



COMPLIANCE REVIEW REPORT

CALIFORNIA MILITARY DEPARTMENT

Compliance Review Unit
State Personnel Board
March 22, 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 California Military Department (Military)'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 |
|------------------------------|---|
| Appointments | Probationary Evaluations Were Not Provided for All Appointments Reviewed |
| Appointments | Appointment Documentation Was Not Kept for All Appointments Reviewed |
| Equal Employment Opportunity | Complainants Were Not Notified of the Reasons for Delays in EEO Investigation Decisions Within the Prescribed Time Period |
| Personal Services Contracts | Personal Services Contracts Complied with Procedural Requirements |
| Mandated Training | Ethics Training Was Not Provided for All Filers |
| Mandated Training | Sexual Harassment Prevention Training Was Not Provided for All Supervisors |
| Compensation and Pay | Incorrect Application of Salary Determination 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 |
| Compensation and Pay | Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Compensation and Pay | Out of Class Pay Authorizations Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Leave | Actual Time Worked Authorizations 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 |
|--------|--|
| Leave | Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Leave | Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records |
| Leave | Leave Reduction Plans Were not Provided to Employees Whose Leave Balances Exceeded Established Limits |
| Leave | 715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Policy | 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:

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

BACKGROUND

The California Military Department is a diverse, community-based organization comprised of four pillars: the California Army National Guard, the California Air National Guard, the California State Military Reserve, and the California Youth and Community Programs. At their core, more than 20,000 soldiers, airmen and airwomen, and state military reservists, stand ready to respond to emergencies in California and across the United states. In times of conflict or distress, service members also deploy overseas in support of combat and humanitarian operations. Across the organization, the Military is committed to improving, preparing, and protecting our communities, state, and nation.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the Military'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 Military 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 Military did not conduct any Exam actions during the compliance review period.

A cross-section of the Military'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 Military provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The CRU also reviewed the Military's policies and procedures concerning unlawful appointments to ensure departmental practices conform to state civil service laws and Board regulations. The Military did not conduct any unlawful appointment investigations during the compliance review period.

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

The review of the Military'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).

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

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

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

The CRU reviewed the Military's Leave Activity and Correction certification forms to verify that the Military 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 Military'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 Military's employee's employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the Military's employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Additionally, the CRU reviewed a selection of Military employees tracked by actual time worked (ATW) during the compliance review period in order to ensure that ATW was appropriately utilized.

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

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 Military elected not to have an exit conference. The CRU received and carefully reviewed the Military’s written response on March 15, 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.) 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, December 1, 2017 through August 31, 2018, the Military made 47 appointments. The CRU reviewed 22 of those appointments, which are listed below:

| Classification | Appointment Type | Tenure | Time Base | No. of Appts. |
|--|--------------------|-----------|-----------|---------------|
| Accountant Trainee | Certification List | Permanent | Full Time | 1 |
| Accounting Administrator II | Certification List | Permanent | Full Time | 1 |
| Associate Governmental Program Analyst | Certification List | Permanent | Full Time | 2 |
| Captain Firefighter/ Security Officer | Certification List | Permanent | Full Time | 1 |
| Chief Engineer I | Certification List | Permanent | Full Time | 1 |
| Electrician II | Certification List | Permanent | Full Time | 1 |
| Environmental Scientist | Certification List | Permanent | Full Time | 1 |
| Groundskeeper | Certification List | Permanent | Full Time | 1 |
| Management Services Technician | Certification List | Permanent | Full Time | 1 |
| Materials and Stories Specialist | Certification List | Permanent | Full Time | 1 |
| Senior Accounting Officer (Specialist) | Certification List | Permanent | Full Time | 1 |

| Classification | Appointment Type | Tenure | Time Base | No. of Appts. |
|---|--------------------|-----------|-----------|---------------|
| Staff Services Analyst | Certification List | Permanent | Full Time | 1 |
| Staff Services Manager I | Certification List | Permanent | Full Time | 1 |
| Stationary Engineer | Certification List | Permanent | Full Time | 2 |
| Utility Shops Supervisor | Certification List | Permanent | Full Time | 1 |
| Accounting Administrator I (Supervisor) | Transfer | Permanent | Full Time | 1 |
| Maintenance Mechanic | Transfer | Permanent | Full Time | 1 |
| Office Technician (Typing) | Transfer | Permanent | Full Time | 1 |
| Property Controller II | Transfer | Permanent | Full Time | 1 |
| Supervisor of Building Trades | Transfer | Permanent | Full Time | 1 |

The Military 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 17 list appointments reviewed, the Military 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 five 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 Military verified the eligibility of each candidate to their appointed class.

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

FINDING NO. 1 – Probationary Evaluations Were Not Provided for All Appointments Reviewed

Summary: The Military did not prepare, complete, and/or retain seven probationary reports of performance for four of the 22 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 |
|----------------------------------|--------------------|--|---|
| Accounting Administrator II | Certification List | 1 | 1 |
| Electrician II | Certification List | 1 | 2 |
| Office Technician (Typing) | Certification List | 1 | 3 |
| Staff Services Analyst (General) | Certification List | 1 | 1 |
| Total | | 4 | 7 |

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 Military states they experienced staff turnover, a lack of knowledge transfer, and a lack of training and awareness of the laws and rules.

