CALIFORNIA STATE PERSONNEL BOARD

COMPLIANCE REVIEW REPORT

CALIFORNIA HORSE RACING BOARD

Compliance Review Unit
State Personnel Board
April 6, 2023

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INTRODUCTION

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

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

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

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

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

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

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

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the California Horse Racing Board (CHRB) 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	Permanent Withhold Actions Complied with Civil Service Laws and Board Rules
Appointments	In Compliance	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules
Personal Services Contracts	In Compliance	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	In Compliance	Mandated Training Complied with Statutory Requirements
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Very Serious	Incorrectly Posted Leave Usage and/or Leave Credit
Leave	In Compliance	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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 Guidelines
Policy	Serious	Performance Appraisals Were Not Provided to All Employees[1]

BACKGROUND

The mission of the CHRB is to ensure the integrity, viability, and safety of the California horse-racing industry by regulating pari-mutuel wagering for the protection of the public; promoting horse racing, breeding, and wagering opportunities; and, fostering safe racing through the development and enforcement of track safety standards and regulations for the health and welfare of all participants.

The CHRB is under the Business, Consumer Services, and Housing Agency. The horse racing industry's specialized and complex regulatory requirements drive the CHRB's organizational structure and determine the responsibilities for its operational divisions.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CHRB's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes[2]. The primary objective of the review was to determine if the CHRB's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The CHRB did not conduct any examinations during the compliance review period.

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[1] Repeat finding. The August 30, 2019, CHRB Compliance Review Report identified 3 of 18 employees reviewed did not receive annual performance appraisals.
[2] Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

The CRU reviewed the CHRB's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

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

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

The CHRB's appointments were also selected for review to ensure the CHRB applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CHRB provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay, e.g., bilingual pay, and monthly pay differentials.

During the compliance review period, the CHRB did not issue or authorize hiring above minimum requests, red circle rate requests, arduous pay, alternate range movements, or out-of-class assignments.

The review of the CHRB's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee.

The CHRB's PSC's were also reviewed.[3] It was beyond the scope of the compliance review to make conclusions as to whether the CHRB's justifications for the contracts were

[3]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.

legally sufficient. The review was limited to whether the CHRB's practices, policies, and procedures relative to PSC's complied with procedural requirements.

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

The CRU also identified the CHRB's employees whose current annual leave, or vacation leave credits, exceeded established limits. The CRU reviewed a cross-section of these identified employees to ensure that employees who have significant "over-the-cap" leave balances have a leave reduction plan in place. Additionally, the CRU asked the CHRB to provide a copy of their leave reduction policy.

The CRU reviewed the CHRB's monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely and ensure the department certified that all leave records have been reviewed and corrected if necessary. The CRU selected a small cross-section of the CHRB's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the CHRB's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the CHRB employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of CHRB positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

Additionally, the CHRB did not track any temporary intermittent employees by actual time worked during the compliance review period.

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

The CHRB declined to have an exit conference. The CRU received and carefully reviewed the CHRB's written response on March 23rd, which is attached to this final compliance review report.report.

FINDINGS AND RECOMMENDATIONS

Examinations

Permanent Withhold Actions

Departments are granted statutory authority to permit withhold of 6ligible from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointments and promotions within the state civil service system shall be merit-based, ascertained by a competitive examination process. (Cal. Const., art. VII, § 1, subd. (b).) If a candidate for appointment is found not to satisfy the minimum qualifications, the appointing power shall provide written notice to the candidate, specifying which qualification(s) are not satisfied and the reason(s) why. The candidate shall have an opportunity to establish that s/he meets the qualifications. (Cal. Code Regs., tit. 2, § 249.4, subd. (b).) If the candidate fails to respond, or fails to establish that s/he meets the minimum qualification(s), the candidate's name shall be removed from the eligibility list. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)(1), (2)), (HR Manual, section 1105.) The appointing authority shall promptly notify the candidate in writing, and shall notify the candidate of his or her appeal rights. *(Ibid.)* A permanent withhold does not necessarily permanently restrict a candidate from retaking the examination for the same classification in the future; however, the appointing authority may place a withhold on the candidate's subsequent eligibility record if the candidate still does not meet the minimum qualifications or continues to be unsuitable. (HR Manual, Section 1105). State agency human resources offices are required to maintain specific withhold documentation for a period of five years. *(Ibid.)*

