



COMPLIANCE REVIEW REPORT

FRANCHISE TAX BOARD

Compliance Review Unit
State Personnel Board
November, 18, 2019

TABLE OF CONTENTS

Introduction	1
Executive Summary	2
Background	4
Scope and Methodology.....	4
Findings and Recommendations.....	6
Examinations	6
Permanent Withhold Actions.....	8
Appointments.....	9
Equal Employment Opportunity	12
Personal Services Contracts.....	13
Mandated Training.....	18
Compensation and Pay.....	21
Leave	36
Policy and Processes.....	52
Departmental Response.....	55

INTRODUCTION

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

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

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 program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

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

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

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

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the Franchise Tax Board (FTB)'s 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
Examinations	Permanent Withhold Actions Complied with Civil Service Laws and Board Rules
Appointments	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules
Personal Services Contracts	Unions Were Not Notified of Personal Services Contract
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/or CalHR Policies and Guidelines
Compensation and Pay	Hiring Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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	Bilingual Pay Authorization 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	Incorrect Authorization of Out-of-Class Pay
Leave	Positive Paid Employees' Time Worked Exceeded Nine Months in a Twelve Consecutive Month Period
Leave	Administrative Time Off Was Not Properly Authorized and/or Monitored
Leave	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Incorrect Application of State Service and Leave Transactions
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 mission of the FTB is to help taxpayers file timely and accurate tax returns, and pay the correct amount to fund services important to Californians. The FTB employs approximately 6,500 employees throughout offices in California, Texas, New York, and Illinois, within seven primary divisions: Administrative Services, Accounts Receivable Management, Audit, Filing, Finance and Executive Services, Legal, and Technology Services.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the FTB's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes². The primary objective of the review was to determine if FTB 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 FTB'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 FTB provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the FTB's Permanent Withhold Actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and Withhold letters.

A cross-section of the FTB'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 FTB 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.

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

The FTB did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the FTB did not make any additional appointments during the compliance review period.

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

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

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

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.

The CRU reviewed the FTB's 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 FTB'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 FTB'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 FTB employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Additionally, the CRU reviewed a selection of FTB positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

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

On September 25, 2019, an exit conference was held with the FTB to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the FTB's written response on October 29, 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 (MQ's) for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the MQ's. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) The final earned rating of each

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

During the period under review, June 1, 2018 through November 30, 2018, the FTB conducted 21 examinations. The CRU reviewed 11 of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Administrator I, FTB	Departmental Promotional	Training and Experience (T&E) ⁴	9/6/2018	211
Administrator II, FTB	Departmental Promotional	T&E	5/9/2018	192
Administrator III, FTB	Departmental Promotional	T&E	11/21/2018	135
Assistant Chief Counsel	Departmental Promotional	T&E	10/3/2018	20
Business Director, Career Executive Assignment (CEA) B	Open	T&E	5/29/2018	11
Division Chief, Audit Division, CEA C	Open	T&E	9/7/2018	13
Office Services Manager I	Departmental Promotional	T&E	7/6/2018	65
Principal Compliance Representative	Departmental Promotional	T&E	6/20/2018	133
Program Specialist II	Departmental Promotional	T&E	8/29/2018	169
Staff Operations Specialist	Departmental Promotional	T&E	9/13/2018	109

⁴ 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
Tax Program Technician II	Departmental Promotional	T&E	8/8/2018	314

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

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

Permanent Withhold Actions

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointments and promotions within the state civil service system shall be merit-based, ascertained by a competitive examination process. (Cal. Const., art. VII, § 1, subd. (b).) Once a candidate has obtained list eligibility, a department may discover information pertaining to that eligible which raises concerns regarding his/her eligibility or suitability for employment with the state. (CalHR Withhold Manual, p. 3.) A permanent withhold action is valid for the duration of the eligible’s list eligibility. (*Ibid.*) Departments are required to maintain a separate file for each withhold action and the file should include a copy of the withhold notification letter sent to the eligible, as well as all supporting documentation which form the basis of the withhold action. (CalHR Withhold Manual, p. 2.)

During the review period, the FTB conducted 15 permanent withhold actions. The CRU reviewed nine of those permanent withhold actions, which are listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Employee Placed on Withhold
Tax Technician, FTB	8PB44	12/18/2017	12/18/2018	Failed to Meet MQ's
Tax Technician, FTB	8PB44	6/24/2018	6/24/2019	Failed to Meet MQ's
Tax Technician, FTB	8PB44	8/20/2018	8/20/2019	Failed to Meet MQ's
Tax Technician, FTB	8PB44	4/25/2018	4/25/2019	Failed to Meet MQ's
Tax Technician, FTB	8PB44	7/1/2018	7/1/2019	Failed to Meet MQ's
Tax Technician, FTB	8PB44	3/27/2018	3/27/2019	Failed to Meet MQ's
Tax Technician, FTB	8PB44	7/8/2018	7/8/2019	Failed to Meet MQ's
Tax Technician, FTB	8PB44	3/13/2018	3/13/2019	Failed to Meet MQ's
Tax Technician, FTB	8PB44	12/18/2017	12/18/2018	Failed to Meet MQ's

FINDING NO. 2 – Permanent Withhold Actions Complied with Civil Service Laws and Board Rules

The CRU found no deficiencies in the permanent withhold actions undertaken by the department during the compliance review period.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250 (b).) Interviews shall be conducted using job-related criteria. (Ibid.) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250 (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (Ibid.) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250 (e).)

During the period under review, April 1, 2018 through September 30, 2018, the FTB made 634 appointments. The CRU reviewed 65 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accountant I (Specialist)	Certification List	Full Time	Limited Term	1
Accounting Technician	Certification List	Full Time	Limited Term	1
Administrator I, FTB	Certification List	Full Time	Permanent	1
Administrator II, FTB	Certification List	Full Time	Permanent	1
Administrator III, FTB	Certification List	Full Time	Permanent	1
Assistant Administrative Analyst, Accounting Systems	Certification List	Full Time	Permanent	1
Associate Operations Specialist	Certification List	Full Time	Permanent	2
Associate Personnel Analyst	Certification List	Full Time	Permanent	1
Associate Tax Auditor	Certification List	Full Time	Permanent	3
CEA	Certification List	Full Time	CEA	2
Compliance Representative	Certification List	Full Time	Permanent	6
Customer Service Specialist	Certification List	Full Time	Permanent	1
Digital Composition Specialist III	Certification List	Full Time	Permanent	1
Information Technology Associate	Certification List	Full Time	Permanent	1
Information Technology Specialist I	Certification List	Full Time	Permanent	2
Investigation Specialist II (Supervisor)	Certification List	Full Time	Permanent	1
Key Data Operator	Certification List	Full Time	Permanent	1
Legal Analyst	Certification List	Full Time	Permanent	1
Limited Examination and Appointment Program Candidate	Certification List	Intermittent	Temporary	1
Management Services Technician	Certification List	Intermittent	Permanent	1
Materials and Stores Specialist	Certification List	Full Time	Permanent	1
Office Assistant (General)	Certification List	Intermittent	Permanent	1
Personnel Specialist	Certification List	Full Time	Permanent	1
Principal Compliance Representative	Certification List	Full Time	Permanent	1
Program Specialist I	Certification List	Full Time	Permanent	1
Program Specialist II	Certification List	Full Time	Permanent	1
Program Specialist III	Certification List	Full Time	Permanent	1
Senior Accounting Officer (Specialist)	Certification List	Full Time	Permanent	1
Senior Compliance Representative	Certification List	Full Time	Permanent	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Senior Operations Specialist	Certification List	Full Time	Permanent	1
Staff Operations Specialist	Certification List	Full Time	Permanent	1
Staff Services Analyst (General)	Certification List	Full Time	Permanent	1
Staff Services Manager I	Certification List	Full Time	Permanent	1
Tax Auditor	Certification List	Full Time	Permanent	3
Tax Counsel	Certification List	Full Time	Permanent	1
Tax Program Technician I	Certification List	Full Time	Permanent	2
Tax Program Technician II	Certification List	Full Time	Permanent	1
Tax Technician	Certification List	Full Time	Permanent	6
Associate Operations Specialist	Training and Development	Full Time	Permanent	1
Associate Personnel Analyst	Training and Development	Full Time	Permanent	1
Staff Services Manager I	Training and Development	Full Time	Permanent	1
Associate Tax Auditor	Transfer	Full Time	Permanent	1
Information Technology Specialist I	Transfer	Full Time	Permanent	1
Key Data Operator	Transfer	Intermittent	Permanent	1
Staff Services Analyst (General)	Transfer	Full Time	Permanent	1
Tax Auditor	Transfer	Full Time	Permanent	1
Tax Technician I	Transfer	Full Time	Permanent	1

FINDING NO. 3 – Appointments Complied with Civil Service Laws and Board Rules

The FTB 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 56 list appointments reviewed, the FTB ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU reviewed six FTB appointments made via transfer. 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.) The FTB verified the eligibility of each candidate to their appointed class.

