



# **COMPLIANCE REVIEW REPORT**

## **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**

Compliance Review Unit  
State Personnel Board  
January 23, 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 Department of Fair Employment and Housing (DFEH) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>1</sup>. The following table summarizes the compliance review findings.

Area	Finding
Examinations	Examinations Complied with Civil Service Laws and Board Rules
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules
Personal Services Contracts	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Mandated Training Complied with Statutory Requirements
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Area	Finding
Leave	Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Policy	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Injured Employee Did Not Receive Claim Forms Within One Working Day of Notice or Knowledge of Injury
Policy	Performance Appraisals Were Not Provided to All Employees

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

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

## **BACKGROUND**

The DFEH is the institutional centerpiece of California's broad anti-discrimination and hate crimes policy. Born out of a decades-long struggle to prohibit discrimination in employment, housing, and business establishments, the DFEH has been at the forefront of protecting civil rights in California since its inception. Today, the DFEH is the largest state civil rights agency in the country with over 220 full-time permanent staff operating out of five offices throughout California. The mission of the DFEH is to protect people of California from unlawful discrimination in employment, housing and public accommodations (businesses) and from hate violence and human trafficking in accordance to the Fair Employment and Housing Act (FEHA), Unruh Civil Rights Act, Disabled Persons Act, and Ralph Civil Rights Act. The employment anti-discrimination provisions of the FEHA apply to public and private employers, labor organizations and employment agencies. Housing providers include public and private owners, real estate agents and brokers, banks, mortgage companies and financial institutions. Since 2013, the DFEH has housed the Fair Employment and Housing Council, a body that issues regulations to ensure that the FEHA and other laws enforced by the DFEH are interpreted and implemented in a way that is fair and that protects the public to the full extent of the law.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the DFEH's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>2</sup>. The primary objective of the review was to determine if the DFEH'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 DFEH'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 DFEH provided, which included examination plans, examination bulletins, job analyses, and scoring results. The DFEH did not conduct any permanent withhold actions during the compliance review period.

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

A cross-section of the DFEH'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 DFEH 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 DFEH did not conduct any unlawful appointment investigations during the compliance review period.

The DFEH's appointments were also selected for review to ensure the DFEH applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the DFEH 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, and alternate range movements.

During the compliance review period, the DFEH did not issue red circle rate requests, arduous pay, or out-of-class assignments.

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

The DFEH's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all

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<sup>3</sup>If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

supervisors were provided supervisory training and sexual harassment prevention training within statutory timelines.

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

The CRU reviewed the DFEH's Leave Activity and Correction Certification forms to verify that the DFEH 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 DFEH's units in order to ensure they maintained accurate and timely leave accounting records.

During the compliance review period, the DFEH did not have any employees with non-qualifying pay period transactions, and did not authorize Administrative Time Off (ATO). Additionally, the DFEH did not track any temporary intermittent employees by actual time worked during the compliance review period.

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

On January 7, 2020, an exit conference was held with the DFEH to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DFEH's written response on January 15, 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, April 1, 2018, through December 31, 2018, the DFEH conducted six examinations. The CRU reviewed four of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) A, Chief Information Officer	CEA	Statement of Qualifications (SOQ) <sup>4</sup>	6/7/18	16
CEA A, Assistant Deputy Director, Education & Outreach	CEA	SOQ	Until Filled	56
Graduate Legal Assistant	Open	SOQ	Continuous	34
Graduate Legal Assistant	Open	SOQ	Continuous	20

<sup>4</sup> In a statement of qualifications (SOQ) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

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

The CRU reviewed four open examinations which the DFEH administered in order to create eligible lists from which to make appointments. The DFEH published and distributed examination bulletins containing the required information for all examinations. Applications received by the DFEH were accepted prior to the final filing date. Applicants were notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examinations that the DFEH conducted during the compliance review period.

