

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYMENT AND RETIREMENT

Jim Cooper, Chair

AB 313 (Cristina Garcia) – As Introduced January 25, 2021

**SUBJECT:** Civil service: Limited Examination and Appointment Program

**SUMMARY:** Makes changes relating to the Limited Exam and Appointment Program (LEAP) administered by the California Department of Human Resources (CalHR). Specifically, **this bill:**

- 1) Requires the CalHR to provide an appointing power a LEAP referral list without combining it with any parallel employment list, as described, if requested by an appointing power.
- 2) Adds, among other existing statutory responsibilities of the CalHR, the requirement for the CalHR to establish guidelines for provision of reasonable accommodation to applicants and employees with disabilities, and to adopt a model reasonable accommodation policy that state agencies and departments could modify as necessary to suit their specific circumstances.
- 3) Requires the CalHR to identify 10 state agencies or departments that, as of June 2021, have 100 or more employees and the lowest representation of persons with known disabilities, averaged over a five-year period from July 1, 2016 through June 30, 2021.
- 4) Requires, by June 30, 2022, the CalHR to confer with each appointing power of an agency or department identified and require it to adopt or revise the required plan required, as specified, to set new goals and timetables for hiring persons with disabilities. As part of the plan, each appointing power must specify two or more of the following strategies, and must agree to use them until at least June 30, 2025:
  - a) Use LEAP-only hiring for any hiring in classifications if parallel LEAP-certified classes are available.
  - b) Work with its disability advisory committee and the department to identify department-specific classifications that can be designated as LEAP-certified classes and commit to hiring from the LEAP for those classes.
  - c) Ensure that at least 16 percent of those interviewed for each position are individuals with disabilities, if those individuals apply and are eligible for appointment.
  - d) Commit to hiring a qualified person with a disability who is as qualified as other reachable candidates on the employment list, unless the appointing power can

demonstrate that the person cannot perform the essential functions of the job, even with reasonable accommodation and appropriate training.

- e) Make vacant positions available for internships for persons with disabilities and make every effort to hire those who successfully complete the internships.
  - f) Expand outreach to the disability community and agree that no hiring process will proceed, unless qualified individuals with disabilities are adequately represented in the applicant pool.
  - g) Work with the CalHR to review all duty statements to ensure that they do not use discriminatory criteria.
  - h) Consult with the Department of Rehabilitation (DOR), the State Council on Developmental Disabilities (SCDD), the State Independent Living Council (SILC), and other state agencies or organizations with expertise in employment of persons with disabilities, and implement a strategy recommended by the agency or organization that the department and appointing power, after consulting with organizations representing persons with disabilities, determine to be potentially effective in hiring persons with disabilities.
- 5) Requires CalHR to promptly make the plans developed or amended, as specified, publicly available.
- 6) Requires, by December 31, 2025, the CalHR, in consultation with the State Personnel Board (SPB), DOR, SCDD, and organizations representing persons with disabilities, to report to the Legislature the following:
- a) The number of persons with disabilities hired by each appointing power, as specified, that have developed the required plans during the three-year period ending June 30, 2025,
  - b) The number retained as of the end of that period,
  - c) A comparison to the hiring of persons with disabilities by the same agency in the three-year period ending June 30, 2022,
  - d) An analysis of which strategies were most effective, and
  - e) Recommendations for future efforts to improve the hiring of persons with disabilities for all state agencies.
- 7) Repeals the requirements in item numbers 3 through 6, inclusive, above, on December 31, 2029.

- 8) Establishes the LEAP Expansion Plan, which requires the following:
- a) The CalHR, by July 1 2022, to develop and implement a plan to expand the LEAP after consultation with the SPB, DOR, Department of Developmental Services, the SCDD, and organizations representing persons with disabilities. The plan must do both of the following:
    - i) Identify statewide classifications (both entry level and promotional only) which are not currently included in the program; determine those that offer the greatest potential to increase employment opportunities for persons with disabilities interested in a range of employment opportunities (including clerical, vocational, and professional), and, by December 31, 2022, designate at least five additional classifications that would address those needs as new LEAP-certified classes pursuant to SPB rules.
    - ii) Ensure that all identified statewide classifications, as specified, offer the greatest potential employment opportunities are designated as LEAP-certified classes by June 30, 2024.
  - b) The CalHR to, upon the request of an individual who has been determined as LEAP-eligible, promptly conduct an assessment determine whether that individual meets the minimum requirements for any job classification.

