



COMPLIANCE REVIEW REPORT

CALIFORNIA ARTS COUNCIL

Compliance Review Unit
State Personnel Board
August 17, 2022

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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.

Pursuant to Government Code section 18502, subdivision (c), the SPB and the California Department of Human Resources (CalHR) may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." SPB and CalHR, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well

as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the California Arts Council (CAC) personnel practices in the areas of appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Severity	Finding
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed
Appointments	Technical	Department Did Not Provide Benefit Information in Accordance with Civil Service Law
Equal Employment Opportunity	Very Serious	A Disability Advisory Committee Has Not Been Established ¹
Equal Employment Opportunity	Very Serious	Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contracts ²
Personal Services Contracts	Serious	Written Justification Was Not Provided for All Personal Services Contracts ³
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers ⁴
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Employees ⁵
Mandated Training	Very Serious	Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs
Compensation and Pay	Very Serious	Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment

¹ Repeat finding. The March 19, 2019, report identified that the CAC did not have an active DAC.

² Repeat finding. The March 19, 2019, report identified unions were not notified prior to entering into any of the five PSC's reviewed.

³ Repeat finding. The March 19, 2019, report identified four of five PSC written justifications were not provided.

⁴ Repeat finding. The March 19, 2019, report identified ethics training was not provided to one new filer within six months of their appointment.

⁵ Repeat finding. The March 19, 2019, report identified sexual harassment prevention training was not provided one of three new supervisors within six months of their appointment and one of three existing supervisors did not receive sexual harassment prevention training.

Area	Severity	Finding
Compensation and Pay	Very Serious	Incorrect Authorization of Out-of-Class Pay
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Serious	Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely
Leave	In Compliance	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Very Serious	Department Does Not Maintain a Current Written Nepotism Policy ⁶
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Serious	Performance Appraisals Were Not Provided to All Employees ⁷

BACKGROUND

The CAC is a state agency with a mission of strengthening arts, culture, and creative expression as the tools to cultivate a better California for all. It supports local arts programming and infrastructure statewide through grants, initiatives, and services. The CAC envisions a California where all people flourish with universal access to and participation in the arts.

The CAC has contracted with the Department of General Services (DGS) to provide their human resources functions.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CAC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁸. The primary objective of the review was to determine if the

⁶ Repeat finding. The March 19, 2019, report identified the CAC did not maintain a current written nepotism policy.

⁷ Repeat finding. The March 19, 2019, report identified four of four employees reviewed did not receive annual performance appraisals.

⁸ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

CAC's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The CAC did not conduct any examinations or permanent withhold actions during the compliance review period.

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

The CAC did not conduct any unlawful appointment investigations or additional appointments during the compliance review period.

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

During the compliance review period, the CAC did not issue or authorize hiring above minimum requests, red circle rate requests, arduous pay, bilingual pay, monthly pay differentials, or alternate range movements.

The review of the CAC'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 reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The CAC's PSC's were also reviewed.⁹ It was beyond the scope of the compliance review to make conclusions as to whether the CAC's justifications for the contracts were legally

⁹If 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.

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

The CAC's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, that all supervisors, managers, and CEAs were provided leadership and development training, and that all employees were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the CAC's monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely and ensure the department certified that all leave records have been reviewed and corrected if necessary. The CRU selected a small cross-section of the CAC'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 CAC's employees' 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 CAC positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements. During the compliance review period, the CAC did not authorize Administrative Time Off.

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

On July 14, 2022, the CRU provided the CAC with the draft compliance review report and the opportunity to participate in an exit conference to explain and discuss the findings and recommendations. The CAC did not request an exit conference, nor did it provide a departmental response to the audit findings.

FINDINGS AND RECOMMENDATIONS

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire

candidates who will be successful. (Cal. Code Regs., tit. 2, § 250, subd. (b).) Interviews shall be conducted using job-related criteria. (*Ibid.*) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250, subd. (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (*Ibid.*) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250, subd. (e).)