### **Appointments**

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250, 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, January 1, 2018, through September 30, 2018, the DFEH made 40 appointments. The CRU reviewed 15 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	3
Fair Employment and Housing Consultant III (Specialist)	Certification List	Permanent	Full Time	1
Fair Employment and Housing Counsel	Certification List	Permanent	Full Time	1
Information Tecnology Tecnician	Certification List	Permanent	Full Time	1
Legal Analyst	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Senior Fair Employment and Housig Counsel (Specialist)	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	1
Business Service Assistant (Specialist)	Permissive Reinstatement	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Office Technician (Typing)	Transfer	Permanent	Full Time	1
Staff Services Manager	Transfer	Permanent	Full Time	1

**FINDING NO. 2 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time**

**Summary:** The DFEH failed to retain personnel records such as NOPA’s, duty statements, job announcement bulletins, and applications. Specifically, of the 15 appointments reviewed, the DFEH did not retain the following: two NOPAs; two job announcement/bulletins; and two sets of interview questions. Additionally, 2 of the 15 appointment files reviewed were missing all of the appointment and recruitment documentation including the hired applicant’s application.

**Criteria:** Appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of five years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Regs., tit. 2, § 26.)

**Severity:** Non-Serious or Technical. Without documentation, the CRU could not verify if the appointments were properly conducted.

**Cause:** The DFEH states that due to construction during an expansion they relocated all Human Resources staff, along with their documents and files, to a temporary location. Despite best efforts to secure and track the records from the headquarters location to the temporary relocation space, records were misplaced during transit.

**Corrective Action:** Within 60 days of the date of this report, the DFEH must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations, title 2, section 26. 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).) Pursuant to Government Code section 19795, subdivision (a), in a state agency with less than 500 employees, like DFEH, the EEO Officer may be the Personnel Officer.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

**FINDING NO. 3 – Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules**

At the time of review, DFEH possessed the policies, procedures, and programs necessary for compliance with the EEO program’s role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the DFEH EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Director of the DFEH. In addition, the DFEH has an established DAC, which reports to the Director on issues affecting persons with disabilities. The DFEH also provided evidence of its efforts to promote EEO in its hiring and employment practices, and to increase its hiring of persons with disabilities. Accordingly, the DFEH EEO program complied with civil service laws and Board rules.

**Personal Services Contracts**

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the state. (Cal. Code Regs., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state’s authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC’s achieve cost savings for the state. PSC’s that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include but are not limited to private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the period under review, April 1, 2018, through December 31, 2018, the DFEH had 13 PSC's that were in effect. The CRU reviewed eight of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified	Union Notification
ACE Attorney Services, Inc.	Legal Consulting	8/18 – 12/20	\$125,000	Yes	No
Bendrick and Egan Economic Consultants	Expert Witness	11/15 – 6/20	\$38,000	Yes	No
Beth G. Chung, PhD.	Expert Witness	8/18 – 12/19	\$23,000	Yes	No
Gifted Hands Cleaning Services	Cleaning	9/18 – 9/18	\$2,000	Yes	No
National Jury Project	Legal Consulting	6/17 – 6/19	\$30,000	Yes	No
Pro Properties	Expert Witness	7/18 – 6/19	\$4,950	Yes	No
Ricardo Winkle, PhD.	Expert Witness	7/18 – 12/19	\$17,850	Yes	No
Sepler and Associates	Training Course Construction & Instruction	1/18 – 2/19	\$3,700	Yes	No

**FINDING NO. 4 – Unions Were Not Notified of Personal Services Contract**

**Summary:** The DFEH did not notify unions prior to entering into all 8 of the 8 PSC's reviewed.

**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 section 19132, subdivision (b)(1).)

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

**Cause:** The DFEH states they differed from the SPB in interpreting Government Code section 19132, subdivision (b)(1), by presuming that if there were no state employees who perform the type of work to be contracted, there were no representative organizations to notify.

**Corrective Action:** Within 60 days of the date of this report, the DFEH 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 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.

