



# **COMPLIANCE REVIEW REPORT**

## **LEGISLATIVE COUNSEL BUREAU**

Compliance Review Unit  
State Personnel Board  
June 22, 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 Legislative Counsel Bureau (LCB)'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	Very Serious	Equal Employment Opportunity Questionnaires Were Not Separated from Applications
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed <sup>1</sup>
Equal Employment Opportunity	Very Serious	A Disability Advisory Committee Has Not been Established <sup>2</sup>
Mandated Training	In Compliance	Mandated Training Complied with Statutory Requirements
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Arduous Pay Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

<sup>1</sup> Repeat finding. January 30, 2017, the LCB's compliance review report identified 21 missing probation reports of the 37 appointment files reviewed.

<sup>2</sup> Repeat finding. January 30, 2017, the LCB's compliance review report showed that the LCB does not have an active DAC.

Area	Severity	Finding
Compensation and Pay	In Compliance	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
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	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	In Compliance	Performance Appraisals Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

### **BACKGROUND**

The LCB provides legal assistance to the two houses of the Legislature, along with 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 the meetings of legislative committees, and representing the Legislature in litigation. The attorney-client relationship is maintained and all work is confidential. In addition, the LCB prepares and provides necessary indices and appropriate tables necessary to identify legislative measures; and, compiles and indexes statutes and codes.

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

Further, pursuant to Chapter 46 of the Statutes of 2012, the California Commission on Uniform State Laws was transferred into the LCB. The California Commission on Uniform State Laws presents to the Legislature uniform laws recommended by the National

Conference of Commissioners on Uniform State Laws and then promotes passage of these uniform acts.

Additionally, pursuant to Chapter 450 of the Statutes of 2018, the LCB also provides advice and investigation services to the Legislature related to workplace misconduct through the Workplace Conduct Unit.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the LCB's examinations, appointments, EEO program, mandated training, compensation and pay, leave, and policy and processes<sup>3</sup>. The primary objective of the review was to determine if the LCB'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 LCB'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 LCB provided, which included examination plans, examination bulletins, job analyses, and scoring results. The LCB did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the LCB'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 LCB 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 LCB did not conduct any unlawful appointment investigations, nor did it make any additional appointments during the compliance review period.

The LCB's appointments were also selected for review to ensure the LCB applied salary regulations accurately; and, correctly processed employees' compensation and pay. The CRU examined the documentation that the LCB 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:

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<sup>3</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

hire above minimum (HAM) requests, arduous pay, alternate range movements, and out-of-class assignments.

During the compliance review period, the LCB did not issue or authorize any red circle rate requests or bilingual pay.

The review of the LCB'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 (DAC).

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

The LCB'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 CEAs were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the LCB'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 LCB'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 LCB'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 LCB employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of LCB positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

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

On May 18, 2021, an exit conference was held with the LCB to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the LCB's written response on May 21, 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, December 1, 2018, through August 30, 2019, the LCB conducted three examinations. The CRU reviewed three of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Information Technology Specialist III	Justified Waiver Process <sup>4</sup>	Evaluation Questionnaire	N/A	1
Information Technology Specialist II	Justified Waiver Process	Evaluation Questionnaire	N/A	2

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<sup>4</sup> The Justified Waiver Process is an alternate method of evaluation with the qualifications being assessed by questionnaire. This process is part of LCB's Special Examination and Appointment Program, a demonstration project, outlined in California Code of Regulations, title 2, section 549.70 et. seq.



Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Proofreader	Open	Written	05/10/19	23

<b>VERY SERIOUS</b>	<b>FINDING NO. 1 EQUAL EMPLOYMENT OPPORTUNITY QUESTIONNAIRES WERE NOT SEPARATED FROM APPLICATIONS</b>
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**Summary:** Out of three examinations reviewed, one examination included applications where EEO questionnaires were not separated from the employment application (STD. 678). Specifically, 3 of the 23 applications reviewed included EEO questionnaires that were not separated from the STD. 678.

**Criteria:** Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application plication indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a): for example, a person’s race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Applicants for employment in state civil service are asked to voluntarily provide ethnic data about themselves where such data is determined by the CalHR to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action EEO questionnaire of the STD. 678 states, “This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions.”

**Severity:** Very Serious. The applicants’ protected classes were visible, subjecting the agency to potential liability.

**Cause:** The LCB acknowledges that examination staff did not remove the EEO questionnaires from the three applications because the candidates did not meet minimum qualifications and were not admitted into the examination. The LCB states that these applications were kept separate from admitted candidates’

applications in the examination file. At no time were EEO questionnaires sent to hiring supervisors/managers.