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

FINDING NO. 2 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: The Military failed to retain personnel records. Specifically, of the 22 appointments reviewed, the Military did not retain three NOPAs and a hired applicant's application.

Criteria: As specified in section 26 of the Board's Regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of five years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Regs., tit. 2, § 26.)

Severity: Non-Serious or Technical. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: The Military states that employees did not return signed NOPAs. Additionally the department experienced staff turnover, a lack of knowledge transfer, and a lack of training and awareness of the laws and rules.

Action: It is recommended that within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the Military submit to CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Cal. Code Regs., tit. 2, § 26.

Equal Employment Opportunity

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

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

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

FINDING NO. 3 – Complainants Were Not Notified of the Reasons for Delays in EEO Investigation Decisions Within the Prescribed Time Period

Summary: The Military provided documentation showing that discrimination complaints related to a medical condition and/or disability were filed during the compliance review period. Two of the four complaint investigations exceeded 90 days and the Military failed to provide written communication to the complainant in a timely manner regarding the status of the complaint.

Criteria: The appointing power must issue a written decision to the complainant within 90 days of the complaint being filed. (Cal. Code

Regs., tit. 2, § 64.4, subd. (a).) If the appointing power is unable to issue its decision within the prescribed time period, the appointing power must inform the complainant in writing of the reasons for the delay. (*Ibid.*)

Severity: Very Serious. Employees were not informed of the reasons for delays in decisions for complaints. Employees may feel their concerns are not being taken seriously, which can leave the agency open to liability and low employee morale.

Cause: The Military states that they experienced staff turnover, a lack of knowledge transfer, and a lack of training and awareness of the laws and rules. Additionally, at the time of the compliance review the EEO Officer retired and position was vacant for four months, which resulted in not having the coverage needed to ensure complaints were responded to in a timely manner.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the Military submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of California Code of Regulations, title 2, section 64.4, subdivision (a).

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, December 1, 2017 through August 31, 2018, the Military had 80 PSC's that were in effect. The CRU reviewed 24 of those, which are listed below:

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified? | Union Notified? |
|--|---|-----------------|-----------------|---------------------------|-----------------|
| Admiral's Experience, Inc. | Food Catering Services | 7/15/18-6/1/19 | \$1,045,240.56 | Yes | Yes |
| ARC of Riverside County | Custodial Services-March ARB | 6/1/18-5/31/20 | \$248,423.04 | Yes | Yes |
| ARC of Riverside County | Janitorial Services-Riverside | 2/1/18-1/31/19 | \$22,928.04 | Yes | Yes |
| ARC San Joaquin | Janitorial Services-Stockton | 5/41/18-4/30/19 | \$63,000.00 | Yes | Yes |
| Associated Compressor & Equipment, LLC | Compressor Maintenance-Fresno | 6/1/18-5/31/19 | \$46,148.00 | Yes | Yes |
| Chem Pro Laboratory, Inc. | Water Treatment Services-San Diego | 2/1/18-1/31/20 | \$4,800.00 | Yes | Yes |
| Ecological Assets Management, LLC | Kit Fox Survey-Camp Roberts | 9/1/18-8/30/19 | \$16,950.00 | Yes | Yes |
| Goodwill Southern California | Groundskeeping | 1/1/18-12/31/19 | \$165,600.00 | Yes | Yes |
| H&L Charter Company, Inc. | Bus Transportation CA Cadet Corp | 7/31/18-7/20/18 | \$41,030.00 | Yes | Yes |
| HARO Environmental, Inc. | Groundwater Monitoring | 7/1/18-6/30/19 | \$20,880.00 | Yes | Yes |
| HCI Systems Inc. | Fire Alarm Service-March Air Reserve Base | 6/1/18-5/31/19 | \$21,600.00 | Yes | Yes |

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified? | Union Notified? |
|---|--|-----------------|-----------------|---------------------------|-----------------|
| Life Options Vocational (LOVARC) | DFAC Food Services-CSLO | 6/1/18-5/31/20 | \$4,715,400.00 | Yes | Yes |
| NCI Affiliates Inc. | Janitorial Services Camp Roberts | 4/1/18-3/31/20 | \$281,390.50 | Yes | Yes |
| Norcal Linen Supply | Laundry Services | 7/15/18-6/16/19 | \$44,160.00 | Yes | Yes |
| Oilfield Environmental & Compliance, Inc. | Monitor Water | 9/1/17-8/31/18 | \$49,996.00 | Yes | Yes |
| Oilfield Environmental & Compliance, Inc. | Monitor Water | 9/1/18-8/31/19 | \$39,137.00 | Yes | Yes |
| Orange Avenue Disposal, Inc. DBA Industrial Waste & Salvage | Refuse Services - Fresno | 2/1/18-1/31/20 | \$31,472.00 | Yes | Yes |
| Pacific Bell Telephone Company DBA AT&T DataComm | Tele-communication Services - | 12/1/17-9/30/18 | \$435,727.60 | Yes | Yes |
| Star Resources Corporation | Landfill Gas & Groundwater Monitoring and Sampling Service | 7/20/18-7/19/19 | \$49,453.37 | Yes | Yes |
| Strength in Support | Behavioral Health Care-Sacramento | 6/1/18-5/31/19 | \$14,000.00 | Yes | Yes |
| The ARC Fresno Madera Counties | Grounds-keeping Services - Fresno | 2/1/18-1/1/20 | \$110,376.00 | Yes | Yes |
| The ARC of San Diego | Janitorial Services | 1/1/18-12/31/18 | \$42,260.28 | Yes | Yes |
| Tierra Data Incorporated | Integrate Resources Management Plan | 9/1/48-8/31/20 | \$41,650.00 | Yes | Yes |

