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COMPLIANCE REVIEW REPORT

OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

Compliance Review Unit
State Personnel Board
March 28, 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 items reviewed by the CRU beyond merit-related issues into 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 Office of Statewide Health Planning and Development (OSHPD)'s personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes¹. The following table summarizes the compliance review findings.

Area	Finding
Examinations	Examinations Complied with Civil Service Laws and Board Rules
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules
Personal Services Contracts	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Mandated Training Complied with Statutory Requirements
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	335 Transactions Included Incorrect Employment Anniversary Dates
Compensation and Pay	Hiring Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and 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	Payment Commenced Before 91st Day and Paid Over 120 Days without CalHR Approval.
Leave	ATW Employee Exceeded the Nine Month in Any Twelve Consecutive Month Limitation

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 Policy and Plans Were Not Provided To All Employees Whose Leave Balances Exceeded Established Limits
Leave	715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines 715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisals Were Not Provided to All Employees

A color-coded system is used to identify the severity of the violations as follows:

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

BACKGROUND

The OSHPD's mission is to advance access to safe, quality healthcare environments through innovative and responsive services and information. The OSHPD's vision is access to safe, quality healthcare environments that meet California's dynamic and diverse needs. Created in 1978, the OSHPD is a department within the California Health and Human Services Agency that provides the state with an enhanced understanding of the structure and function of its healthcare delivery systems. The OSHPD's role has evolved to include the delivery of various services to advance access to safe, quality healthcare environments. The OSHPD has three main roles in the healthcare delivery system:

- Collecting data and disseminating information about California's healthcare infrastructure, and publishing valuable information about healthcare outcomes.

- Promoting an equitably distributed healthcare workforce with loan and scholarship programs and determining areas of unmet need.
- Monitoring the construction, renovation, and seismic safety of hospitals and skilled nursing facilities and providing loan insurance to assist the capital needs of California's not-for-profit healthcare facilities.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the OSHPD'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 [OSHPD] personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the OSHPD's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the OSHPD provided, which included examination plans, examination bulletins, job analyses, and scoring results. The OSHPD did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the OSHPD'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 OSHPD 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 OSHPD did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the OSHPD did not make any additional appointments during the compliance review period.

The OSHPD's appointments were also selected for review to ensure the OSHPD applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the OSHPD 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

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

specific documentation for the following personnel functions related to compensation and pay: hiring above minimum (HAM) requests, bilingual pay, monthly pay differentials, and out-of-class assignments. During the compliance review period, the OSHPD did not issue or authorize red circle rate requests, and arduous pay.

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

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

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

The CRU reviewed the OSHPD's Leave Activity and Correction certification forms to verify that the OSHPD 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 OSHPD'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 OSHPD'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 OSHPD employees who used Administrative Time Off

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.

(ATO) in order to ensure that ATO was appropriately administered. The CRU also reviewed a selection of OSHPD 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 OSHPD's policies and processes concerning nepotism, workers' compensation, and performance appraisals. The review was limited to whether the OSHPD's policies and processes adhered to procedural requirements.

On March 5, 2019, an exit conference was held with the OSHPD to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the OSHPD's written response on March 19, 2019, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

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

During the period under review, September 1, 2017 through May 31, 2018, the OSHPD conducted five examinations. The CRU reviewed all five of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) B, Deputy Director/Chief Information Officer	CEA	Statement of Qualifications ⁴	8/11/2017	15
Compliance Officer, Health Facilities Construction (HFC)	Open	Supplemental ⁵	2/9/2018	19
Fire & Life Safety Officer, HFC	Open	Supplemental	1/31/2018	18
Regional Compliance Officer, HFC	Departmental Promotional	Qualification Appraisal Panel ⁶	8/7/2017	10
Supervisor, HFC	Open	Supplemental	6/27/2018	13

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

The CRU reviewed one departmental promotional and four open examinations which the OSHPD administered in order to create eligible lists from which to make appointments. The OSHPD published and distributed examination bulletins containing the required information for all examinations. Applications received by the OSHPD were accepted prior to the final filing date. Applicants were notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examinations that the OSHPD conducted during the compliance review period.

