

COMPLIANCE REVIEW REPORT

CALIFORNIA SECRETARY OF STATE

Compliance Review Unit
State Personnel Board
March 25, 2020

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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.

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

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

The SPB conducts these reviews on a three-year cycle.

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

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the California Secretary of State (SOS) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. 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 Provided for all Appointments Reviewed and Those That Were Reviewed Were Untimely
Equal Employment Opportunity	Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period
Personal Services Contracts	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Ethics Training Was Not Provided for All Filers
Mandated Training	Leadership and Development Training Was Not Provided for All Supervisors, Managers, and CEAs
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
Compensation and Pay	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Hiring Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Incorrect Authorization of Bilingual Pay

Area	Finding
Compensation and Pay	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Incorrect Authorization of Out-of-Class Pay
Leave	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records
Leave	Leave Reduction Plans Were Not Developed for Employees Whose Leave Balances Exceeded Established Limits
Leave	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Nepotism Policy Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisals Were Not Provided to All Employees

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

- Red = Very Serious
- Orange = Serious
- Yellow = Technical
- Green = In Compliance

BACKGROUND

The SOS's office is dedicated to making government more transparent and accessible in the areas of elections, business, political campaigning, legislative advocacy, and historical treasures.

The SOS's responsibilities include:

- Serving as the state's Chief Elections Officer
- Implementing electronic filing and internet disclosure of campaign and lobbyist financial information
- Maintaining business filings
- Commissioning notaries public
- Operating the Safe at Home confidential address program
- Maintaining the Domestic Partners and Advance Health Care Directive Registries
- Safeguarding the State Archives
- Serving as a trustee of the California Museum

The SOS's office is headquartered in Sacramento with a regional office in Los Angeles. As of December 2019, the SOS employed approximately 552 staff members.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the SOS's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes¹. The primary objective of the review was to determine if the SOS's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the SOS'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 SOS provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the SOS's Permanent Withhold Actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and Withhold letters.

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

¹ 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 SOS did not make any additional appointments during the compliance review period.

The SOS's appointments were also selected for review to ensure the SOS applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the SOS 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: hiring above minimum (HAM) requests, bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments. During the compliance review period, the SOS did not issue or authorize red circle rate requests or arduous pay.

The review of the SOS'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 SOS's PSC's were also reviewed.² It was beyond the scope of the compliance review to make conclusions as to whether the SOS's justifications for the contracts were legally sufficient. The review was limited to whether the SOS's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The SOS'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, managers, and CEAs were provided leadership and development training and sexual harassment prevention training within statutory timelines.

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

²If 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 SOS's Leave Activity and Correction Certification forms to verify that the SOS 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 SOS's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the SOS's 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. Additionally, the CRU reviewed a selection of the SOS employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of SOS's positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

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

An exit conference was not held with the SOS to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the SOS's written response on March 17, 2020, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

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

the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) The final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, December 1, 2018, through August 31, 2019, the SOS conducted three examinations. The CRU reviewed the three examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) A, Assistant Deputy Secretary of State, Voter Education & Outreach	CEA	Statement of Qualifications (SOQ) ³	6/7/19	9
CEA A, Deputy Secretary of State, Policy and Planning	CEA	SOQ	2/15/19	11
CEA B, Chief, Archives Division	CEA	SOQ	8/2/19	5

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

The CRU reviewed three CEA examinations, which the SOS administered in order to create eligible lists from which to make appointments. The SOS published and distributed examination bulletins containing the required information for all examinations. Applications received by the SOS were accepted prior to the final filing date. Applicants were notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found

³ In a Statement of Qualifications 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.

no deficiencies in the examinations that the SOS 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).) If a candidate for appointment is found not to satisfy the minimum qualifications, the appointing power shall provide written notice to the candidate, specifying which qualification(s) are not satisfied and the reason(s) why. The candidate shall have an opportunity to establish that s/he meets the qualifications. (Cal. Code Regs., tit. 2, § 249.4, subd. (b).) If the candidate fails to respond, or fails to establish that s/he meets the minimum qualification(s), the candidate's name shall be removed from the eligibility list. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)(1), (2)), (HR Manual, section 1105.) The appointing authority shall promptly notify the candidate in writing, and shall notify the candidate of his or her appeal rights. (*Ibid.*) A permanent withhold does not necessarily permanently restrict a candidate from retaking the examination for the same classification in the future; however, the appointing authority may place a withhold on the candidate's subsequent eligibility record if the candidate still does not meet the minimum qualifications or continues to be unsuitable. (HR Manual, Section 1105). State agency human resources offices are required to maintain specific withhold documentation for a period of five years. (*Ibid.*)

During the review period, the SOS conducted one permanent withhold action. The CRU reviewed the one permanent withhold action, which is listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Employee Placed on Withhold
Information Technology Specialist I	JC 149341	2/25/19	2/25/20	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, subd. (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, subd. (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, subd. (e).)

