



# **COMPLIANCE REVIEW REPORT**

## **LABOR AND WORKFORCE DEVELOPMENT AGENCY**

Compliance Review Unit  
State Personnel Board  
September 19, 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, subdivision (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 the 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 Labor and Workforce Development Agency (LWDA)'s personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>1</sup>. The following table summarizes the compliance review findings.

Area	Finding
Appointments	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	Disability Advisory Committee Is Not Active
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
Leave	Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Department Has Not Implemented a Monthly Internal Audit Process to Verify Timesheets are Keyed Accurately and Timely
Policy and Processes	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy and Processes	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy and Processes	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

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

## **BACKGROUND**

The LWDA was created in 2002, and is the first cabinet-level agency to coordinate workforce programs. The Agency oversees seven major departments, boards, and panels that serve California workers and businesses by improving access to employment and training programs; enforcing California labor laws to protect workers and create an even playing field for employers; and administering benefits that include workers' compensation, unemployment insurance, disability insurance, and paid family leave. These entities support their mission to provide leadership to protect and improve the well-being of California's current and future workforce.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the LWDA's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>2</sup>. The primary objective of the review was to determine if LWDA's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The LWDA did not administer any examinations during the compliance review period. Additionally, the LWDA did not process any permanent withhold actions during the compliance review period.

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

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

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

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

The LWDA 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 during the compliance review period.

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

The LWDA did not execute any PSC's during the compliance review period.

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

The CRU reviewed the LWDA's Leave Activity and Correction certification forms to verify that the LWDA 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 LWDA's units in order to ensure they maintained accurate and timely leave accounting records. Additionally, the CRU reviewed a selection of the LWDA's positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

During the compliance review period, the LWDA did not have any employees with non-qualifying pay period transactions. The LWDA also did not authorize Administrative Time Off (ATO).

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

The LWDA declined an exit conference to explain and discuss the CRU’s findings and recommendations. The CRU received and carefully reviewed the LWDA’s written response on September 10, 2019, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **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 the candidates who will be successful. (Cal. Code Regs., tit. 2, § 250, subd. (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, subd. (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, subd. (e).)

During the period under review, January 1, 2018 through December 31, 2018, the EDD on behalf of the LWDA made one appointment, listed below, which the CRU reviewed.

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Staff Services Analyst	Certification List	Permanent	Full Time	1

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

The CRU found no deficiencies in the appointment LWDA made during the compliance review period. The EDD's appointment 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).)

The LWDA contracts with EDD for assistance with human resources processing and utilizes EDD's EEO plan and policy. The CRU reviewed LWDA's EEO program in effect during the compliance review period.

**FINDING NO. 2 – Disability Advisory Committee is Not Active**

**Summary:** The LWDA does not have an active DAC.

**Criteria:** Each state agency shall 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 shall invite all employees to serve on the committee and shall 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).)

**Severity:** Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

**Cause:** The LWDA has previously and continues to sit on the EDD's DAC. In conjunction with the EDD, the LWDA will be recruiting new members in October 2019 to coincide with National Disability Employment Awareness Month.

**Action:** The EDD's DAC has not met in 2019. The LWDA submitted a corrective action plan to ensure conformity with Government Code section 19795 subdivision (b)(1). Within 60 days of the Executive Officer's approval of these findings and recommendations, copies of relevant documentation including recruitment efforts for new members to participate in the EDD's DAC, must be submitted to the CRU.

### **Mandated Training**

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

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

§ 19995.4, subd. (c).), 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. As to the sexual harassment and abusive-conduct

prevention component, the training must thereafter be provided to supervisors, once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or Career Executive Assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by the CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biennial 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 all the records for the LWDA's mandated training program that was in effect during the compliance review period, and determined that the LWDA's ethics and supervisory training were in compliance. However:

**FINDING NO. 3 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors**

- Summary:** The LWDA did not provide sexual harassment prevention training to one of three existing supervisors every two years. The LWDA did not have any new supervisors during the compliance review period.
- Criteria:** Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)
- Severity:** Very Serious. The department does not ensure its 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:** Sexual Harassment Prevention Training was provided to all supervisors. Unfortunately, record of completed Sexual Harassment and Prevention Training for one employee was not retained. The employee responsible for record retention is no longer with the LWDA and the EDD is in the process of implementing a Learning Management System (LMS) that will enable the LWDA to track, notify, follow-up, enforce, and retain records of the timely completion of Sexual Harassment Training.
- Action:** The LWDA has submitted a corrective action plan to track and enforce sexual harassment prevention training and maintain training records. However, the LWDA must continue to monitor the sexual harassment prevention training records to ensure conformity with the Government Code section 12950.1, subdivision (a). No further action is required at this time because the LWDA and the EDD are implementing the LMS that is currently in beta testing.

