



COMPLIANCE REVIEW REPORT

CALIFORNIA DEPARTMENT OF MANAGED HEALTH CARE

Compliance Review Unit
State Personnel Board
May 29, 2018

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INTRODUCTION

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

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

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), CalHR and SPB may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." CalHR and SPB, by mutual agreement, expanded the scope of items reviewed by the SPB's CRU beyond merit-related issues into more operational practices that are delegated to departments, and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

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

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

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the California Department of Managed Health Care (DMHC) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes¹. 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	Unlawful Appointment Investigations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Equal Employment Opportunity	EEO Officer's Duty Statement Does Not Reflect EEO Duties
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	Ethics Training Was Not Provided for All Filers
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and CalHR 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 CalHR Policies and Guidelines

¹ 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	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	ATW 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	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits
Leave	715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
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 DMHC protects the health care rights of approximately 26 million Californians and ensures a stable health care delivery system. The DMHC regulates the majority of health coverage in California including 95% of the commercial and government markets. The department has helped more than 2 million Californians resolve health plan problems through the Help Center. As of July 2017, the DMHC has 450 authorized positions, 23% of which are attorneys and a majority of the remainder are a variety of administrative classifications.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the DMHC examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes² when applicable. The primary objective of the review was to determine if DMHC 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 DMHC'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 DMHC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The DMHC did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the DMHC'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 DMHC provided, which included notice of personnel action (NOPA) forms, request for personnel actions (RPA's), vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The CRU also reviewed the DMHC's policies and procedures concerning unlawful appointments to ensure departmental practices conform to state civil service laws, board regulations, and CalHR delegation agreements. The DMHC did not make any additional appointments during the compliance review period.

The DMHC's appointments were also selected for review to ensure the DMHC applied salary regulations accurately and correctly processed employee's compensation and pay. The CRU examined the documentation that the DMHC provided, which included employee's 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, out-of-class assignments, monthly pay differentials, and bilingual pay. During the compliance review period, the DMHC did not issue or authorize arduous pay.

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

The review of the DMHC'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 upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

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

The DMHC'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 and managers were provided supervisory and sexual harassment prevention training within statutory timelines.

The CRU also identified the DMHC employees whose current annual leave, or vacation leave credits, exceeded established limits. The CRU reviewed a cross-section of these identified employees to ensure that employees who have significant "over-the-cap" leave balances have a leave reduction plan in place. Additionally, the CRU asked the DMHC to provide a copy of their leave reduction policy.

The CRU reviewed the DMHC's Leave Activity and Correction certification forms to verify that the DMHC 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 DMHC'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 DMHC's employee's 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 DMHC employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered.

³If 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.

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

On May 2, 2018, an exit conference was held with the DMHC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DMHC's written response on May 9, 2018, 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, September 1, 2016, through May 31, 2017, the DMHC conducted 15 examinations. The CRU reviewed 10 of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Assistant Health Care Service Plan Analyst	Departmental Open	Statement of Qualifications (SOQ) ⁴	N/A	16
Health Program Manager I	Departmental Open	SOQ	12/6/2016	13
Health Program Manager II	Departmental Open	SOQ	12/6/2016	4
Associate Life Actuary	Departmental Promotional	Education and Experience (E&E) ⁵	N/A	2
Corporation Examiner	Departmental Promotional	E&E	N/A	17
Career Executive Assignment (CEA) A, Assistant Deputy Director, Help Center	Open	SOQ	10/20/2016	12
CEA A, Deputy Director, Office of Plan Licensing	Open	SOQ	11/21/2016	4
CEA A, Deputy Director, Office of Plan Monitoring	Open	SOQ	10/4/2016	13
CEA B, Deputy Director, Office of Enforcement	Open	SOQ	11/16/2016	4
CEA B, Deputy Director, Office Financial Review	Open	SOQ	11/18/2016	7

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

⁵ In an education and experience examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

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

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

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) 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, September 1, 2016, through May 31, 2017, the DMHC made 132 appointments. The CRU reviewed 62 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Administrative Assistant II	Certification List	Permanent	Full Time	1
Assistant Chief Counsel	Certification List	Limited Term	Full Time	1
Assistant Chief Counsel	Certification List	Permanent	Full Time	3
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	7
Associate Health Program Advisor	Certification List	Permanent	Full Time	1
Attorney I	Certification List	Permanent	Full Time	4
Attorney III	Certification List	Permanent	Full Time	4