During the period under review, January 1, 2021, through December 31, 2021, the CHRB conducted three permanent withhold actions. The CRU reviewed three of these permanent withhold actions, which are listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Investigator I	1PB02	10/24/21	11/30/21	Failed to Meet Minimum Qualifications (MQs)
Program Technician (PT) II	0PBCS	10/15/21	1/12/22	Failed to Meet MQs
PT II	0PBCS	9/17/20	1/12/22	Failed to Meet MQs

IN COMPLIANCE	FINDING NO. 1 PERMANENT WITHHOLD ACTIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES

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, September 1, 2020, through August 31, 2021, the CHRB made nine appointments. The CRU reviewed six of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Governmental Program Analyst (AGPA)	Certification List	Permanent	Full-Time	1
PT II	Certification List	Permanent	Full-Time	1
Staff Services Analyst (SSA)	Certification List	Permanent	Full-Time	1
Supervising Special Investigator (SSI) I	Certification List	Permanent	Full-Time	1
AGPA	Transfer	Permanent	Full-Time	1
Information Technology Specialist (ITS) I	Transfer	Permanent	Full-Time	1

IN COMPLIANCE	FINDING NO. 2 APPOINTMENTS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES

The CHRB measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the four list appointments reviewed, the CHRB ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

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

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

Equal Employment Opportunity

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

Pursuant to Government Code section 19795, subdivision (a), in a state agency with less than 500 employees, like CHRB, the EEO Officer may be the Personnel Officer.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

IN COMPLIANCE	FINDING NO. 3	EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES

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 CHRB's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Executive Director of the CHRB. The CHRB also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

Personal Services Contracts

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

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews

the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the period under review, January 1, 2021, through December 31, 2021, the CHRB had 74 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?[4]
Darrel McHargue	Steward Services	7/21-6/22	$155,000	Yes	N/A
Donald Dooley	Official Veterinarian	7/20-6/21	$20,000	Yes	N/A
Dr. Alina Vale	Official Veterinarian	7/20-6/21	$70,000	Yes	N/A
Dr. Barrie Grant	Official Veterinarian	7/20-6/21	$25,000	Yes	N/A
Dr. Diane Isbell	Official Veterinarian	7/20-6/21	$20,000	Yes	N/A
Dr. Kathy Jones	Official Veterinarian	7/20-6/21	$20,000	Yes	N/A
Dr. Laurie Bohannon	Official Veterinarian	7/20-6/21	$20,000	Yes	N/A
Dr. Mark Christin	Official Veterinarian	7/20-6/21	$24,244	Yes	N/A
Dr. Michael Pirrone	Official Veterinarian	7/20-6/21	$20,000	Yes	N/A
Dr. Nolton Pattio	Official Veterinarian	7/20-6/21	$90,000	Yes	N/A
Dr. Timothy J. Grande	Official Veterinarian	7/20-6/21	$155,000	Yes	N/A
E. Paul Atkinson	Steward Services	7/21-6/22	$130,000	Yes	N/A
Edwardo E. De La Cruz Ballard	Official Veterinarian	7/20-6/21	$90,000	Yes	N/A
F.G. Franklin	Official Veterinarian	7/20-6/21	$122,000	Yes	N/A
George Yniguez	Steward Services	7/20-6/21	$80,000	Yes	N/A
Grant Baker	Steward	7/21-6/22	$130,000	Yes	N/A

[4] Pursuant to Bus. & Prof. Code § 19518, subd. (c) services performed by stewards and official veterinarians for the CHRB cannot be performed "adequately, competently, or satisfactorily" by civil service personnel. Thus, union notification is not required.