If the individual is found to meet the minimum qualifications, but the classification has not been designated as a LEAP-certified class, the CalHR must promptly designate the classification as LEAP-certified, establish a referral list for that class, and include the individual's name in that referral list.

- c) The CalHR to post current information concerning the LEAP on its website, including, but not limited to, a list of all LEAP-certified classes; information on how to request an assessment of minimum qualifications, as specified; information about a candidate's option to disclose or keep their LEAP status confidential during the hiring process, and the procedure for disclosing LEAP status if the candidates wants to do so.
- 9) Makes conforming changes for these purposes.

**EXISTING LAW:**

- 1) Establishes the LEAP in the state civil service, which provides an alternative to the traditional civil service exam and appointment process to permit a disabled individual to compete for a position in state service by proving eligibility and meeting other specified criteria.

- 2) Defines "disability" for the purpose of the LEAP to be consistent with the definition of "disability" found in state laws governing fair employment and housing and the federal Americans with Disabilities Act (ADA).
- 3) Establishes CalHR as the state department with responsibility over administration of the LEAP and gives CalHR discretion in creating eligibility criteria for participation in the program, examination techniques, and appointment and appeal procedures.
- 4) Requires, in the state civil service, that applicants meet minimum qualifications and undergo a competitive process before being appointed to a position and, in general, creates ranked hiring lists based on the competitive application process from which state employers may choose eligible candidates.
- 5) Requires, under the LEAP, that candidates are first certified as disabled and meet certain minimum qualifications, which may be ascertained through written examination, before being placed on a referral list. CalHR then refers the names of eligible candidates to agencies that are seeking employees for LEAP-eligible positions.
- 6) Requires that LEAP employees are appointed on a temporary and provisional basis to allow them to demonstrate their abilities to perform the duties of their positions during a period of time known as the job examination period (JEP). During this time, LEAP employees do not acquire permanent civil service status but receive the same salaries and benefits provided to other temporary state employees.
- 7) Allows, upon successful completion of the JEP, the employing department to appoint the LEAP employee to an appropriate civil service position.
- 8) Creates a process for LEAP candidates and employees to appeal in situations in which CalHR refuses to certify the employee's eligibility to participate in LEAP or the individual is rejected during the application, selection, or JEP, or is denied reasonable accommodation.
- 9) Establishes the Lanterman Developmental Disabilities Services Act (Lanterman Act) administered by the DDS, provides for an array of services and support sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life to support integration into the community.
- 10) Establishes a system of nonprofit "regional centers" to provide fixed points of contact in the community for all persons with developmental disabilities and their families to coordinate services and support suited to their needs.

11) Requires that the state make available the expertise of state employees and programs to support the employment-related needs of individuals with disabilities, as specified, including ensuring that state government is a model employer of individuals with disabilities.

**FISCAL EFFECT:** Unknown. This bill is flagged as fiscal by Legislative Counsel.

**COMMENTS:** According to the author, “Historically, working age people with disabilities are among the most unemployed and underemployed members of society. Even though there have been major civil rights advancements like the federal Americans with Disabilities Act and the state Disabled Persons Act, people with disabilities are underrepresented in state civil service. Without equal employment opportunities, many persons with disabilities are forced to rely on public benefits and services.

“Unfortunately, state agencies have failed to ensure that persons with disabilities are afforded equal opportunities and the benefits and privileges of state employment. One reason for that failure is that the LEAP has not been effectively implemented and does not practically support the hiring of persons with disabilities. In 2015 CalHR, the DOR and SPB convened a Joint Project in which recommendations were made; however, they have not been met or fallen short of making any progress.”

1) The LEAP, Simplified

The LEAP is an alternative examination program that offers a means of assessing the qualifications and skills of job applicants with disabilities for employment by the state. To be eligible for the LEAP, candidates must be certified by the DOR and have their LEAP certification information entered into CalHR’s database.

Once a LEAP candidate is selected for a position, the candidate must complete an on-the-job testing phase, called the JEP. After successful completion of the JEP, candidates may be appointed to the parallel civil service classification.