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Corporation Examiner IV (Specialist)	Certification List	Permanent	Full Time	1
Corporation Examiner IV (Supervisor)	Certification List	Permanent	Full Time	1
Health Program Specialist I	Certification List	Permanent	Full Time	1
Legal Secretary	Certification List	Permanent	Intermittent	1
Nurse Evaluator IV, Health Services	Certification List	Permanent	Full Time	1
Program Technician II	Certification List	Permanent	Full Time	2
Senior Information Systems Analyst	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	3
Staff Services Analyst (General)	Certification List	Permanent	Intermittent	4
Staff Services Manager I	Certification List	Permanent	Full Time	3
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	1
Systems Software Specialist III (Supervisory)	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Mandatory Reinstatement	Permanent	Full Time	3
Attorney	Mandatory Reinstatement	Permanent	Full Time	1
Corporation Examiner	Mandatory Reinstatement	Permanent	Full Time	1
Staff Health Care Service Plan Analyst	Mandatory Reinstatement	Permanent	Full Time	1
Staff Services Manager I	Mandatory Reinstatement	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Mandatory Reinstatement	Permanent	Full Time	1
Associate Personnel Analyst	Retired Annuitant	Temporary	Intermittent	1
Assistant Chief Counsel	Transfer	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	2
Associate Health Care Service Plan Analyst	Transfer	Limited Term	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Attorney I	Transfer	Permanent	Full Time	1
Attorney I	Transfer	Limited Term	Full Time	1
Program Technician II	Transfer	Permanent	Intermittent	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	3
Staff Services Manager III	Transfer	Permanent	Full Time	1
Support Services Assistant (General)	Transfer	Permanent	Intermittent	1

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

Summary: The DMHC did not prepare, complete, and/or retain six required probationary reports of performance.

Classification	Appointment Type	Number of Appointments Missing Probation Reports	Total Number of Missing Probation Reports
Associate Governmental Program Analyst	Certification List	3	4
Attorney	Certification List	1	1
Attorney III	Certification List	1	1

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.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as CalHR may require. (Gov. Code § 19172.) CalHR’s regulatory scheme provides that “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.” (Code Reg., tit. 2, § 599.795.) Specifically, a written appraisal of performance shall be made to the department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board’s record

retention rules require that appointing powers retain all probationary reports. (Code Reg., titl. 2, § 26, subd. (a)(3).)

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

Cause: The DMHC states that a mechanism did not exist to verify probationary evaluation completion by supervisors and submission of completed probationary reports to employee official personnel files

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

Unlawful Appointment Investigations

Departments that entered into an Unlawful Appointment Investigation Delegation Agreement between their executive management and CalHR have the authority to manage their own unlawful appointment investigations. The Delegation Agreement defines the reporting requirements, responsibilities, obligations, and expectations of the department in this process. Overall, the delegation agreement mandates that departments maintain up-to-date records on each unlawful appointment investigation including, at a minimum: the specific facts surrounding the appointment in question, a description of the circumstances which may have resulted in the unlawful appointment, copies of relevant appointment documents, and any information and/or documentation which may demonstrate that the agency and employee acted in good faith when the appointment was offered and accepted. Departments must also maintain a tracking system to monitor its unlawful appointments.

During the period under review, September 1, 2016, through May 31, 2017, the DMHC conducted four unlawful appointment investigations. The CRU reviewed all unlawful appointment investigations, which are listed below:

Classification	Date Investigation Initiated	Date Investigation Concluded
Attorney	2/27/2017	3/8/2017
Corporation Examiner	4/26/2017	5/3/2017
Program Technician II	9/30/2016	1/5/2017
Program Technician II	2/6/2017	2/7/2017

FINDING NO. 3 – Unlawful Appointment Investigations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The DMHC’s four unlawful appointment investigations were found to comply with the rules set forth in the signed Delegation Agreement with the CalHR.

Equal Employment Opportunity

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

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

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the

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

FINDING NO. 4 – EEO Officer’s Duty Statement Does Not Reflect EEO Duties

Summary: The DMHC’s Chief Deputy Director also serves as the EEO Officer. Although the DMHC EEO program outlines the roles and responsibilities of the EEO Officer, the Chief Deputy Director’s duty statement provided by DMHC does not contain EEO Officer related duties.

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

Severity: Very Serious. The EEO Officer is responsible for developing, implementing, coordinating, and monitoring an effective EEO program. Due to the substantial responsibilities held by each department’s EEO Officer, it is essential that each department, dedicate sufficient staff resources to successfully maintain an effective EEO program.

Cause: The DMHC states that of the duty statement of the Chief Deputy Director, who serves as the Equal Employment Opportunity Officer, was incorrect.

Action: The DMHC has submitted an updated duty statement reflecting EEO Officer duties, therefore, no further action is required at this time.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or

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

For cost-savings PSC's, a state agency is required to notify 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, September 1, 2016, through September 1, 2017, the DMHC had 14 PSC's that were in effect. The CRU reviewed all 14 PSC's, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
Avantpage	Other	9/13/2016 - 8/28/2018	\$108,737	Yes
Bay Area Legal Aid	Legal Consultant	12/1/2016 - 11/30/2018	\$850,000	Yes
Capitol Digital Solutions, LLC	Expert Witness	11/23/2016 - 10/31/2019	\$95,500	Yes
Leading Resources, Inc.	Training	7/1/2017- 6/30/2018	\$249,900	Yes
Legal Aid Society of San Diego Inc.	Legal Consultant	10/1/2016 - 12/31/2017	\$1,200,000	Yes
Legal Aid Society of San Diego Inc.	Legal Consultant	12/1/2016 - 11/30/2018	\$1,200,000	Yes
Legal Services of Northern CA	Legal Consultant	12/1/2016 - 11/30/2018	\$600,000	Yes
Legal Services of Northern CA	Legal Consultant	12/1/2016 - 11/30/2018	\$1,150,000	Yes
Mazars USA LLP	Other	8/15/2014 - 9/30/2017	\$75,000	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
Mission Analytics Group, Inc.	Other	6/17/2016 - 12/31/2016	\$47,240	Yes
Mission Analytics Group, Inc.	Other	7/20/2016 - 12/31/2017	\$191,500	Yes
Neighborhood Legal Services of Los Angeles County	Legal Consultant	12/1/2016 - 11/30/2018	\$1,200,000	Yes
Parker Dennison & Associates, Ltd.	Expert Witness	6/01/2017 - 5/31/2019	\$286,000	Yes
University Enterprises, Inc.	Other	7/1/2017- 6/30/2020	\$714,000	Yes

