



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA DEPARTMENT OF HUMAN RESOURCES**

Compliance Review Unit  
State Personnel Board  
December 10, 2021

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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 CalHR's personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Severity	Finding
Examinations	In Compliance	Examinations Complied with Civil Service Laws and Board Rules
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed
Appointments	Technical	Appointment Documentation Was Not Kept for the Appropriate Amount of Time
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules
Personal Services Contracts	In Compliance	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
Compensation and Pay	Very Serious	Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment
Compensation and Pay	In Compliance	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

Area	Severity	Finding
Compensation and Pay	Very Serious	Incorrect Authorization of Out-of-Class Pay
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	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
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 <sup>1</sup>

### **BACKGROUND**

The CalHR was created on July 1, 2012, by Governor Brown's Reorganization Plan Number 1 of 2011. The reorganization plan consolidated the State of California's two personnel departments, combining the Department of Personnel Administration with certain programs of the SPB. CalHR is responsible for issues related to employee salaries and benefits, job classifications, civil rights, training, exams, recruitment and retention.

<sup>1</sup> Repeat finding. August 12, 2019, the CalHR's compliance review report identified 64 of 80 employees reviewed were not provided a performance appraisal.

For most employees, many of these matters are determined through the collective bargaining process managed by CalHR.

The CalHR's mission is to be the premier leader and trusted partner in innovative human resources management to provide exceptional human resources leadership and services with integrity, respect and accountability to state departments and all current and prospective employees.

### **SCOPE AND METHODOLOGY**

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

A cross-section of the CalHR's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the CalHR provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CalHR did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the CalHR'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 CalHR 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 CRU also reviewed the CalHR's policies and procedures concerning unlawful appointments to ensure departmental practices conform to state civil service laws and Board regulations. The CalHR did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the CalHR did not make any additional appointments during the compliance review period.

The CalHR's appointments were also selected for review to ensure the CalHR applied salary regulations accurately and correctly processed employees' compensation and pay.

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<sup>2</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

The CRU examined the documentation that the CalHR 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: monthly pay differentials, alternate range movements, and out-of-class assignments. During the compliance review period, the CalHR did not issue or authorize hiring above minimum requests, red circle rate requests, arduous pay, or bilingual pay.

The review of the CalHR'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 CalHR's PSC's were also reviewed.<sup>3</sup> It was beyond the scope of the compliance review to make conclusions as to whether the CalHR's justifications for the contracts were legally sufficient. The review was limited to whether the CalHR's practices, policies, and procedures relative to PSC's complied with procedural requirements.

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

The CRU reviewed the CalHR'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 CalHR'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 CalHR'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 CalHR's employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of the CalHR's positive paid

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<sup>3</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.

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

On August 26, 2021, an exit conference was held with the CalHR to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CalHR's written response on September 9, 2021, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) The final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, May 1, 2020, through January 31, 2021, the CalHR conducted three examinations. The CRU reviewed two of those examinations, which are listed below:



Classification	Exam Type	Exam Components	Final File Date	No. of Apps
CEA A, Chief, Administrative Services	CEA	Statement of Qualifications (SOQ) <sup>4</sup>	Until Filled	15
CEA B, Chief, Benefits Division	CEA	SOQ	Until Filled	18

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

### Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act 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

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<sup>4</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.

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, April 1, 2020, through December 31, 2020, the CalHR made 46 appointments. The CRU reviewed 18 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accountant Trainee	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Associate Personnel Analyst	Certification List	Permanent	Full Time	1
Chief Psychologist	Certification List	Permanent	Full Time	1
Labor Relations Analyst	Certification List	Permanent	Full Time	1
Labor Relations Counsel IV	Certification List	Permanent	Full Time	1
Personnel Program Advisor	Certification List	Limited Term	Full Time	1
Personnel Technician II (Specialist)	Certification List	Permanent	Full Time	1
Psychologist	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	2
Staff Services Manager II (Managerial)	Certification List	Limited Term	Full Time	1
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	1
Associate Personnel Analyst	Transfer	Permanent	Full Time	1
Labor Relations Analyst	Transfer	Permanent	Full Time	1
Labor Relations Manager I	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1
Staff Services Manager I	Transfer	Permanent	Full Time	1

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 2 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED</b>
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**Summary:** The CalHR did not provide 4 probationary reports of performance for 3 of the 18 appointments reviewed by the CRU, as reflected in the table below:

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Associate Governmental Program Analyst	List Appointment	1	2
Associate Personnel Analyst	List Appointment	1	1
Chief Psychologist	List Appointment	1	1

**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 Human Resources Office (HRO) to inform supervisors and managers of the requirements to complete probationary reports, not all supervisors and managers provided timely reports.