**Corrective Action:** The LCB has indicated that moving forward, it will ensure that hard copy applications will have the EEO forms removed. Within 90 days of the date of this report, the LCB must submit to the SPB written documentation which addresses the corrections the department has implemented to ensure that future EEO questionnaires are separated from all applications.

### **Appointments**

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

During the period under review, December 1, 2018, through August 2, 2019, the LCB made 150 appointments. The CRU reviewed 45 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Governmental Program Analyst	Certification List	Permanent	Full-Time	1
Graphic Designer II	Certification List	Permanent	Full-Time	1
Information Technology Associate	Certification List	Permanent	Full-Time	3

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
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	5
Information Technology Specialist II	Certification List	Permanent	Full-Time	4
Legal Support Supervisor I	Certification List	Permanent	Full-Time	2
Office Assistant (General)	Certification List	Permanent	Full-Time	1
Office Assistant (Typing)	Certification List	Permanent	Full-Time	1
Office Technician (Typing)	Certification List	Permanent	Full-Time	4
Senior Legal Analyst	Certification List	Permanent	Full-Time	3
Staff Services Analyst (General)	Certification List	Permanent	Full-Time	2
Staff Services Manager II	Certification List	Permanent	Full-Time	1
Deputy Legislative Counsel III	Transfer	Permanent	Full-Time	1
Information Technology Associate	Transfer	Permanent	Full-Time	3
Information Technology Manager I	Transfer	Permanent	Full-Time	1
Information Technology Specialist I	Transfer	Permanent	Full-Time	9
Proofreader	Transfer	Permanent	Full-Time	1

The LCB measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the 30 list appointments reviewed, the LCB ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including State Restriction of Appointments, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU reviewed 15 LCB appointments made via transfer. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Regs., tit. 2, § 425.) The LCB verified the eligibility of each candidate to their appointed class.

However, in reviewing the LCB’s appointments that were made during the compliance review period, the CRU determined the following:

<b>SERIOUS</b>	<b>FINDING No. 2 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED</b>
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**Summary:** The LCB did not provide 2 probationary reports of performance for 2 of the 45 appointments reviewed by the CRU, as reflected in the table below. This is the second consecutive time this has been a finding for the LCB.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Information Technology Specialist I	List Appointment	1	1
Graphic Designer II	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. (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 LCB states that it notifies supervisors and managers of each probationary report due date 30 days in advance, and sends reminder emails. The LCB acknowledges that not all supervisors and managers consistently meet this requirement to complete and return the reports to the Human Resources Office for retention in each employee's official personnel file.

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

### **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).)

The CRU reviewed the LCB's EEO program that was in effect during the compliance review period.

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 the following:

<b>VERY SERIOUS</b>	<b>FINDING NO. 3 A DISABILITY ADVISORY COMMITTEE HAS NOT BEEN ESTABLISHED</b>
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**Summary:** The LCB does not have an active DAC. This is the second consecutive time this has been a finding for LCB.

**Criteria:** 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).)

**Severity:** Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

**Cause:** The LCB states that it previously had an active DAC; however, the committee did not convene during the compliance review period. The LCB states that following the review, the LCB reformulated its DAC which has been active since September 2020.

**Corrective Action:** The LCB has taken steps to re-establish its DAC. Within 90 days of the date of this report, the LCB must submit to the SPB written documentation which addresses the corrections the department has implemented to ensure it maintains an active DAC, comprised of members who have disabilities or who have an interest in disability issues. Copies of relevant documentation demonstrating that the

corrective action has been implemented includes the new DAC roster, agenda, and meeting minutes.

### **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 LCB’s mandated training program that was in effect during the compliance review period, September 1, 2017, through August 30, 2019.

<b>IN COMPLIANCE</b>	<b>FINDING NO. 4</b>	<b>MANDATED TRAINING COMPLIED WITH STATUTORY REQUIREMENTS</b>
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The LCB provided ethics training to its 4 new filers within 6 months of appointment and, for 89 existing filers, “at least once during each consecutive period of 2 calendar years, commencing on the first odd-numbered year thereafter.” In addition, the LCB provided sexual harassment prevention training its 18 new supervisors within 6 months of appointment, and sexual harassment prevention training to its 65 existing supervisors

every 2 years. Thus, the LCB complied with mandated training requirements within statutory timelines.

