

CHAPTER 44
MERIT ISSUE COMPLAINTS
REVISED AUGUST 2023
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CHAPTER 44

MERIT ISSUE COMPLAINTS

1. PURPOSE.

- a. The Department's merit issue complaint process is to provide applicants and employees, including cadets, of the CHP with a uniform method for addressing personnel actions or decisions an applicant/employee believes may be unfair and not based on merit as required by civil service laws and rules.
- b. It is the Department's intent to resolve the issue at the lowest level possible. All merit issue complaint investigations will be conducted by Selection Standards and Examinations Section (SSES).
- c. The complaint process, including time frames, are outlined in this chapter and include procedures established to respond to merit issue complaints.

2. LEGAL AUTHORITY.

- a. California Code of Regulations (CCR), Title 2, Administration, Section 66.1, explains merit issue complaints and the process departments must follow to address merit issue complaints. Pursuant to Section 66.1(a) CCR, merit issue complaints are complaints alleging the State Civil Service Act or State Personnel Board (SPB) regulation or policy has been violated by a state agency.
 - (1) Merit issue complaints, include, but are not limited to, interference with promotional opportunities, interference with a person's access to any SPB appeals process, and the designation of managerial positions pursuant to Government Code Section 3513.
 - (2) Merit issue complaints do not include appeals of actions that are specifically provided for elsewhere in law or in SPB regulations. Examples of appeals that would not fall under the merit issue complaint process include, but are not limited to, adverse actions, equal employment opportunity complaints including allegations of discrimination and harassment based on a protected class, examination appeals, and grievances.

b. Pursuant to Section 66.1(c) CCR, merit issue complaints shall first be filed with our Department, specifically SSES within three years of the alleged violation of SPB regulation or policy prior to filing an appeal with the Appeals Division of SPB. A merit issue complaint may be filed by the affected employee/applicant or designate an attorney or other authorized representative to represent them. No person may file a merit issue complaint on behalf of another person without their specific authorization.

c. Pursuant to Section 66.1(d) CCR, the Department shall inform employees/applicants at the time the complaint is received of their right to challenge the Department's decision, denial of the complaint, or failure to respond by filing a complaint with the Appeals Division of SPB and the timelines for filing according to 66.1(e) CCR.

d. Pursuant to Section 66.1(e) CCR, a merit issue complaint shall be filed with the Appeals Division within 30 days of the Department's decision or denial of the complaint. Failure of a state agency to respond to a merit issue complaint within 90 days of receipt of the complaint shall be deemed a denial of the complaint's allegations and shall release the appellant to file a merit issue complaint directly with the Appeals Division within 30 days of the 90th day.

3. ROLES AND RESPONSIBILITIES.

a. Commissioner.

(1) As the appointing power, the Commissioner is ultimately responsible for ensuring the Department has an effective merit issue complaint process. The merit issue complaint process shall be administered by the SSES commander.

(2) The Commissioner will ensure sufficient resources and personnel are available to process complaints in an efficient and timely manner. Furthermore, the Commissioner will ensure full cooperation from all employees to adequately resolve merit issue complaints.

b. Chief, Personnel and Training Division.

(1) The Personnel and Training Division (PTD) Chief is the decision-maker of any merit issue complaints internally received by the Department, unless the complainant is directly under the PTD Chief, if this is the case, then the Chief of Assistant Commissioner, Staff (ACS) is the decision-maker. The PTD Chief or ACS Chief shall work with the Office of Legal Affairs (OLA) during the review process. The PTD Chief will render a timely written decision to the complainant and reiterate to the complainant their rights to file an appeal with

SPB Appeals Division within the time frame mandated under Section 66.1(e) CCR.

(2) Should the complainant want to discontinue the complaint process, the complainant may do so and the duty to further respond to the complaint shall cease. However, the PTD Chief shall ensure the review continues to ensure compliance with CHP merit issue complaint policies.

c. Office of Legal Affairs.

(1) Office of Legal Affairs provides legal counsel and shall assist the PTD Chief in the determination review.

(2) Office of Legal Affairs is the only command that shall communicate with SPB on all aspects related to merit issue complaints received by the Department. Any questions that may need to be raised regarding the merit issue complaint process shall be directed to OLA who will work with the PTD Chief and/or SPB, as needed.

(3) Should the complainant file an appeal with SPB, OLA will handle all departmental responses to SPB and represent the Department at the merit issue complaint appeal hearing.

d. Commander, Selection Standards and Examinations Section.

(1) The SSES commander is the overall administrator of the merit issue complaint process. The responsibilities of the SSES commander include:

(a) Accept all internally filed merit issue complaints which are submitted within the time frames specified.

(b) Oversee all merit issue complaint activity, including:

1 Immediately advise the PTD Chief and OLA of receipt of a merit issue complaint and provide a copy of the complaint and all supporting documents provided by the complainant.

2 Immediately, upon receipt of a merit issue complaint, provide the complainant with an Opening Letter acknowledging receipt of the complaint and advising complainant of their rights under Section 66.1(e) CCR referenced in paragraph 2.d. of this chapter.

