

June 10, 2014

NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED
CALPIA Personnel

The full text of the amendments to the California Code of Regulations (CCR) that concern CALPIA Personnel is provided in its original single underline and strikethrough format. Changes to this original text, which are being proposed in this Notice, are indicated by double underline for added text and ~~**bold strikethrough**~~ for deleted text to the originally proposed text.

These revisions and accommodations are being made in response to public comments received during the initial 45-day public comment period that ended on June 9, 2014. Other revisions are being made to provide more clarity to the proposed regulations. These proposed changes are being made available for public comment from June 10, 2014 thru June 25, 2014.

REVISIONS TO REGULATION TEXT:

Subsection 8100(a) is amended to:

- Delete text “administrative” and add text “executive” when referring to the General Manager’s description. These changes are made to create language that is consistent with policy language and other agency documentation that refers to the General Manager’s description at CALPIA.

Subsection 8100(b) is amended to:

- Delete text “branch” and add text “staff” when referring to executives. These changes are made to create language that is consistent with policy language and other agency documentation that refers to executives at CALPIA. Also, text was added “Chief Financial Officer” because this position was newly created after the first notice of the proposed regulations. This text was added to reflect new additions to executive staff.

Subsection 8100(c) is amended to:

- Delete text “executive” and add text “administrative” when referring managers and supervisors that are not considered executives. These changes are made to create clarity in language and avoid confusion between executive staff and administrative staff.

Subsection 8111(a) is amended to:

- Add text “and section 8112” to clarify that the definition of Light Duty Assignment also pertains to another section that refers to Light Duty Assignment. These changes are made to add clarity as to which sections the definition of Light Duty Assignment pertains to.

Subsection 8113(c)(3)(A) is amended to:

- Add text “within 15 calendar days” to clarify a specific and reasonable timeframe for the General Counsel to review employee’s outside activities, determine if the activities will interfere with the employee’s work tasks and responsibilities, and then notify employee of the determination. Add text to clarify the 15 calendar days begin after General Counsel is in receipt of the employee’s written statement of incompatible activities.

Subsection 8113(c)(3)(B) is amended to:

- Add text to clarify a specific and reasonable timeframe (10 calendar days) for an employee to appeal the General Counsel’s determination of the employees’ outside activities. Add text to clarify a specific and reasonable timeframe (15 calendar days) for the General Manager to review and issue a decision on the appeal.

ATTACHMENT – CHANGES TO THE TEXT AS ORIGINALLY PROPOSED

All written comments must be received by 5:00 p.m. on June 25, 2014. Please limit your comments to the modifications proposed here. Submit comments to Dawn Eger, Legal Analyst, 560 East Natoma Street, Folsom, CA 95630; by fax to (916) 358-2709; or by e-mail to PIARegs@calpia.ca.gov before 5:00 p.m. on June 25, 2014.

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Attachments

TEXT OF PROPOSED REGULATIONS

In the following text:

underlining indicates original added or amended text

strikeout indicates original deleted text

double underlining indicates added or amended text to original proposed language

bold strikeout indicates deleted text to original proposed language

Title 15. Crime Prevention and Corrections

DIVISION 8. CALIFORNIA PRISON INDUSTRY AUTHORITY

CHAPTER 1. RULES AND REGULATIONS OF CALIFORNIA PRISON INDUSTRY AUTHORITY

Article 1. Scope of Authority

Section 8000 is amended to adopt and amend the definitions below and merge them alphabetically with those that exist in the regulations.

8000. Definitions

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Controlled Substance means a substance, drug, narcotic opiate, hallucinogen, depressant, or stimulant as defined by California Health and Safety Code Section 11007. Also included are prescribed medications containing substances identified in Health and Safety Code Section 11007.

Drug means substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, and as defined in Health and Safety Code Section 11014.

Employee means an individual hired under the authority of the CALPIA General Manager through civil service or contracts and includes volunteers. The term employee does not include inmates.

Enterprises means organized business practices within CALPIA that comprise manufacturing, agriculture and various other services operations under the authority of CALPIA.

Family Member means related to another person through kinship, marriage, adoption, foster relationship, registered domestic partnership, or civil union.

Institution means a community-access facility, community correctional facility, camp, or subfacility of an institution under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR) and headed by a warden.

Prescription means an order for a controlled substance given individually for the person(s) for whom prescribed, directly or indirectly from the prescriber, and as defined in Health and Safety Code Section 11027.

