



# **COMPLIANCE REVIEW REPORT**

## **DEPARTMENT OF INDUSTRIAL RELATIONS**

Compliance Review Unit  
State Personnel Board  
September 30, 2019

## TABLE OF CONTENTS

Introduction .....	1
Executive Summary .....	2
Background .....	4
Scope and Methodology.....	4
Findings and Recommendations .....	6
Examinations .....	6
Appointments .....	9
Equal Employment Opportunity .....	13
Personal Services Contracts.....	15
Mandated Training .....	17
Compensation and Pay.....	21
Leave .....	34
Policy and Processes.....	44
Departmental Response.....	47
SPB Reply .....	47

## 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. Those 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 those reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews.

Effective July 1, 2012, the Governor's Reorganization Plan Number One (GRP1) of 2011 consolidated all of the functions of the Department of Personnel Administration and the merit-related operational functions of the State Personnel Board (SPB) into the California Department of Human Resources (CalHR).

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

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

The SPB conducts those 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 Industrial Relations (DIR)’s 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	Probationary Evaluations Were Not Provided for All Appointments Reviewed
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time
Equal Employment Opportunity	Equal Employment Opportunity Officer Does Not Report Directly to the Head of the Agency
Personal Services Contracts	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Supervisory Training Was Not Provided for All Supervisors
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
Mandated Training	Ethics Training Was Not Provided for All Filers
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

<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
Compensation and Pay	Hiring Above Minimum Requests Did Not Comply with Civil Service Laws, Board Rules, and/or Policies and Guidelines
Compensation and Pay	Red Circle Rate Authorizations Complied with Civil Service Laws, Board Rules, and 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
Compensation and Pay	Out-of-Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Actual Time Worked Employee Exceeded the Nine Month in Any Twelve Consecutive Month Limitation
Leave	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Department Has Not Implemented a Monthly Internal Audit Process to Verify Timesheets are Keyed Accurately and Timely
Leave	Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits
Leave	Error In State Service and Leave Transaction
Policy	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisals Were Not Provided to All Employees

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

- Red = Very Serious
- Orange = Serious
- Yellow = 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, and medical care and other benefits for injured workers. The DIR also publishes materials and holds workshops and seminars to promote healthy employment relations, conducts research to improve its programs, and coordinates with other agencies to target egregious violators of labor laws and tax laws in the underground economy.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the DIR'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 DIR'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 DIR'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 DIR provided, which included examination plans, examination bulletins, job analyses, and scoring results.

The DIR did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the DIR'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 DIR 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.

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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.

The DIR did not conduct any unlawful appointment investigations or make any additional appointments during the compliance review period.

The DIR's appointments were also selected for review to ensure the DIR applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the DIR 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, red circle rate requests, bilingual pay, monthly pay differentials, and out-of-class assignments.

During the compliance review period, the DIR did not issue or authorize any arduous pay.

The review of the DIR'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 DIR'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 DIR's justifications for the contracts were legally sufficient. The review was limited to whether the DIR's practices, policies, and procedures relative to PSC's complied with procedural requirements.

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

The CRU also identified the DIR's employees whose current annual leave, or vacation leave credits, exceeded established limits. The CRU reviewed a cross-section of those 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 DIR to provide a copy of their leave reduction policy.

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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.

The CRU reviewed the DIR's Leave Activity and Correction Certification forms to verify that the DIR 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 DIR's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the DIR's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the DIR employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Moreover, the CRU reviewed a selection of the DIR employees tracked by actual time worked (ATW) during the compliance review period in order to ensure that ATW was appropriately utilized.

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

On September 4, 2019, an exit conference was held with the DIR to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DIR's revised written response on September 23, 2019, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

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



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

During the period under review, March 1, 2018 through August 30, 2018, the DIR conducted 17 examinations. The CRU reviewed 13 of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Assistant Chief, Division of Labor and Standards Enforcement (DLSE)	Departmental Promotional	Statement of Qualifications (SOQ) <sup>4</sup>	6/8/2018	9
Career Executive Assignment (CEA) A, Chief Accounting Officer	CEA	SOQ	5/8/2018	2
CEA B, Chief Information Officer	CEA	SOQ	8/28/2018	17
CEA B, Deputy Chief, DLSE	CEA	SOQ	8/27/2018	4
Apprenticeship Consultant	Open	Training and Experience (T&E) <sup>5</sup>	4/30/2018	25
Apprenticeship Consultant	Open	T&E	7/31/2018	20
Assistant Safety Engineer	Open	T&E	6/8/2018	91
Associate Safety Engineer	Open	T&E	7/31/2018	57

<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.

<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.

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Office Services Supervisor II	Open	T&E	4/10/2018	48
Office Services Supervisor III	Departmental Promotional	T&E	4/6/2018	23
Workers' Compensation Consultant	Open	T&E	3/22/2018	20
Workers' Compensation Consultant	Open	T&E	6/21/2018	5
Regional Manager	Departmental Promotional	Qualification Appraisal Panel <sup>6</sup>	5/8/2018	47

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

The CRU reviewed CEA, departmental promotional and open examinations which the DIR administered in order to create eligible lists from which to make appointments. The DIR published and distributed examination bulletins containing the required information for all examinations. Applications received by the DIR 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 DIR conducted during the compliance review period.

In July of 2018, the SPB concluded a special investigation into the examination process and exam file documentation. While investigating the DIR's conduct of various examinations, the SPB found several significant deficiencies in the administration of the QAP exams. As of this date, the specific recommendation for all QAP chairs to be re-trained and re-certified as QAP Chairs has been implemented.

<sup>6</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.

## **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 period under review, October 1, 2017 through March 31, 2018, the DIR made 464 appointments. The CRU reviewed 43 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accountant Trainee	Certification List	Permanent	Full Time	1
Accounting Administrator I	Certification List	Permanent	Full-time	1
Assistant Information Systems Analyst	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Associate Safety Engineer	Certification List	Permanent	Full Time	1
Attorney	Certification List	Permanent	Full Time	1
Attorney III	Certification List	Permanent	Full Time	1
Auditor I	Certification List	Permanent	Full Time	1
Deputy Labor Commissioner I	Certification List	Permanent	Full Time	1
Deputy Labor Commissioner II	Certification List	Permanent	Full Time	1
Health and Safety Officer	Certification List	Permanent	Full Time	1
Hearing Reporter	Certification List	Permanent	Full Time	1
Industrial Relations Representative	Certification List	Limited Term	Full Time	1
Junior Safety Engineer	Certification List	Permanent	Full Time	2
Legal Secretary	Certification List	Permanent	Full Time	1
Management Services Technician	Certification List	Permanent	Full Time	1
Office Assistant (Typing)	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	2
Principal Safety Engineer (Industrial)	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Senior Apprenticeship Consultant	Certification List	Limited Term	Full Time	1
Senior Legal Typist	Certification List	Permanent	Full Time	1
Senior Safety Engineer (Industrial)	Certification List	Permanent	Full Time	1
Special Investigator	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Permanent	Full Time	3
Staff Services Manager I	Certification List	Permanent	Full Time	1
Supervising Workers' Compensation Consultant	Certification List	Permanent	Full Time	1
Systems Software Specialist I (Technical)	Certification List	Permanent	Full Time	1
Systems Software Specialist II (Technical)	Certification List	Permanent	Full Time	1
Workers' Compensation Judge	Certification List	Permanent	Full Time	1
Associate Safety Engineer	Permissive Reinstatement	Permanent	Full Time	1
Deputy Labor Commissioner I	Permissive Reinstatement	Limited Term	Full Time	1
Industrial Relations Counsel III (Specialist)	Permissive Reinstatement	Permanent	Full Time	1
Industrial Relations Representative	Training and Development (T&D)	Permanent	Full Time	1
Junior Industrial Hygienist	T&D	Permanent	Full Time	1
Junior Safety Engineer	T&D	Permanent	Full Time	1
Senior Legal Typist	T&D	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Attorney III	Transfer	Permanent	Full Time	1
Assistant Industrial Hygienist	Transfer	Permanent	Full Time	1
Hearing Officer I	Transfer	Permanent	Full Time	1
Hearing Reporter	Transfer	Permanent	Full Time	1
Office Assistant (Typing)	Transfer	Permanent	Full Time	1
Senior Legal Typist	Transfer	Permanent	Full Time	1

