



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA ENERGY COMMISSION**

Compliance Review Unit  
State Personnel Board  
May 9, 2022

## TABLE OF CONTENTS

INTRODUCTION .....	1
EXECUTIVE SUMMARY .....	2
BACKGROUND .....	3
SCOPE AND METHODOLOGY .....	4
FINDINGS AND RECOMMENDATIONS .....	6
EXAMINATIONS.....	6
APPOINTMENTS.....	9
EQUAL EMPLOYMENT OPPORTUNITY .....	12
PERSONAL SERVICES CONTRACTS .....	13
MANDATED TRAINING .....	14
COMPENSATION AND PAY .....	16
LEAVE.....	27
POLICY AND PROCESSES.....	35
DEPARTMENTAL RESPONSE.....	38
SPB REPLY .....	38

## **INTRODUCTION**

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

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authorities' personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training, to ensure compliance with civil service laws and Board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews.

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

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

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

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

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

### **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of the California Energy Commission (CEC) 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 Actions Complied with Civil Service Laws and Board Rules
Appointments	In Compliance	Appointments Complied with Civil Service Laws and Board Rules
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 <sup>1</sup>
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Employees <sup>2</sup>
Compensation and Pay	Very Serious	Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment
Compensation and Pay	In Compliance	Alternate Range Movements 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

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<sup>1</sup> Repeat finding. The May 17, 2019, CEC Compliance Review Report identified unions were not notified prior to entering into 1 of 19 PSC's reviewed.

<sup>2</sup> Repeat finding. The May 17, 2019, CEC Compliance Review Report identified 4 of 29 existing supervisors did not receive sexual harassment prevention training every 2 years.

Area	Severity	Finding
Compensation and Pay	In Compliance	Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Incorrect Authorization of Out-of-Class Pay
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Serious	Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely
Leave	In Compliance	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Very Serious	Injured Employees Did Not Receive Claim Forms Within One Working Day of Notice or Knowledge of Injury
Policy	Serious	Performance Appraisals Were Not Provided to All Employees

**BACKGROUND**

The CEC is the state's primary energy policy and planning agency. The CEC plays a critical role in creating the energy system of the future—one that is clean, modern, and ensures the fifth largest economy in the world continues to thrive and plays a key role in implementing and crafting policies and programs to create a low-carbon economy. The CEC is helping create the energy system of California's future through activities such as: planning and policy development, setting renewable energy growth goals, energy efficiency, energy innovation and emergency response strategy.

## SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CEC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>3</sup>. The primary objective of the review was to determine if the CEC'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 CEC'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 CEC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the CEC's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

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

The CEC's appointments were also selected for review to ensure the CEC applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CEC 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, bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments.

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<sup>3</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

During the compliance review period, the CEC did not issue or authorize red circle rate requests or arduous pay.

The review of the CEC'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 CEC's PSC's were also reviewed.<sup>4</sup> It was beyond the scope of the compliance review to make conclusions as to whether the CEC's justifications for the contracts were legally sufficient. The review was limited to whether the CEC's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CEC'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 CEC'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 CEC'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 CEC'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 CEC employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of CEC 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 CEC's policies and processes concerning nepotism, workers' compensation, and performance appraisals. The review was limited to whether the CEC's policies and processes adhered to procedural requirements.

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<sup>4</sup>If 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 CEC did not request an exit conference to explain and discuss the CRU’s initial findings and recommendations. The CRU received and carefully reviewed the CEC’s written response on April 29, 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, January 1, 2021, through September 30, 2021, the CEC conducted 12 examinations. The CRU reviewed nine of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps.
Career Executive Assignment (CEA) A, Chief of Staff	CEA	Statement of Qualifications (SOQ) <sup>5</sup>	9/24/21	5

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<sup>5</sup> 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.



Classification	Exam Type	Exam Components	Final File Date	No. of Apps.
CEA B, Deputy Director Energy Research and Development Division	CEA	SOQ	8/6/21	17
CEA B, Deputy Director Energy Assessments Division	CEA	SOQ	2/20/21	5
CEA C, Chief Counsel	CEA	SOQ	3/21/21	4
Associate Energy Specialist (Technology Evaluation and Development)	Open	Training and Experience (T&E) <sup>6</sup>	Continuous	5
Electric Generation System Program Specialist I	Open	T&E	Continuous	3
Electric Generation System Specialist I	Open	T&E	Continuous	6
Energy Analyst	Open	T&E	Continuous	21
Energy Resources Specialist III (Managerial)	Open	T&E	Continuous	8

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

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<sup>6</sup> 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.

