



# **COMPLIANCE REVIEW REPORT**

## **DEPARTMENT OF GENERAL SERVICES**

Compliance Review Unit  
State Personnel Board  
June 27, 2022

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## INTRODUCTION

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

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

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

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

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

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

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

### **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of the Department of General Services' (DGS) 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
Appointments	Technical	Appointment Documentation Was Not Kept for the Appropriate Amount of Time <sup>1</sup>
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Supervisors <sup>2</sup>

<sup>1</sup> Repeat finding for the third consecutive time. The November 13, 2015, DGS Review Report identified 41 NOPAs and 9 job opportunity bulletins not being retained from 43 appointment files. The April 19, 2019, DGS Compliance Review Report identified 4 NOPAs not being retained from 43 appointment files.

<sup>2</sup> Repeat Finding. The April 19, 2019, DGS Compliance Review Report identified 41 of 189 new supervisors not receiving sexual harassment prevention training within 6 months of appointment. In addition, the report identified 15 of 236 existing supervisors not receiving sexual harassment prevention training every 2 years.

Area	Severity	Finding
Compensation and Pay	Very Serious	Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment <sup>3</sup>
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	Very Serious	Incorrect Authorization of Bilingual Pay <sup>4</sup>
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 <sup>5</sup>
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Serious	Administrative Time Off Was Not Properly Documented
Leave	Serious	Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely <sup>6</sup>
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

<sup>3</sup> Repeat Finding. The April 19, 2019, DGS Compliance Review Report identified one error in the DGS' determination of employee compensation.

<sup>4</sup> Repeat Finding: The April 19, 2019, DGS Compliance Review Report identified three of six employees who did not qualify to receive bilingual pay.

<sup>5</sup> Repeat Finding. The April 19, 2019, DGS Compliance Review Report identified one error in five OOC payments issued.

<sup>6</sup> Repeat Finding. The April 19, 2019, DGS Compliance Review Report identified the DGS failing to implement a monthly internal audit process to verify all timesheets were keyed accurately and timely.

Area	Severity	Finding
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
Policy	Serious	Performance Appraisals Were Not Provided to All Employees <sup>7</sup>

**BACKGROUND**

The DGS serves as business manager for the state of California, with more than 3,600 employees and a budget in excess of \$1 billion. DGS serves the public by providing a variety of services to state agencies through procurement and acquisition solutions; real estate management and design; environmentally friendly transportation; professional printing, design and web services; administrative hearings; legal services; building standards; oversight of structural safety, fire/life safety and accessibility for the design and construction of K-12 public schools and community colleges; funding for school construction; and, disability access.

**SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the DGS' examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>8</sup>. The primary objective of the review was to determine if the DGS' personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR's policies and guidelines, CalHR's Delegation Agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the DGS' examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the DGS provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed

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<sup>7</sup> Repeat Finding. The April 19, 2019, DGS Compliance Review Report identified 29 of 40 employees reviewed as not receiving performance appraisals.

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

the DGS' permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

A cross-section of the DGS' appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the DGS 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 DGS did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the DGS did not make any additional appointments during the compliance review period.

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

The review of the DGS' 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 DGS' PSC's were also reviewed.<sup>9</sup> It was beyond the scope of the compliance review to make conclusions as to whether the DGS' justifications for the contracts were legally sufficient. The review was limited to whether the DGS' practices, policies, and procedures relative to PSC's complied with procedural requirements.

The DGS' mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors,

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<sup>9</sup>If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

managers, and those in Career Executive Assignments (CEA) were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the DGS' 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 DGS' units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the DGS' 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 DGS employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of DGS 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 DGS' policies and processes concerning nepotism, workers' compensation, and performance appraisals. The review was limited to whether the DGS' policies and processes adhered to procedural requirements.

On March 30, 2022, an exit conference was held with the DGS to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DGS' written response on April 29, 2022, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The

advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) The final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, December 2, 2020, through May 31, 2021, the DGS conducted 14 examinations. The CRU reviewed nine of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps.
Assistant Procurement Engineer	Open	Training and Experience (T&E) <sup>10</sup>	3/15/2021	9
Associate Procurement Engineer	Open	T&E	3/15/2021	2
CEA B, Chief, Office of Fiscal Services	CEA	Statement of Qualifications (SOQ) <sup>11</sup>	1/30/2021	12
Presiding Administrative Law Judge	Open	T&E	12/17/2020	7
Presiding Administrative Law Judge	Open	T&E	3/15/2021	6
Principal Structural Engineer	Open	T&E	3/15/2021	2
Printing Process and Operations Planner	Open	T&E	3/15/2021	2
Printing Trades Specialist Trainee	Open	T&E	12/15/2020	1
Printing Trades Specialist Trainee	Open	T&E	3/15/2021	5

<b>IN COMPLIANCE</b>	<b>FINDING NO. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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<sup>10</sup> The Training and Experience examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values.

<sup>11</sup> In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

The CRU reviewed one CEA and eight open examinations which the DGS administered in order to create eligible lists from which to make appointments. The DGS published and distributed examination bulletins containing the required information for all examinations. Applications received by the DGS were accepted prior to the final filing date. Applicants were notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examinations that the DGS 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, December 2, 2020, through May 31, 2021, the DGS conducted two permanent withhold actions. The CRU reviewed those two permanent withhold actions, which are listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Associate Governmental Program Analyst	9PB04	11/6/2020	12/30/2020	Failed to Meet Minimum Qualifications
Associate Governmental Program Analyst	9PB04	8/9/2020	12/29/2020	Failed to Meet Minimum Qualifications

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

### **Appointments**

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250, subd. (b).) Interviews shall be conducted using job-related criteria. (*Ibid.*) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250, subd. (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (*Ibid.*) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250, subd. (e).)