The DIR measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the 33 list appointments, the DIR ordered a certification list of candidates ranked competitively. After

properly clearing the SROA<sup>7</sup> certification list, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists. Additionally, the CRU found no deficiencies in the three permissive reinstatements the DIR made.

Eligibility for training and development assignments shall be limited to employees who (1) have permanent status in their class, or (2) who have probationary status and who previously had permanent status and who, since such permanent status, had no break in service due to a permanent separation. (Gov. Code, § 438, subds. (a) & (b).) The CRU found no deficiencies in the four training and development appointments the DIR made.

A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Regs., tit. 2, § 425.) For each of the seven transfers, the DIR verified the eligibility of each candidate to their appointed class.

However, in reviewing the DIR’s appointments that were made during the compliance review period, the CRU determined the following:

**FINDING NO. 2 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**

**Summary:** The DIR did not prepare, complete, and/or retain 12 probationary reports of performance for nine of the 43 appointments.

Classification	Appointment Type	No. of Appointments	No. of Missing Probation Reports
Office Technician (Typing)	Certification List	1	1
Deputy Labor Commissioner	Certification List	1	1
Staff Services Manager I	Certification List	1	1
Associate Governmental Program Analyst	Certification List	3	6

<sup>7</sup> The state restriction of appointments (SROA) program is intended to prevent the layoff and separation of skilled an experienced employees from state service. The SROA program assists in placing affected employees by temporarily restricting the methods of appointment available to appointing powers. Employees on SROA lists are granted preferential consideration over all other types of appointments except appointments from reemployment lists and mandatory reinstatements.

Classification	Appointment Type	No. of Appointments	No. of Missing Probation Reports
Workers' Compensation Judge	Certification List	1	1
Legal Secretary	Certification List	1	1
Hearing Reporter	Transfer	1	1
Total		9	12

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

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

**Cause:** Although, the DIR's Human Resources (HR) unit sends system generated notifications of the probationary periods to the supervisor and division liaison staff for their new employees, as well as a system generated reminder when a probationary report is past due, there are no procedures in place to ensure the probationary reports are completed and submitted to HR for retention. Additionally, there are no procedures in place to report non-compliance to the senior management on a department-wide basis.

**Action:** The DIR submitted a corrective action plan to develop a new written procedure to track probationary evaluations. However, the DIR must continue to monitor probationary reports to ensure conformity with Government Code section 19171 and California Code of Regulations, title 2, section 599.795. Within 60 days of the SPB

Executive Officer's approval of these findings and recommendations, copies of relevant documentation including the new written procedure and training log for the notification and tracking process shall be submitted to the CRU.

**FINDING NO. 3 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time**

- Summary:** DIR did not retain five NOPAs in 43 appointment files.
- 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. Those 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. Accessibility of documentation is required for auditing purposes as well as for the retrieval of important information pertaining to employment and compensation.
- Cause:** HR did not consistently follow up with employees regarding retention of NOPAs and did not ensure that a copy of the NOPA was placed in the employees' official personnel file (OPF).
- Action:** The DIR submitted a corrective action plan to ensure that NOPAs are retained in the OPF. However, the DIR must continue to monitor NOPAs to ensure conformity with California Code of Regulations, title 2, section 26. Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation including the updated onboarding checklist and the monthly report to executive management shall be submitted to the CRU.

**Equal Employment Opportunity**

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing,

processing, and resolving discrimination complaints; and cooperate with the California Department of Human Resources by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power of each state agency and the director of each department shall 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).)

**FINDING NO. 4 – Equal Employment Opportunity Officer Does Not Report Directly to the Head of the Agency**

**Summary:** The DIR's EEO Officer does not report directly to the director of the department. According to the organizational chart, the EEO Officer reports to the CEA A, Operations Research and Implementation. However, the duty statement indicates that the EEO Officer reports to the Special Assistant to the Director of the Department. No separate, direct reporting relationship with the head of the department has been established for EEO responsibilities.

**Criteria:** The appointing power of each state agency and the director of each state department shall appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the agency to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

**Severity:** Very Serious. The EEO Officer does not have direct access to the head of the department, diminishing the significance of the EEO program.



**Cause:** The previous Director did not have the Civil Rights Officer/Equal Employment Officer (CRO/EEO) report to the Director.

**Action:** The DIR submitted a corrective action plan to ensure that the CRO/EEO Officer reports to the Director on matters related to EEO to ensure conformity with Government Code section 19795. Within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, copies of relevant documentation including the CRO's revised duty statement shall be submitted to the CRU.

### **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 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 period under review, March 1, 2018 through August 30, 2018, the DIR had 77 PSC's that were in effect. The CRU reviewed 15 PSCs.

### **FINDING NO. 5 – Unions Were Not Notified of Personal Services Contracts**

**Summary:** 10 PSC's were executed before unions were notified.

Vendor	Services	Contract Dates	Contract Amount	Union Notified
Court Call LLC	Third party servicing for all courts for non in-person required appearances.	7/1/17 - 6//30/18	\$4,999.99	No
Paul Agajanian Commercial Closer Service Company	Furnish and install new locks	5/3/18 - 12/31/18	\$2,309.75	No
Lilia's Interpreting Services	Spanish Interpreting services for hearings	4/11/18 - 6/30/18	\$200.00	No
All World Language Consultants, Inc.	American sign language interpreting services	5/1/18 - 6/30/19	\$9,999.00	No
Providence Publication dba Cal-Osha Reporter	Posting of job advertisements	6/15/18 - 6/30/18	\$422.00	No
Phoenix Business Inc.	Information Technology services	1/8/18 - 1/7/19	\$1,346,650.00	No
Bridge Micro	FileMaker license and maintenance	6/22/18 - 6/22/19	\$39,785.00	No
Scantron Corporation	5 year software maintenance agreement	6/5/18 - 6/3/23	\$1,660.50	No
Scantron Corporation	Software maintenance renewal of the Scantron System located in Sacramento DOSH Asbestos Unit	6/5/18 - 6/3/18	\$1,385.00	No
Bear Wire	Cabling for phone	8/16/18 – 8/16/18	\$13,833.63	No

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

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

**Cause:** The DIR’s general practice is to notify unions. However, the DIR does not have an internal review process to ensure that business services

staff are aware of pending personal services contracts. The DIR did not provide regular training to business services staff regarding union notification when issuing personal services contracts.

