

COMPLIANCE REVIEW REPORT

FRANCHISE TAX BOARD

Compliance Review Unit
State Personnel Board
October 9, 2023

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INTRODUCTION

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

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

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

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

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

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

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

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the Franchise Tax Board (FTB) 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	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed and Some That Were Provided Were Untimely
Appointments	Technical	Department Did Not Provide Benefit Information in Accordance with Civil Service Law
Appointments	Technical	Appointment Documentation Was Not Kept for the Appropriate Amount of Time
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
Personal Services Contracts	In Compliance	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers ¹
Mandated Training	Very Serious	Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs
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

¹ Repeat finding. The November 18, 2019, FTB Compliance Review Report identified that ethics training was not provided to 8 of 164 new filers within six months of their appointment.

² Repeat finding. The November 18, 2019, FTB Compliance Review Report identified 2 out of 597 existing supervisors who were not provided sexual harassment training every two years.

Area	Severity	Finding
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
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 ³
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	Very Serious	Incorrectly Posted Leave Usage and/or Leave Credit
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	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 ⁴

³ Repeat finding. The November 18, 2019, FTB Compliance Review Report identified 3 errors in the FTB's authorizations of OOC pay.

⁴ Repeat finding. The November 18, 2019, FTB Compliance Review Report identified that the FTB did not provide performance appraisals to 11 of 153 employees reviewed at least once in each twelve calendar months after the completion of the employee's probationary period.

BACKGROUND

The mission of the FTB is to help taxpayers file timely and accurate tax returns and pay the correct amount to fund services important to Californians. The FTB employs approximately 6,500 employees throughout offices in California, Texas, New York, and Illinois, within seven primary divisions: Administrative Services, Accounts Receivable Management, Audit, Filing, Finance and Executive Services, Legal, and Technology Services.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the FTB's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁵. The primary objective of the review was to determine if the FTB'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 FTB's examinations was selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the FTB provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the FTB's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

A cross-section of the FTB's appointments was selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the FTB provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions, vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The FTB did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the FTB did not make any additional appointments during the compliance review period.

⁵ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

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

The review of the FTB'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 FTB's PSC's were also reviewed.⁶ It was beyond the scope of the compliance review to make conclusions as to whether the FTB's justifications for the contracts were legally sufficient. The review was limited to whether the FTB's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The FTB's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, that all supervisors, managers, and those in Career Executive Assignments (CEA) were provided leadership and development training, and that all employees were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the FTB'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 FTB'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 FTB'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 FTB employees who used

⁶If 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.

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

On August 23, 2023, an exit conference was held with the FTB to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the FTB's written response on September 22, 2023, 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, 2022, through June 30, 2022, the FTB conducted 26 examinations. The CRU reviewed 13 of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
CEA B, Development Bureau Director	CEA	Statement of Qualifications ⁷	1/27/22	8
Administrator II, FTB	Departmental Promotional	Training and Experience (T&E) ⁸	12/16/21	84
Administrator IV, FTB	Departmental Promotional	T&E	12/29/21	35
Associate Operations Specialist, FTB	Departmental Promotional	T&E	5/26/22	60
Associate Tax Auditor, FTB	Departmental Promotional	T&E	1/27/22	66
Customer Service Specialist, FTB	Departmental Promotional	T&E	12/22/21	28
Customer Service Supervisor, FTB	Departmental Promotional	T&E	5/19/22	69
Principal Compliance Representative, FTB	Departmental Promotional	T&E	6/2/22	81
Program Specialist I, FTB	Departmental Promotional	T&E	2/1/22	81
Program Specialist III, FTB	Departmental Promotional	T&E	2/25/22	100
Senior Compliance Representative, FTB	Departmental Promotional	T&E	3/4/22	98
Staff Operations Specialist (SOS), FTB	Departmental Promotional	T&E	2/25/22	36
Tax Program Technician II, FTB	Departmental Promotional	T&E	1/28/22	102

IN COMPLIANCE	FINDING NO. 1	EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The CRU reviewed 13 departmental promotional examinations which the FTB administered in order to create eligible lists from which to make appointments. The FTB published and distributed examination bulletins containing the required information for all examinations. Applications received by the FTB were accepted prior to the final filing date.

⁷ 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.

⁸ 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.

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 FTB conducted during the compliance review period.

Permanent Withhold Actions

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointments and promotions within the state civil service system shall be merit-based, ascertained by a competitive examination process. (Cal. Const., art. VII, § 1, subd. (b).) If a candidate for appointment is found not to satisfy the minimum qualifications, the appointing power shall provide written notice to the candidate, specifying which qualification(s) are not satisfied and the reason(s) why. The candidate shall have an opportunity to establish that s/he meets the qualifications. (Cal. Code Regs., tit. 2, § 249.4, subd. (b).) If the candidate fails to respond or fails to establish that s/he meets the minimum qualification(s), the candidate's name shall be removed from the eligibility list. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)(1), (2)), (HR Manual, section 1105.) The appointing authority shall promptly notify the candidate in writing and shall notify the candidate of his or her appeal rights. (*Ibid.*) A permanent withhold does not necessarily permanently restrict a candidate from retaking the examination for the same classification in the future; however, the appointing authority 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, 2022, through June 30, 2022, the FTB conducted 15 permanent withhold actions. The CRU reviewed 11 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
Tax Auditor	6PB53	3/12/22	3/12/23	Failed to Meet Minimum Qualifications (MQs)
Tax Auditor	6PB53	2/15/22	2/15/23	Failed to Meet MQs
Tax Program Technician	0PBJP	1/11/22	1/11/23	Failed to Meet MQs

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Tax Program Technician	0PBJP	4/5/22	4/5/23	Failed to Meet MQs
Tax Program Technician	0PBJP	1/5/22	1/5/23	Failed to Meet MQs
Tax Program Technician	0PBJP	12/24/21	12/24/22	Failed to Meet MQs
Tax Program Technician	0PBJP	3/29/22	3/29/23	Failed to Meet MQs
Tax Technician	8PB44	1/7/22	1/7/23	Failed to Meet MQs
Tax Technician	8PB44	1/14/22	1/14/23	Failed to Meet MQs
Tax Technician	8PB44	11/10/21	11/10/22	Failed to Meet MQs
Tax Technician	8PB44	1/5/22	1/5/23	Failed to Meet MQs

