



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY**

Compliance Review Unit  
State Personnel Board  
October 17, 2019

# TABLE OF CONTENTS

Introduction .....	1
Executive Summary .....	2
Background .....	3
Scope and Methodology.....	3
Findings and Recommendations .....	5
Examinations .....	5
Appointments .....	6
Equal Employment Opportunity .....	8
Mandated Training .....	9
Compensation and Pay.....	11
Leave .....	14
Policy and Processes.....	19
Departmental Response.....	23
SPB Reply .....	23

## **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 authorities' 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.

Effective July 1, 2012, the Governor's Reorganization Plan Number One (GRP1) of 2011 consolidated all of the functions of the Department of Personnel Administration and the merit-related operational functions of the State Personnel Board (SPB) into the California Department of Human Resources (CalHR).

Pursuant to Government Code section 18502(c), CalHR and SPB may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." CalHR and SPB, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

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 the Business, Consumer Services and Housing Agency (BCSH)'s personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>1</sup>. The following table summarizes the compliance review findings.

Area	Finding
Examinations	Examinations Complied with Civil Service Laws and Board Rules
Appointments	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	Disability Advisory Committee Has Not Been Established
Mandated Training	Mandated Training Complied with Statutory Requirements
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Incorrectly Posted Leave Usage and/or Leave Credit
Leave	Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

<sup>1</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

Leave	Departmental Leave Reduction Policy Was Not Developed
Policy	Department Does Not Maintain a Current Written Nepotism Policy
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisals Were Not Provided to All Employees

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 BCSH oversees Departments, Boards, and commissions whose mission is to protect consumers by licensing and regulating California professionals and businesses. The BCSH preserves, expands and funds safe and affordable housing opportunities. In addition, the BCSH investigates and researches earthquake-related issues to advise on ways to reduce earthquake risk and protects the civil rights of all Californians from acts of hate violence and unlawful discrimination in employment, housing, and public accommodations.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the BCSH's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>2</sup>. The primary objective of the review was to determine if BCSH personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

---

<sup>2</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

A cross-section of the BCSH's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the BCSH provided, which included examination plans, examination bulletins, job analyses, and scoring results.

The BCSH did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the BCSH's appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the BCSH provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The BCSH did not conduct any unlawful appointment investigations during the compliance review period.

Additionally, the BCSH did not make any additional appointments during the compliance review period.

The BCSH's appointments were also selected for review to ensure the BCSH applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the BCSH provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation related to out-of-class assignments.

During the compliance review period, the BCSH did not issue or authorize hiring above minimum (HAM) requests, red circle rate requests, arduous pay, bilingual pay, and monthly pay differentials.

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

The BCSH did not execute any PSC's during the compliance review period.

The BCSH's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and sexual harassment prevention training within statutory timelines.

The CRU also identified the BCSH's employees whose current annual leave, or vacation leave credits, exceeded established limits. The CRU reviewed a cross-section of these identified employees to ensure that employees who have significant "over-the-cap" leave balances have a leave reduction plan in place. Additionally, the CRU asked the BCSH to provide a copy of their leave reduction policy.

The CRU selected a small cross-section of the BCSH's units in order to ensure they maintained accurate and timely leave accounting records. Additionally, the CRU reviewed BCSH positive paid employee whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

During the compliance review period, the BCSH did not have any employees with non-qualifying pay period transactions, also did not authorize Administrative Time Off (ATO).

Moreover, the CRU reviewed the BCSH's policies and processes concerning nepotism, performance appraisals. The review was limited to whether the BCSH's policies and processes adhered to procedural requirements.

On September 3, 2019, an exit conference was held with the BCSH to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the BCSH written response on September 25, 2019, which is attached to this final compliance review report.

## **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, subd. (a).) 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 with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) 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, January 1, 2018 through December 31, 2018, the BCSH conducted one examinations. The CRU reviewed this examination, which is listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA), Executive Officer	Open	Supplemental	7/10/2018	1

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

The Department of General Services (DGS) administers examinations on behalf of the BCSH in order to create eligible lists from which to make appointments. The DGS published and distributed the examination bulletin containing the required information for the examination. Applications received by the DGS were accepted prior to the final filing date. Applicants were 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. The CRU found no deficiencies in the examinations that the BCSH conducted during the compliance review period.

**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.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250 (b).) Interviews shall be



conducted using job-related criteria. (Ibid.) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250 (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (Ibid.) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250 (e).)

