

California Code of Regulations
Title 15. Crime Prevention and Corrections
Division 8. California Prison Industry Authority
Chapter 1. Rules and Regulations of California Prison Industry Authority
Article 6. Personnel

INITIAL STATEMENT OF REASONS

SUMMARY

Penal Code section 2801 authorizes the California Prison Industry Authority (CALPIA) to develop and operate industrial, agricultural, and service enterprises employing incarcerated individuals in institutions under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR). CALPIA's mission is to be a self-supporting, customer-focused business that reduces recidivism, increases prison safety, and enhances public safety by providing incarcerated individuals productive work and training opportunities through CALPIA's various enterprises. It is also the policy of CALPIA to ensure these enterprises operate in a safe and professional manner. In an effort to align employee conduct with these policies, CALPIA and the Prison Industry Board (PIB) propose to amend 15 CCR §8104 by expanding CALPIA's current employee conduct regulations to include more comprehensive requirements. The proposed regulatory amendment will also align more closely with CDCR's Code of Conduct regulations, 15 CCR §3391, in an effort to hold CALPIA employees to the same standard as CDCR employees, to the extent possible.

AUTHORITY & REFERENCE

Penal Code section 2801 authorizes CALPIA to develop and operate industrial, agricultural, and service enterprises employing incarcerated individuals in institutions under the jurisdiction of CDCR.

Penal Code section 2805 authorizes CALPIA to establish new industrial, agricultural and service enterprises which it deems appropriate, to initiate and develop new vocational training programs, and to assume jurisdiction over existing vocational training programs.

Penal Code section 2808 authorizes CALPIA's board, the PIB, to contract to employ a General Manager to serve as the chief administrator of CALPIA and to serve at the pleasure of the chairperson of the PIB.

Penal Code section 2809 authorizes CALPIA to recruit and employ civilian staff and establish recruiting, testing, hiring, promotion, disciplinary, and dismissal procedures which meet the needs of CALPIA.

BACKGROUND

CALPIA is a self-supporting, customer-focused business that provides productive work assignments and training opportunities for approximately 5,800 incarcerated individuals within CDCR institutions. CALPIA manages over 100 manufacturing, service, and consumable operations throughout the state. The goods and services produced by CALPIA are sold predominantly to state departments as well as other governmental entities. Industries include food production, metal fabrication, and carpentry, among others.

CALPIA civil service employees work in a variety of settings, including CDCR institutions, CALPIA's central office, in the field, and/or remotely pursuant to an approved telework agreement. Pursuant to 15 CCR §3415, CALPIA employees working within a CDCR institution must observe all rules, regulations, and laws governing the conduct of employees at that institution and failure to do so may lead to the exclusion from CDCR institutions. However, not all CALPIA employees perform their work duties within a CDCR institution. All CALPIA employees are expected to practice appropriate and professional conduct in any setting they may find themselves while on duty in order to foster a safe and productive work environment. Inappropriate conduct reflects negatively on the employee and CALPIA, can lead to the CALPIA employee being excluded from their work environment by CDCR, and can lead to employee discipline, including dismissal from employment. CALPIA takes the work environment and its mission very seriously, which is the primary purpose for promulgating this regulatory proposal. CALPIA wants to be certain that each employee is noticed and clear on what is expected of them while on duty as well as the potential consequences of unprofessional and inappropriate conduct.

POLICY STATEMENT OVERVIEW

Problem Statement: CALPIA's existing employee conduct regulation requires employees to be courteous with incarcerated and paroled individuals, other employees, visitors, and members of the public. The regulation expands on this by adding that incarcerated and paroled individuals must be addressed by their proper names. This is the extent of CALPIA's employee conduct regulation, which is not comprehensive enough to ensure employees are notified of what is expected of them and the potential consequences. It is also not enough to ensure a safe and productive work environment. Additionally, CALPIA is currently relying on CDCR's employee conduct regulation (15 CCR §3391) to enforce employee discipline issues that occur at CDCR institutions, which is not a good or permanent solution for notifying CALPIA employees of workplace expectations since CALPIA and CDCR are separate entities and since these regulations

only apply to CALPIA employees working within CDCR institutions and not to all CALPIA workplaces.

Amending section 8104 by carrying out the objectives stated below, CALPIA can rely on its own employee conduct regulations for enforcement and employees will be properly notified of what is expected of them, thereby ensuring that CALPIA's employee disciplinary process is consistent, uniform, and fair.

