

COMPLIANCE REVIEW REPORT

OFFICE OF LEGISLATIVE COUNSEL

Compliance Review Unit
State Personnel Board
February 13, 2024

TABLE OF CONTENTS

INTRODUCTION	1
EXECUTIVE SUMMARY	2
BACKGROUND	3
SCOPE AND METHODOLOGY	4
FINDINGS AND RECOMMENDATIONS	5
EXAMINATIONS.....	5
APPOINTMENTS.....	7
EQUAL EMPLOYMENT OPPORTUNITY	12
MANDATED TRAINING	13
COMPENSATION AND PAY	17
LEAVE.....	25
POLICY AND PROCESSES	28
DEPARTMENTAL RESPONSE.....	31
SPB REPLY	32

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 Office of Legislative Counsel (OLC) 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	Very Serious	Unlawful Appointment
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed ¹
Appointments	Technical	Department Did Not Provide Benefit Information in Accordance with Civil Service Law
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
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 Employees
Mandated Training	Very Serious	Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs
Compensation and Pay	Very Serious	Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment
Compensation and Pay	In Compliance	Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

¹ Repeat finding. The OLC's June 22, 2021, compliance review report identified 2 probationary reports of performance were not provided for 2 of 45 appointments reviewed. The OLC's January 30, 2017, compliance review report identified 21 probationary reports of performance were not provided for 13 of 37 appointments reviewed.

Area	Severity	Finding
Compensation and Pay	In Compliance	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	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	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Very Serious	Department's Nepotism Policy Does Not Contain All Required Components
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

BACKGROUND

The OLC provides legal assistance to the two houses of the Legislature and their members and committees, by resolving a large volume of complex legal problems arising in connection with the legislative process. The legal services furnished include rendering opinions, drafting bills, counseling, attending as counsel meetings of legislative committees, and representing the Legislature in litigation. The attorney-client relationship is maintained, and all work is confidential. In addition, the OLC prepares and provides necessary indices and appropriate tables necessary to identify legislative measures and compiles and indexes statutes and codes.

The OLC operates the Legislative Data Center, which provides information technology services in support of the legislative information system and the processing of legislative measures.

Additionally, the Workplace Conduct Unit (WCU) is housed within OLC. The WCU is charged with conducting prompt, independent, and objective investigations of allegations of inappropriate workplace conduct by legislative employees, legislative Members, or third parties, based on a person's protected class.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the OLC's examinations, appointments, EEO program, mandated training, compensation and pay, leave, and policy and processes². The primary objective of the review was to determine if the OLC'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 OLC's examinations was selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the OLC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The OLC did not conduct any permanent withhold actions during the compliance review period.

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

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

The review of the OLC's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal

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

discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee.

The OLC did not execute any PSC's during the compliance review period.

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

The CRU reviewed the OLC'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 OLC's units in order to ensure they maintained accurate and timely leave accounting records. Additionally, the CRU reviewed a selection of OLC positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements. During the compliance review period, the OLC did not have any employees with non-qualifying pay period transactions. The OLC also did not authorize Administrative Time Off (ATO).

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

The CRU received and carefully reviewed the OLC's written response on January 26, 2024, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, §

18931, subd. (a).) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) The final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, December 1, 2022, through August 31, 2023, the OLC conducted three examinations. The CRU reviewed the three examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
CEA B, Deputy Director, Architected Services Division	CEA	Statement of Qualifications (SOQ) ³	2/3/23	5
CEA B, Director, Workplace Conduct Unit	CEA	SOQ	7/26/23	6
CEA C, Chief Deputy Director, Customer Services Branch	CEA	SOQ	12/27/22	7

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

³ 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.

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 OLC 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 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, October 1, 2022, through June 30, 2023, the OLC made 131 appointments. The CRU reviewed 26 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Attorney IV	Certification List	Permanent	Full Time	1
Deputy Legislative Counsel	Certification List	Permanent	Full Time	2
Deputy Legislative Counsel III	Certification List	Permanent	Full Time	1
Deputy Legislative Counsel IV	Certification List	Permanent	Full Time	1
Information Technology Associate	Certification List	Permanent	Full Time	3
Information Technology Manager I	Certification List	Permanent	Full Time	1
Information Technology Manager II	Certification List	Permanent	Full Time	1
Information Technology Specialist I	Certification List	Permanent	Full Time	1
Information Technology Specialist I	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Information Technology Specialist II	Certification List	Permanent	Full Time	1
Legal Analyst	Certification List	Permanent	Full Time	2
Legal Office Administrator I	Certification List	Permanent	Full Time	1
Legal Support Supervisor I	Certification List	Permanent	Full Time	1
Library Technical Assistant I	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Principal Deputy Legislative Counsel I	Certification List	Permanent	Full Time	1
Proofreader	Certification List	Permanent	Full Time	2
Senior Legal Typist	Certification List	Permanent	Full Time	1
Information Technology Specialist I	Transfer	Permanent	Full Time	1
Proofreader	Transfer	Permanent	Full Time	1
Office Technician (Typing)	Training & Development	Permanent	Full Time	1

