



COMPLIANCE REVIEW REPORT

CALIFORNIA DEPARTMENT OF ALCOHOL BEVERAGE CONTROL

Compliance Review Unit
State Personnel Board
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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 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), the CalHR and the SPB may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." The CalHR and the 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 the 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, the 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 California Department of Alcohol Beverage Control (ABC)'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
Examinations	Permanent Withhold Actions Complied with Civil Service Laws and Board Rules
Appointments	Probationary Evaluations Were Not Timely
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Regulations
Personnel Services Contracts	Written Justification Was Not Provided for Personal Services Contracts
Personnel Services Contracts	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Ethics Training Was Not Provided for All Filers
Mandated Training	Supervisory Training Was Not Provided for All Supervisors
Mandated Training	Sexual Harassment Prevention Training Was Not Provided For All Supervisors
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines for Appointments
Compensation and Pay	Incorrect Application of Salary Determination Laws, Board Rules, and/or CalHR Policies and Guidelines for Alternate Range Movement
Compensation and Pay	Incorrect Authorization of Bilingual Pay

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
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, Policy and Guidelines
Leave	Administrative Time Off Was Not Properly Documented
Leave	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Incorrect Application of Service and Leave Transactions
Policy and Processes	Neptotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy and Processes	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy and Processes	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 ABC's workload is divided into three elements: administration, licensing, and compliance. The ABC's Headquarters in Sacramento consists of the Director's office and other offices performing licensing, fiscal management, legal, trade practices, training, and personnel/labor relations and other administrative support functions for the ABC.

Agents and/or Licensing Representatives investigate applications for licenses to sell alcoholic beverages and report on the moral character and fitness of applicants and the suitability of premises where sales are to be conducted. Less complex license applications are reviewed and processed by non-sworn Licensing Representatives.

These reports are reviewed at the District Office and are forwarded to Headquarters in Sacramento for further review and processing. If the license is denied, or if its issuance is protested, the applicant is entitled to a hearing before an Administrative Law Judge. After hearing the evidence, the Administrative Law Judge makes a proposed decision which is reviewed by the Legal Section of the ABC and acted upon by the Director.

The ABC's agents are peace officers under Section 830.2 of the California Penal Code and are empowered to investigate and make arrests for violations of the Business and Professions Code that occur on or about licensed premises. Agents are further empowered to enforce any penal provisions of the law any place in the State. Licensees who violate State laws or local ordinances are subject to disciplinary action and may have their licenses suspended or revoked. These licensees are entitled to a hearing before an Administrative Law Judge and an appellate process to the State Supreme Court.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the ABC'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 the ABC's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, and the CalHR's policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the ABC'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 ABC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the ABC's permanent withhold actions documentation, including withhold determination worksheets, state applications (STD 678), class specifications, and withhold letters.

A cross-section of the ABC'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 ABC 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 ABC did not conduct any unlawful

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

appointment investigations during the compliance review period. Additionally, the ABC did not make any additional appointments during the compliance review period.

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

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

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

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

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.

The CRU reviewed the ABC's Leave Activity and Correction certification forms to verify that the ABC 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 cross-section of the ABC's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of ABC employees' 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. The CRU reviewed a selection of the ABC employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Additionally, the CRU reviewed a selection of ABC positive paid employees whose hours were tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

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

The ABC declined an exit conference was held with the ABC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the ABC's revised written response on September 20, 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, April 1, 2018 through December 31, 2018, the ABC conducted nine examinations. The CRU reviewed six of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) A, Deputy Division Chief, Headquarters	CEA	Statement of Qualifications (SOQ) ⁴	5/30/2018	6
CEA A, Division Chief, Northern Division	CEA	SOQ	4/11/2018	6
CEA A, Division Chief, Southern Division	CEA	SOQ	6/15/2018	4
Agent	Open	Written	9/28/2018	184
Agent Trainee	Open	Written	4/13/2018	123
Licensing Representative I	Departmental Promotional	Qualifications Appraisal Panel (QAP) ⁵	7/18/2018	25

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

The CRU reviewed CEA and departmental promotional and open examinations, which the ABC administered in order to create eligible lists from which to make appointments. The ABC published and distributed examination bulletins containing the required information for all examinations. Applications received by the ABC were accepted prior to

⁴ In a Statement of Qualifications (SOQ) 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 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.

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 ABC conducted during the compliance review period.

Permanent Withhold Actions

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointments and promotions within the state civil service system shall be merit-based, ascertained by a competitive examination process. (Cal. Const., art. VII, § 1, subd. (b).) Once a candidate has obtained list eligibility, a department may discover information pertaining to that eligible which raises concerns regarding his/her eligibility or suitability for employment with the state. (CalHR Withhold Manual, p. 3.) A permanent withhold action is valid for the duration of the eligible’s list eligibility. (*Ibid.*) Departments are required to maintain a separate file for each withhold action and the file should include a copy of the withhold notification letter sent to the eligible, as well as all supporting documentation which form the basis of the withhold action. (CalHR Withhold Manual, p. 2.)