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?[4]
	Services				
James Dreyer	Steward Services	7/21-6/22	$125,000	Yes	N/A
John Herbuveaux	Steward Services	7/21-6/22	$25,000	Yes	N/A
Lamparter Consulting	Official Veterinarian	7/20-6/21	$20,000	Yes	N/A
Luis Jauregui	Steward Services	7/21-6/22	$135,000	Yes	N/A
Pegasus Veterinary Group	Official Veterinarian	7/20-6/21	$100,000	Yes	N/A
Richard Lewis	Steward Services	7/21-6/22	$125,000	Yes	N/A
Ronald Church	Steward Services	7/21-6/22	$135,000	Yes	N/A
Thomas McCarthy	Steward Services	7/21-6/22	$120,000	Yes	N/A
Urban Equine Veterinary Services	Official Veterinarian	7/20-6/21	$20,000	Yes	N/A

IN COMPLIANCE	FINDING NO. 4 PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS

The total dollar amount of all the PSC's reviewed was $2,016,244. It was beyond the scope of the review to make conclusions as to whether CHRB justifications for the contract were legally sufficient. For all PSC's reviewed, the CHRB provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Accordingly, the CHRB PSC's complied with civil service laws and board rules.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months

of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

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

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

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

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid*.) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the CHRB's mandated training program that was in effect during the compliance review period, January 1, 2020, through December 31, 2021.

IN COMPLIANCE	FINDING NO. 5 MANDATED TRAINING COMPLIED WITH STATUTORY REQUIREMENTS

The CHRB provided ethics training to its 3 new filers within 6 months of appointment and, for 5 existing filers, "at least once during each consecutive period of 2 calendar years, commencing on the first odd-numbered year thereafter." The CHRB also provided supervisory training to its 2 new supervisors within 12 months of appointment. In addition, the CHRB provided sexual harassment prevention training to its 1 new supervisor within 6 months of appointment, and sexual harassment prevention training to its 10 existing supervisors every 2 years. Thus, the CHRB complied with mandated training requirements within statutory timelines.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate[5] upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

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

During the period under review, September 1, 2020, through August 31, 2021, the CHRB made six appointments. The CRU reviewed all six of those appointments to determine if the CHRB applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
AGPA	Certification List	Permanent	Full Time	$5,149
PT II	Certification List	Limited Term	Full Time	$3,148
SSA	Certification List	Permanent	Full Time	$4,281
SSI I	Certification List	Permanent	Full Time	$7,399
AGPA	Transfer	Permanent	Full Time	$5,652

[5] "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)
ITS I	Transfer	Permanent	Full Time	$9,408

IN COMPLIANCE	FINDING NO. 6	SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES

The CRU found no deficiencies in the salary determinations that were reviewed. The CHRB appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages 10 percent or more of the total time worked. According to the Pay Differential 14, the 10 percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, September 1, 2020, through August 31, 2021, the CHRB issued bilingual pay to 10 employees. The CRU reviewed 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 Management Auditor	R01	Full Time	1
Investigator	R07	Full Time	1
Office Technician (OT) Typing	R04	Full Time	1
PT II	R04	Full Time	3
Senior Management Auditor	S01	Full Time	1

Classification	Bargaining Unit	Time Base	No. of Appts.
Supervising Program Technician (SPT) III	S04	Full Time	1
SSI I	S07	Full Time	1

IN COMPLIANCE	FINDING NO. 7 BILINGUAL PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES

The CRU found that the bilingual pay authorized to employees during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Pay Differentials

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

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

During the period under review, September 1, 2020, through August 31, 2021, the CHRB authorized 56 pay differentials.[6] The CRU reviewed 22 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

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

Classification	Pay Differential	Monthly Amount
AGPA	440	$260
Associate Personnel Analyst	440	$260
Attorney	440	$260
Attorney III	440	$260
CEA	440	$260
ITS I	440	$260
ITS I	440	$260
Information Technology Supervisor II	440	$260
Investigator	244	$100
Investigator	244	$100
Investigator	244	$125
Investigator	244	$125
OT (Typing)	440	$260
PT II	440	$260
Senior Accounting Officer (Specialist)	440	$260
SSA (General)	440	$260
Staff Services Manager I	440	$260
Staff Services Manager II (Supervisory)	440	$260
SPT III	440	$260
SSI I	244	$260
SSI I	244	$260
SSI I	245	5% Above Base Pay

IN COMPLIANCE	FINDING NO. 8	PAY DIFFERENTIAL AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES

The CRU found no deficiencies in the pay differentials that the CHRB 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.