SEVERITY: VERY SERIOUS	FINDING NO. 2 UNLAWFUL APPOINTMENT
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Summary: The CRU found one unlawful appointment during the course of its regular review. The hired candidate did not meet the minimum qualifications for the Legal Analyst classification. The appointment will stand as more than one year has elapsed and there is no evidence of other than good faith by the employee or the department.

Criteria: Pursuant to Government Code section 18931, subdivision (a), the Board shall establish minimum qualifications for determining the fitness and qualifications of employees for each class of position. In accordance with California Code of Regulations, title 2, section 249.4, appointing powers shall verify that the candidate satisfies the minimum qualifications of the classification before the candidate is appointed.

California Code of Regulations, title 2, section 243.2, provides that for appointments in effect for longer than one year, an unlawful appointment may be corrected only when either the employee and/or the appointing power did not act in good faith in accordance with California Code of Regulations, title 2, section 243.

Severity: Very Serious. An unlawful appointment provides the employee with an unfair and unearned appointment advantage over other employees whose appointments have been processed in compliance with the requirements of civil service law. Unlawful appointments which are not corrected also create appointment inconsistencies that jeopardize the equitable administration of the civil service merit system.

When an unlawful appointment is voided, the employee loses any tenure in the position, as well as seniority credits, eligibility to take promotional examinations, and compensation at the voided appointment level. If “bad faith” is determined on the part of the appointing power, civil or criminal action may be initiated. Disciplinary action may also be pursued against any officer or employee in a position of authority who directs any officer or employee to take action in violation of the appointment laws. If bad faith is determined on the part of the employee, the employee may be required to reimburse all compensation resulting from the unlawful appointment and may also be subject to disciplinary action.

Cause: The OLC’s Human Resources (HR) staff incorrectly evaluated the education of the candidate as satisfying the educational requirement in the minimum qualifications for the classification.

Corrective Action: Within 90 days of the date of this report, the OLC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate that the department will improve its hiring practices to ensure conformity with California Code of Regulations, title 2, section 249.4. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

SEVERITY: SERIOUS	FINDING NO. 3 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED
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Summary: The OLC did not provide 11 probationary reports of performance for 5 of the 26 appointments reviewed by the CRU, as reflected in the table below. This is the third consecutive time this has been a finding for the OLC.

Classification	Appointment Type	No. of Appointments	Total No. of Missing Probation Reports
Information Technology Associate	Certification List	1	2
Legal Office Administrator I	Certification List	1	3
Library Technical Assistant I	Certification List	1	2
Senior Legal Typist	Certification List	1	1
Proofreader	Transfer	1	3

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

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

Cause: The OLC states that although their HR Management System automatically sends probation report due date email reminders to supervisors and managers, not all probation reports were completed.

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

SEVERITY: TECHNICAL	FINDING NO. 4 DEPARTMENT DID NOT PROVIDE BENEFIT INFORMATION IN ACCORDANCE WITH CIVIL SERVICE LAW
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Summary: The OLC did not memorialize that the applicant received an explanation of benefits, prior to appointment, in a formal offer of employment 20 times out of the 26 appointments reviewed by the CRU.

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

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

Cause: The OLC states that for 3 of the 20 appointments identified, a list of benefits was provided electronically to the new employees; however, the OLC acknowledges that information was not documented to have been provided prior to acceptance of employment. For the other 17 appointments identified, the OLC was unaware they were required to document current OLC employees received an explanation of benefits, prior to appointment, in a formal offer.

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

Equal Employment Opportunity

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

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

IN COMPLIANCE	FINDING NO. 5	EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES
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After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the OLC'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 Legislative Counsel of the OLC. The OLC 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.

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.*)

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.