During the review period, the ABC conducted one permanent withhold action that was reviewed by the CRU, which is listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Employee Placed on Withhold
Program Technician II	2PB30	10/13/2018	11/16/2018	Failed to Meet Minimum Qualifications

FINDING NO. 2 – Permanent Withhold Actions Complied with Civil Service Laws and Board Rules

The CRU found no deficiencies in the permanent withhold action undertaken by the department 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, December 1, 2017 through August 30, 2018, the ABC made 57 appointments. The CRU reviewed 10 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Agent	Certification List	Permanent	Full Time	1
District Administrator	Certification List	Permanent	Full Time	1
Information Technology Associate	Certification List	Permanent	Full Time	1
Licensing Representative I	Certification List	Permanent	Full Time	1
Licensing Representative II	Certification List	Permanent	Full Time	1
Supervising Investigator	Certification List	Permanent	Full Time	1
Supervising Program Technician I	Certification List	Permanent	Full Time	1
Supervising Program Technician II	Certification List	Permanent	Full Time	1
Legal Assistant	Transfer	Permanent	Full Time	1
Licensing Representative I	Transfer	Permanent	Full Time	1

FINDING NO. 3 – Probationary Evaluations Were Not Timely

Summary: The ABC did not prepare four probationary reports in a timely manner.

Classification	Appointment Type	No. of Appointments	No. of Late Probationary Reports
Agent	Certification List	1	1
Information Technology Associate	Certification List	1	1
Legal Assistant	Transfer	1	1
Licensing Representative I	Transfer	1	1
Total		4	4

Criteria: The service of a probationary period is required when an employee enters in the state civil service by permanent appointment from an employment list. (Gov. Code, § 19171.) A report of the probationer’s performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code of Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: Human Resources notifies supervisors and managers of all their employees that are due probationary and annual evaluations. Despite reminders being sent, not all managers and supervisors completed the required appraisals due to work demands and competing priorities.

Action: The ABC updated their procedures to track probationary evaluations. However, the ABC must continue to monitor probation reports to ensure conformity with Government Code section 19171 and California Code of Regulations, title 2, section 599.795. Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation including the updated procedures and Executive Management report shall be submitted to the CRU.

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; 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).)

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).)

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

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the ABC'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 Director of the ABC. In addition, the ABC has an established DAC which reports to the Director on issues affecting persons with disabilities. The ABC also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff. Accordingly, the ABC's EEO program complied with civil service laws and Board rules.

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 but are not limited to 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, April 1, 2018 through December 31, 2018, the ABC had 63 PSC's that were in effect.

FINDING NO. 5 – Written Justification Was Not Provided for Personal Services Contracts

Summary: Written justification for five PSC's was not prepared or retained. Therefore, the CRU could not determine whether these contracts met the procedural requirements for PSC's.

Vendor	Services	Contract Dates	Contract Amount	Written Justification
Atkinson Baker	Court Reporters	9/25/2018 – 9/26/2018	\$3,339.84	No
KAI Partners, Inc.	Project Approval Lifecycle Gate Stage	07/17/2018 - 09/16/2019	\$153,120.00	No
SRC Constructors	Gun Cabinet Installation	04/01/2018 - 06/30/2018	\$3,432.80	No
Symsoft Solutions	Website Redesign	08/01/2018 - 06/30/2019	\$247,780.00	No
Wind Dancer Moving	Moving Services	6/1/2018 – 6/18/2018	\$8,888.41	No

Criteria: Whenever an agency executes a personal services contract under Government Code section 19130, subdivision (b), the agency shall document, with specificity and detailed factual information, the reasons why the contract satisfies one or more of the conditions specified in Government Code section 19130, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60, subds. (a).

Severity: Serious. By not providing a detailed and factual written justification prior to approving and executing PSC's, the ABC failed to comply with law and rule.

Cause: The ABC's contract unit did not obtain specific, detailed, factual information justifying the need to contract out for services from program contract managers to document its contract files.

Action: The ABC has submitted a corrective action plan to ensure that a written justification is in each PSC file. However, the ABC must continue to monitor PSCs to ensure conformity with Government Code section 19130, subdivision (b), and California Code of Regulations, title 2, section 547.60, subdivision (a). Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation including the updated PSC processes and procedures shall be submitted to the CRU.

FINDING NO. 6 – Unions Were Not Notified of Personal Services Contracts

Summary: Unions were not notified prior to executing three PSC’s.

