

# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS**

Compliance Review Unit  
State Personnel Board  
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## **INTRODUCTION**

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

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

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

## **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of Department of Industrial Relations (DIR) personnel practices in the areas of examinations, appointments, EEO, and PSC's from January 1, 2015, through October 1, 2015, and mandated training from October 1, 2013, through October 1, 2015. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Examinations	Applications Were Not Date Stamped and/or Accepted After The Final File Date	Non-serious or Technical
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated From Applications	Very Serious

Area	Finding	Severity
Appointments	Unlawful Appointment	Very Serious
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time	Serious
Appointments	Applications Were Not Date Stamped and/or Accepted After the Final File Date	Non-serious or Technical
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance
Mandated Training	Supervisory Training Was Not Provided for All Supervisors	Very Serious
Mandated Training	Ethics Training Was Not Provided for All Filers	Very Serious
Mandated Training	Sexual Harassment Training Was Not Provided for All Supervisors	Very Serious

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 DIR was established in 1927. Its mission is to improve working conditions for California's wage earners and to advance opportunities for profitable employment in California. The DIR administers and enforces laws governing wages, hours and breaks, overtime, retaliation, workplace safety and health, apprenticeship training programs, medical care, and other benefits for injured workers. The DIR also publishes materials, holds workshops and seminars to promote healthy employment relations, conducts research to improve its program, and coordinates with other agencies to target egregious violators of labor laws and tax laws in the underground economy.

As of January 2016, the DIR employs over 2,500 employees comprised of safety engineers, industrial hygienists, deputy labor commissioners, workers' compensation judges, apprenticeship consultants, research program specialists, information

technicians, educators, analysts, attorneys, communication staff, and office support staff.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing DIR examinations, appointments, EEO program, and PSC's from January 1, 2015, through October 1, 2015, and mandated training from October 1, 2013, through October 1, 2015. The primary objective of the review was to determine if the DIR personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of DIR examinations and appointments were selected for review to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the DIR provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action (NOPA) forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the DIR EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

DIR PSC's were also reviewed.<sup>1</sup> It was beyond the scope of the compliance review to make conclusions as to whether DIR justifications for the contracts were legally sufficient. The review was limited to whether DIR practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the DIR's mandated training 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>1</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 and sexual harassment training within statutory timelines.

On April 22, 2016, an exit conference was held with the DIR to explain and discuss the CRU's initial findings and recommendations. The DIR was given until May 4, 2016, to submit a written response to the CRU's draft report. On May 4, 2016, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) the advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the DIR conducted 21 examinations. The CRU reviewed ten of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Assistant Chief Counsel	Promotional	Supplemental Application <sup>2</sup>	8/14/15	3
Associate Safety Engineer (Elevators)	Open	Qualification Appraisal Panel (QAP) <sup>3</sup>	7/21/15	66
Career Executive Assignment (CEA) A, Chief, Labor Enforcement Task Force	CEA	Statement of Qualifications (SOQ's) <sup>4</sup>	4/3/15	3
CEA B, Chief, Claims and Risk Management	CEA	SOQ	1/2/15	2
CEA B, Chief, Division of Administration	CEA	SOQ	2/3/15	8
CEA B, Chief, Process Safety Management	CEA	SOQ	1/2/15	2
Chief Hearing Reporter, Division of Workers' Compensation	Promotional	Training & Experience (T&E) <sup>5</sup>	5/1/15	5
Deputy Labor Commissioner III	Open, Non-promotional	QAP	5/15/15	59
District Manager, Division of Occupational Safety and Health	Promotional	QAP	1/29/15	35
Office Services Supervisor II (General)	Open	T&E	2/27/15	37

<sup>2</sup> In a supplemental application (SA) examination, applicants are not required to present themselves in person at a predetermined time and place. Supplemental applications are in addition to the regular application and must be completed in order to remain in the examination. Supplemental applications are also known as "rated" applications.

<sup>3</sup> The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

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

<sup>5</sup> The training and experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values, which are totaled by the online system or a department exam analyst, and then assigned a percentage score.

