



COMPLIANCE REVIEW REPORT

CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Compliance Review Unit
State Personnel Board
July 12, 2016

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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit-related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of Department of Alcoholic Beverage Control (ABC) personnel practices in the areas of examinations, appointments, EEO, and PSC's from June 1, 2015, through February 29, 2016, and mandated training from April 1, 2014, through April 1, 2016. The following table summarizes the compliance review findings.

| Area | Finding | Severity |
|--------------|--|--------------------------|
| Examinations | Examinations Complied with Civil Service Laws and Board Rules | In Compliance |
| Appointments | Equal Employment Opportunity Questionnaires Were Not Separated from Applications | Very Serious |
| Appointments | Applications Were Not Date Stamped and/or Accepted After the Final File Date | Non-serious or Technical |

| Area | Finding | Severity |
|------------------------------|---|---------------|
| Equal Employment Opportunity | Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules | In Compliance |
| Personal Services Contracts | Personal Services Contract Complied with Procedural Requirements | In Compliance |
| Mandated Training | Mandated Training Complied with Statutory Requirements | In Compliance |

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The ABC administers the provisions of the Alcoholic Beverage Control Act, which governs over 87,000 licensed businesses throughout the state. The ABC currently has approximately 446 positions and is responsible for the licensing and regulation of persons and businesses that manufacture, import, distribute, and sell alcoholic beverages in California. The ABC supports its mission through three major organizational elements: administration, licensing, and law enforcement.

The Department's enforcement operations are divided into two divisions (northern and southern) which are supported by a headquarters in Sacramento. The division offices are located in Sacramento and Cerritos. Within each division are a number of district offices. There are 11 districts/branch offices in the northern division, and 13 in the southern division.

The ABC headquarters consists of the Executive Office, Fiscal Management, Human Resources, Information Technology, Legal Division, Licensing Services, Administrative Services, Trade Enforcement, Professional Standards Unit, and Grant Assistance Program.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing ABC examinations, appointments, EEO program, and PSC's from June 1, 2015, through February 29, 2016,

and mandated training from April 1, 2014, through April 1, 2016. The primary objective of the review was to determine if ABC personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action for those deficiencies identified.

A cross-section of ABC examinations and appointments were selected to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the ABC provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the ABC EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

ABC PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether ABC justifications for the contracts were legally sufficient. The review was limited to whether ABC practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the ABC's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors were provided basic supervisory and sexual harassment prevention training within statutory timelines.

On June 23, 2016, an exit conference was held with the ABC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed ABC's written response on June 30, 2016, which is attached to this final compliance report.

¹ If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the ABC conducted six examinations. The CRU reviewed all six of the examinations, which are listed below:

| Classification | Exam Type | Exam Components | Final File Date | No. of Applications |
|---|-----------|----------------------|-----------------|---------------------|
| Agent Trainee, Alcoholic Beverage Control | Open | Written ² | Continuous | 323 |
| Agent, Alcoholic Beverage Control | Open | Written | Continuous | 321 |

² A written examination is a testing procedure in which candidates' job-related knowledge and skills are assessed through the use of a variety of item formats. Written examinations are either objectively scored or subjectively scored.

| Classification | Exam Type | Exam Components | Final File Date | No. of Applications |
|---|-----------------------------------|--|-----------------|---------------------|
| CEA A, Assistant Director of Administration | Career Executive Assignment (CEA) | State of Qualifications (SOQ) ³ | 7/17/2016 | 22 |
| CEA B, Chief Counsel | CEA | SOQ | 4/13/2015 | 4 |
| Deputy Division Chief, Alcoholic Beverage Control | Departmental Promotional | Qualification Appraisal Panel (QAP) ⁴ | 7/10/2016 | 14 |
| Licensing Representative II, Alcoholic Beverage Control | Departmental Promotional | QAP | 8/21/2016 | 18 |

FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules

The ABC administered two open examinations, two departmental promotional examinations, and two CEA examinations in order to create eligible and information lists from which to make appointments, respectively. For the two open examinations and two departmental promotional examinations, the ABC published and distributed examination bulletins containing the required information. Applications received by the ABC were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications for admittance to the examination. The ABC notified applicants as to whether they qualified to take the examination, and those applicants who met the minimum qualifications were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

³ In a statement of qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

⁴ The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

For the two CEA examinations, the ABC published and distributed examination bulletins containing required information. Applications and SOQ's were received by the ABC and were thereafter properly assessed to determine applicant ranks from one to six.