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 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, January 1, 2021, through September 30, 2021, the CEC conducted 16 permanent withhold actions. The CRU reviewed 13 of these permanent withhold actions, which are listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Accountant Trainee	9PB31	5/25/2020	5/25/2021	Failed to Meet Minimum Qualifications (MQs)
Administrative Assistant I	0PBDE	6/22/2021	6/22/2022	Failed to Meet MQs
Administrative Assistant I	0PBDE	12/31/2020	12/31/2022	Failed to Meet MQs
Air Pollution Specialist	3PB03	11/21/2020	11/21/2021	Failed to Meet MQs
Associate Governmental Program Analyst	9PB04	9/7/2020	9/7/2021	Failed to Meet MQs
Associate Governmental Program Analyst	9PB04	4/14/2021	4/14/2022	Failed to Meet MQs
Associate Governmental Program Analyst	9PB04	6/18/2020	6/18/2021	Failed to Meet MQs
Electrical Engineer	0PBDH	9/18/2020	9/18/2021	Failed to Meet MQs
Information Technology Associate	7PB33	6/1/2021	6/1/2022	Failed to Meet MQs
Mechanical Engineer	7PB03	11/22/2020	11/22/2021	Failed to Meet MQs

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Senior Electrical Engineer	7PB05	2/11/2021	2/11/2022	Failed to Meet MQs
Senior Mechanical Engineer	7PB04	4/1/2021	4/1/2022	Failed to Meet MQs
Staff Services Analyst	7PB34	7/23/2020	7/23/2021	Failed to Meet MQs

<b>IN COMPLIANCE</b>	<b>FINDING NO. 2 PERMANENT WITHHOLD ACTIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CRU found no deficiencies in the permanent withhold actions 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, January 1, 2021, through September 30, 2021, the CEC made 122 appointments. The CRU reviewed 37 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accountant Trainee	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accounting Administrator I (Supervisor)	Certification List	Permanent	Full Time	1
Administrative Assistant I	Certification List	Limited Term	Full Time	1
Air Pollution Specialist	Certification List	Permanent	Full Time	1
Associate Energy Specialist (Technology Evaluation and Development)	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Associate Management Auditor	Certification List	Permanent	Full Time	1
Electric Generation System Program Specialist I	Certification List	Permanent	Full Time	1
Electric Generation System Program Specialist III	Certification List	Permanent	Full Time	1
Electric Generation System Specialist I	Certification List	Permanent	Full Time	1
Electric Generation System Specialist III	Certification List	Permanent	Full Time	1
Electrical Engineer	Certification List	Permanent	Full Time	1
Energy Analyst	Certification List	Permanent	Full Time	2
Energy Commission Specialist I (Technology Evaluation and Development)	Certification List	Permanent	Full Time	1
Energy Commission Specialist II (Technology Evaluation and Development)	Certification List	Permanent	Full Time	1
Energy Commission Specialist III (Technology Evaluation and Development)	Certification List	Permanent	Full Time	1
Energy Resource Specialist III (Managerial)	Certification List	Permanent	Full Time	1
Energy Resources Specialist III (Supervisory)	Certification List	Permanent	Full Time	1
Information Officer I (Specialist)	Certification List	Permanent	Full Time	1
Information Technology Associate	Certification List	Permanent	Full Time	1
Information Technology Specialist II	Certification List	Permanent	Full Time	1
Information Technology Supervisor II	Certification List	Permanent	Full Time	1
Legal Assistant	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Management Services Technician	Certification List	Permanent	Full Time	1
Mechanical Engineer	Certification List	Permanent	Full Time	2
Personnel Specialist	Certification List	Permanent	Full Time	1
Research Data Specialist II	Certification List	Permanent	Full Time	1
Senior Mechanical Engineer	Certification List	Permanent	Full Time	2
Staff Services Manager I	Certification List	Permanent	Full Time	1
Utilities Engineer	Certification List	Permanent	Full Time	1
Research Data Specialist III	Training & Development	Temporary	Full Time	1
Administrative Assistant II	Transfer	Permanent	Full Time	1
Research Data Specialist II	Transfer	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Transfer	Permanent	Full Time	1

<b>IN COMPLIANCE</b>	<b>FINDING NO. 3 APPOINTMENTS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CEC measured each applicant’s ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the 33 list appointments reviewed, the CEC ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU reviewed three CEC appointments made via transfer. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Regs., tit. 2, § 425.) The CEC verified the eligibility of each candidate to their appointed class.

