



COMPLIANCE REVIEW REPORT

DEPARTMENT OF CONSERVATION

Compliance Review Unit
State Personnel Board
June 2, 2021

TABLE OF CONTENTS

INTRODUCTION	1
EXECUTIVE SUMMARY	2
BACKGROUND	4
SCOPE AND METHODOLOGY	4
FINDINGS AND RECOMMENDATIONS.....	6
EXAMINATIONS	6
APPOINTMENTS	7
EQUAL EMPLOYMENT OPPORTUNITY	10
PERSONAL SERVICES CONTRACTS	11
MANDATED TRAINING.....	14
COMPENSATION AND PAY.....	17
LEAVE.....	27
POLICY AND PROCESSES.....	32
DEPARTMENTAL RESPONSE.....	35
SPB REPLY	35

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 Department of Conservation (DOC) 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
Appointments	Serious	Probationary Evaluations Were Not Timely
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 ¹
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Supervisors ²
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 Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

¹ Repeat finding. The August 17, 2018, report identified 15 of 27 new filers were not provided ethics training within six months of their appointment.

² Repeat finding. The August 17, 2018, report identified 14 of 39 new supervisors were not provided sexual harassment prevention training within six months of their appointment.

Area	Severity	Finding
Compensation and Pay	In Compliance	Red Circle Rate Authorizations Complied with Civil Service Laws, Board Rules, and 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	In Compliance	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
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 ³

³ Repeat finding. The August 17, 2018, report identified two of the 23 employees reviewed as not receiving performance appraisals.

BACKGROUND

The DOC, with a team of scientists and other dedicated professionals, administers a variety of programs vital to California's public safety, environment, and economy. The DOC balances today's needs with tomorrow's challenges and fosters intelligent, sustainable, and efficient use of California's energy, land, and mineral resources. The DOC is comprised of five divisions which include, Land Resource Conservation; Mine Reclamation; California Geological Survey; Geologic Energy Management; and State Mining & Geology Board. The DOC employs approximately 650 employees across these five divisions, along with the Administrative and Executive divisions.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the DOC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁴. The primary objective of the review was to determine if the DOC'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.

A cross-section of the DOC'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 DOC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The DOC did not conduct any permanent withhold actions during the compliance review period.

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

⁴ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

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

The review of the DOC'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 DOC's PSC's were also reviewed.⁵ It was beyond the scope of the compliance review to make conclusions as to whether the DOC's justifications for the contracts were legally sufficient. The review was limited to whether the DOC's practices, policies, and procedures relative to PSC's complied with procedural requirements.

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

The CRU reviewed the DOC'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 DOC's units in order to ensure they maintained accurate and timely leave accounting records. Additionally, the CRU reviewed a selection of the DOC employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of DOC positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

⁵If 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.

During the compliance review period, the DOC did not have any employees with non-qualifying pay period transactions.

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

The DOC did not request an exit conference to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DOC's written response on May 21, 2021, 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, December 1, 2019, through August 31, 2020, the DOC conducted six examinations. The CRU reviewed four of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) B, Assistant Deputy Director	CEA	Statement of Qualifications (SOQ) ⁶	4/27/20	13
CEA B, Chief Scientific and Data Advisor	CEA	SOQ	4/26/20	3
CEA B, Southern Area Director	CEA	SOQ	6/2/20	14
Senior Precision Electronics Specialist	Open	Training and Experience (T&E) ⁷	7/27/20	10

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

⁶ 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.

⁷ 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

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, December 1, 2019, through August 31, 2020, the DOC made 50 appointments. The CRU reviewed 20 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Budget Analyst	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Associate Industrial Hygienist	Certification List	Permanent	Full Time	1
Attorney	Certification List	Permanent	Full Time	1
Environmental Scientist	Certification List	Permanent	Full Time	1
Office Assistant (Typing)	Certification List	Permanent	Full Time	1
Research Data Supervisor II	Certification List	Permanent	Full Time	1
Senior Engineering Geologist	Certification List	Permanent	Full Time	1
Senior Oil and Gas Engineer (Supervisor)	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	1
Accounting Administrator I (Supervisor)	Transfer	Permanent	Full Time	1
Associate Accounting Analyst	Transfer	Permanent	Full Time	1
Associate Environmental Planner	Transfer	Permanent	Full Time	1
Engineering Geologist	Transfer	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Information Technology Associate	Transfer	Permanent	Full Time	1
Senior Precision Electronics Specialist	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1
Staff Services Manager I	Transfer	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Transfer	Permanent	Full Time	1