CRU reviewed the OLC's mandated training program that was in effect during the compliance review period, September 1, 2021, through August 31, 2023.

SEVERITY: VERY SERIOUS	FINDING NO. 6 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS
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Summary: The OLC provided ethics training to all existing filers. However, the OLC did not provide ethics training to 13 of 23 new filers within 6 months of their appointment.

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

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

Cause: The OLC states there was a turnover in staff responsible for tracking the ethics training.

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

SEVERITY: VERY SERIOUS	FINDING NO. 7 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL EMPLOYEES
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Summary: The OLC did not provide sexual harassment prevention training to 12 of 19 new supervisors within 6 months of their appointment. In addition, the OLC did not provide sexual harassment prevention training to 7 of 46 existing supervisors every 2 years.

Furthermore, the OLC did not provide sexual harassment prevention training to 4 of 77 existing non-supervisors every 2 years.

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

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

Cause: The OLC states that all new supervisors receive supervisory training within the first 12 months of employment, which includes sexual harassment prevention training; therefore, not all supervisors completed sexual harassment prevention training within the mandated six month timeframe. In addition, despite the OLC's Professional Development Office (PDO) providing notices to all existing employees when they are due for sexual harassment prevention training, not all employees completed the training every two years.

Corrective Action: Within 90 days of the date of this report, the OLC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that all employees are provided sexual harassment prevention training in

accordance with Government Code section 12950.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

SEVERITY: VERY SERIOUS	FINDING NO. 8 SUPERVISORY TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS, MANAGERS, AND CEAS
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Summary: The OLC provided basic supervisory training to their 4 new supervisors within 12 months of appointment and provided CEA training to their 2 new CEAs within 12 months of appointment. However, the OLC did not provide manager training to 1 of 4 new managers within 12 months of appointment.

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

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

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

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

Cause: The OLC states that its HR failed to include the manager’s promotion in its monthly report to the PDO; therefore, the PDO did not properly notify the manager of its training requirement.

Corrective Action: Within 90 days of the date of this report, the OLC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that new supervisors are provided supervisory training within twelve months of appointment as required by Government Code section 19995.4.

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

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 rate⁴ 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, October 1, 2022, through June 30, 2023, the OLC made 131 appointments. The CRU reviewed 12 of those appointments to determine if the OLC applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Attorney IV	Certification List	Permanent	Full Time	\$13,789
Information Technology Associate	Certification List	Permanent	Full Time	\$4,652
Information Technology Manager I	Certification List	Permanent	Full Time	\$10,428
Information Technology Specialist I	Certification List	Permanent	Full Time	\$8,652
Information Technology Specialist II	Certification List	Permanent	Full Time	\$9,009
Legal Office Administrator I	Certification List	Permanent	Full Time	\$6,554
Legal Support Supervisor I	Certification List	Permanent	Full Time	\$4,650
Office Technician (Typing)	Certification List	Permanent	Full Time	\$3,471

⁴ "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)
Proofreader	Certification List	Permanent	Full Time	\$5,284
Proofreader	Certification List	Permanent	Full Time	\$5,284
Information Technology Specialist I	Transfer	Permanent	Full Time	\$9,931
Proofreader	Transfer	Permanent	Full Time	\$5,284

SEVERITY: VERY SERIOUS	FINDING NO. 9 INCORRECT APPLICATIONS OF SALARY DETERMINATION LAWS, RULES, AND CALHR POLICIES AND GUIDELINES FOR APPOINTMENT
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Summary: The CRU found 1 error in the 12 salary determinations reviewed:

Classification	Description of Finding	Criteria
Proofreader	Incorrect salary determination resulting in the employee being overcompensated.	Cal. Code Regs., tit. 2, section 599.674, subd. (a)

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

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

Cause: The OLC used the incorrect salary rule when calculating the employee's salary determination.