Eligibility for training and development assignments are limited to employees who (1) have permanent status in their class, or (2) who have probationary status and who previously have had permanent status and who, since such permanent status, have had no break in service due to a permanent separation. (Cal. Code Regs., tit. 2, § 438, subd. (a).) The CRU reviewed three training and development appointments and determined them to be in compliance with applicable civil service laws and Board rules.

The CRU found no deficiencies in the appointments that the FTB initiated during the compliance review period. Accordingly, the CRU found that the FTB's appointments processes and procedures utilized during the compliance review period satisfied civil service laws and Board rules.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795, subd. (a).)

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

FINDING NO. 4 – Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules

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

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the state. (Cal. Code Regs., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include 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, June 1, 2018 through November 30, 2018, the FTB had 164 PSC's that were in effect. The CRU reviewed 50 of those, which are listed below:

Vendor	Type of Contract	Contract Dates	Contract Amount	Justification Identified	Union Notified
Academy X Inc.	Training	11/15/2018 & 12/13/2018	\$1,200	Yes	No
Aramark Uniform & Career Apparel	Service and/or Maintenance	7/1/18 - 6/30/21	\$4,089	Yes	Yes
CalCPA Education Foundation	Training	10/22/18 - 6/30/19	\$11,000	Yes	No
California CLETS Users Group	Training	9/11/18 - 9/14/18	\$1,875	Yes	No
California Peace Officers Association	Training	9/17/18 - 9/20/18	\$1,700	Yes	No
Canon Solutions America	Service and/or Maintenance	7/1/18 - 12/31/18	\$115,650	Yes	Yes
Catherine A Sanderson	Training	10/3/18 - 10/3/18	\$4,950	Yes	No
CRA International Inc.	Service and/or Maintenance	9/1/18 - 6/30/19	\$14,500	Yes	Yes
Cromer Equipment	Service and/or Maintenance	7/1/18 - 6/30/21	\$111,421	Yes	Yes
Federation of Tax Administration	Training	10/6/19 - 10/9/19	\$3,180	Yes	No
Garda CI West Inc.	Service and/or Maintenance	5/11/18 - 5/10/20	\$3,744	Yes	Yes
Government Training Agency	Training	11/5/18 - 12/20/18	\$1,880	Yes	No
IACIS	Training	4/29/2019	\$2,995	Yes	No
IBM	Service and/or Maintenance	10/1/18 - 9/23/19	\$115,467	Yes	No
Innovative Solutions Inc.	Training	12/3/18 - 12/4/18	\$1,220	Yes	Yes
Innovative Solutions Inc.	Training	8/27/18 - 8/31/18	\$1,500	Yes	No

Vendor	Type of Contract	Contract Dates	Contract Amount	Justification Identified	Union Notified
Innovative Solutions Inc.	Training	11/5/19 - 11/9/19	\$2,471	Yes	No
Innovative Solutions Inc.	Training	9/11/18 - 9/12/18	\$1,829	Yes	No
Innovative Solutions Inc.	Training	8/27/18 - 8/31/18	\$4,905	Yes	No
Innovative Solutions Inc.	Training	10/22/18 - 10/26/18	\$2,471	Yes	No
Innovative Solutions Inc.	Training	11/25/18- 11/30/18	\$2,471	Yes	No
Innovative Solutions Inc.	Training	1/14/19- 1/16/19	\$2,471	Yes	No
Innovative Solutions Inc.	Training	9/24/18 - 9/28/18	\$7,621	Yes	No
Innovative Solutions Inc.	Training	11/5/18 - 2/22/19	\$6,553	Yes	No
International Association for Property & Evidence Inc.	Training	12/4/18	\$1,350	Yes	No
Kastle New York LLC t/a Mutual Security Services	Service and/or Maintenance	6/1/18 - 5/31/21	\$9,507	Yes	Yes
Lemons, Grundy & Eisenberg	Service and/or Maintenance	7/1/14- 6/30/19	\$855,000	Yes	Yes
Loyola Marymount University	Training	12/6/18 - 12/7/18	\$2,835	Yes	No
Machinedude Forms Equip Sol	Service and/or Maintenance	7/1/18 - 6/30/20	\$7,200	Yes	Yes
Machinedude Forms Equip Sol	Service and/or Maintenance	6/27/18 - 6/27/18	\$119	Yes	Yes
Magellan Health Services of CA	Service and/or Maintenance	7/1/18 - 6/30/20	\$5,000	Yes	Yes
Mark Andy Print Products	Service and/or Maintenance	8/21/18 - 8/20/20	\$9,120	Yes	Yes

Vendor	Type of Contract	Contract Dates	Contract Amount	Justification Identified	Union Notified
McDonald Carano, LLP.	Service and/or Maintenance	7/1/04 - 6/30/19	\$30,085,000	Yes	Yes
Michael Edmonds	Service and/or Maintenance	9/1/18 - 6/30/19	\$10,000	Yes	Yes
North State Environmental	Service and/or Maintenance	8/1/18 - 7/31/21	\$5,673	Yes	Yes
Ora Systems Inc.	Service and/or Maintenance	7/24/18 - 12/6/18	\$13,545	Yes	Yes
Pitney Bowes Inc.	Service and/or Maintenance	7/1/18 - 6/30/20	\$14,500	Yes	Yes
Pitney Bowes Inc.	Service and/or Maintenance	9/25/18 - 6/30/20	\$7,250	Yes	Yes
PM Truck Repair Inc.	Service and/or Maintenance	9/26/2018	\$601	Yes	Yes
Prevail - Priority Management, San Francisco	Service and/or Maintenance	10/22/18 - 11/6/18	\$50,000	Yes	Yes
Project Management Academy	Training	11/12/18 - 11/15/18	\$1,895	Yes	No
Pyro-Communication Systems, Inc.	Service and/or Maintenance	7/1/18 - 6/30/21	\$813	Yes	No
Spidell Publishing Inc.	Training	10/19/18	\$199	Yes	No
Spidell Publishing Inc.	Training	9/24/18	\$1,881	Yes	No
Spidell Publishing Inc.	Training	1/13/18	\$219	Yes	No
SureConnections, Inc.	Service and/or Maintenance	7/1/18 - 6/30/20	\$250,000	Yes	Yes
Tech Data Corp	Training	6/4/18 - 6/8/18	\$6,700	Yes	Yes

Vendor	Type of Contract	Contract Dates	Contract Amount	Justification Identified	Union Notified
Valley Alarm	Service and/or Maintenance	7/1/18 - 6/30/20	\$1,460	Yes	Yes
Video Streaming Services	Service and/or Maintenance	10/25/18 - 11/19/18	\$4,895	Yes	Yes
Xerox Corporation	Service and/or Maintenance	10/1/2018 - 9/30/19	\$105,454	Yes	Yes

The total dollar amount of all the PSC's reviewed was \$31,877,379. It was beyond the scope of the review to make conclusions as to whether FTB justifications for the contracts were legally sufficient. For all PSC's reviewed, the FTB provided specific and detailed factual information in the written justifications as to how each of the 50 contracts met at least one condition set forth in Government Code section 19131, subdivision (b).