FINDING NO. 5 – Personal Services Contracts Complied with Procedural Requirements

When an agency executes a personal services contract under Government Code section 19130, subdivision (b), the department must document a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total dollar amount of all the PSC’s reviewed was \$7,967,877.00. It was beyond the scope of the review to make conclusions as to whether DMHC justifications for the contract were legally sufficient. For all PSC’s reviewed, the DMHC provided specific and detailed factual information in the written justifications as to how each of the three contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the DMHC PSC’s complied with civil service laws and board rules.

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), & (c), & 19995.4, subd. (b).)

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

Within 12 months of the initial appointment of an employee to a management or career executive assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a 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 DMHC's mandated training program that was in effect during the compliance review period. The DMHC's supervisory training was found to be in compliance. However, the DMHC's ethics training and sexual harassment prevention training were found to be out of compliance.

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

Summary: The DMHC did not provide ethics training to all 165 existing filers. In addition, the DMHC did not provide ethics training to all 194 new filers within six months of their appointment.

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

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

Cause: The DMHC states that required Statement of Economic Interest (Form 700) filers were tracked for Form 700 completion and notified of requirement to complete mandated ethics training. However, a mechanism was not in place to verify training completion.

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

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

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

Summary: The DMHC did not provide sexual harassment prevention training to six of 55 new supervisors within six months of their appointment.

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 litigation.

Cause: The DMHC states that required sexual harassment prevention training at the DMHC may be completed online or via in-person supervisory training. However, a mechanism was not in place to verify training completion.

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

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

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR (Cal. Code Reg., tit. 2, § 599.666). Several salary rules dictate how departments calculate and determine an employee's salary rate⁶ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

During the period under review, September 1, 2016, through May 31, 2017, the DMHC made 132 appointments. The CRU reviewed 27 of those appointments to determine if the DMHC applied salary regulations accurately and correctly processed employees' compensation transactions. These appointments are listed below:

⁶ "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)
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,600
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,600
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,600
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,600
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,600
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,600
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,600
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,600
Attorney	Certification List	Permanent	Full Time	\$6,190
Attorney	Certification List	Permanent	Full Time	\$6,190
Attorney	Certification List	Permanent	Full Time	\$5,130
Corporation Examiner IV (Specialist)	Certification List	Permanent	Full Time	\$6,643
Corporation Examiner IV (Supervisor)	Certification List	Permanent	Full Time	\$8,024
Legal Secretary	Certification List	Permanent	Intermittent	\$3,176 (\$18.32/Hour)
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$3,824
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$3,824
Staff Services Analyst (General)	Certification List	Permanent	Intermittent	\$3,824 (\$22.06/Hour)
Staff Services Analyst (General)	Certification List	Permanent	Intermittent	\$3,824 (\$22.06/Hour)

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Staff Services Analyst (General)	Certification List	Permanent	Intermittent	\$3,824 (\$22.06/Hour)
Associate Governmental Program Analyst	Mandatory Reinstatement	Permanent	Full Time	\$5,072
Attorney	Mandatory Reinstatement	Permanent	Full Time	\$7,899
Corporate Examiner	Mandatory Reinstatement	Permanent	Full Time	\$6,327
Attorney	Transfer	Permanent	Full Time	\$7,898
Attorney	Transfer	Permanent	Full Time	\$7,522
Staff Services Analyst (General)	Transfer	Limited Term	Full Time	\$3,824
Staff Services Analyst (General)	Transfer	Permanent	Full Time	\$3,354
Staff Services Analyst (General)	Transfer	Permanent	Full Time	\$3,195
Associate Governmental Program Analyst	Voluntary Demotion	Permanent	Full Time	\$5,758

FINDING NO. 8 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the 27 salary determinations that were reviewed. The DMHC 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 Reg., tit. 2, § 599.681). However, in many instances, CalHR provides salary rules departments must use when employees move between alternate ranges. They are described in the alternate range criteria (CalHR Pay

Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to rule 599.681.

