

COMPLIANCE REVIEW REPORT

DEPARTMENT OF BUSINESS OVERSIGHT

Compliance Review Unit State Personnel Board January 28, 2019

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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.

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 items reviewed by the CRU beyond merit-related issues into more operational practices that are 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 DBO's personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes¹. 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 Is Not Active
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements
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	Incorrect Application of Salary Determination Laws, Rules, and CaIHR Policies and Guidelines for Alternate Range Movement
Compensation and Pay	Hiring Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Temporary Authorization Employees' Time Worked Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

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

Area	Finding
Leave	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Reduction Plan Was Not Provided to Employee Whose Leave Balance Exceeded Established Limits
Leave	715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Department Does Not Maintain an Updated Written Nepotism Policy
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines

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 DBO serves Californians by effectively overseeing financial service providers, enforcing laws and regulations, promoting fair and honest business practices, enhancing consumer awareness, and protecting consumers by preventing marketplace risks, fraud, and abuse.

The DBO provides protection to consumers and services to businesses engaged in financial service transactions. The DBO regulates a variety of financial services, products, and professionals. The DBO oversees the operations of State-licensed financial institutions, including banks, credit unions, money transmitters, issuers of payment instruments and travelers checks, student loan servicers and premium finance companies. Additionally, the DBO licenses and regulates a variety of other financial service providers, including securities brokers and dealers, investment advisers, deferred

deposit originators (commonly known as payday lenders) and certain fiduciaries and nonbank lenders. As of June 30, 2017, the DBO licensed and supervised more than 389,000 individuals and businesses.

The statutes that govern the DBO's regulatory authority and its licensees are found in the Financial Code and Corporations Code. The DBO's FY 2017-2018 budget totaled \$95 million. The DBO currently has 660 authorized positions, including 377 examiner positions, and is funded entirely with special funds derived mainly from fees paid by licensees.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the DBO's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes². The primary objective of the review was to determine if DBO 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.

A cross-section of the DBO'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 DBO provided, which included examination plans, examination bulletins, job analyses, and scoring results. The DBO did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the DBO'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 DBO provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The DBO did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the DBO did not make any additional appointments during the compliance review period.

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

The DBO's appointments were also selected for review to ensure the DBO applied salary regulations accurately and correctly processed employee's compensation and pay. The CRU examined the documentation that the DBO provided, which included employee's 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 for the following personnel functions related to compensation and pay: hiring above minimum (HAM) requests, bilingual pay, and monthly pay differentials. During the compliance review period, the DBO did not issue or authorize red circle rate requests, arduous pay, or out-of-class assignments.

The review of the DBO'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 upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The DBO's PSC's were also reviewed.³ It was beyond the scope of the compliance review to make conclusions as to whether the DBO justifications for the contracts were legally sufficient. The review was limited to whether the DBO's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The DBO'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 supervisory and sexual harassment prevention training within statutory timelines.

The CRU also identified the DBO'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 DBO to provide a copy of their leave reduction policy.

The CRU reviewed the DBO's Leave Activity and Correction certification forms to verify that the DBO created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small

³If 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.

cross-section of the DBO's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the DBO's employee's employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the DBO employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Additionally, the CRU reviewed a selection of DBO employees tracked by actual time worked (ATW) during the compliance review period in order to ensure that ATW was appropriately utilized.

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

On January 7, 2019, an exit conference was held with the DBO to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DBO's written response on January 11, 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.) 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, August 1, 2017 through April 30, 2018, the DBO conducted 12 examinations. The CRU reviewed eight of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) A, Deputy Commissioner, Administration	Open	Statement of Qualifications (SOQ) ⁴	6/21/2017	11
CEA A, Regional Deputy Commissioner, Banks – Northern Region	Open	SOQ	1/10/2018	4
CEA B, Deputy Commissioner, Banks	Open	SOQ	9/13/2017	6
Corporation Examiner	Departmental Promotional	Education and Experience ⁵	9/26/2017	9
Corporation Examiner IV (Specialist/Supervisor)	Departmental Promotional	Training and Experience (T&E) ⁶	11/3/2017	30
Financial Institutions Manager	Departmental Promotional	Qualification Appraisal Panel ⁷	5/17/2017	33

⁴ 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.

⁵ In an education and experience examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

⁶ The Training and Experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience

performing certain tasks typically performed by those in this classification. Responses yield point values. ⁷ 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.