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

Alternate Range Movement Salary Determination (within same classification)

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

During the period under review, October 1, 2022, through June 30, 2023, the OLC made 41 alternate range movements within a classification. The CRU reviewed 19 of those alternate range movements to determine if the OLC 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)
Deputy Legislative Counsel	A	B	Full Time	\$7,814
Deputy Legislative Counsel	A	B	Full Time	\$7,814
Deputy Legislative Counsel	B	C	Full Time	\$8,281
Deputy Legislative Counsel	B	C	Full Time	\$8,587
Deputy Legislative Counsel	B	C	Full Time	\$8,587
Deputy Legislative Counsel	B	C	Full Time	\$8,587
Deputy Legislative Counsel	C	D	Full Time	\$8,695
Information Technology Associate	N	O	Full Time	\$7,348
Information Technology Specialist I	L	M	Full Time	\$8,638
Information Technology Specialist I	M	N	Full Time	\$8,781
Information Technology Specialist I	M	N	Full Time	\$8,781
Information Technology Specialist I	M	N	Full Time	\$9,273
Information Technology Specialist I	M	N	Full Time	\$9,275
Information Technology Specialist I	M	N	Full Time	\$9,275
Information Technology Specialist I	M	N	Full Time	\$9,500
Information Technology Specialist I	M	N	Full Time	\$9,500
Information Technology Specialist I	M	N	Full Time	\$9,500
Personnel Specialist	M	N	Full Time	\$4,523

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

Hiring Above Minimum Requests

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

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

If the provisions of this section conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.⁵ (Gov. Code, § 19836, subd. (b).) Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in

⁵ Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be competitive with the employee's salary in the exempt appointment. (*Ibid.*) For example, an employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

During the period under review, October 1, 2022, through June 30, 2023, the OLC authorized 10 HAM requests. The CRU reviewed eight of those authorized HAM requests to determine if the OLC correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Deputy Legislative Counsel	Certification List	New to State	\$9,447-\$9,439	\$9,232
Deputy Legislative Counsel	Certification List	New to State	\$7,153 - \$10,630	\$9,232
Deputy Legislative Counsel	Certification List	New to State	\$7,153 - \$10,630	\$10,415
Deputy Legislative Counsel III	Certification List	New to State	\$10,225 - \$13,118	\$11,843
Deputy Legislative Counsel III	Certification List	New to State	\$9,980 - \$12,812	\$12,738
Deputy Legislative Counsel III	Certification List	New to State	\$10,230 - \$13,132	\$12,435
Information Technology Manager II	Certification List	New to State	\$10,421-\$12,668	\$12,035
Information Technology Specialist I	Certification List	New to State	\$7,412 - \$9,931	\$9,931

IN COMPLIANCE	FINDING NO. 11 HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found that the HAM requests the OLC made during the compliance review period satisfied civil service laws, Board rules and CalHR policies and guidelines.

Out-of-Class Assignments and Pay

For excluded⁶ and most rank-and-file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

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

During the period under review, October 1, 2022, through June 30, 2023, the OLC issued OOC pay to eight employees. The CRU reviewed seven of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Deputy Legislative Counsel III	E97	CEA, Director Workplace Conduct Unit	10/1/22-12/2/22

⁶ “Excluded employee” means an employee as defined in Government Code section 3527, subdivision (b) (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to Government Code section 18801.1.

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Deputy Legislative Counsel III	E97	Principal Deputy Legislative Counsel I	10/1/22-11/30/22
Deputy Legislative Counsel III	E97	Principal Deputy Legislative Counsel I	10/1/22-11/30/22
Deputy Legislative Counsel III	E97	Principal Deputy Legislative Counsel I	1/3/22-12/31/22
Deputy Legislative Counsel IV	E97	CEA, Director Workplace Conduct Unit	12/3/22-6/30/23
Information Technology Specialist II	E97	Information Technology Manager I	4/14/23-5/31/23
Legal Assistant	E97	Legal Analyst	10/1/22-10/31/22

SEVERITY: VERY SERIOUS	FINDING NO. 12 INCORRECT AUTHORIZATION OF OUT-OF-CLASS PAY
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Summary: The CRU found five errors in the seven OOC pay assignments reviewed:

Classification	Out-of-Class Classification	Description of Findings	Criteria
Deputy Legislative Counsel III	CEA	Employee was undercompensated for the November 2022 pay period.	Pay Differential 101
Deputy Legislative Counsel III	Principal Deputy Legislative Counsel I	Employee was undercompensated for the October 2022 and November 2022 pay periods.	Pay Differential 101
Deputy Legislative Counsel III	Principal Deputy Legislative Counsel I	Employee was undercompensated for the October 2022 and November 2022 pay periods.	Pay Differential 101
Deputy Legislative Counsel IV	CEA	The employee was undercompensated for the December 2022 pay period. In addition, the employee was issued OOC pay for four days after the expiration of the OOC assignment in the June 2023 pay period.	Pay Differential 101

Classification	Out-of-Class Classification	Description of Findings	Criteria
Legal Assistant	Legal Analyst	The employee was overcompensated for the October 2022 pay period.	Pay Differential 101

Criteria: 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 OLC failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with CalHR's policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The OLC states the errors were due to HR staff referencing outdated salary rates and/or inadvertently omitting salary increases when calculating the OOC pay.