IN COMPLIANCE	FINDING NO. 2	PERMANENT WITHHOLD ACTIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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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, July 1, 2021, through December 31, 2021, the FTB made 734 appointments. The CRU reviewed 103 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
CEA	CEA	Permanent	Full Time	1
Accountant I (Specialist)	Certification List	Permanent	Full Time	1
Accountant Trainee	Certification List	Permanent	Full Time	1
Accountant Officer (Specialist)	Certification List	Limited Term	Full Time	1
Administrator I, FTB	Certification List	Limited Term	Full Time	1
Administrator I, FTB	Certification List	Permanent	Full Time	2
Administrator IV, FTB	Certification List	Permanent	Full Time	1
Associate Business Management Analyst	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Associate Operations Specialist, FTB	Certification List	Permanent	Full Time	2
Associate Personnel Analyst	Certification List	Permanent	Full Time	1
Associate Tax Auditor, FTB	Certification List	Permanent	Full Time	2
Customer Service Specialist, FTB	Certification List	Permanent	Full Time	2
Customer Service Specialist, FTB	Certification List	Limited Term	Full Time	1
Customer Service Specialist, FTB	Certification List	Permanent	Full Time	1
Customer Service Supervisor, FTB	Certification List	Permanent	Full Time	1
Health and Safety Officer	Certification List	Permanent	Full Time	1
Information Technology Associate	Certification List	Permanent	Full Time	3
Information Technology Manager I	Certification List	Permanent	Full Time	1
Information Technology Specialist I	Certification List	Permanent	Full Time	2
Information Technology Specialist II	Certification List	Permanent	Full Time	2
Information Technology Supervisor II	Certification List	Permanent	Full Time	1
Information Technology Technician	Certification List	Permanent	Full Time	1
Investigation Specialist I	Certification List	Permanent	Full Time	1
Key Data Operator	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Key Data Supervisor I	Certification List	Permanent	Full Time	1
Legal Secretary	Certification List	Permanent	Full Time	1
Mailing Machines Operator II	Certification List	Permanent	Full Time	1
Office Assistant (General)	Certification List	Limited Term	Full Time	1
Office Services Manager I	Certification List	Limited Term	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Limited Term	Full Time	1
Personnel Specialist	Certification List	Permanent	Full Time	1
Personnel Specialist	Certification List	Limited Term	Full Term	1
Principal Compliance Representative, FTB	Certification List	Permanent	Full Time	1
Program Specialist I, FTB	Certification List	Permanent	Full Time	1
Program Specialist II, FTB	Certification List	Permanent	Full Time	1
Program Specialist III, FTB	Certification List	Permanent	Full Time	1
Research Data Specialist II	Certification List	Permanent	Full Time	1
Sr. Compliance Representative, FTB	Certification List	Permanent	Full Time	2
Senior Operations Specialist, FTB	Certification List	Permanent	Full Time	2
Staff Services Analyst (General)	Certification List	Permanent	Full Time	2
Staff Services Manager I	Certification List	Permanent	Full Time	1
Student Assistant	Certification List	Temporary	Intermittent	2
Tax Auditor, FTB	Certification List	Permanent	Full Time	3
Tax Counsel	Certification List	Permanent	Full Time	1
Tax Program Assistant	Certification List	Limited Term	Intermittent	3
Tax Program Assistant	Certification List	Permanent	Full Time	1
Tax Program Supervisor, FTB	Certification List	Permanent	Full Time	1
Tax Program Supervisor, FTB	Certification List	Limited Term	Full Time	1
Tax Program Technician I, FTB	Certification List	Permanent	Intermittent	1
Tax Program Technician II, FTB	Certification List	Permanent	Full Time	1
Tax Technician, FTB	Certification List	Permanent	Full Time	2
Tax Technician, FTB	Certification List	Permanent	Intermittent	2
Warehouse Worker	Certification List	Permanent	Intermittent	1
Administrator, FTB	Permissive Reinstatement	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Administrator IV, FTB	Permissive Reinstatement	Permanent	Full Time	1
Associate Operations Specialist, FTB	Permissive Reinstatement	Permanent	Full Time	1
Customer Service Specialist, FTB	Permissive Reinstatement	Permanent	Full Time	3
Information Technology Associate	Permissive Reinstatement	Permanent	Full Time	1
Information Technology Specialist I	Permissive Reinstatement	Permanent	Full Time	1
Office Technician (Typing)	Permissive Reinstatement	Permanent	Full Time	1
Program Specialist III, FTB	Permissive Reinstatement	Permanent	Full Time	1
Senior Compliance Representative, FTB	Permissive Reinstatement	Permanent	Full Time	1
Staff Services Analyst (General)	Permissive Reinstatement	Permanent	Full Time	2
Tax Technician, FTB	Permissive Reinstatement	Permanent	Full Time	1
Tax Technician, FTB	Permissive Reinstatement	Permanent	Intermittent	1
Administrator I, FTB	Training & Development	Permanent	Full Time	1
Administrator III, FTB	Training & Development	Permanent	Full Time	1
Information Technology Specialist I	Training & Development	Permanent	Full Time	2
Information Technology Supervisor II	Training & Development	Permanent	Full Time	1
Associate Budget Analyst	Transfer	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Associate Personnel Analyst	Transfer	Permanent	Full Time	1
Associate Tax Auditor, FTB	Transfer	Permanent	Full Time	1
Health and Safety Officer	Transfer	Permanent	Full Time	1
Information Technology Specialist I	Transfer	Permanent	Full Time	1
Information Technology Supervisor II	Transfer	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Office Services Supervisor II (General)	Transfer	Permanent	Full Time	1
Personnel Specialist	Transfer	Permanent	Full Time	1
Tax Program Technician, FTB	Transfer	Permanent	Full Time	1

SEVERITY: SERIOUS	FINDING NO. 3	PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED AND SOME THAT WERE PROVIDED WERE UNTIMELY
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Summary: The FTB did not provide 31 probationary reports of performance for 11 of the 103 appointments reviewed by the CRU. In addition, the FTB did not provide 10 probationary reports of performance in a timely manner, as reflected in the table below.