The CRU found no deficiencies in the examinations that the ABC conducted during the compliance review period. Accordingly, the ABC fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the ABC made 79 appointments. The CRU reviewed 44 of those appointments, which are listed below:

| Classification | Appointment Type | Tenure | Time Base | No. of Appointments |
|---------------------------------|--------------------|--------------|-----------|---------------------|
| Administrative Assistant II | Certification List | Permanent | Full Time | 1 |
| Agent Trainee | Certification List | Permanent | Full Time | 4 |
| Agent, ABC | Certification List | Permanent | Full Time | 7 |
| Associate Personnel Analyst | Certification List | Permanent | Full Time | 1 |
| Attorney | Certification List | Permanent | Full Time | 1 |
| Attorney | Certification List | Limited Term | Full Time | 1 |
| Licensing Representative I, ABC | Certification List | Permanent | Full Time | 3 |
| Licensing Representative II | Certification List | Permanent | Full Time | 4 |

| Classification | Appointment Type | Tenure | Time Base | No. of Appointments |
|--|-------------------------------------|--------------|--------------|---------------------|
| Office Technician (Typing) | Certification List | Permanent | Full Time | 2 |
| Program Technician II | Certification List | Permanent | Full Time | 2 |
| Supervising Investigator, ABC | Certification List | Permanent | Full Time | 1 |
| Supervising Program Technician I | Certification List | Permanent | Full Time | 1 |
| Program Technician | Demotion | Permanent | Full Time | 1 |
| Program Technician II | Demotion | Permanent | Full Time | 1 |
| Attorney III | Mandatory Reinstatement | Permanent | Full Time | 1 |
| Legal Analyst | Mandatory Reinstatement | Permanent | Full Time | 1 |
| Licensing Representative I, ABC | Mandatory Reinstatement | Permanent | Full Time | 2 |
| Program Technician II | Permissive Reinstatement | Permanent | Full Time | 2 |
| Associate Governmental Program Analyst | Retired Annuitant | Limited Term | Intermittent | 1 |
| Data Processing Manager III | Retired Annuitant | Limited Term | Intermittent | 2 |
| Student Assistant | Temporary Authorization Utilization | Temporary | Intermittent | 1 |
| Program Technician II | Transfer | Permanent | Full Time | 2 |
| Senior Legal Typist | Transfer | Permanent | Full Time | 1 |
| Staff Services Manager II | Transfer | Permanent | Full Time | 1 |

FINDING NO. 2 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications

Summary: Out of 44 appointments reviewed, two appointment files included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, five of the 870 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.

Criteria: Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to

any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, age, or sexual orientation). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

Severity: Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

Cause: The ABC states that the removal of the EEO questionnaires was an oversight.

Action: The ABC has submitted a corrective action plan for ensuring full compliance in meeting the requirements of Government Code section 19704 as part of its departmental response, therefore no further action is required at this time.

FINDING NO. 3 – Applications Were Not Date Stamped and/or Accepted After The Final File Date

Summary: The ABC accepted and processed 178 out of 870 applications that were not date stamped, and 166 applications that were date stamped after the final filing date.

Criteria: California Code of Regulations, title 2, section 174 (Rule 174) requires timely filing of applications: All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement.

Filing an application 'within the time' shall mean postmarked by the postal service or date stamped at one of the department's offices (or appropriate office of the agency administering the examination) by the date specified.

An application that is not postmarked or date stamped by the specified date shall be accepted, if one of the following conditions as detailed in Rule 174 apply: (1) the application was delayed due to verified error; (2) the application was submitted in error to the wrong state agency and is either postmarked or date stamped on or before the specified date; (3) the employing agency verifies examination announcement distribution problems that prevented timely notification to an employee of a promotional examination; or (4) the employing agency verifies that the applicant failed to receive timely notice of promotional examination. (Cal. Code Reg., tit. 2, § 174, subds. (a), (b), (c), & (d).) The same final filing date procedures are applied to the selection process used to fill a job vacancy.

Severity: Non-serious or Technical. Final filing dates are established to ensure all applicants are given the same amount of time in which to apply for a job vacancy and to set a deadline for the recruitment. Therefore, although the acceptance of applications after the final filing date may give some applicants more time to prepare their application than other applicants who meet the final filing date, the acceptance of late applications will not impact the results of the job vacancy selection.

Cause: The ABC states that the hiring managers and/or office staff were inconsistent in date stamping the applications received. In addition, if applications were received by the postmark date, the envelopes were discarded. The ABC also states that for applications received after the postmark date, the envelopes were supposed to be attached to the application as proof of meeting the final filing date deadline and if the envelopes were not attached then it was an oversight by the office staff.

Action: The ABC has submitted a corrective action plan for ensuring compliance in meeting the filing requirements of the California Code of Regulations, title 2, section 174; therefore, no further action is required at this time.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the CalHR by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the Director of the ABC to develop, implement, coordinate, and monitor the ABC's EEO program. (Gov. Code, § 19795.)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the ABC's EEO program that was in effect during the compliance review period.