3 Maintain a complaint tracking system and records, and periodically evaluate the merit issue complaint process and program effectiveness and modify as necessary in consultation with the PTD Chief and OLA.

4 Maintain liaison with appropriate organizational units, state agencies, and/or individuals, and provide information, guidance, and technical assistance to all parties involved, when applicable except as articulated in paragraphs 3.c.(2) and 3.c.(3) of this chapter.

(c) Oversee the merit issue complaint process, including:

1 Assign an impartial investigator to the complaint within five calendar days of receipt of the complaint.

2 Review the entire investigative report, prepare a proposed administrative disposition, including remedies, if appropriate, and submit the entire investigative packet (investigative report, closing documentation) to the decision-maker, PTD Chief and OLA.

e. Merit Issue Complaint Investigators.

(1) Merit issue complaint investigators have the responsibility for inquiring into, and reporting findings of fact on, complaints alleging State Civil Service Act or SPB regulation or policy has been violated by the Department. The merit issue complaint investigators:

(a) Confirm the complaint has been filed within three years of the alleged violation in accordance with Section 66.1(c) CCR. (Refer to paragraph 2.b. of this chapter.)

(b) Ensure the charge(s) and allegation(s) accepted for investigation is/are investigated completely, impartially, and within the established time frames.

(c) Ensure the Public Safety Officers Procedural Bill of Rights (POBR) provisions are strictly adhered to for all employees except applicants and cadets who are not afforded rights under POBR.

(d) Ensure employees interviewed are advised of the purpose of the interview, the confidentiality of the process, and retaliation against anyone involved in the investigative process is prohibited and may result in adverse action.

(e) Prepare an administrative disposition analysis addressing each charge and allegation accepted for investigation for the PTD Chief.

(f) Do not discuss the merits of the case with the parties involved in the investigation.

(g) The Department will strive to maintain confidentiality to the extent possible as the law allows and does not impede the investigation. Full confidentiality cannot be guaranteed. However, the information will be limited to personnel with a need to know only.

(2) The merit issue complaint investigator shall not make a final decision about the merits of the complaint. They only gather evidence and present the facts. Merit issue complaint investigators shall not incorporate judgments in their analysis or findings.

(3) Merit issue complaint investigators will be functionally responsible to the SSES commander when conducting investigations. This will allow the SSES commander to provide a proposed administrative disposition analysis to the PTD Chief.

4. SCOPE.

a. Basis for Complaint. A merit issue complaint is a complaint made by an applicant or employee alleging a violation of the State Civil Service Act, or SPB regulation or policy has been violated by the Department.

(1) Merit issue complaints, include, but are not limited to, interference with promotional opportunities, disputes regarding the effective dates of appointments or promotions, and application of alternate salary ranges within certain classifications.

(2) Merit issue complaints do not include appeals of actions that are specifically provided elsewhere in law or SPB regulations. Examples of appeals that would not fall under the merit issue complaint process include, but are not limited to, adverse actions, equal employment opportunity complaints including allegations of discrimination and harassment based on a protected class, examination appeals, and grievances.

b. Merit Issue Complaint Process. The departmental merit issue complaint process is available to applicants and departmental employees, including cadets. The PTD Chief is the decision-maker of any merit issue complaints internally received by the Department and shall work with OLA during the review process. The PTD Chief will render a timely written decision to the complainant and reiterate to the complainant their rights to file an appeal with SPB Appeals Division within the time frame mandated under Section 66.1(e) CCR. Should the complainant want to discontinue the complaint process, the complainant may do so and the duty to further respond to the complaint shall cease. However, the PTD Chief shall ensure the review continues to ensure compliance with CHP merit issue complaint policies.

c. Time Frames After a Complaint Has Been Received.

(1) Selection Standards and Examinations Section Commander. If the complaint is received timely, the Department has 90 calendar days to respond to the complaint. The SSES commander/investigators have 30 calendar days to complete their investigation and provide a proposed administrative disposition analysis to the PTD Chief and OLA. If the SSES commander is unable to provide a proposed administrative disposition analysis within 30 calendar days, the commander will make notification to the PTD Chief and OLA for the need for additional time and the reasons why additional time is needed, not to exceed 14 calendar days. Should additional investigation be necessary, the SSES commander shall ensure the merit issue complaint investigators complete the additional investigation. The SSES commander shall provide updated information and documents along with an updated proposed administrative disposition analysis to the PTD Chief and OLA within 10 calendar days. Once the PTD Chief makes the determination, the SSES command will mail the Department's determination within one business day.

(2) Personnel and Training Division Chief. Upon receiving the completed investigation and proposed administrative disposition analysis from the SSES commander, the PTD Chief will, within 15 calendar days, ensure OLA has received all material and will work with OLA in the review of the investigation. If additional information is needed, the PTD Chief will immediately advise the SSES commander. The PTD Chief, with OLA's input, will make a determination regarding the merit service complaint within 80 calendar days from the date of receipt of the complaint to the Department absent exigent circumstances. The decision must be rendered and issued no later than on the 90th calendar day from the date of receipt of the complaint. If a decision is not rendered by the 90th day, the complaint is deemed denied.