Classification	Appointment Type	No. of Appointments	Total No. of Missing Probation Reports
Accountant I, FTB	Certification List	1	2
Administrator I, FTB	Certification List	1	3
Administrator IV, FTB	Certification List	2	6
Customer Service Specialist, FTB	Certification List	1	3
Information Technology Associate	Certification List	1	3
Information Technology Specialist	Certification List	1	3
Office Technician (Typing)	Certification List	1	2
Program Specialist III, FTB	Certification List	1	3
Tax Counsel	Certification List	1	3
Tax Technician, FTB	Certification List	1	3

Classification	Appointment Type	No. of Appointments	Total No. of Late Probation Reports
Compliance Representative, FTB	Certification List	2	2

Classification	Appointment Type	No. of Appointments	Total No. of Late Probation Reports
Information Technology Specialist II	Certification List	1	1
Information Technology Supervisor II	Certification List	1	1
Information Technology Technician	Certification List	1	1
Program Specialist II, FTB	Certification List	1	1
Principal Compliance Representative, FTB	Certification List	1	1
Senior Operations Specialist, FTB	Certification List	1	1
Tax Auditor, FTB	Certification List	2	2

Criteria: The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer's performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board's record retention rules require that appointing powers retain all probationary reports for five years from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the

probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The FTB did not have a process in place to ensure that probationary reports were completed.

Corrective Action: Within 90 days of the date of this report, the FTB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the probationary requirements of Government Code section 19172 and 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.

SEVERITY: TECHNICAL	FINDING NO. 4	DEPARTMENT DID NOT PROVIDE BENEFIT INFORMATION IN ACCORDANCE WITH CIVIL SERVICE LAW
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Summary: The FTB did not memorialize that the applicant received an explanation of benefits, prior to appointment, in a formal offer of employment 41 times out of the 103 appointments reviewed by the CRU.

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

Severity: Technical. An applicant is entitled to have all the information regarding benefits relating to their potential employment prior to deciding whether to accept or decline the appointment.

Cause: The FTB states that the during the review period they did not have a standard procedure instructing hiring supervisors to provide standardized benefit information to all new hires.

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

SEVERITY: TECHNICAL	FINDING NO. 5	APPOINTMENT DOCUMENTATION WAS NOT KEPT FOR THE APPROPRIATE AMOUNT OF TIME
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Summary: The FTB failed to retain 11 NOPAs out of the 103 appointments reviewed.

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

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

Cause: The FTB states that they experienced a very high vacancy and turnover rate with their Personnel Specialists during the review period. Additionally, they had to quickly transition to a telework environment during the pandemic, which resulted in a failure to ensure that all appointment documentation was filed correctly and promptly in the official personnel files.

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

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795, subd. (a).)

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. 6	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 FTB'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 FTB. The FTB 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, 2022, through June 30, 2022, the FTB had 31 PSC's that were in effect. The CRU reviewed 19 of those, which are listed below:

Vendor	Services	Contract Amount	Justification Identified?	Union Notification?
Aanko Technologies, Inc.	Hazmat Management Training	\$24,025	Yes	Yes
Aanko Technologies, Inc.	Hazmat Management Training	\$13,800	Yes	Yes
Ablegov, Inc.	Training Services	\$24,210	Yes	Yes
Advanced Integrated Solutions, Inc.	Training Services	\$17,775	Yes	Yes
Bell & Howell, LLC	Preventative Maintenance	\$9,990	Yes	Yes
Canon Solutions America	Hardware and Software Maintenance	\$438,083	Yes	Yes
ExitCertified Corporation	Training Services	\$10,762	Yes	Yes
Fluence Automation, LLC	Proprietary Maintenance	\$449,401	Yes	Yes
Garland Actuarial	Consulting	\$65,000	Yes	Yes

Vendor	Services	Contract Amount	Justification Identified?	Union Notification?
LLC	Services			
Innovative Solutions, Inc	Training Services	\$20,000	Yes	Yes
Performance Technology Partners, LLC	Consulting Services	\$1,640,000	Yes	Yes
Platinum Security, Inc.	Security Guard Services	\$13,137,866	Yes	Yes
Sound & Secure Innovations, Inc.	Alarm Monitoring Service	\$8,292	Yes	Yes
Sound & Secure Innovations, Inc.	Alarm Monitoring Service	\$9,999	Yes	Yes
Southern CA Shredding, Inc.	Shredding Services	\$3,000	Yes	Yes
Sure Connections, Inc.	Wiring Service	\$249,999	Yes	Yes
Trinity Builders, LLC	Construction Services	\$9,277	Yes	Yes
Trinity Builders, LLC	Construction Services	\$9,277	Yes	Yes
Vince M. Kapadia, Inc	Consulting Services	\$25,000	Yes	Yes

IN COMPLIANCE	FINDING NO. 7	PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS
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The total dollar amount of all the PSC's reviewed was \$15,716,358.69. It was beyond the scope of the review to make conclusions as to whether FTB justifications for the contract were legally sufficient. For all PSC's reviewed, the FTB provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, FTB complied with proper notification to all organizations that represent state employees who perform or could perform the type or work contracted as required by California Code of Regulations section 547.60.2. Accordingly, the FTB PSC's complied with civil service laws and board rules.

Mandated Training

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

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a) and (b), & 19995.4, subd. (b).) Additionally, the training must be successfully completed within the term of the employee’s probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).)

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

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 FTB's mandated training program that was in effect during the compliance review period, July 1, 2020, through June 30, 2022.

SEVERITY: VERY SERIOUS	FINDING NO. 8	ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS
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Summary: The FTB provided ethics training to all 1,785 existing filers. However, the FTB did not provide ethics training to 8 of 209 new filers within six months of their appointment. This is the second consecutive time this has been a finding for the FTB.

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 FTB states that although all filers reviewed during the compliance review completed ethics training, the FTB's process was not sufficient to ensure 8 of the 209 filers completed the training within 6 months of their appointment dates.

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

SEVERITY: VERY SERIOUS	FINDING NO. 9	SUPERVISORY TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS, MANAGERS, AND CEAS
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Summary: The FTB provided basic supervisory training to all 88 new supervisors within 12 months of appointment. However, the FTB did not provide manager training to 1 of 19 new managers within 12

twelve months of appointment; and did not provide CEA training to 2 of 4 new CEAs within 12 months of appointment.