**FINDING NO. 1 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications**

- Summary:** Out of 10 examinations reviewed, one exam included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, 28 of the 37 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.
- Criteria:** Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, age, or sexual orientation). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."
- Severity:** Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.
- Cause:** The DIR states that the failure to achieve 100% compliance in separating the EEO questionnaires from the STD 678 applications was caused by an oversight on the part of the employees processing the applications. The Exam Unit staff has now been trained to remove the EEO questionnaires from the exam applications.
- Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DIR submit to the CRU a written corrective action plan that the department will



implement to ensure conformity with in the future that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

**FINDING NO. 2 – Applications Were Not Date Stamped and/or Accepted After The Final File Date**

**Summary:** The DIR accepted and processed six out of 220 applications that were not date stamped and 45 applications that were date stamped after the final filing date for 10 examinations.

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

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

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

**Severity:** Non-serious or Technical. Final filing dates are established to ensure all applicants are given the same amount of time in which to apply for an examination and to set a deadline for the recruitment phase of the examination. Therefore, although the acceptance of applications after the final filing date may give

some applicants more time to prepare their application than other applicants who meet the final filing date, the acceptance of late applications will not impact the results of the examination.

**Cause:** The DIR states that the failure to achieve 100% compliance in date stamping all the STD 678 applications was caused by an oversight on the part of the employees processing the applications. The Examination Unit checks the postmark date and if it is on or before the FFD, the envelopes are destroyed and the application is date stamped (with a date after the FFD). If the postmark was after the FFD, the envelope was kept. The Exam Unit staff has now been trained to keep envelopes if it was received after the FFD no matter the postmark date.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DIR submit to the CRU a written corrective action plan that the department will implement to ensure conformity with Rule 174. Copies of any relevant documentation should be included with the plan.

### Appointments

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

During the compliance review period, the department made 617 appointments. The CRU reviewed 81 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Personnel Analyst	Certification List	Permanent	Full Time	2
Attorney V	Certification List	Permanent	Full Time	1
Auditor I	Certification List	Permanent	Full Time	4

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
CEA A	Certification List	Permanent	Full Time	1
CEA B	Certification List	Permanent	Full Time	2
Data Processing Manager II	Certification List	Permanent	Full Time	1
Deputy Labor Commissioner I	Certification List	Permanent	Full Time	3
Deputy Labor Commissioner III	Certification List	Permanent	Full Time	4
Information Systems Technician	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	4
Presiding Workers' Compensation Judge	Certification List	Permanent	Full Time	1
Special Investigator	Certification List	Permanent	Full Time	4
Staff Services Analyst (General)	Certification List	Permanent	Full Time	4
Staff Services Manager I	Certification List	Permanent	Full Time	2
Staff Services Manager I (Specialist)	Certification List	Permanent	Full Time	1
Supervising Workers' Comp Consultant	Certification List	Permanent	Full Time	2
Deputy Labor Commissioner I	Permissive Reinstatement	Permanent	Full Time	1
Management Services Technician	Permissive Reinstatement	Permanent	Full Time	1
Senior Safety Engineer Industrial	Retired Annuitant	Limited Term	Intermittent	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Associate Information Systems Analyst (Specialist)	Transfer	Permanent	Full Time	1
Deputy Labor Commissioner I	Transfer	Permanent	Full Time	2
Industrial Relations Counsel III (Specialist)	Transfer	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Industrial Relations Representative	Transfer	Permanent	Full Time	1
Management Services Technician	Transfer	Permanent	Full Time	4
Research Program Specialist I	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	2
Staff Services Manager II (Supervisor)	Transfer	Permanent	Full Time	1
Workers' Compensation Assistant	Transfer	Permanent	Full Time	1
Workers' Compensation Consultant	Transfer	Permanent	Full Time	1
Workers Compensation Judge	Transfer	Permanent	Full Time	2
Apprenticeship Consultant	Mandatory Reinstatement	Permanent	Full Time	1
Associate Governmental Program Analyst	Mandatory Reinstatement	Permanent	Full Time	1
Deputy Labor Commissioner I	Mandatory Reinstatement	Permanent	Full Time	1
Information Systems Technician	Mandatory Reinstatement	Permanent	Full Time	1
Legal Support Supervisor I	Mandatory Reinstatement	Permanent	Full Time	1
Office Technician (Typing)	Mandatory Reinstatement	Permanent	Full Time	1
Senior Personnel Specialist	Mandatory Reinstatement	Permanent	Full Time	1
Senior Information Systems Analyst (Specialist)	Mandatory Reinstatement	Permanent	Full Time	1
Staff Information Systems Analyst (Specialist)	Mandatory Reinstatement	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Workers' Compensation Consultant	Mandatory Reinstatement	Permanent	Full Time	1
Associate Information Systems Analyst (Specialist)	Training and Development (T&D)	Permanent	Full Time	1
Assistant Safety Engineer	T&D	Permanent	Full Time	1
Senior Legal Typist	T&D	Permanent	Full Time	1
Associate Safety Engineer (Mining, Tunneling, and Mineral Industries)	T&D	Permanent	Full Time	1
Assistant Safety Engineer	T&D	Permanent	Full Time	1
Associate Personnel Analyst	T&D	Permanent	Full Time	1
Associate Safety Engineer (Amusement Rides)	Temporary Authorization Utilization (TAU)	Temporary	Full Time	1
Associate Safety Engineer (Elevators)	TAU	Temporary	Full Time	2
Graduate Student Assistant	TAU	Temporary	Intermittent	1
Office Technician (Typing)	LEAP	Temporary	Full Time	3