During the period under review, February 1, 2018 through January 31, 2019 the BCSH made five appointments. The CRU reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Administrative Assistant I	Certification List	Permanent	Full Time	1
Research Data Specialist II	Certification List	Permanent	Full Time	1
Staff Services Manager III	Certification List	Limited Term	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Attorney	Transfer	Permanent	Full Time	1

**FINDING NO. 2 – Appointments Complied with Civil Service Laws and Board Rules**

The DGS administers BCSH’s appointments. On behalf of the BCSH, the DGS measured each applicant’s ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the three list appointments reviewed, the DGS ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU reviewed two BCSH appointments made via transfer. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive

officer. (Cal. Code Regs., tit. 2, § 425.) The DGS verified the eligibility of each candidate to their appointed class.

The CRU found no deficiencies in the appointments that the BCSH initiated during the compliance review period. Accordingly, the CRU found that the BCSH's appointments processes and procedures utilized during the compliance review period-satisfied civil service laws and Board rules.

### **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 EEO; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*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 department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795, subd. (a).)

Pursuant to Government Code section 19795, subdivision (a), in a state agency with less than 500 employees, like the BCSH, the EEO Officer may be the Personnel Officer.

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 BCSH's EEO program that was in effect during the compliance review period.

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 BCSH's 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 Executive Director of the BCSH. The BCSH also provided evidence of its efforts to promote EEO in its hiring and employment practices, and to increase its hiring of persons with a disability.

### **FINDING NO. 3 – A Disability Advisory Committee Has Not Been Established**

**Summary:** The BCSH does not have an active DAC.

**Criteria:** 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).)

**Severity:** Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

**Cause:** The BSCH states that a DAC had not been established prior to the compliance review.

**Action:** The BCSH must take appropriate steps to ensure the establishment of a DAC comprised of members who have disabilities or an interest in disability issues. The BCSH must submit to the CRU a written report of compliance, including the DAC roster, agenda, and meeting minutes, no later than 60 days from the date of the SPB Executive Officer's approval of these findings and recommendations.

## **Mandated Training**

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as “filers”) because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & 19995.4, subd. (b).)

Additionally, the training must be successfully completed within the term of the employee’s probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or Career Executive Assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power’s personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in

state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

#### **FINDING No. 4 – Mandated Training Complied with Statutory Requirements**

The BCSH provided ethics training to its seven new filers within six months of appointment and, for four existing filers, “at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter.” The BCSH also provided sexual harassment prevention training its three new supervisors within six months of appointment, and sexual harassment prevention training to its three existing supervisors every two years. The BCSH did not have any employees newly appointed to a supervisory or managerial classification during the compliance review period. Thus, the BCSH complied with mandated training requirements within statutory timelines.

### **Compensation and Pay**

#### **Salary Determination**

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee’s salary rate<sup>3</sup> upon appointment depending on the appointment type, the employee’s state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, February 1, 2018 through January 31, 2019, the BCSH made five appointments. The CRU reviewed all of those appointments to determine if the BCSH applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

---

<sup>3</sup> “Rate” is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (CA CCR Section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Administrative Assistant I	Certification List	Permanent	Full Time	\$3,977
Research Data Specialist II	Certification List	Permanent	Full Time	\$6,003
Staff Services Manager III	Certification List	Limited Term	Full Time	\$7,897
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	\$5,224
Attorney	Transfer	Permanent	Full Time	\$7,609

**FINDING NO. 5 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The DGS administers the BCSH's salary determinations. On behalf of the BCSH, the DGS appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules, and CalHR policies and guidelines. The CRU found no deficiencies in the salary determinations that were reviewed

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges. (Cal. Code Regs., tit. 2, § 599.681.) However, in many instances, CalHR provides salary rules departments must use when employees move between alternate ranges. They are described in the alternate range criteria. (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, February 1, 2018 through January 31, 2019, the BCSH made one alternate range movement within a classification<sup>4</sup>. The CRU reviewed the alternate range movement to determine if the BCSH applied salary regulations accurately and correctly processed the employee's compensation, which is listed below:

<sup>4</sup> 335 transactions.

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Graduate Student Assistant	B	C	Intermittent	\$2,635

**FINDING NO. 6 – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found that the alternate range movement the BCSH made during the compliance review period satisfied civil service laws, Board rules, and CalHR policies and guidelines.

