



COMPLIANCE REVIEW REPORT

GOVERNMENT OPERATIONS AGENCY

Compliance Review Unit
State Personnel Board
February 21, 2019

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INTRODUCTION

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

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

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.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the Government Operations Agency (GovOps)’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
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules
Personal Services Contracts	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Mandated Training Complied with Statutory Requirements
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
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
Policy	Department Does Not Maintain a Current Written Nepotism Policy
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:

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

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

BACKGROUND

The GovOps is responsible for coordinating state operations including procurement, information technology, and human resources. The mission of the GovOps is to improve management and accountability of government programs, increase efficiency, and promote better and more coordinated operations decisions. The GovOps oversees the Department of General Services, Department of Human Resources, Department of Technology, Department of Tax and Fee Administration, Franchise Tax Board, State Personnel Board, Victim Compensation Board, Office of Administrative Law, California Public Employees' Retirement System, and California State Teachers' Retirement System. Beginning July 1, 2018, the GovOps assumed oversight responsibility for the California Complete Count Census Program. The Census will be an extensive statewide outreach and awareness campaign designed to encourage and support full participation by all Californians in the upcoming 2020 Census.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the GovOps' 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 GovOps' 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 GovOps' 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 GovOps provided, which included

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

examination plans, examination bulletins, and scoring results³. The GovOps did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the GovOps' 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 GovOps provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

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

The GovOps' appointments were also selected for review to ensure the GovOps applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the GovOps provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application.

During the compliance review period, the GovOps did not issue or authorize hiring above minimum (HAM) requests, red circle rate requests, arduous pay, bilingual pay, monthly pay differentials, or out-of-class assignments.

The review of the GovOps' 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 GovOps' PSC's were also reviewed.⁴ It was beyond the scope of the compliance review to make conclusions as to whether the GovOps' justifications for the contracts

³ The GovOps only conducted Career Executive Assignment (CEA) examinations during the relevant compliance review period. Generally, CEA examinations are reviewed as part of the CEA appointment process; however, one of the four CEA exams reviewed did not result in an appointment within the compliance review timeframe and as such is being treated as an examination.

⁴If 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.

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

The GovOps' 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 GovOps' 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 GovOps to provide a copy of their leave reduction policy.

The CRU reviewed the GovOps' Leave Activity and Correction certification forms to verify that the GovOps created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the GovOps' units in order to ensure they maintained accurate and timely leave accounting records.

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

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

On February 6, 2019, an exit conference was held with the GovOps to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the GovOps' written response on February 12, 2019, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform

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

During the period under review, August 1, 2017 through July 31, 2018, the GovOps conducted four examinations. The CRU reviewed four of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) A, Assistant Secretary for Digital Entertainment	Open	Statement of Qualifications ⁵	10/27/17	5
CEA A, Assistant Secretary for Innovation & Accountability	Open	Statement of Qualifications	9/14/17	21
CEA A, Director of Performance Improvement	Open	Statement of Qualifications	Until Filled	13

⁵ In a Statement of Qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
CEA B, Deputy Secretary for Fiscal Policy and Administration	Open	Statement of Qualifications	3/30/18	12

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

The CRU reviewed four open examinations that the GovOps administered in order to create eligible lists from which to make appointments. The GovOps published and distributed examination bulletins containing the required information for the examination. Applications received by the GovOps 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 GovOps conducted during the compliance review period.

Appointments

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

During the period under review, August 1, 2017 through July 31, 2018, the GovOps made seven appointments. The CRU reviewed seven of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
CEA	Certification List	CEA	Full Time	3
Limited Examination and Appointment Program (LEAP) Candidate	Certification List	Temporary	Full Time	1
Attorney IV	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1

The GovOps 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 five list appointments reviewed, the GovOps 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 two GovOps 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 GovOps verified the eligibility of each candidate to their appointed class.

