of an exempt position.

An appointee of the Governor is sometimes referred to as an “F” appointment because it falls under subsection “F” in Section 4. An appointee of an “F” is a “G”. A member of a board or commission is referred to as a “D” appointment, and the appointee of a board is an “E, and so on.

The code section in the law that specifies that an appointment may be made is called an **exempt entitlement**.

For example, the code section specifying that the Governor will appoint the director of a department is the entitlement. The authority is “F” because the Governor is making the appointment. Under the Constitution, the “F” appointee is authorized to make a “G” appointment and both would share the same entitlement.

These “G” appointments are referred to as “derived” appointments, since authority to appoint these employees is derived from the Governor’s appointing authority. Therefore, “G” and “F” appointments are always paired, and it is critical to track these appointments very closely since they are tied to a single entitlement.

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# **Exempt Positions and Appointments,** Continued

**How exempt positions are created**

In addition to the exempt positions created by the Governor's appointing authority, exempt positions may be created through:

- new or revised laws
- conversion by the Governor of a vacant civil service managerial position in a line agency under the Governor's direction (see Government Code (GC) Section 12010.6 for exclusions to this provision)
- revision to the State Constitution may add new authorizations

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**Types of exempt positions**

The table below describes the Governments Code Sections (GC) for the two types of exempt positions.

| Type | Description |
|---|---|
| Statutory Exempt | Salaries set by legislation under GC Section 11550, and accrue no leave credits. |
| Non-statutory Exempt | Salaries recommended by the appointing power and approved by DPA under the authority of G.C. Section 19825. |

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**Who can be hired?**

Individuals selected for exempt appointments may be from:

- private sector with no civil service status
- civil service employees who vacate a civil service job to accept an exempt appointment.

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**Exempt employees rights**

Exempt employees serve at the pleasure of the Governor or the appointing power and these appointments may be terminated at any time. When an exempt appointment is terminated, the employee may have mandatory rights and/or permissive reinstatement eligibility.

Some exempt appointments have a time period specified by law and these are referred to as "term appointments." The code of law that authorized the exempt entitlement specifies the length of the term and the Oath of Office will have an expiration date.

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# **Exempt Positions and Appointments,** Continued

**Single appointment class codes**

Each exempt position has its own classification code. Therefore, exempt employees serve as the only person in their exempt classification code for the duration of their exempt appointment.

The exempt position is separate from the exempt entitlement. The entitlement is authorized by law and does not have a funding source. Therefore, a budgeted position needs to be tied to the entitlement to have an exempt position with funding. A budgeted position can be reclassified to the exempt entitlement to provide funding. The Office of Human Resources (OHR) Personnel Manager updates Exempt Position charts to track the exempt entitlements and positions and the funding of these positions.

When the employee vacates the exempt position, the exempt entitlement and the exempt position become vacant. Vacant entitlements can be reused by processing a new exempt position request (EPR) package.

**Loaned entitlements**

Government Code section 12010.5 allows the Governor to redistribute the appointments made under Section VII 4(g) among executive agencies. These are sometimes referred to as “borrowed” or “loaned” positions. For instance, DGS may loan vacant exempt entitlements to the State and Consumer Services Agency (SCSA). The funding tied to that entitlement may or may not be loaned with the entitlement.

# Exempt Position Process

**Introduction**

When the Classification and Pay (C&P) Analyst is notified that an exempt employee is being hired, a specific request procedure must be followed in order to appoint the employee.

**Overview of exempt process**

The following is a summary of the exempt appointment and salary process:

1. The Governor's Office reviews candidates proposed by the agency and/or who are in the Governor's Office applicant file. When an acceptable candidate is approved, the responsible executive (Agency Secretary or department director) is notified of the approval who in turn, must notify the Personnel Manager in OHR so that the necessary transactions can take place to put the appointee on the payroll.
2. The OHR forwards the Exempt Position Request (EPR http://www.documents.dgs.ca.gov/ohr/pom/epr2005.doc), duty statement and organization chart through the Agency (if appropriate) to the Governor's Office, Appointments Unit. At the same time, a copy is sent to the Department of Personnel Administration (DPA) Exempt Unit.
3. The Appointments Unit reviews the EPR and determines that the information on the appointee is correct. The approved EPR is forwarded to DPA.
4. DPA prepares an exempt pay letter if a change to the Exempt pay Scale is necessary. The department is sent a copy with the approved EPR attached.
5. DPA returns a copy of the approved EPR to the department if no pay letter is necessary.