## **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 rate<sup>3</sup> 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, January 1, 2018 through December 31, 2018, the EDD on behalf of the LWDA made one appointment, which the CRU reviewed to determine if the EDD applied salary regulations accurately and correctly processed employees’ compensation.

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Staff Services Analyst	Certification List	Permanent	Full Time	\$4,560

**FINDING NO. 4 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the salary determination that the EDD made on behalf of the LWDA during the compliance review period. The EDD appropriately calculated and processed the salary for the appointment and correctly determined the employee’s anniversary date ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules, and CalHR policies and guidelines.

**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.

<sup>3</sup> “Rate” is any one of the salary rates in the resolution by the CalHR which establishes the salary ranges and steps of the Pay Plan. (Cal. Code Regs., tit. 2, § 599.666.)

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days<sup>4</sup> worked and paid absences<sup>5</sup>, is counted. (Cal. Code Regs., tit. 2, § 265.1 (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.<sup>6</sup> (*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.*)

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. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

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

Generally, permanent intermittent employees may work up to 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 LWDA had two employees whose hours were tracked. The CRU reviewed both of these positive paid appointments to ensure compliance with applicable laws, regulations, policies, and guidelines.

Classification	Time Base	Time Frame	Time Worked
Special Consultant	Intermittent	July 1, 2017 – June 30, 2018	526 hours

<sup>4</sup> For example, vacation, sick leave, compensating time off, etc.

<sup>5</sup> For example, two hours or ten hours counts as one day.

<sup>6</sup> California Code of Regulations section 265.1 became effective on July 1, 2017, and did not apply at the time of all of those appointments. The current regulation sets forth the method for counting time for temporary appointments.

Classification	Time Base	Time Frame	Time Worked
Staff Services Manager I	Intermittent	July 1, 2017 – June 30, 2018	782 hours

**FINDING NO. 5 – Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found no deficiencies in the employees’ positive paid hours that were tracked during the compliance review period. The EDD on behalf of the LWDA provided sufficient justification for positive pay and adhered to applicable laws, regulations, policies and guidelines.

Leave Auditing and Timekeeping

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

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

During the period under review, September 1, 2018 through September 30, 2018, the EDD on behalf of the LWDA reported one unit with active employees. The timesheets reviewed are summarized below:

Timesheet Leave Period	No. of Units Reviewed	Number of Employees	No. of Timesheets Reviewed	No. of Missing Timesheets
September 2018	1	12	12	0

**FINDING NO. 6 – Department Has Not Implemented a Monthly Internal Audit Process to Verify Timesheets are Keyed Accurately and Timely**

**Summary:** The EDD on behalf of the LWDA has not implemented a monthly internal audit process to verify all leave is inputted accurately and timely. The LWDA failed to provide Leave Activity Certification forms for employees in the one unit reviewed.

**Criteria:** Each appointing power shall keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665). Departments are directed to create an audit process to verify all leave input is keyed accurately and timely. (Human Resources Manual Section 2101.) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)

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

**Cause:** Misunderstanding of the audit requirement.

**Action:** The LWDA has submitted a corrective action plan to ensure that all leave is inputted accurately and timely. However, the LWDA must continue to monitor and reconcile leave usage to ensure conformity with the California Code of Regulations, title 2, section 599.665, and Human Resources Manual Section 2101. Furthermore, within 60 days of the Executive Officer's approval of these findings and recommendations, copies of relevant documentation including the RELT report used to reconcile timesheets monthly, must be submitted to the CRU.