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Senior Financial Institutions Examiner	Departmental Promotional	Written ⁸	3/6/2018	30
Supervising Corporation Examiner	Departmental Promotional	T&E	6/6/2017	37

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

The CRU reviewed five departmental promotional and three open examinations which the DBO administered in order to create eligible lists from which to make appointments. The DBO published and distributed examination bulletins containing the required information for all examinations. Applications received by the DBO 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 DBO 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.) 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 period under review, July 1, 2017 through March 31, 2018, the DBO made 161 appointments. The CRU reviewed 22 of those appointments, which are listed below:

⁸ 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	Appointment Type	Tenure	Time Base	No. of Appts.
Accounting Administrator I (Supervisor)	Certification List Permanent		Full Time	1
Associate Budget Analyst	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Limited Term	Full Time	1
Associate Management Auditor	Certification List	Permanent	Full Time	1
Attorney III	Certification List	Permanent	Full Time	2
CEA	Certification List	Permanent	Full Time	2
Corporation Examiner	Certification List	Permanent	Full Time	1
Data Processing Manager	Certification List	Permanent	Full Time	1
Financial Institutions Examiner	Certification List	Permanent	Full Time	1
Legal Secretary	Certification List	Permanent	Full Time	1
Senior Financial Institutions Examiner	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Limited Term	Full Time	1
Special Consultant	Temporary Authorization Utilization (TAU)	Temporary	Intermittent	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Associate Management Auditor	Transfer	Permanent	Full Time	1
Attorney III	Transfer	Permanent	Full Time	1
Financial Institutions Examiner	Transfer	Permanent	Full Time	1
Office Technician (Typing)	Transfer	Permanent	Full Time	1
Staff Services Analyst	Transfer	Permanent	Full Time	1
Staff Services Manager I	Transfer	Limited Term	Full Time	1

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

The DBO 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 14 list appointments reviewed, the DBO 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 seven DBO 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 DBO verified the eligibility of each candidate to their appointed class.

The CRU reviewed one TAU appointment and verified that it met the CalHR rules and guidelines set for TAU appointments.

The CRU found no deficiencies in the appointments that the DBO initiated during the compliance review period. Accordingly, the CRU found that the DBO'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 California Department of Human Resources 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 department to develop, implement, coordinate, and monitor the department'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 DBO EEO program that was in effect during the compliance review period.

Summary: The DBO 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: <u>Very Serious</u>. 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 DBO states that their EEO Officer, who also served as the chair
of the DAC, unexpectedly passed away in 2016 without a succession
plan in place, which led to a lag in reconvening the DAC.

Action: The DBO has submitted documentation constituting a written report of compliance including the DAC bylaws, roster, agenda, and meeting minutes, demonstrating that the DAC is now reestablished. The DBO must take appropriate steps to ensure the DAC remains active.

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 Regs., 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 period under review, August 1, 2017 through April 30, 2018, the DBO had 23 PSC's that were in effect. The CRU reviewed five of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
Clayton Holdings, LLC	Loan Servicing Consent Order	11/20/17 – 9/30/20	\$1,325,400	Yes
Conference of State Bank Supervisors	Training Services	2/23/18 – 3/1/21	\$900,000	Yes
CTR Factor Inc.	Training Services	9/11/17 – 6/30/18	\$30,000	Yes
One Ergo Net Inc.	Ergonomic Services	11/15/17 – 11/14/19	\$30,000	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
Rust Consulting Inc.	Borrower Communication	2/9/18 — 9/30/20	\$727,061	Yes

FINDING NO. 4 – Personal Services Contracts Complied with Procedural Requirements

When an agency executes a personal services contract under Government Code section 19130, subdivision (b), the department must document 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 Regs., tit. 2, § 547.60.). In addition to a written justification, under Government Code section 19132, subdivision (b), the department shall not execute any contract until they have notified all organizations that represent state employees who perform the type of work to be contracted.

The total dollar amount of all the PSC's reviewed was \$3,012,461. It was beyond the scope of the review to make conclusions as to whether DBO justifications for the contract were legally sufficient. For all PSC's reviewed, the DBO provided specific and detailed factual information in the written justifications as to how each of the five contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Additionally, DBO complied with proper notification to all organizations that represent state employees who perform the type or work contracted. Accordingly, the DBO PSC's complied with civil service laws and board rules.

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), (c), & 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 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 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.