Objectives

- Expand CALPIA's current regulations governing employee conduct to include employees of the PIB
- Consolidate various state employee laws and requirements in one location for employee ease
- Provide notice to CALPIA employees of expected behavior and that failure to comply with these expectations may result in discipline up to, and including, dismissal
- Align CALPIA employee conduct regulations with CDCR's employee conduct regulations, to the extent possible, for the purpose of holding employees to the same standards

Benefits

- Help ensure a safe and professional work environment within each CALPIA enterprise
- CALPIA employees will be properly informed of CALPIA's workplace expectations
- Violations can be consistently addressed through the employee discipline process

DISCUSSION OF EACH AMENDMENT

Amend subsection (a) to implement an updated and more thorough regulatory code of conduct for CALPIA employees and to align with CDCR's regulatory code of conduct regulations set forth in 15 CCR §3391, to the extent possible. This proposal establishes a comprehensive list of expectations for employee performance and conduct and extends employee conduct and performance standards to PIB employees. This will allow CALPIA to hold employees accountable for failing to comply with performance standards and expectations while on duty regardless of the employee's specific worksite, and impose employee discipline if necessary. Subsection (a) specifically extends the requirements of this section to PIB employees (CALPIA's General Manager).

The provisions in existing subsections (a) and (b) are either moved, or moved and amended, to proposed subsections (a)-(d).

Initial Statement of Reasons

Unless discussed below, it is necessary to include the provisions in subsections (a)(1)-(a)(15) to consolidate laws, department policies, and other requirements in one place so CALPIA employees are properly notified of, and can easily locate, work requirements. It would not be feasible or reasonable to require employees to research through the California codes, regulations, and other requirements to know what is expected of them – nor would it be reasonable to expect them to know how to go about doing so.

Adopt subsection (a)(3): CALPIA policies and procedures are located in CALPIA's document library which can be found on CALPIA's intranet. CALPIA policies and procedures are also presented to every new employee when hired at CALPIA's new employee orientation and in various mandatory annual trainings. Therefore, it is reasonable to expect employees to be aware of and comply with CALPIA policies and procedures, and this gives them proper notice that it is a requirement to do so and that failure to do so may result in discipline up to, and including, dismissal as stated in proposed subsection (c).

Adopt subsection (a)(4): Gov. Code 19572 states that insubordination constitutes cause for discipline of civil service employees. This subsection gives employees proper notice they are required to comply with directives that are within the law from their supervisor or indirect supervisor, such as a person holding a position within their supervisory chain of command. This subsection also provides notice to supervisors that their directives are required to be within the law.

Adopt subsection (a)(5): Gov. Code 19572 states that an inexcusable neglect of duty constitutes cause for discipline of civil service employees. This subsection gives employees proper notice they are required to comply (carry out) the duties stated in their duty statements. Failure to do so can be an inexcusable neglect of duty.

Adopt subsection (a)(6): CALPIA employs staff to perform duties that require specific skills and performance standards (i.e., attorneys, dive instructors). This regulation requires them to adhere to the professional standards applicable to their profession or trade, such as the State Bar of California and the Association of Diving Contractors International. This is necessary to maintain safety and credibility at CALPIA enterprises and that CALPIA meets its mission and vision.

Adopt subsection (a)(7): This provision has been moved from existing subsection (a) and amended to replace the word "dealings" with "communication" for specificity, and add CDCR employees and members of the PIB as people that must be communicated with in a professional and courteous manner. CALPIA added these two groups of people because CALPIA employees interact with them on a regular and somewhat regular basis respectively as they do with the groups of people stated in the existing regulation. Additionally, CALPIA relies upon CDCR employees for the safety and security of its employees and operations and this subsection will maintain the safety and credibility of CALPIA and of CALPIA's operations and employees.

Adopt subsection (a)(8): This provision has been moved from existing subsection (a) and amended to replace the phrase “proper name” with “name associated with their CDCR number.” The phrase “proper name” is vague and can increase the risk of CALPIA employees using a name that the incarcerated individual is not comfortable with. In an effort to create a professional and consistent work environment, the CALPIA employee is required to call them by the name associated with their CDCR number.

Adopt subsection (a)(9): This provision has been moved from existing subsection (a).

Adopt subsection (a)(10): Gov. Code 19572 permits discipline for unlawful harassment based on the protected classes listed under the Federal Employment and Housing Act (harassment that rises to the level of severe or pervasive). CALPIA is including a zero tolerance harassment regulation to ensure that harassment does not rise to the level of severe or pervasive. This provision is to notify all employees that they are subject to this zero tolerance harassment regulation while on duty and can be disciplined for it, even if that conduct does not rise to the level of severe or pervasive.

Adopt subsection (a)(11): In the course of operations, there have been occasions when CALPIA employees have not adhered to their work schedule, left their work assignment early, arrived to work tardy or did not arrive to work at all without notifying their supervisor. These activities are considered an inexcusable neglect of duty or an inexcusable absence without leave (Gov. Code 19572). CALPIA wants to make clear to employees and their supervisors that work schedules that are in writing (i.e. duty statements, telework agreements, etc.) are the work schedules the employees will be held to. CALPIA has included an exception when they receive permission from their direct or indirect supervisor to do otherwise. The indirect supervisor has been included so that persons above their supervisor within their supervisory chain of command can release them for the day if needed. To ensure employees are properly notified of this requirement, it is necessary to include this provision here.