Eligibility for training and development assignments are limited to employees who (1) have permanent status in their present class, or (2) who have probationary status and who previously have had permanent status and who, since such permanent status, have had no break in service due to a permanent separation. (Cal. Code Regs., tit. 2, § 438, subd. (a).) The CRU reviewed one training and development appointment, and determined it to be in compliance with applicable civil service laws and Board rules.

The CRU found no deficiencies in the appointments that the CEC initiated during the compliance review period. Accordingly, the CRU found that the CEC’s appointments processes and procedures utilized during the compliance review period satisfied civil service laws and Board rules.

**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).)

<b>IN COMPLIANCE</b>	<b>FINDING NO. 4</b>	<b>EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES</b>
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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 CEC’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 CEC. The CEC 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, January 1, 2021, through September 30, 2021, the CEC had two PSC's that were in effect. The CRU reviewed the two of those, which are listed below:

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
Esccue & Associates, Inc.	Supplemental Moving Services	12/1/20 - 11/30/22	\$400,000	Yes	Yes
The Regents of the University of California, on behalf of the Davis Campus	Specialized Training and Development Courses	1/1/21 - 9/30/22	\$65,000	No	No

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 5 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS</b>
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**Summary:** The CEC did not notify unions prior to entering into one of the two PSC’s reviewed. This is the second consecutive time this has been a finding for the CEC.

**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 CEC states that the applicable union was not notified due to a misunderstanding by the agreement manager.

**Corrective Action:** It is the contracting department’s responsibility to identify and notify any unions whose members could potentially perform the type of work to be contracted prior to executing a PSC. The PSC’s reviewed during this compliance review involved (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 CEC 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 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 CEC’s mandated training program that was in effect during the compliance review period, October 1, 2019, through September 30, 2021. The CEC’s ethics training was found to be in compliance, while the CEC’s sexual harassment prevention training was found to be out of compliance.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 6    SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL EMPLOYEES</b>
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**Summary:**                    The CEC provided sexual harassment prevention training to all of its 112 existing non-supervisors every 2 years. In addition, the CEC provided sexual harassment prevention training all of its 130 existing supervisors every 2 years. However, the CEC did not provide sexual harassment prevention training to 5 of 32 new supervisors within 6 months of their appointment. This is the second consecutive time this has been a finding for the CEC.

**Criteria:**                    Each department must provide its supervisors two hours of sexual harassment prevention training every two years and non-supervisory employees one hour of sexual harassment prevention training every two years. New employees must be provided sexual harassment

prevention training within six months of appointment. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code § 19995.4.)

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

**Cause:** The CEC states that although there is a process in place to notify employees of upcoming certification for newly appointed supervisors, it will continue to improve its process with additional follow-up to hold staff accountable and ensure 100 percent compliance.

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

## **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 rate<sup>7</sup> upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

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<sup>7</sup> "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).

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, January 1, 2021, through September 30, 2021, the CEC made 122 appointments. The CRU reviewed 18 of those appointments to determine if the CEC applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accounting Administrator I (Supervisor)	Certification List	Permanent	Full Time	\$6,450
Administrative Assistant I	Certification List	Limited Term	Full Time	\$5,036
Associate Energy Specialist (Technology Evaluation and Development)	Certification List	Permanent	Full Time	\$5,509
Electric Generation System Specialist III	Certification List	Permanent	Full Time	\$10,601
Energy Analyst	Certification List	Permanent	Full Time	\$4,580
Energy Commission Specialist II (Technology Evaluation and Development)	Certification List	Permanent	Full Time	\$8,312
Energy Commission Specialist III (Technology Evaluation and Development)	Certification List	Permanent	Full Time	\$8,077
Information Officer I (Specialist)	Certification List	Permanent	Full Time	\$5,149
Information Technology Associate	Certification List	Permanent	Full Time	\$6,231
Information Technology Specialist II	Certification List	Permanent	Full Time	\$9,878
Management Services Technician	Certification List	Permanent	Full Time	\$3,448
Mechanical Engineer	Certification List	Permanent	Full Time	\$7,337
Personnel Specialist	Certification List	Permanent	Full Time	\$3,301
Research Data Specialist II	Certification List	Permanent	Full Time	\$6,519