Criteria: Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. (Gov. Code, § 19995.4, subd. (b).)

Upon initial appointment of an employee to a managerial position, each employee must receive 40 hours of leadership training within 12 months of appointment. (Gov. Code, § 19995.4, subd. (d).)

Upon initial appointment of an employee to a Career Executive Assignment position, each employee must receive 20 hours of leadership training within 12 months of appointment. (Gov. Code, § 19995.4, subd. (e).)

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

Cause: The FTB states that one manager and two CEAs were late in completing their leadership training due to workload demands and a lack of an escalation process.

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

SEVERITY: VERY SERIOUS	FINDING NO. 10	SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS
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Summary: The FTB provided sexual harassment prevention training to all 200 non-supervisors reviewed, and to all 751 existing supervisors every two years. However, the FTB did not provide sexual harassment prevention training to 5 of 117 new supervisors within 6 months of

their appointment. This is the second consecutive time this has been a finding for the FTB.

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 FTB states that a lack of an automated tracking process led to 5 of 117 new supervisors not completing sexual harassment prevention training within 6 months of their appointment.

Corrective Action: Within 90 days of the date of this report, the FTB 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 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, July 1, 2021, through December 31, 2021, the FTB made 734 appointments. The CRU reviewed 49 of those appointments to determine if the FTB applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Administrator I, FTB	Certification List	Permanent	Full Time	\$7,251
Administrator I, FTB	Certification List	Permanent	Full Time	\$6,870
Administrator I, FTB	Certification List	Limited Term	Full Time	\$6,871
Associate Business Management Analyst	Certification List	Permanent	Full Time	\$5,383
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,383
Associate Personnel Analyst	Certification List	Permanent	Full Time	\$5,383
Compliance Representative, FTB	Certification List	Permanent	Full Time	\$4,191
Compliance Representative, FTB	Certification List	Limited Term	Full Time	\$3,991
Customer Service Specialist, FTB	Certification List	Permanent	Full Time	\$3,992
Customer Service Supervisor, FTB	Certification List	Permanent	Full Time	\$5,884
Health and Safety Officer	Certification List	Permanent	Full Time	\$6,544
Information Technology Associate	Certification List	Permanent	Full Time	\$7,803
Information	Certification List	Permanent	Full Time	\$5,815

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)
Technology Specialist I				
Information Technology Technician	Certification List	Permanent	Full Time	\$4,405
Key Data Supervisor I	Certification List	Permanent	Full Time	\$4,060
Legal Secretary	Certification List	Permanent	Full Time	\$4,888
Office Assistant (General)	Certification List	Permanent	Full Time	\$2,988
Office Assistant (General)	Certification List	Limited Term	Full Time	\$2,988
Office Services Manager I	Certification List	Limited Term	Full Time	\$5,429
Personnel Specialist	Certification List	Permanent	Full Time	\$3,939
Personnel Specialist	Certification List	Limited Term	Full Time	\$4,246
Principal Compliance Representative, FTB	Certification List	Permanent	Full Time	\$7,772
Program Specialist I, FTB	Certification List	Permanent	Full Time	\$8,538
Program Specialist III, FTB	Certification List	Permanent	Full Time	\$9,884
Senior Operations Specialist, FTB	Certification List	Permanent	Full Time	\$6,870
Staff Operations Specialist, FTB	Certification List	Permanent	Full Time	\$6,299
Staff Operations Specialist, FTB	Certification List	Permanent	Full Time	\$6,903
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,476
Staff Services Manager I	Certification List	Limited Term	Full Time	\$6,403
Tax Auditor, FTB	Certification List	Permanent	Full Time	\$3,991
Tax Auditor, FTB	Certification List	Permanent	Full Time	\$4,936
Tax Program Assistant	Certification List	Permanent	Full Time	\$3,514
Tax Program Assistant	Certification List	Limited Term	Intermittent	\$3,201
Tax Program Supervisor, FTB	Certification List	Permanent	Full Time	\$4,486
Tax Program Supervisor, FTB	Certification List	Permanent	Full Time	\$4,274

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Tax Technician, FTB	Certification List	Permanent	Full Time	\$4,182
Administrator II, FTB	Permissive Reinstatement	Permanent	Full Time	\$9883
Customer Service Specialist, FTB	Permissive Reinstatement	Permanent	Full Time	\$4,320
Customer Service Specialist, FTB	Permissive Reinstatement	Limited Term	Full Time	\$4,320
Information Technology Specialist I	Permissive Reinstatement	Permanent	Full Time	\$8,401
Sr. Compliance Representative, FTB	Permissive Reinstatement	Permanent	Full Time	\$7,432
Tax Technician, FTB	Permissive Reinstatement	Permanent	Full Time	\$3448
Administrator II, FTB	Training & Development	Permanent	Full Time	\$9,883
Administrator III, FTB	Training & Development	Permanent	Full Time	\$10,174
Associate Budget Analyst	Transfer	Permanent	Full Time	\$6,232
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	\$5,934
Information Technology Specialist I	Transfer	Permanent	Full Time	\$8,733
Office Services Supervisor II (General)	Transfer	Permanent	Full Time	\$4,661
Personnel Specialist	Transfer	Permanent	Full Time	\$4,672

IN COMPLIANCE	FINDING NO. 11	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 FTB 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, July 1, 2021, through December 31, 2021, the FTB employees made 99 alternate range movements within a classification. The CRU reviewed 38 of those alternate range movements to determine if the FTB 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)	No. of Positions
Compliance Representative, FTB	A	B	Full Time	\$4,191	1
Compliance Representative, FTB	A	B	Full Time	\$4,116	1
Compliance Representative, FTB	B	C	Full Time	\$5,001	2
Compliance Representative, FTB	B	C	Full Time	\$5,031	1
Compliance Representative, FTB	B	C	Full Time	\$5,015	1
Compliance Representative, FTB	B	C	Full Time	\$4,936	3
Customer Service Specialist, FTB	A	B	Full Time	\$4,192	1
Information Technology Associate	A	C	Full Time	\$5,294	1
Information Technology Associate	A	C	Full Time	\$5,339	1
Information Technology Specialist I	A	B	Full Time	\$7,562	2
Information Technology Specialist I	B	C	Full Time	\$8,999	1
Key Data Operator	A	B	Full Time	\$3,093	1