Vendor	Services	Contract Dates	Contract Amount	Union was Notified
Symsoft Solutions	Website Redesign	08/01/2018 - 06/30/2019	\$247,780.00	No
KAI Partners, Inc.	Project Approval Lifecycle Gate Stage	07/17/2018 - 09/16/2019	\$153,120.00	No
SRC Constructors	Gun Cabinet Installation	04/01/2018 - 06/30/2018	\$3,432.80	No

Criteria: The contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted. (Gov. Code, § 19132, subdivision (b)(1).)

Severity: Serious. Unions must be notified of impending personal services contracts in order to ensure they are aware contracts are being proposed for work that their members could perform.

Cause: The ABC’s contract unit provides notice to appropriate unions prior to contract execution. However, email proof of this notification was not consistently maintained in contract files.

Action: The ABC has improved its internal processes to notify unions prior to executing PSCs. However, the ABC must continue to monitor PCSs to ensure conformity with Government Code section 19132, subdivision (b)(1). Furthermore, within 60 days of the SPB Executive Officer’s approval of these findings and recommendations, copies of relevant documentation including any process improvements that have been implemented must be submitted to the CRU.

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 biennial 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.

The CRU reviewed the ABC's mandated training program that was in effect during the compliance review period. The ABC's ethics training, supervisory training, and sexual harassment prevention training were found to be out of compliance.

FINDING NO. 7 – Ethics Training Was Not Provided for All Filers

Summary: The ABC did not provide ethics training to 25 of 308 existing filers. In addition, the ABC did not provide ethics training to seven of 20 new filers within six months of their appointment.

Criteria: New filers must be provided ethics training within six months of appointment. (Gov. Code, § 11146.1.) Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

Severity: Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

Cause: Online ethics training was offered to all filers. However, the Learning Management System (LMS) instituted after December 2017 had several classifications including the Retired Annuitant, Public Information Officer, Legal Assistant, and Information Technology Specialist classifications incorrectly categorized as not requiring ethics training. These incorrect categorization errors have been corrected in the LMS.

Action: The ABC established a LMS and a dedicated training unit to ensure that all ethics training is completed timely. However, the ABC must continue to monitor ethics training to ensure conformity with Government Code sections 11146.1 and 11146.3, subdivision (b). Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation including examples of notifications and reminders for ethics training shall be submitted to the CRU.

FINDING NO. 8 – Supervisory Training Was Not Provided for All Supervisors

- Summary:** The ABC did not provide basic supervisory training to one of 10 new supervisors within twelve months of appointment.
- Criteria:** Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. (Gov. Code, § 19995.4, subd. (b).) Upon completion of the initial training, supervisory employees shall receive a minimum 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (c).)
- Severity:** Very Serious. The department does not ensure its leaders are properly trained. Without proper training, leaders may not properly carry out their leadership roles, including managing employees.
- Cause:** One supervisor is a peace officer who is required to attend a Commission on Peace Officer Standards and Training certified course to satisfy both the basic supervisory training and the legislatively mandate peace officer supervisory training. No classes were offered within 12 months of appointment.
- Action:** The ABC established a LMS and a dedicated training unit to ensure that all supervisory training is completed timely. However, the ABC must continue to monitor basic supervisory training to ensure conformity with Government Code section 19995.4, subdivision (b). Within 60 days of the SPB Executive Officer’s approval of these findings and recommendations, copies of relevant documentation including examples of notifications and reminders for supervisory training shall be submitted to the CRU.

FINDING NO. 9 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

- Summary:** The ABC did not provide sexual harassment prevention training to 19 of 24 new supervisors within six months of their appointment. In addition, the ABC did not provide sexual harassment prevention training to five of 50 existing supervisors every two years.

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

Severity: Very Serious. The department does not ensure its new supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

Cause: Prior to December 2017, the ABC had a manual process to track all mandated training requirements. Supervisors were not automatically notified or reminded to take the required trainings and there was no tracking mechanism for mandated training requirements. Additionally, the retired annuitant classification was incorrectly categorized as not requiring SHPT in the LMS.

Action: The ABC established a LMS and a dedicated training unit to ensure that all SHPT is completed timely. However, the ABC must continue to monitor SHPT to ensure conformity with Government Code section 12950.1, subdivision (a). Within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, copies of relevant documentation including examples of notifications and reminders for SHPT shall be submitted to the CRU.

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 rate⁶ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

⁶ "Rate" is any one of the salary rates in the resolution by the CalHR which establishes the salary ranges and steps of the Pay Plan. (Cal. Code Regs., tit. 2, § 599.666).