⁴ In a Statement of Qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

⁵ In a supplemental application (SA) examination, applicants are not required to present themselves in person at a predetermined time and place. Supplemental applications are in addition to the regular application and must be completed in order to remain in the examination. Supplemental applications are also known as "rated" applications.

⁶ 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.

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, September 1, 2017 through May 31, 2018, the OSHPD made 46 appointments. The CRU reviewed 13 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
CEA B, Deputy Director/Chief Information Officer	Certification List	Temporary	Full Time	1
Information Technology Associate	Certification List	Limited Term	Full Time	1
Information Officer II	Certification List	Permanent	Full Time	1
Information Systems Technician	Certification List	Permanent	Intermittent	1
Office Technician	Certification List	Temp	Full Time	1
Personnel Specialist	Certification List	Permanent	Full Time	1
Research Analyst II (G)	Certification List	Permanent	Full Time	1
Senior Mechanical Engineer	Certification List	Permanent	Full Time	1
Senior Structural Engineer	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Personnel Specialist	Permissive Reinstatement	Permanent	Full Time	1
Associate Personnel Analyst	Transfer	Permanent	Full Time	1
Senior Mechanical Engineer	Transfer	Permanent	Full Time	1

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

Summary: The OSHPD did not provide four probationary reports of performance for two of the 13 appointments reviewed by the CRU.

Classification	Appointment Type	Number of Appointments Missing Probation Reports	Total Number of Missing Probation Reports
Senior Mechanical Engineer	Certification List	1	3
Senior Mechanical Engineer	Transfer	1	1
Total		2	4

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 OSHPD states that they did not have a process for tracking and monitoring compliance with the requirements to provide probationary evaluations to employees serving a probationary report.

Action: The OSHPD has submitted a corrective action plan for ensuring that all employees are provided probationary evaluations; therefore, no further action is required at this time.

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 – Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules

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

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the state. (Cal. Code Regs., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the period under review, September 1, 2017 through May 31, 2018, the OSHPD had six PSC's that were in effect. The CRU reviewed all six PSC's, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Anchor Singh Painting	Service/Maintenance	5/31/2018 - 8/3/2018	\$49,999.99	Yes	No
Bannon Investors Ltd.	Service/Maintenance	6/1/2017 - 7/31/2018	\$9,999.99	Yes	No
Information Mapping Inc.	IT Services	3/15/2018 - 6/1/2018	\$39,108.60	Yes	No
RMC Learning Solutions	Training	1/8/2018-6/30/2018	\$50,000.00	Yes	No
Sterling Van Lines	Service/Maintenance	5/1/2018-6/30/2020	\$49,999.99	Yes	No
VSI Risk Management and Ergonomics	Service/Maintenance	4/30/2016-6/30/2020	\$249,999.99	Yes	No

FINDING NO. 4 – Unions Were Not Notified of Personal Services Contract

Summary: The OSHPD did not notify unions prior to entering into all six of the PSC’s reviewed.

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

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

Cause: The OSHPD states that their procedure was to notify unions after contract execution.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the OSHPD submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of any relevant documentation should be included with the plan.

Mandated Training

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

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

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

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

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

training that appointing powers are required by the afore-cited laws to provide its employees.

In reviewing the OSHPD’s mandated training program that was in effect during the compliance review period, the CRU determined the following:

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements

The OSHPD provided ethics training to its 38 new filers within six months of appointment and semiannual ethics training to its 228 existing filers. The OSHPD also provided supervisory training to its eight new supervisors within 12 months of appointment. In addition, the OSHPD provided sexual harassment prevention training its eight new supervisors within six months of appointment, and sexual harassment prevention training to its 75 existing supervisors every two years. Thus, the OSHPD complied with mandated training requirements within statutory timelines.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR (Cal. Code Regs., tit. 2, § 599.666). Several salary rules dictate how departments calculate and determine an employee’s salary rate⁷ upon appointment depending on the appointment type, the employee’s state employment and pay history, and tenure.