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)	No. of Positions
Personnel Specialist	B	C	Full Time	\$4,277	1
Personnel Specialist	B	C	Full Time	\$4,556	1
Personnel Specialist	C	D	Full Time	\$4,787	1
Student Assistant	A	D	Intermittent	\$3,329	2
Student Assistant	C	D	Intermittent	\$3,329	1
Tax Auditor, FTB	A	B	Full Time	\$4,936	6
Tax Counsel	C	D	Full Time	\$9,669	2
Tax Program Assistant	B	C	Intermittent	\$3,347	1
Tax Technician, FTB	A	B	Full Time	\$3,448	3
Tax Technician, FTB	A	B	Intermittent	\$3,448	4

IN COMPLIANCE	FINDING NO. 12	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 FTB 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 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.¹⁰ (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 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, July 1, 2021, through December 31, 2021, the FTB authorized nine HAM requests. The CRU reviewed eight of those authorized HAM requests to determine if the FTB 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)
IT Supervisor II	Certification List	New to State	\$7,593-\$10,174	\$8,791

¹⁰ 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.

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Tax Auditor, FTB	Certification List	New to State	\$3,991-\$5,249	\$4,536
Tax Auditor, FTB	Certification List	Current State Employee	\$3,991-\$5,249	\$4,190
Tax Auditor, FTB	Certification List	New to State	\$3,991-\$5,249	\$4,536
Tax Auditor, FTB	Certification List	New to State	\$3,991-\$5,249	\$4,190
Tax Auditor, FTB	Certification List	New to State	\$4,936-\$6,489	\$5,811
Tax Auditor, FTB	Certification List	New to State	\$4,936-\$6,489	\$5,738
Tax Auditor, FTB	Certification List	New to State	\$3,991-\$5,249	\$4,190

IN COMPLIANCE	FINDING NO. 13	HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found that the HAM requests the FTB 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, July 1, 2021, through December 31, 2021, the FTB issued bilingual pay to 129 employees. The CRU reviewed 38 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.
Associate Tax Auditor, FTB	R01	Full Time	1
Compliance Representative, FTB	R01	Full Time	12
Customer Service Specialist, FTB	R01	Full Time	3
Customer Service Supervisor, FTB	S01	Full Time	2
Information Technology Specialist I	R01	Full Time	2
Investigation Specialist II (Technical)	R07	Full Time	2
Principle Compliance Representative, FTB	R01	Full Time	1
Program Specialist II, FTB	R01	Full Time	1
Sr. Compliance Representative, FTB	R01	Full Time	3
Tax Program Technician I, FTB	R04	Full Time	1
Tax Program Technician II, FTB	R04	Full Time	2
Tax Technician, FTB	R01	Full Time	7
Tax Technician, FTB	R01	Intermittent	1

IN COMPLIANCE	FINDING NO. 14	BILINGUAL PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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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, July 1, 2021, through December 31, 2021, the FTB authorized 85 pay differentials.¹¹ The CRU reviewed 33 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount	No. of Positions
Administrator I, FTB	441	\$250	1
Administrator II, FTB	102	\$419	5
Administrator III, FTB	102	\$419	1
Associate Tax Auditor, FTB	441	\$250	1
Associate Tax Auditor, FTB	102	\$346	2
Associate Telecommunications Engineer	261	\$300	1
Associate Telecommunications Engineer	73	5.5%	1
Compliance Representative, FTB	441	\$250	1
Deputy Chief, Investigations and Enforcement	73	9%	1
Information Technology Specialist I	102	\$346	1
Investigation Specialist II (Supervisor), FTB	73	9%	2
Investigation Specialist II (Supervisor), FTB	244	\$125	3
Investigation Specialist (Technical), FTB	244	\$100	1
Investigation Specialist (Technical), FTB	73	5%	1
Investigation Specialist (Technical), FTB	73	7%	1
Investigation Specialist (Technical), FTB	73	9%	1
Program Specialist I, FTB	441	\$250	1
Program Specialist I, FTB	102	\$346	2
Program Specialist II, FTB	102	\$346	3
Program Specialist III, FTB	441	\$250	1
Sr. Compliance Representative, FTB	441	\$250	2

¹¹ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

IN COMPLIANCE	FINDING NO. 15	PAY DIFFERENTIAL AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the pay differentials that the FTB 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 excluded¹² and most rank-and-file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and the California Code of Regulations, title 2, section 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the time period outlined in applicable law, policy or MOU expires. (Classification and Pay Guide Section 375.)

During the period under review, July 1, 2021, through December 31, 2021, the FTB issued OOC pay to 50 employees. The CRU reviewed 25 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	No. of Positions
Administrator II,	S01	Administrator III, FTB	10/1/21-9/30/22	1

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

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame	No. of Positions
FTB				
Administrator II, FTB	S01	Administrator III, FTB	11/30/21–12/31/21	1
Administrator II, FTB	S01	Administrator III, FTB	11/2/21-6/30/22	1
Administrator IV, FTB	M01	CEA, B	1/29/21–8/30/21	1
Associate Governmental Program Analyst	R01	Staff Services Analyst (General)	7/1/21-7/30/21	1
Business Service Assistant (Specialist)	R01	Staff Services Analyst (General)	7/1/21-12/31/21	1
Information Technology Manager II	M01	CEA, B	7/1/21-12/31/21	1
Key Data Operator	R04	Staff Services Analyst (General)	7/1/21-12/31/21	4
Key Data Operator	R04	Tax Program Technician I	7/22/21-11/18/21	4
Key Data Operator	R04	Tax Program Technician I	7/22/21-8/1/21	1
Seasonal Clerk	R04	Staff Services Analyst (General)	7/1/21-9/17/21	1
Seasonal Clerk	R04	Staff Services Analyst (General)	7/1/21-12/31/21	6
Staff Services Analyst (General)	R01	Associate Operations Specialist	6/17/21-8/11/21	1
Tax Program Technician II, FTB	R04	Staff Services Analyst (General)	7/1/21-12/31/21	1

SEVERITY: VERY SERIOUS	FINDING NO. 16	INCORRECT AUTHORIZATION OF OUT-OF-CLASS PAY
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Summary: The CRU found 14 errors in the FTB's authorization of OOC pay. This is the second consecutive time this has been a finding for the FTB.