**Action:** The DIR submitted a corrective action plan to ensure that all the unions are notified before PSC's are executed. However, the DIR must continue to monitor PSC's to ensure conformity with Government Code section 19132, subdivision (b)(1). Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation including the log of Business Management Analysts who have attended initial and/or refresher training and the new internal review process shall be submitted to the CRU.

### **Mandated Training**

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & 19995.4, subd. (b).)

Additionally, the training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or Career Executive Assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by the 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 biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

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

**FINDING NO. 6 – Supervisory Training Was Not Provided for All Supervisors**

**Summary:** The DIR did not provide basic supervisory training to five of 79 new supervisors within twelve months of appointment.

**Criteria:** Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. (Gov. Code, § 19995.4, subd. (b).) Upon completion of the initial training, supervisory employees shall receive a minimum 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subd. (c).)

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

**Cause:** The DIR states that it recognizes the importance of supervisor training and has strived to ensure supervisors are trained. However, the DIR did not have an adequate tracking system in place to monitor compliance with the Basic Supervisor training requirement.

**Action:** The DIR has decreased the number of noncompliant supervisors. However, the DIR must submit to CRU corrective actions to improve the current process. Furthermore, the DIR must continue to monitor supervisory training to ensure conformity with Government Code section 19995.4, subdivision (b). Within 60 days of the SPB Executive Officer’s approval of these findings and recommendations, copies of any relevant documentation including any process improvements that have been implemented after the review shall be submitted to the CRU.

**FINDING NO. 7 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors**

**Summary:** The DIR did not provide sexual harassment prevention training to 27 of 96 new supervisors within six months of their appointment. Additionally, the DIR did not provide sexual harassment prevention training to 29 of 259 existing supervisors every two years.

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

**Severity:** Very Serious. The department does not ensure 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 liability.

**Cause:** The DIR states that it recognizes the importance of sexual harassment prevention training to ensure a safe and healthy workplace. To date, 96% of the DIR’s managers have completed the required training. Notice to complete sexual harassment prevention training is automatically sent to new supervisors upon appointment and sent to existing supervisors every two years through an online system. Supervisors did not complete the training due to inconsistent follow up to ensure the course was completed.

**Action:** While the DIR has increased the compliance rate for sexual harassment prevention training (SHPT), it must ensure that all supervisors receive the training. The DIR must submit to CRU corrective actions to improve the current process. Furthermore, the DIR must continue to monitor SHPT to ensure conformity with Government Code section 12950.1 subdivision (a). Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation such as improvements to the current process shall be submitted to the CRU.

**FINDING NO. 8 – Ethics Training Was Not Provided for All Filers**

**Summary:** The DIR did not provide ethics training to 921 of 1,287 existing filers. In addition, the DIR did not provide ethics training to 468 of 525 new filers within six months of their appointment.

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

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

**Cause:** Due to resources and staff shortages in HR, there was no implementation of the tracking mechanism of the ethics training. Therefore, filers who took the training may not have submitted certificates to HR.

**Action:** The DIR has submitted a corrective action plan to develop a tracking mechanism for ethics training. However, the DIR must continue to monitor ethics training to ensure conformity with Government Code sections 11146.1 and 11146.3. Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation such as the contract for the tracking mechanism shall be submitted to the CRU.

## **Compensation and Pay**

### **Salary Determination**

The pay plan for state civil service consists of salary ranges and steps established by the CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate<sup>8</sup> upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

During the period under review, October 1, 2017 through March 31, 2018, the DIR made 464 appointments. The CRU reviewed 44 of those appointments to determine if the DIR applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accountant Trainee	Certification List	Permanent	Full Time	\$3,524
Attorney III	Certification List	Permanent	Full Time	\$8,856
Auditor I	Certification List	Permanent	Full Time	\$3,377
Hearing Reporter	Certification List	Permanent	Full Time	\$5,188
Industrial Relations Representative	Certification List	Limited Term	Full Time	\$4,177
Junior Safety Engineer	Certification List	Permanent	Full Time	\$5,098
Junior Safety Engineer	Certification List	Permanent	Full Time	\$5,098
Office Technician (Typing)	Certification List	Permanent	Full Time	\$2,921
Senior Apprenticeship Consultant	Certification List	Limited Term	Full Time	\$6,605
Workers Compensation Judge	Certification List	Permanent	Full Time	\$8,638
Accounting Administrator I (Supervisor)	Certification List	Permanent	Full Time	\$5,435
Associate Safety Engineer	Certification List	Permanent	Full Time	\$6,753
Deputy Labor Commissioner II	Certification List	Permanent	Full Time	\$6,747
Principal Safety Engineer (Industrial)	Certification List	Permanent	Full Time	\$11,797

<sup>8</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)
Senior Safety Engineer	Certification List	Permanent	Full Time	\$9,277
Supervising Workers' Comp Compliance Officer	Certification List	Permanent	Full Time	\$7,346
Deputy Labor Commissioner	Transfer	Limited Term	Full Time	\$7,068
Attorney III	Transfer	Permanent	Full Time	\$9,299
Associate Safety Engineer	Transfer	Permanent	Full Time	\$9,547
Industrial Relations Counsel III (Specialist)	Transfer	Permanent	Full Time	\$10,967
Hearing Officer I, Occupational Safety and Health Appeals	Transfer	Permanent	Full Time	\$9,299
Hearing Reporter	Transfer	Permanent	Full Time	\$5,446
Systems Software Specialist II (Technical)	Certification List	Permanent	Full Time	\$6,047
Legal Secretary	Certification List	Permanent	Full Time	\$3,303
Senior Legal Typist	Certification List	Permanent	Full Time	\$2,815
Office Assistant (Typing)	Certification List	Permanent	Full Time	\$2,652
Staff Services Manager I	Certification List	Permanent	Full Time	\$6,287
Systems Software Specialist I (Technical)	Certification List	Permanent	Full Time	\$5,814
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	\$5,988
Assistant Information Systems Analyst	Certification List	Permanent	Full Time	\$2,974
Sr. Legal Typist	Transfer	Permanent	Full Time	\$3,304
Office Assistant (Typing)	Transfer	Permanent	Full Time	\$2,796
Management Services Technician	Transfer	Permanent	Full Time	\$3,399
Assistant Industrial Hygienist	Transfer	Permanent	Full Time	\$5,763
Attorney	Certification List	Permanent	Full Time	\$5,387
Management Services Technician	Certification List	Permanent	Full Time	\$3,838
Management Services Technician	Certification List	Permanent	Full Time	\$3,838
Special Investigator	Certification List	Permanent	Full Time	\$5,274
Associate Budget Analyst	Certification List	Permanent	Full Time	\$4,784



Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,784
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,047
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,229
Associate Safety Engineer	Certification List	Permanent	Full Time	\$7,632
Deputy Labor Commissioner I	Certification List	Permanent	Full Time	\$5,022

