

Illegal Appointment

Policy	It is the policy of the DGS that all staff appointments be legal and compliant with all applicable civil service laws and rules (discussed in this section).
Purpose	The purpose of this section is to provide standards and guidelines to facilitate staff investigations of the legality and appropriateness of appointments and the correction of those found to be illegal or impractical.
Overview	<p>An appointment occurs when an individual is offered an appointment to a position, accepts the offer, and begins performing the duties of the position.</p> <p>An alternate range change within a deep class is considered an appointment the same as an appointment to a class and must be treated as such.</p> <p>Government Code Section 19050 requires that all civil service appointments be made in accordance with the Civil Service Act and the State Personnel Board (SPB) rule. This ensures that employees are treated equitably and consistently and it also serves the public's interest in preventing patronage and similar abuse of the State's employment system.</p>

Continued on next page

Illegal Appointment, Continued

Overview (continued)

However, occasionally appointments are made that are inconsistent with applicable laws and rules or after an individual has accepted an offer of appointment, something is discovered or occurs prior to the agreed upon start date that makes the appointment impractical. Such appointments may result from mistakes or misinformation, or they may be deliberate attempts to manipulate the system, or:

- The Governor imposes a hiring freeze
- A person with a mandatory right of return to the classification of appointment must be reinstated and there are no other vacancies in the classification
- The person who made the offer failed to obtain required approvals from the DGS Equal Employment Opportunity (EEO), Budget, and/or Human Resources (OHR) offices
- Information about the offeree is discovered that indicated that s/he is unsuited for the position
- It is discovered that the offeree does not have the required civil service eligibility (e.g., offeree does not possess the minimum qualifications, offeree's classification from which transfer is to occur is not at substantially the same level as the class of intended appointment, offeree is not reachable on the employment list
- It is discovered that while the offeree possesses the required civil service eligibility, a process required by law to be completed prior to appointment has not been completed (e.g., psychological screening or background investigation for a peace officer position)

Continued on next page

Illegal Appointment, Continued

Overview (continued)

When it is discovered that an individual who has been appointed might not have had eligibility for appointment to the classification, or particular "deep" class alternate range at the time of the appointment, or one of the "impractical" reasons stated above, the State Personnel Board (SPB) must be informed of the situation. If the DGS determines it was an illegal appointment or impractical appointment, the employee must NOT be sent home, or returned to his/her former position, or refused appointment after having accepted the position. Only the SPB can void an appointment, and that can occur only after the individual has been given due process.

Whenever an illegal appointment occurs, appropriate corrective action must be taken. Leaving an illegal appointment in effect can have the following detrimental effects:

- Such appointments circumvent and/or contradict the laws and rules that are intended to govern civil service rights and transactions.
- They cause inconsistencies that jeopardize the SPB's overall objective of evenly and equitably administering the civil service system.
- They often give employees unfair and unearned advantages over others whose appointments have been processed in the normal manner.

Whether the DGS should refuse to appoint someone after that person has accepted an offer of a position will depend on the circumstances. The following five points should be taken into consideration prior to arriving at a decision:

1. If, after being offered a position, an individual agrees to come to work under the conditions specified in the offer and the DGS refuses to put the person to work, a court could conclude, based on contract law, that the DGS must either
 - a) Place the person in the position
 - b) As a minimum and depending on the circumstances, compensate the person for any financial loss incurred as a result of that person's reliance on the offer

Continued on next page

Illegal Appointment, Continued

Overview (continued)

2. If, prior to the person's entering upon the duties, it is found that the person does not have the required civil service eligibility, the DGS is not obligated or permitted by law to appoint the person but, as noted above, might be liable for any financial loss incurred as a result of the person's reliance on the offer. In response to an appeal from an individual or a request from the DGS, in cases of extreme hardship or equity, the five-member State Personnel Board has authorized an appointment when an individual does not possess all of the required civil service eligibility.
3. If, prior to the person's entering upon the duties, it is found that the position is not lawfully authorized (e.g. not in the budget), the State might not be obligated or permitted by law to appoint the person. Whether a position is lawfully authorized requires an examination of the applicable statutory or regulatory constraints. If it is clear from these constraints that an appointment would be in violation of law, the DGS is not permitted by law to appoint the person but again might be liable for any financial loss incurred as a result of the person's reliance on the offer.
4. It may be appropriate for the DGS to refuse to appoint an offeree prior to the person entering upon the duties when such a refusal is clearly in the best interest of the State. For example:
 - a) The person is not acceptable, based on substantial newly acquired information
 - b) The person who made the offer was not authorized to do so and appropriate approvals are denied for significant reasons
 - c) Required hiring clearances, such as from the OHR, were not obtained and are withheld for significant reasons.

However, refusal to appoint someone for such reasons could be overturned in court. For example, in the case of an offer by an unauthorized person, a court could consider whether the offeree reasonably could believe that the offer was legitimate. If, based on such reasonable belief, the offeree acted in reliance on the offer to his/her detriment, a court, as a remedy, could order the appointment or, as a minimum, order compensation for the financial loss.