Classification	Out-of-Class Classification	Description of Findings	Criteria
Administrator II	Administrator III	Employee was not compensated for 90 days of OOC pay while performing duties at the higher-level classification, resulting in the employee being undercompensated.	Pay Differential 101
Associate Governmental Program Analyst	Staff Services Analyst (General)	Employee was compensated for July 2021 of OOC pay while performing the duties at the lower-level classification, resulting in the employee being overcompensated.	Pay Differential 91
Key Data Operator	Staff Services Analyst (General)	OOO was not properly calculated July 2021-November 2021, resulting in the employee being overcompensated.	Pay Differential 91 and R04 Bargaining Unit Agreement
Key Data Operator	Tax Program Technician I	OOO was not properly calculated July 2021-September 2021, resulting in the employee being overcompensated.	Pay Differential 91
Key Data Operator (3 positions)	Staff Services Analyst (General)	OOO was not properly calculated July 2021-December 2021, resulting in the employee being overcompensated.	Pay Differential 91 and R04 Bargaining Unit Agreement
Key Data Operator	Tax Program Technician I	OOO was not properly calculated August 2021- September 2021, resulting in the employee being undercompensated.	Pay Differential 91
Seasonal Clerk (2 positions)	Staff Services Analyst (General)	OOO was not properly calculated July 2021- September 2021, resulting in the employee being overcompensated.	Pay Differential 91 and R04 Bargaining Unit Agreement
Seasonal Clerk	Staff Services Analyst (General)	OOO was not properly calculated October 2021- December 2021, resulting in the employee being overcompensated and undercompensated.	Pay Differential 91 and R04 Bargaining Unit Agreement
Seasonal Clerk (2 positions)	Staff Services Analyst (General)	OOO was not properly calculated September 2021- December 2021, resulting in the employee being improperly compensated.	Pay Differential 91 and R04 Bargaining Unit Agreement

Classification	Out-of-Class Classification	Description of Findings	Criteria
Seasonal Clerk	Staff Services Analyst (General)	OOB was not properly calculated July 2021, resulting in the employee being overcompensated.	Pay Differential 91 and R04 Bargaining Unit Agreement

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.

Employees may be compensated for performing duties of a higher classification provided that: the assignment is made in advance in writing and the employee is given a copy of the assignment; and the duties performed by the employee are not described in a training and development assignment or by the specification for the class to which the excluded employee is appointed and, are fully consistent with the types of jobs described in the specification for the higher classification; and the employee does not perform such duties for more than 120 days in a fiscal year. (Cal. Code Regs., tit. 2, § 599.810, subd. (b)(1)(3)(4).)

For excluded employees, there shall be no compensation for assignments that last for 15 consecutive working days or less. (Cal. Code Regs., tit. 2, § 599.810, subd. (c).) An excluded employee performing in a higher class for more than 15 consecutive working days shall receive the rate of pay the excluded employee would receive if appointed to the higher class for the entire duration of the assignment, not to exceed one year. (Cal. Code Regs., tit. 2, § 599.810, subd. (d).) An excluded employee may be assigned out-of-class work for more than 120 calendar days during any 12-month period only if the appointing power files a written statement with the CalHR certifying that the additional out-of-class work is required to

meet a need that cannot be met through other administrative or civil service alternatives. (Cal. Code Regs., tit. 2, § 599.810, subd. (e).)

Severity: Very Serious. The FTB 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 FTB states that they did not account for the hourly versus full-time rates and the potential salary adjustments.

Corrective Action: Within 90 days of the date of this report, the FTB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.810 and Pay Differential 91 and 101. 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 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 the working days of a month. When counting 189 days, every day worked, including partial days¹³ worked and paid absences¹⁴, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day are 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

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

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

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).)

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 FTB had 767 positive paid employees whose hours were tracked. The CRU reviewed 10 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
Key Data Operator	Intermittent	7/1/2021-6/30/22	832 Hours
Key Data Operator	Intermittent	7/1/2021-6/30/22	276 Hours
Key Data Operator	Intermittent	7/1/2021-6/30/22	889 Hours
Key Data Operator	Intermittent	7/1/2021-6/30/22	72 Hours
Key Data Operator	Intermittent	7/1/2021-6/30/22	44 Hours
Key Data Operator	Temporary	1/1/2021-1/1/2022	453.25 Hours
Program Specialist III	Intermittent	7/1/2021-6/30/22	942.5 Hours
Tax Program Assistant	Intermittent	7/1/2021-6/30/22	249 Hours
Tax Program Assistant	Intermittent	7/1/2021-6/30/22	960 Hours
Tax Technician	Intermittent	7/1/2021-6/30/22	32 Hours

IN COMPLIANCE	FINDING NO. 17	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 FTB 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, April 1, 2021, through March 31, 2022, the FTB authorized 143 ATO transactions. The CRU reviewed 40 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 Time on ATO
Administrator I, FTB	8/18/21-8/23/21	3 days
Administrator II, FTB	9/14/21	1 day
Associate Personnel Analyst	4/1/21	8 hours
Associate Tax Auditor, FTB	3/1/21, 9/1/21-9/7/21	5 days
Business Service Officer II (Supervisor)	12/6/21-12/14/21	5 days
Compliance Representative, FTB	8/20/21-8/30/21	55.5 hours
Compliance Representative, FTB	12/28/21-1/6/22	60.5 hours
Compliance Representative, FTB	3/4/22, 3/17/22	8 hours
Customer Service Specialist, FTB	12/24/21	1 day
Customer Service Supervisor, FTB	2/18/22-3/4/22	10 days
Investigation Specialist II (Technical), FTB	11/3/21	5.5 hours
Information Technology Associate	2/1/22	7 hours
Information Technology Specialist I	1/26/22-1/28/22	3 days
Information Technology Specialist II	8/17/21-8/23/21	5 days
Key Data Operator	11/5/21-11/12/21	5 days