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Staff Services Manager I	Certification List	Permanent	Full Time	\$5,916
Utilities Engineer	Certification List	Permanent	Full Time	\$8,293
Research Data Specialist III	Training & Development	Temporary	Full Time	\$8,543
Staff Services Manager II (Supervisory)	Transfer	Permanent	Full Time	\$8,352

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 7 INCORRECT APPLICATIONS OF SALARY DETERMINATION LAWS, RULES, AND CALHR POLICIES AND GUIDELINES FOR APPOINTMENT</b>
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**Summary:** The CRU found the following error in the CEC’s determination of employee compensation:

Classification	Description of Finding(s)	Criteria
Personnel Specialist	Incorrect salary determination resulting in employee being undercompensated	Cal. Code Regs., tit. 2, § 599.676

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

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

**Cause:** The CEC states that the incorrect salary determination was the result of a miscalculation due to an incorrect salary rule being applied.

**Corrective Action:** Within 90 days of the date of this report, the CEC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that employees are compensated correctly. The CEC must establish an audit system to correct current compensation transactions as well as future

transactions. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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, January 1, 2021, through September 30, 2021, the CEC made four alternate range movements within a classification. The CRU reviewed all four of those alternate range movements to determine if the CEC 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)
Air Pollution Specialist	Range A	Range B	Full Time	\$6,053
Legal Secretary	Range A	Range B	Full Time	\$4,435
Mechanical Engineer	Range B	Range D	Full Time	\$8,293
Personnel Specialist	Range C	Range D	Full Time	\$5,278

<b>IN COMPLIANCE</b>	<b>FINDING NO. 8 ALTERNATIVE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the alternate range movements the CEC 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.<sup>8</sup> (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 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

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<sup>8</sup> 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.

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, January 1, 2021, through September 30, 2021, the CEC authorized nine HAM requests. The CRU reviewed seven of those authorized HAM requests to determine if the CEC 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)
Air Pollution Specialist	Certification List	Permanent	\$7,821- \$9,781, Range C	\$8,800, Range C
Electric Generation System Specialist I	Certification List	Permanent	\$8,099- \$10,020	\$8,929
Energy Commission Specialist II (Technology Evaluation and Development)	Certification List	Permanent	\$6,645-\$8,259	\$7,770
Energy Resource Specialist III (Managerial)	Certification List	Permanent	\$9,489- \$10,776	\$10,776
Energy Resources Specialist III (Supervisory)	Certification List	Permanent	\$8,260- \$10,264	\$10,264
Senior Mechanical Engineer	Certification List	Permanent	\$10,301- \$2,892	\$11,878
Senior Mechanical Engineer	Certification List	Permanent	\$9,757- \$12,211	\$10,833

<b>IN COMPLIANCE</b>	<b>FINDING NO. 9</b>	<b>HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found that the HAM requests the CEC 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, January 1, 2021, through September 30, 2021, the CEC issued bilingual pay to four employees. The CRU reviewed all four 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.
Staff Services Manager I	S01	Full Time	1
Energy Commission Specialist I (Efficiency)	R10	Full Time	1
Planner II (Energy Facility Siting)	R01	Full Time	1
Energy Commission Specialist I (Forecasting)	R10	Full Time	1

<b>IN COMPLIANCE</b>	<b>FINDING NO. 10 BILINGUAL PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found that the bilingual pay authorized to employees during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

## Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of



positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention. (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, January 1, 2021, through September 30, 2021, the CEC authorized 46 pay differentials.<sup>9</sup> The CRU reviewed 25 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Air Pollution Specialist	433	4%
Air Pollution Specialist	433	4%
Associate Mechanical Engineer	433	4%
Electric Generation System Program Specialist I	261	\$300
Electric Generation System Program Specialist I	261	\$300
Electric Generation System Program Specialist I	433	3%
Electric Generation System Program Specialist I	433	4%
Electric Generation System Program Specialist II	261	\$300
Electric Generation System Program Specialist III	433	4%
Electric Generation System Specialist III	261	\$300
Electric Transmission System Program Specialist I	261	\$300
Electric Transmission System Program Specialist II	261	\$300
Executive Assistant	52	1.5 Salary Steps
Executive Assistant	52	1.5 Salary Steps
Executive Assistant	52	1.5 Salary Steps
Executive Assistant	52	1.5 Salary Steps
Hearing Adviser II, California Energy Commission	84	5%
Mechanical Engineer	433	2%