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

Summary: The FTB did not notify unions prior to entering into 25 of the 50 PSC's.

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

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

Cause: The FTB states that they determined there were no organizations that had employees who performed the type of work to be contracted, and interpreted the government code as only requiring notice of a contract if an organization that represents state employees who perform the type of work to be contracted actually exists.

Action: It is the contracting department’s responsibility to identify and notify any unions whose members could potentially perform the work to be contracted prior to executing the PSC. It is recommended that, within 60 days of the SPB Executive Officer’s approval of these findings and recommendations, the FTB submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of any relevant documentation should be included with the plan.

Mandated Training

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

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

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

Within 12 months of the initial appointment of an employee to a management or CEA position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management

employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a 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 FTB's mandated training program that was in effect during the compliance review period. The FTB's supervisory training was found to be in compliance, while the FTB'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 FTB provided ethics training to all 1,350 existing filers. However, the FTB did not provide ethics training to eight of 164 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 all of its filers are aware of prohibitions related to their official position and influence.

Cause: The FTB states that they did not have an adequate tracking process in place.

Action: The FTB must take appropriate steps to ensure that all filers are provided ethics training within the time periods prescribed. It is therefore recommended that no later than 60 days after the SPB

Executive Officer's approval of these findings and recommendations, the FTB must submit a corrective action plan to the CRU that ensures conformity with ethics training mandates. Copies of any relevant documentation should be included with the plan.

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

- Summary:** The FTB provided sexual harassment prevention training to all 148 new supervisors within six months of their appointment. However, the FTB did not provide sexual harassment prevention training to two of 597 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 that all of its 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 FTB states that training was not completed within the required timeframe due to unforeseen medical leave and challenges related to training availability.
- Action:** The FTB 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 Executive Officer's approval of these findings and recommendations, the FTB must submit a corrective action plan to the CRU that ensures conformity with sexual harassment training mandates. Copies of any relevant documentation should be included with the plan.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate⁵ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

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

During the period under review, April 1, 2018 through September 30, 2018, the FTB made 634 appointments. The CRU reviewed 34 of those appointments to determine if the FTB applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accountant I (Specialist)	Certification List	Limited Term	Full Time	\$3,239
Administrator I	Certification List	Permanent	Full Time	\$6,086
Administrator II	Certification List	Permanent	Full Time	\$8,732
Administrator III	Certification List	Permanent	Full Time	\$8,185
Assistant Administrative Analyst, Accounting Systems	Certification List	Permanent	Full Time	\$4,177
Associate Operations Specialist	Certification List	Permanent	Full Time	\$5,047
Associate Operations Specialist	Certification List	Permanent	Full Time	\$5,438
Associate Personnel Analyst	Certification List	Permanent	Full Time	\$5,574
Associate Tax Auditor	Certification List	Permanent	Full Time	\$5,331
Associate Tax Auditor	Certification List	Permanent	Full Time	\$5,493
Associate Tax Auditor	Certification List	Permanent	Full Time	\$5,484

⁵ "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)
Compliance Representative	Certification List	Permanent	Full Time	\$3,804
Compliance Representative	Certification List	Permanent	Full Time	\$3,872
Compliance Representative	Certification List	Permanent	Full Time	\$4,561
Compliance Representative	Certification List	Permanent	Full Time	\$3,804
Customer Service Specialist	Certification List	Permanent	Full Time	\$3,546
Information Technology Specialist I	Certification List	Permanent	Full Time	\$5,628
Investigation Specialist II (Supervisor)	Certification List	Permanent	Full Time	\$8,577
Legal Analyst	Certification List	Permanent	Full Time	\$5,033
Management Services Technician	Certification List	Permanent	Intermittent	\$3,063
Materials and Stores Specialist	Certification List	Permanent	Full Time	\$3,805
Office Assistant (General)	Certification List	Permanent	Intermittent	\$2,255
Program Specialist III	Certification List	Permanent	Full Time	\$8,782
Senior Operations Specialist	Certification List	Permanent	Full Time	\$7,225
Staff Operations Specialist	Certification List	Permanent	Full Time	\$5,710
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,136
Tax Counsel	Certification List	Permanent	Full Time	\$5,602
Tax Program Technician II	Certification List	Permanent	Full Time	\$3,336
Tax Technician	Certification List	Permanent	Full Time	\$3,186
Tax Technician	Certification List	Permanent	Full Time	\$3,011
Tax Technician	Certification List	Permanent	Intermittent	\$3,186
Information Technology Specialist I	Transfer	Permanent	Full Time	\$7,702
Key Data Operator	Transfer	Permanent	Intermittent	\$3,162
Tax Technician	Transfer	Permanent	Full Time	\$3,216

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

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

Alternate Range Movement Salary Determination (within same classification)

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

During the period under review, April 1, 2018 through September 30, 2018, the FTB made 122 alternate range movements within a classification⁶. The CRU reviewed 47 of those alternate range movements to determine if the FTB applied salary regulations accurately and correctly processed employee’s compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Compliance Representative, FTB	Range B	Range C	Full Time	\$4,561
Compliance Representative, FTB	Range B	Range C	Full Time	\$4,386
Compliance Representative, FTB	Range B	Range C	Full Time	\$4,578
Compliance Representative, FTB	Range B	Range C	Full Time	\$4,523
Compliance Representative, FTB	Range B	Range C	Full Time	\$4,704
Compliance Representative, FTB	Range B	Range C	Full Time	\$4,561
Compliance Representative, FTB	Range B	Range C	Full Time	\$4,561
Compliance Representative, FTB	Range B	Range C	Full Time	\$4,386
Compliance Representative, FTB	Range B	Range C	Full Time	\$4,386
Compliance Representative, FTB	Range B	Range C	Full Time	\$4,761
Compliance Representative, FTB	Range A	Range B	Full Time	\$3,723

⁶ 335 transactions.

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Compliance Representative, FTB	Range A	Range B	Full Time	\$4,120
Compliance Representative, FTB	Range B	Range C	Full Time	\$4,561
Compliance Representative, FTB	Range B	Range C	Full Time	\$3,662
Compliance Representative, FTB	Range A	Range B	Full Time	\$4,790
Information Technology Associate	Range B	Range C	Full Time	\$7,012
Information Technology Specialist I	Range B	Range C	Full Time	\$7,267
Information Technology Specialist I	Range B	Range C	Full Time	\$6,666
Information Technology Specialist I	Range B	Range C	Full Time	\$6,744
Information Technology Specialist I	Range B	Range C	Full Time	\$6,603
Information Technology Specialist I	Range A	Range B	Full Time	\$7,616
Information Technology Specialist I	Range B	Range C	Full Time	\$7,920
Information Technology Specialist I	Range B	Range C	Full Time	\$7,920
Information Technology Specialist I	Range B	Range C	Full Time	\$7,014
Information Technology Specialist I	Range B	Range C	Full Time	\$7,442
Information Technology Specialist I	Range B	Range C	Full Time	\$6,640
Information Technology Specialist I	Range B	Range C	Full Time	\$7,687
Information Technology Specialist I	Range B	Range C	Full Time	\$7,389
Information Technology Specialist I	Range B	Range C	Full Time	\$6,865
Investigation Specialist I, FTB	Range A	Range B	Full Time	\$3,662
Key Data Operator	Range A	Range B	Intermittent	\$2,663
Key Data Operator	Range A	Range B	Intermittent	\$2,663