In reviewing the DBO's mandated training program that was in effect during the compliance review period, the CRU determined the following:

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements

The DBO provided ethics training to its 116 new filers within six months of appointment and semiannual ethics training to its 343 existing filers. The DBO also provided supervisory training to its 14 new supervisors within 12 months of appointment. In addition, the DBO provided sexual harassment prevention training its 14 new supervisors within six months of appointment, and sexual harassment prevention training to its 73 existing supervisors every two years. Thus, the DBO 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 rate⁹ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

During the period under review, July 1, 2017 through March 31, 2018, the DBO made 161 appointments. The CRU reviewed 19 of those appointments to determine if the DBO applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accounting Administrator I (Supervisor)	Certification List	Permanent	Full Time	\$5,689
Associate Budget Analyst	Certification List	Permanent	Full Time	\$4,784
Associate Governmental Program Analyst	Certification List	Limited Term	Full Time	\$4,784
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	\$5,023
Associate Management Auditor	Certification List	Permanent	Full Time	\$5,022
Associate Management Auditor	Transfer	Permanent	Full Time	\$5,273
Attorney III	Certification List	Permanent	Full Time	\$5,387
Attorney III	Certification List	Permanent	Full Time	\$8,856

⁹ "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)
Attorney III	Transfer	Permanent	Full Time	\$11,301
Corporation Examiner	Certification List	Permanent	Full Time	\$5,597
Data Processing Manager III	Certification List	Permanent	Full Time	\$9,041
Financial Institutions Examiner	Certification List	Permanent	Full Time	\$3,546
Financial Institutions Manager	Transfer	Permanent	Full Time	\$5,300
Legal Secretary	Certification List	Permanent	Full Time	\$3,303
Office Technician (Typing)	Transfer	Permanent	Full Time	\$3,190
Senior Financial Institutions Examiner	Certification List	Permanent	Full Time	\$7,254
Staff Services Analyst	Certification List	Limited Term	Full Time	\$3,977
Staff Services Analyst	Transfer	Permanent	Full Time	\$4,884
Staff Services Manager	Transfer	Limited Term	Full Time	\$6,796

FINDING NO. 6 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the 19 salary determinations that were reviewed. The DBO 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.

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, July 1, 2017 through March 31, 2018, the DBO made 39 alternate range movements within a classification¹⁰. The CRU reviewed 20 of those alternate range movements to determine if the DBO applied salary regulations accurately and correctly processed employee's compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Attorney	Range A	Range B	Full Time	\$5,883
Attorney	Range A	Range B	Full Time	\$5,656
Attorney	Range B	Range C	Full Time	\$6,500
Corporation Examiner	Range A	Range B	Full Time	\$5,255
Corporation Examiner	Range A	Range B	Full Time	\$5,255
Corporation Examiner	Range A	Range B	Full Time	\$5,255
Corporation Examiner	Range A	Range B	Full Time	\$5,255
Corporation Examiner	Range A	Range B	Full Time	\$5,255
Corporation Examiner	Range A	Range B	Full Time	\$5,255
Corporation Examiner	Range A	Range B	Full Time	\$5,732
Financial Institutions Examiner	Range A	Range B	Full Time	\$4,954
Financial Institutions Examiner	Range B	Range C	Full Time	\$5,518
Financial Institutions Examiner	Range B	Range C	Full Time	\$5,518
Financial Institutions Examiner	Range B	Range C	Full Time	\$5,518
Financial Institutions Manager	Range A	Range B	Full Time	\$4,954
Information Technology Specialist I	Range A	Range C	Full Time	\$6,057
Information Technology Specialist I	Range B	Range C	Full Time	\$6,081
Staff Services Analyst	Range A	Range B	Full Time	\$3,914

¹⁰ 335 transactions.

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Staff Services Analyst	Range B	Range C	Full Time	\$4,360
Staff Services Analyst	Range B	Range C	Full Time	\$3,977

The CRU found no deficiencies in 19 out of 20 salary determinations for alternate range movements that the DBO made during the compliance review period. The DBO appropriately calculated and processed the salaries for each alternate range movement and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

However, the DBO incorrectly applied compensation laws, rules and/or CalHR policies and guidelines for one alternate range movement reviewed.

FINDING NO. 7 – Incorrect Application of Salary Determination Laws, R	Rules, and
CalHR Policies and Guidelines for Alternate Range M	Novement

Summary:	The CRU found the following error in the DBO's determination of
	employee compensation:

Classification	Description of Finding(s)	Criteria
Staff Services Analyst	Employee should have been placed into Range B of the Staff Services Analyst classification after being in Range A for six months; instead the employee was placed into Range B after being in Range A for five months.	ARC #069

Criteria: Alternate ranges are designed to recognize increased competence in the performance of class duties based upon experience obtained while in the class. The employee gains status in the alternate range as though each range were a separate classification (Classification and Pay Guide Section 220).