(3) State Personnel Board Appeals Division. Appeals must be filed within 30 calendar days after (1) the Department's decision or denial of the complaint, or (2) after 90 calendar days of receipt of the complaint and the Department has failed to respond.

5. STEPS OF THE MERIT ISSUE COMPLAINT PROCESS. When an applicant or employee alleges a violation of the State Civil Service Act or SPB regulation or policy by the Department, the applicant or employee may pursue a merit issue complaint. The applicant or employee may file a written complaint to the SSES commander within three years of the alleged violation.

a. Elements of a Complaint. The following information shall be included in a complaint:

(1) Statement of the issue—identify the specific act or decision that created the alleged violation. Be specific and cite which act, regulation, or policy the applicant/employee believes was violated. Complaint shall include as much detail as possible when identifying the specific State Civil Service Act or SPB regulation or policy that has been allegedly violated including all relevant documents.

(2) Requested remedy.

b. Investigating the Complaint.

(1) Within five calendar days of receipt of a merit issue complaint, a merit complaint investigator shall be assigned to investigate the complaint. An SSES analyst or manager may be assigned as the merit issue complaint investigator.

(2) The merit issue complaint investigator shall conduct a comprehensive investigation to determine the validity of the facts and the allegation(s) and prepare an investigative report.

c. Documenting Complaints. The response to an internal complaint should be issued within 90 calendar days from the receipt of the complaint.

(1) Issue a Letter of Determination to the complainant within one business day of the PTD Chief's determination. When an allegation is specific to a violation by a specific person(s) rather than a process, a closing letter shall be issued to the person to which the complaint was against with the outcome which advises the employee if the merit issue complaint allegations were sustained or not sustained. The Letter of Determination shall include:

(a) A summary of the results of the investigation and a statement that action will be taken, if appropriate.

(b) New evidence or points raised during the investigation by the investigators.

(c) The PTD Chief's remedy for the situation.

(d) Information pertaining to the complainant's appeal rights.

(2) Selection Standards and Examinations Section shall maintain a tracking system for issuance of Letter of Determination to the respective complainants. All Letters of Determination to complainants shall be sent via e-mail, if known, and certified mail to the complainant's official home address as maintained by the Human Resources Section.

d. Release of Information. The investigation is considered confidential. As such, the Department will only release information a requestor is entitled to under the law.

e. External Merit Issue Complaint Appeals.

(1) If the complainant is dissatisfied with the Department's decision or if the Department fails to respond within 90 calendar days of receipt of the complaint, the complainant may file an appeal directly with the SPB Appeals Division within 30 calendar days. Appeals must be filed with SPB within the time frames specified in regulations or it may be dismissed.

(2) The State Personnel Board Appeal/Complaint Form, with filing instructions, may be accessed from SPB's Web site at www.spb.ca.gov. Appeals and supporting documentation should be filed by e-mail at appeals@spb.ca.gov, but can also be mailed, delivered, or sent by fax to:

State Personnel Board
Appeals Division
801 Capitol Mall, MS#22
Sacramento, CA 95814
FAX: (916) 654-6055

(3) State Personnel Board will notify the Department of the appeal filed by the complainant. At that time, the SSES commander will immediately notify the PTD Chief and OLA of the appeal. Office of Legal Affairs will assume all responsibility to respond to the appeal.

6. PROCESSING THE COMPLAINT AND RESPONSE.

a. Employee Responsibility for Moving the Complaint. The complainant has three years to file a merit issue complaint with the SSES commander.

b. Once a merit issue complaint is received by the Department, commanders shall not advise, counsel, or advance an issue on behalf of the complainant.

7. COMPLAINT RECORDS MANAGEMENT.

a. Purpose. To ensure efficient and confidential management of complaint records to all applicants/employees, procedures for the maintenance and retention of complaint records preserved in departmental files from the initial stage through final disposition have been developed.

b. Receipt of Complaints. Internal merit issue complaint records are to be physically located within SSES. All complaint files shall be placed in a separate confidential file entitled "Merit Issue Complaints," labeled "Active," "Inactive," or "Miscellaneous." Complaints appealed to SPB are handled by OLA and are to remain within OLA.

c. Complaint Investigation/Documentation. Complaint records and related documentation pertaining to the issue in dispute shall be filed with the complaint. The records are identified as confidential and shall be retained in a manner that will prevent their disclosure to unauthorized personnel. The Department will strive to maintain confidentiality to the extent possible as the law allows and does not impede the investigation. Full confidentiality cannot be guaranteed. However, the information will be limited to personnel with a need to know only.

d. Active/Inactive/Miscellaneous Files.

(1) Active complaint files are those reviews pending a response to the complainant.

(2) Inactive complaint files are those requiring no further response.

(3) Miscellaneous complaint files are when a complaint is withdrawn; however, the Department continues its review of the matter to ensure compliance with CHP merit issue complaint policies.

e. Retention. California Highway Patrol record retention policy requires a merit issue complaint be held for two years in the office and eight years at the State Records Center for a total of ten years.

f. Destruction of Records. Destruction of complaint records shall be in compliance with confidential record procedures and shall occur at the expiration of the retention period of the documents.

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