During the period under review, November 1, 2018, through July 30, 2019, the SOS made 123 appointments. The CRU reviewed 33 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accountant Trainee	Certification List	Permanent	Full Time	1
Accounting Analyst	Certification List	Permanent	Full Time	1
Archivist I	Certification List	Permanent	Full Time	2
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Attorney	Certification List	Permanent	Full Time	1
Executive Assistant	Certification List	Permanent	Full Time	1
Information Technology Specialist I	Certification List	Permanent	Full Time	2
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Program Technician II	Certification List	Permanent	Full Time	2
Senior Legal Analyst	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	4
Supervising Program Technician II	Certification List	Permanent	Full Time	2
Supervising Program Technician III	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Program Technician I (LEAP)	Temporary (TAU)	Temporary	Full Time	2
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	2
Attorney I	Transfer	Permanent	Full Time	1
Business Service Assistant (Specialist)	Transfer	Permanent	Full Time	1
Executive Assistant	Transfer	Permanent	Full Time	1
Information Technology Supervisor II	Transfer	Permanent	Full Time	1
Program Technician	Transfer	Permanent	Full Time	1
Program Technician II	Transfer	Permanent	Full Time	1
Staff Services Analyst	Transfer	Permanent	Full Time	1
Staff Services Manager I	Transfer	Permanent	Full Time	1

FINDING NO. 3 – Probationary Evaluations Were Not Provided for all Appointments Reviewed and Those That Were Reviewed Were Untimely

Summary: The SOS did not provide 5 probationary reports of performance for 2 of the 33 appointments reviewed by the CRU. In addition, the SOS did not provide 5 probationary reports of performance in a timely manner.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Associate Governmental Program Analyst	Transfer	1	2
Senior Legal Analyst	Certification List	1	3
Total		2	5

Classification	Appointment Type	Number of Appointments	Total Number of Late Probation Reports
Archivist I	Certification List	2	2
Information Technology Specialist I	Certification List	1	1
Program Technician II	Certification List	1	2
Total		4	5

Criteria:

The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) 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 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.*) The Board's record retention rules require that appointing powers retain all probationary reports for five years from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

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: The SOS states that its Human Resources Office makes a good faith effort to inform supervisors and managers regarding the requirements of completing probationary evaluations. Supervisors and managers are provided the forms and due dates for employees probationary evaluations.

Corrective Action: Within 90 days of the date of this report, the SOS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the probationary requirements of Government Code sections 19171 and 19172. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 – Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period

Summary: The SOS provided evidence that one discrimination complaint related to a disability, medical condition, or denial of reasonable

accommodation was filed during the compliance review period of November 1, 2018, through October 31, 2019. This complaint investigation exceeded 90 days and the SOS failed to provide written communication to the complainant regarding the status of the complaint.

Criteria: The appointing power must issue a written decision to the complainant within 90 days of the complaint being filed. (Cal. Code Regs., tit. 2, § 64.4, subd. (a).) If the appointing power is unable to issue its decision within the prescribed time period, the appointing power must inform the complainant in writing of the reasons for the delay. (*Ibid.*)

Severity: Very Serious. An employee was not informed of the reason for the delay in a decision for the discrimination complaint. The employee may feel his or her concerns are not being taken seriously, which can leave the agency open to liability and low employee morale.

Cause: The SOS states that the failure to notify the complainant within the specified time frame was an oversight by the analyst performing the investigation.

Corrective Action: Within 90 days of the date of this report, the SOS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of California Code of Regulations, title 2, section 64.4, subdivision (a). Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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, December 1, 2018, through August 31, 2019, the SOS had 63 PSC's that were in effect. The CRU reviewed 20 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Aptakrit Technology Solutions, LLC	IT Services	12/10/18 - 2/29/20	\$279,000	Yes	Yes
Aptakrit Technology Solutions, LLC	IT Services	4/15/19 - 4/30/20	\$499,905	Yes	Yes
Celer Systems, Inc.	IT Services	6/03/19 - 6/30/20	\$492,000	Yes	Yes
Certified Testing Solutions	IT Services	2/15/19 - 3/31/20	\$500,000	Yes	Yes
Comtello	IT Services	6/17/19 - 6/30/20	\$480,000	Yes	Yes
Eloquent Systems Inc.	IT Services	7/01/19 - 6/30/20	\$13,242.66	Yes	No
Freeman Craft McGregor Group	IT Services	4/24/19 - 3/17/21	\$406,550	Yes	Yes
Global Touchpoints Inc	IT Services	5/1/19 - 6/30/20	\$1,500,000	Yes	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Infiniti Consulting Group, LLC	IT Services	5/20/19 - 3/03/20	\$230,500	Yes	Yes
Inter-Con Security Systems, Inc.	Security Services	7/01/19 - 3/01/22	\$178,921.02	Yes	No
KPMG LLP	IT Services	6/28/19 - 6/27/20	\$3,215,338	Yes	No
Law Office of Jeffrey Fulton	Legal Consultant	1/04/19 - 12/09/20	\$50,000	Yes	Yes
Loomis Armored	Security Services	7/01/19 - 6/30/20	\$9,500	Yes	Yes
Magellan Health Services of California, Inc.- Employer Services	EAP Services	7/01/19 - 6/30/20	\$20,000	Yes	Yes
Niagara Hood and Filter Cleaning	Service/Maintenance	7/01/19 - 6/30/21	\$38,760	Yes	Yes
North Ridge Consulting	IT Services	6/24/19 - 6/30/20	\$310,420	Yes	Yes
Platinum Security	Security Services	7/01/19 - 2/15/21	\$2,703,000	Yes	Yes
SLI Compliance (a division of Gaming Laboratories International, LLC)	IT Services	3/22/19 - 3/14/21	\$109,108	Yes	Yes
Tek4Gov, Inc	IT Services	6/28/19 - 12/30/19	\$100,000	Yes	Yes
Trinity Technology Group	IT Services	4/1/19 - 12/31/20	\$388,500	Yes	Yes

FINDING NO. 5 – Unions Were Not Notified of Personal Services Contract

- Summary:** The SOS did not notify unions prior to entering into 3 of the 20 PSC's.
- 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, subd. (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 SOS states that in the case of one of the PSC's, it was an oversight by the contract analyst. The SOS further states the other two PSC's were initiated by other departments on the SOS's behalf and the SOS was not aware the unions had not been notified.
- Corrective Action:** It is the contracting department's responsibility to identify and notify any unions whose members could potentially perform the work to be contracted prior to executing the PSC. Within 90 days of the date of this report, the SOS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 SOS's mandated training program that was in effect during the compliance review period, September 1, 2017, through August 31, 2019.

