



COMPLIANCE REVIEW REPORT

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

Compliance Review Unit
State Personnel Board
June 27, 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." The SPB and the 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 the CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, the 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 the SPB's 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 Unemployment Insurance Appeals Board (CUIAB) personnel practices in the areas of examinations, 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
Examinations	In Compliance	Examinations Complied with Civil Service Laws and Board Rules
Examinations	In Compliance	Permanent Withhold Action Complied with Civil Service Laws and Board Rules
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed
Appointments	Technical	Appointment Documentation Was Not Kept for the Appropriate Amount of Time
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Alternate Range Movement Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Incorrect Authorization of Bilingual Pay
Compensation and Pay	Very Serious	Incorrect Authorization of Pay Differentials
Compensation and Pay	Very Serious	Incorrect Application of Out-of-Class Pay

Area	Severity	Finding
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Serious	Administrative Time Off Was Not Properly Documented
Leave	Serious	Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely
Leave	Very Serious	Incorrect Application of State Service and Leave Transaction
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Very Serious	Workers' Compensation Policy Was Not Provided to New Employees by the End of First Pay Period
Policy	Serious	Performance Appraisals Were Not Provided to All Employees

BACKGROUND

The CUIAB was established by the State Legislature in 1943 to provide due process for California’s workers and employers who challenge the Employment Development Department’s (EDD) benefit determinations for Unemployment Insurance (UI), Disability Insurance (DI), and employer payroll tax determinations.

California provides workers and employers with two levels of appeal at the CUIAB at no cost. The first level is an appeal to an Administrative Law Judge (ALJ) in the CUIAB’s Field Operations. The second level is an appeal to the Board Members of the decision made by the Field Operations ALJ. Further recourse may be pursued through Superior Court.

The five-member Board is the governing body of the CUIAB. Three members are appointed directly by the Governor, one is appointed by the Speaker of the Assembly and one is appointed by the Senate President pro Tem. In addition to the daily duties of reviewing and deciding appeals of field decisions, the Board sets policy and approves the major activities of the agency.

The EDD performs human resources operations for the CUIAB.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CUIAB's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes¹. The primary objective of the review was to determine if the CUIAB's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR's policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the CUIAB'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 CUIAB provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the CUIAB's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

A cross-section of the CUIAB'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 CUIAB provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions, vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The CUIAB did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the CUIAB did not make any additional appointments during the compliance review period.

The CUIAB's appointments were also selected for review to ensure the CUIAB applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CUIAB provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: hire above minimum (HAM) requests, red circle rate requests, arduous pay, bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments. During the compliance review period, the CUIAB did not issue or authorize hiring above

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

minimum (HAM) requests, bilingual pay, monthly pay differentials, alternate range movements or out-of-class assignments.

The review of the CUIAB'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.

The CUIAB's PSC's were also reviewed.² It was beyond the scope of the compliance review to make conclusions as to whether the CUIAB's justifications for the contracts were legally sufficient. The review was limited to whether the CUIAB's practices, policies, and procedures relative to PSC's complied with procedural requirements.

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

The CRU reviewed the CUIAB'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 CUIAB'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 CUIAB'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 the CUIAB employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of CUIAB positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

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

²If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

The CUIAB declined an exit conference to explain and discuss the CRU’s initial findings and recommendations. The CRU received and carefully reviewed the CUIAB’s written response on May 16, 2022, 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, subd. (a).) 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 with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) 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, November 1, 2020, through July 31, 2021, the CUIAB conducted three examinations. The CRU reviewed these three examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
ALJ II, CUIAB	Departmental Promotional	Training and Experience (T&E) ³	7/26/21	15
Career Executive Assignment (CEA) A, Assistant Director	Open	Statement of	1/22/21	12

³ The Training and Experience examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values.

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
		Qualifications ⁴		
Presiding ALJ, CUIAB	Open	T&E	12/18/20	9

IN COMPLIANCE	FINDING NO. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The CRU reviewed one departmental promotional and two open examinations which the CUIAB administered in order to create eligible lists from which to make appointments. The CUIAB published and distributed examination bulletins containing the required information for all examinations. Applications received by the CUIAB 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 CUIAB conducted during the compliance review period.