SEVERITY: SERIOUS	FINDING NO. 2 PROBATIONARY EVALUATIONS WERE NOT TIMELY
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Summary: The DOC did not provide in a timely manner four probationary reports of performance for 2 of the 20 appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	Number of Appointments	Total Number of Late Probation Reports
Associate Budget Analyst	Certification List	1	2
Staff Services Manager II (Supervisory)	Certification List	1	1
Total		2	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. (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 DOC states that supervisors, managers, and personnel liaisons are notified monthly by the DOC's Human Resources Office of all employees who are currently on probation, as well as the probation dates. Despite monthly reminders, some supervisors and managers failed to provide timely probation reports. One employee was not provided their first probationary report due to the manager leaving the department within the 10-day window.

Corrective Action: Within 90 days of the date of this report, the DOC 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 599.795. 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).)

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. 3 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 DOC'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 Executive Director of the DOC. The DOC 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, December 1, 2019, through August 31, 2020, the DOC had 46 PSC's that were in effect. The CRU reviewed 20 of those, which are listed below:

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
AECOM Technical Services	Tsunami Hazard Mitigation	6/1/20 - 6/30/21	\$84,708	Yes	Yes
Atlantic Relocation Systems	Moving Services	6/15/20 - 4/30/21	\$43,238	Yes	No
California Institute of Technology	Financial Support	5/27/20 - 6/30/20	\$10,560	Yes	Yes
CPS HR Consulting	Training	3/02/20 - 6/30/22	\$18,850	Yes	Yes
Desert Research Institute	Mineral Testing	2/1/20 - 1/31/23	\$35,000	Yes	Yes
Domain Experts Corporation	Recruitment	7/1/20 - 6/30/22	\$179,750	Yes	Yes
Driltek, Inc.	Well Plugging	9/16/19 - 6/30/21	\$96,583	Yes	Yes
Elavon, Inc.	Payment Services	3/13/20 - 5/31/21	\$3,500	N/A ⁸	No
Frontier Environmental Solutions, Inc.	Mine Remediations	10/1/19 - 3/1/20	\$46,403	Yes	Yes
Intech Mechanical, Inc.	Maintenance	11/5/19 - 6/30/22	\$48,000	Yes	Yes

⁸ The DOC indicated that justification is not applicable as they utilized DGS mandatory Master Service Agreement for the services.

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
Kennedy Court Reporters	Court Reporter	10/17/19 - 11/30/20	\$30,000	Yes	Yes
Laurie Johnson Consulting	Tsunami Hazard Mitigation	4/1/20 - 3/1/21	\$69,973	Yes	Yes
Lawrence Livermore National Security	Consulting Services	11/27/19 - 6/30/21	\$400,000	Yes	Yes
Lazar Translating and Interpreting	Translator	4/16/20 - 6/30/22	\$36,800	Yes	No
Magellan Health Services	Training	3/20/20 - 6/30/23	\$20,000	Yes	Yes
Mikael Villalobos	Training	7/13/20 - 6/30/21	\$20,000	Yes	Yes
Paul Graham Drilling and Service Co.	Well Plugging	7/1/20 - 6/30/21	\$501,650	Yes	Yes
Rescue Training Institute	Training	2/15/20 - 6/30/22	\$35,000	Yes	Yes
Safety Center, Inc.	Training	3/15/20 - 6/30/22	\$9,200	Yes	Yes
South Valley Companies	Well Plugging	9/16/19 - 6/30/21	\$30,000	Yes	Yes

SEVERITY: SERIOUS	FINDING NO. 4 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS
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Summary: The DOC did not notify unions prior to entering into 2 of the 20 PSC's reviewed.

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 DOC states that union notification for one of the contracts was sent, however, the documentation was not saved. The DOC provides that the state contracting manual does not require keeping proof of e-mailed union notifications. For the second contract, the DOC was not aware that Master Services Agreements MSA required union notifications.

SPB Reply: The SPB disagrees with the DOC's interpretation of the State Contracting Manual (SCM). The SCM, Volume 1, section 7.05 provides that departments must certify compliance with union notification. However, it does not state that copies of union notifications are not required to be kept. Further, certification of compliance is not proof that unions were properly notified as required in Government Code section 19132, subdivision (b).