FINDING NO. 6 – Ethics Training Was Not Provided for All Filers

- Summary:** The SOS did not provide ethics training to 7 of 116 existing filers. In addition, the SOS did not provide ethics training to 5 of 10 new filers within 6 months of their appointment.
- Criteria:** New filers must be provided ethics training within six months of appointment. 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:** The SOS acknowledges that not all SOS filers completed ethics training within the prescribed time frames and will audit the process by which employees are notified that training is required.
- Corrective Action:** Within 90 days of this report, the SOS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with Government Code section 11146.3, subdivision (b). Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

FINDING NO. 7 – Leadership and Development Training Was Not Provided for All Supervisors, Managers, and CEAs

- Summary:** The SOS provided basic supervisor training to all 8 new supervisors within 12 months of appointment. However, the SOS did not provide manager training to 1 of 5 new managers within 12 months of appointment; did not provide CEA training to 2 of 3 new CEAs within 12 months of appointment; and did not provide biennial leadership training to 21 of 43 existing supervisors, managers, and/or CEAs.
- Criteria:** Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. Upon completion of the initial training, supervisory employees shall receive

a minimum 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subds. (b) and (c).)

Upon initial appointment of an employee to a managerial position, each employee must receive 40 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subd. (d).)

Upon initial appointment of an employee to a Career Executive Assignment position, each employee must receive 20 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subd. (e).)

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: The SOS concurs that several individuals did not receive the mandated training. The direct supervisor or manager is responsible to ensure supervisory staff complete their required hours, which resulted in a lack of compliance for leadership training. SOS is exploring options to ensure that all staff receive the required training.

Corrective Action: Within 90 days of the date of this report, the SOS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that new supervisors, managers, and CEAs are provided leadership and development training within twelve months of appointment, and that thereafter, they receive a minimum of 20 hours of leadership training biennially. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

FINDING NO. 8 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The SOS did not provide sexual harassment prevention training to 7 of 10 new supervisors within 6 months of their appointment. In

addition, the SOS did not provide sexual harassment prevention training to 5 of 55 existing supervisors every 2 years.

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

Severity: Very Serious. The department does not ensure that all new and existing 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: The SOS concurs that several individuals did not receive the mandated training. The direct supervisor or manager is responsible to ensure supervisory staff complete their required hours, which resulted in a lack of compliance for leadership training. SOS is exploring options to ensure that all staff receive the required training.

Corrective Action: Within 90 days of the date of this report, the SOS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that supervisors are provided sexual harassment prevention training within the time periods prescribed. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 rate⁴ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

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

During the period under review, November 1, 2018, through July 30, 2019, the SOS made 123 appointments. The CRU reviewed 16 of those appointments to determine if the SOS applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accountant Trainee	Certification List	Permanent	Full Time	\$3,665
Accounting Analyst	Certification List	Permanent	Full Time	\$3,807
Archivist I	Certification List	Permanent	Full Time	\$4,588
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,975
Attorney	Certification List	Permanent	Full Time	\$6,760
Executive Assistant	Certification List	Permanent	Full Time	\$3,719
Information Technology Specialist I	Certification List	Permanent	Full Time	\$6,298
Staff Services Manager I	Certification List	Permanent	Full Time	\$6,308
Staff Services Manager I	Certification List	Permanent	Full Time	\$6,483
Staff Services Manager I	Certification List	Permanent	Full Time	\$7,183
Supervising Program Technician II	Certification List	Permanent	Full Time	\$3,439
Supervising Program Technician III	Certification List	Permanent	Full Time	\$3,911
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	\$6,228

⁴ "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Information Technology Supervisor II	Transfer	Permanent	Full Time	\$8,955
Program Technician II	Transfer	Permanent	Full Time	\$3,523
Staff Services Manager I	Transfer	Permanent	Full Time	\$6,124

FINDING NO. 9 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

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

Alternate Range Movement Salary Determination (within same classification)

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

During the period under review, November 1, 2018, through July 30, 2019, the SOS made two alternate range movements within a classification. The CRU reviewed the two alternate range movements to determine if the SOS applied salary regulations accurately and correctly processed each employee's compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Personnel Specialist	A	B	Full Time	\$3,468
Staff Services Analyst (General)	A	B	Full Time	\$3,908

FINDING NO. 10 – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU determined that the alternate range movements the SOS made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Hiring Above Minimum Requests

The CalHR may authorize payment at any step above-the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code § 19836.) For all employees new to state service, departments are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.⁵ (Gov. Code § 19836 subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary

⁵ Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be competitive with the employee's salary in the exempt appointment. (*Ibid.*) For example, An employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

During the period under review, November 1, 2018, through July 30, 2019, the SOS authorized one HAM request. The CRU reviewed the one authorized HAM request to determine if the SOS correctly applied Government Code section 19836 and appropriately verified, approved and documented the candidate's extraordinary qualifications, which is listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Information Technology Specialist	Certification List	Permanent	Range A: \$5,118 - \$6,859 Range B: \$5,628 - \$7,543 Range C: \$6,179 - \$8,280	\$7,887