### **FINDING NO. 3 – Equal Employment Opportunity Questionnaires Were Not Separated From Applications**

**Summary:** Out of 81 appointment files reviewed, 16 files included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, 55 of the 767 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.

**Criteria:** Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940,

subdivision (a) (e.g., a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by CalHR to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

**Severity:** Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

**Cause:** The DIR states that the failure to achieve 100% compliance in separating the EEO questionnaires from the STD 678 applications was caused by an oversight on the part of the employees processing the applications. DIR HR now only accepts electronic applications submitted online. The EEO forms are automatically detached via ECOS before DIR HR retrieves the applicant's application.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DIR submit to the CRU a written corrective action plan that the department will implement to ensure conformity with in the future that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

#### **FINDING NO. 4 – Unlawful Appointment**

**Summary:** A candidate in a non-reachable rank on the certification list was appointed to an Office Technician (Typing) position. Specifically, the candidate was in rank 17 at the time of hire, a rank that was not reachable. Ranks one through 13 had been cleared; however, ranks 14, 15, and 16 had interested candidates who were not

cleared from the list. The department mistakenly thought the appointee was in rank 15 because an individual in that rank shared the same name as the appointee. The department readily recognized and admitted they made an error when making this appointment.

**Criteria:** California Code of Regulations, title 2, § 254 (Rule 254) mandates that each vacancy for a class in which the certification of eligible is under Government Code §19057, the department shall fill a vacancy by eligible in the three highest names certified. Governmental Code section 19057 refers to promotional employment lists. Rule 254 additionally mandates that each vacancy for a class in which the certification of eligible is under Government Code §19057.1, 19057.2, and 19057.3, the department shall fill a vacancy by eligibles in the three highest ranks certified. Government Code § 19057.1, 19057.2 and 19057.3 refers to professional, scientific, administrative and management classifications.

**Severity:** Very Serious. An unlawful appointment provides the employee with an unfair and unearned appointment advantage over other employees whose appointments have been processed in compliance with the requirements of civil service law. Unlawful appointments which are not corrected also create appointment inconsistencies that jeopardize the equitable administration of the civil service merit system.