Classification	Time Frame	Amount of Time on ATO
Key Data Operator	1/12/22-1/14/22	3 days
Materials and Stores Specialist	8/17/21-8/23/21	37 hours
Office Services Manager I	2/2/22	5.5 hours
Principle Compliance Representative, FTB	3/21/22-3/31/22	64 hours
Sr. Compliance Representative, FTB	12/10/21-12/21/21	54 hours
Staff Services Analyst (General)	12/27/21-12/31/21	5 days
Tax Auditor, FTB	7/8/21-7/16/21	55 hours
Tax Auditor, FTB	11/2/21-11/21/21	8 days
Tax Counsel III	4/1/21-7/8/21	69 days
Tax Program Assistant	1/11/22-1/13/22	3 days
Tax Program Supervisor, FTB	1/3/22	1 day
Tax Program Technician I, FTB	5/10/21-5/13/21	4 days
Tax Program Technician I, FTB	1/20/22-1/31/22	7 days
Tax Program Technician II, FTB	1/20/22-1/28/22	49.5 hours
Tax Program Technician II, FTB	11/10/21-11/15/21	24 hours
Tax Program Technician II, FTB	1/24/22-1/28/22	5 days
Tax Program Technician II, FTB	6/1/21	2 hours
Tax Technician, FTB	1/10/22-1/12/22	3 days
Tax Technician, FTB	1/3/22-1/12/22	8 days
Tax Technician, FTB	5/26/21-5/27/21, 6/1/21-6/7/21	7 days
Tax Technician, FTB	5/20/21-5/28/21	7 days
Tax Technician, FTB	12/27/21-12/31/21	33.5 hours
Tax Technician, FTB	7/22/21-7/30/21, 8/2/21	58.5 hours
Tax Technician, FTB	5/20/21-6/7/21	12 days
Tax Technician, FTB	4/29/21-5/7/21	7 days

IN COMPLIANCE	FINDING NO. 18	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 FTB 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, January 1, 2022, through March 31, 2022, the FTB reported 122 units comprised of 6,221 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	No. of Employees	No. of Timesheets Reviewed	No. of Missing Timesheets
January 2022	102	12	12	0
January 2022	261	50	50	0
January 2022	290	58	58	0
February 2022	102	13	13	0
February 2022	272	26	26	0
February 2022	582	14	14	0
March 2022	251	31	31	0

SEVERITY: VERY SERIOUS	FINDING NO. 19	INCORRECTLY POSTED LEAVE USAGE AND/OR LEAVE CREDIT
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Summary: The FTB did not correctly enter 8 of 116 timesheets into the Leave Accounting System during the January 2020 pay period. As a result, 8 employees retained their prior leave balance despite having used leave credits.

Criteria: Departments shall create a monthly internal audit process to verify that all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) 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.*)

Severity: Very serious. Errors in posting leave usage and/or leave credits puts 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 FTB states that the errors were due to high turnover and some manual procedures were overlooked as they transitioned to an online methodology during COVID.

Corrective Action: Within 90 days of the date of this report, the FTB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Human Resources Manual Section 2101. 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 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.¹⁵ (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

¹⁵ 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.

accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609.)

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs., tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs., tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees¹⁶ 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, 2022, through June 29, 2022, the FTB had 52 employees with qualifying and non-qualifying pay period transactions. The CRU reviewed 32 transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time Base	No. Reviewed
Non-Qualifying Pay Period	Full Time	21
Qualifying Pay Period	Full Time	11

IN COMPLIANCE	FINDING NO. 20	SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU determined that the FTB 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.

¹⁶ 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 hire, transfer, and promote all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. (Cal. Code Regs., tit. 2, § 87.) (*Ibid.*) All appointing powers shall adopt an anti-nepotism policy that includes the following components: (1) a statement that the appointing power is committed to merit-based hiring and that nepotism is antithetical to a merit-based civil service system; (2) a definition of "nepotism" as an employee's use of influence or power to hire, transfer, or promote an applicant or employee because of a personal relationship; (3) a definition of "personal relationship" as persons related by blood, adoption, current or former marriage, domestic partnership or cohabitation; (4) a statement that prohibits participation in the selection of an applicant for employment by anyone who has a personal relationship with the applicant, as defined in section 83.6; (5) a statement that prohibits the direct or first-line supervision of an employee with whom the supervisor has a personal relationship, as defined in section 83.6; (6) a process for addressing issues of direct supervision when personal relationships between employees exist. (*Ibid.*)

IN COMPLIANCE	FINDING NO. 21	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 FTB's commitment to the state policy of hiring, transferring, and promoting employees on the basis of merit. Additionally, the FTB'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 COMPLIANCE	FINDING NO. 22	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 FTB 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 FTB 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 160 permanent FTB employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

SEVERITY: SERIOUS	FINDING NO. 23	PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES
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Summary: The FTB did not provide annual performance appraisals to 18 of 160 employees reviewed after the completion of the employee's probationary period. This is the second consecutive time this has been a finding for the FTB.

- 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 employees are apprised of work performance issues and/or goals in a systematic manner.
- Cause:** The FTB did not have a process in place to ensure that performance evaluations were completed.
- Corrective Action:** Within 90 days of the date of this report, the FTB 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 FTB's response is attached as Attachment 1.

SPB REPLY

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



DATE: September 22, 2023

TO: State Personnel Board, Compliance Review Unit

FROM: Amy Tong, Secretary

SUBJECT: California State Personnel Board – FTB Compliance Review Report

Pursuant to the above audit report, enclosed are the Franchise Tax Board's comments pertaining to the results of the audit.

The Government Operations Agency would like to thank the California State Personnel Board for its comprehensive review. The results provide us with the opportunity to better serve our clients and protect the public.

Enclosures



STATE OF CALIFORNIA
Franchise Tax Board

09.22.2023

To: State Personnel Board, Compliance Review Unit
From: Candie Malone, Director, Business and Human Resources Bureau

Memorandum

Subject: Response to Final SPB Compliance Review

The following are the Franchise Tax Board's (FTB) responses to the findings in the recent State Personnel Board (SPB) Compliance Review.