Severity:Very Serious. The DBO failed to comply with the statecivil servicepay plan, by incorrectly applying compensation laws and rules in
accordance with CalHR's policies and guidelines. This results in civil

service employees receiving incorrect and/or inappropriate pay amounts. 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).

- **Cause**: The DBO states that there was a technical error in calculating the months to meet eligibility for the alternate range criteria.
- Action: The DBO has corrected the error and submitted a corrective action plan for ensuring compliance with alternate range change compensation and pay laws, rules, and CalHR policies and guidelines; therefore no further action is required at this time.

Hiring Above Minimum Requests

Government Code section 19836 authorizes CalHR to allow payments above-the minimum rate in the salary range in order to hire persons who have extraordinary qualifications. On April 1, 2005, CalHR granted delegated authority to all departments to approve HAM's for extraordinary qualifications, former legislative employees, and former exempt employees (PML, "Delegation of Personnel Management Functions," 2005-012). On September 25, 2007, CalHR also granted delegated authority for all departments to approve exceptions to the HAM criteria for extraordinary qualifications for all new state employees without prior review or approval from CalHR. However, for existing state employees, departments should obtain approval for CalHR and delegated authority does not apply (PML, "Hiring Above Minimum Standards for Extraordinary Qualifications," 2010-005).

Prior to approving a HAM under delegated authority, departments should demonstrate and document the candidate's extraordinary qualifications. The candidate's extraordinary qualifications should contribute to the work of the department significantly beyond that which other applicants offer. The extraordinary qualifications should provide expertise in a particular area of the department's program well beyond the normal requirements of the class. The department may also consider the unique talent, ability or skill demonstrated by the candidate's previous job experience as extraordinary qualifications, but the scope and depth of such experience should be more significant than the length. The qualifications and hiring rates of state employees already in the same class should be carefully considered (CalHR Online Manual Section 1707). Additionally, departments must request and approve HAM's before a candidate accepts employment (*Ibid*.). In all cases, the candidate's current salary or other bona fide salary offers should be above the minimum rate, verified and appropriately documented.

During the period under review, July 1, 2017 through March 31, 2018, the DBO authorized eight HAM requests. The CRU reviewed all eight authorized HAM requests to determine if the DBO correctly applied Government Code section 19836, and appropriately verified, approved and documented candidates' extraordinary qualifications and subsequent salaries, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Attorney III	List Appointment	New to State	\$8,856 - \$11,361	\$11,361
Auditor I	List Appointment	New to State	\$3,377 - \$4,442	\$4,312
Auditor I	List Appointment	New to State	\$3,377 - \$4,442	\$4,312
Financial Institutions Examiner	List Appointment	Current State Employee	\$3,546 - \$4,718	\$4,580
Financial Institutions Examiner	List Appointment	New to State	\$3,546 - \$4,718	\$4,580
Financial Institutions Examiner	List Appointment	New to State	\$3,546 - \$4,718	\$4,580
Senior Information Systems Analyst (Specialist)	List Appointment	New to State	\$6,057 - \$7,961	\$7,961
Systems Software Specialist II (Technical)	List Appointment	New to State	\$6,047 - \$7,948	\$6,666

FINDING NO. 8 – Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found that the HAM requests the DBO made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages ten percent or more of the total time worked. According to the Pay Scales, specifically Pay Differential 14, the ten percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, July 1, 2017 through March 31, 2018, the DBO issued Bilingual Pay to 11 employees. The CRU reviewed eight of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base
Associate Governmental Program Analyst	R01	Full Time
Consumer Services Representative	R01	Full Time
Executive Assistant	R04	Full Time
Financial Institutions Examiner	R01	Full Time
Financial Institutions Manager	M01	Full Time
Legal Secretary	R04	Full Time
Legal Secretary	R04	Full Time
Staff Services Analyst (General)	R01	Full Time

FINDING NO. 9 – Bilingual Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found that the bilingual pay authorized to eight employees during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive- based pay; or, recruitment and retention (CaIHR Classification and Pay Manual Section 230).