Out-of-Class Assignments and Pay

For excluded<sup>5</sup> and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810 (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810 (a)(3).)

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and the California Code of Regulations, title 2, section 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires. (Classification and Pay Guide Section 375.)

During the period under review, February 1, 2018 through January 31, 2019, the BCSH issued OOC pay<sup>6</sup> to two employees. The CRU reviewed all of these OOC assignments

<sup>5</sup> “Excluded employee” means an employee as defined in section 3527(b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

<sup>6</sup> Excluding bilingual and arduous pay.

to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Attorney	R02	Deputy Secretary, Housing and Consumer Relations	12/1/2018-3/29/2019
Office Technician	R04	Associate Governmental Program Analyst	8/1/2018-10/31/2018

**FINDING NO. 7 – Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the OOC pay assignments that the BCSH authorized during the compliance review period. OOC pay was issued appropriately to employees performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment.

**Leave**

**Positive Paid Employees**

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee’s time to ensure that the Constitutional limit of nine months in any 12 consecutive months is not exceeded. The ATW method of counting time is used in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days<sup>7</sup> worked and paid absences,<sup>8</sup> is counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-

<sup>7</sup> For example, two hours or ten hours counts as one day.

<sup>8</sup> For example, vacation, sick leave, compensating time off, etc.



consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded.<sup>9</sup> (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1,500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year.

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June) without reinstatement, loss or interruption of benefits for all state employers.

At the time of the review, the BCSH had one employee whose hours were tracked. The CRU reviewed the positive paid appointment to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which is listed below:

Classification	Time Base	Time Frame	Time Worked
Graduate Student Assistant	Intermittent	11/16/18 - 1/31/2019	594 Hours

**FINDING NO. 8 – Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found no deficiencies in the employees whose hours were tracked during the compliance review period. The BCSH provided the proper documentation and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

<sup>9</sup> “California Code of Regulation section 265.1 became effective July 1, 2017, and did not apply at the time of all of these appointments. The current regulation sets forth the method for counting time for temporary appointments. The cap under the current regulation is 189 days.

## Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.)

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) If an employee's attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, July 1, 2018 through September 31, 2018, the BCSH reported one unit comprised of 20 active employees during the July 2018 pay period, one unit comprised of 21 active employees during the August 2018 pay period, and one unit comprised of 21 active employees during the September 2018 pay period. The pay periods and timesheets reviewed by the CRU are summarized as follows:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
July 2018	1	20	20	0
August 2018	1	21	21	0
September 2018	1	21	21	0

### **FINDING NO. 9 – Incorrectly Posted Leave Usage and/or Leave Credit**

#### **Summary:**

On behalf of the BCSH, the DGS did not correctly enter three of 62 timesheets into the Leave Accounting System (LAS) during the July, August, and September 2018 pay periods. As a result, one employee lost a total of four hours of leave, and two student assistants did not receive proper leave accruals.

**Criteria:** Departments shall create a monthly internal audit process to verify that all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) If an employee's attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)

**Severity:** Very serious. Errors in posting leave usage and/or leave credits puts the department at risk of incurring additional costs from the initiation of collection efforts from overpayments, the risk of litigation related to recovering inappropriately credited leave hours and funds, and/or the increase of the state's pension payments.

**Cause:** The BCSH states that they contract with the DGS for this function and have no oversight to control how leave is posted.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the BCSH submit to the CRU a written corrective action plan that addresses the corrections the DGS will implement to ensure conformity with Human Resources Manual Section 2101. Documentation showing the creation of the DGS work group referred to in the department response should be included with the plan.

### Leave Reduction Efforts

Departments must create a leave reduction policy for their organization and monitor employees' leave to ensure compliance with the departmental leave policy; and ensure employees who have significant "over-the-cap" leave balances have a leave reduction plan in place and are actively reducing hours. (Human Resources Manual Section 2124.)

Applicable Bargaining Unit (BU) Agreements and the California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. "If a represented employee is not permitted to use all of the vacation to which he or she is entitled in a

calendar year, “the employee may accumulate the unused portion.”<sup>10</sup> (Cal. Code Regs., tit. 2, § 599.737.) “If it appears an exempt employee will have a vacation or annual leave balance that will be above the maximum amount<sup>11</sup> as of January 1 of each year, the appointing power shall require the supervisor to notify and meet with each employee so affected by the preceding July 1, to allow the employee to plan time off, consistent with operational needs, sufficient to reduce their balance to the amount permitted by the applicable regulation, prior to January 1. (Cal. Code Regs., tit. 2, § 599.742.1.)