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 the PSC. The PSC's reviewed during this compliance review involved (include services, i.e., transcription and training services), functions which various rank-and-file civil service classifications perform. Within 90 days of the date of this report, the DOC 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.

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 supervisors 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 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 DOC's mandated training program that was in effect during the compliance review period, September 1, 2018, through August 31, 2020.

SEVERITY: VERY SERIOUS	FINDING NO. 5 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS
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Summary: The CRU reviewed 77 of 326 DOC existing filers. The DOC did not provide ethics training to 76 of 77 existing filers. In addition, the CRU reviewed 58 of 132 new filers. The DOC did not provide ethics training to 24 of 58 new filers within 6 months of their appointment. This is the second consecutive time this has been a finding for the DOC.

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 DOC states that they previously used a manual system to ensure ethics training was completed. Despite notifications, not all filers completed their ethics training within the required time period.

Corrective Action: The DOC provides it has since purchased and implemented a Learning Management System to assist with compliance for training requirements. Within 90 days of this report, the DOC must submit to the SPB a written corrective action response to demonstrate conformity with Government Code section 11146.3. Copies of relevant documentation (i.e., policies and/or procedures) demonstrating that the corrective action has been implemented must be included with the corrective action response.

SEVERITY: VERY SERIOUS	FINDING NO. 6 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS
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Summary: The DOC did not provide sexual harassment prevention training to 7 of 31 new supervisors within 6 months of their appointment. In addition, the DOC did not provide sexual harassment prevention training to 1 of 46 existing supervisors every 2 years. This is the second consecutive time this has been a finding for the DOC.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code, § 19995.4.)

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

Cause: The DOC states that they previously used a manual tracking system to track sexual harassment training and notifications were sent to all employees required to complete the training. Not all employees completed the training within the required time frame.

Corrective Action: The DOC provides it has since purchased and implemented a Learning Management System to assist with compliance for training requirements. Within 90 days of the date of this report, the DOC must submit to the SPB a written corrective action response demonstrating conformity with Government Code section 19995.4. Copies of relevant documentation (i.e., policies and/or procedures) 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 rate⁹ 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, December 1, 2019, through August 31, 2020, the DOC made 50 appointments. The CRU reviewed 10 of those appointments to determine if the DOC applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Office Assistant (Typing)	Certification List	Permanent	Full Time	\$2,719
Research Data Supervisor II	Certification List	Permanent	Full Time	\$6,722
Senior Oil and Gas Engineer (Supervisor)	Certification List	Permanent	Full Time	\$11,243

⁹ “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)
Staff Services Manager I	Certification List	Permanent	Full Time	\$6,124
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	\$6,722
Accounting Administrator I (Supervisor)	Transfer	Permanent	Full Time	\$7,608
Associate Accounting Analyst	Transfer	Permanent	Full Time	\$5,962
Associate Environmental Planner	Transfer	Permanent	Full Time	\$5,960
Staff Services Manager I	Transfer	Permanent	Full Time	\$7,110
Staff Services Manager II (Supervisory)	Transfer	Permanent	Full Time	\$8,352

IN COMPLIANCE	FINDING NO. 7 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 DOC 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, December 1, 2019, through August 31, 2020, the DOC employees made 22 alternate range movements within a classification. The CRU reviewed 14 of those alternate range movements to determine if the DOC applied salary

regulations accurately and correctly processed each employee's compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Attorney	B	C	Full Time	\$6,946
Engineering Geologist	B	C	Full Time	\$7,807
Engineering Geologist	A	B	Full Time	\$6,344
Engineering Geologist	B	C	Full Time	\$7,807
Engineering Geologist	B	C	Full Time	\$7,807
Engineering Geologist	B	C	Full Time	\$7,807
Engineering Geologist	B	C	Full Time	\$7,807
Engineering Geologist	C	D	Full Time	\$8,329
Engineering Geologist	A	B	Full Time	\$6,344
Engineering Geologist	C	D	Full Time	\$10,266
Environmental Scientist	B	C	Full Time	\$5,923
Management Services Technician	A	B	Full Time	\$3,298
Staff Services Analyst (General)	B	C	Full Time	\$4,692
Staff Services Analyst (General)	B	C	Full Time	\$4,692

IN COMPLIANCE	FINDING NO. 8 ALTERNATIVE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU determined that the alternate range movements the DOC made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Red Circle Rates

A red circle rate is a rate of pay authorized for an individual above the maximum salary for his or her class. (Gov. Code, § 19837.) Departments may authorize a red circle rate in the following circumstances: management initiated change¹⁰, lessening of abilities¹¹,

¹⁰ Any major change in the type of classes, organizational structure, and/or staffing levels in a program.