California State Civil Service Pay Scales (Pay Scales) Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, July 1, 2017 through March 31, 2018, the DBO issued pay differentials¹¹ to 29 employees. The CRU reviewed four of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Associate Corporations Investigator	244	\$125
Corporation Examiner	102	\$346
Supervising Special Investigator I	244	\$100
Systems Software Specialist II (Technical)	13	5%

¹¹ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

FINDING NO. 10 – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the four Pay Differentials that the DBO authorized during the compliance review period. Pay Differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

<u>Leave</u>

Actual Time Worked

Actual Time Worked (ATW) is a method that can be used to keep track of a 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. Time is accrued by months so that the immediate prior 12-calendar months are the ones used to count the 189 working days. ATW includes; any day on which the employee physically worked, regardless of the length of time worked on that day¹², any day for which the employee is on paid absence¹³, any holiday for which the employee receives either full or partial pay. If the employee works on the holiday, the day is counted only once regardless of the rate of pay¹⁴.

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. Therefore, departments must monitor the actual number of days worked in order to ensure that they do not exceed 189 days in any 12-consecutive month period (Cal. Code Regs., tit. 2, § 265.1, subd. (a).). For 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. (a).)

For permanent intermittent employees, a maximum of 1,500 hours has been placed on the number of hours which a permanent intermittent employee may work in 12 months.

¹² For example, two hours or ten hours counts as one day.

¹³ For example, vacation, sick leave, compensating time off, etc.

¹⁴ For example, straight time, time and one-half, double time, etc.

Generally, permanent intermittent employees may work up to 1,500 hours in any calendar year (CalHR Online Manual Section 1202 and applicable Bargaining Unit Agreements), however Bargaining Unit 6 employees may work up to 2,000 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, January 1, 2018 through December 1, 2018, the DBO had one employee on ATW. The CRU reviewed the ATW appointment to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which is listed below:

Classification	Position #	Time Base	Time Frame	Time Worked
Special Consultant	410-100-4660-901	Intermittent	Calendar Year	66 Days

FINDING NO. 11 – Temporary Authorization Employees' Time Worked Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the one employee placed on ATW during the compliance review period. The DBO provided the proper documentation justifying the use of ATW and adhered to applicable laws, regulations and CalHR policy and guidelines.

Administrative Time Off

Administrative Time Off (ATO) is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. Additionally, ATO may be granted when employees need time off for any of the following: donating blood, extreme weather that makes getting to work impossible, and/or, when employees need time off to attend special events. Any ATO requests lasting over 30 days must be submitted and approved by CalHR. Approval will generally be given in 30 calendar day increments and any extension must be approved prior to the expiration of the 30 calendar days. Departments must properly document and track ATO for any length of time (PML, "Administrative Time Off (ATO) – Policy, Procedure and Documentation Requirements", 2012-008).

Employees may also be granted a paid leave of absence of up to five days by their appointing power when the employee works or resides in a county where a state of emergency has been proclaimed by the Governor (§ 599.785.5, Administrative Time Off - During State of Emergency).

During the period under review, February 1, 2017 through January 31, 2018, the DBO placed 30 employees on ATO. The CRU reviewed 10 of these ATO appointments to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	No. of Days on ATO
Auditor I	7/31/17	1 Day
Corporation Examiner	12/6/17 – 12/7/17	2 Days
Corporation Examiner	2/1/17 – 2/7/17	5 Days
Financial Institutions Manager	2/13/17	1 Day
Office Technician	1/5/18 & 1/16/18	4 Hours
Seasonal Clerk	3/8/17	2 Hours
Senior Financial Institutions Examiner	3/1/17, 3/9/17, 4/6/17	12 Hours
Senior Financial Institutions Examiner	2/13/17 – 2/14/17	2 Days
Senior Information Systems Analyst (Specialist)	2/13/17 – 2/14/17	2 Days
Staff Services Analyst (General)	11/6/17	4.5 Hours

FINDING NO. 12 – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the 10 employees placed on ATO during the compliance review period. The DBO provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

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).

Additionally, in accordance with CalHR Online Manual Section 2101, departments must create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. 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. Attendance records shall be corrected by the pay period following the pay period in which the error occurred. Accurate and timely attendance reporting is required of all departments and is subject to audit.