## **Compensation and Pay**

### **Salary Determination**

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

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

During the period under review, December 1, 2018, through August 2, 2019, the LCB made 150 appointments. The CRU reviewed 12 of those appointments to determine if the LCB applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Information Technology Associate	Certification List	Permanent	Full Time	\$3,994
Information Technology Associate	Certification List	Permanent	Full Time	\$4,390
Information Technology Associate	Certification List	Permanent	Full Time	\$4,800
Information Technology Manager I	Certification List	Permanent	Full Time	\$9,830
Information Technology Manager II	Certification List	Permanent	Full Time	\$10,378
Information Technology Specialist I	Certification List	Permanent	Full Time	\$6,364
Information Technology Specialist I	Certification List	Permanent	Full Time	\$6,364

<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).



Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Information Technology Specialist II	Certification List	Permanent	Full Time	\$7,223
Information Technology Specialist II	Certification List	Permanent	Full Time	\$7,270
Office Technician (Typing)	Certification List	Permanent	Full Time	\$2,706
Office Technician (Typing)	Certification List	Permanent	Full Time	\$2,706
Senior Legal Analyst	Certification List	Permanent	Full Time	\$5,380

<b>IN COMPLIANCE</b>	<b>FINDING NO. 5 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the salary determinations that were reviewed. The LCB appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

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

During the period under review, December 1, 2018, through August 2, 2019, the LCB employees made 87 alternate range movements within a classification. The CRU reviewed 30 of those alternate range movements to determine if the LCB 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	B	C	Full-Time	\$6766.00
Deputy Legislative Counsel	C	D	Full-Time	\$7832.00
Deputy Legislative Counsel	C	D	Full-Time	\$8934.00
Deputy Legislative Counsel	A	B	Full-Time	\$6119.00
Information Technology Associate	N	O	Full-Time	\$6753.00
Information Technology Associate	N	O	Full-Time	\$6181.00
Information Technology Associate	N	O	Full-Time	\$5622.00
Information Technology Associate	M	N	Full-Time	\$5442.00
Information Technology Associate	M	N	Full-Time	\$5715.00
Information Technology Associate	M	N	Full-Time	\$5443.00
Information Technology Associate	M	N	Full-Time	\$5966.00
Information Technology Associate	M	N	Full-Time	\$5444.00
Information Technology Specialist I	L	M	Full-Time	\$6544.00
Information Technology Specialist I	M	N	Full-Time	\$8157.00
Information Technology Specialist I	A	B	Full-Time	\$5383.00
Information Technology Specialist I	M	N	Full-Time	\$6550.00
Information Technology Specialist I	A	B	Full-Time	\$5383.00
Information Technology Specialist I	M	N	Full-Time	\$6878.00
Information Technology Specialist I	M	N	Full-Time	\$6512.00
Information Technology Specialist I	M	N	Full-Time	\$7962.00
Information Technology Specialist I	L	M	Full-Time	\$7433.00
Information Technology Specialist I	M	N	Full-Time	\$7221.00
Information Technology Specialist I	L	M	Full-Time	\$6232.00
Information Technology Specialist I	A	B	Full-Time	\$5901.00
Information Technology Specialist I	A	B	Full-Time	\$5715.00
Information Technology Specialist I	L	M	Full-Time	\$6450.00
Information Technology Specialist I	L	M	Full-Time	\$6364.00
Information Technology Specialist I	A	B	Full-Time	\$5901.00
Information Technology Technician	M	N	Full-Time	\$4286.00
Personnel Specialist	L	M	Full-Time	\$3846.00

<b>IN COMPLIANCE</b>	<b>FINDING NO. 6 ALTERNATE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the alternate range movements the LCB made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

## Hiring Above Minimum Requests

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

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

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.<sup>6</sup> (Gov. Code, § 19836 subd. (b).)

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

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<sup>6</sup> Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

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

During the period under review, December 1, 2018, through August 2, 2019, the LCB authorized five HAM requests. The CRU reviewed five of those authorized HAM requests to determine if the LCB 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)
Associate Governmental Program Analyst	Certification List	Permanent	\$5,304.00 - \$6,640.00	\$5,750
Information Technology Specialist I	Certification List	Permanent	\$6,587.00 - \$8,826.00	\$7,000
Information Technology Specialist I	Certification List	Permanent	\$6,587.00 - \$8,826.00	\$8,400
Information Technology Specialist II	Certification List	Permanent	\$7,223.00 - \$9,681.00	\$9,315
Information Technology Specialist II	Certification List	Permanent	\$7,223.00 - \$9,681.00	\$9,522