¹¹ Refers to an employee who, after many years of satisfactory service, no longer possess the ability to perform the duties and responsibilities of his/her position.

downward reclassification,¹² split-off,¹³ allocation standard changes,¹⁴ or changes in salary setting methods.¹⁵ (*Ibid.*)

If a salary reduction is the result of split-off, changes in allocation standards, changes in salary setting methods, or a downward reclassification initiated by SPB or CalHR staff determination, the affected employee may receive a red circle rate regardless of the employee's state service total. The employee may retain it until the maximum salary of his or her class equals or exceeds the red circle rate. (Classification and Pay Guide Section 260.)

If an employee is moved to a position in a lower class because of management-initiated changes, he or she may receive a red circle rate provided he or she has a minimum of ten years' state service¹⁶ and has performed the duties of the higher class satisfactorily¹⁷. The length of the red circle rate resulting from a management-initiated change is based on the affected employee's length of state service. The red circle rate ends when the maximum salary of the class equals or exceeds the red circle rate or at the expiration of eligibility. (*Ibid.*)

An employee whose position is blanketed into the state civil service from another public jurisdiction may receive a red circle rate regardless of the length of service in the other jurisdiction. (Cal. Code Regs., tit. 2, § 275.) The employee may retain the red circle rate until the maximum salary of the class to which the employee's position is allocated equals or exceeds the red circle rate.

Additionally, a red circle rate may be authorized for a former CEA appointee who is reinstating to a civil service classification, a CEA with no prior civil service in a promotional exam and is being appointed from a list without a break in service, or a CEA appointee who is being reduced to a lower CEA salary rate (Classification and Pay Guide Section

¹² Downward reclassification is when, as a result of SPB action or a CalHR (or its predecessor, the Department of Personnel Administration) staff determination, an incumbent's position is moved to a lower class without the duties being changed.

¹³ Split off is when one class is split into two or more classes, one of which is at a lower salary level than the original class.

¹⁴ Allocation standards for two or more classes may change to the degree that a position originally allocated to one class may be reallocated to a class with a lower salary without a change in duties.

¹⁵ Revised valuation standards applied in setting the salary for a class may result in reducing the salary of a class.

¹⁶ As calculated by the State Service and Seniority Unit at CalHR. An employee with nine years' state service qualifies if the employee had been laid off or had been on a leave of absence for one or more years to reduce the effect of a layoff (CCR § 599.608).

¹⁷ The latter requirement is normally satisfied by the successful completion of a probationary period, unless there is compelling evidence to suggest otherwise.

440). An employee who has ten years of service, one year of which is under a career executive assignment, shall receive a red circle rate in unless the termination was voluntary or based on unsatisfactory performance. (Cal. Code of Regs., tit. 2, § 599.993.) If the termination was voluntary and performance was satisfactory, a red circle rate is permissive. (*Ibid.*) This rate is based on the CEA salary rate received at the time of the termination. Government Code section 13332.05 limits the funding of the red circle rate to no more than 90 calendar days following termination of a CEA appointment.

As of April 1, 2005, departments have delegated authority to approve red circle rates for general civil service employees and CEA positions for up to 90 days. Current Bargaining Unit agreements also provide guidelines and rules on red circle rates that may supersede applicable laws, codes, rules and/or CalHR policies and guidelines.

During the period under review, December 1, 2019, through August 31, 2020, the DOC authorized one red circle request. The CRU reviewed the red circle request, listed below, to determine if the DOC correctly verified, approved and documented the red circle authorization process:

Classification	Prior Classification	Red Circle Rate	Reason for Red Circle Rate
Supervising Oil and Gas Engineer	CEA	\$15,823	Termination of CEA

IN COMPLIANCE	FINDING NO. 9	RED CIRCLE RATE AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found that the red circle rate request the DOC authorized 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, December 1, 2019, through August 31, 2020, the DOC issued bilingual pay to one employee. The CRU reviewed the bilingual pay authorization to ensure compliance with applicable CalHR policies and guidelines. It is listed below:

Classification	Bargaining Unit	Time Base	No. of Appts.
Associate Governmental Program Analyst	R01	Full Time	1

SEVERITY: VERY SERIOUS	FINDING NO. 10 INCORRECT AUTHORIZATION OF BILINGUAL PAY
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Summary: The CRU found one error in the DOC’s authorization of bilingual pay:

Classification	Description of Finding(s)	Criteria
Associate Governmental Program Analyst	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14

Criteria: For any state agency, a “qualified” bilingual employee, person, or interpreter is someone who 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

CalHR's policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay.