FINDING NO. 4 – Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the ABC EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Director of the ABC. In

addition, the ABC has an established DAC that reports to the Director on issues affecting persons with a disability. The ABC also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state’s authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC’s achieve cost savings for the state. PSC’s that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC’s, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the ABC had one PSC that was in effect and subject to the Department of General Services (DGS) approval, and thus the CRU procedural review. The CRU reviewed the contract, which is listed below:

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified |
|-------------|----------------------------|------------------|-----------------|--------------------------|
| Computronix | Annual IT Support Services | 7/1/14 – 6/30/17 | \$643,783.00 | Yes |

FINDING NO. 5 – Personal Services Contract Complied with Procedural Requirements

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes specific and detailed factual information that demonstrates how the contract meets one

or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

It was beyond the scope of the review to make conclusions as to whether ABC justification for the contract was legally sufficient. The ABC provided specific and detailed factual information in the written justifications as to how the contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the ABC PSC complied with procedural requirements.

Mandated Training

Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, § 11146.1) New filers must be trained within six months of appointment. (Gov. Code, § 11146.3)

Each department must provide its new supervisors basic supervisory training within twelve months of appointment. (Gov. Code, § 19995.4, subs. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4, subd. (b).)

Additionally, each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)

The CRU reviewed the ABC mandated training program that was in effect during the compliance review period.

FINDING NO. 6 – Mandated Training Complied with Statutory Requirements

The ABC provided ethics training to its 58 new filers within six months of appointment and semiannual ethics training to its 248 existing filers during the two-year calendar year period commencing in 2014. The ABC also provided supervisory training to its nine new supervisors within 12 months of appointment. In addition, the ABC provided sexual harassment prevention training its nine new supervisors within six months of appointment and semiannual sexual harassment training to its existing 83 supervisors. Thus, the ABC complied with mandated training requirements within statutory timelines.

DEPARTMENTAL RESPONSE

The ABC's response is attached as Attachment 1.

SPB REPLY

Based upon the ABC's written response, the ABC will comply with the CRU recommendations and findings. The ABC submitted corrective action plans for the two departmental findings that were out of compliance. Therefore, no further action is required.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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June 30, 2016

State Personnel Board
Alton Ford, Manager
Compliance Review Unit
801 Capitol Mall
Sacramento, CA 95814

Dear Mr. Ford:

The Department of Alcoholic Beverage Control (ABC) would like to thank the State Personnel Board's Compliance Review Unit (CRU) for undertaking the 2016 ABC Compliance Review. The ABC has reviewed the report and provides the following response to the findings.

Specific Findings and Responses:

Finding #2: Equal Employment Opportunity Questionnaires were not separated from Applications. The report noted that out of 44 appointments reviewed, two appointment files included applications where EEO questionnaires were not separated from the application. Specifically, five out of the 870 applications reviewed included EEO questionnaires that were not separated from the application.

Cause: The removal of the EEO questionnaires was an oversight.

Response: ABC is now only accepting applications electronically through ECOS. The ECOS system automatically removes the EEO questionnaire from applications. This will prevent this error from occurring in the future. In addition, Human Resource staff has been reminded if an application is received through the postal service, removal of the EEO questionnaire is required prior to uploading the application into the ECOS system.

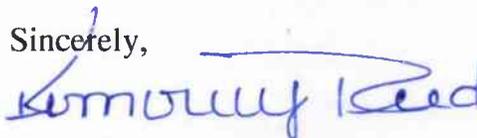
Finding #3: Applications were not date stamped and/or accepted after the final filing date. The report noted that ABC accepted and processed 178 out of 870 applications that were not date stamped, and 166 applications that were date stamped after the final filing date.

Cause: In the past, applicants were directed to send their applications directly to the hiring managers. It appears the hiring managers and/or office staff were inconsistent in date stamping the applications received. In addition, if an application was received by the post mark date, the envelopes were discarded. For applications received after the

post mark date the envelopes were supposed to be attached to the application as proof of meeting the final filing date deadline. If the envelopes were not attached it was an oversight by the office staff.

Response: Currently ABC is only accepting applications electronically through ECOS and the system automatically tracks the date it is submitted and codes applications as a "late response" if received after the final filing date. In the event that an application is submitted via the postal service, Human Resource staff has been reminded to ensure all applications are date stamped and to make a notation on the application if the post mark on the envelope demonstrates they've met the final filing date deadline. Additionally, our hiring checklist for managers has been revised to include this information in the event they receive applications. Also, if a hiring manager receives an application they have been instructed to forward to Human Resources to upload into the ECOS system.

Sincerely,



Kimberly Reed
Personnel Officer