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

The CRU found no deficiencies in the salary determinations that the DIR made during the compliance review period. The DIR 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, CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria. (California Civil Service Pay Scales.) When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, October 1, 2017 through March 31, 2018, the DIR made 47 alternate range movements within a classification. The CRU reviewed 12 of those to determine if the DIR applied salary regulations accurately and correctly processed employee’s compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Staff Services Analyst (General)	Range B	Range C	Full Time	\$3,977
Information Technology	Range B	Range C	Full Time	\$7,616
Industrial Relations Representative	Range B	Range C	Full Time	\$4,360
Information Systems Technician	Range A	Range C	Full Time	\$3,727
Information Technology	Range B	Range C	Full Time	\$7,616
Information Technology	Range B	Range C	Full Time	\$7,616
Legal Secretary	Range A	Range B	Full Time	\$3,641
Legal Secretary	Range A	Range B	Full Time	\$3,641
Research Analyst I (Economics)	Range B	Range C	Full Time	\$4,177
Senior Legal Typist	Range A	Range B	Full Time	\$3,702
Special Investigator	Range A	Range B	Full Time	\$4,953
Staff Services Analyst (General)	Range B	Range C	Full Time	\$4,360

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

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

Hiring Above Minimum Requests

The CalHR may authorize payment at any step above-the minimum limit to classes or positions to meet recruiting problems, to obtain a person who has extraordinary qualifications, to correct salary inequities, or to give credit for prior state service. (Gov. Code § 18936.) For all employees new to state service, appointing authorities are delegated to approve HAMS for extraordinary qualifications without review/approval by CalHR’s Personnel Services Branch. (Human Resources Manual Section 1707.) Appointing authorities may request HAMS for state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Persons with extraordinary qualifications should contribute to the work of the department significantly beyond that which other applicants offer. (*Ibid.*) Extraordinary qualifications may provide expertise in a particular area of a department’s program. This expertise

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

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action.<sup>9</sup> (Gov. Code, § 19836 subd. (b).)

Appointing authorities may request/approve HAMS for former Legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

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

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<sup>9</sup> Except that if the provisions of the a memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

During the period under review, October 1, 2017 through March 31, 2018, the DIR authorized 23 HAM requests. The CRU reviewed 10 of those to determine if the DIR and appropriately verified, approved and documented candidates' extraordinary qualifications and subsequent salaries, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Attorney III	Certification List	New to the State	\$8,856 - \$11,361	\$11,361
Attorney III	Certification List	New to the State	\$8,856 - \$11,361	\$11,361
Attorney IV	Certification List	New to the State	\$9,782 - \$12,560	\$12,560
Attorney	Certification List	New to the State	\$7,316 - \$9,385	\$7,926
Hearing Reporter	Certification List	New to the State	\$5,188 - \$6,493	\$6,168
Management Services Technician	Certification List	Current State Employee	\$3,063 - \$3,838	\$3,838
Management Services Technician	Certification List	Current State Employee	\$2,713 - \$3,399	\$2,921
Associate Safety Engineer (Elevators)	Certification List	New to the State	\$7,632 - \$9,547	\$8,414
Senior Legal Typist	Certification List	New to the State	\$2,815 - \$3,526	\$3,423
Associate Safety Engineer (Elevators)	Certification List	New to the State	\$7,632 - \$9,547	\$8,414

**FINDING NO. 11 – Hiring Above Minimum (HAM) Requests Did Not Comply with Civil Service Laws, Board Rules, and/or Policies and Guidelines**

**Summary:** There were two errors in the HAM requests that DIR authorized.

Classification	Description of Finding(s)	Criteria
Management Services Technician	The DIR did not provide CalHR approval for the HAM authorization. Employee was overpaid.	Human Resources Manual Section 1707
Management Services Technician	Employee's anniversary date was incorrectly changed, Employee was underpaid.	CCR 559.674(c)

**Criteria:** Appointing authorities are delegated the authority to approve payment at any step above the minimum salary limit to classes or positions in order to obtain a person who has extraordinary qualifications. (Gov. Code § 19836.)

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

**Cause:** The DIR acknowledges the error found with respect to the HAMs provided to employees in the MST positions. The MSTs are not listed on the Pay Scales Section 5. Therefore, there should not be a HAM for anyone in that classification.

**Action:** The DIR has submitted a corrective action plan to submit necessary corrective documents to correct the underpayments and initiate accounts receivables to collect the overpayments made. However, the DIR must continue to monitor HAM authorizations to ensure conformity with Government Code section 19836. Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation such as corrective documents for the pay adjustments shall be submitted to the CRU.

### Red Circle Rates

A red circle rate is a rate of pay authorized for an individual above the maximum salary for his or her class. (Gov. Code, § 19837.) Departments may authorize a red circle rate in the following circumstances: management initiated change,<sup>10</sup> lessening of abilities,<sup>11</sup>

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<sup>10</sup> Any major change in the type of classes, organizational structure, and/or staffing levels in a program.

<sup>11</sup> Refers to an employee who, after many years of satisfactory service, no longer possess the ability to perform the duties and responsibilities of his/her position.

downward reclassification,<sup>12</sup> split-off,<sup>13</sup> allocation standard changes<sup>14</sup> or changes in salary setting methods.<sup>15</sup> (*Ibid.*)

If a salary reduction is the result of split-off, changes in allocation standards, changes in salary setting methods, or a downward reclassification initiated by the SPB or the CalHR's staff determination, the affected employee may receive a red circle rate regardless of the employee's state service total. The employee may retain it until the maximum salary of his or her class equals or exceeds the red circle rate. (Classification and Pay Guide Section 260.)

If an employee is moved to a position in a lower class because of management-initiated changes, he or she may receive a red circle rate provided he or she has a minimum of ten years' state service<sup>16</sup> and has performed the duties of the higher class satisfactorily.<sup>17</sup> The length of the red circle rate resulting from a management-initiated change is based on the affected employee's length of state service. The red circle rate ends when the maximum salary of the class equals or exceeds the red circle rate or at the expiration of eligibility. (*Ibid.*)

An employee whose position is blanketed into the state civil service from another public jurisdiction may receive a red circle rate regardless of the length of service in the other jurisdiction. (Cal. Code Regs., tit. 2, § 275.) The employee may retain the red circle rate until the maximum salary of the class to which the employee's position is allocated equals or exceeds the red circle rate.

Additionally, a red circle rate may be authorized for a former CEA appointee who is reinstating to a civil service classification, a CEA with no prior civil service in a promotional exam and is being appointed from a list without a break in service, or a CEA appointee who is being reduced to a lower CEA salary rate. (Classification and Pay Guide Section 440). An employee who has ten years of service, one year of which is under a career

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<sup>12</sup> Downward reclassification is when, as a result of SPB action or a CalHR staff determination, an incumbent's position is moved to a lower class without the duties being changed.

<sup>13</sup> Split off is when one class is split into two or more classes, one of which is at a lower salary level than the original class.

<sup>14</sup> Allocation standards for two or more classes may change to the degree that a position originally allocated to one class may be reallocated to a class with a lower salary without a change in duties.

<sup>15</sup> Revised valuation standards applied in setting the salary for a class may result in reducing the salary of a class.

<sup>16</sup> As calculated by the State Service and Seniority Unit at CalHR. An employee with nine years' state service qualifies if the employee had been laid off or had been on a leave of absence for one or more years to reduce the effect of a layoff (CCR § 599.608).