During the period under review, December 2, 2020, through May 31, 2021, the DGS made 272 appointments. The CRU reviewed 26 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Assistant Chief Counsel	Certification List	Permanent	Full Time	1
Associate Accounting Analyst	Certification List	Permanent	Full Time	1
Associate Architect	Certification List	Permanent	Full Time	1
Attorney III	Certification List	Permanent	Full Time	1
Bookbinder IV	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Chief Engineer I	Certification List	Permanent	Full Time	1
Custodian	Certification List	Permanent	Full Time	1
Electrician I	Certification List	Permanent	Full Time	1
Groundskeeper	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Personnel Supervisor I	Certification List	Permanent	Full Time	1
Principal Architect	Certification List	Permanent	Full Time	1
Space Planner	Certification List	Permanent	Full Time	1
Staff Real Estate Officer	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	1
Accounting Officer (Specialist)	Permissive Reinstatement	Permanent	Full Time	1
Senior Personnel Specialist	Training & Development	Permanent	Full Time	1
Staff Services Manager I	Training & Development	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Lead Groundskeeper	Transfer	Permanent	Full Time	1
Maintenance Mechanic	Transfer	Permanent	Full Time	1
Personnel Specialist	Transfer	Permanent	Full Time	1
Plumber I	Transfer	Permanent	Full Time	1
Senior Architect	Transfer	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Transfer	Permanent	Full Time	1

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 3 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED</b>
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**Summary:** The DGS did not provide 12 probationary reports of performance for 6 of the 26 appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Associate Accounting Analyst	List Appointment	1	1
Electrician I	List Appointment	1	3

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Groundskeeper	List Appointment	1	3
Office Technician (Typing)	List Appointment	1	1
Personnel Supervisor I	List Appointment	1	1
Staff Real Estate Officer	List Appointment	1	3

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

**Severity:** Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

**Cause:** Despite the methods used by the DGS’ Office of Human Resources (OHR) informing supervisors of the requirements to complete probation reports, not all supervisors provided timely probationary reports.

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

<b>SEVERITY: TECHNICAL</b>	<b>FINDING NO. 4 APPOINTMENT DOCUMENTATION WAS NOT KEPT FOR THE APPROPRIATE AMOUNT OF TIME</b>
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**Summary:** Of the 26 appointments reviewed, the DGS did not retain 9 NOPAs. This is the second consecutive time this has been a finding for the DGS.

**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 DGS has an established process for retaining NOPA's; however, many new staff may not be familiar with the retention process and filing is currently backlogged due to high turnover. Since the last SPB Compliance Review in 2019, only one employee remains with the OHR's Personnel Transactions Unit, and all other staff are new.

**Corrective Action:** Within 90 days of the date of this report, the DGS 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	<b>FINDING NO. 5</b> <b>EQUAL EMPLOYMENT OPPORTUNITY PROGRAM</b> <b>COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD</b> <b>RULES</b>
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After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the DGS' 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 DGS. The DGS also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

## Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the state. (Cal. Code Regs., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state’s authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC’s achieve cost savings for the state. PSC’s that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include, but are not limited to, private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC’s, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the period under review, December 2, 2020, through May 31, 2021, the DGS had 335 PSC’s that were in effect. The CRU reviewed 25 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Advantage Total Protection	Fire Alarm System Monitoring	1/21/2021 – 1/20/2024	\$103,565	Yes	Yes
AECOM Technical Services, Inc.	Water Treatment Plant Operations and Maintenance	2/1/20210 – 1/31/2023	\$3,760,916	Yes	No
Aqua-Serv Engineers, Inc.	Water Treatment	1/25/2021 – 1/24/2024	\$32,568	Yes	Yes
Capitol Elevator Co., Inc.	Elevator Service and Maintenance	2/19/2021 – 2/18/2022	\$20,772	Yes	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Centela Capital Inc. dba Dictate Express	Transcription Services	3/1/2021 – 2/15/2023	\$140,698	Yes	Yes
DB Backflow & Plumbing Service	Backflow Testing and Certification	11/30/2020 – 11/24/2023	\$30,940	Yes	Yes
Dean Gazzo Roistacher LLP	Legal Representation Services	3/3/2021 – 4/25/2023	\$150,000	Yes	Yes
Division 5-15, A California Corporation	Sewer Pump Replacement	3/12/2021 – 3/7/2022	\$39,000	Yes	Yes
ECO-Alpha Environmental and Engineering Services, Inc.	Engineering Staffing Services	12/1/2020 – 11/30/2023	\$8,497,053	Yes	Yes
First Data Merchant Services	Electronic Pay Services	3/9/2021 – 5/31/2022	\$15,000	Yes	Yes
Gartner, Inc.	IT Leadership Services	7/1/2021 – 6/30/2022	\$96,760	Yes	No
JDI Electrical Services Inc.	Switchgear Repair, Inspection, and Testing	9/29/2020 – 9/28/2021	\$142,560	Yes	No
Johnson Controls Inc.	Chiller Preventative Maintenance	9/1/2020 – 8/31/2023	\$80,652	Yes	Yes
Johnson Controls Inc.	Chiller Preventative Maintenance	5/10/2021 – 5/9/2024	\$1,559,425	Yes	No
Muller Martini Corp.	Equipment Maintenance	2/8/2021 – 2/7/2022	\$88,000	Yes	No
National Fire Systems, Inc.	Fire Extinguisher Service	5/3/2021 – 5/2/2024	\$22,026	Yes	Yes
Northern Cali Court Reporter	Transcription Services	11/01/2020 – 10/31/2021	\$16,350	Yes	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Porter Scott, A Professional Corporation	Legal Representation Services	4/26/2021 – 4/25/2023	\$150,000	Yes	Yes
Power Solutions	Generator Maintenance and Repair	3/15/2021 – 3/14/2024	\$161,187	Yes	Yes
Pressman's Pride	Roller Recovery Services	11/01/2020 – 10/31/2022	\$144,725	Yes	Yes
Santa Cruz Metal Works	Welding Services	12/01/2020 – 11/30/2023	\$153,480	Yes	Yes
Singh Group, Inc.	Tree Trimming Services	11/17/2020 – 11/16/2023	\$28,650	Yes	Yes
Stanley Access Techs LLC	Automatic Door Maintenance	1/25/2021 – 12/14/2023	\$130,820	Yes	Yes
TravelStore, Inc.	Travel Reservation Services	4/10/2020 – 4/9/2021	\$3,000,000	Yes	Yes
Vinyard Doors Inc.	Door Maintenance	11/20/2020 – 11/19/2023	\$153,488	Yes	Yes

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 6 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS</b>
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**Summary:** The DGS did not notify unions prior to entering into 5 of the 25 PSC's reviewed.