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Staff Services Analyst (General)	Range A	Range B	Full Time	\$3,995
Student Assistant	Range A	Range B	Intermittent	\$2,122
Student Assistant	Range A	Range D	Intermittent	\$2,336
Student Assistant	Range C	Range D	Intermittent	\$2,336
Student Assistant	Range A	Range D	Intermittent	\$2,429
Tax Auditor	Range A	Range B	Full Time	\$4,561
Tax Auditor	Range A	Range B	Full Time	\$4,561
Tax Auditor	Range A	Range B	Full Time	\$4,561
Tax Auditor	Range A	Range B	Full Time	\$4,561
Tax Auditor	Range A	Range B	Full Time	\$4,561
Tax Auditor	Range A	Range B	Full Time	\$4,561
Tax Auditor	Range A	Range B	Full Time	\$4,561
Tax Auditor	Range A	Range B	Full Time	\$4,561
Tax Counsel	Range C	Range D	Full Time	\$7,826
Tax Technician	Range A	Range B	Full Time	\$3,186
Tax Technician	Range A	Range B	Full Time	\$3,063

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

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

Hiring Above Minimum Requests

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

Persons with extraordinary qualifications should contribute to the work of the department significantly beyond that which other applicants offer. (*Ibid.*) Extraordinary qualifications may provide expertise in a particular area of a department’s program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute

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

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action.⁷ (Gov. Code § 19836 subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the 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 and approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in competitive with the employee's salary in the exempt appointment. (*Ibid.*) For example: An employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

⁷ Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

During the period under review, April 1, 2018 through September 30, 2018, the FTB authorized 33 HAM requests. The CRU reviewed 15 of those authorized HAM requests to determine if the FTB correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Associate Personnel Analyst	Certification List	New to State	\$4,975 - \$6,228	\$5,704
Information Technology Associate	Certification List	New to State	\$5,014 - \$6,586	\$5,014
Information Technology Manager I	Certification List	Current State Employee	\$7,376 - \$9,884	\$7,972
Information Technology Specialist I	Certification List	New to State	\$5,118 - \$8,280	\$6,878
Information Technology Specialist II	Certification List	New to State	\$6,516 - \$8,732	\$8,316
Tax Auditor, FTB	Certification List	New to State	\$3,688 - \$5,997	\$3,872
Tax Auditor, FTB	Certification List	Current State Employee	\$3,688 - \$5,997	\$3,872
Tax Auditor, FTB	Certification List	New to State	\$3,688 - \$5,997	\$3,872
Tax Auditor, FTB	Certification List	Current State Employee	\$3,688 - \$5,997	\$3,696
Tax Auditor, FTB	Certification List	New to State	\$3,688 - \$5,997	\$4,218
Tax Auditor, FTB	Certification List	New to State	\$3,688 - \$5,997	\$3,872
Tax Auditor, FTB	Certification List	New to State	\$3,688 - \$5,997	\$3,872
Tax Auditor, FTB	Certification List	New to State	\$3,688 - \$5,997	\$3,872
Tax Auditor, FTB	Certification List	Current State Employee	\$3,688 - \$5,997	\$3,872
Tax Counsel III (Specialist)	Certification List	New to State	\$9,210 - \$11,815	\$11,252

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

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

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages ten percent or more of the total time worked. According to the 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, April 1, 2018 through September 30, 2018, the FTB issued bilingual pay to 194 employees. The CRU reviewed 40 of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base
Administrator I, FTB	S01	Full-Time
Administrator II, FTB	S01	Full-Time
Associate Tax Auditor, FTB	R01	Full-Time
Compliance Representative, FTB	R01	Full-Time
Compliance Representative, FTB	R01	Full-Time
Compliance Representative, FTB	R01	Full-Time
Compliance Representative, FTB	R01	Full-Time
Compliance Representative, FTB	R01	Full-Time
Customer Service Specialist, FTB	R01	Full-Time
Customer Service Specialist, FTB	R01	Full-Time

Classification	Bargaining Unit	Time Base
Customer Service Supervisor, FTB	R01	Full-Time
Customer Service Supervisor, FTB	R01	Full-Time
Deputy Chief, Investigations and Enforcement	M07	Full-Time
Information Technology Associate	R01	Full-Time
Information Technology Specialist I	R01	Full-Time
Investigation Specialist I, FTB	R07	Full-Time
Investigation Specialist II (Supervisor), FTB	S07	Full-Time
Investigation Specialist II (Technical), FTB	R07	Full-Time
Principal Compliance Representative, FTB	R01	Full-Time
Program Specialist I, FTB	R01	Full-Time
Program Specialist II, FTB	R01	Full-Time
Senior Compliance Representative, FTB	R01	Full-Time
Senior Compliance Representative, FTB	R01	Full-Time
Senior Compliance Representative, FTB	R01	Full-Time
Senior Operations Specialist, FTB	R01	Full-Time
Staff Operations Specialist, FTB	R01	Full-Time
Staff Services Analyst (General)	R01	Intermittent
Staff Services Analyst (General)	R01	Full-Time
Tax Technician, FTB	R01	Intermittent
Tax Technician, FTB	R01	Full-Time
Tax Technician, FTB	R01	Full-Time
Tax Technician, FTB	R01	Full-Time
Tax Technician, FTB	R01	Full-Time
Tax Technician, FTB	R01	Full-Time
Tax Technician, FTB	R01	Intermittent
Tax Technician, FTB	R01	Intermittent
Tax Technician, FTB	R01	Full-Time
Tax Technician, FTB	R01	Full-Time
Tax Technician, FTB	R01	Full-Time
Tax Technician, FTB	R01	Intermittent

FINDING NO. 11 – Bilingual Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Pay Differentials

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

California State Civil Service Pay Scales Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, April 1, 2018 through September 30, 2018, the FTB issued pay differentials⁸ to 538 employees. The CRU reviewed 60 of those pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Administrator I, FTB	102	\$419
Administrator I, FTB	102	\$346
Administrator II, FTB	102	\$419
Administrator II, FTB	102	\$419
Administrator II, FTB	102	\$419

⁸ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Associate Tax Auditor, FTB	102	\$346
Associate Tax Auditor, FTB	102	\$346
Associate Tax Auditor, FTB	102	\$346
Associate Tax Auditor, FTB	102	\$346
Associate Tax Auditor, FTB	102	\$346
Associate Tax Auditor, FTB	102	\$346
Associate Tax Auditor, FTB	Out-of-State Supplemental Health Care Program (SHCP) Cash Benefit	\$100
Associate Tax Auditor, FTB	SHCP Cash Benefit	\$100
Associate Tax Auditor, FTB	SHCP Cash Benefit	\$100
Associate Tax Auditor, FTB	SHCP Cash Benefit	\$100
Associate Telecommunications Engineer	261	\$300
Information Technology Specialist I	13	5% Rate Increase
Information Technology Specialist I	13	5% Rate Increase
Information Technology Specialist I	13	5% Rate Increase
Information Technology Specialist II	13	5% Rate Increase
Investigation Specialist I, FTB	73	2% Rate Increase
Investigation Specialist I, FTB	244	\$125
Investigation Specialist II (Supervisor), FTB	73	2% Rate Increase
Investigation Specialist II (Supervisor), FTB	73	2% Rate Increase
Investigation Specialist II (Supervisor), FTB	244	\$125
Investigation Specialist II (Technical), FTB	73	2% Rate Increase
Investigation Specialist II (Technical), FTB	244	\$125
Investigation Specialist II (Technical), FTB	244	\$125
Investigation Specialist II (Technical), FTB	244	\$125
Investigation Specialist II (Technical), FTB	244	\$125
Investigation Specialist II (Technical), FTB	245	8% of Base Salary