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified? | Union Notified? |
|---------------------------|--|-----------------|-----------------|---------------------------|-----------------|
| Trombley Enterprises, LLC | Exterior Stair Painting - Camp Roberts | 4/20/18-9/17/18 | \$118,783.55 | Yes | Yes |

FINDING No. 4 – Personal Services Contracts Complied with Procedural Requirements

When an agency executes a PSC 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 \$7,670,405.94. It was beyond the scope of the review to make conclusions as to whether Military justifications for the contract were legally sufficient. For all 24 PSC’s reviewed, the Military 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). Additionally, the Military complied with proper notification to all organizations that represent state employees who perform the type or work contracted. Accordingly, the Military PSC’s complied with civil service laws and board rules.

Mandated Training

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

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the

CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), (c), & 19995.4, subd. (b).)

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

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

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

The CRU reviewed the Military's mandated training program that was in effect during the compliance review period. The Military's basic supervisory training was found to be in compliance. However, the Military's ethics training and sexual harassment prevention training were found to be out of compliance.

FINDING NO. 5 – Ethics Training Was Not Provided for All Filers

Summary: The Military provided ethics training to six of six existing filers. However, the Military did not provide ethics training to eight of eight new filers within six months of their appointment.

Criteria: New filers must be provided ethics training within six months of appointment. (Gov. Code, § 11146.3, subd. (b).)

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

Cause: The Military states that due to the timing of their “road shows” training, they did not have a sufficient way to ensure all employees were trained.

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

It is therefore recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the Military must submit to the CRU a corrective action plan which ensures compliance with sexual harassment prevention training mandates.

FINDING NO. 6 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The Military did not provide sexual harassment prevention training to six of eight new supervisors within six months of their appointment. In addition, the Military did not provide sexual harassment prevention training to seven of seven existing supervisors every two years.

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

Severity: Very Serious. The department does not ensure its new supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

Cause: The Military states that due to the timing of their "road shows" training, they did not have a sufficient way to ensure all employees were trained

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

It is therefore recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the Military must submit to the CRU a corrective action plan which ensures compliance with sexual harassment prevention training mandates.

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 rate⁴ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

During the period under review, December 1, 2017 through August 31, 2018, the Military made 47 appointments. The CRU reviewed 22 of those appointments to determine if the Military applied salary regulations accurately and correctly processed employees' compensation transactions. These appointments are listed below:

⁴ "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) |
|--|--------------------|-----------|-----------|-----------------------|
| Accountant Trainee | Certification List | Permanent | Full Time | \$3,665 |
| Accounting Administrator II | Certification List | Permanent | Full Time | \$6,907 |
| Associate Governmental Program Analyst | Certification List | Permanent | Full Time | \$4,975 |
| Associate Governmental Program Analyst | Certification List | Permanent | Full Time | \$5,047 |
| Captain Firefighter/Security Officer | Certification List | Permanent | Full Time | \$5,296 |
| Chief Engineer I | Certification List | Permanent | Full Time | \$6,263 |
| Electrician II | Certification List | Permanent | Full Time | \$4,648 |
| Environmental Scientist | Certification List | Permanent | Full Time | \$5,372 |
| Groundskeeper | Certification List | Permanent | Full Time | \$2,965 |
| Management Services Technicians | Certification List | Permanent | Full Time | \$3,838 |
| Materials and Stories Specialist | Certification List | Permanent | Full Time | \$3,174 |
| Senior Accounting Officer (Specialist) | Certification List | Permanent | Full Time | \$4,784 |
| Staff Services Analyst (General) | Certification List | Permanent | Full Time | \$3,977 |
| Staff Services Manager I | Certification List | Permanent | Full Time | \$6,287 |
| Stationary Engineer | Certification List | Permanent | Full Time | \$5,681 |
| Stationary Engineer | Certification List | Permanent | Full Time | \$5,681 |
| Utility Shops Supervisor | Certification List | Permanent | Full Time | \$5,118 |
| Accounting Administrative I | Transfer | Permanent | Full Time | \$6,266 |
| Maintenance Mechanic | Transfer | Permanent | Full Time | \$4,443 |
| Office Technician (Typing) | Transfer | Permanent | Full Time | \$3,327 |
| Property Controller II | Transfer | Permanent | Full Time | \$4,486 |

| Classification | Appointment Type | Tenure | Time Base | Salary (Monthly Rate) |
|-------------------------------|------------------|-----------|-----------|-----------------------|
| Supervisor of Building Trades | Transfer | Permanent | Full Time | \$5,118 |

The CRU found no deficiencies in 20 out of 22 salary determinations that were reviewed. The Military appropriately calculated and processed 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.

However, the Military incorrectly applied compensation laws, rules and/or CalHR policies and guidelines for two salary determinations reviewed.