During the period under review, September 1, 2017 through May 31, 2018, the OSHPD made 46 appointments. The CRU reviewed 12 of those appointments to determine if the OSHPD applied salary regulations accurately and correctly processed employees’ compensation, which are listed below.

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Information Technology Associate	Certification List	Limited Term	Full Time	\$4,177
Information Officer II	Certification List	Permanent	Full Time	\$5,949
Information Systems Technician	Certification List	Permanent	Intermittent	\$3,311

⁷ “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).

Office Technician (LEAP)	Certification List	Temporary	Full Time	\$2,921
Personnel Specialist	Certification List	Permanent	Full Time	\$2,900
Research Analyst II	Certification List	Permanent	Full Time	\$5,877
Senior Mechanical Engineer	Certification List	Permanent	Full Time	\$10,866
Senior Structural Engineer	Certification List	Permanent	Full Time	\$11,767
Staff Services Manager I	Certification List	Permanent	Full Time	\$5,689
Personnel Specialist	Permissive Reinstatement	Permanent	Full Time	\$5,988
Associate Personnel Analyst	Transfer	Permanent	Full Time	\$3,839
Senior Mechanical Engineer	Transfer	Permanent	Full Time	\$9,427

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

The CRU found no deficiencies in the 12 salary determinations that were reviewed. The OSHPD appropriately calculated and keyed the salaries for each appointment and correctly determined employees’ anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

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

During the period under review, July 1, 2017 through March 31, 2018, the OSHPD made one alternate range movement within the same classification. The CRU reviewed the alternate range movement to determine if the OSHPD applied salary regulations accurately and correctly processed employee compensation, which is listed below:

Classification	Prior Range	Current Range	Time Base	Salary
Staff Services Analyst	Range B	Range C	Full Time	\$4,111

The CRU found no deficiencies in the one salary determination for the alternate range movement that the OSHPD made during the compliance review period. The OSHPD appropriately calculated and processed the salaries for the alternate range movement satisfy civil service laws, Board rules and CalHR policies and guidelines.

However, the OSHPD incorrectly applied compensation laws, rules and/or CalHR policies and guidelines for the alternate range movement.

FINDING NO. 7 – 335 Transaction Included Incorrect Employment Anniversary Date

Summary: In processing the 335 transaction listed above, the OSHPD keyed an incorrect anniversary date for the following transaction:

Classification	Prior Range	Current Range	Date 335 Was Keyed	Keyed Anniversary Date	Correct Anniversary Date	Alternate Range Criteria Salary Rule
Staff Services Analyst	Range B	Range C	11/8/2017	4/2018	10/2018	599.683(b)

Criteria: Alternate ranges are designed to recognize increased competence in the performance of class duties based upon experience obtained while in the class. The employee gains status in the alternate range as though each range were a separate classification. (Classification and Pay Guide Section 220).

Severity: Very Serious. The OSHPD 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 pay amounts. In many instances CalHR provides salary rules departments must use when employees move between alternate ranges. They are described in the alternate range criteria (CalHR Pay Scales).

Cause: The OSHPD states that they did not have a process for reviewing the Personnel Action Request prior to it being keyed, nor was there a process for reviewing a transaction once it had been keyed to ensure 100% accuracy.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the OSHPD 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 599.683(b). The OSHPD must work with CalHR and the State Controller's Office to correct the salary and range issue in order ensure the employee is compensated correctly.

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.*). In all

cases, the candidate’s current salary or other bona fide salary offers should be above the minimum rate, verified and appropriately documented.