**Corrective Action:** The CalHR provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the CalHR must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 19172.

<b>SEVERITY: TECHNICAL</b>	<b>FINDING NO. 3 APPOINTMENT DOCUMENTATION WAS NOT KEPT FOR THE APPROPRIATE AMOUNT OF TIME</b>
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**Summary:** The CalHR failed to retain personnel records such as NOPA's, duty statements, job announcements/bulletins, and applications. Of the 18 appointments reviewed, the CalHR did not retain 1 NOPA.

**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 NOPA was not received from the State Controller's Office.

**Corrective Action:** The CalHR provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the CalHR must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with the record retention requirements of California Code of Regulations, title 2, section 26.

**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. 4</b> <b>EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES</b>
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After reviewing the policies, procedures, and programs necessary for compliance with the EEO program’s role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the CalHR’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 Director of the CalHR. The CalHR 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, May 1, 2020, through January 31, 2021, the CalHR had 28 PSC's that were in effect. The CRU reviewed seven of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Capitol Couriers, Inc.	Courier Services	7/1/20 – 6/30/21	\$9,999	Yes	Yes
Cooperative Personnel Services	Training Services	7/1/18 – 6/30/21	\$4,908,350	Yes	Yes
Kronick, Moskovitz, Tiedemann, and Girard	Legal Representation	7/1/19 – 6/30/21	\$1,400,000	Yes	Yes
Little Mendelson	Legal Representation	7/1/19 – 6/30/21	\$100,000	Yes	Yes
Platinum Security, Inc.	Unarmed Security Guard Services	9/1/19 – 6/30/23	\$349,000	Yes	Yes
Steve Barber	Interest Based Bargaining Training	5/1/20 – 6/30/21	\$6,800	Yes	Yes
The Visibility Company	Health and Wellness Program	7/1/20 – 6/30/23	\$750,000	Yes	Yes

IN COMPLIANCE	FINDING NO. 5 PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS
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The total dollar amount of all the PSC’s reviewed was \$7,524,149. It was beyond the scope of the review to make conclusions as to whether the CalHR’s justifications for the contract were legally sufficient. For all PSC’s reviewed, the CalHR provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, the CalHR complied with proper notification to all organizations that represent state employees who perform the type or work contracted. Accordingly, the CalHR 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.)

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 CalHR’s mandated training program that was in effect during the compliance review period, January 31, 2019, through January 31, 2021.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 6 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS</b>
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**Summary:** The CalHR did not provide ethics training to 1 of 98 existing filers. In addition, the CalHR did not provide ethics training to two of seven new filers within six 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:** For new filers who are also transfers, the CalHR was required to obtain further information from their former department. Prior record keeping from other departments and older internal record keeping methods in-house created a delay in determining current compliance affecting the timeliness of correcting and completing the required training.

**Corrective Action:** The CalHR states ethics training has been provided to all employees. Furthermore, the CalHR provides it has taken steps to achieve future compliance in this area. Within 90 days of the date of this report, the CalHR must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 11146.3.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 7 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS</b>
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**Summary:** The CalHR did not provide sexual harassment prevention training to 2 of 12 new supervisors within 6 months of their appointment. In addition, the CalHR did not provide sexual harassment prevention training to 5 of 59 existing supervisors every 2 years.

**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, subs. (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:** For the new supervisors, the CalHR believes that information lags created a delay in offering the sexual harassment prevention training. Prior record keeping from other departments and older internal record keeping methods in-house created delay in determining current compliance affecting the timeliness of correcting and completing the required training.

**Corrective Action:** The CalHR states sexual harassment prevention training has been provided to all supervisors. Furthermore, the CalHR provides it has taken steps to achieve future compliance in this area. Within 90 days of the date of this report, the CalHR must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure that supervisors are provided sexual harassment prevention training in accordance with Government Code section 12950.1.

## **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>5</sup> upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

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<sup>5</sup> "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan. (Cal. Code Regs., tit. 2, section 599.666.)