Classification	Pay Differential	Monthly Amount
Investigation Specialist II (Technical), FTB	245	8% of Base Salary
Investigation Specialist II (Technical), FTB	245	6% of Base Salary
Investigation Specialist II (Technical), FTB	245	6% of Base Salary
Program Specialist I, FTB	102	\$346
Program Specialist I, FTB	102	\$346
Program Specialist I, FTB	102	\$346
Program Specialist I, FTB	102	\$346
Program Specialist I, FTB	102	\$346
Program Specialist I, FTB	SHCP Cash Benefit	\$100
Program Specialist I, FTB	SHCP Cash Benefit	\$100
Program Specialist I, FTB	SHCP Cash Benefit	\$100
Program Specialist I, FTB	SHCP Cash Benefit	\$100
Program Specialist II, FTB	102	\$346
Program Specialist II, FTB	102	\$346
Program Specialist II, FTB	102	\$346
Program Specialist II, FTB	102	\$346
Program Specialist II, FTB	102	\$346
Program Specialist II, FTB	102	\$346
Program Specialist II, FTB	SHCP Cash Benefit	\$100
Program Specialist II, FTB	SHCP Cash Benefit	\$100
Program Specialist II, FTB	SHCP Cash Benefit	\$100
Program Specialist II, FTB	SHCP Cash Benefit	\$100
Sheetfed Offset Press Operator II	201	\$250
Tax Auditor, FTB	102	\$346
Tax Auditor, FTB	102	\$346
Tax Auditor, FTB	102	\$346
Tax Auditor, FTB	102	\$346
Tax Auditor, FTB	102	\$346
Tax Technician, FTB	186	\$100

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

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

Out-of-Class Assignments and Pay

For excluded⁹ 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 (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810 (a)(3).)

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

During the period under review, September 1, 2017 through September 30, 2018, the FTB issued out-of-class pay to 61 employees. The CRU reviewed 18 of these OOC assignments to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

⁹ “Excluded employee” means an employee as defined in section 3527(b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Administrator II	S01	Administrator III	1/31/18 - 6/30/18
Administrator IV	S01	Career Executive Assignment (CEA)	11/1/17 - 9/30/18
Associate Personnel Analyst	R01	Staff Services Manager I	3/19/18 - 7/16/18
Data Processing Manager I	S01	Systems Software Specialist II	6/1/17 - 12/31/17
Office Services Supervisor II	S04	Tax Program Supervisor	1/22/18 - 5/21/18
Personnel Specialist (Range D)	R01	Personnel Supervisor I	12/21/17-4/20/18
Personnel Specialist (Range D)	R01	Personnel Supervisor I	11/1/17 - 12/31/17
Personnel Supervisor I	S01	Personnel Supervisor II	5/31/18 - 5/31/19
Staff Services Analyst (General)	R01	Staff Services Manager I (Specialist)	3/19/18 - 7/16/18
Tax Program Assistant	R04	Tax Program Technician I	1/31/18 - 5/30/18
Tax Program Assistant	R04	Tax Program Technician I	1/31/18 - 5/30/18
Tax Program Assistant	R04	Tax Program Technician I	1/31/18 - 5/30/18
Tax Program Assistant	R04	Tax Program Technician I	1/31/18 - 5/30/18
Tax Program Assistant	R04	Tax Program Technician I	1/31/18 - 5/30/18
Tax Program Assistant	R04	Tax Program Technician I	1/31/18 - 5/30/18
Tax Program Assistant	R04	Tax Program Technician I	1/31/18 - 5/30/18
Tax Program Assistant	R04	Tax Program Technician I	1/31/18 - 5/31/18
Tax Program Technician I	R04	Tax Program Technician II	6/18/18 - 10/18/18

FINDING NO. 13 – Incorrect Authorization of Out-of-Class Pay

Summary: The CRU found three errors in the FTB’s authorizations of OOC pay:

Classification	Out-of-Class Classification	Description of Findings	Criteria
Data Processing Manager I (Excluded)	Systems Software Specialist II	The FTB incorrectly determined the OOC pay issued from July through November, 2017. The employee was overpaid as a result of a miscalculation. Also, the FTB did not pay the employee for OOC work performed in December, 2017.	Pay Differential 101
Personnel Specialist	Personnel Supervisor I	The employee worked OOC over the 120-calendar day limit. As such, the FTB issued OOC pay for one day in April, 2018 that the employee was not entitled to.	Pay Differential 91 and R01 Bargaining Unit Agreement
Tax Program Technician I	Tax Program Technician II	The employee worked OOC over the 120-calendar day limit. As such, the FTB issued OOC pay for three days in October, 2018 that the employee was not entitled to.	Pay Differential 91 and R04 Bargaining Unit Agreement

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

Severity: Very Serious. The FTB 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 FTB states that a lack of training during the compliance review period led to the identified overpayment and underpayment.

Action: The FTB must take appropriate steps to ensure that employees are compensated correctly. It is therefore recommended that no later than 60 days after the SPB Executive Officer's approval of these findings and recommendations, the FTB must submit a written corrective action plan that addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.810. In addition, the FTB must provide relevant documentation showing the corrections that were made and that accounts receivables were created to collect the payment errors.

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 days¹⁰ worked and paid absences,¹¹ is counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

¹⁰ For example, two hours or ten hours counts as one day.

¹¹ For example, vacation, sick leave, compensating time off, etc.

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded.¹² (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

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

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

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

At the time of the review, the FTB tracked 571 employees' hours. The CRU reviewed 50 of those positive paid employees to ensure the time worked complied with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Tenure	Time Base	Time Frame	Hours Worked
Associate Governmental Program Analyst	Permanent	Intermittent	1/1/2018 – 12/31/18	1852
Key Data Operator	Permanent	Intermittent	1/1/2018 – 12/31/18	1073.5
Staff Services Analyst	Permanent	Intermittent	1/1/2018 – 12/31/18	2039.5
Staff Services Analyst	Permanent	Intermittent	1/1/2018 – 12/31/18	1841
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	2088
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	2088

¹² “California Code of Regulation section 265.1 became effective July 1, 2017, and did not apply at the time of all of these appointments. The current regulation sets forth the method for counting time for temporary appointments. The cap under the current regulation is 189 days.

Classification	Tenure	Time Base	Time Frame	Hours Worked
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	1997
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	1886.75
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	2131
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	2313
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	2164
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	2088
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	1776.5
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	1045.75
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	1427.75
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	2087.75
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	2088
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	2095.92
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	1470.25
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	2088
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	2105.75
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	1796.75
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	1966.75
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	2088
Tax Technician	Permanent	Intermittent	1/1/2018 – 12/31/18	2088
Information Technology Manager I	Retired Annuitant	Intermittent	7/1/2017 – 6/30/2018	932.5
Information Technology Specialist I	Retired Annuitant	Intermittent	7/1/2017 – 6/30/2018	792.75

Classification	Tenure	Time Base	Time Frame	Hours Worked
Seasonal Clerk	Temporary	Intermittent	3/22/2018 - 12/31/2018	1065.15
Seasonal Clerk	Temporary	Intermittent	3/14/2017 - 3/14/2018	1494
Seasonal Clerk	Temporary	Intermittent	3/14/2017 - 3/14/2018	1616.5
Seasonal Clerk	Temporary	Intermittent	2/11/2017 - 2/11/2018	1544.5
Seasonal Clerk	Temporary	Intermittent	10/14/2017 - 10/14/2018	1111.5
Seasonal Clerk	Temporary	Intermittent	3/10/2017 - 3/10/2018	1415
Seasonal Clerk	Temporary	Intermittent	2/19/2017 - 2/19/2018	1181.5
Student Assistant	Temporary	Intermittent	10/13/2017 - 10/13/2018	1429
Student Assistant	Temporary	Intermittent	1/17/2018 - 1/17/2019	1370.5
Student Assistant	Temporary	Intermittent	11/1/2017 - 11/1/2018	1720
Student Assistant	Temporary	Intermittent	11/2/2017 - 11/2/2018	1466.5
Student Assistant	Temporary	Intermittent	11/20/2017 - 11/20/2018	1259.45
Student Assistant	Temporary	Intermittent	11/15/2017 - 11/15/2018	1139.5
Student Assistant	Temporary	Intermittent	12/12/2017 - 12/12/2018	1477.1
Student Assistant	Temporary	Intermittent	11/13/2017 - 11/13/2018	1366
Student Assistant	Temporary	Intermittent	11/20/2017 - 11/20/2018	1227
Student Assistant	Temporary	Intermittent	1/17/2017 - 1/17/2018	1606
Student Assistant	Temporary	Intermittent	9/10/2017 - 9/10/2018	1391.5
Student Assistant	Temporary	Intermittent	11/20/2017 - 11/20/2018	1324.5
Student Assistant	Temporary	Intermittent	12/20/2017 - 12/20/2018	1381.75
Student Assistant	Temporary	Intermittent	10/10/17 - 10/10/18	1181.45
Student Assistant	Temporary	Intermittent	11/01/2017 - 11/01/2018	1213.15
Student Assistant	Temporary	Intermittent	9/1/2017 - 9/1/2018	1337.25