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# **Exempt Position Process,** Continued

**Recruitment procedures**

The recruitment to fill an exempt position can be done by DGS, State and Consumer Services Agency (SCSA) or the Governor's Office, or DGS may hire an executive search firm. When DGS is conducting the recruitment the OHR C&P Analyst will use the following steps:

| Step | Action |
|---|---|
| 1 | Obtain current duty statement from exempt position history file and provide to the appropriate Deputy Director and or Chief Deputy Director to verify or update. |
| 2 | Provide assistance to the Executive Office in developing minimum qualifications and desirable qualifications. |
| 3 | Obtain desired publicity period from Executive Office. Recommend a minimum of three (3) weeks. |
| 4 | Prepare a Job Opportunity Bulletin describing the duties, minimum qualifications and any desirable qualifications. |
| 5 | Determine which organizations from the following list should be included in the distribution:<br>• State departments<br>• EEO listing (Shared/ Support/EEO Exam Distribution List)<br>• Capitol Weekly<br>• Various newspapers<br>– Sacramento Bee<br>– Los Angeles Times<br>– San Francisco Chronicle and/or Examiner<br>– Fresno Bee<br>– San Diego Tribune<br>– Wall Street Journal |
| 6 | Work with the Personnel Liaison (PL) for the appropriate Office/Division for help placing the ads. The Office/Division pay for the ads; therefore, their five-digit billing code, name, address, and name of contact person need to be provided to the newspapers for billing purposes. |

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# Exempt Position Process, Continued

**Exempt position request (EPR)**

The following table is a description of the steps in the appointment process.

| Step | Action |
|---|---|
| 1 | When notified of a vacant position, the Office/Division PL sends a Request for Personnel Action (RPA) with approved duty statement and organization chart to OHR |
| 2 | Review the DGS Exempt Positions chart. If the "Remarks" column indicates "entitlement only," this means there is no budgeted position assigned to this entitlement, at this time.<br>• Confirm with the Management Services Division (MSD) Deputy Director if the Executive Office wants to use a budgeted position or the Executive Office "blanket fund."<br>• Contact the Budget Officer to either identify a vacant position to be redirected to the Executive Office, or to inform them that blanket funds will be used. |
| 3 | Verify existing classification code and title, exempt level, and salary. |
| 4 | Prepare the EPR http://www.documents.dgs.ca.gov/ohr/pom/epr2005.doc. Complete only the information that is new or changing. |
| 5 | Prepare the EPR justification memo (see sample memo at http://www.documents.dgs.ca.gov/ohr/pom/Sample EPR cover.doc<br>• Address to Appointments Secretary, Governor's Office<br>• Signature blocks for Director, Agency Secretary, and Governor's Office Appointments Secretary |
| 6 | Prepare the Governor's Office Action Request (GOAR) http://www.documents.dgs.ca.gov/ohr/pom/GOAR.doc<br>• Complete "subject line" and mark box "Request for Approval" and print. |

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# Exempt Position Process, Continued

**Exempt position request (EPR)** (continued)

| Step | Action |
|---|---|
| 7 | Assemble EPR package in the following order:<br><br>• Coordination sheet, copied on blue paper<br>• GOAR<br>• Justification memorandum<br>• EPR<br>• Proposed appointee's resume<br>• Proposed appointee's Governor's application form<br>• Duty statement for position<br>• Current organization chart |
| 8 | Upon receipt of the approved EPR and DPA Pay Letter, which is usually faxed to the Personnel Officer followed by hard copies, distribute copies to (the originals are sent to the "Exempt" file for that particular classification code):<br><br>• Personnel Operations Manager<br>• Personnel Operations, Assistant Manager<br>• Personnel Operations, C&P Analyst<br>• Personnel Transactions Unit (PTU) Supervisor<br>• Personnel Specialist (PS) in PTU<br>• Berge Ochikubo, OHR<br>• Terry Werner, ABMS |
| 9 | Have the following ready before or on the start date:<br>• Oath of Office (STD 688) http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std688.pdf<br>➢ Forward the Oath form to the office administering the Oath, usually the Executive Office or SCSA<br>➢ Exempt appointees must sign the Oath on or prior to the effective date. The Governor, Agency Secretary, Director, any other appointee of the Governor (F authority) or any Notary Public may administer the Oath<br>➢ The original Oath is filed with the Secretary of State's Office or the Governor's Office. Attach a copy of the RPA and send a copy to the Official Personnel Folder (OPF) |

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# Exempt Position Process, Continued

**Exempt position request (EPR)** (continued)

| Step | Action |
|---|---|
| 9 | • Exempt appointment documents may be obtained from the PS in PTU. Either the Personnel Manager, Assistant Manager, C&P Analyst, or PTU Manager should meet with the new appointee to complete the appointment documents and answer any questions |
| 10 | The C&P Analyst completes the RPA and sends to the PS in PTU |
| 11 | The PS in PTU process the STD 607 to establish the position with new title, new unit code, etc., if necessary. Once all exempt appointment documents, Personnel Action Request (PAR), and 612, if applicable, are received, the appointment can be keyed |