Permanent Withhold Actions

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointments and promotions within the state civil service system shall be merit-based, ascertained by a competitive examination process. (Cal. Const., art. VII, § 1, subd. (b).) If a candidate for appointment is found not to satisfy the minimum qualifications, the appointing power shall provide written notice to the candidate, specifying which qualification(s) are not satisfied and the reason(s) why. The candidate shall have an opportunity to establish that s/he meets the qualifications. (Cal. Code Regs., tit. 2, § 249.4, subd. (b).) If the candidate fails to respond, or fails to establish that s/he meets the minimum qualification(s), the candidate's name shall be removed from the eligibility list. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)(1), (2)), (HR Manual, section 1105.) The appointing authority shall promptly notify the candidate in writing, and shall notify the candidate of his or her appeal rights. (*Ibid.*) A permanent withhold does not necessarily permanently restrict a candidate from retaking the examination for the same classification in the future; however, the appointing authority

⁴ In a Statement of Qualifications 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.

may place a withhold on the candidate’s subsequent eligibility record if the candidate still does not meet the minimum qualifications or continues to be unsuitable. (HR Manual, Section 1105). State agency human resources offices are required to maintain specific withhold documentation for a period of five years. (*Ibid.*)

During the period under review, November 1, 2020, through July 31, 2021, the CUIAB conducted one permanent withhold action. The CRU reviewed the one permanent withhold action, which is listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Office Technician (OT) (Typing)	4PB2402	3/16/20	12/10/20	Failed to Meet Minimum Qualifications

IN COMPLIANCE	FINDING NO. 2 PERMANENT WITHHOLD ACTION COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The CRU found no deficiencies in the permanent withhold action undertaken by the department during the compliance review period.

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, September 1, 2020, through May 31, 2021, the CUIAB made 103 appointments. The CRU reviewed 23 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
CEA A, Executive Office	Certification List	CEA	Full Time	1
CEA C, Executive Director/Chief ALJ	Certification List	CEA	Full Time	1
ALJ I	Certification List	Permanent	Full Time	3
Information Technology (IT) Specialist I	Certification List	Permanent	Full Time	1
IT Manager II	Certification List	Permanent	Full Time	1
Legal Support Supervisor I	Certification List	Limited Term	Full Time	1
Management Services Technician (MST)	Certification List	Permanent	Full Time	3
OT (Typing)	Certification List	Limited Term	Full Time	2
OT (Typing)	Certification List	Permanent	Full Time	1
Presiding ALJ	Certification List	Permanent	Full Time	1
Program Technician (PT) III	Certification List	Limited Term	Full Time	1
Senior Legal Typist	Certification List	Permanent	Full Time	1
ALJ I	Reinstatement	Limited Term	Full Time	1
OT (Typing)	Reinstatement	Permanent	Full Time	1
OT (Typing)	Reinstatement	Limited Term	Full Time	2
PT III	Transfer	Permanent	Full Time	1
Senior Legal Typist	Transfer	Permanent	Full Time	1

SEVERITY: SERIOUS	FINDING NO. 3 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED
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Summary: The CUIAB did not provide 3 probationary reports of performance for 2 of the 23 appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
ALJ I	Certification List	1	1
PT III	Transfer	1	2

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 CUIAB disputes the finding, and provides that one ALJ I (D.S.⁵) separated from CUIAB's employment before a probation report was due. The CUIAB also provides that a second ALJ I (T.O.) was provided their first probationary report and that at the time of review, a second probationary report was not yet due.

Furthermore, the CUIAB asserts that it provided the CRU with all three of the probationary reports for the PT III.

SPB Reply: Regarding the missing ALJ I probationary report, the employees who CUIAB cites in its department response are not the employee (M.C.)

⁵ Initials will be used to protect the employees' identities.

who was missing a probationary report. The CUIAB did not provide a response on that particular issue. Additionally, the CRU only received one probationary report, the first one, for the PT III appointment.

Corrective Action: Within 90 days of the date of this report, the CUIAB 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.

SEVERITY: TECHNICAL	FINDING No. 4 APPOINTMENT DOCUMENTATION WAS NOT KEPT FOR THE APPROPRIATE AMOUNT OF TIME
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Summary: Of the 23 appointments reviewed, the CUIAB did not retain 7 NOPAs.

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

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

Cause: The CUIAB did not receive and retain NOPA’s in accordance with retention schedule guidelines.

Corrective Action: Within 90 days of the date of this report, the CUIAB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations, title 2, section 26. Copies of relevant documentation 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 CUIAB, 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).)