During the period under review, February 1, 2021, through January 31, 2022, the CAC made 12 appointments. The CRU reviewed seven of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Governmental Program Analyst (AGPA)	Certification List	Permanent	Full Time	2
Information Technology Specialist I	Certification List	Permanent	Full Time	1
Staff Services Manager II (Managerial)	Certification List	Permanent	Full Time	1
AGPA	Reinstatement	Limited Term	Full Time	1
Information Officer II	Reinstatement	Permanent	Full Time	1
AGPA	Transfer	Permanent	Full Time	1

SEVERITY: SERIOUS	FINDING NO. 1 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED
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Summary: The CAC did not provide three probationary reports of performance for one of the seven appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
AGPA	Transfer	1	3

Criteria: The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (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 the department rules may require. (Gov. Code, § 19172.) 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.) 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 for five years from the date the record is created. (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 CAC did not provide a written departmental response indicating the cause of the deficient finding.¹⁰

Corrective Action: Within 90 days of the date of this report, the CAC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19172. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

¹⁰ Despite numerous attempts from the CRU, the CAC did not respond to this draft report. More information on the CRU's efforts can be found in the "Department Response" section at the end of this report.

SEVERITY: TECHNICAL	FINDING NO. 2 DEPARTMENT DID NOT PROVIDE BENEFIT INFORMATION IN ACCORDANCE WITH CIVIL SERVICE LAW
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Summary: The CAC did not memorialize that the applicant received an explanation of benefits, prior to appointment, in a formal offer of employment for all seven appointments reviewed by the CRU.

Criteria: An appointing power, before offering employment to an applicant, shall provide the applicant, in writing, with an explanation of benefits that accompany state service. These documents shall include a summary of the applicable civil service position with salary ranges and steps within them, as well as information on benefits afforded by membership in the Public Employees' Retirement System and benefits and protections provided to public employees by the State Civil Service Act. (Gov. Code § 19057.2.)

Severity: Non-Serious/Technical. An applicant is entitled to have all of the information regarding benefits relating to their potential employment prior to making a decision as to whether to accept or decline the appointment.

Cause: The CAC did not provide a written departmental response indicating the cause of the deficient finding.

Corrective Action: Within 90 days of the date of this report, the CAC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the explanation of benefits requirements of Government Code section 19057.2. Copies of relevant documentation (including a template letter) demonstrating that the corrective action has been implemented must be included with the corrective action response.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in

accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department’s EEO program. (Gov. Code, § 19795, subd. (a).)

Pursuant to Government Code section 19795, subdivision (a), in a state agency with less than 500 employees, like CAC, 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).)

SEVERITY: VERY SERIOUS	FINDING NO. 3 A DISABILITY ADVISORY COMMITTEE HAS NOT BEEN ESTABLISHED
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Summary: The CAC does not have an active DAC. This is the second consecutive time this has been a finding for the CAC.

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 CAC did not provide a written departmental response indicating the cause of the deficient finding.

Corrective Action: Within 90 days of the date of this report, the CAC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues. Copies of relevant documentation demonstrating that the corrective action has been implemented, including the new DAC roster, agenda, and meeting minutes, must be included with the corrective action response.

SEVERITY: VERY SERIOUS	FINDING NO. 4 COMPLAINTANTS WERE NOT NOTIFIED OF THE REASONS FOR DELAYS IN DECISIONS WITHIN THE PRESCRIBED TIME PERIOD
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Summary: The CAC failed to provide documentation to demonstrate that two discrimination complaints related to a disability, medical condition, or denial of reasonable accommodation were appropriately adjudicated.

Criteria: The appointing power must issue a written decision to the complainant within 90 days of the complaint being filed. (Cal. Code Regs., tit. 2, § 64.4, subd. (a).) If the appointing power is unable to issue its decision within the prescribed time period, the appointing power must inform the complainant in writing of the reasons for the delay. (*Ibid.*)

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

Cause: The CAC did not provide a written departmental response indicating the cause of the deficient finding.

Corrective Action: Within 90 days of the date of this report, the CAC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of California Code of Regulations, title 2, section

64.4, subdivision (a). Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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, but are not limited to, 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, March 1, 2021, through February 28, 2022, the CAC had three PSC’s that were in effect. The CRU reviewed the three PSC’s, which are listed below:

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
aRise to Greatness, LLC	Workplace Health Consultant	5/30/21-11/16/21	\$58,000	Yes	No
aRise to Greatness, LLC	Workplace Health Consultant	5/30/21-2/28/22	\$58,000	Yes	No
Excel Interpreting and Translating	Interpretation/ Translation/ Transcription	7/1/21-6/30/22	\$20,000	No	No

SEVERITY: SERIOUS	FINDING NO. 5 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS
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Summary: The CAC did not notify unions prior to entering into the three PSC’s reviewed. This is the second consecutive time this has been a finding for the CAC.