Unauthorized electronic communication device means devices that are not issued by the State of California and are not labeled with an “Authorized for State Use” sticker. Unauthorized electronic communication device includes, but is not limited to, cell phones, computers, hybrid cellular/Internet/wireless devices, person digital assistants (PDA), cameras, video recorders, fax machines, or pagers, including components and parts of devices. Unauthorized electronic communication devices are prohibited in workplaces.

Under the influence means an employee’s working abilities are impaired and the employee does not have the ability to perform their duties with the same characteristics of a sober person due to alcohol, drugs, controlled substances, or a combination thereof.

Workplace means all offices, warehouses, enterprises, and the showroom under the authority of CALPIA, regardless of location.

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NOTE: Authority cited: Sections 2801 and ~~2808~~ 2809 Penal Code. Reference: Sections 2800, 2801, 2803, 2805, 2806, 2807, 2808, 2809, and 2811 Penal Code; Sections 6303 and 6304.3 Labor Code

Title 15, Division 8, Chapter 1, new Article 6 is adopted to read:

Article 6. Personnel

New sections 8100 through 8120 are adopted to read:

8100. Executive Staff.

(a) The General Manager is the chief ~~administrative~~-executive officer for CALPIA and the appointing authority for all employees.

(b) The General Manager shall establish an Executive ~~Branch~~ Staff of the CALPIA which shall consist of Assistant General Managers, a General Counsel, a Chief Financial Officer, and a Chief of External Affairs.

(c) The General Manager shall appoint the Prison Industry Manager or the Prison Industry Administrator of an enterprise as the chief ~~executive~~-administrative officer of that enterprise. The chief ~~executive~~ administrative officer of an enterprise is responsible for the oversight, training, and discipline of all employees under their charge.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Section 2809 Penal Code.

8101. Emergencies.

Regardless of an employee's civil service classification, in an emergency, employees shall perform any task as directed by the General Manager, the General Manager's designee, or the employee's supervisor. In the event an employee is contacted by telephone or is otherwise

informed of an emergency situation at a workplace to which they are assigned, the employee shall report without delay to the on-site emergency coordinator.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8102. Identification Card.

Employees shall be issued an identification card granting access to institutions and workplaces as required for the performance of their duties. While on duty, employees shall carry their identification card and produce the card upon request. An employee shall promptly report the loss of their identification card to their supervisor who shall immediately do one of the following:

(1) when the employee is assigned to a workplace located at an institution, follow CDCR local rules and notify Human Resources at Central Office.

(2) when the employee is assigned to a workplace not located at an institution, notify Human Resources at Central Office.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8103. Employees within Institutions

(a) Employees who are assigned to or are engaged in work at an institution shall observe CCR, Title 15, Division 3, Chapter 1, Subchapter 5, Article 2 which governs CDCR employees. Civil service employees failing to follow this subsection may be subject to disciplinary action pursuant to the authority of the General Manager.

(b) Failure to observe provisions of CCR, Title 15, Division 3, Chapter 1, Subchapter 5, Article 2 may lead to exclusion from CDCR institution(s).

NOTE: Authority cited: Sections 2801, and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8104. Employee Conduct.

(a) Employees shall be professional and courteous in their dealings with inmates, parolees, fellow employees, visitors, and members of the public. Inmates and parolees shall be addressed by their proper names. Inmates and parolees shall not be addressed by derogatory or slang reference.

(b) Allegations made by employees regarding the misconduct of a CDCR Peace Officer shall be made in accordance with CCR, Title 15, Division 3, Section 3391, pursuant to PC Section 832.5.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 832.5, 2801 and 2809 Penal Code.

8105. Reporting of Arrest, Conviction, or Change in Driving Status.

(a) If an employee is arrested or convicted of a violation of law, the employee shall notify their supervisor or, when appropriate, the contract manager of the fact.

(b) Restrictions to an employee's driving privilege which interferes with their job duties shall be reported by the employee to their supervisor or, when appropriate, the contract manager.

(c) Misconduct which impairs a civil service employee's ability to do their job, causes discredit to, or affects or involves the CALPIA, may be cause for disciplinary action.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8106. Intoxicants and Drugs.

(a) Employees shall not report for duty while under the influence.

(b) Employees shall report to the Prison Industries Administrator, Manager, or supervisor the presence of an employee on duty, or on standby for duty, who may be under the influence.

(c) Employees and visitors of CALPIA are prohibited from the following actions:

(1) Bringing alcoholic beverages, illegal drugs, or substances deemed illegal by operation of the law shall not be brought to workplaces or onto institution grounds.

(2) Bringing controlled substances or prescription drugs to workplaces or onto institution grounds without a valid prescription.

