



COMPLIANCE REVIEW REPORT

OFFICE OF LEGISLATIVE COUNSEL

Compliance Review Unit
State Personnel Board
January 30, 2017

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INTRODUCTION

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

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training, to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews. 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 Office of Legislative Counsel (OLC) personnel practices in the areas of examinations, appointments, EEO, and PSC's from August 1, 2015, through July 31, 2016, and mandated training from August 1, 2014, through August 1, 2016. The following table summarizes the compliance review findings.

| Area | Finding | Severity |
|------------------------------|---|---------------|
| Examinations | Examinations Complied with Civil Service Laws and Board Rules | In Compliance |
| Appointments | Probationary Evaluation Were Not Provided for All Appointments Reviewed | Serious |
| Equal Employment Opportunity | A Disability Advisory Committee Has Not Been Established | Very Serious |

| Area | Finding | Severity |
|-------------------|--|---------------|
| Mandated Training | Mandated Training Complied with Statutory Requirements | In Compliance |

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 OLC has a proud history, dating to 1913, of providing legal expertise to assist the California State Legislature. The agency provides leading-edge technology services that support the legislative process. This includes computer services, data networking, and related customer services to the Legislature and others. In addition, the OLC is a nonpartisan public agency that drafts legislative proposals, prepares legal opinions, and provides other confidential legal services to the Legislature and others. The OLC employs approximately 80 Legal staff, 315 Information Technology, and 101 administrative and support staff.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing OLC examinations, appointments, EEO program, PSC's from August 1, 2015, through July 31, 2016, and mandated training from August 1, 2014, through August 1, 2016. The primary objective of the review was to determine if OLC personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of OLC examinations and appointments were selected for review to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the OLC provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action (NOPA) forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the OLC 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 OLC did not execute any PSC's subject to the Department of General Services approval and thus our procedural review during the compliance review period.

In addition, the OLC 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 and sexual harassment prevention training within statutory timelines.

On January 12, 2017, an exit conference was held with the OLC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the OLC written response on January 25, 2017, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

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

competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the OLC conducted 50 examinations. The CRU reviewed 13 of those examinations, which are listed below:

| Classification | Exam Type | Exam Components | Final File Date | No. of Apps |
|---|--------------------------|---|-----------------|-------------|
| Deputy Legislative Counsel | Departmental Promotional | Education and Experience (E&E) ¹ | 11/5/2015 | 6 |
| Deputy Legislative Counsel III | Departmental Promotional | Qualification Appraisal Panel ² | 9/24/2015 | 3 |
| Information Technical Specialist I, Range B/C | Open | QAP | 5/13/2016 | 60 |
| Information Technical Specialist I, Range C | Departmental Promotional | E&E | 4/14/2016 | 41 |
| Information Technical Specialist I, Range C | Open | QAP | 8/31/2015 | 12 |
| Information Technical Specialist I, Range D | Open | E&E | 9/25/2015 | 31 |
| Information Technical Specialist I, Range E | Open | E&E | 8/17/2015 | 14 |
| Information Technical Specialist I, Range E | Open | QAP | 8/7/2015 | 22 |
| Information Technical Specialist I, Range E | Open | E&E | 3/4/2016 | 10 |
| Information Technical Specialist I, Range E | Open | E&E | 5/2/2016 | 4 |

¹ In an education and experience examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

² The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

| Classification | Exam Type | Exam Components | Final File Date | No. of Apps |
|----------------------------------|--------------------------|----------------------|-----------------|-------------|
| Information Technical Special II | Open | E&E | 2/19/2016 | 9 |
| Proofreader | Open Continuous | Written ³ | 9/22/2015 | 41 |
| Senior Legal Analyst | Departmental Promotional | E&E | 12/23/2015 | 2 |

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

The CRU reviewed nine open examinations and four departmental promotional examination, which the OLC administered in order to create eligible lists from which to make appointments. The OLC published and distributed examination bulletins containing the required information for all examinations. Applications received by the OLC were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications for admittance to the examinations. The OLC notified applicants as to whether they qualified to take the examination, and those applicants who met the minimum qualifications were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the OLC conducted during the compliance review period. Accordingly, the OLC fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

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

³ A written examination is a testing procedure in which candidates' job-related knowledge and skills are assessed through the use of a variety of item formats. Written examinations are either objectively scored or subjectively scored.

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 compliance review period, the OLC made 85 appointments. The CRU reviewed 37 of those appointments, which are listed below:

| Classification | Appointment Type | Tenure | Time Base | No. of Appts |
|---|------------------|-----------|--------------|--------------|
| Deputy Legislative Counsel III | List Appointment | Permanent | Full Time | 2 |
| Graduate Legal Assistant | List Appointment | Permanent | Full Time | 1 |
| Information Technical Specialist I C | List Appointment | Permanent | Full Time | 6 |
| Information Technical Specialist I E | List Appointment | Permanent | Full Time | 2 |
| Information Technical Specialist II | List Appointment | Permanent | Full Time | 4 |
| Information Technical III | List Appointment | Permanent | Full Time | 1 |
| Materials and Stores Specialist | List Appointment | Permanent | Full Time | 1 |
| Office Assistant (General) | List Appointment | Permanent | Intermittent | 4 |
| Personnel Specialist | List Appointment | Permanent | Full Time | 3 |
| Senior Legal Typist | List Appointment | Permanent | Intermittent | 3 |
| Senior Personnel Specialist | List Appointment | Permanent | Full Time | 1 |
| Staff Services Analyst (General) | List Appointment | Permanent | Full Time | 3 |
| Staff Services Manager I | List Appointment | Permanent | Full Time | 1 |
| Staff Services Manager II (Managerial) | List Appointment | Permanent | Full Time | 1 |
| Business Service Assistant (Specialist) | Transfer | Permanent | Full Time | 1 |
| Personnel Supervisor II | Transfer | Permanent | Full Time | 1 |
| Staff Services Analyst (General) | Transfer | Permanent | Full Time | 2 |