During the period under review, June 1, 2016, through February 28, 2017, the DMHC made 30 alternate range movements within a classification⁷. The CRU reviewed 14 of those alternate range movements to determine if the DMHC applied salary regulations accurately and correctly processed employee’s compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Attorney	Range C	Range D	Full Time	\$6,636
Attorney	Range B	Range C	Full Time	\$5,895
Attorney	Range A	Range B	Full Time	\$5,130
Attorney	Range B	Range C	Full Time	\$6,190
Attorney	Range A	Range B	Full Time	\$5,130
Attorney	Range C	Range D	Full Time	\$6,636
Attorney	Range B	Range C	Full Time	\$6,190
Corporation Examiner	Range A	Range B	Full Time	\$5,053
Corporation Examiner	Range A	Range B	Full Time	\$5,053
Corporation Examiner	Range A	Range B	Full Time	\$5,053
Legal Secretary	Range A	Range B	Full Time	\$3,677
Personnel Specialist	Range A	Range B	Full Time	\$3,193
Staff Services Analyst	Range B	Range C	Full Time	\$3,824
Staff Services Analyst	Range A	Range B	Full Time	\$3,193

FINDING NO. 9 – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found that the 14 alternate range movements the DMHC made during the compliance review period, satisfied civil service laws, board rules and CalHR policies and guidelines.

Hiring Above Minimum Requests

Government Code section 19836 authorizes CalHR to allow payments above-the minimum rate in the salary range in order to hire persons who have extraordinary qualifications. On April 1, 2005, CalHR granted delegated authority to all departments to approve HAM’s for extraordinary qualifications, former legislative employees, and

⁷ 335 transactions.

former exempt employees (PML, “Delegation of Personnel Management Functions,” 2005-012). On September 25, 2007, CalHR also granted delegated authority for all departments to approve exceptions to the HAM criteria for extraordinary qualifications for all new state employees without prior review or approval from CalHR. However, for existing state employees, departments should obtain approval from CalHR and delegated authority does not apply (PML, “Hiring Above Minimum Standards for Extraordinary Qualifications,” 2010-005).

Prior to approving a HAM under delegated authority, departments should demonstrate and document the candidate’s extraordinary qualifications. The candidate’s extraordinary qualifications should contribute to the work of the department significantly beyond that which other applicants offer. The extraordinary qualifications should provide expertise in a particular area of the department’s program well beyond the normal requirements of the class. The department may also consider the unique talent, ability or skill demonstrated by the candidate’s previous job experience as extraordinary qualifications, but the scope and depth of such experience should be more significant than the length. The qualifications and hiring rates of State employees already in the same class should be carefully considered (CalHR Online Manual Section 1707). In all cases, the candidate’s current salary or other bona fide salary offers should be above the minimum rate, verified and appropriately documented. Additionally, departments must request and approve HAM’s before a candidate accepts employment (Ibid.).

During the period under review, September 1, 2016, through May 31, 2017, the DMHC authorized one HAM request. The CRU reviewed the authorized HAM request to determine if the DMHC correctly applied Government Code section 19836 and appropriately verified, approved, and documented candidate’s extraordinary qualifications and subsequent salaries, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Associate Life Actuary	Certification List	New to State	N/A	\$8,160

FINDING NO. 10 – Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

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

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 (Government Code § 19837). Departments may authorize a red circle rate in the following circumstances: management initiated change⁸, lessening of abilities⁹, downward reclassification¹⁰, split-off¹¹, allocation standard changes¹², or changes in salary setting methods¹³ (*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 SPB or CalHR 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 service¹⁴ and has performed the duties of the higher class satisfactorily¹⁵. 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 Reg., tit. 2, § 275). The employee may retain the red circle rate

⁸ Any major change in the type of classes, organizational structure, and/or staffing levels in a program.

⁹ 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.

¹⁰ Downward reclassification is when, as a result of SPB action or a DPA staff determination, an incumbent's position is moved to a lower class without the duties being changed.

¹¹ 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.

¹² 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.

¹³ Revised valuation standards applied in setting the salary for a class may result in reducing the salary of a class.

¹⁴ 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).

¹⁵ The latter requirement is normally satisfied by the successful completion of a probationary period, unless there is compelling evidence to suggest otherwise.

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 (CalHR Class and Pay Guide Section 440). If an employee, with ten years of state service, has one or more years of state service under a CEA appointment, has been terminated from a CEA appointment, and the termination was not voluntary nor was it based on unsatisfactory performance, CA Code of Regulations Section 599.988 mandates a red circle rate. In those cases where the employee's CEA termination was voluntary, but all of the other criteria above are met, Rule 599.988 allows the employee to be permissively granted a red circle rate. This rate is based upon the CEA salary rate received at the time of the termination. Government Code section 13332.05 limits the duration 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 (PML, "Delegation of Personnel Management Functions," 2005-012). Current Bargaining Unit agreements also provide guidelines and rules on red circle rates that may supersede applicable laws, codes, rules and/or CalHR policies and guidelines.