During the period under review, November 1, 2017 through January 31, 2018, the DBO reported 47 units comprised of 587 active employees during the November 2017 pay period, 47 units comprised of 590 active employees during the December 2017 pay period, and 47 units comprised of 576 active employees during the January 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
November 2017	103	10	10	0
November 2017	122	4	4	0
November 2017	165	21	21	0
November 2017	198	1	1	0
November 2017	203	8	8	0
November 2017	323	37	37	0

FINDING NO. 13 – Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU reviewed employee leave records from one leave period to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The DBO kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

Leave Reduction Efforts

Departments must comply with the regulations and CalHR policies that require a leave plan for every employee with vacation or annual leave hours over the maximum amount permitted (Cal. Code Regs., tit. 2, § 599.742.1 and applicable Bargaining Unit Agreements). Bargaining Unit Agreements and California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. For instance, according to California Code of Regulations, title 2, section 599.737, if a represented employee does not use all of the vacation to which he or she is entitled in a calendar year, "the employee may accumulate the unused portion, provided that on January 1st of a calendar year, the employee shall not have more than" the established limit as stipulated by the applicable bargaining unit agreement¹⁵. Likewise, if an excluded employee does not use all of the vacation credit, provided that on January 1st of a calendar year, the excluded employee shall not have more than 80 vacation days." (Cal. Code Regs., tit. 2, § 599.738).

In accordance with CalHR Online Manual Section 2124, 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.

As of December 2017, 30 DBO employees exceeded the established limits of vacation or annual leave. The CRU reviewed 16 of those employees' leave reduction plans to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Assistant Chief Counsel	M02	160	Yes
Attorney III	R02	394.98	Yes
Attorney III	R02	76.5	Yes
Attorney III	R02	243	Yes
Attorney III	R02	292	Yes
Attorney III	R02	244	No
Chief Deputy Commissioner	E99	390	Yes

¹⁵ 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 bargaining unit 5 the established limit is 816 hours.

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Corporation Examiner	R01	13	Yes
Financial Institutions Examiner	R01	33.5	Yes
General Counsel	E99	476	Yes
Senior Financial Institutions Examiner	R01	99	Yes
Staff Services Analyst	R01	48.25	Yes
Staff Services Manager I	M01	62.25	No
Staff Services Manager I	S01	28.75	Yes
Staff Services Manager II	M01	61	Yes
Supervising Corporation Examiner	M01	156	Yes
Total		2778.23	

FINDING NO. 14 – Leave Reduction Plans Was Not Provided to Employee Whose Leave Balance Exceeded Established Limits

- **Summary:** Although the DBO made a reasonable effort to ensure that all employees over the maximum vacation or annual leave hours had leave reduction plans in place, the DBO did not provide a leave reduction plan for one employee reviewed whose leave balance significantly exceeded established limits.
- **Criteria:** 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. 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, unless exempted, 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. (Cal. Code Regs., tit. 2, § 599.742.)

According to CalHR Online Manual Section 2124, "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. Therefore, appointing authorities and state managers and supervisors must create a leave reduction policy for the 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".

- Severity: <u>Non-serious or Technical.</u> 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 DBO states that one employee refused to complete a leave reduction plan.
- Action: The DBO has submitted a corrective action plan for ensuring that all employees over the maximum vacation or annual leave hours have leave reduction plans in place; therefore, no further action is required at this time.

State Service

An employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service¹⁶ (Cal. Code Regs., tit. 2, § 599.608).

Hourly or daily rate employees working at a department in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service (Cal. Code Regs., tit. 2, § 599.609).

For each additional qualifying monthly pay period as defined in section 599.608, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. Portions of non-qualifying monthly

¹⁶ Except as provided in sections 599.609 and 599.776.1(b) of these regulations, in the application of Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, 19997.4 and sections 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.787, 599.791, 599.840 and 599.843 of these regulations.

pay periods of service shall not be counted nor accumulated (Cal. Code Regs., tit. 2, § 599.739). On the first day following a qualifying monthly pay period, excluded employees¹⁷ shall be allowed credit for annual leave with pay (Cal. Code Regs., tit. 2, § 599.752).

Permanent intermittent employees also earn leave credits on the pay period following the accumulated accrual of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period are not counted or accumulated towards leave credits."

During the period under review, July 1, 2017 through March 31, 2018, the DBO had seven employees with non-qualifying pay period 715 transactions¹⁸. The CRU reviewed all seven 715 transactions to ensure compliance with applicable laws, regulations and CaIHR policy and guidelines, which are listed below:

Type of 715 Transaction	Time base	Number Reviewed
Non-Qualifying Pay Period	Full Time	1
Qualifying Pay Period	Full Time	6

FINDING NO. 15 – 715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU determined that the DBO ensured employees with non-qualifying pay periods did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

Policy and Processes

<u>Nepotism</u>

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. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. Nepotism is defined as the practice of an employee