**Return rights**

An employee who vacates a permanent civil service position to accept an exempt position could have as many as three reinstatement options at the termination of the exempt position based on their employee history. In brief, these options are:

- Mandatory reinstatement to a position in the former civil service classification
- Eligibility to compete on a deferred or late basis in examinations for classifications above the former civil service level
- Contingent upon existing eligibility or eligibility acquired through a deferred examination, mandatory reinstatement to a vacant position above the former civil service level

**Determining return rights**

After the appointment of an exempt employee, the C&P Analyst:

- Determines the return rights by reviewing the employee's employment history and using the Exempt Reinstatement Schedule Work Sheet http://www.documents.dgs.ca.gov/ohr/pom/Exempt Worksheet Master.doc
- Informs the Personnel Manager of the employee's return rights. The Personnel Manager maintains all information on the Exempt Positions chart and will add this information to the "Remarks" column.

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# Exempt Position Process, Continued

**Terminated exempt return rights**

When an exempt appointee is terminated, the C&P Analyst:

- Re-evaluates the return rights and prepares and Exempt Return Rights/Options Letter
- Answers questions and facilitates the reinstatement of the employee, if applicable
- Informs the PS in PTU of the termination date

# Resources

**Resources**

The following table identifies various sources of information regarding the exempt positions and appointments process.

| Resource | Section |
|---|---|
| Classification & Pay Guide | 600 |
| Law & Regulation<br>http://leginfo.legislature.ca.gov/faces/codes.xhtml;jsessionid=c8f1e6c1f42fa1674f4b99e93e34<br><br>http://leginfo.legislature.ca.gov/faces/codes.xhtml;jsessionid=ec740fb92d7f258ccc38ebd5c0c9<br><br>http://weblinks.westlaw.com/toc/default.aspx?Abbr=ca%2Dadc&Action=ExpandTree&AP=I6C9E1EC0D48E11DEBC02831C6D6C108E&ItemKey=I6C9E1EC0D48E11DEBC02831C6D6C108E&RP=%2Ftoc%2Fdefault%2Ewl&Service=TOC&RS=WEBL13.01&VR=2.0&SPa=CCR-1000&pbc=DA010192&fragment#I6C9E1EC0D48E11DEBC02831C6D6C108E | CA State Constitution, Article 7, Section 4; Article 9, Section 21, & Article 20, Section 22<br><br>GC: 1999.7.3, 18522, 11710, 19847, 19849.6, 19889.4, 12010-12019, 11550, 19825, 3513, 19141-19142, 18990, 18992, 18993, 19997.43, 19997.53<br>Rules: 599.990, 234, 235 |
| Pay Scales<br>http://www.calhr.ca.gov/state-hr-professionals/Pages/pay-scales.aspx | 2, 10 |
| Personnel Management Policy & Procedures Manual (PMPPM) | 313, 315, 335 |
| Responsible Control Agency<br>http://gov.ca.gov/home.php<br>http://www.calhr.ca.gov/Pages/home.aspx | Governor's Office<br>CalHR |

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# Resources, Continued

## Resources

| Resource | Section |
|---|---|
| State Administrative Manual (SAM)<br>http://sam.dgs.ca.gov/ | 400, 422.1 |
| SPB/CalHR Policy Memos<br>http://www.calhr.ca.gov/state-hr-professionals/Pages/policy-memos.aspx | PML: 2005-013 |
| **Other:** | |
| GOAR<br>http://www.documents.dgs.ca.gov/ohr/pom/GOAR.doc<br>Governor Appointee Information<br>http://www.documents.dgs.ca.gov/ohr/pom/Governor Appointee Info.doc<br>EPR<br>http://www.documents.dgs.ca.gov/ohr/pom/epr2005.doc | |
| Exempt Salary Schedule 6/04<br><br>Compensation Plus<br><br>Benefits for Terminated Exempts<br><br>Attendance Clerk Manual<br>http://www.ohr.dgs.ca.gov/guides.htm | http://www.dpa.ca.gov/pv_obj_cache/pv_obj_id_4FD1BB8CE2FC196D1E5934F26426C9CF304D0900/filename/salary-schedule.pdf<br>http://www.dpa.ca.gov/pv_obj_cache/pv_obj_id_07107779632AF7914918A56A36A63147628B0100/filename/handbook.pdf<br>http://www.dpa.ca.gov/jobinfo/ex_cea.shtm<br>28 |