During the period under review, September 1, 2017 through May 31, 2018, the OSHPD authorized one HAM request. The CRU reviewed the one authorized HAM request to determine if the OSHPD correctly applied Government Code section 19836 and appropriately verified, approved and documented the candidate’s extraordinary qualifications, which is listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Senior Structural Engineer	Certification List	New to State	\$9,404 - \$11,767	\$11,767

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

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

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages ten percent or more of the total time worked. According to the Pay Scales, specifically Pay Differential 14, the ten percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position Duty Statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, July 1, 2017 through March 31, 2018, the OSHPD issued bilingual pay to one employee. The CRU reviewed the bilingual pay authorization to ensure compliance with applicable CalHR policies and guidelines, which is listed below:

Classification	Collective Bargaining Identifier	Time Base
Office Assistant I	R04	Full Time

FINDING NO. 9 – Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found that the bilingual pay authorized to one employee 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, July 1, 2017 through March 31, 2018, the OSHPD issued pay differentials⁸ to 73 employees. The CRU reviewed 18 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Associate Health Facility Construction Financing Analyst	305	5%

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

Classification	Pay Differential	Monthly Amount
District Structural Engineer	261	\$300
District Structural Engineer	261	\$300
District Structural Engineer	261	\$300
District Structural Engineer	261	\$300
District Structural Engineer	261	\$300
Health Facility Construction Financing Specialist	305	5%
Principal Structural Engineer	261	\$300
Senior Health Facility Construction Financing Specialist	305	5%
Senior Health Facility Construction Financing Specialist	305	5%
Senior Structural Engineer	261	\$300
Senior Structural Engineer	261	\$300
Senior Structural Engineer	261	\$300
Senior Structural Engineer	261	\$300
Senior Structural Engineer	261	\$300
Senior Structural Engineer	261	\$300
Supervisor, Health Facilities Review	261	\$300
Supervisor, Health Facilities Review	261	\$300

FINDING NO. 10 – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the 18 pay differentials that the OSHPD authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

Out-of-Class Assignments and Pay

For excluded⁹ and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment (Cal. Code Regs., tit., 2, § 599.810).

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, July 1, 2017 through March 31, 2018, the OSHPD issued OOC pay to one employee. The CRU reviewed the OOC assignment to ensure compliance with applicable CalHR policies and guidelines, which is listed below:

Classification	Collective Bargaining Identifier	Out-of-Class Classification	Time Frame
Data Processing Manager IV	M01	CEA	5/2/2017 - 11/20/2017

FINDING NO. 11 – Payment Commenced Before 91st Day and Paid Over 120 Days without CalHR Approval

Summary: The CRU found the following payroll error in the OSHPD's issuing of out-of-class payments:

Classification	Area	Description of Finding(s)	Criteria
Data Processing Manager IV	Out of Class Pay	Employee was compensated prior to the 91st day.	Pay Differential 101

Severity: Very Serious. The OSHPD failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in

⁹ "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.

accordance with CalHR's policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The OSHPD states that due to a complete turnover in staff during the time the assignment was approved and completed by the incumbent, they are unable to speak to the process followed in approving the OOC assignment, or to the training provided to the staff at that time.

Action: The OSHPD has submitted a corrective action plan for ensuring proper review and approval of all OOC assignments in adherence to all laws and rules governing OOC assignments; therefore, no further action is required at this time.

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 day¹⁰, any day for which the employee is on paid absence¹¹, 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 pay¹².

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

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

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

¹² For example, straight time, time and one-half, double time, etc.

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

For permanent intermittent employees, a maximum of 1,500 hours has been placed on the number of hours which a permanent intermittent employee may work in 12 months. Generally, permanent intermittent employees may work up to 1,500 hours in any calendar year (CalHR Online Manual Section 1202 and applicable Bargaining Unit Agreements), however Bargaining Unit 6 employees may work up to 2,000 hours in any calendar year.

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

Classification	Position #	Time Base	Time Frame	Time Worked
Information Technology Technician	441-175-1400-901	Intermittent	1/1/2017 - 12/31/2017	122.5 Hours
Seasonal Clerk	441-320-1120-901	Intermittent	12/3/2016 - 12/3/2017	209 Day 1033.25 Hours
Seasonal Clerk	441-420-1120-001	Intermittent	3/22/2017 - 3/22/2018	261 Days 2019 Hours

FINDING NO. 12 – ATW Employee Exceeded the Nine Month in Any Twelve Consecutive Month Limitation

Summary: The OSHPD did not monitor one of the ATW employee’s actual number of days worked. According to timesheets and pay history documents provided by the OSHPD, the employee worked 261 days in a calendar year, which exceeded the 189 day in a calendar year limit. (CalHR Online Manual Section 1202.)