When an unlawful appointment is voided, the employee loses any tenure in the position, as well as seniority credits, eligibility to take promotional examinations, and compensation at the voided appointment level. If “bad faith” is determined on the part of the appointing power, civil or criminal action may be initiated. Disciplinary action may also be pursued against any officer or employee in a position of authority who directs any officer or employee to take action in violation of the appointment laws. If bad faith is determined on the part of the employee, the employee may be required to reimburse all compensation resulting from the unlawful appointment and may also be subject to disciplinary action. In this case, the appointment will stand as more than one

year has elapsed and the candidate accepted the job offer in good faith.

**Cause:** The DIR states that this was a clerical error as there were three candidates on the eligibility list with the same name. DIR HR has reminded the Certification Unit staff of the importance of verifying the hired candidate.

**Action:** The CRU referred this unlawful appointment to the CalHR Personnel Management Division. The Personnel Management Division has informed the DIR of the findings with instructions to investigate and take corrective action. Within 60 days of the Executive Officer's approval of these findings and recommendations, the DIR must submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure the department will improve its hiring practices. Copies of any relevant documentation should be included with the plan.

**FINDING NO. 5 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**

**Summary:** The DIR did not prepare, complete, and/or retain 25 required probationary reports of performance.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Associate Personnel Analyst	Certification List	1	2
Deputy Labor Commissioner I	Certification List	1	1
Deputy Labor Commissioner III	Certification List	3	5
Information Systems Technician	Certification List	1	2
Office Technician (Typing)	Certification List	2	4
Staff Services Analyst (General)	Certification List	1	1



Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Staff Services Manager I	Certification List	1	1
Supervising Workers' Compensation Consultant	Certification List	2	2
Associate Information Systems Analyst (Specialist)	Transfer	1	3
Industrial Relations Counsel III (Specialist)	Transfer	1	1
Industrial Relations Representative	Transfer	1	1
Staff Services Analyst (General)	Transfer	1	1
Staff Services Manager II (Supervisor)	Transfer	1	1
<b>Total</b>		<b>17</b>	<b>25</b>

**Criteria:**

A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2,

§ 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

**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 DIR states that when an employee is serving a probationary period, the assigned Personnel Specialist communicates the length of the probationary period as well as the dates reports are due to the supervisor for the employee. Although the dates are provided, it is incumbent upon the supervisor to not only provide the reports on a timely basis to the employees, but also to ensure the original signed report is forwarded to the Personnel Specialist for placement into the employees official personnel file. In this case, the reports were never forwarded to the Personnel Specialist from the supervisor. DIR HR has made good faith efforts to provide clarity on the probationary period to all management within the DIR. DIR HR states that they relied on a manual system and lacked an automated tracking system to allow for follow-up as the due date approached to ensure probationary reports were submitted in a timely manner.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DIR submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172.

**FINDING NO. 6 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time**

**Summary:** The DIR failed to retain personnel records such as NOPA's and applications. Specifically, seven out of 81 NOPA's were missing

from the personnel files, and 10 out of 81 files reviewed were missing all but the hired applicant's application.

**Criteria:** As specified in section 26 of the Board's regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointment 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 Reg., tit. 2, § 26.) Section 174 of the Board's regulations specifically applies to examination applications and requires a two year retention period.

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

**Cause:** The DIR states that when a civil service employee is initially appointed, a NOPA is generated for the employee to sign acknowledging pertinent appointment information. When these NOPA's are generated, the assigned Personnel Specialist will route or mail the document to the employee with a request that it be returned signed. The Personnel Specialist is required to follow-up with the employee within a reasonable amount of time for documentation not received back from the employee. In the seven cases mentioned, these documents were never returned from the employee. For the 10 missing hired applicant applications the Transaction unit has been reminded of the need to have the STD. 678 attached with the hiring documents.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DIR submit to the CRU a written corrective action plan that 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 any relevant documentation should be included with the plan.

**FINDING NO. 7 – Applications Were Not Date Stamped and/or Accepted After The Final File Date**

**Summary:** The DIR accepted and processed 42 out of 841 applications that were not date stamped and 158 applications that were date stamped after the final filing date.