Corrective Action: Within 90 days of the date of this report, the OLC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.810 and Pay Differential 101. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Leave

Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting time is used to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all the working days of a month. When counting 189 days, every day worked, including partial days⁷ worked and paid absences⁸, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day are not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

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

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1500 hours within 12 consecutive months

⁷ For example, two hours or ten hours count as one day.

⁸ For example, vacation, sick leave, compensating time off, etc.

may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

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

At the time of the review, the OLC had 19 positive paid employees whose hours were tracked. The CRU reviewed 15 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
Attorney III	Retired Annuitant	7/1/22-6/30/23	913 Hours
Attorney Supervisor	Retired Annuitant	7/1/22-6/30/23	802 Hours
Attorney Supervisor	Retired Annuitant	7/1/22-6/30/23	464 Hours
Attorney Supervisor	Retired Annuitant	7/1/22-6/30/23	883 Hours
CEA	Retired Annuitant	7/1/22-6/30/23	960 Hours
Information Technology Manager II	Retired Annuitant	7/1/22-6/30/23	648.5 Hours
Information Technology Specialist I	Retired Annuitant	7/1/22-6/30/23	959 Hours
Information Technology Specialist I	Retired Annuitant	7/1/22-6/30/23	841 Hours
Information Technology Specialist I	Retired Annuitant	7/1/22-6/30/23	838.5 Hours
Information Technology Specialist I	Retired Annuitant	7/1/22-6/30/23	33 Hours
Information Technology Specialist I	Retired Annuitant	7/1/22-6/30/23	1.75 Hours
Information Technology Specialist I	Retired Annuitant	7/1/22-6/30/23	746.5 Hours
Information Technology Specialist I	Retired Annuitant	7/1/22-6/30/23	249 Hours
Legal Office Administrator I	Retired Annuitant	7/1/22-6/30/23	450 Hours
Staff Services Manager II (Supervisory)	Retired Annuitant	7/1/22-6/30/23	96 Hours

IN COMPLIANCE	FINDING NO. 13 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The OLC provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

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, March 2, 2023, through May 31, 2023, the OLC reported 11 units comprised of 578 active employees during the March 2023 pay period, 598 active employees during the April 2023 pay period, and 581 employees during the May 2023 pay period. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	No. of Employees	No. of Timesheets Reviewed	No. of Missing Timesheets
March 2023	160	20	20	0
March 2023	170	24	24	0
April 2023	140	46	46	0
May 2023	120	12	12	0
May 2023	180	8	8	0

IN COMPLIANCE	FINDING NO. 14 LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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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 OLC 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.

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.*)

SEVERITY: VERY SERIOUS	FINDING NO. 15 DEPARTMENT'S NEPOTISM POLICY DOES NOT CONTAIN ALL REQUIRED COMPONENTS
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Summary: The OLC's nepotism policy does not contain all required components. Specifically, the OLC's nepotism policy does not include:

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 “personal relationship” as persons related by blood, adoption, current or former marriage, domestic partnership or cohabitation.
3. A statement that prohibits participation in the selection of an applicant for employment by anyone who has a personal relationship with the applicant.

Criteria: 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. (Human Resources Manual Section 1204). All department nepotism policies shall include six specific components which emphasize that nepotism is antithetical to merit-based civil service and include definitions and prohibitions integral to upholding the merit system. (Cal. Code Regs., tit. 2, § 87.)

Severity: Very Serious. Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. Departments must take proactive steps to ensure that the hiring, transferring, and promoting of all employees is done on the basis of merit and fitness in accordance with civil service statutes. Maintaining a current written nepotism policy that addresses all requirements outlined in civil service statute, rules and regulations, and its dissemination to all staff, is the cornerstone for achieving these outcomes.

Cause: The OLC acknowledges their nepotism policy does not include all the required components and they are committed to updating it as soon as possible.

Corrective Action: Within 90 days of the date of this report, the OLC must submit to the SPB a written corrective action response which includes an updated nepotism policy which contains all requirements outlined in Human Resources Manual section 1204, and documentation demonstrating that it has been distributed to all staff.