Criteria: Temporary employee means an employee holding a position under temporary appointment. Employees appointed under a temporary authorization (TAU) may be appointed on the basis of ATW. ATW is a method that can be used to keep track of a TAU employee’s time to ensure that the Constitutional limit of nine months in any twelve consecutive months is not exceeded. (Cal. Const., art. VII, § 5.) Typically, the ATW is 189 working days in 12 consecutive months, regardless of the classification or the department the temporary

appointment was served under, unless they have had a three-month break in service. (Cal. Code Regs., tit. 2, § 265.1, subd. (a).)

Severity: Serious: The department failed to comply with Article VII, section 5 of the Constitution which limits the amount of time an individual may work in a temporary appointment for the state civil service. The limitation cannot be extended or exceeded for any reason. The appointing power must maintain the records and control the time worked so as not to exceed the constitutional 9-month limitation in 12 consecutive months.

Cause: The OSHPD states that they did not have a process for ensuring intermittent employees time was being tracked.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the OSHPD submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of Cal. Const., art. VII, § 5 and CalHR Online Manual Section 1202. Copies of any relevant documentation should be included with the plan.

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, March 1, 2017 through February 28, 2018, the OSHPD placed seven employees on ATO. The CRU reviewed all seven of these employees placed on ATO to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	No. of Days on ATO
Office Technician (General)	10/25/2017-10/31/2017	6
Personnel Specialist	12/29/2017-1/8/2018	10
Research Data Specialist II	11/3/2017-11/13/2017	10
Staff Services Manager I	9/1/2017- 9/11/2017	10
Staff Services Manager I	10/20/2017-10/31/2017	11
Staff Services Manager I	3/21/2017- 5/19/2017	59
Supervising Program Technician III	8/2/2017- 8/8/2017	6

FINDING NO. 13 – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the seven employees placed on ATO during the compliance review period. The OSHPD 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, December 1, 2017 through February 28, 2018, the OSHPD reported 33 units comprised of 205 active employees during the December 2017. The pay period and timesheets reviewed by the CRU are summarized as follows:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed
December 2017	110	5	5
December 2017	160	38	38
December 2017	175	66	66

FINDING NO. 14 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records

Summary: The OSHPD failed to provide completed Leave Activity and Correction Certification forms for one out of the three units reviewed during the December 2017 pay period.

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 directs departments to 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 have been 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 OSHPD states that they did not have a process for ensuring that monthly leave audits were conducted. Additionally, the Human Resources Services Section was down staff in their Transactions Unit which caused inefficiencies in the audit process.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the OSHPD 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 agreement¹³. Likewise, if an excluded employee does not use all of the vacation to which he or she is entitled in a calendar year, the "employee may accumulate the unused portion of vacation credit, provided that on January 1st of a calendar year, the excluded employee shall not have more than 80 vacation days." (Cal. Code Regs., tit. 2, § 599.738).

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

As of December 2017, 34 OSHPD employees exceeded the established limits of vacation or annual leave. The CRU reviewed 15 of those employees' leave reduction plans to

¹³ 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.

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
Administrative Assistant I	C01	222	No
CEA	M01	1068.25	No
CEA	M01	138	No
District Structural Engineer	E48	147	No
Health Facilities Review, Supervisor	S09	688	No
Health Facilities Review, Supervisor	S09	44.5	No
Information Technology Specialist I	R01	48.5	No
Research Analyst II General	R01	34.25	No
Research Scientist Supervisor II	S10	346	No
Regional Compliance Officer	S09	165	Yes
Senior Architect	R09	100.25	No
Senior Architect	R09	108.5	No
Senior Structural Engineer	R09	446	No
Senior Structural Engineer	R09	96	No
Staff Services Manager I	S01	558.05	No
Total		4210.3	

FINDING NO. 15 – Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits

Summary: The OSHPD did not provide leave reduction plans for the 14 of the 15 employees reviewed whose leave balances significantly exceeded established limits. Additionally, OSHPD 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 OSHPD states that they did not have a process in place for ensuring that employees reduced their leave balances under the established limits.