(d) Obtaining or delivering any one of the following to an inmate or parolee is prohibited:

(1) Intoxicants or drugs of any kind; or

(2) Preparations or paraphernalia associated with drugs or intoxicants.

(e) Civil service employees violating subsections (a), (b), (c), or (d) shall be subject to disciplinary action under the authority of the General Manager.

(f) Any person, including visitors, that violates subsection (c) or (d) shall be subject to criminal prosecution pursuant to Penal Code Section 4573.5.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801, 2809, and 4573.5 Penal Code.

8107. Unauthorized Electronic Communication Device.

(a) The possession or use of an unauthorized electronic communication device by an employee inside a workplace or within the secure perimeter of an institution is prohibited.

(b) Employees shall maintain and lock their unauthorized electronic communication devices in their personal or state vehicles while on institution grounds or in workplaces.

(c) Non-employees and visitors shall follow subsections (a) and (b), and will be subject to (d).

(d) Unauthorized electronic communication devices shall be subject to confiscation.

NOTE: Authority cited: Sections 2801, and 2809 Penal Code. Reference: Section 2809 Penal Code.

8108. Vacations.

Employee vacations will be granted at times convenient for the continued operations of CALPIA and are subject to the approval of the employee's immediate supervisor. Approved time off may be revoked if it is deemed mission essential because the employee's time off would result in a significant financial loss for CALPIA.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8109. Employee Work Schedules.

Employee work schedules will be in accordance with state civil service rules and shall be subject to approval. The immediate supervisor, with the approval of the General Manager or the General Manager's designee, shall determine the work schedules for all employees under their authority.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8110. In-Service Training.

All employees shall participate in CALPIA's mandatory training as directed by the General Manager. Employees working within institutions are required to participate in the CDCR mandatory training program as prescribed by the warden. When work schedules permit, employees may attend training classes on state time during their regular working hours.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8111. Light Duty Assignments and Reasonable Accommodations.

(a) Light Duty Assignment. For the purposes of this section and section 8112, "light duty assignment" means a temporary work assignment for employees with documented medical restrictions arising out of a work-related injury or illness or a non-industrial injury or illness, who cannot perform the essential functions(s) of their job, for a limited duration.

(b) Reasonable Accommodation. For the purposes of this section, "reasonable accommodation" means any modifications or adjustments to a job or work environment that will enable a qualified applicant or employee with a disability to perform the essential functions of the job. Essential functions cannot be waived as a form of Reasonable Accommodation.

(c) All Light Duty Assignments or Reasonable Accommodations shall be under the authority of the General Manager or the General Manager's designee.

(d) Employees shall submit requests for Light Duty Assignment or Reasonable Accommodations to their supervisor.

(e) Upon receipt of the employee's request, the supervisor shall immediately contact the Return-to-Work Coordinator (RTWC) at Central Office regarding the employee's request. The supervisor and the RTWC shall work cooperatively to immediately begin the interactive process with the employee regarding Light Duty Assignment or Reasonable Accommodation.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8112. Limited Term Light Duty Assignments.

(a) The General Manager may utilize Limited Term Light Duty assignments to allow employees with documented medical limitations to work. The employee may be placed in a vacant budgeted position within the employee's bargaining unit, or may be permitted to work in their current position, while temporarily waiving the essential functions of their job.

(b) Positions will not be permanently identified as a "light duty." Limited Term Light Duty for one employee shall not exceed 60 calendar days in a 6-month period for medical condition(s).

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8113. Incompatible Activity.

(a) Employees shall not engage in incompatible activities pursuant to GC Section 19990.

(b) Other incompatible activity that employees shall not engage in includes, but is not limited to, the following:

(1) Employment or participation in an activity of an illegal nature.

(2) Employment or activity which will prevent the employee from performing their job at CALPIA in an efficient and capable manner, or results in an actual conflict of interest or creates the appearance of a conflict of interest with the employee's job.

(3) Employment which will prevent a prompt response to a call to report to duty in an emergency or when otherwise required to be present by the employee's supervisor or the General Manager.

(4) Using workgroup computer technologies to conduct activities not related to the mission or work tasks of CALPIA.

(c) Before engaging in outside employment, activity, or an endeavor that conceivably might be incompatible, inconsistent, or in conflict with his/her duties as a CALPIA employee, the employee shall submit a written statement to the General Counsel through the employee's supervisor. The statement shall include the following:

(1) An outline of proposed duties or activities; and

(2) Details identifying the prospective employer, employer's address, phone number; and

(3) Sufficient detail for the General Counsel to determine whether the proposed activity will interfere with the employee's work tasks and responsibilities.