Criteria: 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. (Gov. Code, § 19132, subd. (b)(1).)

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

Cause: The CAC did not provide a written departmental response indicating the cause of the deficient finding.

Corrective Action: It is the contracting department’s responsibility to identify and notify any unions whose members could potentially perform the type of work to be contracted prior to executing a PSC. The PSC’s reviewed during this compliance review involved consulting and translation services, functions which various rank-and-file civil service classifications perform. Within 90 days of the date of this report, the CAC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

SEVERITY: SERIOUS	FINDING NO. 6 WRITTEN JUSTIFICATION WAS NOT PROVIDED FOR ALL PERSONAL SERVICES CONTRACTS
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Summary: The CAC did not prepare or retain written justification why one contract satisfied Government Code section 19130, subdivision (b). This is the second consecutive time this has been a finding for the CAC.

Vendor	Services	Contract Dates	Contract Amount
Excel Interpreting and Translating	Interpretation/ Translation/ Transcription	7/1/21-6/30/22	\$20,000

Criteria: Whenever an agency executes a personal services contract under Government Code section 19130, subdivision (b), the agency shall document, with specificity and detailed factual information, the reasons why the contract satisfies one or more of the conditions specified in Government Code section 19130, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60, subd. (a).) The agency shall maintain the written justification for the duration of the contract and any extensions of the contract or in accordance with the record retention requirements of section 26, whichever is longer. (Cal. Code Reg., tit. 2, § 547.60, subd. (b).)

Severity: Serious. Without specific written justification detailing why a PSC satisfies one or more conditions specified in Government Code section 19130, the CRU could not determine whether the department’s PSC’s complied with current procedural requirements.

Cause: The CAC did not provide a written departmental response indicating the cause of the deficient finding.

Corrective Action: Within 90 days of the date of this report, the CAC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19130, subdivision (b), and California Code of Regulations, title 2, section 547.60, subdivision (a). Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as “filers”) because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a

semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), and (b), & 19995.4, subd. (b).) Additionally, the training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, 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).)

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 biennial basis. (*Ibid.*)

New employees must be provided sexual harassment prevention training within six months of appointment. Thereafter, each department must provide its supervisors two hours of sexual harassment prevention training and non-supervisors one hour of sexual harassment prevention training every two years. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code, § 19995.4.)

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 CAC's mandated training program that was in effect during the compliance review period, March 1, 2020, through February 28, 2022.

SEVERITY: VERY SERIOUS	FINDING NO. 7 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS
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Summary: Although the CAC did provide ethics training to all six existing filers, the CAC did not provide ethics training to two of three new filers within six months of their appointment. This is the second consecutive time this has been a finding for the CAC.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

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

Cause: The CAC did not provide a written departmental response indicating the cause of the deficient finding.

Corrective Action: Within 90 days of this report, the CAC must submit to the SPB a written correction action response which addresses the corrections the department will implement to demonstrate conformity with Government Code section 11146.3. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

SEVERITY: VERY SERIOUS	FINDING NO. 8 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL EMPLOYEES
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Summary: The CAC did not provide sexual harassment prevention training to two of four existing supervisors every two years. The CAC did not appoint any new supervisors during the period under review. This is the second consecutive time this has been a finding for the CAC.

In addition, the CAC provided sexual harassment prevention training to all 12 existing non-supervisors every 2 years. However, the CAC did not provide sexual harassment prevention training to two of three new non-supervisors within six months of their appointment.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention training every two years and non-supervisory

employees one hour of sexual harassment prevention training every two years. New employees must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code § 19995.4.)

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

Cause: The CAC did not provide a written departmental response indicating the cause of the deficient finding.

Corrective Action: Within 90 days of the date of this report, the CAC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that all employees are provided sexual harassment prevention training in accordance with Government Code section 12950.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

SEVERITY: VERY SERIOUS	FINDING NO. 9 SUPERVISORY TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS, MANAGERS, AND CEAS
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Summary: The CAC did not provide biennial leadership training to the three existing supervisors and managers reviewed.

Criteria: Upon initial appointment of an employee to a managerial position, each employee must receive 40 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subd. (d).)