IN COMPLIANCE	FINDING NO. 5 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES
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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 CUIAB's 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 CUIAB's Executive Director. The CUIAB also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

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, November 1, 2020, through July 31, 2021, the CUIAB had 11 PSC's that were in effect. The CRU reviewed four of those, which are listed below:

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
Carahsoft Technology	On-Line Training for IT Employee	4/8/21 – 6/30/21	\$4,500	Yes	Yes
CFC Network	Mail Courier	11/2/20 – 9/30/21	\$3,702	Yes	Yes
Global Knowledge	On-Line Training for IT System Center Configuration Manager	12/4/20 – 6/30/21	\$2,995	Yes	Yes
Global Knowledge	On-Line Training for IT Employee	5/3/21 – 6/30/21	\$4,250	Yes	Yes

IN COMPLIANCE	FINDING NO. 6 PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS
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The total dollar amount of all the PSC’s reviewed was \$15,447. It was beyond the scope of the review to make conclusions as to whether the CUIAB’s justifications for the contract were legally sufficient. For all PSC’s reviewed, the CUIAB provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, the CUIAB complied with proper notification to all organizations that represent state employees who perform the type or work contracted. Accordingly, the CUIAB’s PSC’s complied with civil service laws and board rules.

Mandated Training

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

Additionally, 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 CUIAB’s mandated training program that was in effect during the compliance review period, August 1, 2019, through January 31, 2021. The CUIAB’s ethics training was found to be out of compliance, while the CUIAB’s sexual harassment prevention training was found to be in compliance.

SEVERITY: VERY SERIOUS	FINDING No. 7 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS
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Summary: The CUIAB did not provide ethics training to 16 of 130 existing filers. In addition, the CUIAB did not provide ethics training to 3 of 35 new filers within six months of their appointment.

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 CUIAB stated some of the ALJ’s were scheduled to attend in-person ethics training through the National Judicial College in early 2020; however, that training was delayed due to the Covid-19 pandemic. Additionally, during the review period, the staggered dates for Ethics training could not be tracked through the existing Learning Management System.

SPB Reply: While in-person Ethics training may have not been available during the early stages of the Covid-19 pandemic, Ethics training has been available on the California Department of Justice’s website “on-demand” since at least fiscal year 2017-2018.

Corrective Action: Within 90 days of this report, the CUIAB 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.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by the CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate⁶ 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, September 1, 2020, through May 31, 2021, the CUIAB made 103 appointments. The CRU reviewed 21 of those appointments to determine if the CUIAB applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
ALJ I	Certification List	Permanent	Full Time	\$9,231
ALJ I	Certification List	Permanent	Full Time	\$9,231
ALJ I	Certification List	Permanent	Full Time	\$9,936
IT Specialist I	Certification List	Permanent	Full Time	\$6,715
IT Manager II	Certification List	Permanent	Full Time	\$9,813
Legal Support Supervisor I	Certification List	Limited Term	Full Time	\$4,227
MST	Certification List	Permanent	Full Time	\$2,921
MST	Certification List	Permanent	Full Time	\$4,132
MST	Certification List	Permanent	Full Time	\$4,132
OT (Typing)	Certification List	Limited Term	Full Time	\$3,144
OT (Typing)	Certification List	Limited Term	Full Time	\$3,144
OT (Typing)	Certification List	Permanent	Full Time	\$3,144
Presiding ALJ	Certification List	Permanent	Full Time	\$12,790
PT III	Certification List	Limited Term	Full Time	\$3,466
Senior Legal Typist	Certification List	Permanent	Full Time	\$3,822
ALJ I	Reinstatement	Limited Term	Full Time	\$11,2181
OT (Typing)	Reinstatement	Permanent	Full Time	\$3,935

⁶ "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).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
OT (Typing)	Reinstatement	Limited Term	Full Time	\$3,935
OT (Typing)	Reinstatement	Limited Term	Full Time	\$3,935
PT III	Transfer	Permanent	Full Time	\$4,339
Senior Legal Typist	Transfer	Permanent	Full Time	\$4,321

IN COMPLIANCE	FINDING NO. 8 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the salary determinations that were reviewed. The CUIAB 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, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules 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, September 1, 2020, through May 31, 2021, the CUIAB made one alternate range movement within a classification. The CRU reviewed the one alternate range movement to determine if the CUIAB applied salary regulations accurately and correctly processed that employee's compensation, which is listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Senior Legal Typist	A	B	Full Time	\$3,945