FINDING No. 7– Incorrect Application of Compensation Laws, Board Rules, and/or CalHR Policies and Guidelines

Summary: The CRU found the following errors in the Military's salary determination of employee compensation:

| Classification | Description of Findings | Criteria |
|----------------------------|---|----------|
| Maintenance Mechanic | Incorrect MSA transaction calculation for a lateral transfer resulting in an erroneous MSA date. An employee's MSA was accelerated one month when employee should have retained prior anniversary date. | 599.674 |
| Office Technician (Typing) | Incorrect salary determination for an A02 transfer appointment. An employee should have received a one-step increase or 5% and a new anniversary date when transferring from a Case Records Technician to Office Technician (Typing). | 599.676 |

Severity: Very Serious. The Military 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 and resulted in the civil service employees receiving incorrect and/or inappropriate pay amounts.

Cause: The Military states that they experienced staff turnover, a lack of knowledge transfer, and a lack of training and awareness of the laws and rules.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the Military submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, sections 599.674, and 599.676. The Military must work with CalHR and the State Controller's Office (SCO) to correct the salary and range issues in order ensure the employee is compensated correctly including any backpay.

Hiring Above Minimum Requests

Government Code section 19836 authorizes CalHR to allow payments above-the minimum rate in the salary range in order to hire persons who have extraordinary qualifications. On April 1, 2005, CalHR granted delegated authority to all departments to approve HAM's for extraordinary qualifications, former legislative employees, and former exempt employees (PML, "Delegation of Personnel Management Functions," 2005-012). On September 25, 2007, CalHR also granted delegated authority for all departments to approve exceptions to the HAM criteria for extraordinary qualifications for all new state employees without prior review or approval from CalHR. However, for existing state employees, departments should obtain approval from CalHR and delegated authority does not apply (PML, "Hiring Above Minimum Standards for Extraordinary Qualifications," 2010-005).

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

During the period under review, December 1, 2017 through August 31, 2018, the Military authorized one HAM request. The CRU reviewed one authorized HAM request to determine if the Military 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) |
|----------------------|--------------------|------------------|-----------------------|-----------------------|
| Maintenance Mechanic | Certification List | New to the State | \$4,231.00-\$4,874.00 | \$4,650 |

FINDING No. 8 – Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

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

Pay Differentials

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

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

During the period under review, November 1, 2017 through July 31, 2018, the Military issued pay differentials⁵ to ten employees. The CRU reviewed all of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

| Classification | Pay Differential | Monthly Amount |
|--|------------------|----------------|
| Captain Firefighter/Security officer | 245 | 8.00% |
| Captain Firefighter/Security officer | 244 | \$75 |
| Firefighter | 244 | \$125 |
| Firefighter/Security Officer | 245 | 3% |
| Firefighter/Security Officer | 245 | 6% |
| Maintenance Mechanic | 297 | \$200 |
| Maintenance Mechanic | 233 | \$100 |
| Military Department Heavy Equipment Operator | 297 | \$200 |
| Water and Sewage plant Supervisor | 338 | 4% |
| Water and Sewage plant Supervisor | 233 | \$100 |

FINDING No. 9 - Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the ten Pay Differentials that the Military 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 excluded⁶ 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).

⁵ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

⁶ "Excluded employee" means an employee as defined in section 3572(b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

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

During the period under review, November 1, 2017 to July 31, 2018, the Military issued out-of-class pay⁷ to nine employees. The CRU reviewed all of these OOC assignments to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

| Classification | Bargaining Unit | Out-of-Class Classification | Time Frame |
|---------------------------------|-----------------|--|----------------------|
| Accounting Officer (Specialist) | R01 | Associate Governmental Program Analyst | 10/1/2017-2/28/2018 |
| Electrician II | R12 | Chief Engineer I | 1/1/2018-3/18/2018 |
| Environmental Scientist | R10 | Senior Environmental Scientist | 10/1/2017-1/30/2018 |
| Firefighter/Security Officer | R07 | Captain Firefighter/Security Officer | 10/1/2017-5/31/2018 |
| Maintenance Mechanic | R12 | Supervisor of Building Trades | 5/1/2017-12/31/2017 |
| Staff Services Analyst | R01 | Associate Governmental Program Analyst | 11/13/2017-1/11/2018 |
| Staff Services Analyst | R01 | Associate Governmental Program Analyst | 12/1/2017-1/28/2018 |
| Stationary Engineer | R13 | Chief of Plant Operations II | 5/1/2017-2/28/2018 |
| Stationary engineer | R13 | Chief Engineer II | 1/1/2017-12/31/2017 |

⁷ Excluding bilingual and arduous pay.

FINDING NO. 10 – Out of Class Pay Authorizations Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Summary: The CRU found the following error in the Military’s salary computation while the employee was serving in an OOC assignment.

| Classification | Description of Finding(s) | Criteria |
|---------------------|--|---------------------|
| Stationary Engineer | The employee was underpaid over 4 months from July 2017 through October 2017 because the Military failed to include a general salary increase when determining the employee’s OOC pay. The Military correctly issued the employee monthly OOC payments of \$283.90 based on the employee's prior salary of \$5,678. However, starting July 2017, the employee's base salary increased to \$5,965 due to a general salary increase and as such, the monthly OOC rate increased to \$298.25. This was accurately reflected in Military's monthly OOC payments issued to the employee from November to December 2017. The employee is owed around \$57.40 of OOC pay. | Pay Differential 95 |

Criteria: According to Pay Differential 95 when “an employee is required in writing to work in a higher classification, the employee shall be entitled to receive the difference between his/her salary and differentials and the salary and differentials of the higher class at the same step the employee would receive if the employee were to be promoted to that class”.