The CRU found no deficiencies in the appointments that the GovOps initiated during the compliance review period. Accordingly, the CRU found that the GovOps’ appointments processes and procedures utilized during the compliance review period satisfied civil service laws and Board rules. However, in reviewing the GovOps’ appointments that were made during the compliance review period, the CRU determined the following:

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

Summary: The GovOps did not provide three probationary reports of performance for three of the seven appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	Number of Appointments Missing Probation Reports	Total Number of Missing Probation Reports
Associate Governmental Program Analyst	Certification List	1	1
Attorney IV	Transfer	1	1
Staff Services Analyst (General)	Transfer	1	1
		3	3

Criteria: The service of a probationary period is required when an employee enters in the state civil service by permanent appointment from an employment list. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as CalHR may require. (Gov. Code, § 19172.) CalHR’s regulatory scheme provides that “a report of the probationer’s performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job.” (Cal. Code Regs., tit. 2, § 599.795.) Specifically, a written appraisal of performance shall be made to the department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board’s record retention rules require that appointing powers retain all probationary reports. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

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

Cause: The GovOps states that despite the methods used by Human Resources to inform supervisors of the requirements to complete probationary reports, not all supervisors provided timely probationary reports.

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

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 by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the Director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

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

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

FINDING NO. 3 – Equal Employment Opportunity Program Complied With All 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 GovOps 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 to the Director of the GovOps. In addition, the GovOps has an established DAC that reports to the Director on issues affecting persons with disabilities. The GovOps also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with disabilities. Accordingly, the GovOps 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, August 1, 2017 through July 21, 2018, the GovOps had five PSC’s that were in effect. The CRU reviewed three of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notified?
Blind Magic	Install Blinds and Shutters	6/30/18 - 9/1/18	\$15,681.18	Yes	No
Janet Horsager	Prepare Report on Electric Vehicle Charging	6/13/18 - 9/30/18	\$8,000.00	Yes	No

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notified?
Stantec Consulting Services, Inc.	Prepare Operational Strategy for Census Program	6/1/18 - 12/31/18	\$29,510.71	Yes	No

When an agency executes a personal services contract under Government Code section 19130, subdivision (b), the department must document a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Regs., tit. 2, § 547.60.). In addition to a written justification, under Government Code section 19132, subdivision (b), the department shall not execute any contract until they have notified all organizations that represent state employees who perform the type of work to be contracted.

The total dollar amount of all the PSC’s reviewed was \$53,191.89. It was beyond the scope of the review to make conclusions as to whether the GovOps justifications for the contract were legally sufficient. For all three PSC’s reviewed, the GovOps provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19131, subdivision (b). However, in reviewing the GovOps’ PSC’s executed during the compliance review period, the CRU determined the following:

FINDING NO. 4 – Unions Were Not Notified of Personal Service Contracts

Summary: The GovOps did not notify unions prior to entering into three of the three PSC’s reviewed.

Criteria: Government Code section 19132, subdivision (b)(1), mandates that “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.”

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. Failing to notify the union is a violation of the law and jeopardizes the validity of the contract.

Cause: The GovOps states that notification to the unions was not properly documented.

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 Executive Officer's approval of these findings and recommendations, the GovOps 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 and AB 906. 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), (c), & 19995.4, subd. (b).)

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

Within 12 months of the initial appointment of an employee to a management or Career Executive Assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

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

In reviewing the GovOps' mandated training program that was in effect during the compliance review period, the CRU determined the following:

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements

The GovOps provided ethics training to its two new filers within six months of appointment and ethics training to its 12 existing filers. In addition, the GovOps provided sexual harassment prevention training to its 12 existing supervisors every two years. The GovOps did not have any first time supervisors requiring basic supervisory training. Additionally, the GovOps did not have any first time supervisors requiring sexual harassment prevention training within 6 months of appointment. Thus, the GovOps complied with mandated training requirements within statutory timelines.

Compensation and Pay

Salary Determination

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

calculate and determine an employee’s salary rate⁶ upon appointment depending on the appointment type, the employee’s state employment and pay history, and tenure.

During the period under review, August 1, 2017, through July 31, 2018, the GovOps made 10 appointments. The CRU reviewed three of those appointments to determine if the GovOps applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,784
Limited Examination and Appointment Program (LEAP) Candidate	Certification List	Permanent	Full Time	\$3,009
Staff Services Analyst (General)	Transfer	Temporary	Full Time	\$4,097

FINDING NO. 6 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the three salary determinations that were reviewed. The GovOps 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.