#### **FINDING NO. 5– Mandated Training Complied with Statutory Requirements**

The CRU reviewed the DFEH's mandated training program that was in effect during the compliance review period, January 1, 2017, to December 31, 2018. The DFEH provided ethics training to its 11 new filers within 6 months of appointment and, for 33 existing filers, "at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter." The DFEH also provided supervisory training to its 9 new supervisors within 12 months of appointment. In addition, the DFEH provided sexual harassment prevention training to its 9 new supervisors within 6 months of appointment, and sexual harassment prevention training to its 25 existing supervisors every 2 years. Thus, the DFEH complied with mandated training requirements within statutory timelines.

### **Compensation and Pay**

#### **Salary Determination**

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments



calculate and determine an employee's salary rate<sup>5</sup> upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

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

During the period under review, January 1, 2018, through September 30, 2018, the DFEH made 40 appointments. The CRU reviewed 13 of those appointments to determine if the DFEH applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,077
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,784
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,975
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$6,228
Fair Employment and Housing Counsel	Certification List	Permanent	Full Time	\$9,228
Fair Employment & Housing Counsel III (Specialist)	Certification List	Permanent	Full Time	\$5,485
Information Technology Technician	Certification List	Permanent	Full Time	\$4,530
Legal Analyst	Certification List	Permanent	Full Time	\$4,344
Office Technician (Typing)	Certification List	Permanent	Full Time	\$2,921
Office Technician (Typing)	Certification List	Permanent	Full Time	\$3,349

<sup>5</sup> "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (CA CCR Section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Sr. Fair Employment & Housing Counsel (Specialist)	Certification List	Permanent	Full Time	\$8,856
Staff Services Manager I	Certification List	Permanent	Full Time	\$7,351
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	\$6,273

**FINDING NO. 6 – 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 DFEH 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, January 1, 2018, through September 30, 2018, the DFEH employees made seven alternate range movements within a classification. The CRU reviewed all seven of those alternate range movements to determine if the DFEH 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)
Fair Employment & Housing Counsel	C	D	Full Time	\$7,826
Fair Employment & Housing Counsel	C	D	Full Time	\$7,826
Information Technology Technician	A	C	Full Time	\$3,871
Legal Secretary	A	B	Full Time	\$3,641
Legal Secretary	A	B	Full Time	\$3,641
Staff Services Analyst (General)	B	C	Full Time	\$4,196
Staff Services Analyst (General)	B	C	Full Time	\$4,196

**FINDING NO. 7 – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

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

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages 10 percent or more of the total time worked. According to the Pay Differential 14, the 10 percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

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

During the period under review, January 1, 2018, through September 30, 2018, the DFEH issued bilingual pay to 40 employees. The CRU reviewed 15 of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base
Administrator I, Fair Employment and Housing	S01	Full-Time
Associate Governmental Program Analyst	R01	Full-Time
Business Service Assistant (Specialist)	R01	Full-Time
Fair Employment and Housing Consultant III (Specialist)	R01	Full-Time
Fair Employment and Housing Counsel	R02	Full-Time
Legal Secretary	R04	Full-Time
Office Technician (Typing)	R04	Full-Time
Staff Services Analyst (General)	R01	Full-Time
Staff Services Analyst (General)	R01	Full-Time
Staff Services Manager I	S01	Full-Time
Staff Services Manager I	S01	Full-Time
Staff Services Manager I	S01	Full-Time
Staff Services Manager I	S01	Full-Time
Staff Services Manager II (Supervisory)	S01	Full-Time
Staff Services Manager II (Supervisory)	S01	Full-Time

**FINDING NO. 8 – Bilingual Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

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

Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary

responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention. (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, January 1, 2018, through September 30, 2018, the DFEH issued pay differentials<sup>6</sup> to three employees. The CRU reviewed all three of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Executive Assistant	52	\$355
Legal Secretary	141	\$226
Senior Legal Typist	141	\$420

**FINDING NO. 9 – 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 DFEH 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.

**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

<sup>6</sup> For the purposes of CRU’s review, only monthly pay differentials were selected for review at this time.

completion of an examination, for seasonal type work, while attending school, or for consulting services.

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

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

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1,500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1,500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2,000 hours in any calendar year.

