

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Dickinson Analyst: Janet Jennings Bill Number: AB 872
Related Bills: None Telephone: 845-3495 Introduced Date: February 22, 2013
Amended Date: April 8, 2013
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Employment/Adverse Actions

SUMMARY

This bill would modify the protections provided to state employees under the California Civil Service Act.

RECOMMENDATION

No position.

Summary of Amendments

As introduced on February 22, 2013, this bill would provide state employees additional protections under the California Civil Service Act, as discussed in this analysis.

The April 8, 2013, amendments removed the mandate for each state employer to create a joint labor management committee, removed the prohibition of a full time state employee to hold additional paid positions within state service, and added additional time for adverse actions based on fraud, embezzlement, or falsification of records.

This is the department's first analysis of the bill. This analysis only addresses the provisions of this bill that impact the department's programs and operations.

REASON FOR THE BILL

The reason for the bill is to afford additional protections within the state's disciplinary process for state employees.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2014, and would apply to adverse actions occurring on or after that date.

Board Position:

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Executive Officer

Date

Selvi Stanislaus

5/22/13

ANALYSIS

STATE LAW

The California Civil Service Act within the Government Code establishes procedures for taking disciplinary actions, called adverse actions, by the State Personnel Board. The Act provides a statute of limitations of three years to serve an adverse action on state employees. If the action is not served within three years after the cause for discipline, the action is deemed invalid. In a case where the adverse action is due to fraud, embezzlement, or falsification of records, the notice of adverse action must be served within three years after the discovery of the misconduct. Adverse actions served within the statute of limitations can result in dismissal, demotion, or reassignment.

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Any Franchise Tax Board (FTB) employee or member responsible for the unauthorized disclosure of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony. If the unauthorized disclosure involves the use of a state computer, it may be prosecuted as a felony. Additionally, the FTB may take disciplinary action against an employee who makes an unauthorized disclosure.

THIS BILL

This bill would do the following:

- Mandates grievances filed for a violation related to a safe and healthy work environment be given a priority status.
- Mandates state employers to honor a Memorandum of Understanding under which the employee is covered.
- Prohibits state employers from standardizing work in a given time period or issuing unreasonable quota.
- Prohibits contractors from priority in obtaining permanent, overtime, or on call positions over state employees unless it is more economical to employ the contractor.
- Prohibits state employees who are required to maintain a professional license from being required to perform work that would jeopardize their license.
- Mandates a peer review committee if a state employer does not employ professional management staff as defined.
- Prohibits adverse action against state employees unless the notice of adverse action is served and the investigation is completed within one year of the discovery of the cause for discipline, except for adverse actions for fraud, embezzlement, or falsification of records which would be subject to a three year period for service of the notice of action.

The bill would define the following terms:

- A Contractor is any person other than a civil service employee, contracted by a state agency.
- An Employee is a civil service employee other than an excluded employee, of the state of California.
- An Employer is all state agencies, boards and commissions designated by law that employ civil service employees, except the University of California.
- A Professional Employee is an employee as defined in Section 3521.5 of the Government Code.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The bill would prohibit state employers from standardizing work in a given time period. Non-professional duties such as opening and sorting mail, keying, document sorting, and stock delivery is easily evaluated by meeting a minimum standard of work within a specified time frame. The author may wish to amend the bill to apply the prohibition to professional employees only.

This bill uses the undefined term "unreasonable quota." The absence of a definition to clarify this term could lead to disputes with employees and would complicate the administration of this provision of the bill.

A one year statute of limitations to serve an adverse action for unauthorized accesses would weaken the department's ability to use disciplinary action as a deterrent for violating the department's unauthorized access policies. The shortened statute would limit the cases the department develops to acts that occur during the most recent year; however, some occurrences of unauthorized access take longer than one year from the employee's first inappropriate access to investigate. Allowing unauthorized accesses to escape discipline due to a shortened statute of limitations would also weaken privacy protection for taxpayers' confidential information.

OTHER STATES' INFORMATION

A comparison with other states would not be meaningful as this bill pertains to administrative procedures that are specific to California.

FISCAL IMPACT

The department would need to enhance the audit systems used to identify instances of inappropriate access of confidential taxpayer information and devote additional resources to analyze data collected to decrease the time it presently takes to uncover patterns of unauthorized access. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

SUPPORT/OPPOSITION¹

Support: American Federation of State, County, and Municipal Employees
(Co-Sponsor)
Service Employees International Union, Local 1000 (Co-Sponsor)
Union of American Physicians and Dentists (Co-Sponsor)
Association of California State Supervisors
Professional Engineers in California Government

Opposition: None on File

ARGUMENTS

Proponents: Some could argue that it is unfair for state employees to wait up to three years for disciplinary investigations to be completed.

Opponents: Some could argue that the Government Code already affords state employees more than adequate protection from unfair disciplinary activity.

LEGISLATIVE STAFF CONTACT

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¹ According to the Assembly Committee analysis dated April 23, 2013 { http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0851-0900/ab_872_cfa_20130423_103842_asm_comm.html }