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

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

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

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

**Cause:** The DIR states that the failure to achieve 100% compliance in date stamping all the STD 678 applications was caused by an oversight on the part of the employees processing the applications. DIR HR now only accepts electronic applications submitted online. Late applications are automatically marked as such and if marked accurately, will not be forwarded to the divisions.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DIR submit to the CRU a written corrective action plan that the department will implement to ensure conformity with Rule 174. Copies of any relevant documentation should be included with the plan.

### Equal Employment Opportunity

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

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

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

The CRU reviewed the DIR's EEO program that was in effect during the compliance review period.

**FINDING NO. 8 – Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules**

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the DIR's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level and is the Personnel Officer, reports directly to the Director of the DIR. In addition, the DIR has an established DAC. The DIR completed a workforce analysis, which was submitted to the CRU. The DIR also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff.

Personal Services Contracts

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 Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify the 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 compliance review period, the DIR had the following 20 PSC's that were in effect and subject to Department of General Services (DGS) approval and thus our procedural review.

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Ace Attorney Service, Inc.	Legal Services	8/1/2015 - 7/31/2017	\$100,000	Yes
California Department of Public Health	Hazard Evaluation System & Information Service	7/2/2015 - 6/30/2018	\$3,049,917	Yes
California Deposition Reporters, Inc.	Court Reporting & Transcript Services	4/1/2015 - 3/31/2017	\$150,000	Yes
Employment Development Department (EDD)	Cashiering & Collection Services	7/1/2015 - 6/30/2017	\$1,259,530	Yes
EDD	Interagency Mailing Services	7/1/2015 - 6/30/2018	\$6,001,275	Yes
EMSL Analytical, Inc.; DBA: LA Testing	Lab Services	7/1/2015 - 6/30/2017	\$190,000	Yes
Felipe C. Ortiz	Translation & Interpreting Services	7/1/2015 - 6/30/2017	\$160,000	Yes
Hanna Interpreting Services, LLC	Translation & Interpreting Services	7/15/2015 - 6/30/2017	\$200,000	Yes
Kennedy Court Reporters	Court Reporting & Transcript Services	7/15/2015 - 6/30-2017	\$200,000	Yes
Mob Media, Inc.	Heat Illness Media Campaign	7/1/2015 - 10/31/2015	\$203,000	Yes
NM Spanish Interpreter / Translator	Translation & Interpreting Services	1/1/2015 - 12/31/2016	\$107,000	Yes
PSI Services, LLC	Develop & Administer Certification Exams	7/15/2015 - 6/30/2017	\$3,024,000	Yes
Rand Corporation	Economic Survey & Analysis	4/15/2015 – 9/14/2016	\$179,972	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Secure Record Management / Secure	File Scanning and Shredding Services	3/2/2015 – 8/30/2015	\$71,575	Yes
Regents of the University of California	Patient Handling Outreach & Education Program	4/1/2015 – 3/31/2016	\$132,359	Yes
Regents of the University of California	Injury & Illness Prevention Program	7/1/2015 – 6/30/2016	\$75,000	Yes
Regents of the University of California	Worker Occupational Safety & Health Training & Education (WOSHTEP)	7/1/2015 – 6/30/2016	\$349,000	Yes
Regents of the University of California	Additional Assistance WOSHTEP	7/1/2015 – 6/30/2016	\$220,000	Yes
Wage Justice Center	Delinquent Debt Collection	2/1/2015 – 1/31/2017	\$696,000	Yes
Willenken, Wilson, Loh & Delgado, LLP	Legal Services	7/1/2015 – 6/30/2016	\$600,000	Yes

#### **FINDING NO. 9 – Personal Services Contracts Complied with Procedural Requirements**

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes *specific and detailed factual information* that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total amount of all the PSC's reviewed was \$16,968,628.00. It was beyond the scope of the review to make conclusions as to whether DIR's justifications for the contracts were legally sufficient. For all PSC's subject to DGS approval, the DIR provided specific and detailed factual information in the written justifications as to how each of the 20 contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the DIR PSC's complied with procedural requirements.



