

APPRENTICE APPEAL RIGHTS

4172

(No.13 July 2014)

RIGHTS FOR EMPLOYEES FAILING ACADEMY

4172.1

(No.13 July 2014)

Employees classified as FFII and FAE and attending the FFA or COA, hired on a permanent basis must successfully complete the appropriate Academy Course as a condition of probation. HFEO hired as apprentices must successfully complete the appropriate Academy Courses (FFA, COA and HFEO). Employees who fail either the FFA ,COA or HFEO are rejected during probation and have the right to appeal the rejection to a Skelly Officer, the State Personnel Board (SPB) and the CFFJAC. During the mandatory period of time between serving the Notice of Rejection and the effective date of rejection, the employee may be assigned to a temporary work assignment at their home Unit. If the employee's presence at their home Unit creates a safety problem or could be a major detriment to the completion of work, the Unit Chief may request the employee be placed on paid administrative leave (ATO). ATO should only be used in extreme or unusual situations.

If an employee is rejected during probation for failure to pass the Academy, the following will occur:

- 1) Academy staff will:
 - Prepare the "Notice of Rejection During Probationary Period" with specific examples supporting the Notice.
 - Sign the "Notice of Rejection During Probationary Period".
 - Serve the Notice of Rejection on the employee.
 - Notify the Unit, Region, Statewide JAC Coordinator and CFFJAC about the rejection using the CAL FIRE 305 form.
 - Notify the Unit Chief or designee, Skelly Officer, and CAL FIRE Legal Office about the rejection.
 - Provide copies of the "Notice of Rejection During Probationary Period" to the affected Region Administrative Officer, Unit Chief, Legal Office, and Skelly Officer (if Skelly hearing requested).

- 2) Human Resources staff or Unit Chief/designee will provide the Academy staff with information concerning any return rights the employee may have to a former position/classification.
- 3) Unit Personnel Services Specialist will process the employee's rejection (if not modified by the Skelly Officer), final pay and overtime pay if applicable.

Employees classified as FFII and FAE, that attend the Firefighter Challenge (FFC), have only one opportunity to successfully complete the FFC and meet the equivalency of the FFA. Employees attending the FFC will have no appeal rights since failure of the course is not a punitive action.

Those employees will not be rejected on probation. Instead they will be returned to their Unit for an assignment until they can be scheduled in the next FFA or COA. A transmittal letter will be forwarded to their Unit and a CAL FIRE 305 will be distributed through the JAC Coordinators to monitor the agreement status.

Employees classified as a limited term (LT) FAE must successfully complete Basic Fire Control as a condition of employment for the limited term position. This will not preclude the employee from remaining on the permanent FAE examination list.

A limited term employee does not have a probationary period and can not be dismissed on probation for failure to complete a condition of employment. Instead, the apprentice is dismissed for failure to successfully complete the course, and a transmittal letter is forwarded to their Unit. A CAL FIRE 305 form will be distributed through the JAC Coordinators to monitor the agreement status.

APPEAL TO SKELLY OFFICER

4172.2

(No. 6 February 2007)

For permanent employees, the period of time between serving the Notice of Rejection and the effective date of rejection must be at least five calendar days. During this 5-day period the employee has the right to appeal the rejection to the "Skelly" Officer. CAL FIRE will assign a Skelly Officer for apprentices rejected during probation. At management's option, the 5-day period of time can be extended to give the employee adequate time to prepare a response to the Skelly Officer.

The Skelly Officer has the authority to uphold, modify, or dismiss the rejection. If the Skelly Officer modifies or dismisses the rejection, the Academy staff will rescind/modify the original Notice of Rejection During Probationary Period.

For limited term employees, there are no Skelly Hearing appeal rights.

APPEAL TO STATE PERSONNEL BOARD (SPB)

4172.3

(No. 6 February 2007)

Regardless of whether an apprentice appeals the rejection to a Skelly Officer, the apprentice may file an appeal in writing to the State Personnel Board (SPB) if they have permanent status. Such a request must be filed with the SPB within 15 calendar days of the effective date of the rejection during probation. The SPB may uphold, modify or dismiss the rejection.

APPEAL TO CFFJAC

4172.4

(No. 6 February 2007)

When an apprentice with permanent status is rejected during probation, CFFJAC will be notified of the rejection and the Apprentice Agreement will be cancelled no sooner than 30 days after the effective date of rejection.

When an apprentice with limited term status fails to successfully complete the course, CFFJAC will be notified of the failure and the Apprentice Agreement will be cancelled no sooner than 30 days after the effective date of failure.

Within 30 days of the effective date of separation, an employee may appeal the cancellation of an Apprentice Agreement to the CFFJAC Administrator. Appeals must contain (at a minimum) a description of the reason/circumstances leading to the appeal and the desired outcome. Within 15 days from receipt of an appeal, the CFFJAC Administrator will notify CAL FIRE and refer the matter to SubJAC for review.

SubJAC must schedule a review of the appeal permitting at least 10 days notice to the charged party. The review must occur no later than 30 days from the date of referral. SubJAC may consider written documentation, in addition to testimony from witnesses, including hearsay evidence. Parties will have an opportunity to respond to statements or questions. Cross-examinations and subpoenas are not allowed.

SubJAC shall make a written report that includes a finding, rationale, and recommendation concerning the appeal to the CFFJAC Administrator within 15 days of the date of the review. The CFFJAC Administrator will forward this recommendation to the parties concerned. If SubJAC members cannot agree on a recommendation, a written summary of the review and the reasons for no recommendations must be sent to the Administrator of the CFFJAC within 15 days of the date of the review.

If either party is not satisfied after the recommendation from SubJAC, notification of intent to continue the appeal must be sent to the CFFJAC Administrator within 15 days of the written notification of SubJAC's recommendation. The appeal is automatically continued to the CFFJAC Administrator if SubJAC is unable to agree on a recommendation.

If the appeal is timely, the CFFJAC Administrator will schedule an Administrative Review of the case no later than 15 days from the date of the receipt of the request to continue the appeal. The CFFJAC Administrator will review the recommendation, finding, and rationale from SubJAC, as well as, receive additional information from the charged and charging parties and make a recommendation to both parties for resolution of the appeal.

If the CFFJAC Administrator's recommendation is not accepted, a written request for a hearing before the CFFJAC must be sent to the CFFJAC Administrator no later than 15 days from the date of the CFFJAC Administrator's recommendation.

If the appeal is timely, the CFFJAC Administrator will prepare a report to the CFFJAC. A hearing will be scheduled at the earliest meeting that permits a 10-day notice to the charged party. Any concerned party, including the charging party, may be represented at the hearing by counsel or other qualified representative. If after the hearing, either party is not satisfied, a written request to refer the appeal to the Administrator of Apprenticeship for resolution under the California Code of Regulations, Title 8, chapter 2, part 1, 201,202, 203, must be sent to the CFFJAC Administrator within 15 days from the CFFJAC decision.

Regardless of the appeal outcome, the CFFJAC's determination is a recommendation only in reference to the apprentice employment status. Hiring decisions are at the department's discretion.

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