2) Duties of CalHR Relating to Individuals with a Disability

Pursuant to existing law, CalHR is required to outline specific actions to improve the representation of individuals with a disability in the state workforce and to ensure equal and fair employment practices for employees who are individuals with a disability. The requirement includes that CalHR survey the number of individuals with a disability in each department by at least job category and salary range for the purpose of developing goals and timetables, as provided, and compare those numbers with the number of disabled individuals in the workforce.

CalHR must also establish guidelines for state agencies and departments to set goals and timetables to improve the representation of individuals with a disability in the state workforce, and such goals and timetables must be set by at least job category.

3) Findings In A 2015 Report by the State Regarding Employment of Individuals with Disabilities in State Civil Service

After a 10-month effort to evaluate civil service policies and processes relating to employment of individuals with disabilities in state civil service, joint research performed by CalHR, the SPB and DOR found several deficiencies. These findings highlighted the following, at that time:

- a) The state, as an employer, is inconsistent in its policies, procedures, education, accountability, and data collection regarding employment of individuals with disabilities.
- b) Many opportunities exist to standardize methodology across all state agencies to promote uniformity, consistency and sensitivity regarding the employment of individuals with disabilities.
- c) The state will be unable to further its stated goal of increasing employment of individuals with disabilities, unless it makes fundamental changes and performs concerted outreach to promote itself as an employer of choice to that employment sector.

The report also intimates that, "... separate state agencies interpret and apply regulations independently, causing a lack of consistency in how applicants and employees with disabilities are hired and treated. Further, "Standardization of methodology is required to assure [individuals] with disabilities are afforded equal opportunities, benefits, and privileges of employment regardless of the state agency to which they apply or belong."

Additional information regarding this report can be found on the DOR's website.<sup>1</sup>

4) LEAP Employment Statistics as of 2016

According to a CalHR report in 2016 titled, "*Annual Census of Employees in State Service*," LEAP employment grew from 2012 through 2015, but declined in 2016. While there was a decline in LEAP employment from 2015 to 2016, overall net participation in the LEAP continued to show growth.

Data in the report shows disabled individuals employed in the LEAP testing phase; employees in their first civil service position following LEAP conversion, and those separated from the LEAP testing phase. As a caveat, the report notes that the information provided is "from the State Controller's Office Current and History files." The figures show "current and immediate past positions, but not prior positions, so only those in the JEP and those in their initial civil service position following conversion to a civil service position from the JEP are identifiable because a JEP may overlap the end of a calendar year [where] the same candidate may be shown in the testing phase for two sequential years."

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<sup>1</sup> <https://www.dor.ca.gov/Content/DorIncludes/documents/CCEPD/Joint%20Project%202015-PDF%20Version.pdf>

In sum, the report shows that individuals who have identified themselves as disabled in civil service increased from 10.6 percent in 2012, to 11.7 percent in 2016, as a percentage of the civil service workforce during that period. The report also notes that “[a]n agency with a disability representation below 80 percent of the disability parity (16.6 percent) is required to set a hiring goal and develop an action plan to increase representation of [individuals] with disabilities.”

Additional information in the report also shows that among all state agencies by gender, women with disabilities accounted for 6.7 percent (14,162) in state civil service, and men accounted for 5.1 percent (10,779) in state civil service, during that period. Thus, individuals with disabilities represented a total of 11.8 percent (29,941) of the state civil service workforce.

Additional information contained in the report can be found on CalHR’s website.<sup>2</sup>

#### 5) Prior Civil Service Reform Efforts, In General, Relating to the LEAP

During the past several years, the state has sought to make improvements, in general, to the civil service process. These efforts, generally known as Civil Service Improvement (CSI), have included items such as updating and streamlining the state’s job classifications; modernizing recruitment, examination and hiring practices; developing more robust employee management training programs; succession planning; reforming probation policies; and, improving employee and management evaluation processes.

Relating to the LEAP, existing law, as previously discussed, was modified to eliminate the probationary period for LEAP employees. On October 7, 2016, CalHR also issued a memorandum to Personnel Management Liaisons in state agencies about changes and ongoing efforts relating to the LEAP.<sup>3</sup>

In addition, please see the Governor’s veto message of Assembly Bill 365 (C. Garcia, 2019) under “Prior or Related Legislation” below.