## Mandated Training

Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, § 1146.1) New filers must be trained within six months of appointment. (Gov. Code, § 11146.3)

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

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

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

### **FINDING NO. 10 – Supervisory Training Was Not Provided for All Supervisors**

**Summary:** The DIR did not provide basic supervisory training to 21 of 50 new supervisors within 12 months of appointment.

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

**Severity:** Very Serious. The department does not ensure its new managers are properly trained. Without proper training, new supervisory employees may not properly carry out their supervisory roles, including managing employees.

**Cause:** The DIR states that despite notifying all employees and their supervisors of the requirement to take all mandatory training, supervisors do not always take the training, possibly due to workload or remote supervision of field staff

**Action:** The DIR must take appropriate steps to ensure that new supervisors are provided supervisory training within the twelve months.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the DIR must establish a plan to ensure compliance with supervisory training mandates and submit to the SPB a written report of compliance.

#### **FINDING NO. 11 – Ethics Training Was Not Provided for All Filers**

**Summary:** The DIR did not provide ethics training to 30 of 82 existing filers. In addition, the DIR did not provide ethics training to 10 of 20 new filers within six months of their appointment.

**Criteria:** New filers must be provided ethics training within six months of appointment. Exiting filers must be trained least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).) Course content must be approved by the Fair Political Practices Commission and the Attorney General. (Gov. Code, § 11146.1, subd. (c).)

**Severity:** Very Serious. The department does not ensure its filers are aware of prohibitions related to his or her official position and influence.

**Cause:** The DIR states that despite notifying all employees and their supervisors of the requirement to take all mandatory training, supervisors do not always take the training, possibly due to workload or remote supervision of field staff.

**Action:** The DIR must take appropriate steps to ensure that filers are provided ethics training within the time periods prescribed.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the DIR must establish a plan to ensure compliance with ethics training mandates and submit to the SPB a written report of compliance.

**FINDING NO. 12 – Sexual Harassment Training Was Not Provided for All Supervisors**

**Summary:** The DIR did not provide sexual harassment prevention training to training to 19 of 82 existing supervisors every two years. In addition, the DIR did not provide sexual harassment prevention training to four of 20 new supervisors within six months of appointment.

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

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

**Cause:** The DIR states that despite notifying all employees and their supervisors of the requirement to take all mandatory training, supervisors do not always take the training, possibly due to workload.

**Action:** The DIR must take appropriate steps to ensure that its supervisors are provided sexual harassment training within the time periods prescribed.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the DIR must establish a plan to ensure

compliance with sexual harassment training mandates and submit to the SPB a written report of compliance.

### **DEPARTMENTAL RESPONSE**

The DIR's response is attached as Attachment 1.

### **SPB REPLY**

Based upon the DIR's written response, the DIR will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

It is further recommended that the DIR comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.

## STATE OF CALIFORNIA

Edmund G. Brown Jr., Governor

## DEPARTMENT OF INDUSTRIAL RELATIONS

## HUMAN RESOURCES

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May 4, 2016

Suzanne Ambrose  
Executive Officer  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95818

Dear Ms. Ambrose:

The Department of Industrial Relations (DIR) would like to thank the State Personnel Board's Compliance Review Unit (CRU) for undertaking the 2015 DIR Compliance Review. The DIR has reviewed the report and provides the following information regarding the findings.

## Specific Findings and Responses:

**FINDING NO. 1 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications.** The report noted that DIR did not separate 28 EEO questionnaires from 37 applications.

**Response:** The Exam Unit staff has now been trained to remove the EEO questionnaires from all exam applications.

**FINDING NO. 2 – Applications Were Not Date Stamped and/or Accepted After The Final File Date.** The report noted that 220 applications were not date stamped and 60 applications were date stamped after the final filing date for 10 exams.

**Response:** The Exam Unit staff has been advised to keep all envelopes that are received after the FFD to show proof of meeting the FFD postmark date. DIR HR has reinforced date stamping all exam applications on the front page of the applications with the Exam Unit staff.