FINDING NO. 11 – Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Bilingual Pay

The CalHR may authorize payment at any step above-the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code § 19836.) For all employees new to state service, departments are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Persons with extraordinary qualifications should contribute to the work of the department significantly beyond that which other applicants offer. (*Ibid.*) Extraordinary qualifications may provide expertise in a particular area of a department's program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) When a number of candidates offer considerably more qualifications than the minimum, it may not be necessary to pay above the minimum to acquire unusually well-qualified people. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.⁶ (Gov. Code § 19836 subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the

⁶ Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be competitive with the employee's salary in the exempt appointment. (*Ibid.*) For example, An employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

During the period under review, November 1, 2018, through July 30, 2019, the SOS issued bilingual pay to 20 employees. The CRU reviewed 14 of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base	No. of Appts.
Associate Governmental Program Analyst	R01	Full Time	1
Information Technology Associate	R01	Full Time	1
Office Technician (Typing)	R04	Full Time	2
Program Technician II	R04	Full Time	6
Staff Services Manager I	S01	Full Time	2
Supervising Program Technician II	S04	Full Time	1
Supervising Program Technician III	S04	Full Time	1

FINDING NO. 12 – Incorrect Authorization of Bilingual Pay

Summary: The CRU found 14 errors in the SOS's authorization of bilingual pay:

Classification	Description of Finding(s)	Criteria
Associate Governmental Program Analyst	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Gov. Code, § 7296 and Pay Differential 14
Information Technology Associate	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Gov. Code, § 7296 and Pay Differential 14

Classification	Description of Finding(s)	Criteria
Office Technician (Typing) (2 positions)	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Gov. Code, § 7296 and Pay Differential 14
Program Technician II (6 positions)	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Gov. Code, § 7296 and Pay Differential 14
Staff Services Manager I (2 positions)	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Gov. Code, § 7296 and Pay Differential 14
Supervising Program Technician II	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Gov. Code, § 7296 and Pay Differential 14
Supervising Program Technician III	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Gov. Code, § 7296 and 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)-(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 rules in accordance with CalHR’s policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay.

Cause: The SOS states that they were unaware of the requirement to complete form STD. 897 (Bilingual Authorization). The SOS states that it started using the STD. 897 when reviewing bilingual pay requests in August 2019.

Corrective Action: Within 90 days of the date of this report, the SOS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 7296 and Pay Differential 14. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Pay Differentials

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

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, November 1, 2018, through July 30, 2019, the SOS issued pay differentials⁷ to three employees. The CRU reviewed the three pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Investigator	244	\$100
Investigator	244	\$125

⁷ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Investigator	245	8%

FINDING NO. 13 – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

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

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, subd. (a)(3).)

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

During the period under review, November 1, 2018, through July 30, 2019, the SOS issued OOC pay to nine employees. The CRU reviewed seven of those OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

⁸ “Excluded employee” means an employee as defined in section 3527, subd. (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.

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Archivist II	R21	Staff Services Manager I	1/14/19 - 5/14/19
Attorney	R02	Attorney III	11/30/18 - 1/30/19
Attorney	R02	Attorney III	11/30/18 - 1/30/19
Information Technology Associate	R01	Training Officer II	10/1/18 -12/31/18
Office Assistant (Typing)	R04	Office Technician (Typing)	10/1/18 - 11/29/18
Program Technician II	R04	Supervising Program Technician II	8/1/18 - 11/29/18
Staff Services Manager III	M01	CEA B	4/1/19 - 9/6/19

FINDING NO. 14 – Incorrect Authorization of Out-of-Class Pay

Summary: The CRU found three errors in the SOS's authorization of OOC pay:

Classification	Area	Description of Finding(s)	Criteria
Archivist II	Out of Class Pay	The employee worked OOC over the 120-calendar day limit. As such, the SOS issued OOC pay for one day in May 2019 that the employee was not entitled to.	Pay Differential 91 and R21 Bargaining Unit Agreement
Program Technician II	Out of Class Pay	The employee worked OOC over the 120-calendar day limit. As such, the SOS issued OOC pay for one day in November 2018 that the employee was not entitled to.	Pay Differential 91 and R04 Bargaining Unit Agreement
Staff Services Manager III	Out of Class Pay	Managerial employee did not wait until the 91 st day to receive OOC pay. As such, the SOS issued OOC pay for 90 days that the employee was not entitled to.	Pay Differential 101

Criteria: Employees may be compensated for performing duties of a higher classification provided that: the assignment is made in advance in writing and the employee is given a copy of the assignment; and the duties performed by the employee are not described in a training and development assignment and further, taken as a whole, are fully consistent with the types of jobs described in the specification for the higher classification; and the employee does not perform such duties for more than 120 days in a fiscal year. (Cal. Code Regs., tit. 2, § 599.810, subd. (b)(1)(3)(4).)

For excluded employees, there shall be no compensation for assignments that last for 15 consecutive working days or less. (Cal. Code Regs., tit. 2, § 599.810, subd. (c).) An excluded employee performing in a higher class for more than 15 consecutive working days shall receive the rate of pay the excluded employee would receive if appointed to the higher class for the entire duration of the assignment, not to exceed one year. (Cal. Code Regs., tit. 2, § 599.810, subd. (d).) An excluded employee may be assigned out-of-class work for more than 120 calendar days during any 12-month period only if the appointing power files a written statement with the CalHR certifying that the additional out-of-class work is required to meet a need that cannot be met through other administrative or civil service alternatives. (Cal. Code Regs., tit. 2, § 599.810, subd. (e).)