<sup>17</sup> The latter requirement is normally satisfied by the successful completion of a probationary period, unless there is compelling evidence to suggest otherwise.

executive assignment, shall receive a red circle rate in unless the termination was voluntary or based on unsatisfactory performance. (Cal. Code of Regs., tit. 2, § 599.993.) If the termination was voluntary and performance was satisfactory, a red circle rate is permissive. (*Ibid.*) This rate is based on the CEA salary rate received at the time of the termination. Government Code section 13332.05 limits the funding of the red circle rate to no more than 90 calendar days following termination of a CEA appointment.

As of April 1, 2005, departments have delegated authority to approve red circle rates for general civil service employees and CEA positions for up to 90 days. Current Bargaining Unit agreements also provide guidelines and rules on red circle rates that may supersede applicable laws, rules and/or CalHR policies and guidelines.

During the period under review, October 1, 2017 through March 31, 2018, the DIR authorized one red circle request listed below, which the CRU reviewed to determine if the DIR correctly verified, approved and documented the red circle authorization process.

Classification	Prior Classification	Red Circle Rate	Reason for Red Circle Rate
Research Program Specialist III (Demography)	CEA	\$1,527	Management Initiated Change

**FINDING NO. 12 – Red Circle Rate Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found that the red circle rate request authorized by the DIR 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 ten percent or more of the total time worked. According to Pay Differential 14, the ten percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position’s duty statement to confirm the percentage of time spent 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, October 1, 2017 through March 31, 2018, the DIR issued Bilingual Pay to 240 employees. The CRU reviewed 15 of those, which are listed below:

Classification	Bargaining Unit	Time Base
Associate Safety Engineer	R09	Full-Time
Assistant Industrial Hygienist	R10	Full Time
Office Services Supervisor II (General)	S04	Full Time
Senior Safety Engineer	R09	Full Time
Investigator	R07	Full Time
Management Services Technician	R01	Full Time
Staff Services Analyst (General)	R01	Full Time
Workers' Compensation Consultant	R01	Full Time
Deputy Labor Commissioner I	R02	Full Time
Staff Services Manager I	S01	Full Time
Management Services Technician	R01	Full Time
Deputy Labor Commissioner II	R02	Full Time
Legal Secretary	R04	Full Time
Deputy Labor Commissioner II	R02	Full Time
Auditor I	R01	Full Time

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

The CRU found that the bilingual pay authorizations the DIR made 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 those 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, October 1, 2017 through March 31, 2018, the DIR issued pay differentials<sup>18</sup> to 432 employees. The CRU reviewed 25 of those to ensure compliance with applicable CalHR policies and guidelines, which are listed below:

Classification	Pay Differential	Monthly Amount
Information Technology Specialist I	13	5%
Information Technology Associate	13	5%
Associate Information Systems Analyst (Specialist)	13	5%
Senior Legal Typist	141	5%
Senior Personnel Specialist	211	5%
Junior Safety Engineer	261	\$200
Workers' Compensation Judge	84	5%
Regional Manager, Claims Adjudication	84	5%
Hearing Officer I, Occupational Safety and Health and Appeals Board (OSHAB)	84	5%
Presiding Workers' Compensation Judge	84	5%
Hearing Officer II, OSHAB	84	5%
Hearing Officer I, OSHAB	84	5%
Residing Workers' Compensation Judge	84	5%
Hearing Officer I, OSHAB	84	5%
Investigator	244	\$125

<sup>18</sup> For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Senior Legal Typist	141	10%
Investigator	244	\$100
Investigator	73	1% - 7%
Information Technology Specialist I	13	5%
Presiding Workers' Compensation Judge	158	5%
Presiding Workers' Compensation Judge	158	5%
Presiding Workers' Compensation Judge	13	5%
Legal Support Supervisor I	141	10%
Senior Legal Typist	141	10%
Personnel Specialist	211	5%

**FINDING NO. 14 – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU determined that the pay differentials that the DIR authorized during the compliance review period, were issued in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

Out-of-Class Assignments and Pay

For excluded<sup>19</sup> and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810.)

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

<sup>19</sup> “Excluded employee” means an employee as defined in section 3572(b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

During the period under review, October 1, 2017 through March 31, 2018, the DIR issued out-of-class pay<sup>20</sup> to 53 employees. The CRU reviewed nine of those to ensure compliance with applicable CalHR policies and guidelines, which are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Deputy Labor Commissioner II	BU 2	Deputy Labor Commissioner III	01/01/18 - 04/30/18
Associate Safety Engineer	BU 9	District Manager, Division of Occupational Safety and Health (DOSH)	11/01/17 - 05/01/18
Associate Safety Engineer	BU 9	District Manager, DOSH	07/03/17 - 01/03/18
Staff Services Analyst (General)	BU 1	Associate Governmental Program Analyst	09/01/17 - 12/29/17
Industrial Relations Counsel IV	BU 2	CEA	09/15/17 - 01/12/18
Management Services Technician	BU 1	Offices Services Supervisor II	03/15/18 - 05/30/18
Junior Safety Engineer	BU 9	Assistant Safety Engineer	08/24/16 - 08/23/17
Office Assistant	BU 1	Management Services Technician	02/16/17 - 06/15/17
Personnel Technician	BU 1	Staff Services Analyst (General)	08/02/17 - 11/29/17

**FINDING NO. 15 – Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules and CalHR Policies and Guidelines**

The CRU determined the OOC assignments that the DIR authorized during the compliance review period, were appropriately issued to employees performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the employee has a current, legal appointment.

<sup>20</sup> Excluding bilingual and arduous pay.

## Leave

### Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of nine months in any 12 consecutive months is not exceeded. The ATW method of counting time is used in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days worked and paid absences,<sup>21</sup> is counted. (Cal. Code Regs., tit. 2, § 265.1 subd. (b).) The hours worked in one day is not limited by this rule.<sup>22</sup> (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe.<sup>23</sup> (*Ibid.*) The employee shall serve no longer than 189 days in a 12-consecutive month timeframe. (*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 that the limitations set forth in this section are not exceeded. (Cal. Code Regs., tit. 2, § 265.1 subd. (f).)

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

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

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<sup>21</sup> For example, vacation, sick leave, compensating time off, etc.

<sup>22</sup> For example, two hours or ten hours counts as one day.

<sup>23</sup> California Code of Regulations section 265.1 became effective on July 1, 2017, and did not apply at the time of all of those appointments. The current regulation sets forth the method for counting time for temporary appointments.

At the time of the review, the DIR had 75 employees on ATW. The CRU reviewed 13 of those to ensure compliance with applicable laws, regulations, and policies and guidelines.

**FINDING NO. 16 – Actual Time Worked (ATW) Employee Exceeded the Nine Month in Any Twelve Consecutive Month Limitation**

**Summary:** One employee worked 149.75 hours over the 1500-hour limit in a 12 consecutive month period; the DIR failed to monitor the employee’s ATW.

Classification	Time Base	Time Frame	Time Worked
Student Assistant	Intermittent	06/21/2017 - 06/20/2018	1,649.75 hours

**Criteria:** If any employee is appointed to an intermittent time base position on a TAU basis, there are two controlling time limitations that must be considered. The first controlling factor is the constitutional limit of nine months in any 12 consecutive months for temporary appointments that cannot be extended for any reason. Another controlling factor limits the maximum work time for student, youth, and seasonal classifications to 1500 hours. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

**Severity:** Serious. The amount of hours an individual may work in a temporary appointment is limited in the state civil service. TAU appointments are distinguished from other appointments as they can be made in the absence of an appropriate employment list. Intermittent appointments are not to be used to fill full-time or part-time positions. Such use would constitute illegal circumvention of those eligible lists.