Upon initial appointment of an employee to a Career Executive Assignment position, each employee must receive 20 hours of leadership training within 12 months of appointment. Thereafter, the

employee shall receive a minimum of 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subd. (e).)

Severity: Very Serious. The department does not ensure its leaders are properly trained. Without proper training, leaders may not properly carry out their leadership roles, including managing employees.

Cause: The CAC did not provide a written departmental response indicating the cause of the deficient finding.

Corrective Action: Within 90 days of the date of this report, the CAC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that new supervisors are provided supervisory training within twelve months of appointment as required by Government Code section 19995.4. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 rate¹¹ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, February 1, 2021, through January 31, 2022, the CAC made 12 appointments. The CRU reviewed three of those appointments to determine if

¹¹ "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

the CAC applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Information Technology Specialist I	Certification List	Permanent	Full Time	\$7,954
Staff Services Manager II (Managerial)	Certification List	Permanent	Full Time	\$8,171
AGPA	Reinstatement	Limited Term	Full Time	\$5,652

SEVERITY: VERY SERIOUS	FINDING NO. 10 INCORRECT APPLICATIONS OF SALARY DETERMINATION LAWS, RULES, AND CALHR POLICIES AND GUIDELINES FOR APPOINTMENT
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Summary: The CRU found the following error in the CAC's determination of employee compensation:

Classification	Description of Finding	Criteria
AGPA	Employee's salary was not properly reconstructed with all General Salary Increases included upon return from a permanent separation. Therefore, the employee, upon reentry into the state, was not provided the correct salary, resulting in the employee being undercompensated.	Cal. Code Regs., tit. 2, § 599.677

Criteria: Departments are required to calculate and apply salary rules for each appointed employee accurately based on the pay plan for the state civil service. All civil service classes have salary ranges with minimum and maximum rates. (Cal. Code Regs., tit. 2, § 599.666.)

Severity: Very Serious. The CAC failed to comply with the requirements outlined in the state civil service pay plan. Incorrectly applying compensation laws and rules in accordance with CalHR's policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay amounts.

Cause: The CAC did not provide a written departmental response indicating the cause of the deficient finding.

Corrective Action: Within 90 days of the date of this report, the CAC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that employees are compensated correctly. The CAC must establish an audit system to correct current compensation transactions as well as future transactions. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Out-of-Class Assignments and Pay

For excluded¹² 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, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

According to the 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 the California Code of Regulations, title 2, section 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 provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the time period outlined in applicable law, policy or MOU expires. (Classification and Pay Guide Section 375.)

During the period under review, February 1, 2021, through January 31, 2022, the CAC issued OOC pay to one employee. The CRU reviewed one OOC assignment to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines, which is listed below:

¹² “Excluded employee” means an employee as defined in Government Code section 3527, subdivision (b) (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to Government Code section 18801.1.

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Accounting Officer (Specialist)	R01	Senior Accounting Officer (Supervisory)	2/22/21-6/22/21

SEVERITY: VERY SERIOUS	FINDING NO. 11 INCORRECT AUTHORIZATION OF OUT-OF-CLASS PAY
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Summary: The CRU found one error in the CAC's authorization of OOC pay:

Classification	Out-of-Class Classification	Description of Finding	Criteria
Accounting Officer (Specialist)	Senior Accounting Officer (Supervisor)	The 9.23 percent Personal Leave Program reduction was not taken into consideration when determining the OOC pay rate which resulted in the employee being overcompensated.	Pay Differential 91

Criteria: An employee may be temporarily required to perform out-of-class work by his/her department for up to one hundred twenty (120) calendar days in any twelve (12) consecutive calendar months when it determines that such an assignment is of unusual urgency, nature, volume, location, duration, or other special characteristics; and, cannot feasibly be met through use of other civil service or administrative alternatives. Departments may not use out-of-class assignments to avoid giving civil service examinations or to avoid using existing eligibility lists created as the result of a civil service examination.

Severity: Very Serious. The CAC failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with CalHR's policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The CAC did not provide a written departmental response indicating the cause of the deficient finding.

Corrective Action: Within 90 days of the date of this report, the CAC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with

California Code of Regulations, title 2, section 599.810 and Pay Differential 91. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Leave

Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 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. When counting 189 days, every day worked, including partial days¹³ worked and paid absences¹⁴, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

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

¹³ For example, two hours or ten hours count as one day.