Severity: Very Serious. The SOS failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with CalHR's policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The SOS acknowledges that in two instances the OOC pay exceeded the 120-day limit by one day. The SOS states that this was a clerical error made by the analyst assigned to processing the OOC justification letter.

Additionally, the SOS acknowledges that in one instance a managerial employee was placed in an OOC assignment prior to the 91st day as outlined in Pay Differential 101. The SOS states that the analyst responsible for processing the OOC justification memo relied

upon California Code of Regulations section 599.810 when making a recommendation on the OOC request, which did not include verbiage that managerial employees must wait 90 days before receiving compensation for OOC assignments.

Corrective Action: Within 90 days of the date of this report, the SOS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with pay differentials 91 and 101. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 9 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 days⁹ worked and paid absences,¹⁰ 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

⁹ For example, two hours or ten hours counts as one day.

¹⁰ For example, vacation, sick leave, compensating time off, etc.

ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

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

Generally, permanent intermittent employees may work up to 1500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year.

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

At the time of the review, the SOS had 12 positive paid employees whose hours were tracked. The CRU reviewed eight of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Time Base	Time Frame	Time Worked
Accountant Trainee	Retired Annuitant	12/4/18 - 6/30/19	723 hours
Accounting Administrator I (Supervisor)	Retired Annuitant	7/1/18 - 6/30/19	795.5 hours
Associate Governmental Program Analyst	Retired Annuitant	7/1/18 - 6/30/19	952 hours
Attorney III	Retired Annuitant	7/1/18 - 6/30/19	203.75 hours
Data Processing Manager III	Retired Annuitant	7/1/18 - 6/30/19	960 hours
Information Technology Specialist I	Retired Annuitant	7/1/18 - 6/30/19	35.65 hours
Information Technology Specialist I	Retired Annuitant	7/1/18 - 6/30/19	650 hours
Senior Personnel Specialist	Retired Annuitant	5/20/19 - 6/30/19	125.5 hours

FINDING NO. 15 – Positive Paid Employees’ Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The SOS provided sufficient justification and adhered to applicable laws, regulations and CalHR policy 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, June 1, 2018, through May 30, 2019, the SOS placed three employees on ATO. The CRU reviewed the three ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Date(s) of ATO	Amount of Time on ATO
Information Technology Associate	2/5/19	9 hours
Investigator	2/22/19	8 hours
Mailing Machines Operator I	6/4/18	7.25 hours

FINDING NO. 16 – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The SOS provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

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

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. (*Ibid.*) 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, March 1, 2019, through May 30, 2019, the SOS reported 16 units comprised of 1,471 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
April 2019	211	12	12	0
April 2019	220	17	16	0
April 2019	550	27	27	0
May 2019	211	13	13	0
May 2019	220	16	16	0
May 2019	550	28	28	0

FINDING NO. 17 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed

Summary: The SOS failed to provide completed Leave Activity and Correction Certification forms for the three units reviewed during the May 2019 pay period.

- Criteria:** Departments are responsible for maintaining accurate and timely leave accounting records for their employees. (Cal. Code Regs., tit. 2, § 599.665.) Departments shall identify and record all errors found using a Leave Activity and Correction form. (Human Resources Manual section 2101.) Furthermore, departments shall certify that all leave records for the unit/pay period identified on the certification form have been reviewed and all leave errors identified have been corrected. (*Ibid.*)
- Severity:** Technical. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. For post-audit purposes, the completion of Leave Activity and Correction Certification forms demonstrates compliance with CalHR policies and guidelines.
- Cause:** The SOS states that they referred to PML 2015-007 when completing the Leave Activity and Correction Certification forms. The SOS states that their pay periods/units with missing CalHR-139 forms did not have errors to identify or correct. It was the SOS's interpretation that the PML instructions did not indicate that a form is required when there are no errors to report or correct.
- SPB Reply:** Human Resources Manual section 2101 requires that the agency certifies that all leave records for units/pay have been reviewed to ensure accuracy. Absent a completed CalHR-139 form, the SOS could not provide documentation that the units/pay identified in the review for May 2019 had been checked for accuracy.
- Corrective Action:** Within 90 days of the date of this report, the SOS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that their monthly internal audit process is documented. The SOS must incorporate completion of Leave Activity and Correction Certification forms for all leave records even when errors are not identified or corrected. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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."¹¹ (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 amount¹² 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, ensuring employees maintain the capacity to optimally perform their jobs. (Cal. Code Regs., tit. 2, § 599.742.1.) 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, 38 SOS employees exceeded the established limits of vacation or annual leave. The CRU reviewed 20 of those employees' leave reduction plans to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

¹¹ For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for Bargaining Unit 06 there is no established limit and for Bargaining Unit 05 the established limit is 816 hours.

¹² Excluded employees shall not accumulate more than 80 days.

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Associate Accounting Analyst	R01	185.8	No
Associate Accounting Analyst	R01	268	No
Attorney III	R02	77.75	No
Corporation Documents Examiner	R04	440.5	No
Corporation Documents Examiner	R04	933	No
Information Technology Manager I	M01	695.5	No
Information Technology Specialist I	R01	522	No
Information Technology Specialist II	R01	721	No
Information Technology Supervisor II	S01	348	No
Program Technician II	R04	365.5	No
Program Technician II	R04	497.75	No
Program Technician II	R04	1,965.75	No
Program Technician II	R04	2,118.63	No
Staff Services Analyst (General)	R01	941.75	No
Staff Services Manager I	S01	253.75	No
Staff Services Manager I	S01	288.5	No
Staff Services Manager I	S01	777.5	No
Staff Services Manager I	S01	854.5	No
Staff Services Manager II (Supervisory)	S01	433.25	No
Staff Services Manager III	M01	858	No
Total		13,546.43	

FINDING NO. 18 – Leave Reduction Plans Were Not Developed for Employees Whose Leave Balances Exceeded Established Limits

Summary: The SOS did not provide leave reduction plans for the 20 employees reviewed whose leave balances significantly exceeded established limits. Additionally, the SOS did not provide a general departmental policy addressing leave reduction.