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

At the time of the review, the DFEH had 17 employees whose hours were tracked. The CRU reviewed 12 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

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

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

Classification	Tenure	Time Base	Time Frame	Time Worked
Accounting Officer (Specialist)	Retired Annuitant	Intermittent	Fiscal Year	927.5 Hours
Associate Governmental Program Analyst	Retired Annuitant	Intermittent	Fiscal Year	375 Hours
Associate Governmental Program Analyst	Retired Annuitant	Intermittent	Fiscal Year	918.5 Hours
Fair Employment and Housing Consultant III (Specialist)	Retired Annuitant	Intermittent	Fiscal Year	627.5 Hours
Fair Employment and Housing Consultant III (Specialist)	Retired Annuitant	Intermittent	Fiscal Year	945.45 Hours
Graduate Student Assistant	Temporary	Intermittent	12 Consecutive Months	221.5 Hours
Graduate Student Assistant	Temporary	Intermittent	12 Consecutive Months	188.75 Hours
Office Technician	Retired Annuitant	Intermittent	Fiscal Year	784.5 Hours
Research Data Specialist II	Retired Annuitant	Intermittent	Fiscal Year	2.5 Hours
Senior Fair Employment and Housing Counsel (Specialist)	Retired Annuitant	Intermittent	Fiscal Year	610.5 Hours
Senior Fair Employment and Housing Counsel (Specialist)	Permanent	Intermittent	Calendar Year	1,044 Hours
Senior Personnel Specialist	Retired Annuitant	Intermittent	Fiscal Year	828 Hours

**FINDING NO. 10 – Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

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

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, July 1, 2018, through September 30, 2018, the DFEH reported 29 units comprised of 200 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 <sup>9</sup>	Number of Missing Timesheets
July 2018	258	9	9	0
August 2018	258	9	9	0
September 2018	258	9	9	0

<sup>9</sup> The number of timesheets may exceed the number of employees due to the existence of revised timesheets.



Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed <sup>9</sup>	Number of Missing Timesheets
July 2018	271	10	13	0
August 2018	271	12	14	0
September 2018	271	11	13	0

**FINDING NO. 11 – Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

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

Leave Reduction Efforts

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

Applicable Memorandums of Understanding and the California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. “If a represented employee is not permitted to use all of the vacation to which he or she is entitled in a calendar year, the employee may accumulate the unused portion.”<sup>10</sup> (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 amount<sup>11</sup> as of January 1 of each year, the appointing power shall require the supervisor to notify and meet with each employee so affected by the preceding July 1, to allow the employee to plan time off, consistent with operational needs, sufficient to reduce their balance to the amount permitted by the applicable regulation, prior to January 1. (Cal. Code Regs., tit. 2, § 599.742.1.)

<sup>10</sup> For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for bargaining unit 6 there is no established limit and for bargaining unit 5 the established limit is 816 hours.

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

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

As of December 2018, 17 DFEH employees exceeded the established limits of vacation or annual leave. The CRU reviewed 12 of those employees’ leave reduction plans to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Assistant Chief Counsel	M02	516.5	Yes
Attorney IV	R02	35	Yes
Fair Employment & Housing Consultant III	R01	388.25	Yes
Information Technology Supervisor II	S01	479.63	Yes
Office Technician	R04	12	Yes
Senior Fair Employment & Housing Counsel	R02	391	Yes
Senior Fair Employment & Housing Counsel	R02	138	Yes
Staff Services Analyst	R01	43.5	Yes
Staff Services Manager I	S01	175	Yes
Staff Services Manager I	S01	57.85	Yes
Staff Services Manager II	S01	39.25	Yes
Staff Services Manager II	S01	56	Yes
<b>Total</b>		<b>2,331.98</b>	

**FINDING NO. 12 – Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU reviewed employee leave records from 12 different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The DFEH kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

**Policy and Processes**

Nepotism

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

**FINDING NO. 13 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

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

Workers’ Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under

workers' compensation law. (Cal. Code Regs., tit. 8, § 9880 subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee's "personal physician," as defined by Labor Code section 4600. (Cal. Code Regs., tit. 8, § 9880 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 a notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401 subd. (a).)