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

During the period under review, April 1, 2020, through December 31, 2020, the CalHR made 46 appointments. The CRU reviewed 16 of those appointments to determine if the CalHR applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,149
Associate Personnel Analyst	Certification List	Permanent	Full Time	\$5,488
Chief Psychologist	Certification List	Permanent	Full Time	\$11,493
Labor Relations Analyst	Certification List	Permanent	Full Time	\$5,330
Personnel Program Advisor	Certification List	Limited Term	Full Time	\$7,815
Personnel Technician II (Specialist)	Certification List	Permanent	Full Time	\$3,817
Psychologist	Certification List	Permanent	Full Time	\$10,946
Staff Services Manager I	Certification List	Permanent	Full Time	\$6,447
Staff Services Manager I	Certification List	Permanent	Full Time	\$6,972
Staff Services Manager II (Managerial)	Certification List	Limited Term	Full Time	\$7,988
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	\$7,609
Associate Personnel Analyst	Transfer	Permanent	Full Time	\$5,488
Labor Relations Analyst	Transfer	Permanent	Full Time	\$5,333
Labor Relations Manager I	Transfer	Permanent	Full Time	\$8,154
Staff Services Analyst (General)	Transfer	Permanent	Full Time	\$4,495
Staff Services Manager I	Transfer	Permanent	Full Time	\$5,851

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 8 INCORRECT APPLICATION OF SALARY DETERMINATION LAWS, RULES, AND CALHR POLICIES AND GUIDELINES FOR APPOINTMENT</b>
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**Summary:** The CRU found two errors in the CalHR’s determination of employee compensation:

Classification	Description of Findings	Criteria
Staff Services Manager I	Employee was entitled to receive a 5% pay increase. Incorrect salary determination resulted in the employee being underpaid.	Cal. Code Regs., § 599.674
Psychologist	Employee was not returned to the appropriate salary range prior to movement into the appointed classification. Incorrect salary determination resulted in the employee being overpaid.	Cal. Code Regs., § 599.676

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

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

**Cause:** Human error in application of salary rules.

**Corrective Action:** The CalHR provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the CalHR must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure that employees are compensated correctly. The CalHR must establish an audit system to correct current compensation transactions as well as future transactions.

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, April 1, 2020, through December 31, 2020, the CalHR employees made 14 alternate range movements within a classification. The CRU reviewed seven of those alternate range movements to determine if the CalHR 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)
Accountant Trainee	A	L	Full Time	\$3,907
Associate Governmental Program Analyst	A	L	Full Time	\$5,304
Information Technology Specialist II	A	L	Full Time	\$9,545
Legal Counsel	L	M	Full Time	\$6,286
Personnel Technician II (Specialist)	A	L	Full Time	\$3,932
Psychologist	A	L	Full Time	\$10,814
Staff Services Analyst (General)	C	N	Full Time	\$4,630

<b>IN COMPLIANCE</b>	<b>FINDING NO. 9 ALTERNATIVE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the alternate range movements the CalHR made 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, April 1, 2020, through December 31, 2020, the CalHR issued pay differentials<sup>6</sup> to 43 employees. 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 III	84	5%
CEA	248	5%
Personnel Program Advisor	248	5%
Personnel Program Advisor	248	5%
Personnel Program Manager II	248	5%
Personnel Program Manager II	248	5%
Personnel Technician I	249	\$150
Personnel Technician I	249	\$150
Staff Personnel Program Analyst	248	5%
Staff Personnel Program Analyst	248	5%

<sup>6</sup> For the purposes of the CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Staff Personnel Program Analyst	248	5%
Staff Personnel Program Analyst	248	5%
Staff Services Manager I	248	5%
Staff Services Manager III	248	5%

<b>IN COMPLIANCE</b>	<b>FINDING NO. 10</b>	<b>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 CalHR authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

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

For excluded<sup>7</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.)

<sup>7</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.