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, December 1, 2017 through August 30, 2018, the ABC made 57 appointments. The CRU reviewed 10 of those appointments to determine if the ABC applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Agent	Certification List	Permanent	Full Time	\$4,331
Information Technology Associate	Certification List	Permanent	Full Time	\$4,177
District Administrator	Certification List	Permanent	Full Time	\$8,661
Licensing Representative I	Certification List	Permanent	Full Time	\$4,039
Licensing Representative II	Certification List	Permanent	Full Time	\$4,220
Supervising Investigator	Certification List	Permanent	Full Time	\$8,078
Supervising Program Technician I	Certification List	Permanent	Full Time	\$3,847
Supervising Program Technician II	Certification List	Permanent	Full Time	\$3,387
Legal Assistant	Transfer	Permanent	Full Time	\$3,682
Licensing Representative I	Transfer	Permanent	Full Time	\$4,302

FINDING NO. 10 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines for Appointments

The CRU found no deficiencies in the salary determinations reviewed. The ABC 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 the CalHR's 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, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria. (California Civil Service 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, December 1, 2017 through August 30, 2018, the ABC made 21 alternate range movements within a classification. The CRU reviewed seven of those alternate range movements to determine if the ABC applied salary regulations accurately and correctly processed employee’s compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Agent	Range A	Range B	Full Time	\$4,935
Attorney	Range C	Range D	Full Time	\$7,316
Information Technology Associate	Range B	Range C	Full Time	\$4,481
Information Technology Specialist I	Range B	Range C	Full Time	\$7,616
Information Technology Specialist I	Range B	Range C	Full Time	\$7,616
Management Services Technician	Range A	Range B	Full Time	\$3,162
Student Assistant	Range B	Range C	Intermittent	\$2,243

FINDING NO. 11 – Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Alternate Range Movement

Summary: One error was found in employee compensation.

Classification	Description of Finding(s)	Criteria
Student Assistant	The employee was entitled to receive the minimum of Range C. Employee was overpaid.	CCR tit. 2, § 599.673

- Criteria:** Departments are required to calculate and apply salary rules for each appointed employee accurately based on the pay plan for the state civil service. All civil service classes have salary ranges with minimum and maximum rates (Cal. Code Regs., tit. 2, § 599.666).
- Severity:** Very Serious. Failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules not in accordance with the CalHR's policies and guidelines, results in civil service employees receiving incorrect and/or inappropriate pay amounts.
- Cause:** The employee retained his salary upon transfer to the ABC. The error in salary determination was identified after his appointment and corrected.
- Action:** The ABC submitted a corrective action plan to ensure that all salaries are determined accurately. However, the ABC must continue to monitor salary determinations to ensure conformity with California Code of Regulations section 599.666. Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation including the process and procedures to double check salary determinations before keying appointments shall be submitted to the CRU.

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 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, December 1, 2017 through August 30, 2018, the ABC authorized bilingual pay for five employees, which the CRU reviewed to ensure compliance with applicable CalHR policies and guidelines.

Classification	Bargaining Unit	Time Base
Agent	R07	Full-Time
Licensing Representative II	R07	Full-Time
Management Services Technician	R01	Full-Time
Program Technician	R04	Full-Time
Supervising Investigator	S07	Full-Time

FINDING NO. 12 – Incorrect Authorization of Bilingual Pay

Summary: Two employees were not were not authorized bilingual pay.

Classification	Description of Finding(s)	Criteria
Licensing Representative II	Authorization form and duty statement was not provided. Also, the employee was not certified as bilingual. Employee was overpaid.	Pay Differential 14
Management Services Technician	Authorization form and duty statement was not provided. Also, the employee was not certified as bilingual. Employee was overpaid.	Pay Differential 14

Criteria: For any state agency, a “qualified” bilingual employee, person, or interpreter is someone who CalHR has tested and certified, someone who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as proficient in both the English language and the non-English language to be used. (Gov. Code, § 7296 subd. (a)(1)(2)(3).) An individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on a continuing basis averaging 10 percent of the time spent either conversing, interpreting or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions. (Pay Differential 14.)

- Severity:** Very Serious. Failure to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with the CalHR's policies and guidelines, results in civil service employees receiving incorrect and/or inappropriate pay amounts.
- Cause:** Two employees were receiving bilingual pay without the proper certifications.
- Action:** The ABC has a process in place to ensure that all employees who receive bilingual pay are certified. However, the ABC must continue to monitor bilingual pay to ensure conformity with Pay Differential 14 requirements. Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation including the EEO Officer's revised duty statement and procedures that have been implemented shall be submitted to the CRU.