Action: The OSHPD has submitted a corrective action plan for ensuring leave reduction plans are provided to employees whose leave balances exceed established limits; therefore, no further action is required at this time.

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 service¹⁴

¹⁴ 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.

(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 employees¹⁵ shall be allowed credit for annual leave with pay (Cal. Code Regs., tit. 2, § 599.752).

Permanent intermittent employees 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, July 1, 2017 through March 31, 2018, the OSHPD had eight employees with non-qualifying pay period 715 transactions¹⁶. The CRU reviewed all sixteen 715 transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of 715 Transaction	Time Base	Number Reviewed
Non-Qualifying Pay Period	Full Time	8
Non-Qualifying Pay Period	Part Time	2
Qualifying Pay Period	Full Time	5
Non-Qualifying Pay Period	Part Time	1

¹⁵ 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.

¹⁶ 715 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.

FINDING NO. 16 – 715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU determined that the OSHPD 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. 17 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

After reviewing the OSHPD’s nepotism policy in effect during the compliance review period, the CRU verified that the policy was disseminated to all staff and emphasized the OSHPD’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the OSHPD’s nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions as outlined in CalHR’s Online Manual Section 1204.

Workers’ Compensation

Pursuant to California Code of Regulations, title 8, section 9880, employers shall provide to every new employee at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under Workers’ Compensation Law. This notice shall also contain a form that the employee can use to pre-designate

their personal physician or medical group as defined by Labor Code section 4600. Additionally, employers shall also provide a claim form and notice of potential eligibility to their employee within one working day of notice or knowledge that the employee has suffered a work related injury or illness (Labor Code, § 5401).

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

FINDING NO. 18 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

After reviewing the OSHPD's workers' compensation process that was in effect during the compliance review period, the CRU verified that when the OSHPD 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 OSHPD received worker's compensation claims, the OSHPD 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 77 permanent OSHPD 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.

FINDING NO. 19 – Performance Appraisals Were Not Provided to All Employees

Summary: The OSHPD did not provide performance appraisals to 52 of 77 employees reviewed at least once in each twelve calendar months after the completion of the employee’s probationary period.

Classification	Date Performance Appraisal(s) Due
Associate Governmental Program Analyst	12/27/2017
Associate Health Facility Construction Finance Analyst	12/31/2017
Chief Fire and Life Safety Officer (Health Facilities Construction)	12/31/2017
Compliance Officer, Health Facilities Construction	1/29/2018
Compliance Officer, Health Facilities Construction	9/30/2017
Compliance Officer, Health Facilities Construction	1/2/2018
Compliance Officer, Health Facilities Construction	1/28/2018
District Structural Engineer	12/27/2017
District Structural Engineer	12/29/2017
District Structural Engineer	10/11/2017
Fire and Life Safety Officer II (Health Facilities Construction)	8/15/2017
Fire and Life Safety Officer II (Health Facilities Construction)	8/25/2017
Fire and Life Safety Officer II (Health Facilities Construction)	4/2/2018
Fire and Life Safety Officer II (Health Facilities Construction)	12/25/2017
Fire and Life Safety Officer II (Health Facilities Construction)	2/26/2018
Fire and Life Safety Officer II (Health Facilities Construction)	9/30/2017
Fire and Life Safety Officer II (Health Facilities Construction)	8/31/2017
Fire and Life Safety Officer II (Health Facilities Construction)	8/31/2017
Information Technology Associate	1/29/2018
Information Technology Manager I	1/31/2018
Information Technology Specialist I	8/23/2017