During the period under review, June 1, 2016, through February 28, 2017, the DMHC authorized two Red Circle Rate requests. The CRU reviewed all authorized Red Circle Rate requests, listed below, to determine if the DMHC correctly verified, approved and documented the Red Circle Rate authorization process:

Classification	Prior Classification	Red Circle Rate	Reason for Red Circle Rate
Attorney III	CEA B	\$10,305	Management Initiated Change
Staff Services Manager II	CEA A	\$9,666	Management Initiated Change

FINDING NO. 11 – Red Circle Rate Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found that the two Red Circle Rate requests the DMHC authorized 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 the Pay Scales, specifically 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 duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, June 1, 2016, through February 28, 2017, the DMHC issued bilingual pay to two employees. The CRU reviewed the bilingual pay authorizations, to ensure compliance with applicable CalHR policies and guidelines, which are listed below:

Classification	Bargaining Unit	Time Base
Program Technician II	R04	Full Time
Supervising Program Technician II	S04	Full Time

FINDING NO. 12 – Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the two bilingual pay differentials the DMHC authorized during the compliance review period. Bilingual pay was issued only in those instances in which bilingual skills were used on a continuous basis and average ten percent or more of the total time worked.

Pay Differentials

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

California State Civil Service Pay Scales (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, June 1, 2016, through February 28, 2017, the DMHC issued pay differentials¹⁶ to 14 employees. The CRU reviewed ten of these pay differentials to ensure compliance with applicable CalHR policies and guidelines, which are listed below:

Classification	Pay Differential	Monthly Amount
Assistant Chief Counsel	8	9.61%
Assistant Chief Counsel	8	9.61%
Assistant Chief Counsel	8	9.61%
Assistant Chief Counsel	8	9.61%
Assistant Chief Counsel	8	9.61%
Assistant Chief Counsel	8	9.61%
Program Technician II	411	\$100
Program Technician II	411	\$100
Program Technician II	411	\$100

¹⁶ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Supervising Program Technician II	411	\$100

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

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

Out-of-Class Assignments (OOC) and Pay

For excluded¹⁷ and most rank and file employees, out of class 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 (CA Code of Regulations § 599.810).

According to CalHR’s 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 DPA Rule 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 DPA regulation. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires (Section 375).

During the period under review, June 1, 2016, through February 28, 2017, the DMHC issued out-of-class pay¹⁸ to 14 employees. The CRU reviewed nine of these out-of-class assignments to ensure compliance with applicable CalHR policies and guidelines, which are listed below:

¹⁷ “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.

¹⁸ Excluding bilingual and arduous pay.

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Administrative Assistant II	R01	Staff Services Manager I	2/9/2017 - 3/31/2017
Assistant Chief Counsel	M02	CEA, B	8/31/2016 - 12/28/2016
Associate Governmental Program Analyst	R01	Staff Services Manager I	9/1/2016 - 9/30/2016
Associate Governmental Program Analyst	R01	Staff Services Manager I	10/1/2016 - 1/28/2017
Associate Governmental Program Analyst	R01	Staff Services Manager I	9/26/2016 - 1/23/2017
Associate Personnel Analyst	R01	Staff Services Manager I	8/15/2016 - 11/7/2016
Attorney III	R02	Assistant Chief Counsel	2/8/2016 - 6/6/2016
Office Technician (General)	R04	Staff Services Analyst	12/21/2016 - 3/16/2017
Staff Services Manager II (Supervisory)	S01	Health Program Manager III	9/14/2016 - 1/11/2017

FINDING NO. 14 – Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the nine out of class pay assignments that the DMHC authorized during the compliance review period. Out of Class pay was issued appropriately 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 person has a current, legal appointment.

Leave

Actual Time Worked

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. Time is accrued by months so that the immediate prior 12-calendar months are the ones used to count the 194 working days. ATW includes; any day on which the employee physically worked, regardless of the length of time worked on that day¹⁹, any day for which the employee is on paid absence²⁰, any holiday for which the employee receives either full or partial pay. If the employee works on the holiday, the day is counted only once regardless of the rate of pay²¹.

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. Therefore, departments must monitor the actual number of days worked in order to ensure that they do not exceed 194 days in any 12-consecutive month period (Personnel Management Policy and Procedures Manual Sections 330.2-330.4).

At the time of the review, the DMHC had three employees on ATW. The CRU reviewed all three of the ATW appointments to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Position #	Time Base	Time Frame	No. of Days on ATW
Seasonal Clerk	409-151-1120-921	Intermittent	07/2016-06/2017	195
Seasonal Clerk	409-151-1120-921	Intermittent	05/2017-06/2017	19
Seasonal Clerk	409-151-1120-921	Intermittent	05/2017-06/2017	20

FINDING NO. 15 – ATW Employee Exceeded the Nine Month in Any Twelve Consecutive Month Limitation

Summary: The DMHC did not monitor one ATW employee’s actual number of days worked in order to ensure the employee did not exceed the 194 days in any 12-consecutive month period. (CalHR Online Manual Section 1202.). According to timesheets and pay history documents provided by the DMHC, the employee worked 195 days

¹⁹ For example, two hours or ten hours counts as one day.
²⁰ For example, vacation, sick leave, compensating time off, etc.
²¹ For example, straight time, time and one-half, double time, etc.

in a calendar year, which exceeded the 194 day in a calendar year limitation.

Criteria: Temporary employee means an employee holding a position under temporary appointment. Employees appointed under a temporary authorization (TAU) may be appointed on the basis of ATW. ATW is a method that can be used to keep track of a TAU employee's time to ensure that the Constitutional limit of nine months in any twelve consecutive months is not exceeded. (Cal. Const., art VII, § 5.) Typically, the ATW is 194 working days in 12 consecutive months, regardless of the classification or the department the temporary appointment was served under, unless they have had a three-month break in service.