**FINDING NO. 3 – Equal Employment Opportunity Questionnaires Were Not Separated From Applications.** The report noted that out of 81 appointment files reviewed 16 files included the EEO questionnaires

**Response:** DIR HR has reinforced this requirement with the Certification Unit. Currently DIR HR is only accepting electronic applications through ECOS and the system automatically removes the EEO questionnaires. This should eliminate this error from occurring moving forward.

**FINDING NO. 4 – Unlawful Appointment.** The report notes a candidate was hired out of a non-reachable rank on the certification list at the Office Technician (typist) level.

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**Response:** DIR HR sent a Potential Unlawful Appointment letter to the candidate and is conducting a Preliminary Determination. The DIR HR Certification Unit has been reminded to accurately verify the hired candidates' eligibility as there can be more than one person on the eligibility list with the same name.

**FINDING NO. 5 – Probationary Evaluations Were Not Provided for All Appointments Reviewed.** The report notes that 25 probationary reports of performance were not prepared, completed and/or retained.

**Response:** DIR HR will put in place a tracking system with managers and supervisors to ensure Probationary Reports are completed and issued timely to probationary employees.

**FINDING NO. 6 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time.** The report notes that DIR failed to retain personnel records for the appropriate amount of time and there were missing NOPA's out of the 81 files reviewed.

**Response:** DIR HR will develop a tracking system to ensure receipt of signed NOPA's. For the 10 missing hired applications, the Transactions Unit has been reminded of the need to have the STD. 678 attached with the hiring documents.

DIR HR Certification Unit will require hiring managers to provide interview questions, practical exercises or written exercises completed by the applicants, rating criteria, notices sent to the applicants, list of applicants interviewed, dates of interviews, panel members of the interviews, and hiring supervisor notes regarding applicants. These documents will be placed in the hiring files.

**FINDING NO. 7 – Applications Were Not Date Stamped and/or Accepted After The Final File Date.** The report indicates out of the 841 applications accepted and processed 42 were not date stamped and 158 were date stamped after the FFD.

**Response:** DIR HR states that the failure to achieve 100% compliance in date stamping all the STD 678 applications was caused by an oversight on the part of the employees processing the applications. DIR HR now only accepts electronic applications submitted online through ECOS. Late applications are automatically marked as such and will not be forwarded to the divisions.

**FINDING NO. 10 – Supervisory Training Was Not Provided for All Supervisors.** The report indicates that 21 of the 50 new supervisors were not provided basic supervisory training within the first 12 months of appointment.

**Response:** DIR HR is going to establish a Training and Development unit that will be responsible for tracking and ensuring the required Basic Supervisory Training is completed by new supervisors and managers within a year.

**FINDING NO. 11 – Ethics Training Was Not Provided for All Filers.** The report indicates that 30 of 82 existing filers were not provided training. Furthermore, 10 of the 20 new filers were not provided training within the first six months of their appointment.

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**Response:** DIR HR is going to hire an Ethics Officer who will be responsible for tracking and ensuring designated Filers complete the required Ethics Training within the first six months of their appointment.

**FINDING NO. 12 – Sexual Harassment Training Was Not Provided for All Supervisors.**

The report indicates that 19 of 82 existing supervisors were not provided training every two years. Furthermore, four of the 20 new supervisors were not provided training within the first six months of their appointment.

**Response:** DIR HR is going to establish a Training and Development Unit that will be responsible for tracking and ensuring the required Sexual Harassment Training is completed by supervisors and managers within the first six months of appointment.

DIR HR would like to once again thank the SPB Compliance Review team and appreciate the opportunity to respond to the reports. DIR will continue to educate and train our Divisions on the best hiring practices and requirements to ensure compliance with SPB's civil service merit system.

If you have questions or need additional information, feel free to contact me at (415) 703-1446.

Sincerely,



Johanna M. Collins  
DIR Exam Manager

cc: Cliff Okamoto, Chief of Administration  
Lourdes Coles, Acting HR Chief