Cause: The DOC states that they failed to include in the duty statement at the time of the promotion-in-place (PIP) the requirement for bilingual duties, as well as an updated STD 897. The employee went out on an approved leave of absence shortly after the PIP and the HRO was unable to correct the error until the employee returned.

Corrective Action: Within 90 days of the date of this report, the DOC 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 7296, and Pay Differential 14. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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, December 1, 2019, through August 31, 2020, the DOC issued pay differentials¹⁸ to 30 employees. The CRU reviewed 15 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Associate Oil and Gas Engineer	433	4%
Associate Oil and Gas Engineer	433	4%
Associate Oil and Gas Engineer	433	4%
Energy and Mineral Resources Engineer	433	3%
Energy and Mineral Resources Engineer	433	4%
Engineering Geologist	433	4%, 3%
Senior Engineering Geologist	433	3%
Senior Oil and Gas Engineer (Specialist)	433	3%
Senior Oil and Gas Engineer (Supervisor)	433	4%, 3%
Supervising Engineering Geologist	433	4%
Supervising Engineering Geologist	433	3%
Supervising Oil and Gas Engineer	433	4%
Supervising Oil and Gas Engineer	433	4%, 3%
Supervising Oil and Gas Engineer	433	4%
Supervising Oil and Gas Engineer	433	2%

SEVERITY: VERY SERIOUS	FINDING NO. 11 INCORRECT AUTHORIZATION OF PAY DIFFERENTIALS
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Summary: The CRU found one error in the 15 pay differentials reviewed:

Classification	Area	Description of Finding(s)	Criteria
Associate Oil and Gas Engineer	Longevity Pay Differential	The employee was not eligible to receive the four percent additional pay. Employee was overcompensated.	Pay Differential 433

¹⁸ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

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 DOC 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 DOC states that the HRO used a State Controller's Office (SCO) report to apply pay differentials. The excel spreadsheet with the SCO data rounded up inappropriately.

Corrective Action: The DOC has indicated that it has changed the excel spreadsheet to show decimals for state service time. Within 90 days of the date of this report, the DOC must submit to the SPB a written corrective action response which contains updated policies and/or procedures to ensure that employees are compensated correctly in accordance with Pay Differential 433 and that transactions are keyed accurately.

Out-of-Class Assignments and Pay

For excluded¹⁹ 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).)

¹⁹ "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.

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, December 1, 2019, through August 31, 2020, the DOC issued OOC pay to 20 employees. The CRU reviewed 13 of these 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
Associate Environmental Planner	R01	Senior Environmental Scientist (Supervisory)	Aug-20
Associate Governmental Program Analyst	R01	Staff Services Manager I	Jun-20
Associate Oil and Gas Engineer	R09	Senior Oil and Gas Engineer (Supervisor)	Apr-20
Engineering Geologist	R09	Senior Engineering Geologist (Supervisory)	Jul-20
Office Technician (Typing)	R04	Office Services Supervisor II (General)	Apr-20
Precision Electronics Specialist	R09	Senior Precision Electronics Specialist	Jan-20
Senior Engineering Geologist	S09	Supervising Engineering Geologist	Feb-20
Senior Oil and Gas Engineer (Specialist)	R09	CEA	Jul-20
Senior Oil and Gas Engineer (Supervisor)	S09	Supervising Oil and Gas Engineer	Jul-20

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Senior Precision Electronics Specialist	S09	Staff Electronics and Instrumentation Engineer	May-20
Staff Services Manager I	S01	CEA	May-20
Supervising Engineering Geologist	S09	CEA	Jan-20
Supervising Oil and Gas Engineer	S09	CEA	May-20

IN COMPLIANCE	FINDING NO. 12 OUT OF CLASS PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the OOC pay assignments that the DOC authorized during the compliance review period. OOC pay was issued appropriately to employees 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.

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 days²⁰ worked and paid absences²¹, 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

²⁰ For example, two hours or ten hours count as one day.

²¹ For example, vacation, sick leave, compensating time off, etc.

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).)