Adopt subsection (a)(12): Written employee expectations is a method of communicating what a Unit Manager/Supervisor expects from employees. They are formal guidelines which provide consistent direction to the employees. They cover a variety of general topics and topics specific to the unit which typically provide specificity to topics that are already in law or regulation (i.e., confidentiality, attendance, break periods, etc.). CALPIA has included an exception when they receive permission from their direct or indirect supervisor for the purpose of flexibility. Including this requirement provides CALPIA employees with proper notice that they must follow unit expectations.

Adopt subsection (a)(13): Pursuant to 15 CCR §8298, employee participation in illegal activities is prohibited and is considered an incompatible activity in relation to employment at CALPIA. This proposed regulation requires employees to report such activity taking place in the workplace or while on duty – meaning the employee may not physically be at the workplace but is on duty (i.e., in the field driving a CALPIA vehicle).

Pursuant to 15 CCR §3415, CALPIA employees who are working in CDCR institutions are required to report misconduct, unethical or illegal activity, and any complaints or discipline impacting professional licensure as described in 15 CCR §3391(a)(9). CALPIA is expanding this requirement to apply to CALPIA employees that are not working at CDCR institutions to help ensure the safety and security of all CALPIA employees regardless of where the CALPIA employee is physically working.

To ensure employees are properly notified of this requirement, how to go about reporting the activity, and the consequences of not reporting the activity, it is necessary to include this provision here.

Adopt subsection (a)(14): In addition to CALPIA and the PIB, other state agencies, such as the Governor's office, California Civil Rights Department, and State Auditor's office, have the authority to conduct inquiries and investigations into other state agencies, including CALPIA. Additionally, CALPIA contracts with CDCR's Office of Internal Affairs to conduct investigations on its behalf, including investigations of allegations of misconduct by CALPIA employees. This regulation properly notifies CALPIA employees that CALPIA, the PIB, and other agencies have this right, that employees must cooperate with these inquiries/investigations, unless the employee is the subject of a criminal inquiry/investigation (since they have a Fifth Amendment right to not cooperate with a criminal inquiry of investigation), and that failure to do so may lead to discipline up to, and including, dismissal.

Adopt subsection (a)(15): Many CALPIA employees have access to various confidential records and are required to take a variety of privacy and security training through CDCR and CALPIA courses (i.e., Confidential Disclosure, Confidential Documents, Security Awareness). These courses address the requirements of the Information Practices Act of 1977 and other privacy laws and are included in various CDCR and CALPIA privacy policies. This regulation properly notifies CALPIA employees that they must maintain confidentiality of all information relating to incarcerated individuals, employees, and state operations as described in these CDCR and CALPIA privacy policies and that failure to do so may lead to discipline up to, and including, dismissal.

Adopt subsection (c): The state of California follows a program of progressive discipline when an employee fails to meet the required standards of performance. Progressive discipline establishes a process of clear, timely, consistent, and documented communications with an employee designed to ensure an understanding of job expectations, provide an opportunity to correct behavior, improve performance, and assure "due process." This subsection gives employees notice that they might be subject to progressive discipline for failing to adhere to the requirements set forth in this section.

Adopt subsection (d): This provision has been moved from existing subsection (b).

ALTERNATIVES

CalPIA must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

ECONOMIC IMPACT ASSESSMENT

- **Creation/Elimination of Jobs Within the State:** CALPIA has determined that this regulatory proposal will have no impact on the creation or elimination of existing jobs within the State of California.
- **Creation/Elimination of Business Within the State:** CALPIA has determined that this regulatory proposal will have no impact on the creation or elimination of businesses within the State of California because businesses are not affected by the internal management of CALPIA and the employment of incarcerated workers within CDCR institutions and CALPIA operations.
- **Expansion of Business Within the State:** CALPIA has determined that this regulatory proposal will have no impact on the expansion of business within the State of California because businesses are not affected by the internal management of CALPIA and the employment of incarcerated workers within CDCR institutions and CALPIA operations.
- **Significant Adverse Impact on Business:** CALPIA has determined that this regulatory proposal will have no significant statewide adverse impact on business because businesses are not affected by the internal management of CALPIA and the employment of incarcerated workers within CDCR institutions and CALPIA operations.

BENEFITS TO THE CALIFORNIA PUBLIC

- These regulations will benefit the public, incarcerated persons, parolees, and department employees by ensuring that failure by employees to comply with the law, CDCR policies, or employee expectations are consistently and fairly addressed through the employee discipline process.
- These regulations put department employees on notice of conduct expectations, the process for assessing allegations and penalties for the imposition of discipline, and provide for consistent application of the department's employee disciplinary process and employee due process.

LOCAL MANDATE

CALPIA has determined that this regulatory action would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by part 7 (commencing with Section 17500) of Division 4 of the Government Code.

DOCUMENTS RELIED UPON

N/A