Workers' Compensation

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

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

IN COMPLIANCE	FINDING NO. 16 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU verified that the OLC 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 OLC 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 74 permanent OLC 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. 17 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES
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Summary: The OLC did not provide annual performance appraisals to 60 of 74 employees reviewed after the completion of the employee's probationary period.

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

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

Cause: Despite the OLC's HR Management System sending email reminders to supervisors with each employee's performance appraisal due date, not all performance appraisals were completed.

Corrective Action: Within 90 days of the date of this report, the OLC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

DEPARTMENTAL RESPONSE

The OLC's response is attached as Attachment 1.

SPB REPLY

Based upon the OLC's written response, the OLC 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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January 26, 2024

Compliance Review Unit
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

RE: OLC Response to SPB Compliance Review Draft Findings

The State Personnel Board's Compliance Review Unit (CRU) recently completed a review of the Office of Legislative Counsel's (OLC's), known statutorily as the Legislative Counsel Bureau (LCB), personnel practices in the areas of examinations, appointments, equal employment opportunity (EEO), personnel services contracts (PSCs), mandated training, compensation and pay, leave, and policy and process from October 1, 2022, through June 30, 2023. The primary objective of the review was to determine if OLC personnel practices, policies, and procedures complied with state civil service laws and board regulations and to recommend corrective action where concerns were identified. Below are the OLC's responses to the CRU areas of concern:

FINDING NO. 2 – Unlawful Appointment

Summary: The CRU found one unlawful appointment during the course of its regular review. The hired candidate did not meet the minimum qualifications for the Legal Analyst classification. The appointment will stand as more than one year has elapsed and there is no evidence of other than good faith by the employee or the department.

Cause: Human Resources staff incorrectly evaluated the education of the candidate as meeting the minimum qualifications for the classification. Although the candidate did possess the required experience, the candidate did not satisfy the educational requirement.

Human Resources management will ensure staff evaluating minimum qualifications are properly trained, and we will implement a secondary review of candidates' experience and education to ensure minimum qualifications are met prior to finalization of appointments.

FINDING NO. 3 – Appointments – Probationary Evaluations Were Not Provided for All Appointments Reviewed

Summary: The OLC did not provide 11 probationary reports of performance for five of the 26 appointments reviewed by the CRU. This is the third consecutive time this has been a finding for the OLC.

Cause: Human Resources staff input probation report due dates into the OLC's Human Resources Management System (HRMS) when processing new appointments. The HRMS automatically sends email reminders to supervisors and managers notifying them of each probationary report 30 days in advance of the due date. Human Resources will implement improved procedures to track receipt of reports and follow up with those supervisors who do not complete them. Additionally, management will discuss ways in which to communicate to supervisors the expectation and importance of completing probation reports in a timely manner.

FINDING NO. 4 – Department did not provide benefit information in accordance with Civil Service Law.

Summary: The OLC did not memorialize that the applicant received an explanation of benefits, prior to appointment, in a formal offer of employment 20 times out of the 26 appointments reviewed by the CRU.

Cause: Of the 20 appointments that were discussed by the CRU, 17 appointees were already current employees of the OLC who were receiving benefits through their employment with the OLC. For the other 3 appointments discussed, the OLC electronically provided a comprehensive list of all benefits available to new employees, however we acknowledge that information was not documented to have been provided prior to final acceptance of an offer of employment.

Going forward, the OLC will create an official offer letter that all OLC supervisors and managers will use when offering positions to candidates prior to acceptance of an employment offer. This offer letter will contain the necessary salary and benefit information to meet the requirements of the statute.

FINDING NO.6 – Ethics Training was not provided to all filers.

Summary: The OLC provided ethics training to all existing filers. However, the OLC did not provide ethics training to 13 of 23 new filers within 6 months of their appointment.

Cause: During the audit period, the Senior Legal Analyst who administered the OLC's Form 700/Conflict of Interest program left state service. During the transition to the employee's successor, the method by which the prior administrator was notified of new employees inadvertently did not transfer to the new employee. In June 2023, after realizing the issue, the OLC implemented an updated automatic notification process through its HRMS.

FINDING NO.7 – Sexual Harassment prevention training was not provided for all employees.