Severity: Very Serious. The Military 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 Military states that they experienced staff turnover, a lack of knowledge transfer, and a lack of training and awareness of the laws and rules.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the Military submit to the CRU a written corrective action plan that addresses the

corrections the department will implement to ensure conformity with Pay Differential 95. The Military must work with CalHR and the SCO to correct the pay differential and ensure the employee is compensated correctly.

Leave

Actual Time Worked

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

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. Time is accrued by months so that the immediate prior 12-calendar months are the ones used to count the 189 working days. ATW includes; any day on which the employee physically worked, regardless of the length of time worked on that day⁸, any day for which the employee is on paid absence⁹, any holiday for which the employee receives either full or partial pay. If the employee works on the holiday, the day is counted only once regardless of the rate of pay¹⁰.

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. Therefore, departments must monitor the actual number of days worked in order to ensure that they do not exceed 189 days in any 12-consecutive month period (Personnel Management Policy and Procedures Manual Sections 330.2-330.4). For 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, subd. (d).)

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

⁸ For example, two hours or ten hours counts as one day.

⁹ For example, vacation, sick leave, compensating time off, etc.

¹⁰ For example, straight time, time and one-half, double time, etc.

| Classification | Time Base | Time Frame | Time Worked |
|-------------------|--------------|-----------------------|-------------|
| Student Assistant | Intermittent | 11/13/2017-11/13/2018 | 969.5 |
| Student Assistant | Intermittent | 1/22/2018-5/29/2018 | 370 |
| Student Assistant | Intermittent | 9/8/2016-1/19/2017 | 259.8 |
| Student Assistant | Intermittent | 9/1/2016-8/18/2017 | 1174 |
| Student Assistant | Intermittent | 3/14/2017-10/31/2017 | 754 |
| Student Assistant | Intermittent | 3/13/2017-9/17/2017 | 488 |
| Student Assistant | Intermittent | 1/23/2018-7/1/2018 | 559 |

FINDING NO. 11 – Actual Time Worked Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines (Language may be revised)

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

Administrative Time Off

Administrative Time Off (ATO) is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. Additionally, ATO may be granted when employees need time off for any of the following: donating blood, extreme weather that makes getting to work impossible, and/or, when employees need time off to attend special events. Any ATO requests lasting over 30 days must be submitted and approved by CalHR. Approval will generally be given in 30 calendar day increments and any extension must be approved prior to the expiration of the 30 calendar days. Departments must properly document and track ATO for any length of time (PML, “Administrative Time Off (ATO) – Policy, Procedure and Documentation Requirements”, 2012-008).

Employees may also be granted a paid leave of absence of up to five days by their appointing power when the employee works or resides in a county where a state of

emergency has been proclaimed by the Governor (§ 599.785.5, Administrative Time Off - During State of Emergency).

During the period under review, June 1, 2017 through May 31, 2018, the Military placed four employees on ATO. The CRU reviewed all 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 |
|--|-----------------------|--------------------|
| Associate Environmental Planner (Natural Sciences) | 2/16/2018 | 1 |
| Associate Governmental Program Analyst | 6/1/2017 | 1 |
| Principal Architect | 12/1/2017-12/8/2017 | 7 |
| Senior Environmental Specialist | 12/18/2017-12/19/2017 | 2 |

FINDING NO. 12 – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Leave Auditing and Timekeeping

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

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

During the period under review, March 1, 2018 through May 31, 2018, the Military reported seven units comprised of 80 active employees during the March 2018 pay period, nine units comprised of 80 active employees during the April 2018 pay period and eight units comprised of 80 active employees during the May 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 |
|------------------------|---------------|---------------------|-------------------------------|------------------------------|
| March 2018 | 7 | 80 | 80 | 0 |
| April 2018 | 9 | 80 | 80 | 0 |
| May 2018 | 8 | 80 | 80 | 0 |

FINDING NO. 13 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed

Summary: The Military failed to provide completed Leave Activity and Correction Certification forms for all three months reviewed during the review period. The Military notified CRU they will complete the Leave Activity Correction Certification form moving forward.

Criteria: In accordance with California Code of Regulations, title 2, section 599.665, departments are responsible for maintaining accurate and timely leave accounting records for their employees. In an effort to ensure departmental compliance, CalHR mandates that departments audit processes include the comparison of “what has been recorded in the leave accounting system as accrued/earned or used by each employee to their attendance record for the pay period” (CalHR Online Manual Section 2101). CalHR also dictates that departments identify and record all leave errors found using a Leave Activity and Correction Certification form (Ibid.). Moreover, CalHR requires that departments certify that all leave records for the unit/pay period identified on the certification form be reviewed regardless of whether errors were identified.

Severity: Non-serious or Technical. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. For post audit purposes, the

completion of Leave Activity and Correction Certification forms demonstrates compliance with CalHR policies and guidelines.