<sup>9</sup> For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Senior Civil Engineer	433	4%
Senior Electrical Engineer	261	\$300
Senior Electrical Engineer	261	\$300
Senior Electrical Engineer	261	\$300
Senior Mechanical Engineer	433	3%
Senior Mechanical Engineer	433	4%
Senior Mechanical Engineer	433	4%

<b>IN COMPLIANCE</b>	<b>FINDING NO. 11 PAY DIFFERENTIAL AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the pay differentials that the CEC authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

#### Out-of-Class Assignments and Pay

For excluded<sup>10</sup> 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

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<sup>10</sup> “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.

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, January 1, 2021, through September 30, 2021, the CEC issued OOC pay to three employees. The CRU reviewed all three 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
Business Service Assistant (Specialist)	R01	Business Services Officer (Specialist)	3/1/21-6/29/21
Energy Commission Specialist II (Technology Evaluation and Development)	R10	Energy Commission Specialist III (Supervisory)	1/1/21-6/30/21
Hearing Adviser II, California Energy Commission	R02	Assistant Chief Counsel	4/9/21-6/30/21

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 12 INCORRECT AUTHORIZATION OF OUT-OF-CLASS PAY</b>
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**Summary:** The CRU found three errors in the CEC’s authorization of OOC pay:

Classification	Out-of-Class Classification	Description of Finding(s)	Criteria
Business Service Assistant (Specialist)	Business Services Officer (Specialist)	The 9.23% Personal Leave Program (PLP) reduction was not taken into consideration when determining the OOC pay rate, which resulted in the employee being overcompensated. In addition, the CEC incorrectly calculated the employee’s OOC pay, which resulted in the employee being undercompensated.	Pay Differential 91
Energy Commission Specialist II (Technology Evaluation and Development)	Energy Commission Specialist III (Supervisory)	The 9.23% PLP reduction was not taken into consideration when determining the OOC pay rate, which resulted in the employee being overcompensated. In addition, the CEC incorrectly calculated the employee’s OOC pay, which resulted in the employee being undercompensated.	Pay Differential 94

Classification	Out-of-Class Classification	Description of Finding(s)	Criteria
Hearing Adviser II, California Energy Commission	Assistant Chief Counsel	The 9.23% PLP reduction was not taken into consideration when determining the OOC pay rate, which resulted in the employee being overcompensated.	Pay Differential 91

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

**Severity:** Very Serious. The CEC 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 CEC states that the 2020 Personal Leave Program reduction in pay was not considered when calculating the pay for those serving in an out of class assignment which resulted in overpayment.

**Corrective Action:** Within 90 days of the date of this report, the CEC 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 Differentials 91 and 94. 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 days<sup>11</sup> worked and paid absences<sup>12</sup>, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

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

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

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.

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<sup>11</sup> For example, two hours or ten hours count as one day.

<sup>12</sup> For example, vacation, sick leave, compensating time off, etc.

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.<sup>13</sup>

At the time of the review, the CEC had 32 positive paid employees whose hours were tracked. The CRU reviewed 22 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
Accounting Administrator I (Specialist)	Retired Annuitant (RA)	7/1/20-6/30/21	927.5 hours
Administrative Assistant I	RA	7/1/20-6/30/21	912 hours
Air Resources Supervisor I	RA	7/1/20-6/30/21	1566 hours
Associate Governmental Program Analyst	RA	7/1/20-6/30/21	1847 hours
Associate Personnel Analyst	RA	7/1/20-6/30/21	483.75 hours
Attorney III	RA	7/1/20-6/30/21	567 hours
Attorney IV	RA	7/1/20-6/30/21	1017 hours
Attorney IV	RA	7/1/20-6/30/21	812 hours
Electric Generation System Program Specialist III	RA	7/1/20-6/30/21	1205 hours
Electric Generation System Program Specialist III	RA	7/1/20-6/30/21	960 hours
Electric Generation System Specialist I	RA	7/1/20-6/30/21	651 hours
Energy Commission Specialist II (Technology Evaluation and Development)	RA	7/1/20-6/30/21	960 hours
Energy Commission Specialist II (Technology Evaluation and Development)	RA	7/1/20-6/30/21	894.5 hours
Energy Commission Specialist II (Technology Evaluation and Development)	RA	7/1/20-6/30/21	813 hours

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<sup>13</sup> However, Executive Order N-25-20, signed by Governor Newsom on March 12, 2020, suspended work hour limitations on retired annuitants' hours due to the Covid-19 emergency.