FINDING NO. 14 – Positive Paid Employees Time Worked Exceeded Nine Months in a Twelve Consecutive Month Period

Summary: The FTB did not consistently monitor the actual number of days and/or hours worked in order to ensure that applicable positive paid employees did not exceed the 189 days, or 1,500 hours, in any 12 consecutive month period limitation. Specifically, the following employee exceeded the 1,500-hour limitation:

Classification	Tenure	Time Base	Time Frame	Hours Worked	Hours Over
Student Assistant	Temporary	Intermittent	11/1/2017 - 11/1/2018	1720	220
TOTAL					220

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. (Cal Const., art VII § 5.) The nine-month period may be computed on a calendar or actual basis. When computing time worked, 189 days equals nine months. (Cal. Code Regs., tit. 2, § 265.1 subd. (b).)¹³ Another controlling factor limits the maximum work time for student, youth, and seasonal classifications to 1,500 hours. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Severity: Serious. The number of days or 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 these eligible lists.

¹³ California Code of Regulation section 265.1 became effective July 1, 2017, and did not apply at the time to all of these appointments, however the 1500-hour limitation in 12 consecutive months applied to all temporary, intermittent appointments made prior to July 1, 2017. The current regulation sets forth the method for counting time for temporary appointments.

Cause: The FTB states that their interpretation of the regulations and subsequent tracking procedures were not in line with the interpretation provided during the review.

Action: It is recommended that, within 60 days of the SPB Executive Officer’s approval of these findings and recommendations, the FTB submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure all positive paid employees’ hours are tracked and processed in conformity with California Code of Regulations, title 2, section 265.1, subdivision (a). Copies of any relevant documentation should be included with the plan.

Administrative Time Off

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

During the period under review, September 1, 2017 through August 30, 2018, the FTB placed 104 employees on ATO. The CRU reviewed 51 of these 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
Administrator I	9/28/2017 – 12/20/17	84
Administrator I	9/18/17 – 9/29/17	12
Administrator I	10/2/17 – 10/13/17	12
Administrator I	11/8/17 – 11/9/17	2
Administrator I	11/13/17 – 11/22/17	10
Associate Information Systems Analyst	11/14/17 – 8/30/18	290
Associate Operations Specialist	11/16/17	1
Associate Tax Auditor	9/1/17	1

Classification	Time Frame	No. of Days on ATO
Compliance Representative	11/14/17	1
Compliance Representative	6/5/18	1
Compliance Representative	8/15/18	1
Compliance Representative	8/14/18	1
Customer Service Supervisor	4/6/18 – 7/31/18	117
Customer Services Specialist	5/25/18	1
Customer Services Specialist	1/16/18	1
Information Technology Specialist I	5/7/18 – 8/30/18	116
Key Data Operator	3/30/18 – 4/5/18	7
Key Data Operator	5/3/18 – 5/9/18	7
Key Data Operator	4/13/18 – 4/19/18	7
Mailing Machines Operator II	6/6/18 – 8/27/18	83
Office Services Manager I	8/28/17 – 10/26/17	60
Office Technician	5/9/18	1
Principal Compliance Representative	5/1/18 – 8/30/2018	122
Program Specialist I	8/8/18 – 8/22/18	15
Program Specialist I	8/28/17 – 9/4/17	8
Program Specialist I	9/1/17	1
Program Specialist I	9/1/17 – 9/8/17	8
Program Specialist I	11/15/17	1
Program Specialist I	6/7/18	1
Senior Compliance Representative	12/15/17 – 4/10/18	117
Tax Auditor	9/1/17	1
Tax Program Assistant	2/12/18 – 2/21/18	10
Tax Program Assistant	12/28/17	1
Tax Program Technician II	4/6/18	1
Tax Program Technician II	4/10/18	1
Tax Technician	5/1/18 – 5/25/18	25
Tax Technician	8/28/18 – 9/4/18	8
Tax Technician	8/14/17 – 9/22/17	39

Classification	Time Frame	No. of Days on ATO
Tax Technician	3/9/18 – 4/20/18	43
Tax Technician	12/14/17 – 2/9/18	58
Tax Technician	8/27/18 – 8/30/18	4
Tax Technician	7/10/18 – 8/30/18	52
Tax Technician	3/30/18 – 5/4/18	36
Tax Technician	7/30/18 – 8/28/18	30
Tax Technician	8/22/18 – 8/28/18	7
Tax Technician	10/12/17 – 3/22/18	162
Tax Technician	5/1/18 – 5/7/18	7
Tax Technician	2/1/18	1
Tax Technician	7/17/18	1
Tax Technician	10/2/17	1
Tax Technician	11/29/17 – 11/30/17	0

FINDING NO. 15 – Administrative Time Off Was Not Properly Documented and/or Monitored

Summary: The FTB did not document and/or monitor ATO in conformity with the established CalHR policies and procedures. The CRU found seven errors in the FTB’s ATO practices:

Classification	Description of Finding(s)	No. of Days on ATO
Associate Information Systems Analyst	The FTB did not submit a 30-day ATO extension request to CalHR prior to the expiration date of the prior approved leave. On May 16, 2018 FTB sent a 60-day ATO extension request to cover the 30 days and CalHR approved the ATO.	290
Tax Technician	The FTB did not submit an ATO 30-day extension request to CalHR at least 5 working days prior to the expiration date of the approved leave.	36
Tax Technician	The FTB did not submit an ATO 30-day extension request to CalHR at least 5 working days prior to the expiration date of the approved leave.	39

Classification	Description of Finding(s)	No. of Days on ATO
Tax Technician	The FTB did not submit an ATO 30-day extension request to CalHR at least 5 working days prior to the expiration date of the approved leave.	162
Tax Technician	The employee's ATO hours were not documented on the employee's July, 2017 timesheet.	30
Tax Technician	The employee's ATO hours were not documented on the employee's April, 2018 timesheet.	25
Tax Technician	The FTB initially reported that the employee was placed on ATO for two days, however the ATO was coded in error and employee was never placed on ATO.	0

Criteria: Appointing authorities are authorized to approve ATO for up to five (5) working days. (Gov. Code § 19991.10.) Furthermore, they “have delegated authority to approve up to 30 calendar days.” (Human Resources Manual Section 2121.) Any ATO in excess of 30 calendar days must be approved in advance by the CalHR. (*Ibid.*) In most cases, if approved, the extension will be for an additional 30 calendar days. (*Ibid.*) The appointing authority is responsible for submitting ATO extension requests to CalHR at least 5 working days prior to the expiration date of the approved leave. (*Ibid.*)

When requesting an ATO extension, the appointing authority must provide a justification establishing good cause for maintaining the employee on ATO for the additional period of time. (*Ibid.*) ATO may not be used and will not be granted for an indefinite period. (*Ibid.*) If CalHR denies a request to extend ATO, or the appointing authority fails to request approval from CalHR to extend the ATO, the employee must be returned to work in some capacity. (*Ibid.*)

Regardless of the length of ATO, appointing authorities must maintain thorough documentation demonstrating the justification for the ATO, the length of the ATO, and the approval of the ATO. (*Ibid.*)

Severity: Serious. Because an employee on ATO is being paid while not working, a failure to closely monitor ATO usage could result in costly abuse. The use of ATO is subject to audit and review by CalHR and other control agencies to ensure it is being utilized appropriately. Failure to grant ATO in conformity with the procedures in this policy may result in abuse and be cause for CalHR revoking the appointing authority's delegation to utilize ATO without first obtaining approval from CalHR.