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. (Classification and Pay Manual Section 230.) 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. (*Ibid.*) 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. (*Ibid.*)

California State Civil Service 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, December 1, 2017 through August 30, 2018, the ABC issued pay differentials⁷ to six employees that the CRU reviewed to ensure compliance with applicable CalHR policies and guidelines, which are listed below:

Out of Class Assignments and Pay

For excluded⁸ 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 subd. (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. (Classification and Pay Guide Section 375.) 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. (*Ibid.*) Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. (*Ibid.*) Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires. (*Ibid.*)

During the period under review, December 1, 2017 through August 30, 2018, the ABC issued OOC pay⁹ to three employees. The CRU reviewed their OOC assignments to ensure compliance with applicable CalHR policies and guidelines, which are listed below:

Classification	Bargaining Unit	OOC Classification	Time Frame
Senior Legal Typist	BU 4	Legal Secretary	6/1/2018 – 7/8/2018
Staff Programmer Analyst	BU 1	Senior Programmer Analyst	4/3/2017 – 7/31/2017
Licensing Representative II	BU 7	Staff Services Manager I	7/7/2017 – 9/14/2017

⁷ For the purposes of CRU’s review, only monthly pay differentials were selected for review at this time.
⁸ “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.
⁹ Excluding bilingual and arduous pay.

FINDING NO. 13 – 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 ABC authorized during the compliance review period. The 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 days¹⁰ worked and paid absences,¹¹ 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-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

¹⁰ For example, two hours or ten hours counts as one day.

¹¹ For example, vacation, sick leave, compensating time off, etc.

ensure the limitations set forth are not exceeded.¹² (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 1,500 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 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, the ABC had 28 employees whose hours were tracked. The CRU reviewed five of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Time Base	Time Frame	Total Hours Worked
Student Assistant	Intermittent	9/6/2017 – 9/5/2018	1,363.5
Student Assistant	Intermittent	6/1/2017 – 6/30/2018	1,158.5
Associate Governmental Program Analyst – Retired Annuitant (RA)	Intermittent	7/1/2017 – 6/30/2018	744
Associate Governmental Program Analyst – (RA)	Intermittent	7/1/2017 – 6/30/2018	670.25
Program Technician – (RA)	Intermittent	7/1/2017 – 6/30/2018	957

FINDING NO. 14 – Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, Policy and Guidelines

¹² “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.

The CRU found no deficiencies in the employees' hours that were tracked during the compliance review period. The ABC provided sufficient justification and adhered to applicable laws, regulations, policies and guidelines for positive paid employees.

Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, 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. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation; extreme weather preventing safe travel to work; states of emergency; voting; and when employees need time off to attend special events. (*Ibid.*)

During the period under review, October 1, 2017 through September 30, 2018, the ABC placed 49 employees on ATO. The CRU reviewed six of these ATO authorizations to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	No. of Days on ATO	No. of Hours on ATO
Agent	2/14/2018 – 7/18/2018	155	
Licensing Representative I	11/22/2017		1
Office Services Supervisor II	2/22/2018 – 3/6/2018		16
Program Technician	8/6/2018		4
Program Technician	8/6/2018		2
Program Technician II	11/22/2017 4/3/2018 7/11/2018		3 3 2

FINDING NO. 15 – Administrative Time Off Was Not Properly Documented

Summary: One written justification for ATO authorization was not provided.

Classification	Time Frame	No. of Hours
Licensing Representative II	11/22/2017	1

Criteria: Appointing authorities are authorized to approve ATO for up to five (5) working days under Government Code section 19991.10, and have delegated authority to approve up to 30 calendar days. (Human Resources Manual Section 2121.) Any ATO in excess of 30 calendar days must be approved in advance by the CalHR. (*Ibid.*) In most cases, if approved, the extension will be for an additional 30 calendar days. (*Ibid.*) The appointing authority is responsible for submitting ATO extension requests to CalHR at least 5 working days prior to the expiration date of the approved leave. (*Ibid.*)

When requesting an ATO extension, the appointing authority must provide a justification establishing good cause for maintaining the employee on ATO for the additional period of time. (*Ibid.*) ATO may not be used and will not be granted for an indefinite period. (*Ibid.*) If the CalHR denies a request to extend ATO, or the appointing authority fails to request approval from the CalHR to extend the ATO, the employee must be returned to work in some capacity. (*Ibid.*)

Regardless of the length of ATO, appointing authorities must maintain thorough documentation demonstrating the justification for the ATO, the length of the ATO, and the approval of the ATO. (*Ibid.*)

Severity: Serious. Because an employee on ATO is being paid while not working, a failure to closely monitor ATO usage could result in costly abuse. The use of ATO is subject to audit and review by the CalHR and other control agencies to ensure it is being utilized appropriately. Failure to grant ATO in conformity with procedures and policy may result in abuse and cause for the CalHR revoking the appointing authority's delegation to utilize ATO without first obtaining approval from the CalHR.

Cause: The ATO was authorized by the employee's supervisor. However, the reason why ATO was required was not documented on the employee's timesheet.