Classification	Tenure	Time Frame	Time Worked
Energy Commission Specialist III (Efficiency)	RA	7/1/20-6/30/21	1428 hours
Energy Commission Specialist III (Forecasting)	RA	7/1/20-6/30/21	810 hours
Energy Commission Specialist III (Technology Evaluation and Development)	RA	7/1/20-6/30/21	577 hours
Energy Resource Specialist III (Managerial)	RA	7/1/20-6/30/21	1187 hours
Senior Accounting Officer (Specialist)	RA	7/1/20-6/30/21	960 hours
Senior Engineering Geologist	RA	7/1/20-6/30/21	760 hours
Senior Mechanical Engineer	RA	7/1/20-6/30/21	799 hours
Senior Mechanical Engineer	RA	7/1/20-6/30/21	381 hours

<b>IN COMPLIANCE</b>	<b>FINDING NO. 13 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The CEC 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, July 1, 2021, through June 30, 2021, the CEC authorized 155 ATO transactions. The CRU reviewed 45 of these ATO transactions to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Hours on ATO
Accounting Technician	2/9/2021-2/18/2021	64
Air Pollution Specialist	10/6/2020-10/14/2020	56
Air Pollution Specialist	6/3/2021-6/3/2021	8
Air Pollution Specialist	5/13/2021-5/14/2021	6
Air Resources Engineer	7/6/2020-11/13/2020	64
Air Resources Engineer	9/1/2020-11/30/2020	80
Associate Energy Specialist (Forecasting)	8/25/2020-9/4/2020	48
Associate Energy Specialist (Technology Evaluation and Development)	7/10/2020-7/23/2020	80
Associate Energy Specialist (Technology Evaluation and Development)	5/3/2021-5/24/2021	16
Associate Governmental Program Analyst	5/1/2020-7/3/2020	80
Associate Governmental Program Analyst	11/30/2020-12/11/2020	80
Associate Governmental Program Analyst	9/3/2020-9/3/2020	3
Attorney III	8/28/2020-9/10/2020	80
Attorney III	8/19/2020-8/26/2020	48
Attorney III	7/10/2020-7/29/2020	48
Attorney III	9/28/2020-10/9/2020	80
Attorney IV	10/9/2020-12/23/2020	56
Business Service Officer I (Specialist)	7/15/2020-7/28/2020	80
Electric Generation System Program Specialist I	8/3/2020-12/23/2020	72
Electric Generation System Specialist I	8/4/2020-8/6/2020	16
Electric Generation System Specialist I	8/3/2020-8/31/2020	36
Electric Generation System Specialist I	7/31/2020-8/7/2020	16
Electric Transmission System Program Specialist I	10/22/2020-12/18/2020	80
Electric Transmission System Program Specialist II	8/13/2020-8/15/2020	24
Energy Analyst	9/22/2020-10/5/2020	80
Energy Commission Specialist I (Technology Evaluation and Development)	8/19/2020-8/19/2020	8
Energy Commission Specialist II (Efficiency)	8/24/2020-9/4/2020	40
Energy Commission Specialist II (Efficiency)	9/4/2020-9/8/2020	16
Energy Commission Specialist II (Technology Evaluation and Development)	7/20/2020-11/23/2020	64
Energy Resource Specialist III (Managerial)	3/19/2021-3/19/2021	8
Energy Resource Specialist III (Managerial)	4/9/2021-4/9/2021	8
Energy Resources Specialist III (Supervisory)	4/12/2021-4/13/2021	16
Information Technology Associate	5/24/2021-5/26/2021	24
Information Technology Manager I	7/1/2020-8/3/2020	64