IN COMPLIANCE	FINDING NO. 9 ALTERNATIVE RANGE MOVEMENT COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU determined that the one alternate range movement the CUIAB made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Hiring Above Minimum Requests

The CalHR may authorize payment at any step above the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code, § 19836.) For all employees new to state service, departments are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Extraordinary qualifications may provide expertise in a particular area of a department's program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.⁷ (Gov. Code, § 19836, subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The

⁷ Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. *(Ibid.)* A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. *(Ibid.)* Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. *(Ibid.)*

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be competitive with the employee’s salary in the exempt appointment. *(Ibid.)* For example, An employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. *(Ibid.)*

During the period under review, September 1, 2020, through May 31, 2021, the CUIAB authorized three HAM requests. The CRU reviewed these three authorized HAM requests to determine if the CUIAB correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates’ extraordinary qualifications, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
ALJ I	Certification List	Limited Term	\$9,231 – \$11,611	\$11,220
ALJ I	Certification List	Limited Term	\$9,231 – \$11,611	\$11,220
ALJ I	Certification List	Permanent	\$9,231 – \$11,611	\$11,220

IN COMPLIANCE	FINDING NO. 10	HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND OR CALHR POLICIES AND GUIDELINES
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The CRU found that the HAM requests the CUIAB 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 10 percent or more of the total time worked. According to the Pay Differential 14, the 10 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, September 1, 2020, through May 31, 2021, the CUIAB issued bilingual pay to 47 employees. The CRU reviewed 17 of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base	No. of Appts.
Executive Secretary II	R04	Full Time	1
Legal Support Supervisor I	S04	Full Time	2
Legal Support Supervisor II	S04	Full Time	2
MST	R01	Full Time	3
OT (Typing)	R04	Full Time	3
PT III	R04	Full Time	2
Seasonal Clerk	R04	Full Time	1
Senior Legal Typist	R04	Full Time	2
Staff Services Analyst (General)	R01	Full Time	1

SEVERITY: VERY SERIOUS	FINDING NO. 11 INCORRECT AUTHORIZATION OF BILINGUAL PAY
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Summary: The CRU found 7 errors in the CUIAB's 17 authorizations of bilingual pay:

Classification	No. of Positions	Description of Findings	Criteria
MST	1	Department failed to provide a certification that the employee's duties required use of bilingual skills for at least 10% of their time.	Pay Differential 14
MST	1	Department failed to provide supporting documentation demonstrating the need for bilingual services.	Pay Differential 14
OT (Typing)	3	Department failed to provide a certification that the employee's duties required use of bilingual skills for at least 10% of their time.	Pay Differential 14
PT III	1	Department failed to provide certification that the employee's duties required use of bilingual skills for at least 10% of their time.	Pay Differential 14
Seasonal Clerk	1	Department failed to provide a certification that the employee's duties required use of bilingual skills for at least 10% of their time.	Pay Differential 14

Criteria: For any state agency, a “qualified” bilingual employee, person, or interpreter is someone who the CalHR has tested and certified, someone who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as proficient in both the English language and the non-English language to be used. (Gov. Code, § 7296, subd. (a)(3).) An individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on a continuing basis averaging 10 percent of the time spent either conversing, interpreting or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions. (Pay Differential 14.)

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

Cause: The CUIAB did not ensure that duty statements indicate that the position is bilingual. Furthermore, documentation certifying that an employee is bilingual could not be found for two employees as they were certified more than 20 years ago.

Corrective Action: Going forward the CUIAB will work with its human resources' office to ensure that duty statements clearly indicate the position is bilingual based on specific duties that are performed. Within 90 days of the date of this report, the CUIAB must submit to the SPB a written corrective action response which demonstrates the corrections the department has implemented to ensure conformity with Pay Differential 14.

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. (Classification and Pay Manual Section 230.)