¹⁴ For example, vacation, sick leave, compensating time off, etc.

Generally, permanent intermittent employees may work up to 1500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year.

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June), regardless of the number of state employers, without reinstatement, loss or interruption of benefits¹⁵.

At the time of the review, the CAC had three positive paid employees whose hours were tracked. The CRU reviewed two of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Tenure	Time Frame	Time Worked
Seasonal Clerk	Intermittent	11/1/20-11/1/21	1500 Hours
Staff Services Manager I	Retired Annuitant	7/1/20-6/30/21	1060.20 Hours

IN COMPLIANCE	FINDING NO. 12 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The CAC provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Leave Auditing and Timekeeping

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

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records

¹⁵ However, Executive Order N-25-20, signed by Governor Newsom on March 12, 2020, suspended work hour limitations on retired annuitants' hours due to the Covid-19 emergency.

shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. *(Ibid.)* If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. *(Ibid.)* Attendance records shall be corrected by the pay period following the pay period in which the error occurred. *(Ibid.)* Accurate and timely attendance reporting is required of all departments and is subject to audit. *(Ibid.)*

During the period under review, September 1, 2021, through December 1, 2021, the CAC reported three units comprised of 21 active employees for the September pay period, 21 active employees for the October pay period, and 22 active employees for the November pay period. The pay period and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
November 2021	310	9	9	0

SEVERITY: SERIOUS	FINDING NO. 13 DEPARTMENT HAS NOT IMPLEMENTED A MONTHLY INTERNAL AUDIT PROCESS TO VERIFY ALL LEAVE INPUT IS KEYED ACCURATELY AND TIMELY
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Summary: The CAC failed to implement a monthly internal audit process to verify all timesheets were keyed accurately and timely and to certify that all leave records have been reviewed and corrected if necessary.

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

Severity: Serious. Departments must document that they reviewed all leave

inputted into their leave accounting system to ensure accuracy and timeliness. Failure to audit leave could put the department at risk of incurring additional costs from the initiation of collection efforts from overpayments, and the risk of liability related to recovering inappropriately credited leave hours and funds.

Cause: The CAC did not provide a written departmental response indicating the cause of the deficient finding.

Corrective Action: Within 90 days of the date of this report, the CAC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that their monthly internal audit process was documented and that all leave input is keyed accurately and timely. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

State Service

The state recognizes two different types of absences while an employee is on pay status; paid or unpaid. The unpaid absences can affect whether a pay period is considered to be a qualifying or non-qualifying pay period for state service and leave accruals.

Generally, 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 service.¹⁶ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

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 qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs., tit. 2, §

¹⁶ Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, and 19997.4 and California Code of Regulations, title 2, sections 599.609, 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.776.1, 599.787, 599.791, 599.840 and 599.843 provide further clarification for calculating state time.

599.608.) 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. (Cal. Code Regs., tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees¹⁷ shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

Permanent intermittent employees also earn leave credits on the pay period following the accumulated accrual of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period, are not counted or accumulated towards leave credits.

During the period under review, February 1, 2021, through January 31, 2022, the CAC had one employee with a qualifying pay period transaction. The CRU reviewed the transaction to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which is listed below:

Type of Transaction	Time base	Number Reviewed
Qualifying Pay Period	Full Time	1

IN COMPLIANCE	FINDING NO. 14 SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU determined that the CAC ensured employees with qualifying pay periods did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

¹⁷ As identified in Government Code sections 19858.3, subdivisions (a), (b), or (c), or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subdivision (c), or California Code of Regulations, title 2, section 599.752, subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

SEVERITY: VERY SERIOUS	FINDING NO. 15 DEPARTMENT DOES NOT MAINTAIN A CURRENT WRITTEN NEPOTISM POLICY
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Summary: The CAC does not maintain a current written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees. This is the second consecutive time this has been a finding for the CAC.

Criteria: It is the policy of the State of California to recruit, hire and assign all employees on the basis of fitness and merit in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204). All department policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring, and assigning employees on the basis of merit. (*Ibid.*)

Severity: Very Serious. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. Departments must take proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes. Maintaining a current written nepotism policy, and its dissemination to all staff, is the cornerstone for achieving these outcomes.

Cause: The CAC did not provide a written departmental response indicating the cause of the deficient finding.