**Criteria:** The contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted. (Gov. Code, § 19132, subd. (b)(1).)

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

**Cause:** The DGS has documented expectations for these union notifications to occur; however, the notification part of the process was not consistently reviewed by supervisors. The DGS found some inconsistencies in proper procurement file documentation as analysts transitioned from paper files to electronic files while adapting to the hybrid work environment due to the pandemic and emergency telework.

**Corrective Action:** It is the contracting department's responsibility to identify and notify any unions whose members could potentially perform the type of work to be contracted prior to executing a PSC. Within 90 days of the date of this report, the DGS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### **Mandated Training**

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

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

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of

probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the DGS' mandated training program that was in effect during the compliance review period, May 31, 2019, through May 31, 2021.

<b>SEVERITY:</b> <b>VERY SERIOUS</b>	<b>FINDING NO. 7 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS</b>
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**Summary:** The DGS did not provide ethics training to 23 of 106 existing filers. In addition, the DGS did not provide ethics training to 11 of 55 new filers within 6 months of their appointment.

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

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

**Cause:** Prior to the Covid-19 pandemic, the DGS provided in-person Ethics training to its employees multiple times a year. When employees were mandated to work from home, the DGS shifted to virtual instructor led training which caused a gap in the training offered. There was a delay in acquiring the technology and tools to teach virtually, the training content was not virtual-friendly and the key trainer retired which resulted in not all new or existing filers completing Ethics training in a timely manner.

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

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

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 8 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS</b>
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**Summary:** The DGS did not provide sexual harassment prevention training to 20 of 75 new supervisors within 6 months of their appointment. In addition, the DGS did not provide sexual harassment prevention training to 99 of 542 existing supervisors every 2 years. This is the second consecutive time this has been a finding for the DGS.

**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:** During the Covid-19 pandemic, the DGS made many adjustments for mandated trainings including working with a vendor to provide webinars and ensuring that staff and access and knowledge on how to complete the virtual trainings. However, the DGS discovered it was challenging for the DGS staff that works a multitude of shifts (i.e. day, evening and night) to participate in the webinars due to the limited times offered by the vendor.

**Corrective Action:** Within 90 days of the date of this report, the DGS 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 the CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee’s salary rate<sup>12</sup> upon appointment depending on the appointment type, the employee’s state employment and pay history, and tenure.

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

During the period under review, December 2, 2020, through May 31, 2021, the DGS made 272 appointments. The CRU reviewed 24 of those appointments to determine if the DGS applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Assistant Chief Counsel	Certification List	Permanent	Full Time	\$14,092
Associate Accounting Analyst	Certification List	Permanent	Full Time	\$5,406
Associate Architect	Certification List	Permanent	Full Time	\$8,293
Attorney III	Certification List	Permanent	Full Time	\$11,503
Bookbinder IV	Certification List	Permanent	Full Time	\$4,903
Chief Engineer I	Certification List	Permanent	Full Time	\$6,696
Custodian	Certification List	Permanent	Full Time	\$2,731
Electrician I	Certification List	Permanent	Full Time	\$4,751
Groundskeeper	Certification List	Permanent	Full Time	\$3,788
Office Technician (Typing)	Certification List	Permanent	Full Time	\$3,144
Personnel Supervisor I	Certification List	Permanent	Full Time	\$5,797

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<sup>12</sup> “Rate” is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Principal Architect	Certification List	Permanent	Full Time	\$13,691
Space Planner	Certification List	Permanent	Full Time	\$3,750
Staff Real Estate Officer	Certification List	Permanent	Full Time	\$5,959
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,281
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	\$7,017
Accounting Officer (Specialist)	Permissive Reinstatement	Permanent	Full Time	\$4,496
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	\$6,446
Lead Groundskeeper	Transfer	Permanent	Full Time	\$4,142
Maintenance Mechanic	Transfer	Permanent	Full Time	\$5,222
Personnel Specialist	Transfer	Permanent	Full Time	\$4,102
Plumber I	Transfer	Permanent	Full Time	\$5,241
Senior Architect	Transfer	Permanent	Full Time	\$12,223
Staff Services Manager II (Supervisory)	Transfer	Permanent	Full Time	\$8,352

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 9 INCORRECT APPLICATION OF SALARY DETERMINATION LAWS, RULES, AND CALHR POLICIES AND GUIDELINES FOR APPOINTMENT</b>
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**Summary:** The CRU found one error, as identified below, in the DGS' determination of employee compensation. This is the second consecutive time this has been a finding for the DGS.

Classification	Description of Finding	Criteria
Staff Real Estate Officer	Employee should not have received a five percent range differential when appointed to their new classification, resulting in an overpayment.	Cal. Code Regs., tit. 2, § 599.674, subd. (a)

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

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

**Cause:** The cause for this finding can be attributed to human error in the interpretation and application of the salary rules. The State Controller's Office (SCO) provides salary determination training and due to turnover at the SCO, the training class was not provided for more than a year. In the interim, the DGS' OHR's supervisors provided training to new staff.

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

#### Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges. (Cal. Code Regs., tit. 2, § 599.681.) However, in many instances, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria. (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, December 2, 2020, through May 31, 2021, the DGS employees made six alternate range movements within a classification. The CRU reviewed all nine of those alternate range movements to determine if the DGS 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)
Information Technology Associate	A	B	Full Time	\$4,632
Personnel Specialist	A	B	Full Time	\$3,768
Staff Services Analyst (General)	B	C	Full Time	\$4,281
Staff Services Analyst (General)	B	C	Full Time	\$4,356
Staff Services Analyst (General)	B	C	Full Time	\$4,692
Staff Services Analyst (General)	B	C	Full Time	\$4,423

<b>IN COMPLIANCE</b>	<b>FINDING NO.10 ALTERNATIVE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the alternate range movements the DGS made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Hiring Above Minimum Requests

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

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

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.<sup>13</sup> (Gov. Code, § 19836, subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary 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, December 2, 2020, through May 31, 2021, the DGS authorized six HAM requests. The CRU reviewed all of those authorized HAM requests to determine if the DGS 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)
Attorney III	Certification List	Permanent	\$9,463 – \$12,140	\$10,955
Attorney III	Certification List	Permanent	\$9,463 – \$12,140	\$11,503
Information Technology Specialist I	Certification List	Permanent	\$5,562 – \$7,454	\$7,454