Classification	Time Frame	Amount of Hours on ATO
Information Technology Specialist I	8/27/2020-9/25/2020	80
Mechanical Engineer	10/26/2020-11/5/2020	80
Mechanical Engineer	9/8/2020-9/22/2020	80
Office Technician (Typing)	4/9/2021-4/30/2021	24
Personnel Specialist	7/1/2020-7/1/2020	0.5
Personnel Specialist	8/13/2020-9/28/2020	12.5
Personnel Specialist	4/27/2021-5/29/2021	31.75
Research Data Specialist II	6/18/2021-6/18/2021	5
Research Data Specialist III	8/12/2020-9/2/2020	80
Senior Accounting Officer (Specialist)	10/7/2020-10/8/2020	16
Senior Accounting Officer (Specialist)	11/24/2020-12/3/2020	64

<b>IN COMPLIANCE</b>	<b>FINDING NO. 14 ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The CEC 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, April 1, 2021, through June 30, 2021, the CEC reported 48 units comprised of 676 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
April 2021	151	14	14	0
April 2021	214	5	5	0
April 2021	710	12	11	1
May 2021	140	39	38	1
May 2021	530	12	12	0
May 2021	820	26	25	1
June 2021	310	29	29	0
June 2021	430	23	23	0
June 2021	600	9	9	0

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 15 DEPARTMENT HAS NOT IMPLEMENTED A MONTHLY INTERNAL AUDIT PROCESS TO VERIFY ALL LEAVE INPUT IS KEYED ACCURATELY AND TIMELY</b>
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**Summary:** The CEC failed to implement a monthly internal audit process to verify all timesheets were keyed accurately and timely. In nine instances, timesheets were keyed incorrectly and/or not keyed timely.

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

**Severity:** Serious. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. Failure to audit leave could put the department at risk

of incurring additional costs from the initiation of collection efforts from overpayments, and the risk of liability related to recovering inappropriately credited leave hours and funds.

**Cause:** The CEC states that although they have an audit process, their practice was to select timesheets randomly for monthly audits instead of reviewing all submitted timesheets for errors and timely processing.

**Corrective Action:** Within 90 days of the date of this report, the CEC 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.<sup>14</sup> (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

Hourly or daily rate employees working at a department in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609.)

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<sup>14</sup> 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.

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 employees<sup>15</sup> 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, January 1, 2021, through September 30, 2021, the CEC had three employees with qualifying and non-qualifying pay period transactions. The CRU reviewed five 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	1
Non-Qualifying Pay Period	Full Time	1
Non-Qualifying Pay Period	Part Time	3

<b>IN COMPLIANCE</b>	<b>FINDING NO. 16</b>	<b>SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the CEC ensured employees with non-qualifying pay periods did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

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<sup>15</sup> As identified in Government Code sections 19858.3, subdivisions (a), (b), or (c), or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subdivision (c), or California Code of Regulations, title 2, section 599.752, subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

## Policy and Processes

### Nepotism

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

<b>IN COMPLIANCE</b>	<b>FINDING NO. 17 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the policy was disseminated to all staff and emphasized the CEC's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CEC'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 CEC did not employ volunteers during the compliance review period.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 18 INJURED EMPLOYEES DID NOT RECEIVE CLAIM FORMS WITHIN ONE WORKING DAY OF NOTICE OR KNOWLEDGE OF INJURY</b>
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**Summary:** Of the five workers' compensation claim forms reviewed by the CRU, two of them were not provided to the employee within one working day of notice or knowledge of injury.

**Criteria:** An employer shall provide a claim form and notice of potential eligibility for workers' compensation benefits to its employee within one working day of notice or knowledge that the employee has suffered a work related injury or illness. (Cal. Lab. Code, § 5401, subd. (a).)

**Severity:** Very Serious. An injured employee was not provided the required form within the 24-hour time period. Providing the form within 24-hours of injury prevents any delay in treatment to which the employee is entitled. A work related injury can result in lost time beyond the employee's work shift at the time of injury and/or result in additional medical treatment beyond first aid.

**Cause:** The CEC states that their process was not sufficient to ensure injured staff received the appropriate documents within one working day of reported injury or knowledge of injury.

**Corrective Action:** Within 90 days of the date of this report, the CEC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Labor Code, section 540.1. 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 85 permanent CEC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 19 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b>
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**Summary:** The CEC did not provide annual performance appraisals to 5 of 85 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 CEC states that although there is a policy in place to ensure performance appraisals are completed annually, it will continue to improve its process with additional follow-up to hold staff accountable and ensure 100 percent compliance.

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

### **SPB REPLY**

Based upon the CEC written response, the CEC 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.