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. Further, exceptions, under certain circumstances, may be made to the 1500 hour limitation, as long as the appointing power follows the process outlined in the Personnel Management Policy and Procedures Manual, section 333.

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 DOC had 16 positive paid employees whose hours were tracked. The CRU reviewed 13 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	Temporary	3/1/19 - 2/28/20	888 Hours
Seasonal Clerk	Temporary	11/1/18 - 10/30/19	1664.75 Hours
Seasonal Clerk	Temporary	2/1/19 - 1/30/20	1086.25 Hours

Classification	Tenure	Time Frame	Time Worked
Seasonal Clerk	Temporary	10/1/18 - 9/30/19	1617 Hours
Seasonal Clerk	Temporary	2/1/19 - 1/30/20	858.25 Hours
Seasonal Clerk	Temporary	10/2018 - 9/2019	706.25 Hours
Seasonal Clerk	Temporary	11/2018 - 10/2019	1557 Hours
Seasonal Clerk	Temporary	1/2019 - 12/2019	1132 Hours
Seasonal Clerk	Temporary	1/2019 - 12/2019	1159 Hours
Senior Precision Electronics Specialist	Retired	7/1/19 - 6/30/20	939 hours
Student Assistant	Temporary	6/1/19 - 5/30/20	1223.5 Hours
Student Assistant	Temporary	11/1/18 - 10/30/19	1481 Hours
Student Assistant	Temporary	2/1/19 - 1/30/20	675 Hours

IN COMPLIANCE	FINDING NO. 13 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 DOC 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, June 1, 2019, through May 31, 2020, the DOC placed six employees on ATO. The CRU reviewed all of the ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
CEA	4/10/20 - 4/30/20	14 days
Executive Assistant	8/30/19 - 9/9/19	5 days
Information Technology Associate	1/6/20 - 1/13/20	5 days
Information Technology Specialist I	12/6/19 - 12/13/19	5 days
Information Technology Specialist I	6/26/19 - 7/12/19	4 days
Supervising Oil And Gas Engineer	6/25/19 - 6/27/19	2 days

IN COMPLIANCE	FINDING NO. 14 ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The DOC provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

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

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, March 1, 2020, through May 31, 2020, the DOC reported 27 units comprised of 1775 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
March 2020	101	21	20	1
March 2020	104	13	13	0
March 2020	105	15	15	0
April 2020	101	20	20	0
April 2020	104	13	13	0
April 2020	105	15	15	0
May 2020	101	20	20	0
May 2020	104	13	13	0
May 2020	105	13	13	0

IN COMPLIANCE	FINDING NO. 15 LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU reviewed employee leave records from three different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The DOC kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

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. 16 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 DOC's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the DOC'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 DOC did not employ volunteers during the compliance review period.

IN COMPLIANCE	FINDING NO. 17 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 DOC 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 DOC 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 81 permanent DOC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines²². These are listed below:

Classification	Number of Employees' Files Reviewed
Associate Environmental Planner	4
Associate Governmental Program Analyst	4
Associate Oil and Gas Engineer	15

²² According to the DOC internal policy, performance appraisals are due March 30, 2020, for the prior 2019 calendar year.

Classification	Number of Employees' Files Reviewed
Attorney	2
Attorney III	1
Attorney IV	1
Engineering Geologist	20
Information Technology Associate	2
Information Technology Specialist I	2
Information Technology Specialist II	1
Office Technician (Typing)	6
Research Data Analyst II	1
Research Data Specialist I	1
Research Data Specialist II	1
Senior Engineering Geologist	3
Senior Environmental Planner	1
Senior Oil and Gas Engineer (Specialist)	6
Senior Personnel Specialist	1
Staff Services Analyst (General)	4
Staff Services Manager I	1
Staff Services Manager II (Supervisory)	1
Staff Services Manager III	1
Supervising Engineering Geologist	1
Supervising Oil and Gas Engineer	1

SEVERITY: SERIOUS	FINDING NO. 18 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES
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Summary: The DOC did not provide annual performance appraisals to 12 of 81 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 apprised of work performance issues and/or goals in a systematic manner.

Cause: The DOC states that supervisors and managers were notified of the requirement to complete timely performance appraisals. Numerous performance appraisals were issued to staff; however, due to the requirement for telework at the time of the deadline, many appraisals were not signed by the employee and the supervisor/manager and the Human Resources Office did not receive a copy of the performance appraisal.