¹⁷ As identified in Government Code sections 19858.3(a), 19858.3(b), or 19858.3(c) as it applies to employees excluded from the definition of state employee under section Government Code 3513(c), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

¹⁸ 715 transaction code is used for: temporary leaves of 30 calendar days or less (per SPB Rule 361) resulting in a non-qualifying pay period; used for qualifying a pay period while on NDI; used for qualifying a pay period while employee is on dock and furlough.

using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. Personal relationships for this purpose include but are not limited to, association by blood, adoption, marriage and/or cohabitation. In addition, there may be personal relationships beyond this general definition that could be subject to these policies. Overall, departmental nepotism policies should aim to prevent favoritism or bias based on a personal relationship when recruiting, hiring or assigning employees. Departments have the discretion, based on organizational structure and size, to develop nepotism policies as they see fit (CaIHR Online Manual Section 1204).

FINDING NO. 16 – Department Does Not Maintain an Updated Written Nepotism Policy

- **Summary:** The DBO did not have an updated written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees. Although the DBO is working on a new nepotism policy, the nepotism policy provided during the compliance review period had not been revised since 2013, and additionally was missing multiple components listed in CalHR's PML 2015-14 "Statewide Guidance on Nepotism Policies".
- **Criteria:** Departmental nepotism policies should aim to prevent favoritism or bias based on a personal relationship when recruiting, hiring or assigning employees, and 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. (PML, "Statewide Guidance on Nepotism Policies," 2015-14).
- Severity: <u>Very Serious.</u> 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 DBO states that their updated anti-nepotism policy was in draft format at the time of the audit, but had not been approved or communicated to staff.

Action: The DBO has submitted draft updated written nepotism policy which is in compliance with CalHR Guidelines; therefore no further action is required at this time.

Workers' Compensation

Pursuant to California Code of Regulations, title 8, section 9880, employers shall provide to every new employee 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. This notice shall also contain a form that the employee can use to pre-designate their personal physician or medical group as defined by Labor Code section 4600. Additionally, employers shall also provide a claim form and notice of potential eligibility to their employee within one working day of notice or knowledge that the employee has suffered a work related injury or illness (Labor Code, § 5401).

According to Labor Code section 3363.5, public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. Workers' compensation coverage is not mandatory for volunteers as it is for employees. This is specific to the legally uninsured state departments participating in the Master Agreement. Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (SCIF) office to discuss the status of volunteers (PML, "Workers' Compensation Coverage for Volunteers," 2015-009). Those departments that have volunteers should have notified or updated their existing notification to the SCIF by April 1, 2015, whether or not they have decided to extend workers' compensation coverage to volunteers. In this case, the DBO did not employ volunteers during the compliance review period.

FINDING NO. 17 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

After reviewing the DBO's workers' compensation process that was in effect during the compliance review period, the CRU verified that when the DBO 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 DBO received worker's compensation claims, the CRU 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 26 permanent DBO employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations and CalHR policy and guidelines. These are listed below:

Classification	Date Performance Appraisals Due
Accounting Officer (Specialist)	9/5/17
Associate Corporations Investigator	5/3/17
Associate Governmental Program Analyst	10/28/14
Associate Governmental Program Analyst	2/14/18
Associate Governmental Program Analyst	2/10/17
Attorney III	9/27/17
Attorney III	12/20/17
Consumer Services Representative	7/1/17
Corporation Examiner	6/4/17
Corporation Examiner	9/22/17
Corporation Examiner B	3/20/17
Financial Institutions Manager	11/16/17
Financial Institutions Manager	3/1/17
Financial Institutions Manager	3/31/17
Legal Analyst	10/24/17
Office Assistant	3/10/17
Office Technician (Typing)	2/29/17
Program Technician I	5/15/17
Records Management Analyst	4/4/17
Senior Financial Institutions Examiner	12/7/17
Senior Legal Analyst	8/31/17
Senior Personnel Specialist	4/27/17
Staff Services Analyst	3/24/18

Classification	Date Performance Appraisals Due
Staff Services Analyst	5/11/17
Staff Services Manager III	9/10/17
Supervising Corporations Examiner	1/3/18

In reviewing the DBO performance appraisals policies and processes, the CRU determined the following:

FINDING NO. 18 – Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines

The CRU found no deficiencies in the 26 performance appraisals selected for review. Accordingly, the DBO performance appraisal policy and processes satisfied civil service laws, Board rules and CalHR policies and guidelines.

DEPARTMENTAL RESPONSE

The DBO's response is attached as Attachment 1.