Severity: Non-serious or Technical. The department failed to comply with Article VII, Section 5 of the Constitution which limits the amount of time an individual may work in a temporary appointment for the state civil service. The limitation cannot be extended or exceeded for any reason. The appointing power must maintain the records and control the time worked so as not to exceed the constitutional 9-month limitation in 12 consecutive months. (*Ibid.*)

Cause: The DMHC states that they vigilantly monitors actual time worked for their ATW employees. In the non-serious or technical violation in this case, the count was in error by one day.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DMHC submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of Article VII, Section 5 of the Constitution and CalHR Online Manual Section 1202.

Administrative Time Off

Administrative Time Off (ATO) is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. 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. Additionally, ATO may be granted when employees need time off for any of the following: donating blood, extreme weather that makes getting to

work impossible, and/or, when employees need time off to attend special events. Any ATO requests lasting over 30 days must be submitted and approved by CalHR. Approval will generally be given in 30 calendar day increments and any extension must be approved prior to the expiration of the 30 calendar days. Departments must properly document and track ATO for any length of time (PML, "Administrative Time Off (ATO) – Policy, Procedure and Documentation Requirements", 2012-008).

Employees may also be granted a paid leave of absence of up to five days by their appointing power when the employee works or resides in a county where a state of emergency has been proclaimed by the Governor (§ 599.785.5. Administrative Time Off - During State of Emergency).

During the period under review, January 1, 2016, through December 31, 2016, the DMHC placed two employees on ATO. The CRU reviewed the two ATO appointments to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	No. of Days on ATO
Senior Legal Analyst	8/25/2016- 8/25/2016	1
Systems Software Specialist III (Supervisory)	8/5/2016- 8/10/2016	4

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

The CRU found no deficiencies in the two employees placed on ATO during the compliance review period. The DMHC provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

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

Additionally, in accordance with CalHR Online Manual Section 2101, departments must create a monthly internal audit process to verify all leave input into any leave accounting

system is keyed accurately and timely. 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. Attendance records shall be corrected by the pay period following the pay period in which the error occurred. Accurate and timely attendance reporting is required of all departments and is subject to audit.

During the period under review, December 1, 2016, through February 28, 2017, the DMHC reported 26 units comprised of 454 active employees during the December 2016 pay period, the DMHC reported 27 units comprised of 451 active employees during the January 2017 pay period, and 27 units comprised of 461 active employees during the February 2017 pay period. 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	Number of Missing Timesheets
January 2017	121	31	31	0
January 2017	161	45	45	0
January 2017	411	30	30	0
January 2017	517	10	10	0
January 2017	572	29	29	0
January 2017	621	28	28	0
February 2017	111	36	36	0
February 2017	162	37	37	0
February 2017	171	27	27	0
February 2017	461	26	26	0
February 2017	572	28	28	0
February 2017	621	29	29	0

FINDING NO. 17 – Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU reviewed employee leave records from two different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The DMHC kept complete and accurate time and attendance records for each employee and officer employed within the

department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

Leave Reduction Efforts

Departments must comply with the regulations and CalHR policies that require a leave plan for every employee with vacation or annual leave hours over the maximum amount permitted (Cal. Code Regs., tit. 2, § 599.742.1 and applicable Bargaining Unit Agreements). Bargaining Unit Agreements and California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. For instance, according to California Code of Regulations, title 2, section 599.737, if a represented employee does not use all of the vacation to which he or she is entitled in a calendar year, “the employee may accumulate the unused portion, provided that on January 1st of a calendar year, the employee shall not have more than the established limit as stipulated by the applicable bargaining unit agreement²²”. Likewise, if an excluded employee does not use all of the vacation to which he or she is entitled in a calendar year, the “employee may accumulate the unused portion of vacation credit, provided that on January 1st of a calendar year, the excluded employee shall not have more than 80 vacation days.” (Cal. Code Regs., tit. 2, § 599.738).

In accordance with CalHR Online Manual Section 2124, departments must create a leave reduction policy for their organization and monitor employees’ leave to ensure compliance with the departmental leave policy; and ensure employees who have significant “over-the-cap” leave balances have a leave reduction plan in place.

As of December 2016, 31 DMHC employees exceeded the established limits of vacation or annual leave. The CRU reviewed 15 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
Associate Administrative Analyst (Accounting Systems)	R01	366	Yes
Attorney III	R02	262	Yes

²² For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for bargaining units 06 there is no established limit and bargaining unit 5 the established limit is 816 hours.