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

The CRU reviewed all documentation showing that all employees and volunteers (if applicable) received written notice of the rights, benefits, and obligations under workers' compensation law for the review period of January 1, 2018, through September 30, 2018. Additionally, the CRU reviewed a list of the five most recent workers' compensation claims submitted by employees to the DFEH to determine if employees and volunteers (if applicable) timely received Workers' Compensation Claim Forms.

**FINDING NO. 14 – Injured Employee Did Not Receive Claim Forms Within One Working Day of Notice or Knowledge of Injury**

**Summary:** Of the five workers' compensation claim forms reviewed by the CRU, one of them was not provided to the employee within one working day of notice or knowledge of injury.

**Criteria:** An employer shall provide a claim form and notice of potential eligibility for workers' compensation benefits to its employee within one working day of notice or knowledge that the employee has suffered a work related injury or illness. (Labor Code, § 540.1.)

**Severity:** Very Serious. An injured employee was not provided the form within the 24-hour time period. Providing the form within 24-hours of injury prevents any delay in treatment to which the employee is entitled. A work related injury can result in lost time beyond the employee’s work shift at the time of injury and/or result in additional medical treatment beyond first aid.

**Cause:** The DFEH states that the Human Resources office emailed instructions to the supervisor which failed to emphasize that the workers’ compensation claim form must be provided to the employee within one working day of notice of knowledge of injury.

**Corrective Action:** Within 60 days of the date of this report, the DFEH must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Labor Code, § 540.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 28 permanent DFEH 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
Associate Governmental Program Analyst	5/2/18
Associate Governmental Program Analyst	8/1/18
Associate Governmental Program Analyst	9/2/18
Assistant Chief Counsel	9/9/18
Fair Employment & Housing Consultant III (Specialist)	10/17/18

Classification	Date Performance Appraisals Due
Fair Employment & Housing Consultant III (Specialist)	12/1/18
Fair Employment & Housing Counsel	2/3/18
Fair Employment & Housing Counsel	7/27/18
Fair Employment & Housing Counsel	8/8/18
Fair Employment & Housing Counsel	9/6/18
Fair Employment & Housing Consultant I	2/15/18
Fair Employment & Housing Consultant II	8/1/18
Office Technician (Typing)	1/17/18
Office Technician (Typing)	3/15/18
Office Technician (Typing)	5/17/18
Office Technician (Typing)	7/28/18
Office Technician (Typing)	9/1/18
Office Technician (Typing)	10/1/18
Senior Fair Employment & Housing Counsel (Specialist)	10/31/18
Senior Fair Employment & Housing Counsel (Specialist)	12/2/18
Senior Legal Typist	7/1/18
Staff Services Analyst (General)	1/30/18
Staff Services Analyst (General)	3/1/18
Staff Services Manager I	9/23/18
Staff Services Manager I	10/15/18
Staff Services Manager I	11/2/18
Staff Services Manager I	11/2/18
Staff Services Manager II (Supervisory)	10/19/18

**FINDING NO. 15 – Performance Appraisals Were Not Provided to All Employees**

**Summary:** The DFEH did not provide annual performance appraisals to 16 of 28 employees after the completion of the employee’s 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 DFEH states that despite reminders being sent, not all managers and supervisors completed the required appraisals due to work demands and competing priorities.

**Corrective Action:** Within 60 days of the date of this report, the DFEH 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 DFEH's response is attached as Attachment 1.

### **SPB REPLY**

Based upon the DFEH's written response, the DFEH will comply with the corrective actions specified in these report findings. Within 60 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.



## Department of Fair Employment & Housing

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January 21, 2020

Subject: Department of Fair Employment & Housing's Response to the 2019 State Personnel Board Compliance Review

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

Dear Ms. Ambrose,

The Department of Fair Employment & Housing (DFEH) appreciates the Compliance Review Unit (CRU) team's collaboration throughout the oversight process. We continually strive for excellence in our personnel and hiring practices, which is reflected by the overall compliance in 11 of the 15 areas reviewed. Based on the compliance review conducted by the CRU, the DFEH Human Resources Office (HRO) provides the following response to the findings as presented by the State Personnel Board (SPB).