#### 6) Comments by Supporters

According to Disability Rights California, “Historically, working age people with disabilities are among the most unemployed and underemployed members of society. Even though there have been major civil rights advancements, like the federal Americans with Disabilities Act and the state Disabled Persons Act, people with disabilities are underrepresented in state civil service. Without equal employment opportunities, many persons with disabilities are forced to rely on public benefits and services.

“Unfortunately, state agencies have failed to ensure that persons with disabilities are afforded equal opportunities and the benefits and privileges of state employment. One reason for that

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<sup>2</sup> <http://www.calhr.ca.gov/Documents/ocr-census-of-employees-2016.pdf>

<sup>3</sup> <http://www.calhr.ca.gov/PML%20Library/PML2016028.pdf>

failure is that the LEAP has not been effectively implemented and does not practically support the hiring of persons with disabilities. [This bill] addresses these historic barriers and implements some of the recommendations of the joint project report to increase employment for persons with disabilities in state civil service.”

#### 7) Prior or Related Legislation

Assembly Bill 2328 (C. Garcia) was substantially similar to the current bill. This bill was held in the Assembly Committee on Public Employment and Retirement at the request of the author following disruption to the legislative calendar as a result of COVID-19.

Assembly Bill 3069 (Lackey) would establish a LEAP pilot project relating to state internship and employment opportunities for homeless and former foster youth, among other provisions. This bill was held on the Assembly Appropriations committee Suspense File.

Assembly Bill 365 (C. Garcia, 2019), which is substantially similar to the current bill, proposed to make changes relating to the LEAP; however, it was vetoed by the Governor who stated that:

*“Being inclusive and accommodating of people with disabilities is critical to creating a diverse workforce. Assembly Bill 365, however, would make permanent, at a significant cost, a pilot program that is still in need of improvement. Furthermore, this effort can be addressed administratively.*

*“As a result, I am directing the Government Operations Agency, in collaboration with CalHR, to ensure that disability policies are included in the newly established Diversity Taskforce. This Taskforce has been created in order to ensure we achieve a state workforce that reflects the Californians we serve. The Taskforce will bring together civil and public servants to improve the State's hiring and retention of persons with disabilities, among other diversity issues.*

*“For these reasons, I am unable to sign this bill but remain determined in our efforts to address this important issue.”*

Chapter 35, Statutes of 2016 (Senate Bill 848, Committee on Budget and Fiscal Review), provides that a candidate appointed through the LEAP is not required to serve a probation period, upon successful completion of the job examination period.

Chapter 356, Statutes of 2015 (Senate Bill 644, Hancock), changed the method for a person with a developmental disability to qualify under the LEAP from the current written exam or readiness evaluation, to an internship with a state agency, as specified.

Chapter 667, Statutes of 2014 (Assembly Bill 1041, Chesbro), created a statewide Employment First Policy and sets forth requirements related to the inclusion of employment opportunities and services in a regional center participant's individual program plan.

Chapter 231, Statutes of 2009 (Assembly Bill 287, Beall), established the Employment First Committee as a standing committee of the State Council on Developmental Disabilities to identify strategies and best practices for significantly increasing the numbers of people with developmental disabilities in competitive integrated employment and the number who earn wages at or above minimum wage.

Chapter 1088, Statutes of 2002 (Assembly Bill 925, Aroner), required, in addition to other measures intended to bring adults with disabilities into gainful employment, that the state government become a model employer of individuals with disabilities.

The federal Americans with Disabilities Act of 1990 is a comprehensive civil rights policy that establishes a clear, comprehensive prohibition on discrimination on the basis of disability and guarantees that people with disabilities have the same opportunities as others.

Chapter 738, Statutes of 1988 (Senate Bill 2677, Green), established the LEAP.

The federal Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in employment (including the practices of federal contractors), federal programs (including programs receiving federal financial assistance), and employment. See Sections 501, 503, 504, and 508 of the act.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Disability Rights California (*Sponsor*)

Association of California State Employees with Disabilities (*Co-Sponsor*)

California Council of the Blind

Disability Rights Education and Defense Fund

##### **Opposition**

None on file.

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