During the period under review, April 1, 2020, through December 31, 2020, the CalHR issued OOC pay to three employees. The CRU reviewed those three OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Associate Governmental Program Analyst	R01	Staff Services Manager I	7/15/2019 – 7/15/2020
Personnel Program Advisor	Excluded	Personnel Program Manager II	8/19/2020 – 2/19/2021
Psychologist	R19	Chief Psychologist	8/5/2019 – 8/5/2020

<b>SEVERITY:</b> <b>VERY SERIOUS</b>	<b>FINDING NO.</b> <b>11</b>	<b>INCORRECT AUTHORIZATION OF OUT-OF-CLASS PAY</b>
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**Summary:** The CRU found errors in all three of the CalHR’s authorizations of OOC pay:

Classification	Out-of-Class Classification	Description of Findings	Criteria
Associate Governmental Program Analyst	Staff Services Manager I	OOO pay was not recalculated after the employee received their Merit Salary Adjustment. Employee was underpaid.	Pay Differential 91
Personnel Program Advisor	Personnel Program Manager II	OOO pay was not calculated with the Personal Leave Program (PLP) 2020 reduction for all the days within the OOC period. Employee was overpaid.	Human Resources Manual Section 2113
Psychologist	Chief Psychologist	OOO pay was not calculated with the PLP 2020 reduction for all the days within the OOC period. Employee was overpaid.	Human Resources Manual Section 2113

**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 CalHR 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:** Human error contributed to one of the findings. However, the other two were due to a miscalculation related to the recent implementation of the 2020 Personal Leave Program.

**Corrective Action:** The CalHR provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the CalHR must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with California Code of Regulations, title 2, section 599.810 and Pay Differential 91 and Human Resources Manual Section 2113.

## 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>8</sup> worked and paid absences<sup>9</sup>, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine

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<sup>8</sup> For example, two hours or ten hours count as one day.

<sup>9</sup> For example, vacation, sick leave, compensating time off, etc.

calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

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

Generally, permanent intermittent employees may work up to 1500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year. Further, exceptions, under certain circumstances, may be made to the 1500 hour limitation, as long as the appointing power follows the process outlined in the Personnel Management Policy and Procedures Manual, section 333.

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June), regardless of the number of state employers, without reinstatement, loss or interruption of benefits.

At the time of the review, the CalHR had 29 positive paid employees whose hours were tracked. The CRU reviewed 10 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Tenure	Time Frame	Time Worked
Expert Examiner	Temporary	Intermittent	36.5 hours
Expert Examiner	Temporary	Intermittent	64 hours
Expert Examiner	Temporary	Intermittent	66 hours
Expert Examiner	Temporary	Intermittent	88 hours
Information Technology Specialist I	Retired Annuitant	Intermittent	344 hours
Personnel Program Advisor	Retired Annuitant	Intermittent	768 hours
Personnel Program Analyst	Retired Annuitant	Intermittent	472.75 hours
Personnel Program Analyst	Retired Annuitant	Intermittent	36.5 hours
Staff Services Manager I	Retired Annuitant	Intermittent	958.5 hours

Classification	Tenure	Time Frame	Time Worked
Staff Services Manager I	Retired Annuitant	Intermittent	915.5 hours

<b>IN COMPLIANCE</b>	<b>FINDING NO. 12</b>	<b>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 CalHR provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

### Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation, extreme weather preventing safe travel to work, states of emergency, voting, and when employees need time off to attend special events. (*Ibid.*)

During the period under review, January 31, 2020, through January 31, 2021, the CalHR placed 63 employees on ATO. The CRU reviewed 15 of these ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Accounting Administrator I (Specialist)	8/17/2020 – 8/19/2020	1 hour
Legal Counsel	4/13/2020 – 5/1/2020	10 days
Office Technician (Typing)	4/3/2020 – 4/17/2020	15 days
Office Technician (Typing)	3/18/2020 – 7/10/2021	480 hours
Personnel Program Advisor	5/6/2020 – 9/28/2020	80 hours
Personnel Technician I	3/18/2020 – 4/1/2020	15 days
Staff Personnel Program Analyst	8/17/2020 – 12/31/2020	80 hours

Classification	Time Frame	Amount of Time on ATO
Staff Personnel Program Analyst	4/1/2020 – 6/30/2020	10 days
Staff Services Analyst (General)	8/27/2020 – 9/13/2020	80 hours
Staff Services Analyst (General)	12/3/2020 – 12/3/2020	4 hours
Staff Services Manager I	6/1/2020 – 6/12/2020	80 hours
Staff Services Manager I	8/19/2020 – 8/21/2020	3 days
Staff Services Manager I	1/27/2021 – 1/27/2021	1 day
Staff Services Manager II (Supervisory)	5/27/2020 – 6/2/2020	7 days
Staff Services Manager III	1/6/2020 – 1/6/2020	1 day

<b>IN COMPLIANCE</b>	<b>FINDING NO.</b> <b>13</b>	<b>ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The CalHR provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

#### Leave Auditing and Timekeeping

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

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. (*Ibid.*) If an employee's attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, November 1, 2020, through January 31, 2021, the CalHR reported 39 units comprised of 291 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
November 2020	100	22	22	0
November 2020	300	12	12	0
December 2020	175	34	34	0
December 2020	560	7	7	0
January 2021	240	8	8	0
January 2021	680	10	10	0

<b>IN COMPLIANCE</b>	<b>FINDING NO. 14</b>	<b>LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU reviewed employee leave records from three different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The CalHR 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.<sup>10</sup> (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who

<sup>10</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.