**Cause:** HR tracked hours worked for intermittent employees (Student Assistants, Graduate Student Assistants, Retired Annuitants) for purposes of pay, but failed to monitor actual time worked to ensure those employees did not exceed limits authorized for those classifications.

**Action:** The DIR created a tracking mechanism for the hours worked by positive paid employees. However, the DIR must continue to monitor the positive paid hours to ensure conformity with California Code of Regulations, title 2, section 265.1. Within 60 days of the SPB

Executive Officer's approval of these findings and recommendations, copies of relevant documentation such as the monthly tracking log shall be submitted to the CRU.

Administrative Time Off

Administrative Time Off (ATO) is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (Ibid.) ATO can be granted when employees need time off for reasons such as blood or organ donation; extreme weather permitting safe travel to work; states of emergency; voting; and when employees need time off to attend special events. (Ibid.)

During the period under review, June 1, 2017 through May 31, 2018, the DIR placed 308 employees on ATO. The CRU reviewed 19 of those to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Length of ATO
Staff Services Analyst (General)	2/28/2018	8 hours
Industrial Relations Representative	12/5/2017	3 hours
Deputy Labor Commissioner I	12/8/2017	4 hours
Associate Safety Engineer (Elevators)	10/9/2017 - 10/13/2017	5 hours
Industrial Relations Representative	12/5/2017	3 hours
CEA	1/29/2019 - 7/27/2018	127 days
District Manager	8/2-8/18, 8/30-8/31	120 hours
Associate Safety Engineer	5/1/2018 - 5/4/2018	32 hours
Associate Governmental Program Analyst	10/26/2017 - 10/27/17	8 hours
Industrial Relations Counsel III (Specialist)	12/8/2017	4 hours
Hearing Reporter	5/22/2018	8 hours
Associate Safety Engineer	3/7/2018	3 hours
Senior Legal Typist	11/9/2017	3 hours
Management Services Technician	3/20/2018	4 hours
Deputy Labor Commissioner I	8/28/2017 - 9/5/2017	48 hours

Classification	Time Frame	Length of ATO
Office Technician (Typing)	10/3/2017	8 hours
Management Services Technician	1/9/2018 - 1/12/2018	32 hours
Industrial Relations Representative	12/20/2017	45 hours
CEA	3/7/2018	2 hours

**FINDING NO. 17 – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found employees the DIR placed on ATO during the compliance review period, were properly justified and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

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

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, March 1, 2018 through May 31, 2018, the CRU reviewed four units comprised of 105 active employees and four units comprised of 107 active employees during the April and May 2018 pay periods. The pay periods and timesheets reviewed by the CRU are summarized as follows:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed
4/2018	101	53	47
4/2018	105	11	10

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed
4/2018	112	34	31
4/2018	115	7	4
5/2018	101	53	46
5/2018	105	11	6
5/2018	112	36	32
5/2018	115	7	4

**FINDING NO. 18 – Department Has Not Implemented a Monthly Internal Audit Process to Verify Timesheets are Keyed Accurately and Timely**

**Summary:** The DIR did not provide completed Leave Activity and Correction Certification forms for four out of four units for both pay periods reviewed. Additionally, 23 of 212 timesheets were missing.

**Criteria:** Each appointing power shall 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 an audit process to verify all leave input is keyed accurately and timely. Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (Human Resources Manual Section 2101.)

**Severity:** Serious. In order for departmental leave accounting reports to reflect accurate data, the review of the leave accounting records and corrections, if necessary, are to be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. This means corrections are to be made prior to the next monthly leave activity report being produced.

**Cause:** The DIR did not have a comprehensive monthly internal audit process for conducting leave balance audits.

**Action:** The DIR has implemented the use of the Leave Activity and Correction Certification form. However, the DIR must continue to reconcile the leave usage against the monthly timesheets to ensure conformity with California Code of Regulations, title 2, section



599.665. Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation such as the monthly LAB report and Leave Activity and Corrective Action forms completed after the review shall be submitted to the CRU.

### Leave Reduction Efforts

Departments must create a leave reduction policy for their organization and monitor employee's 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 bargaining Unit Agreement 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>24</sup> (Cal. Code. Regs., tit. 2, § 599.737.) If it appears an exempt employee will have a vacation or annual leave balance that will be above the maximum amount<sup>25</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 by January 1. (Cal. Code Regs., tit. 2, § 599.742.1.)

It is the intent of the state to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation. (Cal. Code Regs., tit. 2, § 599.742.1), ensuring employees maintain the capacity to optimally perform their jobs. For exempt 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.

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<sup>24</sup> For represented employees, the established limit for annual or vacation leave accruals is 640 hours; however, for bargaining unit 06 there is no established limit and for bargaining unit 05 the established limit is 816 hours.

<sup>25</sup> Excluded employees shall not accumulate more than 80 days.

As of December 2017, 382 DIR employees exceeded the established limits of vacation or annual leave. The CRU reviewed 25 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
Deputy Labor Commissioner I	R02	101	No
Senior Legal Typist	R04	100	No
Workers' Compensation Manager	M01	724	No
Associate Safety Engineer	R09	1764	No
Information Technology Associate	R01	1298.25	No
CEA	M01	2116.5	No
Research Data Specialist III	R01	280	No
Deputy Labor Commissioner I	R02	536.25	No
Information Technology Manager II	M01	1664	No
Assistant Chief Counsel	M02	1996	No
Accounting Administrator II	S01	425.25	No
Associate Safety Engineer	R09	1080.5	No
Senior Legal Typist	R04	588.25	No
Associate Governmental Program Analyst	R01	923.5	No
Senior Safety Engineer (Industrial)	R09	786.25	No
Nursing Consultant III (Specialist)	R17	2011	No
Information Technology Specialist I	R01	1240.67	No
Associate Safety Engineer	R09	1514	No
District Manager	S09	1737	No
Workers' Compensation Consultant	R01	35	No
Associate Accounting Analyst	R01	484	No
Senior Safety Engineer (industrial)	R09	1549	No
Associate Safety Engineer	R09	1783	No
Senior Safety Engineer (Elevators)	S09	1709	No
Staff Services Manager I	S01	347	No
<b>Total</b>		<b>26793.42</b>	

**FINDING NO. 19 – Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits**

**Summary:** The DIR did not provide leave reduction plans for all 25 employees whose leave balances significantly exceeded established limits.

**Criteria:** It is the policy of the state to foster and maintain a workforce that has the capacity to effectively produce quality services expected by both internal customers and the citizens of California. (Human Resources Manual Section 2124.) Therefore, appointing authorities and state managers and supervisors must create a leave reduction policy for the organization and monitor employees' leave to ensure compliance with the departmental leave policy; and; ensure employees who have significant "over-the-cap" leave balances have a leave reduction plan in place and are actively reducing hours. (*Ibid.*)

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

**Cause:** The DIR did not have a process in place to address employees who have excessive leave balances for Vacation/Annual Leave. Staff assigned to establish leave reduction processes and guidance for leave reduction plans left the DIR in 2018.

**Action:** The DIR has submitted a corrective action plan to ensure employees who have excessive leave balances have a leave reduction plan and are actively reducing their leave balances. However, the DIR must continue to monitor employee leave reduction plans to ensure conformity with Human Resources Manual Section 2124. Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation such as the leave reduction process and employees' leave reduction plans approved after the review shall be submitted to the CRU.