Corrective Action: Within 90 days of the date of this report, the CAC must submit to the SPB a written corrective action response which includes an updated nepotism policy which contains requirements outlined in Human Resources Manual section 1204, and documentation demonstrating that it has been distributed to all staff.

Workers' Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. (Cal. Code Regs., tit. 8, § 9880, subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee's "personal physician," as defined by Labor Code section 4600. (Cal. Code Regs., tit. 8, § 9880, subd. (c)(7) & (8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work-related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401, subd. (a).)

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers' compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. (*Ibid.*) In this case, the CAC did not employ volunteers during the compliance review period.

IN COMPLIANCE	FINDING NO. 16 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU verified that the CAC provides notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law. Furthermore, the CRU verified that when the CAC received workers' compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

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

The CRU selected four permanent CAC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

SEVERITY: SERIOUS	FINDING NO. 17 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES
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Summary: The CAC did not provide annual performance appraisals to three of four employees reviewed after the completion of the employee’s probationary period. This is the second consecutive time this has been a finding for the CAC.

Criteria: Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee’s probationary period. (Cal. Code Regs., tit. 2, § 599.798.)

Severity: Serious. The department does not ensure that all of its employees are apprised of work performance issues and/or goals in a systematic manner.

Cause: The CAC did not provide a written departmental response indicating the cause of the deficient finding.

Corrective Action: Within 90 days of the date of this report, the CAC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of relevant

documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

DEPARTMENTAL RESPONSE

On July 14, 2022, the CRU provided the CAC with the draft compliance review report and requested the CAC's written departmental response to the draft report, indicating the cause of each deficient finding, to be submitted by July 28, 2022. The CAC did not provide the written response by the date requested.

As a result, the CRU followed up with the CAC on August 4, 2022, and August 5, 2022, receiving no reply. Furthermore, on August 9, 2022, the CRU contacted DGS, CAC's human resources office, to solicit assistance in obtaining the CAC's response. As of August 15, 2022, the CAC has not provided the CRU with any departmental response, nor any indication it plans to submit a response to the findings outlined in the review.

SPB REPLY

Within 90 days of the date of this report, a written corrective action response including documentation demonstrating implementation of the corrective actions specified, must be submitted to the CRU.

California Arts Council response received post-report, on September 27, 2022



Strengthening arts, culture,
and creative expression as the
tools to cultivate a better
California for all.

Gavin Newsom, **Governor**
Jonathan Moscone, **Executive Director**
2750 Gateway Oaks Drive, Suite 300, Sacramento CA 95833
(916) 322-6555 | www.arts.ca.gov

September 26, 2022

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

SUBJECT: California Arts Council Audit Response

Dear Ms. Ambrose:

This letter is in response pursuant to Government Code 18661, the State Personnel Board's (SPB) Compliance Review Unit (CRU) conducted a review of the California Arts Council's (CAC) personnel practices on August 17, 2022, in examinations, appointments, Equal Employment Opportunity, Personal Services Contracts, mandated training, compensation and pay, leave, and policy and procedures. The CAC has reviewed the report and prepared responses to the findings.

During the timeframe of this audit, the CAC encountered several challenges, including a large turnover of staff; to be specific, the CAC had an attrition rate of 33%. Additionally, due to the COVID-19 pandemic, CAC staff were shifted to a 100% telework environment, which created communication and navigational challenges.

Finding #1 Probationary Evaluations were Not Provided for All Appointments Reviewed.

The CAC agrees with the finding and understands the importance of probationary evaluations. The CRU reviewed seven appointments. One of the appointments was missing three probationary reports.

Cause: Despite the methods used by the Human Resources Office (HRO) to inform and remind supervisors and managers of the requirements to complete probationary reports, one of our managers was unsuccessful. Due to vacancies in their unit, the manager was given multiple tasks to complete and was unable to complete the probationary reports for this staff person in a timely manner.

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

Finding #2 Department Did Not Provide Benefit Information in Accordance with Civil Service Law.

The CAC agrees with the finding. The CRU reviewed seven appointments. In all seven appointments the CAC did not provide applicants a letter stating explanation of benefits prior to appointment or in a formal offer of employment.

Cause: The CAC HRO was unaware of this requirement.

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

Finding #3 Disability Advisory Committee (DAC) has not been established.

The CAC understands agrees with the finding and understands the importance of the DAC.