### **Finding No. 2 - Appointment Documentation Was Not Kept for the Appropriate Amount of Time**

The CRU found that DFEH failed to retain certain personnel records for a minimum period of five years from the date the records were created; DFEH was unable to locate hiring packages for two appointed employees.

**Cause:** In late 2018, due to construction during an expansion of its headquarters location, DFEH relocated Human Resources and all other Administrative Services Division staff, along with their documents and files, to a temporary nearby location. Despite the department's best efforts to secure and track the records from the headquarters location to the temporary relocation space, records were misplaced during transit.

**Response:** DFEH determined that during the return move to its headquarters location or any future relocation, Human Resources Office staff would pack, track and move all personnel records themselves, rather than entrusting them to contracted moving services.

### **Finding No. 4 - Unions Were Not Notified of Personal Services Contracts**

The CRU found that DFEH did not notify unions prior to entering into all 8 of the 8 personal services contracts reviewed.

**Cause:** DFEH differed from the SPB in interpreting Government Code section 19132, subdivision (b)(1) by presuming that, because there were no "state employees who perform the type of work to be contracted," there were no representative organizations to



notify. DFEH now is aware of the SPB's interpretation that, because the intent of the notification is (a) to allow affected unions and/or organizations to challenge the intended contracts before the SPB, and (b) to ensure transparency and to build and maintain a strong civil service system, as envisioned in the State Constitution, an alternative is for DFEH to notice all unions to ensure compliance with the statute. It is SPB's determination that DFEH cannot conclude that no union exists to represent employees that perform or could perform the services proposed and thereby not provide any notice of DFEH's intention to contract for personal services.

**Response:** DFEH has updated its relevant procedures and checklists to ensure that a PSC shall not be executed until DFEH has either (a) notified all organizations that represent state employees who perform the type of work to be contracted, or (b) notified all organizations that represent all state employees if it appears that there are no state employees who perform, or who could perform, the type of work to be contracted. Additionally, the procedures and checklists will ensure PSCs include all necessary documentation prior to being routed for signature/approval. Further, DFEH will ensure all DFEH staff creating and processing PSCs are trained to ensure conformity with Government Code section 19132, subdivision (b)(1)

#### **Finding No. 14 - Injured Employee Did Not Receive Claim Forms Within One Working Day of Notice or Knowledge of Injury**

The CRU found that of the five workers' compensation claim forms reviewed, one of them was not provided to the employee within one working day of notice or knowledge of injury.

**Cause:** The employee in question experienced a medical issue at work on Thursday, February 28, 2019 and was briefly hospitalized. The supervisor notified HRO the same day of the incident and HRO responded with the relevant forms and procedures, however, the emailed instructions from HRO failed to emphasize that the State Compensation Insurance Fund e3301 Potential Eligibility form must be provided to the employee within one working day of notice or knowledge of injury. The supervisor did not provide the form to the employee until Monday, March 4, 2019.

**Response:** HRO has revised its workers' compensation email and procedures to supervisors to emphasize that the e3301 form must be provided to an employee with a potential workers' compensation claim within the proper one-day timeframe.

#### **Finding No. 15 - Performance Appraisals Were Not Provided to All Employees**

The CRU found that DEFH did not provide annual performance appraisals to 16 of 28 employees at least once in each 12 calendar months after the completion of the employee's probationary period.

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

competing priorities.

**Response:** Procedures have been updated for notification of probationary and annual evaluations. Previously, Human Resources notified supervisors and managers directly on a monthly basis of all pending probationary and annual evaluations due. Now, in addition to those notifications, HRO will notify Executive Management of upcoming due dates on probationary and annual evaluations - upon appointment, monthly, and as needed with past due reminders. The Executive Staff will then pass the information down the chain of command. Human Resources will track the completion of probationary and annual evaluations and follow up as necessary.

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

Sincerely,

A handwritten signature in black ink that reads "Kevin Kish". The signature is written in a cursive, flowing style.

Kevin Kish  
DFEH Director