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

Summary: The OLC did not prepare, complete, and/or retain 21 required probationary reports of performance.

| Classification | Appointment Type | No. of Appointments | No. of Uncompleted Prob. Reports |
|---|------------------|---------------------|----------------------------------|
| Graduate Legal Assistant | List Appointment | 1 | 1 |
| Information Technical Specialist I, Range C | List Appointment | 2 | 2 |
| Information Technical Specialist II | List Appointment | 1 | 1 |
| Information Technical Specialist III | List Appointment | 1 | 1 |
| Office Assistant (General) | List Appointment | 1 | 1 |
| Personnel Specialist | List Appointment | 1 | 2 |
| Senior Legal Typist | List Appointment | 3 | 9 |
| Staff Services Manager II (Managerial) | List Appointment | 1 | 2 |
| Business Service Assistant (Specialist) | Transfer | 1 | 1 |
| Staff Services Analyst (General) | Transfer | 1 | 1 |
| Total | | 13 | 21 |

Criteria: A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

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 OLC states that although the Human Resources (HR) Office currently has a notification system in place for supervisors and managers, HR does not have internal controls to monitor the completion and return of probationary reports to HR.

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

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. In a state agency with less than 500 employees, like OLC the EEO Officer may be the Personnel Officer.

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 CRU reviewed the OLC EEO program that was in effect during the compliance review period.

FINDING NO. 3 – A Disability Advisory Committee Has Not Been Established

Summary: The OLC does not have an active DAC.

Criteria: 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).)

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 OLC states that it previously had an active DAC; however, the committee did not convene during the SPB audit review period. Although OLC staff did not meet at the departmental level, staff continued to participate in the statewide DAC meetings.

Action: The OLC must take appropriate steps to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues. The OLC must submit to the CRU a written report of compliance, including the DAC roster, agenda, and meeting minutes, no later than 60 days from the date of the SPB's Executive Officer's approval of these findings and recommendations.

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 California Department of Human Resources (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).) 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 OLC's mandated training program that was in effect during the compliance review period and found to be in compliance.

FINDING NO. 4 – Mandated Training Complied with Statutory Requirements

The OLC provided ethics training to its 18 new filers within six months of appointment and semiannual ethics training to its 69 existing filers during two-year calendar year period commencing in 2014. The OLC also provided supervisory training to its six new supervisors within 12 months of appointment. In addition, the OLC provided sexual harassment prevention training its eight new supervisors within six months of appointment, and sexual harassment prevention training to its 62 existing supervisors every two years. Thus, the OLC complied with mandated training requirements within statutory timelines.

DEPARTMENTAL RESPONSE

The OLC's response is attached as Attachment 1.

SPB REPLY

Based upon the OLC's written response, the OLC will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

It is further recommended that the OLC 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.

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January 25, 2017

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The Compliance Review Unit (CRU) recently completed a review of the Office of Legislative Counsel (OLC) personnel practices in the areas of appointments, examinations, and equal employment opportunity (EEO) from August 1, 2015, through July 31, 2016, and mandated training from August 1, 2014 through August 1, 2016. The primary objective of the review was to determine if OLC personnel practices, policies, and procedures complied with state civil service laws and board regulations and to recommend corrective action where concerns were identified. Of the four areas reviewed by the CRU, there were two areas of concern. Below are the OLC's responses to the CRU:

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

No Response Needed

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

Cause: Although the OLC Human Resources (HR) Office currently has a notification system in place for supervisors and managers, HR does not have internal controls to monitor the completion and return of probationary reports to HR.

Response: Along with the reminder emails sent to OLC supervisors and managers notifying of each probationary report due date 30 days in advance, OLC HR will implement an internal HR tracking process to ensure all probationary reports are completed in a timely manner and returned to the human resources office for retention in each employee's official personnel file.

FINDING NO. 3 - A Disability Advisory Committee (DAC) Has Not Been Established

Cause: The OLC previously had an active DAC, however; the committee did not convene during the SPB audit review period. Although OLC staff did not meet at the departmental level, staff continued to participate in the Statewide DAC meetings.

Response: The OLC will have an active DAC in 2017. Communication about the DAC will be announced to OLC staff in late January or early February 2017 to solicit new committee members.

FINDING NO. 4 – Mandated Training Complied with Statutory Requirements

No Response Needed

The OLC would like to once again thank the CRU and appreciates the opportunity to respond to the compliance review report. Additionally, the OLC takes the reported concerns very seriously and has implemented corrective action to strengthen oversight and compliance in the sited areas as indicated in our responses above. If you have any questions or concerns, please contact Mike Dallas, Human Resources Officer at (916) 341-8333 or michael.dallas@lc.ca.gov.