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<sup>11</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, April 1, 2020, through December 31, 2020, the CalHR had six employees with non-qualifying pay period transactions. The CRU reviewed 29 transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Qualifying Pay Period	Full Time	13
Non-Qualifying Pay Period	Full Time	16

<sup>11</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.

<b>IN COMPLIANCE</b>	<b>FINDING NO. 15</b>	<b>SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the CalHR 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 workplace because it is antithetical to California’s merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

<b>IN COMPLIANCE</b>	<b>FINDING NO. 16</b>	<b>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 CalHR’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CalHR’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 CalHR did not employ volunteers during the compliance review period.

<b>IN COMPLIANCE</b>	<b>FINDING NO.</b> <b>17</b>	<b>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 CalHR 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 CalHR 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 25 permanent CalHR employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:



Classification	Date Performance Appraisals Due
Assistant Chief Counsel	6/11/2020
Associate Governmental Program Analyst	7/25/2020
Associate Personnel Analyst	3/22/2020
Attorney V	7/18/2020
Information Technology Associate	11/30/2020
Information Technology Associate	12/21/2020
Information Technology Specialist I	4/30/2020
Information Technology Specialist I	9/30/2020
Personnel Program Advisor	2/28/2020
Personnel Program Advisor	3/31/2020
Personnel Program Manager II	5/31/2020
Personnel Program Manager II	5/31/2020
Personnel Technician I	8/1/2020
Senior Accounting Officer (Specialist)	7/4/2020
Staff Personnel Program Analyst	7/26/2020
Staff Personnel Program Analyst	3/31/2020
Staff Personnel Program Analyst	1/29/2020
Staff Personnel Program Analyst	6/30/2020
Staff Services Analyst (General)	1/4/2020
Staff Services Manager I	9/15/2020
Staff Services Manager I	3/9/2020
Staff Services Manager II (Supervisory)	6/30/2020
Staff Services Manager II (Supervisory)	2/26/2020
Staff Services Manager II (Supervisory)	11/2/2020
Supervising Personnel Selection Consultant	4/7/2020

<b>SEVERITY:</b> <b>SERIOUS</b>	<b>FINDING NO.</b> <b>18</b>	<b>PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b>
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**Summary:** The CalHR did not provide annual performance appraisals to 10 of 25 employees reviewed after the completion of the employee's probationary period. This is the second consecutive time this has been a finding for CalHR.

**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 annual notice that is sent to all supervisors and managers, and the follow-up email reminders to submit performance appraisals, some supervisors and managers do not submit performance appraisals as required to the Human Resources Office.

**Corrective Action:** The CalHR provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the CalHR must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798.

### **DEPARTMENTAL RESPONSE**

The CalHR's response is attached as Attachment 1.

### **SPB REPLY**

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

**Human Resources Office**

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Sacramento, CA 95811  
(916) 322-0720 Fax (916) 327-0568

**Governor** Gavin Newsom

**Secretary, Government Operations Agency** Yolanda  
Richardson

**Director** Eraina Ortega

September 9, 2021

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

Re: California Department of Human Resources Response to Draft State Personnel Board Compliance Report

Dear Ms. Ambrose,

The California Department of Human Resources (CalHR) has received the draft of the State Personnel Board's (SPB) Compliance Review Report. Based on the compliance review conducted by the Compliance Review Unit (CRU) of CalHR's 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, CalHR provides the following response to each of the findings presented by SPB.

**Finding No. 2: Probationary evaluations were not provided for all appointments reviewed**

The summary by the CRU indicated that CalHR did not provide four probationary reports of performance for three out of 18 appointments reviewed by the CRU.

**Cause:** Despite the methods used by the Human Resources Office (HRO) to inform supervisors and managers of the requirements to complete probationary reports, not all supervisors and managers provided timely probationary reports.