<b>IN COMPLIANCE</b>	<b>FINDING NO. 7 HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found that the HAM requests the LCB made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Arduous Pay

Effective July 1, 1994, appointing authorities were provided the discretion to provide additional compensation for employees exempt from the Fair Labor Standards Act (FLSA) who perform arduous work that exceeds the normal demands of state service

employment. (Human Resources Manual Section 1702.) The work must be extraordinarily demanding, time consuming, and significantly exceed employees' normal workweek. The employee cannot be entitled to receive any other sort of compensation such as overtime. Eligible employees are FLSA-exempt employees who do not receive compensation in recognition of hours worked in excess of 40 hours per week. The duration of the arduous period must be at least two weeks or more. (*Ibid.*)

Excluded and represented employees who are FLSA-exempt and assigned to Work Week Group E are eligible to receive up to four (4) months of pay per fiscal year, or per event for emergencies, if the following conditions are met:<sup>7</sup>

- There is a nonnegotiable deadline or extreme urgency;
- Work exceeds normal work hours and normal productivity;
- Work is unavoidable;
- Work involves extremely heavy workload;
- Employee is eligible for no other compensation, and
- The circumstances that support this pay differential are documented.

Departments have delegated authority to approve arduous pay for excluded employees who are FLSA-exempt, but CalHR approval is required for any arduous pay issued to represented employees.

Although departments have delegated authority to approve arduous pay,<sup>8</sup> they are required to fill out CalHR Form 777, documenting the circumstances, assessment and rationale behind all arduous pay approvals. A new Form 777 should be filled out for every employee receiving the pay differential, every time an employee is approved to receive a new pay differential, and every time an employee wants to extend their arduous pay. Extensions are only granted in rare circumstances. Departments must keep the Form 777 on file and retain the form for five years after the approval date. (*Ibid.*)

During the period under review, December 1, 2018, through August 2, 2019, the LCB issued Arduous Pay to three employees. The CRU reviewed three arduous pay authorizations, listed below, to ensure compliance with applicable CalHR policies and guidelines:

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<sup>7</sup> Applicable Memorandum of Understandings or Bargaining Unit Agreements detail other specific criteria.

<sup>8</sup> Pay Letter 94-32 established Pay Differential 62 regarding arduous pay for Bargaining Units 1, 7, 9, 17, 19, and 21, and Excluded employees.

Classification	Bargaining Unit	Work Week Group	Time Base	Total Compensation	Number of Months Received
Information Technology Manager II	M01	2	Full Time	\$3,600	3
Information Technology Specialist II	R01	2	Full Time	\$3,600	3
Information Technology Specialist III	M01	2	Full Time	\$3,600	3

<b>IN COMPLIANCE</b>	<b>FINDING NO. 8 ARDUOUS PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found that the arduous pay authorizations that the LCB made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

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

For excluded<sup>9</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

<sup>9</sup> “Excluded employee” means an employee as defined in section 3527, subd. (b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires. (Classification and Pay Guide Section 375.)

During the period under review, December 1, 2018, through August 2, 2019, the LCB issued OOC pay to one employee. The CRU reviewed the OOC assignment to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. This is listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Staff Services Analyst	R01	Staff Services Manager I	07/08/19 - 11/30/19

<b>IN COMPLIANCE</b>	<b>FINDING NO. 9</b>	<b>OUT OF CLASS PAY 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 OOC pay assignments that the LCB authorized during the compliance review period. OOC pay was issued appropriately to employees 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.

**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>10</sup> worked and paid absences<sup>11</sup>, is 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 calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

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

Generally, permanent intermittent employees may work up to 1500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year. Additionally, 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 LCB had 18 positive paid employees whose hours were tracked. The CRU reviewed 14 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

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<sup>10</sup> For example, two hours or ten hours count as one day.

<sup>11</sup> For example, vacation, sick leave, compensating time off, etc.