California State Civil Service 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, September 1, 2020, through May 31, 2021, the CUIAB issued pay differentials⁸ to 45 employees. The CRU reviewed 12 of those pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

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

Classification	No. of Positions	Pay Differential	Monthly Amount
ALJ I	4	National Judicial College Differential Pay	5%
Legal Support Supervisor I	1	Recruitment and Retention Differential Pay	5%
Legal Support Supervisor I	1	Recruitment and Retention Differential Pay	10%
MST	1	Geographic Recruitment and Retention Pay Differential	\$250
OT (Typing)	1	Geographic Recruitment and Retention Pay Differential	\$250
Senior Legal Typist	1	Geographic Recruitment and Retention Pay Differential	10%
Senior Legal Typist	3	Recruitment and Retention Differential Pay	10%

SEVERITY: VERY SERIOUS	FINDING NO. 12	INCORRECT AUTHORIZATION OF PAY DIFFERENTIALS
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Summary: The CRU found 5 errors in the 12 pay differentials reviewed:

Classification	No. of Positions	Description of Findings	Criteria
ALJ I	4	Department failed to provide certification of training documenting the employee is eligible for this pay differential.	Pay Differential 84
Legal Support Supervisor I	1	The employee received the incorrect pay differential after having served the required 12 months in their prior pay differential, resulting in the employee being underpaid.	Pay Differential 141

Criteria: A pay differential may be appropriate 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. 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.)

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

Cause: No cause provided by the CUIAB.

Corrective Action: Within 90 days of the date of this report, the CUIAB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Pay Differentials 84 and 141 and ensure that employees are compensated correctly and that transactions are keyed accurately. 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 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, 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.)

⁹ "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.

During the period under review, September 1, 2020, through May 31, 2021, the CUIAB issued OOC pay to four employees. The CRU reviewed these four OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
ALJ II	R02	Presiding ALJ	7/1/20 – 10/28/20
ALJ II	R02	Presiding ALJ	1/1/21 – 4/30/21
MST	R01	PT III	7/31/20 – 11/27/20
OT (Typing)	R01	PT III	9/1/20 – 12/29/20

SEVERITY: VERY SERIOUS	FINDING NO. 13	INCORRECT APPLICATION OF OUT-OF-CLASS PAY
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Summary: The CRU found four errors in the CUIAB’s four OOC payments:

Classification	No. of Positions	Description of Finding(s)	Criteria
ALJ II	2	OOO pay was not calculated with the Personal Leave Program (PLP) 2020 reduction for all the days within the OOC period. Employee was overpaid.	Pay Differential 91
MST	1	OOO pay was not calculated with the PLP 2020 reduction for all the days within the OOC period. Employee was overpaid.	Pay Differential 91
OT (Typing)	1	OOO pay was not calculated with the PLP 2020 reduction for all the days within the OOC period. Employee was overpaid.	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 CUIAB failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with the CalHR's policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: PLP was not factored into the out-of-class pay.

Corrective Action: Within 90 days of the date of this report, the CUIAB 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 days¹⁰ worked and paid absences¹¹, 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.*)

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

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

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).)

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 benefits.

At the time of the review, the CUIAB had 24 positive paid employees whose hours were tracked. The CRU reviewed three 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
Attorney III	Retired Annuitant	7/1/19 – 6/30/20	568 hours
OT (Typing)	Permanent	1/1/20 – 12/30/20	1,503.15 hours
Seasonal Clerk	Temporary	2/8/21 – 2/7/22	167 days

IN COMPLIANCE	FINDING NO. 14 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 CUIAB provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, 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. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation, extreme weather preventing safe travel to work, states of emergency, voting, and when employees need time off to attend special events. (*Ibid.*)

During the period under review, May 1, 2020, through April 30, 2021, the CUIAB authorized 383 ATO transactions. The CRU reviewed 28 of those ATO transactions to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Associate Governmental Program Analyst	8/17/20	2.25 hours
IT Specialist I	6/29/20 – 6/30/20	2 days
Legal Support Supervisor I	9/29/20 – 9/30/20	20 hours
Legal Support Supervisor I	6/2/20	3 hours
Legal Support Supervisor II	7/7/20	2.5 hours
MST	10/14/20 – 10/19/20	2.5 hours
MST	3/22/21	2 hours
MST	5/4/20 – 6/30/20	17 days
MST	7/15/20	3.5 hours
MST	3/22/21	2 hours
MST	8/14/20	2 hours
MST	5/1/20 – 5/15/20	45 hours
MST	6/2/20	1 day
MST	6/1/20 – 8/19/20	18.5 hours
MST	6/2/20	1 day
OT (General)	8/17/20 – 8/19/20	3 hours
OT (Typing)	1/5/21 – 1/8/21	4 days