FINDING NO. 3 – Probationary evaluations were not provided for all appointments reviewed and some that were provided were untimely.

Cause: In the instances where a probationary report was not on file for the employees in question, it was either due to the supervisor not “launching/initiating” the report or not completing all steps once launched. During the time period in question, even though emails and reminders were sent to the supervisors, there was no escalation or compliance process in place to ensure that the reports were being done timely.

FTB Response: We plan on adding the second level supervisor to the email reminder to ensure the requirement is communicated and escalated up the management chain. In addition, we are implementing a compliance check to ensure probationary reports are completed.

FINDING NO. 4 – Department did not provide benefit information in accordance with civil service law.

Cause: Prior to 2022, FTB did not have a standard procedure instructing hiring supervisors to provide standardized benefit information to all new hires. FTB completed the creation of a process and procedures in July of 2020 in response to Government Code 19057.2. We rolled the concept out to the department in July 2020 through 2021. During 2021, there was some inconsistency with employees receiving information based on the rollout schedule. Depending on the schedule, some employees could not have received the letter during the audit period.

FTB Response: Due to the inconsistencies, FTB implemented an official offer letter in the middle of 2021. This letter includes salary and benefit information as required. The letter was implemented in phases. The entire enterprise was brought on board by the end of 2022. This process ensures that all applicants have all the benefit information prior to officially accepting or denying the appointment.

FINDING NO. 5 – Appointment documentation was not kept for the appropriate amount of time.

Cause: FTB experienced a very high vacancy and turnover rate with their Personnel Specialists during this period. Additionally, we had to quickly transition to a telework environment during the pandemic, which resulted in a failure to ensure that all appointment documentation was filed correctly and promptly in the Official Personnel Folders.

FTB Response: FTB understands the importance of retaining the Notice of Personnel Action (NOPA) and has implemented an electronic signature and tickler process to ensure NOPAs are properly filed and maintained.

FINDING NO. 8 – Ethics training was not provided for all filers.

Cause: Although all 209 new filers examined by the SPB completed the ethics training, thus making them aware of the prohibitions related to their official position and influence, FTB's process was not sufficient to ensure eight of those employees completed the training within six months of their appointment dates.

FTB Response: In January 2023, FTB implemented an automated IT solution that tracks employees' ethics training obligations. The solution allows FTB to run reports at least every quarter to identify employees who still need to complete ethics training. FTB's new automated IT solution will help ensure all new filers comply with their obligation to complete the training within six months of their appointment.

FINDING NO. 9 – Supervisory training was not provided for all supervisors, managers, and CEAs.

Cause: The new manager who was identified in the report as noncompliant received their reminder, registered for, and began their new manager training within the 12-month period, but didn't complete it until a few days after the due date. The new CEAs identified in the report were both notified of their training requirement and received multiple reminders of their need to complete the required training. They ended up not completing the training on time due to competing workload demands. Even though this is not an acceptable reason for not meeting the deadline, their completion ended up being late because there was no escalation process in place at that time for noncompliance.

FTB Response: We are currently implementing a process that includes improved communication, compliance reporting, and an escalation process to FTB's Talent Management leadership as well as to the management of the new supervisors/managers/CEAs who are noncompliant as of certain points in time.

FINDING NO. 10 – Sexual harassment prevention training was not provided for all supervisors.

Cause: During the applicable period, FTB's process for tracking new supervisors was primarily manual. This process involved utilizing monthly reports to identify newly appointed supervisors to enroll them into the first available supervisory block training, which includes a sexual harassment prevention component. FTB recognizes the importance of sexual harassment prevention training to ensure a safe and productive work environment for its employees. We acknowledge that due to unforeseen challenges related to training schedules and manually tracking new supervisor appointments, training for five out of 117 new supervisors was not completed within the required timeframe.

FTB Response: After the applicable audit period, FTB's process was enhanced so that FTB's Learning Management System (LMS) automatically enrolls newly appointed supervisors, within the first 30 days of their appointment, into sexual harassment prevention training separate from FTB's supervisory block training. A 30-day deadline is set for the training and the LMS sends emails to the new supervisor and their direct supervisor every 15 days until the required training is completed. This solution also allows FTB to regularly monitor the training and identify new supervisors at risk of not complying with the six-month training requirement.

FINDING NO. 16 – Incorrect authorization of out-of-class pay.

Cause: There were pay discrepancies found within the Out-of-Class Pay group. In our computations, FTB did not account for the hourly versus full time rates and the potential salary adjustments.

FTB Response: We are reviewing all the discrepancies identified and will be making the necessary adjustments. Moving forward we have implemented additional quality review to ensure Out-of-Class Pay is computed properly.

FINDING NO. 19 – Incorrectly posted leave usage and/or leave credit.

Cause: FTB's official record of leave accounting is our internal system, TimePortal. We share a leave usage file monthly with SCO and have processes in place to manually update the Leave Accounting System (LAS) for transactions that fall outside of the file sharing dates. The business area had high turnover and some

manual procedures were overlooked as we transitioned to an online methodology during COVID. FTB understands the importance of ensuring our official leave accounting records match LAS and we have implemented stronger procedures and quality review to ensure leave usage is recorded accurately in LAS.

FTB Response: We have implemented a process where we run a monthly report to identify any discrepancies and correct them. We have also implemented a process in cases where an employee separates or transfers to another department. In these cases, the Personnel Specialist works all discrepancies and updates both TimePortal and LAS before they process the separation to ensure the leave balances are accurate before separation or transfer. We have corrected all of the accounts with findings.

FINDING NO. 23 – Performance appraisals were not provided to all employees.

Cause: In the instances where a performance evaluation was not on file for the employees in question, it was either due to the supervisor not “launching/initiating” the report or not completing all steps once launched. FTB has consistently sent emails to supervisors and managers reminding them of the requirement.

FTB Response: FTB has improved this process by implementing a series of emails that go out to update the managers around the process of annuals. To further improve our compliance, FTB will be implementing a compliance process that is escalated through our executive management.

FTB appreciates the opportunity to respond to the findings and share our process improvements. If you have any questions, please contact Candie Malone at candie.malone@ftb.ca.gov or at (916)845-4937.

Sincerely,

Patricia Carte on behalf of Candie Malone

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