Leave

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).

⁶ “Rate” is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (CA CCR Section 599.666).

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

During the period under review, November 1, 2017 through January 31, 2018, the GovOps reported one unit comprised of 15 active employees during the November 2017 pay period, one unit comprised of 15 active employees during the December 2017 pay period, and one unit comprised of 15 active employees during the January 2018 pay period. The pay periods and timesheets reviewed by the CRU are summarized as follows:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
November 2017	100	15	15	0
December 2017	100	15	15	0
January 2018	100	15	15	0

FINDING NO. 7 – Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Leave Reduction Efforts

Departments must comply with the regulations and CalHR policies that require a leave plan for every employee with vacation or annual leave hours over the maximum amount permitted (Cal. Code Regs., tit. 2, § 599.742.1 and applicable Bargaining Unit Agreements). Bargaining Unit Agreements and California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. For instance, according to

California Code of Regulations, title 2, section 599.737, if a represented employee does not use all of the vacation to which he or she is entitled in a calendar year, “the employee may accumulate the unused portion, provided that on January 1st of a calendar year, the employee shall not have more than” the established limit as stipulated by the applicable bargaining unit agreement⁷. Likewise, if an excluded employee does not use all of the vacation to which he or she is entitled in a calendar year, the “employee may accumulate the unused portion of vacation credit, provided that on January 1st of a calendar year, the excluded employee shall not have more than 80 vacation days.” (Cal. Code Regs., tit. 2, § 599.738).

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

As of December 2017, one GovOps’ employee exceeded the established limits of vacation or annual leave. The CRU reviewed this employees’ leave reduction plan to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Deputy Secretary	E99	403.5	Yes

FINDING NO. 8 – 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.

⁷ For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for bargaining units 06 there is no established limit and bargaining unit 5 the established limit is 816 hours.

Policy and Processes

Nepotism

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

FINDING NO. 9 – Department Does Not Maintain a Current Written Nepotism Policy

Summary: The GovOps did not maintain or disseminate a written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees prior to the CRU's compliance review. However, the GovOps drafted a nepotism policy on October 24, 2018 that complies with CalHR's PML 2015-14 "Statewide Guidance on Nepotism Policies" and implemented a process to disseminate the policy to GovOps employees and new hires.

Criteria: Departmental nepotism policies should aim to prevent favoritism or bias based on a personal relationship when recruiting, hiring or assigning employees, and 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. (PML, "Statewide Guidance on Nepotism Policies," 2015-14).

Severity: Very Serious. Departments must take proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes.

The maintaining of a current written nepotism policy, and its dissemination to all staff, is the basis for achieving these ends.

Cause: The GovOps states that their nepotism policy was in draft format at the time of the compliance review and had not yet been distributed to staff.

Action: The GovOps provided a copy of their nepotism policy dated October 24, 2018, to the CRU, which complies with CalHR's PML 2015-14 "Statewide Guidance on Nepotism Policies", and implemented a process to disseminate the policy to GovOps employees and new hires. Therefore, no further action is required at this time.

Workers' Compensation

Pursuant to California Code of Regulations, title 8, section 9880, employers shall provide to every new employee at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under Workers' Compensation Law. This notice shall also contain a form that the employee can use to pre-designate their personal physician or medical group as defined by Labor Code section 4600. Additionally, employers shall also provide a claim form and notice of potential eligibility to their employee within one working day of notice or knowledge that the employee has suffered a work related injury or illness (Labor Code, § 5401).

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

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

FINDING NO. 10 – Workers’ Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

After reviewing the GovOps’ workers’ compensation process that was in effect during the compliance review period, the CRU verified that when the GovOps provides notice to their employees to inform them of their rights and responsibilities under CA Workers’ Compensation Law.

Performance Appraisals

According to Government Code section 19992.2, departments must “prepare performance reports.” Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee’s probationary period.