Classification	Time Frame	Amount of Time on ATO
OT (Typing)	1/13/21	7 hours
OT (Typing)	6/26/20	1 hour
OT (Typing)	7/30/20	2.5 hours
OT (Typing)	9/25/20 – 9/30/20	3 days
OT (Typing)	11/18/20 – 11/20/20	3 days
Presiding ALJ	11/2/20 – 1/4/21	314 hours
PT III	9/17/20 – 9/25/20	22 hours
PT III	8/31/20	1day
Senior Legal Typist	4/16/21	2 hours
Senior Legal Typist	7/31/20	9 hours
Senior Legal Typist	5/8/20	2 hours

SEVERITY: SERIOUS	FINDING No. 15 ADMINISTRATIVE TIME OFF WAS NOT PROPERLY DOCUMENTED
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Summary: The CUIAB did not grant ATO in conformity with the established policies and procedures. Of the 28 ATO transactions reviewed by the CRU, 1 was found to be out of compliance. Specifically, the CUIAB did not obtain approval from the CalHR prior to authorizing ATO in excess of 30 days for one employee.

Criteria: Appointing authorities are authorized to approve ATO for up to five (5) working days. (Gov. Code, § 19991.10.) Furthermore, they “have delegated authority to approve up to 30 calendar days.” (Human Resources Manual Section 2121.) Any ATO in excess of 30 calendar days must be approved in advance by the CalHR. (*Ibid.*) In most cases, if approved, the extension will be for an additional 30 calendar days. (*Ibid.*) The appointing authority is responsible for submitting ATO extension requests to CalHR at least five working days prior to the expiration date of the approved leave. (*Ibid.*)

When requesting an ATO extension, the appointing authority must provide a justification establishing good cause for maintaining the employee on ATO for the additional period of time. (*Ibid.*) ATO may not be used and will not be granted for an indefinite period. (*Ibid.*) If CalHR denies a request to extend ATO, or the appointing authority fails to request approval from CalHR to extend the ATO, the employee must be returned to work in some capacity. (*Ibid.*)

Regardless of the length of ATO, appointing authorities must maintain thorough documentation demonstrating the justification for the ATO, the length of the ATO, and the approval of the ATO. (*Ibid.*)

Severity: Serious. Because an employee on ATO is being paid while not working, a failure to closely monitor ATO usage could result in costly abuse. The use of ATO is subject to audit and review by CalHR and other control agencies to ensure policy compliance. Findings of non-compliance may result in the revocation of delegated privileges.

Cause: CUIAB provides that it provided the CRD with incorrect data regarding ATO for the employee whose ATO exceeded 30 days. Some of the time the employee used was inadvertently charged to ATO. It should have been charged to Annual Leave; this has been corrected.

SPB Reply: Documentation provided by the CUIAB shows that the employee in question began department-ordered ATO on November 12, 2020. The Leave Accounting System shows that the employee took a total of 333 hours amount of ATO for the months of November 2020 – January 2021. This amounts to over 30¹² days of ATO.

Furthermore, the CUIAB provided a copy of a memo they sent to the CalHR on December 16, 2020, requesting approval to extend the employee's ATO leave. The CUIAB did not provide any documentation that the CalHR approved that request.

Corrective Action: Within 90 days of the date of this report, the CUIAB 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 19991.10 and Human Resources Manual Section 2121. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

¹² The employee in question works 10-hour days.

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 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, February 1, 2021, through April 30, 2021, the CUIAB reported two units comprised of 78 active employees. The pay periods 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
February 2021	365	26	0	0
March 2021	366	24	0	0
April 2021	365	28	0	0

SEVERITY: SERIOUS	FINDING NO. 16 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 CUIAB 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: No specific cause provided.

Corrective Action: Within 90 days of the date of this report, the CUIAB 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.¹³ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who

¹³ 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.

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, § 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 employees¹⁴ 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, September 1, 2020, through May 31, 2021, the CUIAB had eight employees with qualifying and non-qualifying pay period transactions. The CRU reviewed 12 transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Qualifying Pay Period	Full Time	9
Non-Qualifying Pay Period	Full Time	3

SEVERITY:	FINDING NO.	INCORRECT APPLICATION OF STATE SERVICE AND LEAVE TRANSACTION(S)
VERY SERIOUS	17	

Summary: The CRU found 1 error in the CUIAB’s 12 state service transactions:

¹⁴ 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.