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Attorney III	R02	855	Yes
Attorney IV	R02	221	No
CEA	M01	177	Yes
Corporation Examiner IV (Supervisor)	S01	703	Yes
Corporation Examiner IV (Supervisor)	S01	395	Yes
Data Processing Manager IV	M01	457	Yes
Staff Information Systems Analyst (Specialist)	R01	163.75	Yes
Staff Services Manager I	S01	536	Yes
Staff Services Manager II (Supervisory)	S01	201	Yes
Staff Services Manager III	M01	1363	Yes
Supervising Corporation Examiner	M01	820	Yes
Supervising Corporation Examiner	M01	66	Yes
Systems Software Specialist II (Technical)	R01	229	Yes
Total		6814.75	

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

Summary: Although the DMHC made a reasonable effort to ensure that all employees over the maximum vacation or annual leave hours had leave reduction plans in place, the DMHC did not provide a leave reduction plan for one Attorney IV reviewed whose leave balances significantly exceeded established limits.

Criteria: 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. 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 for reasons other than those listed in sections 599.737 and 599.738 of these regulations 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. (Cal. Code Regs., tit. 2, § 599.742.)

According to CalHR PML 2016-029, “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. 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”.

Severity: Non-serious or Technical. California state employees have accumulated significant leave hours over the last several years 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 DMHC states that they regularly monitor leave usage and enforce the establishment of requisite leave reduction plans for employees exceeding maximum leave caps. In this case notification and reminders were sent however the leave reduction plan was not completed.

Action: The DMHC has submitted the missing leave reduction plan, therefore, no further action is required at this time.

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 service²³ (Cal. Code Regs., tit. 2, § 599.608).

²³ Except as provided in sections 599.609 and 599.776.1(b) of these 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 these regulations.

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 as defined in section 599.608, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. 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. Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated (Cal. Code Regs., tit. 2, § 599.739). On the first day following a qualifying monthly pay period, excluded employees²⁴ shall be allowed credit for annual leave with pay (Cal. Code Regs., tit. 2, § 599.752).

Permanent Intermittent employees earn vacation according to the preceding schedule for each increment of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period are not counted or accumulated.

During the period under review, June 1, 2016, through February 28, 2017, the DMHC processed four 715 transactions²⁵. The CRU reviewed all 715 transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of 715 Transaction	Time base	Number Reviewed
Non-Qualifying Pay Period	Full Time	4

FINDING NO. 19 – 715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

²⁴ 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.

²⁵ 715 transaction code is used for: temporary leaves of 30 calendar days or less (per SPB Rule 361) resulting in a non-qualifying pay period; used for qualifying a pay period while on NDI; used for qualifying a pay period while employee is on dock and furlough.

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 these 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 (CalHR Online Manual Section 1204).

FINDING NO. 20 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

After reviewing the DMHC's nepotism policy in effect during the compliance review period, the CRU verified that the policy was disseminated to all staff and emphasized the DMHC's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the DMHC'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 as outlined in CalHR's Online Manual Section 1204.

Worker's Compensation

Pursuant to California Code of Regulations, title 8, section 9880, employers shall provide to every new employee 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. This notice shall also contain a form that the employee can use to pre-designate their personal physician or medical group as defined by Labor Code section 4600. Additionally, employers shall also provide a claim form and notice of potential eligibility to their employee within one working day of notice or knowledge that the employee has suffered a work related injury or illness (Labor Code § 5401).

According to Labor Code section 3363.5, public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. Workers' compensation coverage is not mandatory for volunteers as it is for employees. This is specific to the legally uninsured state departments participating in the Master Agreement. Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (SCIF) office to discuss the status of volunteers (PML, "Workers' Compensation Coverage for Volunteers," 2015-009). Those departments that have volunteers should have notified or updated their existing notification to the SCIF by April 1, 2015, whether or not they have decided to extend workers' compensation coverage to volunteers. In this case, the DMHC did not employ volunteers during the compliance review period.

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

After reviewing the DMHC's workers' compensation process that was in effect during the compliance review period, the CRU verified that the DMHC 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 DMHC received worker's compensation claims, the DMHC properly provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code section 19992.2, departments 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 20 permanent DMHC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations and CalHR policy and guidelines. These are listed below:

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

Summary: The DMHC did not provide performance appraisals to three of 20 employees reviewed at least once in each twelve calendar months after the completion of the employee's probationary period.

Classification	Date Performance Appraisal(s) Due
Associate Personnel Analyst	3/14/2017
Data Processing Manager IV	12/14/2016
Program Technician II	5/31/2017

Criteria: Departments are required to “prepare performance reports and keep them on file as prescribed by department rule” (Government Code section 19992.2). 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.

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

Cause: The DMHC states that a mechanism did not exist to verify performance appraisal completion by supervisors and submission of completed performance appraisals to employee OPF’s.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the DMHC submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of any relevant documentation should be included with the plan.

DEPARTMENTAL RESPONSE

The DMHC’s response is attached as Attachment 1.

SPB REPLY

Based upon the DMHC’s written response, the DMHC will comply with the CRU

recommendations and findings and provide the CRU with an action plan.

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



Edmund G. Brown Jr., Governor
State of California
Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
980 9th St., Ste. 500, Sacramento, CA 95814
Telephone: 916-324-8176 | Fax: 916-255-5241
www.HealthHelp.ca.gov

May 9, 2018

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

Re: Response to State Personnel Board (SPB) Draft Compliance Review Report

Dear Ms. Ambrose:

We appreciate the opportunity to provide comments to the draft SPB Compliance Review Report for the Department of Managed Health Care (DMHC).