(A) The General Counsel must notify the employee of the determination in writing within 15 calendar days of receipt.

(B) If an employee disagrees with the determination, the employee may appeal to the General Manager in writing within 10 calendar days providing an explanation of their disagreement. The General Manager's will review and issue a decision on the appeal within 15 calendar days of receipt, and that decision is final.

(d) Violation by civil service employees of these provisions may result in disciplinary actions up to and including termination of employment.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code, Section 19990 Government Code.

8114. Legal Matters.

(a) An employee who is subpoenaed to testify before a court or other tribunal in connection with a matter, event, or transaction which they have gained knowledge of during the course of their

duties shall notify CALPIA's General Counsel, Legal Services in writing within one business day. The written notification shall include all relevant information concerning the contact, copy of any subpoena, and a summary of their anticipated testimony.

(b) Employees shall not consult or testify as a specialist or an expert witness based on expertise gained in the course of their duties, in an administrative, civil, or criminal action without giving reasonable notice, as defined in subsection(a)(1), to the CALPIA General Counsel.

(1) An employee who is contacted for the purpose of eliciting expert testimony, as defined in Evidence Code Section 720, shall notify CALPIA's General Counsel, Legal Services in writing within one business day. The written notification shall include all relevant information concerning the contact, copy of any subpoena, and a summary of their anticipated testimony.

(2) CALPIA's General Counsel or their designee retains the discretion to seek to quash the subpoena on substantive or procedural grounds before the judicial body through whose authority the subpoena was issued.

(c) Compensation for witnesses pursuant to GC Section 68097.2(a) shall be provided to an employee who is obligated by a subpoena to attend as a witness before a court or other tribunal in an administrative, civil, or criminal action or proceeding in connection with a matter, event, or transaction which they have gained knowledge of during the course of their duties.

(d) In accordance with GC Section 68097.2(b), reimbursement in the form of a check or money order made payable to CALPIA shall be tendered at the time of the issuance of the subpoena.

(e) An employee who meets the requirements of subsection (b) shall submit to their immediate supervisor an itemized travel expense claim within two business days following their testimony.

(f) An employee who is subpoenaed to testify pursuant to subsection (b) and receives witness fees pursuant to GC Section 68093 shall relinquish those fees to CALPIA if the employee is on pay status during the duration of their testimony.

NOTE: Authority cited: Sections 2801 and 2809, Penal Code. Reference: Sections 68097.2 and 68093, Government Code; Section 720 Evidence Code; Sections 2801, and 2809 Penal Code.

8115. Familiarity.

Employees shall not engage in undue familiarity with inmates, parolees, or family members, friends, or associates of inmates or parolees. Whenever there is reason for an employee to have personal contact or discussions with inmates, parolees, or family members, friends, or associates of inmates or parolees, the employee shall maintain a helpful but professional attitude and demeanor. Employees shall not discuss their personal affairs with inmates or parolees.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8116. Committed Family and Friends of Employees.

(a) While off-duty, employees may conduct relationships with an inmate, parolee, or person known by the employee to be a family member, friend, or associate of an inmate or parolee who is the employee's family member, as defined in section 8000, pursuant to disclosure set forth in subsection (c).

(b) Employees shall disclose current or previous relationships with someone who has been previously or is currently committed to the jurisdiction of CDCR, pursuant to disclosure set forth in subsection (c).

(c) Employees shall notify their supervisor in writing of relationships described in subsection (a) and (b). The supervisor shall provide the written notice to the General Manager, the warden at the employee's assigned workplace, the appropriate CDCR Director, and CDCR Assistant Secretary.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8117. Employee and Inmate/Parolee Transactions.

(a) Employees shall not directly or indirectly trade, barter, lend, give, promise to give, or otherwise engage in personal transactions with an inmate, parolee, or person known by the employee to be a family member, friend, or associate of an inmate or parolee except as provided in subsection (e), Section 8116 and Section 8119.1.

(b) Except as provided in subsection (e), employees shall not take, deliver, or otherwise transmit a verbal or written message, document, item, article, or substance to an inmate, parolee, or person known by the employee to be a family member, friend, or associate of an inmate or parolee.

(c) Except as provided in subsection (e) and Sections 8116 and 8119.1, employees shall not contact, correspond or otherwise communicate with an inmate, parolee, or person known by the employee to be a family member, friend, or associate of an inmate or parolee.