Type of Transaction	Time base	State Service Incorrectly Posted	Leave Accruals Incorrectly Posted
Qualifying Pay Period	Full Time	1	1

Criteria: In the application of Government Code section 19837, an employee shall be considered to have a month of state service if the employee either: (1) has had 11 or more working days of service in a monthly pay period; or (2) would have had 11 or more working days of service in a monthly pay period but was laid off or on a leave of absence for the purpose of lessening the impact of an impending layoff. (Cal. Code Regs., tit.2, § 599.608.) Absences from state service resulting from permanent separation for more than 11 consecutive working days which fall into two consecutive pay periods shall disqualify one of the pay periods. (*Ibid.*)

Hourly or daily rate employees working in a state agency 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.) When an employee has a break in service or changes to full-time, any combination of time worked which does not equal one qualifying month of full-time service shall not be accumulated or counted. (*Ibid.*)

Severity: Very Serious. For audit purposes, accurate and timely attendance reporting is required of all departments. If the length of an informal leave results in a non-qualifying pay period, a state service transaction must be processed. Inappropriately authorizing state service credits and leave accruals to employees who did not earn them results in a monetary loss for the department.

Cause: No specific cause provided.

Corrective Action: Within 90 days of the date of this report, the CUIAB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure state service transactions are keyed accurately. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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.*)

IN COMPLIANCE	FINDING NO. 18 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU verified that the policy was disseminated to all staff and emphasized the CUIAB's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CUIAB's nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Workers' Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. (Cal. Code Regs., tit. 8, § 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 CUIAB did not employ volunteers during the compliance review period.

SEVERITY: VERY SERIOUS	FINDING NO. 19 WORKERS' COMPENSATION POLICY WAS NOT PROVIDED TO NEW EMPLOYEE BY THE END OF FIRST PAY PERIOD
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Summary: The CUIAB did not provide documentation to demonstrate it provides specific notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law.

Criteria: 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. (Cal. Code of Regs., tit. 8, § 9880.)

Severity: Very Serious. The department does not ensure that its employees are aware of policies and procedures concerning worker's compensation.

Cause: No specific cause provided.

Corrective Action: Within 90 days of the date of this report, the CUIAB 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 8, section 9880. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 29 permanent CUIAB 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. 20 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES
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Summary: The CUIAB did not provide annual performance appraisals to 19 of 29 employees reviewed after the completion of the employee’s probationary period.

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

Cause: The CUIAB has a process in place wherein it distributes an annual memo to management announcing the opportunity for employees to complete an individual development plan (IDP) and “the performance appraisal process.” Nonetheless, performance appraisals were not completed.

SPB Reply: Human Resources Manual section 2009, which references Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798, provides that the IDP is

separate from the performance appraisal. The CUIAB is required by law to provide performance appraisals to employees; however, employees are not required to participate in the IDP process.

Corrective Action: Within 90 days of the date of this report, the CUIAB 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

The CUIAB's departmental response is attached as Attachment 1.

SPB REPLY

Based upon the CUIAB's written response, the CUIAB will comply with the corrective actions specified in these report findings. 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.

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Cause:

The EDD recognizes the importance of obtaining and retaining signed NOPAs for appointments and other updates to Employment History. The EDD will work with the CUIAB to ensure signed NOPAs are received and retained according to the Retention Schedule guidelines

Finding No. 7	ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS
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Summary: Ethics training was not provided for all filers

Cause:

The CUIAB recognizes the importance of timely Ethics training for filers of Statements of Economic Interest. For some of the instances in which training was completed untimely, Administrative Law Judges were scheduled for in-person Ethics training through the National Judicial College in early 2020. However, that training was delayed due to the onset of the COVID-19 pandemic. The staggered due dates for Ethics training could not be tracked through the EDD's Learning Management System (LMS) at the time of the audit. For all future Ethics training requirements, CUIAB's training program will develop a program to ensure all filers are notified timely of the due dates, that reminders are provided to all filers as the due dates approach, and that completion oversight is in place. By June 2022, the EDD commits to provide CUIAB additional training and resources to fully utilize the LMS to track coursework.

Finding No. 11	INCORRECT AUTHORIZATION OF BILINGUAL PAY
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Summary: The CRU found 7 errors in the CUIAB's 17 authorizations of bilingual pay.

Cause:

The EDD recognizes the importance of ensuring that position statements are clear and easy to understand and also detail the requirements of each duty. The EDD will work with the CUIAB to ensure that future duty statements clearly indicate that a position is bilingual based on specific duties performed and clearly notated on the duty statement.