Cause: The FTB states that the ATO discrepancies occurred due to errors associated with their internal documentation process.

Action: It is recommended that within 60 days of the SPB Executive Officer's approval of these findings and recommendations, the FTB submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of GC 19991.10 and CalHR Manual Section 2121. Copies of any relevant documentation should be included with the plan.

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, August of 2018, the FTB reported 183 units comprised of 6,203 active employees. The pay periods, units 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
August, 2018	102	17	17	0
August, 2018	143	8	8	0
August, 2018	186	44	44	0
August, 2018	214	8	8	0
August, 2018	215	8	8	0
August, 2018	235	25	25	0
August, 2018	250	16	16	0
August, 2018	292	43	43	0
August, 2018	625	61	61	0
August, 2018	955	12	12	0
August, 2018	974	9	9	0
Total	11	251	251	0

FINDING NO. 16 – Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU reviewed employee leave records from the August 2018 leave period to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The FTB kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

Leave Reduction Efforts

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

Applicable Bargaining Unit (BU) Agreements 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.”¹⁴ (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 amount¹⁵ as of January 1 of each year, the appointing power shall require the supervisor to notify and meet with each employee so affected by the preceding July 1, to allow the employee to plan time off, consistent with operational needs, sufficient to reduce their balance to the amount permitted by the applicable regulation, prior to January 1. (Cal. Code Regs., tit. 2, § 599.742.1.)

“It is the intent of the state to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation. (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. (Human Resources Manual Section 2124.)

As of December 2017, 609 FTB employees exceeded the established limits of vacation or annual leave. The CRU reviewed 43 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 Unit Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Administrator I	S01	910	Yes
Administrator II	S01	574.33	Yes
Administrator II	S01	645	Yes
Administrator III	M01	722	Yes
Administrator III	M01	543.25	Yes
Administrator IV	M01	596	Yes

¹⁴ 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 for bargaining unit 05 the established limit is 816 hours.

¹⁵ Excluded employees shall not accumulate more than 80 days.

Classification	Collective Bargaining Unit Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Associate Information Systems Analyst Specialist	R01	587	Yes
Associate Information Systems Analyst Specialist	R01	850	Yes
Attorney V	R02	608	Yes
Career Executive Assignment	M01	615	Yes
Data Processing Manager II	S01	783	Yes
Data Processing Manager II	S01	740.25	Yes
Data Processing Manager II	S01	1866	Yes
Data Processing Manager II	S01	840	Yes
Data Processing Manager III	M01	744.5	Yes
Data Processing Manager III	M01	986	Yes
Data Processing Manager III	M01	878	Yes
Data Processing Manager III	M01	536.5	Yes
Investigator Specialist II	S07	735	Yes
Program Specialist II	R01	666	Yes
Program Specialist II	R01	932	Yes
Program Specialist II	R01	766	Yes
Program Specialist III	R01	1075.5	Yes
Program Specialist III	R01	624	Yes
Program Specialist III	R01	878	Yes
Research Data Analyst II	R01	556	Yes
Senior Information Systems Analyst Specialist	R01	823	Yes
Senior Information Systems Analyst Specialist	R01	737	Yes
Senior Information Systems Analyst Specialist	R01	725	Yes
Senior Information Systems Analyst Specialist	R01	749	Yes
Staff Information Systems Analyst Specialist	R01	793.75	Yes
Staff Information Systems Analyst Specialist	R01	802	Yes
System Software Specialist II (Technical)	R01	609.75	Yes
System Software Specialist III (Technical)	R01	1392.6	Yes
System Software Specialist III (Technical)	R01	1331	Yes

Classification	Collective Bargaining Unit Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
System Software Specialist III (Technical)	R01	1140	Yes
System Software Specialist III Supervisor	M01	891	Yes
Tax Counsel IV	R02	646	Yes
Tax Counsel IV	R02	471	Yes
Tax Counsel IV	R02	906	Yes
Tax Counsel IV	R02	735	Yes
Tax Counsel IV	R02	1471	Yes
Tax Counsel IV	R02	733	Yes
TOTAL		35,213.43	

FINDING NO. 17 – Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU reviewed employee vacation and annual leave to ensure that those employees who have significant “over-the-cap” leave balances have a leave reduction plan in place and are actively reducing hours. In addition, the CRU reviewed the department’s leave reduction policy to verify its compliance with applicable rule and law, and to ensure its accessibility to employees. Based on our review, the CRU found no deficiencies in this area.

State Service

The state recognizes two different types of absences while an employee is on pay status; paid or unpaid. The unpaid absences can affect whether a pay period is considered to be a qualifying or non-qualifying pay period for state service and leave accruals.

An employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.¹⁶ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

¹⁶ 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 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 employees¹⁷ 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, April 1, 2018 through December 31, 2018, the FTB had 91 employees with qualifying and/or non-qualifying pay period transactions. The CRU reviewed 31 of these transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time Base	Number Reviewed
Non-Qualifying Pay Period	Full Time	17
Qualifying Pay Period	Full Time	14
Total		31

¹⁷ As identified in Government Code sections 19858.3(a), 19858.3(b), or 19858.3(c) or as it applies to employees excluded from the definition of state employee under Government Code section 3513(c) or California Code of Regulations section 599.752 subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

FINDING NO. 18 – Incorrect Application of State Service and Leave Transactions

Summary: The CRU found three errors in the FTB’s state service transactions:

Type of Transaction	Pay Period	Description of Finding
Qualifying Pay Period	July 2018	Employee did not receive leave accruals and state service credits for a qualifying pay period.
Qualifying Pay Period	June and July 2018	Employee did not receive leave accruals and state service credits for a qualifying pay period.
Non-Qualifying Pay Period	April 2018	Employee did not receive leave accruals and state service credits for a 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 and/or the employee.

Cause: The FTB states that the three errors were a result of the personnel transactions staff not properly keying and calculating leave accruals and state service accruals.

Action: The FTB must take appropriate steps to ensure state service transactions are keyed accurately. It is therefore recommended that no later than 60 days after the SPB Executive Officer's approval of these findings and recommendations, the FTB must establish an audit system to key and correct state service transactions.

Policy and Processes

Nepotism

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

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

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

Workers' Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. (Cal. Code Regs., tit. 8, § 9880 subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee's "personal physician," as defined by Labor Code Section 4600. (Cal. Code Regs., tit. 8, § 9880 subd. (c)(7)(8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work-related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401 subd. (a).)

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

FINDING NO. 20 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Performance Appraisals

According to Government Code section 19992.2 subsection (a), appointing powers must "prepare performance reports." Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee's probationary period.

The CRU selected 153 permanent FTB employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

In reviewing the FTB performance appraisals policies and processes, the CRU determined the following:

FINDING NO. 21 – Performance Appraisals Were Not Provided to All Employees

Summary: The FTB did not provide performance appraisals to 11 of 153 employees reviewed at least once in each twelve calendar months after the completion of the employee’s probationary period, which are listed below.

Classification	Date Performance Appraisals Due
Accounting Officer (Specialist)	5/1/2018
Assistant Administrative Analyst, Accounting System	2/1/2018
Compliance Representative, FTB	2/1/2018
Information Technology Specialist I	2/28/2018
Information Technology Specialist I	1/5/2018
Information Technology Specialist I	2/15/2018
Information Technology Specialist I	1/18/2018
Information Technology Specialist I	3/1/2018
Information Technology Specialist I	8/22/2018
Tax Auditor, FTB	2/5/2018
Tax Program Technician II, FTB	5/6/2018

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

- Severity:** Serious. The department does not ensure that all of its employees are apprised of work performance issues and/or goals in a systematic manner.
- Cause:** The FTB states that 11 out of the 153 individuals reviewed had not received an annual evaluation as required due to not having an adequate tracking process in place.
- Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the FTB 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 FTB's response is attached as Attachment 1.

