

## **ACQUISITION AND RETENTION OF REQUIRED LICENSES AND CERTIFICATES**

(No.25 November 1991)

**1013**

Cross Reference: Government Code Section 19585  
State Personnel Board Rule 172.

### **INTRODUCTION**

**1013.1**

(No.25 November 1991)

In lieu of adverse action, Government Code Section 19585 provides that employees may be terminated, demoted, or transferred for failing to acquire or retain licenses, certificates, registrations, and other professional qualifications required by the incumbents' class specification. State Personnel Board Rule 172 further provides that: "Where a position requires driving of an automobile, the employee must have a valid state driver's license, a good driving record and is expected to drive the car safely. The foregoing general qualifications shall be deemed to be part... of each class specification and need not be specifically set forth therein."

Government Code Section 19585 applies to permanent and probationary employees. It may be used in lieu of adverse action or rejection during probation when the only cause for action is the simple absence of a license, certification, or registration. An employee who has filed a proper and timely application for renewal shall be considered to have maintained the license, registration, or certificate unless it is subsequently denied, revoked, or suspended. Action under this government code section is considered nondisciplinary for purposes of the civil service act and Board rules.

Action may not be taken under Government Code Section 19585 for medical, physical ability, work, or academy performance standards. Where an employee fails to obtain or retain a required license for medical reasons, the regions/units will consider reasonable accommodation obligations and medical demotion, transfer or termination (see Government Code Section 19253.5), or disability retirement.

### **LOSS OF DRIVERS' LICENSES FOR OTHER THAN MEDICAL REASONS**

**1013.2**

(No.25 November 1991)

A commercial (or fire fighter's) license and appropriate certifications are required by the specifications for all employees in the classification of HFEO, Fire Captain, and Fire Apparatus Engineer. The job duties for State Forest Ranger I/II establish the ability to legally operate a car as a requirement for continued employment. **All employees in these classifications are responsible for promptly reporting the loss of applicable driver's licenses to their immediate supervisors** (see Section 1013.6 below as it relates to the consequences for failing to report the loss of a license). Supervisors are responsible for carrying out the following action when they learn that an employee failed to obtain/ retain the referenced driver's license, unless the loss of the license was based on medical and/or physical incapacities (see exhibit "Action for Loss of Drivers' Licenses for Other Than Medical Reasons.")

Employees will not be allowed to use accrued leave in lieu of the following.

## **FIRST TIME OFFENSES**

**1013.3**

(No.25 November 1991)

When the employee fails to obtain/retain the applicable driver's license, and the loss of the license will not exceed 30 days, the employee will be demoted to a classification that does not require a license for the length of time s/he is without the license.

Typically, the regions will use the closest classification in the employee's occupational series that does not require the license (e.g., Fire Fighter II for fire suppression staff) though this will be dictated by: (1) the type of work of most value to the region; and, (2) the classification most associated with the job to be performed. If a vacancy does not exist, the employee may be placed in the 904 blanket as long as: (1) his/her original position remains vacant; and, (2) there is every reason to believe the license will be regained within 30 days. When the license is restored, the employee will be reinstated to his/her former position and classification.

If the employee fails to regain the license within 30 days, the region chief may temporarily leave the employee in the lower classification, but only if: (1) a coded vacancy exists and the employee is moved out of the 904 blanket without relocation/per diem obligations (or a coded position is left vacant to offset blanket expenditures for the employee's salary); (2) necessary work is available in the lower level; and, (3) there is reason to believe that the license will be restored within 30 more days. If these conditions are not present (or the license is still not obtained), the region will proceed through the actions outlined below for second- and third-time offenses.

When an employee will be without the required license for more than 30 days, the region chief may also opt to proceed with the actions outlined below for second- and third-time offenses.

## **SECOND TIME OFFENSES**

**1013.4**

(No.25 November 1991)

If an employee loses his/her license a second time (or if the employee loses his/her license for more than 30-60 days the first time), s/he will be offered an unpaid leave of absence for up to 18-months coinciding with the period the employee will be without the license.