<sup>13</sup> Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Information Technology Specialist I	Certification List	Permanent	\$6,715 – \$8,999	\$8,500
Senior Legal Typist	Certification List	Permanent	\$3,030 – \$3,795	\$3,301
Senior Legal Typist	Certification List	Permanent	\$3,388 – \$4,236	\$3,388

<b>IN COMPLIANCE</b>	<b>FINDING NO.11 HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found that the HAM requests the DGS 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, December 2, 2020, through May 31, 2021, the DGS issued bilingual pay to nine employees. The CRU reviewed all nine 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 Governmental Program Analyst	R01	Full Time	3
Office Technician (Typing)	R04	Full Time	3
Senior Legal Typist	R04	Full Time	2
Special Investigator	R07	Full Time	1

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO.12 INCORRECT AUTHORIZATION OF BILINGUAL PAY</b>
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**Summary:** The CRU found nine errors in the DGS' authorization of bilingual pay. This is the second consecutive time this has been a finding for the DGS.

Classification	No. of Positions	Description of Findings	Criteria
Associate Governmental Program Analyst	1	Department failed to supply documentation showing the employee passed an oral fluency exam.	Government Code section 7296
Associate Governmental Program Analyst	2	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Pay Differential 14
Office Technician (Typing)	3	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Pay Differential 14
Senior Legal Typist	2	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Pay Differential 14
Special Investigator	1	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Pay Differential 14

**Criteria:** For any state agency, a "qualified" bilingual employee, person, or interpreter is someone who the CalHR has tested and certified, someone who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as

proficient in both the English language and the non-English language to be used. (Gov. Code, § 7296, subd. (a)(3).) An individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on a continuing basis averaging 10 percent of the time spent either conversing, interpreting or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions. (Pay Differential 14.)

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

**Cause:** The cause for this finding can be attributed to lack of adequate transfer of knowledge and training from previous staff when they left the DGS. Additionally, there was a lack of checks and balances as well as unclear roles and responsibilities regarding bilingual pay authorization.

**Corrective Action:** Within 90 days of the date of this report, the DGS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 7296, and/or Pay Differential 14. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention. (Classification and Pay Manual Section 230.)

California State Civil Service Pay Scales Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, December 2, 2020, through May 31, 2021, the DGS authorized 137 pay differentials.<sup>14</sup> The CRU reviewed 14 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Administrative Law Judge I	84	5%
Administrative Law Judge II (Specialist)	84	5%
Administrative Law Judge II (Specialist)	84	5%
Administrative Law Judge III	84	5%
Administrative Law Judge III	84	5%
Architectural Designer	433	3%
Chief Engineer II	435	\$100
Chief Engineer II	435	\$100
Legal Secretary	141	10%
Legal Secretary	141	10%
Principal Structural Engineer	261	\$300
Printing Trades Specialist Trainee (General)	86	10%
Printing Trades Specialist Trainee (General)	86	8%
Senior Structural Engineer	261	\$300

<b>IN COMPLIANCE</b>	<b>FINDING NO.13 PAY DIFFERENTIAL AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the pay differentials that the DGS 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.

<sup>14</sup> For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

## Out-of-Class Assignments and Pay

For excluded<sup>15</sup> and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

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

During the period under review, December 2, 2020, through May 31, 2021, the DGS issued OOC pay to 11 employees. The CRU reviewed eight of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and the CalHR's policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Associate Governmental Program Analyst	R01	Staff Services Manager I	12/2/2021 – 12/31/2021
Associate Personnel Analyst	R01	Staff Services Manager I	12/2/2020 – 1/31/2021
Offset Press Assistant	R14	Webfed Offset Press Operator II	12/2/2021 – 12/31/2021
Staff Services Manager I	S01	Staff Services Manager II	4/1/2021 – 4/30/2021
Supervising Structural Engineer	S09	Principal Structural Engineer	3/2/2021 – 4/30/2021

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<sup>15</sup> "Excluded employee" means an employee as defined in Government Code section 3527, subdivision (b) (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to Government Code section 18801.1.

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Webfed Offset Press Operator II	R14	Webfed Offset Press Operator IV	12/2/2021 – 12/31/2021
Webfed Offset Press Operator III	R14	Webfed Offset Press Operator IV	12/2/2021 – 12/31/2021
Webfed Offset Press Operator III	R14	Webfed Offset Press Operator IV	12/2/2021 – 12/31/2021

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING No.14 INCORRECT AUTHORIZATION OF OUT-OF-CLASS PAY</b>
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**Summary:** The CRU found six errors in the DGS' authorization of OOC pay. This is the second consecutive time this has been a finding for the DGS.

Classification	Out-of-Class Classification	Description of Finding(s)	Criteria
Associate Governmental Program Analyst	Staff Services Manager I	The OOC was not properly calculated for December 2020, resulting in the employee being overcompensated.	Pay Differential 91
Offset Press Assistant	Webfed Offset Press Operator II	The 9.23 percent Personal Leave Program reduction was not taken into consideration when determining the OOC pay rate which resulted in the employee being overcompensated.	Pay Differential 96
Staff Services Manager I	Staff Services Manager II	The OOC was not properly calculated for April 2021, resulting in the employee being overcompensated.	Pay Differential 101
Webfed Offset Press Operator II	Webfed Offset Press Operator IV	The 9.23 percent Personal Leave Program reduction was not taken into consideration when determining the OOC pay rate which resulted in the employee being overcompensated.	Pay Differential 96
Webfed Offset Press Operator III	Webfed Offset Press Operator IV	The 9.23 percent Personal Leave Program reduction was not taken into consideration when determining the OOC pay rate which resulted in the employee being overcompensated.	Pay Differential 96

Classification	Out-of-Class Classification	Description of Finding(s)	Criteria
Webfed Offset Press Operator III	Webfed Offset Press Operator IV	The 9.23 percent Personal Leave Program reduction was not taken into consideration when determining the OOC pay rate which resulted in the employee being overcompensated.	Pay Differential 96

**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 DGS 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 cause for this finding can be attributed to a lack of knowledge on OOC pay when the salary reduction for the Personal Leave Program 2020 was in place. Although the DGS has tools in place (e.g. Excel spreadsheets) for OOC pay to assist with the base salary calculations, it does not appear that one was created for the time when the 9.23% salary reduction was in place.