Summary: The OLC did not provide sexual harassment prevention training to 12 of 19 new supervisors within 6 months of their appointment. In addition, the OLC did not provide sexual harassment prevention training to 7 of 46 existing supervisors every 2 years. Furthermore, the OLC did not provide sexual harassment prevention training to 4 of 77 existing non-supervisors every 2 years.

Cause: All new supervisors receive supervisory/management training in the first 12 months of employment, which includes a module on sexual harassment training. The OLC will ensure that those new supervisors who do not complete their supervisory/management training within 6 months receive supplemental sexual harassment training to ensure they have received this training within the six-month requirement. For refresher training, the OLC's Professional Development Office (PDO) notices all employees when they are due for refresher training. The PDO is establishing new escalation procedures, up through executive management when necessary, to ensure better enforcement of mandated training requirements.

FINDING NO.8 – Supervisory training was not provided for all supervisors, managers, and CEAs

Summary: The OLC provided basic supervisory training to their 4 new supervisors within 12 months of appointment and provided CEA training to their 2 new CEAs within 12 months of appointment. However, the OLC did not provide manager training to 1 of 4 new managers within 12 months of appointment.

Cause: Human Resources failed to include the manager's promotion in its monthly report to the PDO, and therefore the PDO was unable to properly notice the employee of their training requirement. The OLC is reviewing options for implementing an automated notification to the PDO from the HRMS to prevent such an oversight from recurring.

FINDING NO.9 – Incorrect applications of salary determination laws, rules, and CalHR policies and guidelines for appointment.

Summary: The CRU found 1 error in the 12 salary determinations reviewed: Proofreader – incorrect salary determination resulting in the employee being overcompensated.

Cause: The OLC agrees its salary determination was incorrect.

The OLC used CCR 599.681, which is the movement between alternate ranges when processing the employees transfer. This gave the employee the range differential of 3% and did not change their anniversary date of May 2023. According to the alternate range criteria 285, the OLC should have used CCR 599.674, which would have provided the 3% increase and the OLC should have inputted a new accelerated anniversary date of November 2023.

OLC HR Transactions staff will be required to attend advanced salary determination training in order to correct these type of errors in the future.

FINDING NO.12 – Incorrect authorization of out-of-class pay.

Summary: The CRU found five errors in the seven OOC pay assignments reviewed.

Cause: The OLC agrees these pay determinations were incorrect. All errors were reviewed, and the causes of each were determined. Errors were due to HR staff referencing outdated salaries before general salary increases were posted when calculating OOC pay in 2 instances, not factoring in merit salary increases or other salary increases in 2 instances, and not initially bringing employees to the minimum of the out of class classification's salary in 1 instance. OLC HR Transactions staff will be required to attend refresher and advanced training to mitigate future errors in salary determinations, and they have been instructed to review the revision date for all salaries to ensure they are current.

Additionally, OLC HR will institute secondary reviews and monthly audits to review salary determinations for accuracy.

FINDING NO.15 – Department's Nepotism policy does not contain all required components.

Summary: The OLC's nepotism policy does not contain all required components. Specifically, the OLC's nepotism policy does not include:

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 "personal relationship" as persons related by blood, adoption, current or former marriage, domestic partnership or cohabitation.
3. A statement that prohibits participation in the selection of an applicant for employment by anyone who has a personal relationship with the applicant.

Cause: The OLC will be updating its Nepotism Policy as quickly as possible, as we agree it does not contain the above statements.

FINDING NO.17 – Performance appraisals were not provided to all employees.

Summary: The OLC did not provide annual performance appraisals to 60 of 74 employees reviewed after the completion of the employee's probationary period.

Cause: The OLC has an annual performance review policy that specifies when each Branch's reviews are due. Administrative and IT staff are due during the birth month of the employee. Attorneys and Legal Support employees are due by December 31, each year.

As with Finding #3, the OLC's HRMS sends email reminders to supervisors notifying them of each employee's performance review 30 days in advance of the due date. Human Resources will implement improved procedures to track receipt of reviews and follow up

with those supervisors who do not complete them. Additionally, management will discuss ways in which to communicate to supervisors the expectation and importance of completing annual reviews in a timely manner.

The OLC would like to once again thank the CRU and appreciates the opportunity to respond to the compliance review report. Additionally, the OLC takes the reported concerns very seriously and will implement corrective action to strengthen oversight and compliance in the sited areas as indicated in our responses above. If you have any questions or concerns, please contact Michael Dallas, Human Resources Officer at (916) 341-8333 or michael.dallas@lc.ca.gov.