Cause: The Military states that they experienced staff turnover, a lack of knowledge transfer, and a lack of training and awareness of the laws and rules.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the Military submit to the CRU a corrective action plan to ensure conformity with California Code of Regulations, title 2, section 599.665 and CalHR Online Manual Section 2101. Copies of any relevant documentation should be included with the plan.

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 agreement¹¹. 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.

¹¹ 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.

As of December 2017, the Military reported 32 employees who exceeded the established limits of vacation or annual leave. The CRU reviewed 17 of those employees' leave reduction plans to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

| Classification | Collective Bargaining Identifier | Total Hours Over Established Limit | Leave Reduction Plan Provided |
|--------------------------------------|----------------------------------|------------------------------------|-------------------------------|
| Associate Construction Analyst | R09 | 167.25 | No |
| Captain Firefighter/Security Officer | R07 | 527 | No |
| Captain Firefighter/Security Officer | R07 | 860.5 | No |
| Carpenter II | R12 | 202 | No |
| Chief Engineer II | S13 | 991 | No |
| Construction Inspector II | R09 | 477 | No |
| Construction Supervisor I | R09 | 182 | No |
| Fire Fighter | R07 | 214 | No |
| Information Technology Associate | R01 | 102 | No |
| Maintenance Mechanic | R12 | 242.5 | No |
| Maintenance Mechanic | R12 | 92 | No |
| Maintenance Mechanic | R12 | 123 | No |
| Personnel Specialist | R01 | 510.25 | No |
| Senior Electrical Engineer | R09 | 784 | No |
| Staff Services Manager I | S01 | 328.5 | No |
| Supervisor of Building Trades | S12 | 550 | No |
| Utility Shops Supervisor | S12 | 123 | No |
| Total | | 6389.5 | |

FINDING NO. 14 – Leave Reduction Plans Were not Provided to Employees Whose Leave Balances Exceeded Established Limits

Summary: The Military did not provide leave reduction plans for all 17 of the employees reviewed whose leave balances significantly exceeded established limits. Additionally, Military did not provide a general departmental policy addressing leave reduction.

Criteria: It is the intent of the state to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation. (Cal. Code Regs., tit. 2, § 599.742.1), ensuring employees maintain the capacity to optimally perform their jobs. The employee shall also be notified by July 1 that, if the employee fails to take off the required number of hours by January 1, unless exempted, the appointing

power shall require the employee to take off the excess hours over the maximum permitted by the applicable regulation at the convenience of the agency during the following calendar year. (Cal. Code Regs., tit. 2, § 599.742.)

According to CalHR Online Manual Section 2124, “it is the policy of the state to foster and maintain a workforce that has the capacity to effectively produce quality services expected by both internal customers and the citizens of California. Therefore, appointing authorities and state managers and supervisors must create a leave reduction policy for the organization and monitor employees’ leave to ensure compliance with the departmental leave policy; and; ensure employees who have significant ‘over-the-cap’ leave balances have a leave reduction plan in place and are actively reducing hours”.

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

Cause: The Military states that they experienced staff turnover, a lack of knowledge transfer, and a lack of training and awareness of the laws and rules.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the Military submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.742 and CalHR Online Manual Section 2124. Copies of any relevant documentation should be included with the plan.

State Service

An employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service¹² (Cal. Code Regs., tit. 2, § 599.608).

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

For each additional qualifying monthly pay period as defined in section 599.608, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated (Cal. Code Regs., tit. 2, § 599.739). On the first day following a qualifying monthly pay period, excluded employees¹³ 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, November 1, 2017 through July 31, 2018, the Military had three employees with non-qualifying pay period 715 transactions¹⁴. The CRU reviewed six 715 transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

¹² 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.

¹³ As identified in Government Code sections 19858.3(a), 19858.3(b), or 19858.3(c) as it applies to employees excluded from the definition of state employee under section Government Code 3513(c), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

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

| Type of 715 Transaction | Time Base | Number Reviewed |
|---------------------------|-----------|-----------------|
| Non-Qualifying Pay Period | Full Time | 6 |

FINDING NO. 15 – 715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

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. 16 – Department Does Not Maintain a Current Written Nepotism Policy

Summary: The Military does not maintain a current written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees.

Criteria: 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 (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 Military states that they experienced staff turnover, a lack of knowledge transfer, and a lack of training and awareness of the laws and rules.
- Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the Military submit to the CRU a written nepotism policy aimed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees, in conformity with PML 2015-14 "Statewide Guidance on Nepotism Policies".

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.

FINDING NO. 17 – Workers’ Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Performance Appraisals

According to Government Code section 19992.2, 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 70 permanent Military 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.