State Service

An employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.<sup>26</sup> (Cal. Code Regs., tit. 2, § 599.608.)

Hourly or daily rate employees working at a department in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609.)

For each additional qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs., tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs., tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees<sup>27</sup> shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

Permanent intermittent employees also earn leave credits on the pay period following the accumulated accrual of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period, are not counted or accumulated towards leave credits.

During the period under review, October 1, 2017 through March 31, 2018, the DIR had 32 employees with non-qualifying pay period transactions. The CRU reviewed 11 of those transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Qualifying Pay Period	Full Time	1
Non-Qualifying Pay Period	Full Time	10

**FINDING NO. 20 – Error in State Service and Leave Transaction**

<sup>26</sup> Except as provided in sections 599.609 and 599.776.1(b) of those regulations, in the application of Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, 19997.4 and sections 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.787, 599.791, 599.840 and 599.843 of those regulations.

<sup>27</sup> As identified in Government Code sections 19858.3(a), 19858.3(b), or 19858.3(c) as it applies to employees excluded from the definition of state employee under section Government Code 3513(c), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

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

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

Hourly or daily rate employees working in a state agency in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609.) When an employee has a break in service or changes to full-time, any combination of time worked which does not equal one qualifying month of full-time service shall not be accumulated or counted. (*Ibid.*)

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

**Cause:** The DIR's Personnel Specialist (PS) processed a non-qualifying pay period transaction a month late, making the prior pay period non-qualifying. The PS did not make the necessary corrections to the employee's state service and leave accruals after making the employment history corrections.

**Action:** The DIR has submitted a corrective action plan to ensure service and leave transactions are processed accurately. However, the DIR must continue to monitor these transactions to ensure conformity with

California code of Regulations, title 2, sections 599.608 and 599.609. Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation including the training log for the review of non-qualifying pay periods and employment history adjustments shall be submitted to the CRU.

## **Policy and Processes**

### Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. 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. Personal relationships for this purpose include but are not limited to, association by blood, adoption, marriage and/or cohabitation. In addition, there may be personal relationships beyond this general definition that could be subject to those policies. Overall, departmental nepotism policies should aim to prevent favoritism or bias based on a personal relationship when recruiting, hiring or assigning employees. Departments have the discretion, based on organizational structure and size, to develop nepotism policies as they see fit. (Human Resources Manual Section 1204.)

### **FINDING NO. 21 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU verified that the DIR's nepotism policy was disseminated to all staff and emphasized the DIR's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the DIR'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 the 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 (State Fund) office to discuss the status of volunteers. (*Ibid.*)

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

**FINDING NO. 22 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

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

Performance Appraisals

According to Government Code section 19992.2, 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 16 permanent DIR employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Date Performance Appraisals Due
Associate Safety Engineer	8/8/2018
Accountant I (Specialist)	9/30/2017

Classification	Date Performance Appraisals Due
Accounting Officer (Specialist)	5/1/2017
Apprenticeship Consultant	3/31/2017
Associate Safety Engineer	4/30/2017
Attorney IV	1/8/2017
Auditor I	1/6/2018
Information Technology Associate	9/30/2018
Information Officer II	5/3/2017
Legal Secretary	6/20/2018
Management Services Technician	8/1/2018
Personnel Specialist	9/7/2017
Special Investigator	6/12/2018
Senior Safety Engineer (Industrial)	11/15/2017
Staff Services Manager I	11/17/2017
Supervising Workers' Compensation Consultant	9/14/2017

**FINDING NO. 23 – Performance Appraisals Were Not Provided to All Employees**

**Summary:** The DIR did not provide performance appraisals to all 16 employees reviewed.

**Criteria:** Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code § 19992.2, subsection (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 systemic manner.

**Cause:** The DIR does not have a procedure in place that ensures annual performance appraisals are completed by supervisors and managers for each employee.



**Action:** The DIR has submitted a corrective action plan to ensure that performance appraisals are completed timely. However, the DIR must continue to monitor performance appraisals to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Within 60 days of the SPB Executive Officer's approval of these findings and recommendations, copies of relevant documentation such as the revised Performance Appraisal procedures; Performance Appraisal Guidelines; automated tracking, notification and follow-up process and the monthly report for the executive team shall be submitted to the CRU.

### **DEPARTMENTAL RESPONSE**

The DIR's response is attached as Attachment 1.

### **SPB REPLY**

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

DEPARTMENT OF INDUSTRIAL RELATIONS  
**Victoria Hassid, Chief Deputy Director**  
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September 23, 2019

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

**Re: Department of Industrial Relations Reponse to Draft State Personnel Board Compliance Review Report**

Dear Ms. Ambrose:

The Department of Industrial Relations (DIR) would like to thank the Compliance Review team for their dedication and professionalism throughout the compliance review process. The DIR strives to comply with all state personnel statutes, regulations and policies and seeks to be a model state employer. The DIR sincerely appreciates the Compliance Review team's thorough review and will work diligently to take steps to remediate all issues found in this year's review and improve DIR's future compliance. This letter serves as both a corrective action plan and report of compliance addressing the findings issued in the State Personnel Board (SPB) Compliance Review Report for the DIR dated September 17, 2019

**Finding No. 2. –Probationary Evaluations were not provided for All Appointments Reviewed.**

**Cause:** Although the DIR Human Resources (HR) unit sends system generated notifications to the supervisor and division liaison staff of the probationary periods for their new employee as well as a system generated reminder when a probationary report is past due, there are no procedures in place to ensure they are completed and submitted to HR for retention. Additionally, there are no procedures in place to report non-compliance to the senior management on a department wide level.

**Corrective Action:** HR will develop and implement a written procedure to track and follow up with managers regarding all probationary evaluations. DIR HR will ensure appropriate HR staff and program liaisons are trained on the procedure and understand the importance of accurate tracking.

**Finding No. 3 – DIR did not retain five NOPAs in 43 appointment files.**

**Cause:** HR did not consistently follow up with employees regarding retention of NOPAs and did not ensure that copies of the NOPA were placed in the employee official personnel file (OPF).

**Corrective Action:** The State Controller's Office (SCO) generates two copies of the employee NOPA and sends both to HR. HR will send one copy to the employee for signature, the second copy will remain in the OPF until the signed NOPA is returned by the employee. At that time the second copy will be removed from the OPF and destroyed. HR will follow up with the employee every two weeks after the initial mailing of the NOPA until the NOPA is obtained from the employee and retained in the employee's file. In addition, this important action will be included in DIR's onboarding checklist for new employees. HR will report monthly to executive management to ensure compliance.

**Finding No. 4 – The Equal Employment Opportunity (EEO) officer does not directly report to the head of the Department.**

**Cause:** The previous Director did not have the Civil Rights Officer (CRO) (note DIR refers to EEO as CRO) report to the Director.

**Corrective Action:** The Acting Director clarified that the CRO shall report to the Director at the end of 2018. The Department is revising the CRO's Duty Statement and specifying that the CRO will serve as the Department's Equal Employment Officer and that the EEO reports to the Director on all EEO matters.