“It is the intent of the state to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation. (Cal. Code Regs., tit. 2, § 599.742.1.), ensuring employees maintain the capacity to optimally perform their jobs. For exempt employees, “the employee shall also be notified by July 1 that, if the employee fails to take off the required number of hours by January 1, the appointing power shall require the employee to take off the excess hours over the maximum permitted by the applicable regulation at the convenience of the agency during the following calendar year. (*Ibid*) To both comply with existing civil service rules and adhere to contemporary human resources principles, state managers and supervisors must cultivate healthy work- life balance by granting reasonable employee vacation and annual leave requests when operationally feasible. (Human Resources Manual Section 2124.)

As of December 2018, one BCSH employee exceeded the established limits of vacation or annual leave. The CRU reviewed the employee’s leave reduction plan to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which is listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Deputy Secretary	E99	207	Yes

**FINDING NO. 10 – Leave Reduction Plan Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

<sup>10</sup> For represented employees, the established limit for annual or vacation leave accruals is 640 hours. However, for bargaining units 06 there is no established limit and for bargaining unit 05 the established limit is 816 hours.

<sup>11</sup> Excluded employees shall not accumulate more than 80 days.

The CRU reviewed employee vacation and annual leave to ensure that those employees who have significant leave balances over the established limits have leave reduction plans in place and are actively reducing hours. Based on our review, the CRU found no deficiencies in this area.

However, the BCSH did not develop a general departmental leave reduction policy.

**FINDING NO. 11 – Departmental Leave Reduction Policy Was Not Developed**

**Summary:** The BCSH did not develop and communicate a general departmental leave reduction policy.

**Criteria:** “It is the policy of the state to foster and maintain a workforce that has the capacity to effectively produce quality services expected by both internal customers and the citizens of California. (Human Resources Manual Section 2124.) Therefore, appointing authorities and state managers and supervisors must create a leave reduction policy for the organization and monitoring of employees’ leave to ensure compliance with the departmental leave policy; and; ensure employees who have significant ‘over-the-cap’ leave balances have a leave reduction plan in place and are actively reducing hours”.  
(*Ibid.*)

**Severity:** Technical. California state employees have accumulated significant leave hours creating an unfunded liability for departmental budgets. The value of this liability increases with each passing promotion and salary increase. Accordingly, leave balances exceeding established limits need to be addressed immediately.

**Cause:** The BCSH states that they do not have a written policy in accordance with CalHR Manual Section 2124.

**Action:** It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the BCSH submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.742 and Human Resources Online Manual Section 2124. Copies of any relevant documentation should be included with the plan.

## **Policy and Processes**

### **Nepotism**

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include but are not limited to, association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) In addition, there may be personal relationships beyond this general definition that could be subject to these policies. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

### **FINDING NO. 12 – Department Does Not Maintain a Current Written Nepotism Policy**

**Summary:** The BSCH does not maintain a current written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees.

**Criteria:** It is the policy of the State of California to recruit, hire and assign all employees on the basis of fitness and merit in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204). All department policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

**Severity:** Very Serious. Departments must take proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes. The maintaining of a current written nepotism policy, and its dissemination to all staff, is the basis for achieving these ends.

**Cause:** The BCSH states that their nepotism policy was in draft format at the time of the audit and had not been distributed to staff.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the BCSH submit the updated nepotism policy, along with documentation showing it has been distributed to all staff.

### Workers' Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. (Cal. Code Regs., tit. 8, § 9880 subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee's "personal physician," as defined by Labor Code Section 4600. (Cal. Code Regs., tit. 8, § 9880 subd. (c)(7)(8).) (Cal. Code Regs., tit. 8, § 9880 subd. (c)(7).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work related injury or illness, employers shall provide a claim form and a notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401 subd. (a).)

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers' compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund office to discuss the status of volunteers. (*Ibid.*)

In this case, the BCSH did not employ volunteers during the compliance review period.

**FINDING NO. 13 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU verified that the BCSH provides notice to their employees to inform them of their rights and responsibilities under CA Workers' Compensation Law. Furthermore, the

CRU verified that when the BCSH received worker's compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

### Performance Appraisals

According to Government Code section 19992.2, departments must "prepare performance reports." Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee's probationary period.