If the employee rejects a voluntary leave of absence, the region will permanently transfer the employee to another classification if: (1) a coded vacancy is available; (2) it does not cost the State any money for relocation or per diem; and, (3) it is otherwise consistent with applicable laws, rules, and policy.

If a transfer between classifications cannot be accomplished, the region will permanently demote the employee to another classification if: (1) a coded vacancy is available; (2) it does not cost the State any money for relocation or per diem; and, (3) it is otherwise consistent with applicable laws, rules, and policy.

If a transfer cannot be accomplished, the region will proceed to the action outlined below for third-time offenses.

## THIRD TIME OFFENSES

1013.5

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This section applies to employees who: (1) fail to retain their license for a third time; (2) choose not to accept a leave of absence; or, (3) cannot be transferred or demoted to another classification under the conditions outlined above.

Employees who fall into this category will be separated from State service because they cannot carry out the full range of duties associated with their classification. They will be allowed to exercise permissive reinstatement privileges as otherwise provided by Government Code Sections 19585(g), if approved by the Chief Deputy Director.

## AS IT RELATES TO ADVERSE ACTION

1013.6

(No.25 November 1991)

Actions like those described above under Government Code Section 19585 are not "adverse" or "punitive". They are only taken for the simple purpose of removing an employee from a classification for which s/he no longer qualifies by virtue of losing a license. The reason for losing the license does not matter, except if it is medical, and then Government Code Section 19585 does not apply at all.

In addition to the above, it is possible for an employee to demonstrate a simultaneous job failing that by itself would warrant adverse action. In such cases, the adverse action is not for the absence of a license, but rather for related misconduct. Thus, an employee will be removed from his/her position under Government Code Section 19585 for the simple reason that s/he does not have a driver's license. At the same time, the employee may also receive adverse action because of job-related misconduct tangentially related to the loss of the license. Examples of invoking Government Code Section 19585 and taking a simultaneous adverse action are outlined below.

- Employees are responsible for immediately reporting the loss of a driver's license. Therefore, **failure to report** the loss of a license can result in adverse action for: insubordination, dishonesty, willful disobedience, and/ or misuse of State property. At the same time, Government Code Section 19585 will be invoked for the simple purpose of removing the employee from a job that requires the presence of a license.
- Employees are responsible for the safe operation of State vehicles. Therefore, if failure to operate a State vehicle in a safe manner results in the loss of a driver's license, adverse action can be taken for unsafe operation of the vehicle. At the same time, Government Code Section 19585 can be invoked for the simple purpose of removing the employee from a job that requires the presence of a license.

Where the above does not result in simultaneous removal from the position, there is no conflict. For example, regions may remove the employee from a position under Government Code Section 19585 for not having a license, and give him an official letter of reprimand (i.e., adverse action) at the same time because he failed to report the loss of the license. A region may also be faced with the situation where an employee will be without a license for 18-months. The associated misconduct (e.g., unsafe operation of a State vehicle) might merit a 30-day adverse action suspension followed a 17-month leave of absence (or demotion) under Government Code Section 19585 for not having a license.

Situations may arise where invoking Government Code Section 19585 and taking adverse action are in conflict. For example, the Department has a policy requiring termination of safety employees who are under the influence of drugs/alcohol while on duty. Thus, an employee cited for drunk driving in a State vehicle may face termination for drinking on duty, thereby negating the need to invoke Government Code Section 19585. In situations like this, taking adverse action and terminating the employee for his misconduct will prevail. However, the compelling cause for the adverse action will be the misconduct of the employee (i.e., being drunk on duty)--not the absence of a license.

Where there is no misconduct related to an employee's job performance, the regions will not use adverse action for the absence/loss of a license. Put another way: If the cause for losing a license is not related to the employee's on-the-job performance, then the regions will limit their course of action to those outlined above under Government Code Section 19585.

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