Leave

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, October 1, 2020, through September 30, 2021, the CHRB authorized 30 ATO transactions. The CRU reviewed 30 of these ATO transactions to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
AGPA	4/1/21 – 4/1/21	2 hours
AGPA	4/20/21 – 4/20/21	2 hours
AGPA	5/11/21 – 5/11/21	2 hours
AGPA	4/16/21 – 4/16/21	2 hours
AGPA	5/7/21 – 5/7/21	3 hours
AGPA	6/1/21 – 6/1/21	2 hours
AGPA	8/16/21 – 8/16/21	2 hours
Associate Management Auditor	4/28/21 – 4/28/21	8 hours
Associate Management Auditor	5/18/21 – 5/27/21	71 hours
Attorney	4/22/21 – 4/22/21	8 hours
Investigator	2/5/21 – 2/16/21	80 hours
OT (Typing)	12/9/20 – 12/14/20	32 hours
OT (Typing)	4/20/21 – 4/20/21	2 hours
OT (Typing)	7/27/21 – 7/30/21	19.5 hours
OT (Typing)	8/11/21 – 8/24/21	32.5 hours
OT (Typing)	8/12/21 – 8/16/21	16 hours
PT II	11/18/20 – 11/21/20	32 hours
PT II	12/26/20 – 1/17/21	128 hours
PT II	11/28/20 – 12/11/20	80 hours
PT II	12/9/20 – 12/20/20	80 hours
PT II	1/13/21 – 1/23/21	80 hours
PT II	2/23/21 – 2/23/21	2 hours
PT II	4/14/21 – 4/14/21	8 hours
PT II	5/5/21 – 5/5/21	8 hours
PT II	4/7/21 – 4/9/21	16 hours
PT II	5/8/21 – 5/9/21	10 hours

Classification	Time Frame	Amount of Time on ATO
PT II	5/8/21 – 5/8/21	6 hours
SPT III	11/24/20 – 12/5/20	80 hours
SSI I	12/5/20 – 12/18/20	80 hours
SSI I	8/18/21 – 8/28/21	40 hours

SEVERITY: VERY SERIOUS	**FINDING NO. 9**	**INCORRECTLY POSTED LEAVE USAGE AND/OR LEAVE CREDIT**

Summary: The CHRB did not correctly enter 4 of 30 ATO transactions into the Leave Accounting System (LAS) during the December 2020, and January, April, and August 2021 pay periods. Specifically, ATO was not entered into LAS.

Criteria: Departments shall create a monthly internal audit process to verify that all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) If an employee's attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. *(Ibid.)* Attendance records shall be corrected by the pay period following the pay period in which the error occurred. *(Ibid.)*

Severity: Very serious. Errors in posting leave usage and/or leave credits puts the department at risk of incurring additional costs from the initiation of collection efforts from overpayments, and the risk of liability related to recovering inappropriately credited leave hours and funds.

Cause: The CHRB states that the cause of this finding was keying errors.

Corrective Action: The CHRB asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the CHRB must submit to the SPB documentation which demonstrates the meaningful and system actions it has taken to ensure conformity with Human Resources Manual Section 2101.

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, July 1, 2021, through September 30, 2021, the CHRB reported 14 units comprised of 48 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
July 2021	101	2	2	0
July 2021	202	3	3	0
July 2021	402	2	2	0
August 2021	101	2	2	0
August 2021	202	3	3	0
August 2021	402	2	2	0
September 2021	101	2	2	0
September 2021	202	3	3	0
September 2021	402	3	3	0

IN COMPLIANCE	FINDING NO. 10	LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES

The CRU reviewed employee leave records from three different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The CHRB kept complete and accurate time

and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

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.[7] (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.)

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[8] shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

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[7] 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.

[8] 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.