The CRU selected one permanent BCSH employee to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations and CalHR policy and guidelines.

### **FINDING NO. 14 – Performance Appraisals Were Not Provided to All Employees**

**Summary:** The BCSH did not provide performance appraisals to one of one employee reviewed at least once in each twelve calendar months after the completion of the employee's probationary period, which is listed below.

Classification	Date Performance Appraisal Due
Staff Services Manager II Specialist	3/7/2018

**Criteria:** "Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule." (Gov. Code § 19992.2 subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit.2, § 599.798.)

**Severity:** Serious. The department does not ensure that all of its employees are apprised of work performance issues and/or goals in a systematic manner.



**Cause:** The BCSH states that despite the methods used by Human Resources to inform supervisors of the requirements to complete performance appraisals, not all supervisors provided timely performance appraisals.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the BCSH submit to the SPB a written corrective action plan that addresses the corrections the department will implement to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of any relevant documentation should be included with the plan.

### **DEPARTMENTAL RESPONSE**

The BCSH's response is attached as Attachment 1.

### **SPB REPLY**

Based upon the BCSH's written response, the BCSH will comply with the CRU's recommendations and findings.

It is further recommended that the BCSH comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.



State of California  
**BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY**

Gavin Newsom, Governor  
Alexis Podesta, Secretary

September 25, 2019

Suzanne Ambrose  
Executive Officer  
State Personnel Board

**SUBJECT: Business, Consumer Services and Housing Agency's Response to Draft State Personnel Board Compliance Report**

Dear Ms. Ambrose,

The Business, Consumer Services and Housing Agency (BCSH) has received the draft of the State Personnel Board's Compliance Review Report. Based on the compliance review conducted by the Compliance Review Unit (CRU) of BCSH's personnel practices in the areas of Examinations, Appointments, Equal Employment Opportunity, Personal Services Contracts, and Pay, Leave, and Policy, the BCSH provides the following responses to each of the findings below presented by CRU:

**Finding No. 3:** A Disability Advisory Committee (DAC) has not been Established

Cause: A Disability Advisory Committee had not been established prior to the compliance review.

Corrective Action: Our Personnel Liaison has since joined the neighboring department (State Treasurer Office) DAC and will share agenda, meeting minutes, and all other related materials with all BCSH staff via email and/or in weekly staff meetings.

**Finding No.9:** Incorrectly Posted Leave Usage and/or Leave Credit

Cause: BCSH contracts with the Department of General Services (DGS) for this function and BCSH staff have no oversight to control how leave is posted.

Corrective Action: DGS has ensured BCSH that they will create appropriate procedures and begin implementation to comply with PML 2015-007. (This was a recent finding in

915 Capitol Mall, Suite 350A, Sacramento, California 95814 (916) 653-4090 [www.bcsb.ca.gov](http://www.bcsb.ca.gov)

DGS's CRU, June 2019, to which they state they will create a working group to address mistakes.)

**Finding No. 11: Department Leave Reduction Policy was not Developed**

Cause: Although BCSH does not have a written policy in accordance with CalHR Online Manual Section 2121, an internal process is maintained wherein an annual email is provided to staff with leave accrued over the established limit of 640 hours that requests said employees to complete the CalHR 138 Leave Reduction Plan. Leave reduction plans are then reviewed by the personnel liaison.

Corrective Action: BCSH is finalizing a written policy that is in compliance with the CalHR Online Manual Section 2121.

**Finding No. 12: Department Does Not Maintain a Current Written Nepotism Policy**

Cause: BCSH's nepotism policy was in draft format at the time of the audit and had not been distributed to staff.

Corrective Action: The Agency has created and distributed a nepotism policy. The Agency has also implemented a process to disseminate policies to newly hired staff who must then sign a form acknowledging receipt of those policies.

**Finding No. 14: Performance Appraisals Were Not Provided to All Employees**

Cause: Despite the methods used by Human Resources to inform supervisors of the requirements to complete performance appraisals, not all supervisors provided timely performance appraisals.

Corrective Action: BCSH has since implemented a process to set a schedule for performance appraisal due dates for all employees and will ensure compliance. The BCSH leadership team will emphasize the importance of completing performance appraisals timely in management meetings.

BCSH takes these compliance issues very seriously and have considered the findings identified in the Compliance Review report and have commenced all necessary corrective actions to bring the Agency into compliance.

Sincerely,

  
Alexis Podesta  
Agency Secretary