Classification	Date Performance Appraisal(s) Due
Information Technology Specialist I	8/5/2017
Information Technology Specialist I	1/30/2018
Information Technology Specialist I	12/31/2017
Information Technology Specialist I	2/1/2018
Information Technology Specialist I	6/5/18
Office Technician (T)	10/27/2017
Office Technician (T)	1/30/2018
Principal Structural Engineer	11/28/2017
Program Technician II	1/4/2018
Research Scientist I (Epidemiology/Biostatistics)	6/26/2018
Research Scientist Manager (Epidemiology/Biostatistics)	12/17/2017
Senior Architect	12/30/2017
Senior Architect	12/18/2017
Senior Architect	7/19/2017
Senior Architect	1/10/2018
Senior Electrical Engineer	12/26/2017
Senior Electrical Engineer	3/29/2018
Senior Mechanical Engineer	12/18/2017
Senior Structural Engineer	2/1/2018
Senior Structural Engineer	12/7/2017
Senior Structural Engineer	8/14/2017
Senior Structural Engineer	10/29/2017
Senior Structural Engineer	7/5/2017
Senior Structural Engineer	6/19/2018
Senior Structural Engineer	6/18/2018
Staff Services Analyst (G)	2/9/2018
Staff Services Manager I	4/30/2018
Supervisor, Health Facilities Review	3/31/2018
Supervisor, Health Facilities Review	3/1/2018
Supervisor, Health Facilities Review	8/30/2017
Supervisor, Health Facilities Review	1/20/2018

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 appraised of work performance issues and/or goals in a systematic manner.

Cause: The OSHPD states that they experienced a high rate of staff turnover within the Human Resources Services Section and failed to ensure that all employees received performance appraisals in a timely manner.

Action: The OSHPD has submitted a corrective action plan for ensuring performance appraisals are provided to employees once in each twelve calendar months after the completion of the employees' probationary period; therefore, no further action is required at this time.

DEPARTMENTAL RESPONSE

The OSHPD's response is attached as Attachment 1.

SPB REPLY

Based on the OSHPD's written response, the OSHPD will comply with the CRU recommendations and findings and provide the CRU with a corrective action plan with supporting documentation for Finding Nos.4, 7, 12, and 14.

It is further recommended that the OSHPD 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 with supporting documentation.

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March 19, 2019

State Personnel Board
Policy and Compliance Review Division
801 Capitol Mall
Sacramento, CA 95814

This letter is in response to the California State Personnel Board's (SPBs) compliance review draft of the Office of Statewide Health Planning and Development (OSHPD) personnel practices. The SPB draft report provided nine findings, an explanation of why they occurred, and details to summarize corrective action plans.

Specific Findings and Responses:

Finding No. 2 - Probationary Evaluations Were Not Provided for All Appointments Reviewed

Cause: OSHPD agrees with the finding that Probationary Evaluations were not provided for all appointments reviewed. Prior to 2018, OSHPD did not have a process for tracking and monitoring compliance with the requirements to provide probationary evaluations to employees serving a probationary period.

Response: OSHPD has implemented procedures to notify supervisors of employee's probationary report due dates within the first couple weeks of an employee's appointment to a position requiring a probationary period be served. In addition, OSHPD Human Resources Services Section has drafted procedures and has implemented a tracking log to monitor incoming probationary reports, and alert staff to notify supervisors when they are deficient in providing probationary reports for an appropriate employee (Attachment 1,2). Copies of probationary reports will be placed in an employee's Official Personnel File.

Finding No. 4 - Unions Were Not Notified of Personal Services Contract

Cause: OSHPD agrees with the finding that unions were not notified prior to execution of a contract. OSHPD's current procedures notify unions after execution.

Response: OSHPD has implemented procedures ensure unions are notified prior to execution.

Finding No. 7 - 335 Transaction Included Incorrect Employment Anniversary Date

Cause: OSHPD agrees with the finding that the 335 transaction included an incorrect employment anniversary date. Prior to 2018, OSHPD did not have a process for reviewing the State Personnel Board

Std. 680 document, Personnel Action Request, prior to it being keyed, nor was there a process for reviewing a transaction once it had been keyed to ensure 100% accuracy.