Criteria: It is the policy of the state to foster and maintain a workforce that has the capacity to effectively produce quality services expected by both internal customers and the citizens of California. (Human Resources Manual section 2124.) Therefore, appointing authorities and state managers and supervisors must create a leave reduction policy for

the organization and monitor employees' leave to ensure compliance with the departmental leave policy. Employees who have significant "over-the-cap" leave balances must have a leave reduction plan in place and be actively reducing hours. (*Ibid.*)

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

Cause: The SOS acknowledges it did not have a general department plan addressing leave reduction. As of January 1, 2020, it established a leave management program for employees; a general policy is pending executive approval.

Corrective Action: Within 90 days of the date of this report, the SOS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure employees who have significant "over-the-cap" leave balances have a leave reduction plan in place. In addition, the SOS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.742 and Human Resources Manual Section 2124. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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.¹³ (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.

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 employees¹⁴ 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, November 1, 2018, through July 30, 2019, the SOS had 10 employees with non-qualifying pay period transactions. The CRU reviewed the 10 transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Non-Qualifying Pay Period	Full Time	9
Qualifying Pay Period	Full Time	1

¹³ Except as provided in Cal. Code Regs., tit. 2, sections 599.609 and 599.776.1, subd. (b) , 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.

¹⁴ As identified in Government Code sections 19858.3, subd. (a), 19858.3, subd. (b), or 19858.3, subd. (c) or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subd. (c) or California Code of Regulations, tit. 2, section 599.752 subd. (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

FINDING NO. 19 – Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Policy and Processes

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 association by blood, adoption, marriage and/or cohabitation. (*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. 20 – Nepotism Policy Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Summary: The SOS maintains a written nepotism policy; however, the nepotism policy does not state that the Department is committed to the State policy of recruiting, hiring and assigning employees on the basis of merit and fitness.

Criteria: Departmental nepotism policies should aim to prevent favoritism or bias based on a personal relationship when recruiting, hiring or assigning employees. Departments have the discretion, based on organizational structure and size, to develop nepotism policies as they see fit (Human Resources Manual Section 1204). Departments should review their policies to determine if there is any need to update their statements or make them more specific to the needs of their organizations. A nepotism policy should be comprised of

specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions as outlined in the Human Resources Manual Section 1204.

Severity: Very Serious. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. Departments must take proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes. Maintaining a current written nepotism policy, and its dissemination to all staff, is the cornerstone for achieving these outcomes.

Cause: The SOS states that their nepotism policy will be reviewed to ensure it contains updated information and best practices.

Corrective Action: Within 90 days of the date of this report, the SOS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Human Resources Manual Section 1204. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 subds. (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.*)

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

FINDING NO. 21 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the SOS provides notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law. Furthermore, the CRU verified that when the SOS received worker's compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code section 19992.2, subdivision (a), appointing powers 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 83 permanent SOS employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

Classification	Date Performance Appraisals Due	Date Performance Appraisal Provided
Accounting Analyst	5/31/2018	Not Provided
Archivist II	3/31/2018	Not Provided
Archivist II	3/31/2018	Not Provided
Archivist II	7/29/2018	Not Provided
Associate Accounting Analyst	9/11/2018	Not Provided
Associate Accounting Analyst	4/30/2018	Not Provided
Associate Budget Analyst	11/30/2018	Not Provided

Classification	Date Performance Appraisals Due	Date Performance Appraisal Provided
Associate Governmental Program Analyst	9/30/2018	Not Provided
Associate Governmental Program Analyst	8/5/2018	Not Provided
Associate Governmental Program Analyst	3/1/2018	Not Provided
Associate Governmental Program Analyst	4/30/2018	Not Provided
Associate Governmental Program Analyst	4/18/2018	Not Provided
Associate Governmental Program Analyst	12/31/2018	Not Provided
Associate Governmental Program Analyst	5/25/2018	Not Provided
Associate Governmental Program Analyst	11/21/2018	Not Provided
Attorney	8/14/2018	Not Provided
Business Service Officer I (Specialist)	3/1/2018	Not Provided
Business Service Officer I (Specialist)	9/26/2018	Not Provided
Business Service Officer I (Specialist)	4/30/2018	Not Provided
Business Service Officer II (Specialist)	1/25/2018	Not Provided
Digital Composition Specialist I	6/30/2018	Not Provided
Digital Composition Specialist I	6/30/2018	Not Provided
Information Technology Associate	10/31/2018	Not Provided
Information Technology Associate	5/13/2018	Not Provided
Information Technology Manager I	2/16/2018	Not Provided
Information Technology Manager I	9/13/2018	Not Provided
Information Technology Manager II	8/31/2018	Not Provided
Information Technology Specialist I	1/30/2018	Not Provided