Corrective Action: Within 90 days of the date of this report, the DOC 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 DOC's response is attached as Attachment 1.

SPB REPLY

Based upon the DOC's written response, the DOC 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.



May 19, 2021

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

Dear Ms. Ambrose:

RESPONSE TO DRAFT COMPLIANCE REVIEW

The Department of Conservation (DOC), Division of Administration, Human Resources Office (HRO), has taken the findings from the Compliance Audit conducted by the State Personnel Board seriously. Below are the causes to the various findings.

- Finding No. 2 Probationary Evaluations Were Not Timely
 - Supervisors, managers and personnel liaisons are notified monthly by the DOC's Human Resources Office of all employees that are currently on probation, as well as the probation dates. Despite monthly reminders, some supervisors and managers failed to provide timely probation reports. One employee was not provided their first probationary report due to the manager leaving the department within the 10-day window.
- Finding No. 4 Unions Were Not Notified of Personal Services Contracts
 - The DOC sent out the union notification for contract 4019-009, however, did not save the documentation. Per the state contracting manual volume 1, keeping proof of emailing out a union notification is not a requirement. For contract 2019-022, the DOC was not aware that Master Services Agreements (MSA) required union notifications. The DOC has updated the desk manual that MSA's need union notifications.
- Finding No. 5 Ethics Training Was Not Provided for All Filers
 - The DOC previously used a manual system to ensure ethics training was completed. Despite notifications, not all filers completed their ethics training within the required time period. Last year, the DOC implemented a Learning Management System (LMS). Mandatory training is automatically assigned and sent to employees upon appointment. The LMS allows for tracking and reports to be sent to supervisors, managers and the HRO for non-compliance.

- The DOC is in the process of updating the Training Policy to include required timelines for training to be completed. The current policy does not identify the timelines.
- Finding No. 6 Sexual Harassment Prevention Training Was Not Provided for All Supervisors
 - The DOC previously used a manual tracking system to track sexual harassment training and notifications were sent to all employees required to complete the training. Not all employees completed the training within the required time frame. Last year, the DOC implemented an LMS. Sexual Harassment Training is now sent to all employees upon appointment to a supervisory or managerial classification. The LMS is able to track compliance and provide reports that are provided to supervisors, managers and the HRO.
 - Finding No. 10 Incorrect Authorization of Bilingual Pay
 - The DOC failed to include in the duty statement at the time of the promotion-in-place the requirement for bilingual duties, as well as an updated STD 897. The employee went out on an approved leave of absence shortly after the PIP and the HRO was unable to correct the error until the return of the employee.
 - Finding No. 11 Incorrect Authorization of Pay Differentials
 - The HRO used a MIRS report to apply pay differentials. The MIRS report reflected 22 years instead of 21.75 years due to rounding up on the excel spreadsheet. The MIRS reports used for calculating pay and state service will now all show years and months to avoid overcompensating employees.
 - Finding No. 18 Performance Appraisals Were Not Provided to All Employees
 - The DOC notified supervisors and managers of the requirement to complete timely performance appraisals. Numerous performance appraisals were issued to staff, however due to the requirement for telework at the time of the deadline, many appraisals were not signed by the employee and the supervisor/manager and the HRO did not received a copy of the performance appraisal.

If you have any questions or need additional information, please contact me at (916) 531-3557.

Sincerely,

Tara Hirst
Personnel Officer

The Corrective Action Response (CAR) is an opportunity for departments to demonstrate necessary steps have been implemented to correct the non-compliant Findings (deficiency) found as a result of the Compliance Review.

For each non-compliant Finding, refer to the Corrective Action section of that Finding in the review report. Copies of relevant documentation demonstrating that the Corrective Action has been or is in the process of being corrected must be included with the CAR. Examples include, but are not limited to, updated internal policies or procedures (should be included for most findings), a training log for mandated training, and/or any new or updated forms, plans, or documents that have been implemented.