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

FINDING NO. 18 – Performance Appraisals Were Not Provided to All Employees

Summary: The Military did not provide performance appraisals to 46 of 70 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 Appraisal(s) Due |
|--------------------|-----------------------------------|
| Armory Custodian I | 7/23/2017 |
| Armory Custodian I | 1/6/2017 |

| Classification | Date Performance Appraisal(s) Due |
|--|-----------------------------------|
| Armory Custodian I | 8/2/2017 |
| Associate Construction Analyst | 10/23/2017 |
| Associate Environmental Planner | 5/1/2017 |
| Associate Governmental Program Analyst | 12/2/2017 |
| Associate Management Auditor | 7/12/2017 |
| Carpenter I | 11/11/2017 |
| Chief Engineer II | 8/1/2017 |
| Constructor Inspector II | 4/9/2017 |
| Construction Supervisor I | 4/1/2017 |
| Environmental Scientist | 8/29/2017 |
| Executive Assistant | 1/17/2017 |
| Executive Secretary I | 9/1/2017 |
| Groundskeeper | 10/1/2017 |
| Information Officer II | 9/7/2017 |
| Information Technology Specialist I | 7/17/2017 |
| Instructor Military Department | 4/1/2017 |
| Instructor Military Department | 1/18/2017 |
| Instructor Military Department | 2/3/2017 |
| Maintenance Mechanic | 5/19/2017 |
| Maintenance Mechanic | 12/24/2017 |
| Office Technician (Typing) | 1/24/2017 |
| Office Technician (Typing) | 9/17/2017 |
| Painter II | 10/26/2017 |
| Personnel Specialist | 10/1/2017 |
| Plumber I | 9/24/2017 |
| Senior Delineator | 4/18/2017 |
| Senior Electrical Engineer | 12/18/2017 |

| Classification | Date Performance Appraisal(s) Due |
|---|-----------------------------------|
| Senior Environmental Scientist (Specialist) | 3/27/2017 |
| Senior Environmental Scientist (Specialist) | 1/6/2017 |
| Senior Environmental Scientist (Specialist) | 7/1/2017 |
| Senior Environmental Scientist (Specialist) | 11/1/2017 |
| Senior Land Agent (Specialist) | 5/1/2017 |
| Sheetfed Offset Press Operator III | 4/14/2017 |
| Staff Services Manager I | 10/22/2017 |
| Staff Services Manager I | 7/2/2017 |
| Staff Services Manager II (Supervisory) | 9/10/2017 |
| Stationary Engineer | 6/1/2017 |
| Stationary Engineer | 12/1/2017 |
| Supervising Groundskeeper I | 1/31/2017 |
| Supervising Management Auditor | 10/1/2017 |
| Supervisor of Building Trades | 4/9/2017 |
| Supervisor of Building Trades | 6/15/2017 |
| Utility Shops Supervisor | 2/1/2017 |
| Utility Shops Supervisor | 2/1/2017 |

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 Military states that they experienced staff turnover, a lack of knowledge transfer, and a lack of training and awareness of the laws and rules.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the Military 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 Military's response is attached as Attachment 1.

SPB REPLY

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



MILITARY DEPARTMENT
OFFICE OF THE ADJUTANT GENERAL
9800 Goethe Road
Sacramento, California 95827-3561

March 15, 2019

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

**SUBJECT: CA MILITARY DEPARTMENT RESPONSE TO THE STATE PERSONNEL BOARD
DRAFT COMPLIANCE REPORT**

Dear Ms. Ambrose:

Pursuant to Government Code Section 18661, the State Personnel Board (SPB) Compliance Review Unit (CRU) conducted a compliance review of the CA Military Department's (CMD) personnel practices in the areas of Examinations, Appointments, Equal Employment Opportunity (EEO), Personal Services Contracts, Mandated Training, Compensation and Pay, Leave, and Policy and Processes. On February 12, 2019, CMD received the SPB's draft Compliance Report. CMD reviewed the compliance findings and appreciates the collaboration and professionalism of the CRU. CMD is pleased with the findings in the areas where we are compliant, and committed to addressing the remaining areas where issues are present. Please find CMD's responses to each of those areas below:

Finding No. 1 – Probationary Evaluations Were Not Provided for All Appointments Reviewed

Summary: The CRU reflected that CMD did not prepare, complete, and/or retain seven probationary reports of performance for four of the 22 appointments reviewed by the CRU.

Cause: Staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules.

Action: We understand hiring managers throughout the CMD are responsible for completing probation reports timely for all employees. They are also responsible for sending the reports to the State Personnel Programs (SPP) Office in Sacramento to be filed in the Official Personnel File (OPF). We will train current staff to follow up with the hiring managers to ensure compliance with this requirement. CMD is also in the process of securing a new Human Capital Automation Tool (HCAT). We believe once this system is fully operational, it will drastically improve our ability to monitor these reports.

Finding No. 2 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: The CRU reflected that CMD failed to retain personnel records. Specifically, of the 22 appointments reviewed, the CMD did not retain three Notice of Personnel Actions (NOPA) and a hired applicant's application.

Cause: Employees are not returning signed NOPAs, therefore SPP is unable to file into OPFs. In addition, staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules.

Action: We have procedures in place to follow up with employees to ensure they return all documents that are required to be in the OPF. We also train staff to file documents timely. Again, HCAT will alleviate some of these issues since we will be able to track them and maintain compliance with all rules and regulations.

Finding No. 3 – Complainants Were Not Notified of the Reasons for Delays in EEO Investigation Decisions Within the Prescribed Time Period

Summary: The CRU reflected that CMD provided documentation showing that discrimination complaints related to medical condition and/or disability were filed during the compliance review period. Two of the four complaint investigations exceeded 90 days and CMD was unable to provide written communication to the complainant in a timely manner regarding the status of the complaint.

Cause: Staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules. The time period of this review (August 2017 through August 2018), was during the period of time when our EEO Officer retired (August 2017). Our new EEO Officer did not come on board until December 2017. We did not have the coverage needed to ensure complaints were responded to timely.