Classification	Date Performance Appraisals Due	Date Performance Appraisal Provided
Information Technology Specialist I	4/24/2018	Not Provided
Information Technology Specialist I	9/30/2018	Not Provided
Information Technology Specialist I	6/30/2018	Not Provided
Information Technology Specialist I	2/28/2018	Not Provided
Information Technology Specialist I	12/31/2018	Not Provided
Information Technology Specialist I	4/18/2018	Not Provided
Information Technology Specialist I	12/13/2018	Not Provided
Information Technology Specialist I	10/19/2018	Not Provided
Information Technology Specialist I	1/13/2018	Not Provided
Investigator	10/25/2018	Not Provided
Office Assistant (typing)	12/3/2018	Not Provided
Office Assistant (typing)	9/19/2018	Not Provided
Office Technician (Typing)	11/28/2018	Not Provided
Office Technician (Typing)	7/29/2018	Not Provided
Political Reform Program Specialist	8/31/2018	Not Provided
Political Reform Program Specialist	6/30/2018	Not Provided
Program Technician	10/16/2018	Not Provided
Program Technician	2/23/2018	Not Provided
Program Technician II	4/28/2018	Not Provided
Program Technician II	6/22/2018	Not Provided
Program Technician II	11/30/2018	Not Provided
Program Technician II	11/1/2018	Not Provided
Program Technician II	8/16/2018	Not Provided
Program Technician II	10/16/2018	Not Provided
Program Technician II	6/25/2018	Not Provided
Program Technician II	6/17/2018	Not Provided

Classification	Date Performance Appraisals Due	Date Performance Appraisal Provided
Program Technician II	7/8/2018	Not Provided
Program Technician II	7/11/2018	Not Provided
Program Technician II	12/14/2018	Not Provided
Program Technician II	7/31/2018	Not Provided
Program Technician II	7/27/2018	Not Provided
Program Technician II	12/14/2018	Not Provided
Program Technician II	11/21/2018	Not Provided
Program Technician II	8/2/2018	Not Provided
Program Technician II	9/12/2018	Not Provided
Program Technician II	9/1/2018	Not Provided
Program Technician II	3/8/2018	Not Provided
Program Technician III	4/30/2018	Not Provided
Staff Services Manager I	7/19/2018	Not Provided
Staff Services Manager I	1/17/2018	Not Provided
Staff Services Manager I	1/11/2018	Not Provided
Staff Services Manager II (Supervisory)	10/31/2018	Not Provided
Staff Services Manager II (Supervisory)	10/31/2018	Not Provided
Staff Services Manager III	5/15/2018	Not Provided
Staff Services Manager III	5/15/2018	Not Provided
Staff Services Manager III	7/28/2018	Not Provided
Staff Services Manager III	5/15/2018	Not Provided
Supervising Attorney	5/7/2018	Not Provided
Supervising Program Technician II	1/14/2018	Not Provided
Supervising Program Technician II	12/21/2018	Not Provided
Supervising Program Technician II	10/13/2018	Not Provided
Supervising Program Technician II	9/13/2018	Not Provided
Supervising Program Technician III	8/20/2018	Not Provided

Classification	Date Performance Appraisals Due	Date Performance Appraisal Provided
Supervising Special Investigator II	8/16/2018	Not Provided
Television Specialist	11/14/2018	Not Provided

FINDING NO. 22 – Performance Appraisals Were Not Provided to All Employees

Summary: The SOS did not provide annual performance appraisals to any of the 83 employees reviewed after the completion of the employees' probationary period.

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

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

Cause: The SOS acknowledges that performance appraisals were not provided to all employees. The SOS further states that they are currently developing a standardized process to ensure managers and supervisors complete performance appraisals for their employees on an annual basis.

Corrective Action: Within 90 days of the date of this report, the SOS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

DEPARTMENTAL RESPONSE

The SOS's response is attached as Attachment 1.

SPB REPLY

Based upon the SOS's written response, the SOS will comply with the corrective actions specified in these report findings. Within 90 days of the date of this report, a written corrective action response including documentation demonstrating implementation of the corrective actions specified must be submitted to the CRU.



ALEX PADILLA | SECRETARY OF STATE
STATE OF CALIFORNIA | MANAGEMENT SERVICES
1500 11th Street, 4th floor | Sacramento, CA 95814 | www.sos.ca.gov

DATE: March 17, 2020

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

FROM: Mike Green, Human Resources Manager

SUBJECT: Secretary of State Response to SPB 2019 Draft
Compliance Review Report

Dear Ms. Ambrose:

Below is the Secretary of State's response to the findings in the Draft report:

FINDING NO. 3 – Probationary Evaluations Were Not Provided for all Appointments Reviewed; Additionally, Several Probationary Evaluations Were Not Timely

The Secretary of State's Human Resources Office makes a good faith effort to inform supervisors and managers regarding the requirements of completing probationary evaluations. Supervisors and managers are provided the forms and due dates of probationary evaluations of their employees.

The Secretary of State provides leadership training to its supervisors and managers which is geared towards a wide variety of supervisory roles and responsibilities. One such class covers the area of Progressive Discipline and focuses on the supervisor's role during the process, part of which highlights the importance of providing staff with timely probationary reports.

FINDING NO. 4 – Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period

The failure to notify the Complainant within the specified time frame was an oversight by the analyst performing the investigation. The Secretary of

State's EEO team will be implementing processes and procedures for conducting investigations and adjust those procedures to ensure this will not re-occur.

FINDING NO. 5 – Unions Were Not Notified of Personal Services Contract

The failure to not notify the unions for three contracts was not intentional. In the case of one of the agreements, it was an oversight by the contract analyst. The other two agreements were initiated by other departments on the SOS's behalf and we were not aware the unions had not been notified. The Secretary of State's procurement and contracting management are in the process of updating procedures and file documentation checklists to ensure this will not re-occur, including for those agreements not initiated or administered by the SOS.