**CalHR Response:** Currently, HRO sends memos to all supervisors and managers informing them of probationary report due dates when they hire a probationary employee. Moving forward, CalHR will set an expectation that immediately upon receipt of the memo, supervisors will document the probationary dates by any means necessary to ensure that they are aware of due dates and submit probationary reports timely. In addition, HRO will make an announcement at least three times per year to remind supervisors and managers during monthly management meetings of the importance of completing and submitting probationary reports timely. HRO will continue

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to utilize a newly implemented tracking mechanism as well to ensure probationary reports are completed and received timely.

**Finding No. 3: Appointment documentation was not kept for the appropriate amount of time**

The summary by the CRU indicated that the CalHR failed to retain personnel records, such as NOPAs, duty statements, job announcements/bulletins, and applications. Of the 18 appointments reviewed, the CalHR did not retain one NOPA.

**Cause:** The NOPA was not received from the State Controller's Office (SCO).

**CalHR Response:** Going forward the HRO will continue to monitor appointment file documentation for completeness. The HRO will maintain a copy of SPB's Material Request Form (MRF) with all Request for Personnel Action (RPA) packages to follow up on all documentation required by CCR § 26.

**Finding No. 6: Ethics training was not provided for all filers**

The summary by the CRU indicated that CalHR did not provide ethics training to one of 98 existing filers. In addition, the CalHR did not provide ethics training to two of seven new filers within six months of their appointment.

**Cause:** For new filers who are also transfers it required obtaining further information from their former department. Prior record keeping from other departments and older internal record keeping methods in-house created delay in determining current compliance affecting the timeliness of correcting and completing required training.

**CalHR Response:** Compliance had been achieved for the purposes of ethics training being completed. Revised recording keeping systems, HR to Training office messaging protocol, as well as revised messaging protocols to employees have been instituted to ensure notification and completion of mandatory training is accomplished. Mandatory training is provided through the Office of the Attorney General's (OAG) online training.

**Finding No. 7: Sexual Harassment Prevention Training was not provided for all supervisors**

The summary by the CRU indicated that CalHR did not provide Sexual Harassment Prevention Training to two of 12 new supervisors within six months of their appointment.

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In addition, the CalHR did not provide Sexual Harassment Prevention Training to five of 59 existing supervisors every two years.

**Cause:** For the new filers, it is believed that information lags created a delay in offering the SHPT training. Prior record keeping from other departments and older internal record keeping methods in-house created delay in determining current compliance affecting the timeliness of correcting and completing required training.

**CalHR Response:** Compliance had been achieved for the purposes of SHPT being completed. Revised recording keeping systems, new HR to Training office messaging protocol, as well as revised messaging protocols to employees have been instituted to ensure notification and completion of mandatory training is accomplished. Mandatory training is now provided through the Department of Fair Employment and Housing (DFEH) online training to ensure ready access to the mandatory training.

**Finding No. 8: Incorrectly application of salary determination laws, rules, and CalHR policies and guidelines for appointment**

The summary by the CRU found two errors in the CalHR's determination of employee compensation.

**Cause:** Human error in application of the salary rules.

**CalHR Response:** Staff have been trained on the two errors that occurred and have all either attend the State Controller's Office Salary Determination training or are enrolled for an upcoming course. In addition, a new procedure has been implemented to provide second level reviews from management for the more complex, less routine salary determinations.

**Finding No. 11: Incorrect authorization of Out-of-Class pay**

The summary by the CRU found three errors in the CalHR's authorization of OOC pay.

**Cause:** Human error contributed to one of the findings; however, the other two were due to a miscalculation related to the recent implementation of PLP 2020.

**CalHR Response:** Staff have been trained on the three errors that were found.

**Finding No. 18: Performance appraisals were not provided to all employees**

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The summary by the CRU indicated that the CalHR failed to provide annual performance appraisals to 10 of 25 employees reviewed after the completion of the employee's probationary period.

**Cause:** Despite the annual notice that is sent to all supervisors and managers, and the follow-up email reminders to submit performance appraisals, some supervisors and managers do not submit performance appraisals as required to the HRO.

**CalHR Response:** Going forward, in addition to the emails and reminders, CalHR's leadership team will emphasize the importance of completing performance appraisals in management meetings (weekly Executive meetings and monthly supervisor/manager meetings).

Sincerely,

*Stephanie Hees*

Stephanie Hees  
Chief of Human Resources  
California Department of Human Resources