**Corrective Action:** Within 90 days of the date of this report, the DGS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.810 and Pay Differentials 91, 96 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 in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days<sup>16</sup> worked and paid absences<sup>17</sup>, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd.

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<sup>16</sup> For example, two hours or ten hours count as one day.

<sup>17</sup> For example, vacation, sick leave, compensating time off, etc.

(b.) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

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

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

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

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 DGS had 45 positive paid employees whose hours were tracked. The CRU reviewed 11 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
Information Technology Specialist I	Retired	7/1/2019 – 6/30/2020	238.75 hours
Maintenance Mechanic	Permanent	1/1/2021 – 12/31/2021	1,185.5 hours
Maintenance Mechanic	Permanent	1/1/2021 – 12/31/2021	1,012 hours
Project Director II	Retired	7/1/2019 – 6/30/2020	771 hours
Seasonal Clerk	Temporary	8/31/2020 – 6/30/2021	977.5 hours
Senior Structural Engineer	Retired	7/1/2019 – 6/30/2020	772 hours
Senior Structural Engineer	Retired	7/1/2019 – 6/30/2020	665 hours

Skilled Trades Journeyperson (Casual Employment)	Temporary	12/29/2020 – 6/30/2021	83 hours
Skilled Trades Journeyperson (Casual Employment)	Temporary	5/4/2021 – 6/30/2021	324 hours
Skilled Trades Journeyperson (Casual Employment)	Temporary	12/3/2020 – 3/31/2021	458 hours
Staff Services Manager I	Retired	7/1/2019 – 6/30/2020	1,172 hours

<b>IN COMPLIANCE</b>	<b>FINDING NO.15 POSITIVE PAID EMPLOYEES’ TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The DGS provided sufficient justification and adhered to applicable laws, regulations and the CalHR’s 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, March 1, 2020, through March 1, 2021, the DGS authorized 3239 ATO transactions. The CRU reviewed 20 of these ATO transactions to ensure compliance with applicable laws, regulations, and the CalHR’s policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Associate Governmental Program Analyst	9/30/2020 – 10/6/2020	32 hours
CEA	6/1/2020 – 6/22/2020	80 hours
CEA	1/7/2021 – 1/26/2021	80 hours
Chief Engineer II	6/1/2020 – 6/2/2020	12 hours
Construction Supervisor I	6/1/2020	8 hours
Construction Supervisor I	6/1/2020	8 hours

Classification	Time Frame	Amount of Time on ATO
Construction Supervisor I	6/2/2020	8 hours
Construction Supervisor II	6/2020 8/17/2020 – 8/19/2020	4.5 hours 18 hours
Custodian	4/14/2020 – 5/29/2020	112 hours
Custodian	1/25/2021 – 3/25/2021	224 hours
Custodian Supervisor I	3/21/2020 – 5/20/2020	320 hours
Electrician I	3/9/2021 – 3/15/2021	208 hours
Electrician I	3/9/2021 – 3/10/2021	168 hours
Fire and Life Safety Officer II	8/18/2020 – 8/19/2020	4.5 hours
Groundskeeper	6/1/2020 – 7/16/2020	256 hours
Inspector of Automotive Equipment	2/14/2020 – 6/13/2020	680 hours
Office Assistant (Typing)	6/1/2020 – 6/5/2020	40 hours
Painter I	3/2/2020 – 3/30/2020	50 hours
Research Data Specialist I	6/23/2020 – 6/30/2020	48 hours
Stationary Engineer	6/1/2020 – 6/2/2020	16 hours

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO.16 ADMINISTRATIVE TIME OFF WAS NOT PROPERLY DOCUMENTED</b>
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**Summary:** The DGS did not grant ATO in conformity with the established policies and procedures. Of the 20 ATO authorizations reviewed by the CRU, the 18 hours ATO for the Construction Supervisor II was found to be out of compliance for failing to document justification for ATO.

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

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

authority fails to request approval from the CalHR to extend the ATO, the employee must be returned to work in some capacity. (*Ibid.*)

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

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

**Cause:** The cause for this finding can be attributed to lack of adequate checks and balances in place.

**Corrective Action:** Within 90 days of the date of this report, the DGS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19991.10 and Human Resources Manual Section 2121. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### 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, December 2, 2020, through March 1, 2021, the DGS reported 316 units comprised of 3,919 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
December 2020	563	11	11	0
December 2020	931	15	15	0
December 2020	972	12	12	0
December 2020	580	10	10	0
January 2021	510	17	17	0
January 2021	860	11	11	0
January 2021	972	11	11	0
January 2021	112	9	9	0
February 2021	599	22	22	0
February 2021	105	14	14	0

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO.17 DEPARTMENT HAS NOT IMPLEMENTED A MONTHLY INTERNAL AUDIT PROCESS TO VERIFY ALL LEAVE INPUT IS KEYED ACCURATELY AND TIMELY</b>
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**Summary:** The DGS failed to implement a monthly internal audit process to verify all timesheets were keyed accurately and timely and to certify that all leave records have been reviewed and corrected if necessary. This is the second consecutive time this has been a finding for the DGS.

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

corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)

**Severity:** Serious. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. Failure to audit leave could put the department at risk of incurring additional costs from the initiation of collection efforts from overpayments, and the risk of liability related to recovering inappropriately credited leave hours and funds.

**Cause:** The DGS is aware of the need to implement a monthly internal audit process. A high rate of turnover within OHR contributed to this finding.

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

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO.18 INCORRECTLY POSTED LEAVE USAGE AND/OR LEAVE CREDIT</b>
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**Summary:** The DGS did not correctly enter 4 of 48 timesheets into the Leave Accounting System during the December 2020 pay period and 2 of 48 timesheets during the January 2021 pay period. As a result, six 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:** Delays with employees and supervisors completing and approving timesheets cause the DGS' internal timekeeping system to not update leave balances automatically. While OHR had a manual process in place to correct this, staff turnover within the OHR combined with other competing priorities due to the Covid-19 pandemic, has delayed the corrections.