Continued on next page

Illegal Appointment, Continued

Overview (continued)

5. Every effort should be made by the DGS to provide a remedy, up to and including an appointment that mitigates the severity of any hardship that might have been incurred as a result of the person's reliance on the offer. However, as noted above, if it has been determined that the person does not have the required civil service eligibility, appointment of the person can be accomplished only through authorization by the five-member State Personnel Board. Such authorization will be provided only in cases of extreme hardship.
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Examples of illegal appointments

The following are some examples of illegal appointments:

- Improper clearance of a certified list resulting in non-eligibility.
 - Transfer from exempt to civil service with no prior civil service eligibility.
 - Person competes in exam who is later found not to meet the minimum qualifications.
 - Appointment to the incorrect range of a deep class
 - A short duration appointment intended to give eligibility for a future movement.
 - Appointment to a class, location, or time base made solely to give eligibility to transfer to another class, location, or time base.
 - Promotion of an employee to one class that is made solely to provide a subsequent movement at a higher class and salary.
 - Failure to obtain a medical clearance prior to an appointment, but in conjunction with another action.
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Process

The following phases for handling an illegal appointment are discussed in detail in Personnel Management Policy and Procedures Manual (PMPPM) Section 395.

- Investigating
 - Determining appointment legality and good faith
 - Selecting corrective/remedial actions
 - Taking action
 - Appealing
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Continued on next page

Illegal Appointment, Continued

Investigating This section of the PMPPM (395) covers the procedures and resources that should be used to gather the facts that are needed to evaluate the circumstances and legality of an appointment.

Determining appointment legality/good faith Once the facts and circumstances have been determined, they should be reviewed in light of:

1. the specific laws and rules that govern the specific type of transaction in question and
2. SPB Rule 8, which sets good faith standards for both appointing powers and appointees to follow in their actions under the civil service system.

The following questions should be answered during the analysis:

1. Was the appointment legal?
 2. Did the DGS' intent in making the appointment meet the good faith standards contained in part (a) of SPB Rule 8?
 3. Did the employee's actions in accepting the appointment meet the good faith standards contained in part (b) of SPB Rule 8?
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Illegal Appointment, Continued

Selecting corrective and remedial actions

When the above two steps lead to a conclusion that an appointment is illegal, the C&P Analyst submits the data, in writing, to the SPB. SPB staff must decide on the appropriate combination of corrective and remedial action. Key points that must be decided upon at this stage include:

- Appointment cancellation – this action retroactively cancels the status or merit-related aspects of the appointment.
- Alternative appointments – when an appointment of a good faith appointee is canceled, it should be determined if the work performed would have been covered by an alternative appointment for which the appointee would have been eligible. When this is the case, the alternative appointment should be made retroactively to replace the canceled appointment.
- Compensation – when appointments are canceled, any needed pay rate corrections are made at the time of the cancellation. In addition, Rules 8 and 266 determine if compensation adjustments are to be retroactive. Rule 9 distinguishes compensation from the status-related items impacted by an appointment cancellation.
- Remedial actions – when an appointment is canceled, and the appointee acted in good faith, efforts should be taken to mitigate the negative effects that the cancellation has upon the employee.
- Sanctions – a determination is made as to whether anyone should be held at fault for the illegal appointment and if any punitive action or other sanctions should be taken against him/her
- Letting the action stand – SPB will make this determination and notify the department.

Taking action

This section of the PMPPM (395) describes the process for taking the actions decided upon in the step above. This includes the advance notice and the right to respond required by Rule 60.

Continued on next page

Illegal Appointment, Continued

Appeal rights This section of the PMPPM (395) describes the right of the DGS and /or the employee to appeal an appointment cancellation or correction.

Other information The PMPPM section (395) contains several examples of illegal appointment processing in addition to “How to Obtain an Employee’s Work History.”

Resources The following table depicts the various resources available regarding illegal appointments.

Resource	Section
Law and Regulation http://leginfo.legislature.ca.gov/faces/codes.xhtml;jsessionid=ec740fb92d7f258ccc38ebd5c0c9 http://weblinks.westlaw.com/toc/default.aspx?Abbr=ca%2Dadc&Action=ExpandTree&AP=11CF57861D48D11DEBC02831C6D6C108E&ItemKey=11CF57861D48D11DEBC02831C6D6C108E&RP=%2Ftoc%2Fdefault%2Ewl&Service=TOC&RS=WEBL13.01&VR=2.0&SPa=CCR-1000&pbcr=DA010192&fragment#11CF57861D48D11DEBC02831C6D6C108E	GC Sections 18525, 18670, 18671, 19050, 19051, 19257, 19257.5, 19680, 19682, 19683, 19764, 19572, 19583.5 Rule 8, 9, 60, 60.1, 266, 266.1, 302.2, 302.3
Personnel Management Policy and Procedures Manual (PMPPM)	395
Responsible Control Agency http://www.calhr.ca.gov/Pages/home.aspx http://www.spb.ca.gov/	CalHR, SPB
Other	
California Code of Regulations www.calregs.com	