SPB REPLY

Based upon the FTB's written response, the FTB will comply with the CRU's recommendations and findings.

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



STATE OF CALIFORNIA
Franchise Tax Board

Attachment 1

10.11.19

To: State Personnel Board, Compliance Review Unit
From: Paul Ogden, Director, Business and Human Resources Bureau
Subject: **Response to Final SPB Compliance Review**

Memorandum

The following are the Franchise Tax Board's (FTB) responses to findings in the recent State Personnel Board (SPB) Compliance Review. Each item below includes the SPB Finding Number, SPB's Summary/Criteria/Severity statements, followed by FTB's Response.

FTB appreciates the opportunity to provide the additional information provided below, and hope that it can be reviewed and included in the final "posted" report.

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

Summary: The FTB did not notify unions prior to entering into 25 of the 50 PSC's.

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

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

FTB Response: The FTB determined that there were no organizations that had employees who performed the type of work contracted. FTB interpreted the government code as only requiring notice of a contract if an organization that represents state employees who perform the type of work to be contracted actually exists (not that all organizations needed to be notified). We acknowledge the finding based on the interpretation of the SPB review staff and will put a process in place to ensure that all necessary organizations are notified in the future.

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

Summary: The FTB provided ethics training to all 1,350 existing filers. However, the FTB did not provide ethics training to eight of 164 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 all of its filers are aware of prohibitions related to their official position and influence.

FTB Response

FTB acknowledges that we could not produce completion records for eight of 164 new filers. We will review and improve our processes to ensure that all existing and new filers continue to complete the training as required within the specified timeframe and that documentation of such completion is retained.

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

Summary: The FTB provided sexual harassment prevention training to all 148 new supervisors within six months of their appointment. However, the FTB did not provide sexual harassment prevention training to two of 597 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 that all of its 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.

FTB Response

FTB recognizes the importance of sexual harassment prevention training to ensure a safe and productive work environment for its employees. We acknowledge that due to unforeseen medical leave, and challenges related to training availability, training for two out of 597 existing supervisors was not completed within the required timeframe. We will take steps to ensure that all supervisors take this training in the future as required.

FINDING NO. 13 – Incorrect Authorization of Out-of-Class Pay

Summary: The CRU found three errors in the FTB's authorizations of OOC pay.

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

Severity: Very Serious. The FTB 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.

FTB Response

FTB acknowledges that during the period of the review there was a lack of training, which led to the identified overpayment and underpayment.

Our Classification and Pay (C&P) area has developed an FTB form that will not only outline in greater detail the reasons for the OOC, but also secure approvals and contain information related to the exact dates of authorization. C&P will include a calendar to remove any confusion.

Additionally, FTB is in the process of developing a new automated system which will automatically calculate the OOC days to ensure employees are not compensated beyond the appropriate time frames allotted per laws, rules, policies and bargaining contracts.

FINDING NO. 14 – Positive Paid Employees Time Worked Exceeded Nine Months in a Twelve Consecutive Month Period

Summary: The FTB did not consistently monitor the actual number of days and/or hours worked in order to ensure that applicable positive paid employees did not exceed the 189 days, or 1,500 hours, in any 12 consecutive month period limitation. Specifically, the following employee exceeded the 1,500-hour limitation (deleted for response purposes):

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. (Cal Const., art VII § 5.) The nine-month period may be computed on a calendar or actual basis. When computing time worked, 189 days equals nine months. (Cal. Code Regs., tit. 2, § 265.1 subd. (b).)¹³ Another controlling factor limits the maximum work time for student, youth, and seasonal classifications to 1,500 hours. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Severity: Serious. The number of days or 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 these eligible lists.

FTB Response

On July 1, 2017 the State Personnel Board issued new state regulations redefining the 12-month pay period rule for monitoring 1500 hours worked (Article 6, Section 5, of the California Constitution).

FTB acknowledges that during the review period it was brought to our attention that our interpretation of the regulations and subsequently our tracking procedures were not in line with the interpretation provided during the review. In light of this information, we have updated our processes to ensure we are in compliance with interpretation of the regulation provided by SPB staff.

FINDING NO. 15 – Administrative Time Off Was Not Properly Documented and/or Monitored

Summary: The FTB did not document and/or monitor ATO in conformity with the established CalHR policies and procedures. The CRU found seven errors in the FTB's ATO practices.

Criteria: Appointing authorities are authorized to approve ATO for up to five (5) working days. (Gov. Code § 19991.10.) Furthermore, they “have delegated authority to approve up to 30 calendar days.” (Human Resources Manual Section 2121.) Any ATO in excess of 30 calendar days must be approved in advance by the CalHR. (*Ibid.*) In most cases, if approved, the extension will be for an additional 30 calendar days. (*Ibid.*) The appointing authority is responsible for submitting ATO extension requests to CalHR at least 5 working days prior to the expiration date of the approved leave. (*Ibid.*) When requesting an ATO extension, the appointing authority must provide a justification establishing good cause for maintaining the employee on ATO for the additional period of time. (*Ibid.*) ATO may not be used and will not be granted for an indefinite period. (*Ibid.*) If CalHR denies a request to extend ATO, or the appointing authority fails to request approval from CalHR to extend the ATO, the employee must be returned to work in some capacity. (*Ibid.*)

Regardless of the length of ATO, appointing authorities must maintain thorough documentation demonstrating the justification for the ATO, the length of the ATO, and the approval of the ATO. (*Ibid.*)

Severity: Serious. Because an employee on ATO is being paid while not working, a failure to closely monitor ATO usage could result in costly abuse. The use of ATO is subject to audit and review by CalHR and other control agencies to ensure it is being utilized appropriately. Failure to grant ATO in conformity with the procedures in this policy may result in abuse and be cause for CalHR revoking the appointing authority’s delegation to utilize ATO without first obtaining approval from CalHR.

FTB Response

FTB acknowledges that the ATO discrepancies were appropriately identified in the SPB Compliance Review. The three errors associated with our internal documentation process (log and timesheets) were immediately corrected when initially found.

During the data collection period, FTB was able to quickly identify a reporting flaw in our internal documentation process. As a result, FTB has instituted quarterly audits of all ATO reported into our internal timekeeping system against logs of granted ATO to address and resolve any discrepancies immediately. Further, FTB placed oversight into one area rather than having it spread through the various areas who utilize ATO.

FINDING NO. 18 – Incorrect Application of State Service and Leave Transactions

Summary: The CRU found three errors in the FTB’s state service transactions.

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 and/or the employee.

FTB Response

The three errors (from early to mid -2018) identified in this finding were the result of the personnel transactions staff not properly keying and calculating the leave accruals and state service credits. In the Fall of 2018, when FTB realized that this is a more complex workload, we reassigned it to a specialized unit within Personnel Transactions. This staff works solely on State Disability Insurance workloads which helps to mitigate errors and provide better oversight. Additionally, this unit attends training classes provided by the State Controller's Office as needed.

FINDING NO. 21 – Performance Appraisals Were Not Provided to All Employees

Summary: The FTB did not provide performance appraisals to 11 of 153 employees reviewed at least once in each twelve calendar months after the completion of the employee's probationary period, which are listed below (deleted for response purposes).

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

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

FTB Response

FTB acknowledges that two of the 153 individuals reviewed had not received an annual evaluation as required.

FTB will continue to encourage all supervisors and managers to complete the annual evaluations and our automated tools are demonstrating greater success in meeting this expectation. We will also change our process to require that individuals who recently passed probation (and whose annual performance appraisal would have been due beyond a 12 month period in our old process) will be given a short-year evaluation in the month of August following their completion of the probation period- then every year in August after that.