Action: The ABC has updated its ATO procedures to ensure that all ATO is justified before it is approved. However, the ABC must continue to monitor ATO to ensure conformity with Human Resources Manual Section 2121. Within 60 days of the SPB Executive Officer’s approval of these findings and recommendations, copies of relevant documentation including the revised ATO procedures, ATO justification memorandums approved after this review, and tracking mechanism utilized for ATO shall be submitted to the CRU.

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 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, October 1, 2017 through September 30, 2018, the ABC reported 37 units comprised of 425 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	No. of Units Reviewed	No. of Employees	No. of Timesheets Reviewed	No. of Missing Timesheets
July 2018	2	22	22	0
August 2018	2	23	23	0
September 2018	2	22	22	0

FINDING NO. 16 – Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the ABC’s leave auditing and timekeeping. The ABC 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 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. (Human Resources Manual Section 2124.)

Applicable Memorandums of Understanding 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."¹³ (Cal. Code Regs., tit. 2, § 599.737.) If it appears an excluded employee will have a vacation or annual leave balance that will be above the maximum amount¹⁴ 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 excluded 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, 32 ABC employees exceeded the established limits of vacation or annual leave. The CRU reviewed eight of those employees' leave reduction plans to

¹³ 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.

¹⁴ Excluded employees shall not accumulate more than 80 days.

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
Agent	R07	26.5	Yes
Agent	R07	34.5	Yes
Agent	R07	33.25	Yes
CEA	M01	188	Yes
Legal Secretary	R04	98.5	Yes
Staff Services Manager I	S01	55.5	Yes
Supervising Investigator	S07	132.75	Yes
Supervising Investigator	S07	74.75	Yes
Total		643.75	

FINDING NO. 17 – Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the ABC’s leave reduction efforts. Employees’ vacation and annual leave records were reviewed to ensure that those employees who have significant “over-the-cap” leave balances have a leave reduction plan in place and are actively reducing hours. In addition, the CRU verified the department’s leave reduction policy complied with applicable rule and law, and was accessible to its employees.

State Service

The state recognizes two different types of absences while an employee is on pay status: paid or unpaid. The unpaid absences can affect whether a pay period is considered to be a qualifying or non-qualifying pay period for state service and leave accruals.

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 service.¹⁵ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

¹⁵ 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.

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 qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs. tit. 2, § 599.608.) 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. (Cal. Code Regs. tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees¹⁶ 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, December 1, 2017 through August 30, 2018, the ABC had 22 employees with non-qualifying pay period transactions. The CRU reviewed seven of those transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time Base	No. Reviewed
Non-Qualifying Pay Period	Full Time	3
Non-Qualifying Pay Period	½ Time	1
Qualifying Pay Period	Full Time	3

FINDING NO. 18 – Incorrect Application of Service and Leave Transactions

Summary: One employee received state service and leave accruals for a non-qualifying pay period.

¹⁶ As identified in Government Code sections 19858.3(a), 19858.3(b), or 19858.3(c) or as it applies to employees excluded from the definition of state employee under Government Code section 3513(c) or California Code of Regulations section 599.752 subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

Criteria: In the application of Government Code section 19837, an employee shall be considered to have a month of state service if the employee either: (1) has had 11 or more working days of service in a monthly pay period; or (2) would have had 11 or more working days of service in a monthly pay period but was laid off or on a leave of absence for the purpose of lessening the impact of an impending layoff. (Cal. Code of Regs., tit.2, § 599.608.) Absences from state service resulting from permanent separation for more than 11 consecutive working days which fall into two consecutive pay periods shall disqualify one of the pay periods. (*Ibid.*)

Hourly or daily rate employees working in a state agency 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.) When an employee has a break in service or changes to full-time, any combination of time worked which does not equal one qualifying month of full-time service shall not be accumulated or counted. (*Ibid.*)

Severity: Very Serious. For audit purposes, accurate and timely attendance reporting is required of all departments. If the length of an informal leave results in a non-qualifying pay period, a state service transaction must be processed. Inappropriately authorizing state service credits and leave accruals to employees who did not earn them results in a monetary loss for the department.

Cause: This was the result of a keying error and has since been corrected.

Action: The ABC has appointed a transactions manager to ensure that all service and leave transactions are input timely and accurately. However, the ABC must continue to monitor service and leave transactions to ensure conformity with California Code of Regulations, title 2, sections 599.608 and 599.609. Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation including any new or updated transactions procedures shall be submitted to the CRU.

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. 19 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the ABC's nepotism policy was disseminated to all staff and emphasized the ABC's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the ABC's nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

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).) 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 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 (State Fund) office to discuss the status of volunteers. (*Ibid.*)

FINDING NO. 20 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the ABC 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 ABC received notice or knowledge of a work related injury or illness they provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code section 19992.2, appointing agencies 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 20 permanent ABC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policy and guidelines.