Response: OSHPD has implemented procedures requiring the Staff Services Manager I in the Human Resources Services Section's, Transaction Unit, to review all Std. 680s prior to being keyed. In addition, the Personnel Specialists are now required to review employment history to ensure the document was keyed correctly.

Finding No. 11 - Payment Commenced Before 91st Day and Paid Over 120 Days without CalHR Approval

Cause: OSHPD agrees that the payment commenced before the 91st day of an Out of Class (OOC) Assignment. Due to a complete turn over in staff from the time this assignment was approved and completed by the incumbent, to the time the current Human Resources Services Section staff were hired, we are unable to speak to the process followed in approving the OOC Assignment or the training provided to the staff at the time.

Response: OSHPD has drafted procedures for the appropriate Program staff and Human Resources Services Section staff regarding requesting and approving OOC Assignments, to ensure proper review for adherence to all laws and rules governing OOC Assignments. These procedures will be included as part of the Classification and Pay Analyst Desk Manual. In addition, OSHPD has put a multi-level approval process in place, consisting of an initial review and recommendation by a Classification and Pay Analyst, and subsequent review and approval required by three levels of management. (Attachment 3)

Finding No. 12 - ATW Employee Exceeded the Nine Months in Any Twelve Consecutive Month Limitation

Cause: OSHPD agrees that there was an ATW employee who exceeded their time worked in their 12-month consecutive period. Prior to 2018, OSHPD did not have a process for ensuring intermittent employee's time was being tracked.

Response: OSHPD Human Resources Services Section has implemented the use of the intermittent benefit tracking on the State Controller's Office, California Leave Accounting System. The Intermittent Benefit Tracking Report is printed monthly to verify that intermittent employees do not exceed their time worked.

Finding No. 14 - Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records

Cause: OSHPD agrees that there was a Leave Activity and Correction Certification form for all units. Prior to 2018, OSHPD did not have a process for ensuring that monthly leave audits were conducted. In addition, OSHPD Human Resources Services Section was down staff in their Transactions Unit causing inefficiencies in the audit process.

Response: OSHPD Human Resources Services Section has implemented a monthly process within its Transactions Unit to ensure leave audits are completed.
State Personnel Board

Finding No. 15 - Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits

Cause: OSHPD agrees that leave reduction plans were not provided to employees whose leave balances exceeded the established limits. Prior to 2018, OSHPD did not have a process in place for ensuring that employees reduced their leave balances under the established limits.

Response: OSHPD is actively managing the unfunded liability associated with leave benefits over established limits. OSHPD has created a process to notify staff at the beginning of the calendar year requesting employees work with their supervisors to create a leave reduction plan. In addition, OSHPD's Human Resources Services Section provides Executive Management with status of employee leave balances twice a year to ensure compliance. (Attachment 4)

Finding No. 19 - Performance Appraisals Were Not Provided to All Employees

Cause: OSHPD agrees that performance appraisals were not provided to 52 of 77 employees at least once in each twelve calendar months after the completion of the employee's probationary period. OSHPD has experienced a high rate of staff turnover within the Human Resources Services Section and failed to ensure that all employees received performance appraisals timely.

Response: On January 3, 2019, OSHPD's Human Resources Services Section sent a communication to all staff stating that effective January 1, 2019, OSHPD will require managers and supervisors to submit performance appraisals for all their employees who are no longer on probation by March 31 of each year. In addition, OSHPD's Human Resources Services Section has created an internal tracking system to ensure that all the performance appraisals are completed in a timely manner. (Attachment 5)

Thank you again for the opportunity to discuss and respond to the draft compliance review report. If you have any questions, please contact me at (916) 326-3269 or Lynne.Cervinka@oshpd.ca.gov.

Sincerely,



Lynne Cervinka
Chief of Human Resources Services Section
Administrative Services Division

Cc: Fran Mueller, Chief Deputy Director, OSHPD
Monica Erickson, Deputy Director, Administrative Services Division, OSHPD