The DMHC recognizes the importance of efforts to evaluate personnel practices to ensure compliance and foster implementation of best practices. We continually strive for excellence in our employment, development and contracting practices and are pleased to see these efforts reflected in our compliance in the areas of Examinations, Compensation and Pay, and Personal Services Contracts. Our overall compliance in 15 of the 22 areas of review also demonstrates DMHC's commitment to adhering to civil service laws, board regulations, bargaining agreements and our CalHR delegation agreements.

We offer the following response to the seven deficiencies noted in the draft report.

1. Probationary evaluations were not provided for all appointments reviewed.

Cause: A mechanism did not exist to verify probationary evaluation completion by supervisors and submission of completed probationary reports to employee Official Personnel Files (OPF's).

Response: The DMHC recently implemented two systems which will be utilized to more effectively track the completion of probationary evaluations. Within the last two years, the DMHC implemented an automated Request for Personnel Action (RPA) system and within the last six months, a Learning Management System (LMS); both feature mechanisms which will be utilized to track and monitor probationary evaluation completion. To further ensure compliance, notifications will also be sent to the Deputy Directors of supervisors with continued outstanding reviews. Notifications of completion will also be provided to Human Resources as a strategy to ensure completed

probationary evaluations are filed in Official Personnel Files (OPF).

2. EEO Officer's Duty Statement does not reflect EEO Duties.

Cause: During the most recent duty statement revision project, ending in December 2016, the DMHC initiated a department-wide review of all duty statements. The updates included a review of current duties as well as integration of duty statement content into a new more comprehensive duty statement template. In that review process, a review of the Chief Deputy Director, who serves as the Equal Employment Opportunity (EEO) Officer, was not completed.

Response: The duty statement of the EEO Officer has been updated to reflect EEO duties.

3. Ethics Training was not provided for all filers.

Cause: Required Statement of Economic Interest (Form 700) filers were tracked for Form 700 completion and notified of requirement to complete mandated Ethics training. A mechanism was not in place to verify training completion.

Response: With the implementation of the DMHC LMS, filers will be assigned to the Ethics training within the LMS and automatically notified to complete the mandated training within six months of hire and every two years thereafter. Notifications will also be sent to the supervisors of Form 700 filers to further ensure compliance. Monitoring and reporting oversight will be provided by the DMHC Training Office.

4. Sexual Harassment Prevention Training was not provided for all supervisors.

Cause: Required sexual harassment prevention training at the DMHC may be completed online or via in-person supervisory training. A mechanism was not in place to verify training completion.

Response: The DMHC strongly supports ensuring a work environment free from unlawful harassment and discrimination. All DMHC employees, regardless of classification, are required to complete sexual harassment prevention training every two years. With the implementation of the DMHC LMS, all DMHC supervisors will be assigned sexual harassment prevention training within the LMS and automatically notified to complete the mandated training within six months of hire and every two years thereafter. Sexual harassment prevention training may also be obtained via the Basic Supervision for State Supervisors (Week 2) or through Agency-wide online training. In

order to "opt out" of the designated online training, a supervisor must provide a certificate of completion for an AB 1825-compliant course. Reminder notifications will also be sent to the supervisors of employees required to complete the training with monitoring and reporting oversight provided by the DMHC Training Office.

5. ATW employee exceeded the nine month in any twelve consecutive month limitation.

Cause: The DMHC vigilantly monitors actual time worked for our ATW employees. In the non-serious or technical violation in this case, the count was in error by one day.

Response: The DMHC will continue to vigilantly monitor time worked for our ATW employees and ensure the actual days counted is accurate in accordance with existing requirements.

6. Leave reduction plans were not provided to employees whose leave balances exceeded established limits.

Cause: The DMHC regularly monitors leave usage and enforces the establishment of requisite leave reduction plans for employees exceeding maximum leave caps. In this case notification and reminders were sent however the leave reduction plan was not completed.

Response: The DMHC routinely initiates and implements leave reduction plans for all employees exceeding maximum leave caps. Of the 15 employees reviewed, one did not have a completed leave reduction plan. The required plan is now complete. The DMHC has also implemented notifications to Deputy Directors that include leave cash out cost estimates.

7. Performance appraisals were not provided to all employees.

Cause: A mechanism did not exist to verify performance appraisal completion by supervisors and submission of completed performance appraisals to employee OPF's.

Response: As noted in the response to Item 1 above, the DMHC will also utilize our RPA and LMS systems to more effectively track the completion of appraisals. Initial notifications and reminders will be sent to supervisors. Subsequent reminders will include Deputy Directors of supervisors with continued outstanding appraisals to further ensure compliance. Notifications of completions will also be provided to Human Resources as a strategy to ensure completed performance appraisals are filed in OPF's.

If you have any questions or would like any additional information, please contact Matilda Aidam at (916) 738-3375 or matilda.aidam@dmhc.ca.gov.

Sincerely,



Cassandra McTaggart
Deputy Director
Office of Administration

CM:ma

Attachment

cc: Marta Green, Chief Deputy Director