**Corrective Action:** Within 90 days of the date of this report, the DGS 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 considered to be a qualifying or non-qualifying pay period for state service and leave accruals.

Generally, an employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.<sup>18</sup> (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

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

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<sup>18</sup> Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, and 19997.4 and California Code of Regulations, title 2, sections 599.609, 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.776.1, 599.787, 599.791, 599.840 and 599.843 provide further clarification for calculating state time.

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs., tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs., tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees<sup>19</sup> shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

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

During the period under review, December 2, 2020, through March 1, 2021, the DGS had 12 employees with qualifying and non-qualifying pay period transactions. The CRU reviewed 14 transactions to ensure compliance with applicable laws, regulations and the CalHR’s policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Non-Qualifying Pay Period	Full Time	9
Qualifying Pay Period	Full Time	5

<b>IN COMPLIANCE</b>	<b>FINDING NO.19 SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the DGS 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.

**Policy and Processes**

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state

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<sup>19</sup> As identified in Government Code sections 19858.3, subdivisions (a), (b), or (c), or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subdivision (c), or California Code of Regulations, title 2, section 599.752, subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

workplace because it is antithetical to California’s merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

IN COMPLIANCE	<b>FINDING No.20 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the policy was disseminated to all staff and emphasized the DGS’ commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the DGS’ nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Workers’ Compensation

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

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

In this case, the DGS did not employ volunteers during the compliance review period.

IN COMPLIANCE	<b>FINDING NO.21 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the DGS 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 DGS 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 50 permanent DGS employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO.22 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b>
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**Summary:** The DGS did not provide annual performance appraisals to 33 of 50 employees reviewed after the completion of the employee's probationary period. This is the second consecutive time this has been a finding for the DGS.

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

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

**Cause:** Despite the methods used by the DGS' OHR to inform all supervisors of the requirements to complete performance appraisals, not all supervisors provided timely performance appraisals.

**Corrective Action:** Within 90 days of the date of this report, the DGS 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 DGS' departmental response<sup>20</sup> is attached as Attachment 1.

## **SPB REPLY**

Based upon the DGS' written response, the DGS will comply with the corrective actions specified in these report findings. Within 90 days of the date of this report, a written corrective action response including documentation demonstrating implementation of the corrective actions specified must be submitted to the CRU.

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<sup>20</sup> The DGS' departmental response is dated April 29, 2022; however, the DGS did not transmit its response to the CRU until June 1, 2022.

April 29, 2022

Suzanne M. Ambrose  
Executive Officer  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95818

Dear Ms. Ambrose:

The Department of General Services (DGS) has received the March 9, 2022, draft of the State Personnel Board's (SPB) Compliance Review Report (Report). Based on the compliance review conducted by the SPB Compliance Review Unit (CRU) of DGS' personnel practices in the areas of examinations, appointments, Equal Employment Opportunity (EEO), Personal Services Contracts, mandated training, compensation and pay, leave, and policy and processes, DGS provides the following responses and causes to each of the findings presented by SPB.

**Finding No. 3: Probationary Evaluations Were Not Provided for All Appointments Reviewed**

Summary

The summary by the CRU indicated that DGS did not provide a total of 12 probationary reports of performance for 6 of the 26 appointments reviewed by the CRU. This is the second consecutive time this has been a finding for DGS.

Cause

Despite the methods used by the DGS Office of Human Resources (OHR) to inform supervisors of the requirements to complete probationary reports, not all supervisors provided timely probationary reports.

Response

DGS managers and supervisors are responsible for providing probationary evaluations for all employees who complete a probationary period. Currently, DGS OHR sends email notifications generated automatically by the Activity Based Management System (ABMS) to all supervisors informing them of probationary report due dates when they hire a probationary employee. The first email notifies supervisors and the Attendance Clerk (AC) of an employee's new probation period and report due dates. There is an email reminder notifying

supervisors the employee's probation report is due in 21 days and another email reminder notifying supervisors the employee's probation report is due in seven (7) days prior to each of the three (3) probation reports. There is one (1) final email reminder notifying supervisors the employee's final probation report is due.

In addition to the email notifications, moving forward, the DGS leadership team will emphasize the importance of completing probationary reports in management meetings.

#### **Finding No. 4: Appointment Documentation Was Not Kept for the Appointment Appropriate Amount of Time**

##### Summary

The summary by the CRU indicated that DGS did not retain nine (9) Notice of Personnel Action (NOPA) forms out of the 26 appointments reviewed. This is the second consecutive time this has been a finding for DGS.

##### Cause

DGS has an established process for retaining NOPAs; however, DGS has new staff who may not be familiar with the process and due to high turnover, filing is currently backlogged. Since the last SPB Compliance Review in 2019, only one employee remains with the OHR Personnel Transactions Unit, and all other staff are new.

##### Response

To correct this finding in the future, DGS will document the current process by creating a process map for the NOPA procedures and retention to adapt to the hybrid work environment and provide training to new staff. DGS will continue to monitor appointment file documentation to ensure records are readily accessible and retained in an orderly and systematic manner in accordance with California Code of Regulations, Title 2, Section 26.

#### **Finding No. 6: Unions Were Not Notified of Personal Services Contracts**

##### Summary

DGS did not notify unions prior to entering into five (5) of the 25 Personal Services Contracts (PSC) reviewed.

##### Cause

Although DGS had documented expectations for these notifications to occur, this particular part of the process was not consistently reviewed by supervisors. It is unknown in these five (5) instances if the notification occurred prior to award and was not properly documented in the procurement file or if the analyst failed to notify the unions altogether. DGS found there to be some inconsistencies in

proper procurement file documentation as analysts transitioned from paper files to electronic files to adapt to the hybrid work environment due to the Covid-19 pandemic and emergency telework.

### Response

DGS has remedied this deficiency by completing the union notification of these contracts. DGS has put appropriate measures in place to ensure this does not happen in the future. These measures include adding the notification requirement to checklists, emphasizing the requirement in applicable desk manuals, reviewing at the supervisor level, and auditing by the section managers as well as additional training for staff on the notification process.

## **Finding No. 7: Ethics Training Was Not Provided for All Filers**

### Summary

The summary by the CRU indicated that DGS did not provide ethics training to 23 of 106 existing filers. In addition, DGS did not provide ethics training to 11 of 55 new filers within 6 months of their appointment.