**Finding No. 5. – DIR did not notify unions prior to entering in 10 of the 15 personal service contracts.**

**Cause:** DIR's general practice is to notify unions; however, DIR does not have an internal review process to ensure that business services staff are aware of pending personal service contracts. DIR did not provide regular training to business services staff regarding union notification when issuing personal services contracts.

**Corrective Action:** All Business Management Analysts will receive initial and/or refresher training as appropriate, and an internal review process will be implemented to help ensure that there is no lapse or failure to notify in the future.

**Finding No. 6 - Supervisory Training was not provided for all supervisors**

**Cause:** DIR recognizes the importance of supervisor training and has strived to ensure supervisors are trained; however, DIR did not have an adequate tracking system in place to monitor compliance with the Basic Supervisor training requirement.



**Corrective Action:** As a result of the joint effort made by the Division Training Liaisons and the HR training unit team, DIR has significantly reduced the number of non-compliant supervisors. On May 3, 2018, HR sent a policy memo to all DIR Supervisors, Managers, and CEAs. The memo explained the leadership mandate and provided resources to meet the requirement. DIR has created a tracking mechanism, incorporated the training in the new employee/supervisor checklist, and created an auto-notification for newly appointed supervisors to make the supervisor and division aware of the need to take the required training.

Compliance has gone up from 38% in April 2018 to 85% currently. DIR continues to work with division management to ensure that all supervisors receive the required training and expects to achieve full compliance in 2019.

**Finding No. 7 – DIR did not provide sexual harassment prevention training to all supervisors within six months of their appointment.**

**Cause:** DIR recognizes the importance of sexual harassment prevention training to ensure a safe and healthy workplace. As of this response 96% of DIR's managers have completed the required training. Notice to complete sexual harassment prevention training is automatically sent to new supervisors upon appointment and sent to existing supervisors every two years through an online system. Supervisors did not complete the training due to inconsistent follow up to ensure the course was completed.

**Corrective Action:** DIR has followed up with each out-of-compliance supervisor through email, and through their manager, to complete the training and set a deadline of October 15 for full compliance.

**Finding No. 8 – Ethics Training was not provided to all filers**

**Cause:** Due to resources and staff shortages in HR, there was no implementation of the tracking mechanism of the Ethics Training. Therefore, filers who took the training may not have submitted the certificates to HR.

**Corrective Action.** Beginning in 2019 DIR contracted with a vendor to develop a tracking mechanism for DIR's Ethics training compliance. An auto-reminder will be sent via email to the employee when their training is due. The HR training unit staff will track and be responsible to oversee this function.

**Finding No. 11 – Hiring Above Minimum (HAM) Requests Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

Two errors were found:

1. Management Services Technician (MST) – DIR did not provide CalHR approval for the authorization, employee was overpaid; and

2. Management Services Technician (MST) – Anniversary date was incorrectly changed, employee was underpaid

**Cause:** DIR acknowledges the errors found with respect to the HAMs provided to the MST positions. MSTs are not listed on the Pay Scales Section 5; therefore, there should not be a HAM for anyone in that classification.

**Corrective Action:** DIR is reviewing the errors related to the MST positions and will make adjustments accordingly, prepare and submit corrective documents where overpayments occurred, and make necessary notifications to parties involved.

Moving forward all HAMs involving Section 5 of the Pay Scales will be reviewed by the Personnel Supervisor to ensure that the correct dollar amounts are being used, the Personnel Action Request (PAR) will be reviewed to ensure that the dollar amounts (based-on salary and “plus” salary) are documented correctly before the appointment is processed and that HAM's are calculated in the manner instructed in Section 5 of the Pay Scales.

#### **Finding No. 16 – Actual Time Worked (ATW) Employee Exceeded the Nine Month in Any Twelve Consecutive Month Limitation**

**Cause:** HR tracked hours worked for intermittent employees (Student Assistants, Graduate Student Assistants, Retired Annuitants) for purposes of pay but failed to monitor actual time worked to ensure those employees did not exceed limits authorized for those classifications.

**Corrective Action:** DIR created a tracking log for the Payroll and Benefits staff to track hours worked for intermittent employees. Staff must update the log monthly upon receiving the employee's timesheet and processing their pay. Upon reaching the 12-month timeframe for the employee, the form is signed by the Personnel Specialist verifying hours worked and then kept with the corresponding timesheet. If the employee did not work in the 12<sup>th</sup> month, the tracking log would be kept with the last timesheet received for the 12-month period.

#### **Finding No. 18 – Department Has Not Implemented a Monthly Internal Audit Process to Verify Timesheets are Keyed Accurately and Timely**

**Cause:** DIR did not have a comprehensive monthly internal audit process for conducting leave balance audits.

**Corrective Action:** Payroll and Benefits staff implemented use of the Leave Activity and Correction Certification Form. Personnel Specialists complete the Leave Activity and Correction Certification form, whether they have employees who had leave usage adjustments or not, and submit the forms to their supervisor. The supervisor verifies that the leave correction has been entered into the system, signs the form, and returns it to the Personnel Specialist to be filed with their STD 672, based on PML 2015-007, issued on 2/26/15.



**Finding No. 19 – Leave Reduction Plans Were not Provided to Employees Whose Leave Balances Exceeded Established Limits**

**Cause:** DIR did not have a process in place addressing employees who have excessive leave balances for Vacation/Annual Leave. Staff assigned to establish leave reduction processes and guidance for leave reduction plans left DIR in 2018.

**Corrective Action:** DIR will assign staff to establish a leave reduction process and develop guidance for leave reduction plans.

**Finding No. 20 – Error in State Service and Leave Transaction**

**Cause:** DIR Personnel Specialist processed a 715 transaction (non-qualifying pay period) a month later, making the prior pay period non-qualifying. The Personnel Specialist did not make the necessary corrections to the employee's state service and leave accruals after making the employment history corrections, thus causing the finding by SPB.

**Corrective Action:** Managers will review importance of and provide training regarding review of employment history adjustments, in particular the 715 transaction and processing the corresponding state service and leave accrual adjustments with transaction staff. A late 715 transaction must be followed up by processing the corresponding state service and leave accrual adjustments without exception.

**Finding No. 23 – Performance Appraisals not provided to all employees**

**Cause:** DIR does not have a procedure in place that ensures annual performance appraisals are completed by supervisors and managers for each employee.

**Corrective Action:** HR will refine the Performance Appraisal procedures and reintroduce DIR's Performance Appraisal Guidelines to all supervisors. The Guidelines will emphasize the performance appraisal procedures, why appraisals are essential for the employee and a benefit for the supervisor, as well as when appraisals shall be conducted. The procedures will also specify that probation evaluations and annual appraisals shall be routed to HR for OPF retention.

In addition, DIR will develop and implement an automated tracking, notification, and follow-up process for managers to ensure that appraisals are performed in a timely manner. HR will report monthly to executive management to ensure compliance.

DIR appreciates the CRU's attention, guidance and time during this year's compliance review process. DIR will continue to review and revise its policies and procedures to comply with all state civil service laws and regulations.

If you have any additional questions, please direct them to Chief Deputy Director Victoria Hassid at [vhassid@dir.ca.gov](mailto:vhassid@dir.ca.gov).

Thank you,

A handwritten signature in black ink, appearing to read "Victoria Hassid". The signature is fluid and cursive, with a large loop at the end of the last name.

Victoria Hassid  
DIR Chief Deputy Director