<u>SPB REPLY</u>

Based upon the DBO's written response and corrective action plans submitted, the DBO will comply with the CRU findings and recommendations.

STATE OF CALIFORNIA Department of Business Oversight

GOVERNOR Gavin Newsom • COMMISSIONER Jan Lynn Owen

January 11, 2019

Suzanne M. Ambrose, Executive Officer State Personnel Board 801 Capitol Mall, Suite 1200 Sacramento, CA 95814

Dear Ms. Ambrose,

Subject: Department of Business Oversight's Response to the 2018 State Personnel Board Compliance Report

The Department of Business Oversight (DBO) appreciated the Compliance Review Unit (CRU) team's collaboration throughout the compliance review process. We continually strive for excellence in our personnel and hiring practices, which is reflected in the overall compliance in 14 of the 18 areas reviewed. Based on the compliance review conducted by the CRU the DBO Human Resources Office (HRO) provides the following response to the findings as presented by the State Personnel Board (SPB).

Finding No. 3: The Disability Advisory Committee (DAC) is not active.

The CRU identified that the DBO does not have an active DAC.

Cause: DBO's DAC last met in 2015. The DBO EEO officer who also served as the chair of the DAC unexpectedly passed away in 2016 without a succession plan in place, and this led to a lag in reconvening the DAC.

DBO Response: A May 2018 internal audit identified the DAC compliance gap and DBO has been actively working to reconvene the DAC. Efforts made include updating the DAC bylaws, creating the DAC application for committee members, recruiting members and assigning roles. DBO's DAC is comprised of five individuals located in the Sacramento, Los Angeles and San Diego offices. A meeting was held December 18, 2018, with a guest speaker who is a leading expert on state DAC committees. The next meeting is scheduled for February 2019, and future meetings will be held on a quarterly basis.

DBO has also created a DAC page on the internal DBO Internet site, which has links to current events, Disability Access News, the Americans with Disabilities Act, as well as state and federal agencies which enforce discrimination laws. Department of Business Oversight January 11, 2019 Page 2

The EEO office is in the process of developing a desk manual to ensure the DAC continues to meet regularly even after a staff change.

Finding No. 7: Incorrect application of salary determination laws, rules, and CalHR policies and guidelines for Alternate Range Movement.

The summary by the CRU reflected that one of the 20 salary determinations reviewed for alternate range movement was keyed after five months rather than at the required six-month date, resulting in an overpayment of the salary increase for one month.

Cause: There was a technical error in calculating the months to meet eligibility for the Alternate Range Criteria.

DBO Response: The employee's Payroll Information Management System (PIMS) history has been corrected to reflect the accurate range change date and account receivable documents have been processed for the one month pay difference. The range change calculation process has been reviewed with all Personnel Specialist staff in the HRO and the process checklist has been updated to include a verification of Range Change dates.

Finding No. 15: Leave reduction plans were not provided for an employee whose leave balance exceeded established limits.

The CRU indicated that although the DBO made a reasonable effort to ensure that all employees over the maximum vacation or annual leave hours had leave reduction plans in place, the DBO did not provide a leave reduction plan for one employee reviewed whose leave balance significantly exceeded the established limits.

Cause: A leave reduction plan for one employee in 2017 was not completed. The employee refused to complete a leave reduction plan.

DBO Response: Although the employee in question did not have a documented plan for 2017, she did provide a plan for 2018 and reduced her balance by 110 hours. The DBO has also updated the "Transfer In" checklist to include a notification if a transfer employee has a leave balance over the maximum when they initially transfer into the department.

Finding No. 17: Department does not maintain an updated written Nepotism P olicy.

The DBO did not have an updated written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees. Although the DBO is working on the new nepotism policy, the nepotism policy provided during the compliance review period had not been revised since 2013, and additionally was missing multiple components listed in CalHR's PML 2015-14 "Statewide Guidance on Nepotism Policies."

Cause: DBO's updated anti-nepotism policy was in draft format at the time of the audit. The updated policy was submitted by HRO to DBO management but had not been approved or communicated to staff.

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DBO Response: DBO has an anti-nepotism policy that became effective in 2013. DBO has a draft updated policy, which is in compliance with CalHR Guidelines. The policy has been approved and submitted to the unions for review.

If you have any questions or would like to discuss DBO's responses, please contact Michael Miller, Deputy Commissioner, Administration Division at (916) 322-1571 or <u>Michael.Miller@dbo.ca.gov</u>.

Sincerely, Jan Lynn Owen

Commissioner Department of Business Oversight