### Cause

Prior to the Covid-19 pandemic, DGS provided in-person Ethics training to DGS employees up to five (5) times per year. In March 2019, DGS staff were mandated to work from home where possible due to the Covid-19 pandemic. DGS had to shift from in-person training to virtual instructor led training which caused a gap in training offered. There was a six (6) to eight (8) month delay in acquiring the technology and tools to teach virtually. DGS also encountered issues with the training content not being virtual-friendly and an inadequate transfer of knowledge from the trainer, as the key trainer retired. This resulted in not all new or existing filers completing the Ethics training in a timely manner.

In the past, DGS had multiple training systems in place to track training completions and DGS was dependent on program's Training Coordinators, whom were individuals with varying levels of Training Coordinator skills and knowledge, to track the training. DGS was in the process of implementing a Learning Management System (LMS), Blackboard, that failed to deliver at the pilot stage. This resulted in DGS implementing a new LMS, Cornerstone, in June 2021. DGS imported all the records available from the legacy systems to Cornerstone. However, the historic records were created by over eighty (80) different Training Coordinators for their respective divisions/offices; therefore, equating to inaccurate data being entered.

### Response

DGS reviewed the training records for the Ethics training and there are 34 "in progress" records remaining. DGS is working to correct this Finding and sent

communications through LMS to the employees and supervisors requesting employees take the training.

The Cornerstone LMS is a centralized location for all DGS training records. Employees and supervisors are notified when noncompliant employees are past due for the Ethics training. The LMS also has reports available to supervisors that track compliance. The system automatically assigns Ethics training to all mandated Form 700 filers. It also tracks the recertification period and assigns the training again before the compliance period ends. The automation within the LMS nullifies the need to depend on Training Coordinators entering information on behalf of other employees, as training records are maintained by the individual employee, in addition to the LMS.

DGS University will create compliance dashboards to be sent to DGS leadership on monthly basis. In addition, DGS leadership team will emphasize the importance of completing mandatory training in management meetings with their employees.

### **Finding No. 8: Sexual Harassment Prevention Training Was Not Provided for All Supervisors**

#### Summary

The summary by the CRU indicated that DGS did not provide sexual harassment prevention training to 20 of 75 new supervisors within 6 months of their appointment. In addition, the DGS did not provide sexual harassment prevention training to 99 of 542 existing supervisors every 2 years. This is the second consecutive time this has been a finding for the DGS.

#### Cause

During the Covid-19 pandemic, DGS made many adjustments for mandated trainings. DGS worked with the vendor to provide webinars and ensured staff had access and knowledge on how to use the virtual trainings. DGS discovered that it was challenging for the multitude of shifts (i.e., day, evening, night) that DGS staff work to participate in the webinars due to limited times offered by the vendor.

In the SPB Compliance Review from 2019, DGS stated it has been the responsibility of an employee's direct supervisor in conjunction with the program's Training Coordinator to ensure compliance and track completion of training. DGS planned to begin implementing a department wide LMS, Blackboard, which would automate and centralize mandatory training for all employees. The LMS, Blackboard, failed during the pilot period and was replaced by a different system, Cornerstone, which was fully implemented in June 2021.

### Response

DGS reviewed the training records for the sexual harassment prevention training. There are 19 new supervisors identified by SPB who need to complete the training and three (3) supervisors who no longer work at DGS. There are 58 supervisors identified by SPB who need to complete the training and three (3) are no longer employed at DGS. DGS is working to correct this Finding by sending communications to the employees and supervisors requesting employees take the training by April 15, 2022.

DGS uses the current LMS, Cornerstone, for assigning, tracking completion, reassigning before compliance year expirations, and reporting on who takes the sexual harassment prevention training. Since implementing this system, DGS shifted to Department of Fair Employment and Housing (DFEH) sexual harassment prevention training course. DGS has made March the month for sexual harassment prevention training for all affected staff that are due for the training. Further, new hires are automatically assigned sexual harassment prevention training to be taken within 30-days of hire. This ensures compliance, as well as reassigns them the training before the 2-year requirement.

DGS University will create compliance dashboards to be sent to DGS leadership on monthly basis. In addition, DGS leadership team will emphasize the importance of completing mandatory training in management meetings with their employees.

### **Finding No. 9: Incorrect Applications of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment**

#### Summary

The summary by the CRU found one (1) error in the DGS' determination of employee compensation. This is the second consecutive time this has been a finding for the DGS.

#### Cause

The cause for this finding can be attributed to human error in the interpretation and application of the salary rules. The State Controller's Office (SCO) provides salary determination training and due to turnover at SCO, the training class was not provided for over a year. This resulted in DGS OHR supervisors providing training to new staff.

#### Response

DGS is working to correct the identified error and plans to correct no later than the 90-day corrective action period. The training class is now offered by SCO and part of the DGS OHR training plan is for staff to take the training class upon meeting pre-requisites. In addition, all salary determinations need a second level

review from a supervisor or manager prior to keying. Although this is the second consecutive time this has been a finding for the DGS, the SPB Compliance Review from 2019 appears to be a different reason than the one found for this finding.

## **Finding No. 12: Incorrect Authorization of Bilingual Pay**

### Summary

The summary by the CRU found nine (9) errors in DGS' authorization of bilingual pay. DGS failed to supply supporting documentation demonstrating the need for bilingual services. Additionally, the report noted DGS did not validate all Oral Fluency Exam results for authorization of bilingual pay. This is the second consecutive time this has been a finding for the DGS.

### Cause

The cause for this finding can be attributed to a lack of adequate transfer of knowledge and training from previous staff when they left DGS. Additionally, there was a lack of checks and balances as well as unclear roles and responsibilities regarding bilingual pay authorization.

### Response

DGS acknowledges that the Oral Fluency Exam for bilingual pay authorization was not validated for one (1) of the nine (9) employees. DGS is working to correct the identified errors and intends to obtain the missing Oral Fluency Exam results and retain the documentation with the Request for Personnel Action (RPA).