The CRU selected two permanent GovOps employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations and CalHR policy and guidelines. These are listed below:

Classification	Date Performance Appraisals Due
Staff Services Manager I	2/23/2017
Staff Services Manager II	8/23/2017

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

FINDING NO. 11 – Performance Appraisals Were Not Provided to All Employees

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

Classification	Date Performance Appraisal(s) due
Staff Services Manager I	2/23/2017
Staff Services Manager II	8/23/2017

- Criteria:** Departments are required to “prepare performance reports and keep them on file as prescribed by department rule” (Gov. Code § 19992.2). Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee’s probationary period.
- Severity:** Serious. The department does not ensure that all of its employees are apprised of work performance issues and/or goals in a systematic manner.
- Cause:** The GovOps states that despite the methods used by Human Resources to inform supervisors of the requirements to complete performance appraisals, not all supervisors provided timely performance appraisals.
- Action:** It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the GovOps submit to the SPB 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 GovOps response is attached as Attachment 1.

SPB REPLY

Based upon the GovOps’ written response, the GovOps will comply with the CRU recommendations and findings and provide the CRU with a corrective action plan. It is further recommended that the GovOps 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.



CALIFORNIA GOVERNMENT OPERATIONS AGENCY

GAVIN NEWSOM

California Governor

MARYBEL BATJER

Secretary

February 11, 2019

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

Re: Government Operations Agency Response to Draft State
Personnel Board Compliance Report

Dear Ms. Ambrose,

The Government Operations Agency (GovOps) has received the draft of the State Personnel Board's (SPB) Compliance Review Report. Based on the compliance review conducted by the Compliance Review Unit (CRU) of GovOps' personnel practices in the areas of Examinations, Appointments, Equal Employment Opportunity (EEO), Personal Services Contracts, Mandated Training, Compensation and Pay, Leave, and Policy, the Government Operations Agency provides the following response to each of the findings presented by SPB.

Finding No. 2: Probationary evaluations were not provided for all appointments reviewed

The summary by the CRU indicated that GovOps did not provide three probationary reports of performance for three of the seven appointments reviewed by the CRU.

Cause: Despite the methods used by Human Resources to inform supervisors of the requirements to complete probationary reports, not all supervisors provided timely probationary reports.

GovOps Response: Currently, Human Resources sends memos to all supervisors informing them of probationary report due dates

DEPARTMENTS

Office of
Administrative Law
Franchise Tax Board
Department of
General Services
Department of
Human Resources
State Personnel Board
Public Employees'
Retirement System
State Teachers'
Retirement System
Department of
Technology
Victim Compensation
Board
Department of Tax and
Fee Administration
California Complete
Count Office

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when they hire a probationary employee. Moving forward, in addition to the memos, Human Resources will send out a reminder to supervisors before the due date of a probationary report. In addition, the GovOps leadership team will emphasize the importance of completing probationary reports in management meetings.

Finding No. 4: Unions were not notified in a timely manner

The summary by the CRU indicated that unions were not notified by GovOps prior to entering into three of the Personal Services Contracts reviewed.

Cause: Notification to the Unions were not properly documented.

GovOps Response: GovOps will be implementing a process with the DGS to ensure that unions are notified prior to entering into a Personal Services Contract and that the notification is properly documented.

Finding No. 9: Department does not maintain a current written Nepotism Policy

The summary by the CRU indicated that GovOps did not maintain or disseminate a written nepotism policy to prevent favoritism or bias in the recruiting, hiring, or assigning of employees prior to the CRU's compliance review.

Cause: GovOps' nepotism policy was in draft format at the time of the audit and had not been distributed to staff.

GovOps Response: GovOps has created and distributed a nepotism policy. GovOps has also implemented a process to disseminate policies to newly hired staff who must then sign a form acknowledging receipt of those policies.

Finding No. 11: Performance appraisals were not provided to all employees

Cause: Despite the methods used by Human Resources to inform supervisors of the requirements to complete performance appraisals, not all supervisors provided timely performance appraisals.



MARYBEL BATJER
Secretary

GovOps Response: GovOps will be implementing a process to set a schedule for performance appraisal due dates. A policy has been drafted and is currently under review and will be implemented once approved. The GovOps leadership team will emphasize the importance of completing performance appraisals in management meetings.

Sincerely,



Julie Lee, Undersecretary



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