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

During the period under review, September 1, 2020, through August 31, 2021, the CHRB had four employees with qualifying and non-qualifying pay period transactions. The CRU reviewed six transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time Base	Number Reviewed
Non-Qualifying Pay Period	Full Time	2
Qualifying Pay Period	Full Time	4

IN COMPLIANCE	FINDING NO. 11	SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES

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

defined in section 83.6; (6) a process for addressing issues of direct supervision when personal relationships between employees exist. *(Ibid.)*

IN COMPLIANCE	FINDING NO. 12	NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES

The CRU verified that the policy was disseminated to all staff and emphasized the CHRB's commitment to the state policy of hiring, transferring, and promoting employees on the basis of merit. Additionally, the CHRB's nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Workers' Compensation

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

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

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

IN COMPLIANCE	FINDING NO. 13	WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES

The CRU verified that the CHRB 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 CHRB 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 14 permanent CHRB employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

SEVERITY: SERIOUS	FINDING NO. 14 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES

Summary: The CHRB did not provide annual performance appraisals to 3 of 14 employees reviewed after the completion of the employee's probationary period. This is the second consecutive time this has been a finding for the CHRB.

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

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

Cause: The CHRB states that despite implementing a formal process to notify supervisors of all performance appraisals that are due;

including a tracking process, late filing notification, and escalation process, one supervisor did not comply with providing staff performance appraisals.

Corrective Action: The CHRB asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the CHRB must submit to the SPB documentation which demonstrates the meaningful and system actions it has taken to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798.

DEPARTMENTAL RESPONSE

The EMSA's response is attached as Attachment 1.

SPB REPLY

Based upon the CHRB's written response, the CHRB 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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March 20, 2023

To: Ms. Suzanne Ambrose, Executive Director
California State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

From: Sara Hostetter,
Asst. Chief of Administration/Personnel Officer
Administration Unit

SUBJECT: **CHRB RESPONSE TO THE STATE PERSONNEL BOARD DRAFT COMPLIANT REPORT**

The California Horse Racing Board (CHRB) submits this letter in response to the State Personnel Board's compliance review in the areas of examinations, appointments, equal employment opportunity, personal services contracts, mandated training, compensation and pay, leave and policies. The CHRB strives to ensure compliance with all civil service laws; maintain the integrity of the State's merit-based selection processes; and employ the best practices. We appreciate the opportunity to respond to the findings outlined in the draft below.

FINDING NO. 9 – INCORRECTLY POSTED LEAVE USAGE AND/OR LEAVE CREDIT

Cause: The CHRB did not correctly enter 4 of 30 ATO transactions into the Leave Accounting System (LAS) during the December 2020, and January, April, and August 2021 pay periods. Specifically, ATO was not entered into LAS.

Response: The transition to emergency telework due to the pandemic presented unique challenges for managing COVID and documenting ATO associated with COVID. Departments were tasked with implementing new leave types, EPSLA and Emergency Family and Medical Leave Expansion Act (E-FMLA), and documenting them on PARS and in LAS. The CHRB worked diligently to ensure the time was keyed accurately, and due to keying errors, ATO was missed on four staff. The CHRB has added another step in the timesheet process. Each timesheet will go through a second review by the other HR staff member that did not do the initial keying. This double check will give new eyes to ensure time/ATO is keyed accurately, and if missed, will be corrected in a timely manner.

FINDING NO. 14 – PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES

Cause The CHRB did not provide annual performance appraisals to 3 of 14 employees reviewed after the completion of the employee's probationary period. This is the second consecutive time this has been a finding for the CHRB.

Response: Since the last compliance review, the CHRB Human Resources staff created and implemented a formal process to notify supervisors of all performance appraisals that are due, a tracking process and late filing notification/escalation process to ensure appraisals are provided to all employees. However, despite these measures, the CHRB acknowledges that one supervisor did not comply with providing staff a performance appraisal. The CHRB Human Resources staff will add an additional step to the current process. The Personnel Officer will elevate non-compliant supervisors to the Executive Director to address the non-compliance.

The CHRB appreciates the opportunity to address the findings in this report. Please let me know if we can provide any additional information related to the audit findings. I can be reached at (916) 869-3276 or sehostetter@chrb.ca.gov.

Sincerely,

Sara E. Hostetter,
Asst. Chief of Administration/Personnel Officer
Human Resources Office
Administration Unit