Additionally, the Bilingual Pay Authorization Form (STD. 897) and Bilingual Survey Physical Tally Sheets were not supplied for eight (8) of the nine (9) employees issued bilingual pay. DGS acknowledges that these documents are required to ensure compliance with applicable California Department of Human Resources (CalHR) policies and guidelines. Specifically, these documents are required to designate a position as bilingual and authorize bilingual pay pursuant to Pay Differential 14.

DGS is in the process of correcting the authorization of bilingual pay process to ensure compliance in the future. Remedial measures will include development of documented internal policies, procedures, and resources (i.e., job guide), updating DGS' Personnel Operations Manual, and coordinating internally to distinguish roles and responsibilities to ensure compliance. Additionally, DGS is working to correct the identified errors and plans to correct no later than the 90-day corrective action period

## **Finding No. 14: Incorrect Authorization of Out-of-Class Pay**

### Summary

The summary by the CRU found six (6) errors in the DGS' authorization of Out of Class (OOC) pay. This is the second consecutive time this has been a finding for the DGS.

### Cause

The cause for this finding can be attributed to a lack of knowledge on OOC pay when the salary reduction for Personal Leave Program (PLP) 2020 was in place. DGS has tools (e.g., excel sheets) in place for OOC pay to assist with the base salary calculations and it does not appear one was created for the time during the 9.23% salary reduction was in place. DGS has new staff who may not be familiar with OOC pay. Since the last SPB Compliance Review in 2019, only one employee remains with the OHR Personnel Transactions Unit, and all other staff are new.

### Response

DGS is working to correct the identified errors and plans to correct no later than the 90-day corrective action period. To correct this finding in the future, DGS will provide OOC training to all staff and update tools to include calculations during salary reduction periods.

## **Finding No. 16: Administrative Time Off (ATO) Was Not Properly Documented**

### Summary

The summary by the CRU found that DGS did not grant ATO in conformity with the established policies and procedures. Of the 20 ATO authorizations reviewed by the CRU, the 18 hours ATO for the Construction Supervisor II was found to be out of compliance for failing to document justification for ATO.

### Cause

The cause for this finding can be attributed to lack of adequate checks and balances in place.

### Response

DGS acknowledges not properly documenting the ATO authorization for the Construction Supervisor II. The error identified by SPB was an aberration and the majority of the ATO cases are handled properly.

DGS OHR managers receive alerts when ATO is posted in an employee's timesheet. The OHR managers were not previously tasked with verifying the validity of the ATO or requesting justification documentation. DGS OHR managers and analysts will begin receiving ATO alerts and will be responsible for

contacting program supervisors to request justification documentation for ATO usage. There will also be communication sent to DGS supervisors informing them of the new process of granting ATO. The process will require justification be sent to OHR within one (1) day of the ATO approval at the program level, and the appropriateness of ATO will be assessed immediately thereafter.

In addition to the email notifications, moving forward, DGS leadership team will emphasize the importance of following the ATO policy and process outlined in the Personnel Operations Manual which requires notification to the Chief, Office of Human Resources (OHR).

### **Finding No. 17: Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input Is Keyed Accurately and Timely**

#### Summary

The summary by the CRU found DGS failed to implement a monthly internal audit process to verify all timesheets were keyed accurately and timely and to certify that all leave records have been reviewed and corrected if necessary. This is the second consecutive time this has been a finding for the DGS.

#### Cause

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

#### Response

To correct this finding in the future, DGS will reinstate the monthly internal audit process and will train new staff on the established process.

### **Finding No. 18: Incorrectly Posted Leave Usage and/or Leave Credit**

#### Summary

The summary by the CRU found DGS did not correctly enter 4 of 48 timesheets into the Leave Accounting System (LAS) during the December 2020 pay period and 2 of 48 timesheets during the January 2021 pay period. As a result, six employees retained their prior leave balance despite having used leave credits.

#### Cause

The DGS internal timekeeping system, Project Accounting and Leave (PAL), interfaces with SCO; however, if the user (employee) does not enter their work/leave hours timely and/or the approver (supervisor) does not approve the timesheet timely, the interface for leave does not take place. As a result, leave is not deducted from LAS. DGS had a process in place to address leave that did

not interface; however, DGS has had turnover with the staff assigned to complete this task. Due to other competing priorities which took precedence due to the Covid-19 pandemic, a new process for leave interface was placed on hold.

#### Response

DGS is working to correct the identified errors and plans to correct during the 90-day corrective action period. To correct this finding in the future, DGS will reinstate the monthly internal audit process and DGS will train new staff on the established process.

### **Finding No. 22: Performance Appraisals Were Not Provided to All Employees**

#### Summary

The summary by the CRU indicated that DGS did not provide annual performance appraisals to 33 of 50 employees reviewed after the completion of the employee's probationary period.

#### Cause

Despite the methods used by DGS OHR to inform supervisors of the requirements to complete performance appraisals, not all supervisors provided timely performance appraisals.

#### Response

Currently, DGS OHR sends email notifications generated automatically by the Activity Based Management System (ABMS) to all supervisors notifying employees and supervisors the Performance Appraisal Summary Std. 638 is due the month of the employee's birthdate. DGS will include Attendance Clerks on the email notifications for tracking purposes. In addition to the notifications, in the future, DGS leadership team will emphasize the importance of completing performance appraisals in management meetings.

### **Conclusion**

DGS would like to thank SPB for undertaking the 2021 DGS Compliance Review. DGS regards the audit process with a high degree of respect and views these reports as a productive, collaborative learning experience with the SPB to adjust as necessary to ensure compliance. DGS strives to be in full compliance with established requirements, training, tracking systems, best practices, and reminders.

Please note that responses were not required for Findings No. 1, 2, 5, 10, 11, 13, 15, 19, 20, 21 since the DGS was determined to be in compliance.

Should you have any questions or need additional information, please contact me at (279) 946-8026 and [estela.gonzales@dgs.ca.gov](mailto:estela.gonzales@dgs.ca.gov) or Jennifer Gothier, Personnel Officer at (279) 946-8081 and [Jennifer.gothier@dgs.ca.gov](mailto:Jennifer.gothier@dgs.ca.gov).

Sincerely,



Estela Gonzales  
Chief, Office of Human Resources  
Department of General Services

cc: Katherine Minnich, Deputy Director, Administration Division  
Jennifer Gothier, Personnel Officer, Office of Human Resources