Cause: We attribute this to the many challenges we have experienced. The vacancies of essential positions have limited our ability to develop this program.

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

Finding #4. Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period.

The CAC agrees with the finding and understands the importance of communication during the EEO Complaint process.

Cause: The EEO complaints are submitted into the statewide database by the designated EEO officer, the CAC Deputy Director. This complaint was investigated by the assigned Department of Finance (DOF) attorney. The DOF Attorney directed the EEO not to speak about the complaint to the complainants. The EEO responded to complainants whenever there were updates provided by the investigating attorney.

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

Finding #5 Unions Were Not Notified of Personal Services Contracts.

The CAC agrees with the finding and understands its severity.

Cause: During this time of high staff turnover within the Contract and Procurement Section, new staff make unacceptable errors. The AGPA responsible for this error was with the department for only 30 days. Unfortunately, this error was not caught by the MPP in charge.

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

Finding #6 Written Justification Was Not Provided for All Personal Services Contracts.

The CAC agrees with the finding and understands its severity.

Cause: During this time of high staff turnover within the Contract and Procurement Section, new staff make unacceptable errors. The AGPA responsible for this error was with the department for only 30 days. Unfortunately, this error was not caught by the MPP in charge.

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

Finding #7. Ethics Training was Not Provided for All Filers.

The CAC agrees with the finding and understands its severity.

Cause: The CAC provided Ethics Training for six of the six Filers. Unfortunately, two of these filers did not complete training within the first six months of appointment.

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

Finding #8 Sexual Harassment Prevention Training Was Not Provided for All Employees.

The CAC agrees with the finding and understands its severity.

Cause: Due to a vacancy within the HRO, training was not consistently and/or accurately monitored.

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

Finding #9 Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs.

The CAC agrees with the finding and understands its severity.

Cause: Due to a vacancy within the HRO, training was not consistently and/or accurately monitored.

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

Finding #10 Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment.

The CAC agrees with the finding and understands the importance of ensuring staff are well trained to determine employees' pay.

Cause: Employee's salary was not properly reconstructed with all General Salary Increases included upon return from a permanent separation. Therefore, the employee, upon reentry into the state, was not provided the correct salary, resulting in the employee being undercompensated.

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

Finding #11 Incorrect Authorization of Out-of-Class Pay.

The DGS OHR and CAC agrees with the finding and understands the importance of ensuring staff are well trained to determine employees' pay.

Cause: The 9.23 percent Personal Leave Program reduction was not taken into consideration when determining the OOC pay rate which resulted in the employee being overcompensated

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

Finding #12 Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules and/or Cal HR Policies and Guidelines.

Finding #13 Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely.

The DGS OHR and CAC agrees with the finding and understands the importance of ensuring staff are well trained.

Cause: DGS OHR Personnel Transactions Unit is aware of the need to implement a monthly internal audit process. DGS has had a high turnover with the staff assigned to complete this task and the staff responsible for generating interim reports to show all leave that did not interface for employees.

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

Finding #14. Service and Leave Transactions Complied with Civil Service Laws, Board Rules and/or Cal HR Policies and Guidelines.

Finding #15 Department Does Not Maintain a Current Nepotism Policy.

The CAC agrees with the finding and understands its severity.

Cause: We attribute this to several challenges. The vacancies of essential positions have limited our ability to develop this policy.

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

Finding #16. Workers Compensation Process Complied with Civil Service Laws, Board Rules and/or Cal HR Policies and Guidelines.

Suzanne M. Ambrose
September 27, 2022
Page 5 of 5

Finding #17 Performance Appraisals Were Not Provided to All Employees.

The CAC agrees with the finding and understands the importance of Performance Appraisals. The CRU reviewed four employees reviewed. Three of the employees were missing performance evaluations.

Cause: The HRO reminds supervisors and managers of the requirements to complete performance evaluations annually.

Remedy: A fully detailed corrective action response will be provided on or before the deadline.

The CAC is committed to complying with all statutory and regulatory requirements. We would like to thank the CRU for the opportunity to respond to this Compliance Review report.

Should you have any questions or need additional information, please contact me via email at ayanna.kiburi@cac.ca.gov or Kapua Kahumoku, Director of Operations at kapua.kahumoku@cac.ca.gov.

Sincerely,



Ayanna Kiburi, Acting Executive Director
California Arts Council