## **Policy and Processes**

### **Nepotism**

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) 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. (*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. 7 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU verified that the LWDA’s nepotism policy was disseminated to all staff and emphasized the LWDA’s commitment to the state policy of recruiting, hiring and assigning employees, based on merit. Additionally, the LWDA’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, § 9800 subd. (a).) This notice shall be in writing, a form that employees may use as an optional method for notifying the employer of their “personal physician.” (Cal. Code Regs., tit. 8, § 9880 subd. (c)(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 (SCIF) office to discuss the status of volunteers. (*Ibid.*)



**FINDING NO. 8 – Workers’ Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU verified that the LWDA provides notice to their employees to inform them of their rights and responsibilities under CA Workers’ Compensation law. Furthermore, the CRU verified that when the LWDA received worker’s compensation claims, the LWDA met the statutory requirements by providing claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code section 19992.2 subdivision (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 three permanent LWDA employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

**FINDING NO. 9 – Performance Appraisals Were Not Provided to All Employees**

**Summary:** The LWDA did not provide performance appraisals to two of three employees after the completion of the employee’s probationary period.

Classification	Date Performance Appraisals Due
Associate Governmental Program Analyst	9/1/2018
Staff Services Manager I	4/10/2018

**Criteria:** Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code § 19992.2). 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:** Existing procedures were insufficient to ensure evaluations were completed. The LWDA has reminded all managers of the importance of timely performance appraisals and has implemented a tracking system to ensure performance appraisals are completed timely. To date, all employees have received their performance appraisal for the year.

**Action:** The LWDA has submitted a corrective action plan to ensure all performance appraisals are completed timely. However, the LWDA must continue to monitor performance appraisals to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Furthermore, within 60 days of the Executive Officer's approval of these findings and recommendations, copies of relevant documentation including the recently implemented tracking system must be submitted to the CRU.

### **DEPARTMENTAL RESPONSE**

The LWDA's response is attached as Attachment 1.

### **SPB REPLY**

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



STATE OF CALIFORNIA  
Labor & Workforce Development Agency

GOVERNOR Gavin Newsom • SECRETARY Julie A. Su

Agricultural Labor Relations Board • California Unemployment Insurance Appeals Board  
California Workforce Development Board • Department of Industrial Relations  
Employment Development Department • Employment Training Panel • Public Employment Relations Board

**TO: STATE PERSONNEL BOARD**  
**FROM: JAY STURGES**  
**SUBJECT: RESPONSE TO THE COMPLIANCE REVIEW REPORT**  
**DATE: 9/10/2019**

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The Labor and Workforce Development Agency (LWDA) would like to thank the State Personnel Board's Compliance Review Unit for their professionalism and dedication. The LWDA takes compliance issues very seriously and appreciates the opportunity to further refine and strengthen processes and procedures that ensure the integrity of the State's merit based recruitment and selection processes and compliance with all civil service laws and regulations. The LWDA provides the following responses to the findings presented in the report.

**Finding – Disability Advisory Committee is Not Active**

Summary: The LWDA does not have an active DAC.

Cause: LWDA has previously and continues to sit on the EDD's DAC. In conjunction with the EDD, LWDA will be recruiting new members in October 2019 to coincide with National Disability Employment Awareness Month.

**Finding – Sexual Harassment Prevention Training Was Not Provided for All Supervisors**

Summary: The LWDA did not provide sexual harassment prevention training to one of three existing supervisors every two years. The LWDA did not have any new supervisors during the compliance review period.

Cause: Sexual Harassment Prevention Training was provided to all supervisors. Unfortunately, records of completed Sexual Harassment and Prevention Training for one employee were not retained. The employee responsible for record retention is no longer with LWDA and EDD is in the process of implementing a Learning Management System that will enable LWDA to track, notify, follow-up, enforce, and retain records of the timely completion of Sexual Harassment Prevention Training.

**Finding – Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave is Inputted Accurately and Timely**

Summary: The EDD on behalf of the LWDA has not implemented a monthly internal audit process to verify all leave is inputted accurately and timely. The LWDA failed to provide Leave Activity Certification forms for the one unit reviewed during the January 2018 pay period. Additionally, three timesheets were missing.

Cause: During the audit period there was no Leave Audit and Activity Correction form as there were no changes to the STD 672. Moving forward, LWDA will utilize a Report of Employee Leave Totals (RELT) to reconcile leave monthly.

#### **Finding – Performance Appraisals Were Not Provided to All Employees**

Summary: LWDA did not provide performance appraisals to two of three employees after the completion of the employee's probationary period.

Cause: Existing procedures were insufficient to ensure evaluations were completed. LWDA has reminded all managers of the importance of timely performance appraisals and has implemented a tracking system to ensure performance appraisals are completed timely. To date, all employees have received their performance appraisals for the year.

JAY STURGES,

Associate Secretary, Fiscal Policy and Administration

cc: Alicia Leisenring, EDD  
Felicia Molle, LWDA