During the compliance review, the CUIAB was unable to locate the DE 897s for two bilingual employees that were completed over 20 years ago. The CUIAB

subsequently located the two requested DE 897s and have supplied them with this response.

Finding No. 12	INCORRECT AUTHORIZATION OF PAY DIFFERENTIALS
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Summary: The CRU found 5 errors in the 12 pay differentials reviewed.

Cause:

The EDD recognizes the importance of ensuring that the appropriate pay differential is applied and the computation for each are validated. The EDD will work to ensure any future pay differentials are correctly calculated.

Finding No. 13	INCORRECT APPLICATION OF OUT-OF-CLASS PAY
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Summary: The CRU found four errors in the CUIAB's four out-of-class (OOC) payments.

Cause:

The EDD recognizes the importance of ensuring every employee is paid accurately. This finding is associated with the Personnel Leave Program reduction where EDD failed to factor in that reduced rate. The EDD will work to ensure any future pay reduction programs consider all processes where an adjustment to the computation steps are necessary.

Finding No. 15	ADMINISTRATIVE TIME OFF WAS NOT PROPERLY DOCUMENTED
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Summary: The CUIAB did not grant Administrative Time Off (ATO) in conformity with the established policies and procedures. Of the 28 ATO transactions reviewed by the CRU, 1 was found to be out of compliance for failing to document the justification for ATO. Specifically, the CUIAB did not obtain approval from the CalHR prior to authorizing ATO in excess of 30 days for one employee.

Cause:

The CUIAB recognizes the importance of assigning ATO in conformity with established policies and procedures.

The data submitted to the SPB for the Compliance Review Report regarding ATO for

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employee Server was incorrect. The data indicated that ATO was assigned to the employee on January 20, 21, 22, 25, 27, 28, and 29 of 2021. That data was gleaned from an internal report in early February 2021, which included the inadvertently assigned ATO for these dates. However, a subsequent time correction was issued in February 2021, correcting that time from ATO to Annual Leave.

On December 16, 2020, CUIAB submitted a request to CalHR for an extension of ATO for this employee until January 11, 2021. On December 17, 2020, CalHR approved the ATO extension through January 10, 2021. The last date that ATO was assigned for this period was January 4, 2021. The CUIAB assigned ATO in conformity with established policies and procedures.

Finding No. 16	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 CUIAB 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.

Cause: The EDD recognizes the importance of ensuring the accuracy of all leave input keyed. As we await the full implementation of an enterprise-wide system that would meet this requirement, the EDD has implemented the process to validate the items keyed on a monthly basis.

Finding No. 17	INCORRECT APPLICATION OF STATE SERVICE AND LEAVE TRANSACTIONS
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Summary: The CRU found 1 error in the CUIAB's 12 state service transactions.

Cause:

The EDD recognizes the seriousness and importance of ensuring employees receive accurate credit for qualifying service. The EDD will work to ensure the pay and employment history of employees are validated when changes are made to their status within a pay period.

Finding No. 19	WORKERS' COMPENSATION POLICY WAS NOT PROVIDED TO NEW EMPLOYEE BY THE END OF THE FIRST PAY PERIOD
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Summary: The CUIAB did not provide documentation to demonstrate it provides

specific notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law.

Cause:

The CUIAB recognizes the importance of providing timely Workers' Compensation policy information to new employees. All new employees are given a New Employee Handbook that includes Worker's Compensation information and all new employees are given a form to pre-designate a personal physician. Moving forward, the CUIAB will add the e13286 (New Employee's Guide to Workers' Compensation) to the documents that are distributed to new employees.

Finding No. 20	PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES
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Summary: The CUIAB did not provide annual performance appraisals to 19 of 29 employees reviewed after the completion of the employee's probationary period.

Cause:

The CUIAB recognizes the importance of completing performance appraisals on its employees. The CUIAB distributes an annual memo to management announcing the opportunity for their employees to complete an individual development plan and the performance appraisal process. The CUIAB will add procedures for each manager to advise Administrative Services when their respective performance appraisals have been completed.

If you have any questions or need additional information, please contact Alicia Leisenring at (916) 653-8456 or Alicia.Leisenring@edd.ca.gov.



HOLLY RAMSEY, Chief
Human Resource Services Division

Attachments:

1. Bilingual Pay Action Requests