Action: Our current EEO Officer has created a log/tickler file to ensure we are tracking all cases appropriately. This will also assist us with ensuring notices to employees are timely. This has shown to work successfully in our most current cases. When an EEO Officer goes on military leave or leaves the department, we have procedures in place to handle cases timely.

Finding No. 5 – Ethics Training Was Not Provided for All Filers

Summary: The CRU reflected that CMD provided ethics training to six of six existing filers. However, CMD did not provide ethics training to eight of eight new filers within six months of their appointment.

Cause: Our Ethics training was provided via “Road Shows” in the past. Unfortunately, due to timing of those road shows, there was not a sufficient way to ensure all employees were trained.

Action: We are currently working on a CMD contract that will allow filers to take the training online. Once the contract is in place, we will be able to get filers trained timely depending on when they are due. We also created a process to manually track all mandated training throughout the department until our recently procured HCAT is online. HCAT will allow us the tools needed to run reports of all mandated training for each employee and automatically send notifications of upcoming required training directly to the employee and supervisor for non-compliance.

Finding No. 6 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The CRU reflected that CMD did not provide sexual harassment prevention training to six of eight new supervisors within six months of their appointment. In addition, CMD did not provide sexual harassment prevention training to seven of seven existing supervisors every two years.

Cause: Our Sexual Harassment Prevention Training was also provided via "Road Shows". Unfortunately, due to timing of those road shows, there was not a sufficient way to ensure all employees had the training.

Action: We are currently working on a CMD contract that will allow all supervisors to take the training online. Supervisors will be trained timely depending on when they are due. We also created a process to manually track all mandated training throughout the department until HCAT is online. HCAT will allow reports to keep track of all mandated training for each employee and automatically send notifications of upcoming required training directly to the employee and supervisor.

Finding No. 7 – Incorrect Application of Compensation Laws, Board Rules, and/or CalHR Policies and Guidelines

Summary: The CRU reflected that CMD incorrectly applied compensation laws and made errors in salary determinations of employee compensation for two employees.

Cause: Staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules.

Action: CMD took immediate action to correct the two issues brought to our attention. SPP management has since met with the Personnel Specialists to ensure they are following all rules, regulations, policies, and internal procedures. Management is also reviewing cases to continuously monitor for errors.

Finding No. 10 – Out of Class Pay Authorizations Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Summary: The CRU found that CMD made an error in the salary computation while the employee was serving in an OOC assignment.

Cause: Staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules. Lack of knowledge of the bargaining unit contracts.

Action: CMD took immediate action to correct the issue brought to our attention. We have since informed/trained staff when dealing with any of these types of pay issues to always review the bargaining unit contracts, all pay differential rules, as well as any other rules/regulations that may pertain to the case at hand. Management is now reviewing all OOC assignments to maintain compliance.

Finding No. 13 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed

Summary: The CRU found that CMD inadvertently omitted completed Leave Activity and Correction Certification (LACC) forms for all three months reviewed during the review period. The CMD notified CRU they will start completing the LACC form.

Cause: Staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules.

Action: SPP was unaware of PML 2015-007 that required departments to start using the LACC form to use as an internal audit process to verify all leave input into the CA Leave Accounting System (CLAS). Effective March 2019, the LACC form will be implemented.

Finding No. 14 – Leave Reduction Plans Were not Provided to Employees Whose Leave Balances Exceeded Established Limits

Summary: The CRU found that CMD did not provide leave reduction plans for all 17 of the employees reviewed whose leave balances significantly exceeded established limits. Additionally, CMD did not provide a general departmental policy addressing leave reduction.

Cause: Staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules.

Action: CMD issued guidance in the past and supplied employees with a type of leave plan to assist with reducing time. Due to turnover in the SPP office, we haven't maintained a process to monitor and assist employees/management with effectively reducing time. We are in the process of creating a policy for all State Civil Service (SCS) staff which will include a process to monitor the time on a bi-annual, if not quarterly basis.

Finding No. 16 – Department Does Not Maintain a Current Written Nepotism Policy

Summary: The CRU found that CMD did not maintain a current written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees.

Cause: Staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules.

Action: We are currently in the process of creating a Nepotism Policy for CMD SCS staff to ensure compliance with this requirement.

Finding No. 18 – Performance Appraisals Were Not Provided to All Employees

Summary: The CRU found that CMD did not provide performance appraisals to 46 of 70 employees reviewed at least once in each twelve calendar months after the completion of the employee's probationary period.

Cause: Staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules.

Ms. Suzanne Ambrose
March 15, 2019
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Action: We are creating a Performance Appraisal Policy for CMD SCS staff to ensure compliance with this requirement. CMD is in the process of procuring a new personnel management system; HCAT. We believe that once this system is fully operational, it will drastically improve our ability to monitor these reports.

As outlined above, we have addressed the issues, or are in the process of complying with all personnel practices enforced by the SPB.

If you need additional information, please contact Kimberly Deane, Chief of HR, SPP at Kimberly.a.deane.nfg@mail.mil, or (916) 854-3077. Thank you in advance for the opportunity to respond to these findings.

Sincerely,



Phillip J. Armstrong
Lieutenant Colonel, CA Army National Guard
Director, State Personnel Programs