FINDING NO. 21 – Performance Appraisals Were Not Provided to All Employees

Summary: Eight employees were not provided performance appraisals at least once in each twelve calendar months after the completion of the employees' probationary period.

Classification	Date Performance Appraisals Due
Acct Officer (Specialist)	10/3/2018
Agent	3/1/2018
Assistant Chief Counsel	6/19/2018

Classification	Date Performance Appraisals Due
Attorney III	12/18/2018
Information Technology Specialist I	12/31/2018
Licensing Representative I	3/1/2018
Staff Services Manager II (Supervisory)	7/17/2018
Staff Services Manger I	12/7/2018

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: HR notifies supervisors and managers of all their employees that are due annual evaluations. Despite reminders being sent, not all managers and supervisors completed the required appraisals due to work demands and competing priorities.

Action: The ABC updated its procedures for notification of performance appraisals. However, the ABC must continue to monitor performance appraisals to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation including the updated procedures for performance appraisals and Executive Staff reports shall be submitted to the CRU.

DEPARTMENTAL RESPONSE

The ABC's response is attached as Attachment 1.

SPB REPLY

It is further recommended that the ABC will comply with the afore-stated recommendations and submit documentation to the CRU within 60 days that shows the corrective actions have been implemented.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

3927 Lennane Drive, Suite 100
Sacramento, CA 95834
(916) 419-2510



September 20, 2019

State Personnel Board
Suzanne Ambrose, Executive Officer
801 Capitol Mall
Sacramento, CA 95814

Dear Ms. Ambrose:

The Department of Alcoholic Beverage Control (ABC) would like to thank the State Personnel Board's Compliance Review Unit (CRU) for undertaking the 2019 ABC Compliance Review. The ABC has reviewed the report and provides the following response to the findings.

Specific Findings and Responses:

Finding #3: Probationary evaluations were not timely. The report noted that 4 probationary reports were not prepared in a timely manner.

Cause: Human Resources notifies supervisors and managers of all their employees that are due probationary and annual evaluations. The Human Resources Unit tracks the submitted appraisals and sends managers and supervisors reminders. Despite reminders being sent, not all managers and supervisors completed the required appraisals due to work demands and competing priorities.

Response: Procedures have been updated for notification of probationary and annual evaluations. Previously, Human Resources notified Executive Management of upcoming due dates on probationary and annual evaluations upon appointment, monthly, and as needed with past due reminders. The Executive Staff would then pass the information down the chain of command. Now, in addition to the Executive staff reports, supervisors and managers are notified directly on a monthly basis of all pending probationary and annual evaluations due. Human Resources tracks the completion of probationary and

annual evaluations and follows up as necessary. An automated reminder system for probationary reports is being developed and should be implemented in 2020.

Finding #5: Written justification was not provided for Personal Services Contracts. The report noted that ABC failed to provide written justification for five Personal Services Contracts (PSC).

Cause: ABC's contract unit did not obtain specific, detailed, factual information justifying the need to contract out for services from program contract managers to document its contract files.

Response: Internal processes are being updated to ensure adequate justification is provided by program staff during contract development.

Finding #6: Unions were not notified of Personal Services Contracts. The report noted that ABC failed to notify the Unions prior to executing three PSCs.

Cause: ABC's contract unit does provide notice to the appropriate union prior to contract execution, however email proof of this notification was not consistently maintained in contract files.

Response: Internal processes have been changed to ensure this documentation is in each file.

Finding #7: Ethics training was not provided for all filers. The report noted that ABC failed to provide ethics training to 25 of 308 existing filers. Additionally, ABC did not provide ethics training to 7 of 20 new filers within six months of their appointment.

Cause: Online ethics training was offered to all filers. Prior to December 2017, the tracking of training completion was a manual process. In December 2017, the Department implemented a learning management system (LMS) to automate notifications of training due, reminders for completion, and report generation on past due training. The LMS had several classifications incorrectly categorized as not requiring ethics training. The Retired Annuitant, Public Information Officer, Legal Assistant, and Information Technology Specialist classifications were incorrectly categorized. This has been corrected in the system.

Response: The Department is committed to ensuring all required training is completed in a timely manner. As such, ABC has established the LMS to help

accomplish that goal. The LMS provides an automated process of notification and reminders for training assignments and reminders. Additionally, a training unit with dedicated training staff was established to ensure the Department is able to track training completion.

Finding #8: Supervisory training was not provided for all supervisors. The report noted that ABC failed to provide basic supervisory training to 1 of 10 new supervisors within twelve months of appointment.