FINDING NO. 6 – Ethics Training Was Not Provided for All Filers

Seven (7) Secretary of State employees did not complete Ethics Training during the 2017/2018 period. The SOS will audit the process by which the employees required to complete Ethics Training are notified.

FINDING NO. 7 – Leadership and Development Training Was Not Provided for All Supervisors, Managers, and CEAs

SOS agrees that one (1) managerial employee was not provided Managerial training within 12 months of their initial appointment.

SOS agrees that two (2) of the new CEAs did not complete CEA training within the 12-month timeframe. Per CalHR's Human Resources Manual, policy #2801 dated 3/8/2017, SOS prioritized the required Basic Supervision Training (80 hours) for newly appointed employees to a supervisory position. Therefore, CEA training was not provided within the 12-month timeframe. Policy #2801 was revised without notification to departments sometime after 12/31/2018, and currently does not require new CEAs or Managerial employee to complete 80 hours of Basic Supervision training.

SOS agrees 21 identified supervisory, managerial and CEA employees did not complete all of the required 20 hours of continuing education (biennial requirement).

For all training mandated by Government Code §19995.4 the direct supervisor or manager is responsible to ensure supervisory staff complete

their required hours, which resulted in a lack of compliance. The Workforce Development Section (Training Unit) provides an overview of training requirements to all new supervisory staff members; monthly training announcements and newsletters to supervisory staff members; quarterly progress reports to individual supervisory staff members; and quarterly summary progress reports of all supervisory staff to division chiefs to remind supervisory staff members of their responsibilities. SOS is exploring the implementation of a Learning Management System (LMS) to assist with notifying and monitoring all mandatory training. Additionally, the Workforce Development Section that falls under the umbrella of the Human Resources Bureau will discuss further with Executive Management to secure their support and enforcement when supervisory and managerial staff do not follow through with training requirements as mandated by regulations.

FINDING NO. 8 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

SOS agrees that seven (7) new supervisors did not receive Sexual Harassment Prevention (SHP) training within the first six months of their appointment. Five (5) of the seven (7) new supervisors completed SHP training after the prescribed timeframe. SOS agrees five (5) existing supervisors did not complete SHP training as prescribed. Three (3) of the five (5) existing supervisors were on leaves of absence during the biannual SHP training which all other supervisors attended; however, they did not complete make-up sessions upon their return from leave.

The current process places the responsibility on managers to ensure their supervisory staff members attend the biannual SHP training which resulted in a lack in compliance. SOS is instituting SHP training on a monthly basis for new employees and quarterly SHP training for new supervisory staff members to ensure completion within six months of their appointment. SOS is exploring the implementation of a Learning Management System (LMS) to assist with notifying and monitoring all mandatory training.

FINDING NO. 12 – Incorrect Authorization of Bilingual Pay

The Secretary of State was unaware of the requirement to complete form STD. 897. The SOS became aware of the criteria in the middle part of 2019. Effective August 2019 the SOS has begun using the STD. 897 when reviewing bilingual pay requests.

FINDING NO. 14 – Incorrect Authorization of Out-of-Class Pay

In two instances the OOC pay exceeded the 120-day limit by one day. This was a clerical error made by the analyst assigned to processing the OOC justification letter. Additional training will be given to HR staff regarding processing such requests.

In one instance a Managerial employee was placed in an OOC assignment prior to the 91st day as outlined in Pay Differential 101. The analyst responsible for processing the OOC justification memo relied upon California Code of Regulations § 599.810 when making a recommendation on the OOC request. This statute did not include verbiage that Managerial employees must wait 90 days before receiving compensation for OOC assignments. The Secretary of State will provide additional training to its HR staff on the process of approving OOC assignments. However, the SOS wishes to request that procedural information be placed in a central depository to ensure that human resource professionals do not overlook applicable laws and rules. Additionally, the SOS wishes to request for regular and ongoing training efforts for human resource professionals made available through the control agencies throughout the year.

FINDING NO. 17 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed

The SOS referred to the PML 2015-007 instructions below when completing the forms.

- Identify and record all errors found during the comparison pay period utilizing a Leave Activity and Correction Certification form (Certification). A sample form is attached.
- Certify that all leave records for the unit/pay period identified on the Certification form have been reviewed.
- If necessary, obtain corrected attendance records and correct errors in the leave accounting system.
- Certify that all leave errors identified on the Certification form have been corrected.
- File and maintain the Certification form with the STD. 672 form for each unit and retain based on the STD. 672 form retention schedule.

Pay periods/units with missing CalHR-139 forms did not have errors to identify or correct. It was the Secretary of State's interpretation the instructions do not indicate a form is required when there are no errors to report or correct.

FINDING NO. 18 – Leave Reduction Plans Were Not Developed for Employees Whose Leave Balances Exceeded Established Limits

A Leave Management Program was established effective January 1, 2020. As of today, employees and managers were notice and Leave Reduction Plans are being developed. The SOS provided proposed plans for the program at the time of the audit as it was pending executive approval.

FINDING NO. 20 – Nepotism Policy Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The Secretary of State has been reviewing and updating its policies as necessary. The Nepotism Policy will be reviewed to ensure it contains updated information and best practices.

FINDING NO. 22 – Performance Appraisals Were Not Provided to All Employees

The SOS acknowledges that not all performance appraisals were provided to all employees. The SOS is currently developing a standardized process to ensure managers and supervisors complete performance appraisals for their employees on an annual basis.