(d) If an employee is contacted, asked, or coerced, other than under circumstances specified in subsection (e), to engage in activities described in subsections 8117 (a), (b), and (c), the employee shall immediately notify their supervisor, the Prison Industries Administrator, Manager, or Branch Manager in writing.

(e) Exceptions to the above prohibitions are as follows:

(1) In the execution of their assigned duties, employees shall issue or receive mail, packages, and other authorized items permitted to inmates according to institution policy and local procedures.

(2) In the execution of their assigned duties, employees may interact with inmates, parolees or family members, friends, or associates of inmates or parolees as necessary.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8118. Employee and Inmate/Parolee Sexual Misconduct.

(a) Sexual Misconduct. For the purposes of this section, “sexual misconduct” means sexual behavior by an employee, volunteer, agent or individual working on behalf of CALPIA which involves or is directed toward an inmate or parolee. The legal concept of “consent” does not exist between employees and inmates/parolees; all sexual behavior between them constitutes sexual misconduct and shall subject the employee to disciplinary action and possible prosecution under the law. Sexual misconduct includes, but is not limited to:

(1) Influencing or offering to influence an inmate’s/parolee’s safety, custody, housing, privileges, work detail, parole conditions or programming, or offering goods or services, in exchange for sexual favors; or

(2) Threatening an inmate’s/parolee’s safety, custody, housing, privileges, work detail, parole conditions or programming, because the inmate/parolee has refused to engage in sexual behavior; or

(3) Invading privacy beyond that reasonably necessary to maintain safety and security; or

(4) Disrespectful, unduly familiar, or sexually threatening comments directed to, or within the hearing of, an inmate/parolee; or

(5) Engaging in sexual act(s) or contact, including:

(A) Sexual intercourse;

(B) Sodomy;

(C) Oral copulation;

(D) Penetration of genital or anal openings by a foreign object, substance, instrument or device for the purpose of sexual arousal, gratification, or manipulation;

(E) Rubbing or touching of the breasts or sexual organs of another or of oneself, in the presence of and with the knowledge of another, for the purpose of sexual arousal, gratification, or manipulation.

(b) Penalties. All allegations of sexual misconduct shall be subject to investigation, which may lead to disciplinary action and possible criminal prosecution.

(c) Reporting Requirements. Employees that observe or receive information concerning sexual misconduct shall immediately report the information or incident directly to the Prison Industries Administrator, Manager, supervisor, or the highest-ranking official on duty at CALPIA Central Office, who shall then immediately report to the CDCR Office of Internal Affairs. Failure to accurately and promptly report an incident, information, or facts which would lead a reasonable person to believe sexual misconduct has occurred may subject employees to disciplinary action.

(d) Confidentiality. Pursuant to GC Section 6254(f)(2), alleged victims who report criminal sexual misconduct shall be advised that their identity will be kept confidential from the public. Upon their request, the alleged victim's identity shall be kept confidential in court proceedings pursuant to Penal Code Section 293.5.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 289.6, 293.5, 2801 and 2809 Penal Code: Section 6254 Government Code.

8119. Hiring of Ex-Offenders.

(a) The General Manager's written approval is required to offer employment to an ex-offender.

(b) Ex-offenders shall not, without the General Manager's written approval, be assigned to areas which enable them to access:

(1) Employee records.

(2) Inmate personal or medical information.

(c) An ex-offender shall not be appointed to a position requiring a background clearance until such clearance is received.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8119.1 Approval of Ex-Offender Employee Transactions.

Relationships involving business and financial transactions between employees and persons previously incarcerated under the jurisdiction of CDCR shall require the advance approval of the General Manager.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.

8120. Personal Information Record Access and Amendment.

(a) Persons whom CALPIA maintains a record containing personal information have the right to inspect their record, or authorize someone to inspect their records on their behalf, and to request amendment to correct outdated, inaccurate, or incomplete information.

(1) Requests to inspect a record shall be submitted in writing to CALPIA Human Resources.

(2) Requests to amend a record shall be submitted in writing to CALPIA Human Resources and include documentary evidence to support the requested amendment.

(b) The denial of a request to amend a record may be appealed in writing to the Assistant General Manager of the subject employee's reporting chain of command. The Assistant General Manager's determination can be appealed to the General Manager, and shall include all relevant documentation.

(c) If an individual's appeal is denied, they may submit a statement of disagreement to CALPIA Human Resources for placement in the record. The statement shall remain part of the record for as long as the disputed information is retained.

NOTE: Authority cited: Sections 2801 and 2809 Penal Code. Reference: Sections 2801 and 2809 Penal Code.