Cause: One supervisor was unable to attend the Supervisor course within twelve months of appointment due to no classes being offered. As a peace officer, the supervisor is required to attend a Commission on Peace Officer Standards and Training certified Supervisory course to not only satisfy the supervisory component but the legislatively mandated peace officer supervisory training. The training was completed as soon as a POST-certified course was available.

Response: The Department is committed to ensuring all required training is completed in a timely manner. A training unit with dedicated training staff was established to ensure the Department is able to track training completion.

Finding #9: Sexual harassment prevention training was not provided for all supervisors. The report noted that ABC failed to provide sexual harassment prevention training to 19 of 24 new supervisors within 6 months of their appointment. In addition, ABC did not provide sexual harassment prevention training to 5 of 50 existing supervisors every 2 years.

Cause: Prior to December 2017, the tracking of training completion was a manual process. In December 2017, the Department implemented a LMS to automate notifications of training due, reminders for completion, and report generation on past due training. The retired annuitant classification was incorrectly categorized in the LMS. This has been corrected in the system.

Response: The Department is committed to ensuring all required training is completed in a timely manner. As such, ABC has established the LMS to help accomplish that goal. The LMS provides an automated process of notification and reminders for training assignments and reminders. Additionally, a training unit with dedicated training staff was established to ensure the Department is able to track training completion.

Finding #11: Incorrect application of salary determination laws, rules, and CalHR policies and guidelines for alternate range movement. The report noted one error was found in the determination of employee compensation.

Cause: The employee retained his salary upon transfer to ABC. The error in salary determination was identified after appointment and corrected.

Response: The Department has instituted a double check system on all salary determinations. The hiring analyst completes the salary determination prior to hire. The personnel specialist reviews the salary determination to ensure accuracy. Prior to the appointment being keyed the transactions manager reviews all hiring documents including the salary determination to ensure the appointment and salary are being made following all laws, rules, and policies.

Finding #12: Incorrect authorization of bilingual pay. The report noted two employees were not authorized to receive bilingual pay.

Cause: Two employees were receiving bilingual pay without the proper certifications.

Response: In August of 2017, the Department completed an internal audit of the bilingual pay program. As a result, several employees were identified as not having proof of a language fluency examination. Employees were given one year to complete the language fluency examination and re-certify their bilingual status. The two employees identified in the audit failed to recertify their bilingual status and the bilingual pay was rescinded. Since that time, the Department's Equal Employment Opportunity Officer has begun managing the program and has put procedures in place to ensure only those employees certified to receive bilingual pay are receiving it.

Finding #15: Administrative Time Off was not properly documented. The report noted that ABC failed to provide one written justification for Administrative Time Off (ATO).

Cause: ATO was authorized by the employee's supervisor however, the reason the ATO was needed was not documented on the timesheet.

Response: The Department has updated its ATO procedures to include a required ATO memorandum for all ATO approvals. This memorandum is required to be submitted along with the timesheet to ensure the personnel specialist has the necessary approval documentation at the time the ATO leave is

keyed in the system. Additionally, Human Resources has an ATO tracking spreadsheet that is logged in the event ATO is used and updated when the Personnel Specialist receives the timesheet.

Finding #18: Incorrect application of Service and Leave Transactions. The report noted that one employee received state service and leave accruals for a non-qualifying pay period.

Cause: This was a result of a keying error and has since been corrected.

Response: The transactions staff utilize the view direct reports in the SCO system to ensure the accuracy of information keyed into the system. Additionally, Human Resources has recently appointed a transactions manager who reviews all transactions prior to being keyed and also reviews the system reports to ensure all transactions are made following the applicable rules, laws, and policies.

Finding #21: Performance appraisals were not provided to all employees. The report noted that 8 of 20 employees reviewed were not provided performance reports at least once in each 12 calendar months after the completion of the employees' probationary period.

Cause: Human Resources notifies supervisors and managers of all their employees that are due probationary and annual evaluations. The Human Resources Unit tracks the submitted appraisals and sends managers and supervisors reminders. Despite reminders being sent, not all managers and supervisors completed the required appraisals due to work demands and competing priorities.

Response: Procedures have been updated for notification of probationary and annual evaluations. Previously, Human Resources notified Executive Management of upcoming due dates on probationary and annual evaluations upon appointment, monthly, and as needed with past due reminders. The Executive Staff would then pass the information down the chain of command. Now, in addition to the Executive staff reports, supervisors and managers are notified directly on a monthly basis of all pending probationary and annual evaluations due. Human Resources tracks the completion of probationary and annual evaluations and follows up as necessary.

Thank you for the opportunity to respond to SPB's findings. Should you have any questions please contact me at (916) 419-2557.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Deems", written in a cursive style.

Randall Deems
Administration Division Chief