



COMPLIANCE REVIEW REPORT

COMMISSION ON STATE MANDATES

Compliance Review Unit
State Personnel Board
November 12, 2015

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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 DTSCs through the Board's decisions, rules, policies, and consultation.

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

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of Commission on State Mandates (Commission) personnel practices in the areas of examinations, appointments, EEO, PSC's, and mandated training from July 1, 2014, through June 30, 2015. The following table summarizes the compliance review findings.

Area	Finding	Severity
Appointments	Applications Were Not Date Stamped	Non-serious or Technical
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance
Mandated Training	Mandated Training Program Complied with Statutory Requirements	In Compliance

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

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

BACKGROUND

The Commission is a quasi-judicial body whose statutory responsibilities are: To adjudicate test claims of local governments that allege the existence of reimbursable state-mandated programs and determine any costs required to be reimbursed; To hear and decide claims alleging that the State Controller's Office has incorrectly reduced payments to local governments for reimbursement claims; To hear and decide requests for mandate redetermination, alleging that the state's liability for a mandate has been modified based on a subsequent change in law; To determine the existence of significant financial distress for applicant counties seeking to reduce their General Assistance Aid payments.

Our Vision: The Commission timely renders sound decisions, in compliance with article XIII B, section 6 of the California Constitution, to resolve disputes regarding reimbursement for state-mandated local programs and relieve unnecessary congestion of the courts.

Our Mission: To fairly and impartially hear and determine matters filed by state and local government; resolve complex legal questions in a deliberative and timely manner; and produce well-reasoned and lawful decisions. We act with professionalism, integrity, objectivity, and efficiency in making determinations. We treat all parties with courtesy and respect and we consider their views with objectivity. We produce sound, well-reasoned decisions, in a timely manner, using innovative tools and techniques to improve our efficiency. We demonstrate fair, honest, and ethical behavior. We provide a safe and healthy work environment to promote the physical and mental well-being of staff. We encourage cooperation and collaboration, and support personal and professional development. We ensure that our practices are protective of the environment and human health and are energy and resource efficient.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing Commission examinations, appointments, EEO program, PSC's, and mandated training from July 1, 2014, through June 30, 2015. The primary objective of the review was to determine if Commission personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

The Commission did not conduct any examinations during the compliance review period. A cross-section of Commission 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 Commission provided, which included notice of personnel action forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the Commission 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 CRU also interviewed appropriate Commission staff.

The Commission had no PSC's that were subject to Department of General Services (DGS) approval.¹

In addition, the Commission's mandated training 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 training within statutory timelines.

The Commission declined to have an exit conference. On November 06, 2015, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

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

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) the advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the DTSC 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.)

On behalf of the Commission, the California Department of General Services (DGS) handles all examinations and appointments. During the compliance review period, the DGS did not conduct any examinations on behalf of the Commission.

Appointments

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

During the compliance review period, the Commission made 3 appointments. The CRU reviewed all 3 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Staff Services Manager II, Managerial	Certification List	Permanent	Full Time	1
Attorney III	Transfer	Permanent	Full Time	1

FINDING NO. 1 – Applications Were Not Date Stamped

Summary: The Commission accepted and processed 29 out of 107 applications that were not date stamped by the department.

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

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

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

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

Cause: The Commission states that while it did date stamp applications submitted through the mail and in person, it did not date stamp applications submitted electronically. The Commission asserts that all filing dates were maintained in an application file despite all applications not being date stamped upon submission.

Action: The Commission has submitted a corrective action plan for ensuring full compliance in meeting the requirements of Rule 174 as part of its department response, therefore no further action is required at this time.

Equal Employment Opportunity (EEO)

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources (CalHR) by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.) In a state agency with less than 500 employees, like the Commission, the EEO officer may be the personnel officer. (*Ibid.*)

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 Commission's EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate Commission staff.

FINDING NO. 2 – 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 Commission'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 Commission. In addition, the Commission has an established DAC that reports to the director on issues affecting persons with a disability. The Commission also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff.

Personal Services Contracts

During the compliance review period, the Commission did not execute any PSC's subject to the Department of General Services (DGS) approval. Therefore, the CRU did not review any PSC's.

Mandated Training

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

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

Additionally, each department having 50 or more employees must provide its supervisors two hours of sexual harassment training every two years. New supervisors must be provided supervisory training within six months of appointment. (Gov. Code, § 12950.1 subd. (a).)

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

FINDING NO. 3 – Mandated Training Complied with Statutory Requirements

The Commission provided semiannual ethics training to its 12 filers during 2-year calendar year period commencing in 2013. The Commission did not appoint any new supervisors and therefore it was not necessary to provide supervisory training. In addition, the Commission provided semiannual sexual harassment training to its 3 supervisors every 2 years.

DEPARTMENTAL RESPONSE

The Commission's response is attached as Attachment 1.

SPB REPLY

Based upon the Commission's written response, the Commission will comply with the CRU recommendations and findings. The Commission submitted a corrective action plan for the 1 departmental finding that was out of compliance.

STATE of CALIFORNIA
**COMMISSION ON STATE
MANDATES**



Sent via e-mail

November 9, 2015

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

RE: Response to Finding No. 1 in October 28, 2015 Draft Compliance Review Report

Dear Ms. Ambrose:

Thank you for the opportunity to respond to the findings in the October 28, 2015 Draft Compliance Review Report. The Commission on State Mandates (Commission) hereby submits the following response to address the Non-serious or Technical violation in the Commission's process for date-stamping applications as identified in Finding No. 1.

Commission staff accepted and processed 29 out of 107 applications that were not date-stamped. For the three appointments made during the audit period, the Commission allowed for applications to be submitted by U.S. Mail, by personal delivery, and by email, as specified in the vacancy announcements. While Commission staff date-stamped paper copy applications delivered to the office for each appointment, staff failed to electronically date-stamp the applications delivered via email.

However, the filing dates of all applications were recorded in each specific application file maintained by the Commission. Further, the filing dates and times of all email applications were additionally maintained in the Commission's email file.

Nonetheless, the Commission's management team is aware of the discrepancy addressed in Finding No. 1 and has advised staff that all email applications be electronically date-stamped accordingly.

Please contact Heidi Palchik at (916) 323-3562 if you have questions.

Sincerely,

Heather Halsey
Executive Director