CORRECTIVE ACTION RESPONSE

DEPARTMENT: Department of Conservation	BRANCH/DIVISION/PROGRAM: Human Resources Office
CONTACT PERSON (NAME AND TITLE): Tara Hirst, Personnel Officer	CORRECTIVE ACTION RESPONSE DATE: September 2, 2021

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)	POLICY/PROCEDURE
Finding as stated in the report, by number	Description of 1) completed or planned corrective action(s) and 2) of supporting documentation	Actual or Estimated Completion Date	Is a copy of the updated Policy or Procedure Included?
Finding 2	<p>On August 6, 2021, an email was sent to all supervisors and managers regarding the serious nature of probation reports and the failure of supervisors and managers to comply with State law. The Human Resources Office (HRO) created a new notification that is sent to supervisors and managers when a NOPA is received. The HRO is now sending calendar reminders to the Personnel Liaison (PL) and supervisor/manager for each of the probation dates. The reminders are set for 10 days before the due date. The Classification & Pay Analysts are sending a 10-day and 7-day reminder to the PL and supervisor/manager. A weekly spreadsheet is sent to the Deputy Director of Administrative with a list of probation reports that have not been received by the due date. The Admin Deputy personally notifies any supervisor/manager of their responsibility to complete the probation reports timely. Any supervisor/manager that fails to complete the probation report within the 20-day timeframe will be subject to disciplinary action. The HRO is working on documenting the newly adapted procedures.</p> <p>Copies of emails and spreadsheet are attached.</p>	September 30, 2021	no

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)	POLICY/PROCEDURE
Finding 4	<p>The Performance Review Unit (PRU) has updated their internal Contract Analyst Desk Manual to reflect the notification and retention of the notification to unions (page 23 #10 and page 24 #13)</p> <p>A copy of the updated desk manual is attached.</p>	June 2021	Yes
Finding 5	<p>The DOC was tracking Ethics training manually. New employees were not added to the tracking system timely and internal employees that were now required to take training were not added to the system, causing a failure to comply with the training deadlines. The DOC has added the Ethics training to the newly implemented Learning Management System (LMS) and employees are added to the LMS system at the time their DOC profile/email is establish in the IT system. The DOC updated the Training Policy in July 2021 to reflect timeframes for all mandated trainings. The policy requires Ethics training to be completed within the first 30 days of employment to ensure compliance within the mandated timeframe. The training unit is able to run reports of non-compliant employees and escalate non-compliance to division management.</p> <p>In November 2020, all employees were required to complete the biennial Ethics training. With the use of the LMS system tracking, all active employees completed the training within the 30-day window.</p> <p>A copy of the updated Training Policy is attached.</p>	July 2021	Yes
Finding 6	<p>The DOC was previously tracking Sexual Harassment Training manually. With the implementation of the LMS, employees are automatically enrolled in the training at the time of appointment. The DOC has updated the Training Policy to reflect a 30-day timeframe to take all mandated training. After 30 days, all non-compliant employees are reported to division management.</p> <p>A copy of the updated Training Policy is attached.</p>	July 2021	Yes
Finding 10	<p>The DOC promoted-in-place an employee who then went out on an approved leave of absence. A correction to the duty statement was not made before the employee was off pay status. Upon the employee's return to full time work, they were assigned to Contact Tracing (CT). The CT assignment required bilingual services, so the employee continued to receive their bilingual pay differential for the duration of their CT assignment. The employee was released back to DOC on July 1, 2021 at which time the bilingual pay differential was removed. The DOC had determined at the higher level, bilingual services were no longer needed.</p>	July 2021	No

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)	POLICY/PROCEDURE
Finding 11	<p>The analyst responsible for pulling the MIRS reports from the State Controller's Office (SCO) has been trained to verify the months of state service have not been rounded up on the pay differential reports. A request has been sent to the SCO to correct the overpayment for the employee that received their longevity pay a month early due to the rounding up of state service months.</p> <p>The desk procedure for pulling MIRS reports is being updated to ensure numbers are not being rounded up or down and that numbers are shown with decimal points on the report.</p>	September 2021	No
Finding 18	<p>During the audit period, the DOC was transitioning to telework and utilizing electronic signature programs. Many of the Performance Appraisals (PA) were issued to staff, however, due to office closures and lack of knowledge and experience with electronic signature programs, performance appraisal forms were not signed or sent to the HRO for compliance. This past PA cycle, the HRO conducted multiple training sessions and the PRU conducted a manager's workshop on Writing Performance Appraisals. During the training, guidance was provided on how to submit the PA with electronic signatures. Tracking was completed daily with weekly tracking reports sent out to supervisors and managers. The HRO reached out to individual supervisors and managers to track down missing performance appraisals.</p> <p>The HRO will be updating the procedures and training slides for Performance Appraisals to include utilizing electronic signature programs. The training is included as an attachment.</p>	October 31, 2021	Yes