Classification	Tenure	Time Frame	Time Worked
Deputy Legislative Counsel III	Intermittent	July 1, 2018 – June 30, 2019	775.5 hours
Deputy Legislative Counsel IV	Intermittent	July 1, 2018 – June 30, 2019	591 hours
Information Technology Specialist I	Intermittent	July 1, 2018 – June 30, 2019	957.5 hours
Information Technology Specialist II	Intermittent	July 1, 2018 – June 30, 2019	534.5 hours
Legislative Clerk	Intermittent	January 1, 2018 – December 31, 2018	2084.75 hours
Office Assistant (General)	Intermittent	January 1, 2018 – December 31, 2018	1926.75 hours
Office Assistant (General)	Intermittent	January 1, 2018 – December 31, 2018	1228.05 hours
Office Assistant (General)	Intermittent	January 1, 2018 – December 31, 2018	2256.75 hours
Office Assistant (General)	Intermittent	January 1, 2018 – December 31, 2018	2088 hours
Office Technician (Typing)	Intermittent	January 1, 2018 – December 31, 2018	1770 hours
Principal Deputy Legislative Counsel I	Intermittent	July 1, 2018 – June 30, 2019	753 hours
Senior Law Indexer	Intermittent	July 1, 2018 – June 30, 2019	950 hours
Senior Legal Typist	Intermittent	January 1, 2018 – December 31, 2018	1800.25 hours
Staff Services Manager II (Supervisory)	Intermittent	July 1, 2018 – June 30, 2019	271.5 hours

<b>IN COMPLIANCE</b>	<b>FINDING No. 10 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 LCB provided sufficient justification for those employees who exceeded the 1500-hour limit, and found that LCB 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, June 1, 2018, through May 31, 2019, the LCB placed four employees on ATO. The CRU reviewed all four 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
Career Executive Assignment	10/12/2018-12/02/2018	52 days
Deputy Legislative Counsel III	10/2/2018-10/23/2018	22 days
Deputy Legislative Counsel III	10/2/2018-10/23/2018	22 days
Office Assistant (General)	4/1/2019-4/23/2019	23 days

<b>IN COMPLIANCE</b>	<b>FINDING NO. 11 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 LCB provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

### 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>12</sup> (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

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

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>13</sup> shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

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

During the period under review, December 1, 2018, through August 2, 2019, the LCB had two employees with non-qualifying pay period transactions. The CRU reviewed two transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

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

<sup>12</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.

<sup>13</sup> As identified in Government Code sections 19858.3, subdivision (a), 19858.3, subdivision (b), or 19858.3, subdivision (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. 13<sup>14</sup> 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 LCB 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. 14 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 LCB’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the LCB’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.

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<sup>14</sup> Original finding number 12, Leave Activity and Correction Certification Forms Were Not Completed for All Leave Records Reviewed, was removed as the LCB provided documentation that it audits leave activity on a monthly basis. Thus, this report has no finding 12.

## 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 LCB did not employ volunteers during the compliance review period.

<b>IN COMPLIANCE</b>	<b>FINDING 15<sup>15</sup></b>	<b>NO. 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 LCB 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 LCB 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,

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<sup>15</sup> Originally, the CRU found the LCB had not provided one claim form in a timely manner to one employee. However, after obtaining additional information, the CRU determined that the LCB had provided the claim form as soon as it learned of a potential injury. Previously, the employee had not notified the LCB that they had been injured on the job.

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 36 permanent LCB 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
Deputy Legislative Counsel	09/01/2017
Deputy Legislative Counsel	04/01/2018
Deputy Legislative Counsel	09/10/2018
Deputy Legislative Counsel	10/28/2018
Deputy Legislative Counsel	11/13/2018
Deputy Legislative Counsel	11/29/2018
Deputy Legislative Counsel	12/01/2018
Deputy Legislative Counsel	12/01/2018
Deputy Legislative Counsel	12/03/2018
Deputy Legislative Counsel	05/24/2019
Deputy Legislative Counsel	06/28/2019
Deputy Legislative Counsel	09/21/2019
Deputy Legislative Counsel	11/29/2019
Deputy Legislative Counsel	12/01/2019
Deputy Legislative Counsel	12/10/2019
Deputy Legislative Counsel III	03/30/2018
Deputy Legislative Counsel III	07/20/2018
Deputy Legislative Counsel III	12/01/2018
Deputy Legislative Counsel III	12/06/2018
Deputy Legislative Counsel III	12/30/2018
Deputy Legislative Counsel III	06/15/2019
Deputy Legislative Counsel IV	04/29/2017
Deputy Legislative Counsel IV	04/29/2018
Deputy Legislative Counsel IV	05/04/2018
Deputy Legislative Counsel IV	05/30/2018
Deputy Legislative Counsel IV	07/30/2018
Deputy Legislative Counsel IV	10/03/2018

Classification	Date Performance Appraisals Due
Deputy Legislative Counsel IV	10/03/2018
Deputy Legislative Counsel IV	11/05/2018
Deputy Legislative Counsel IV	05/05/2019
Deputy Legislative Counsel IV	12/29/2019
Principal Deputy Legislative Counsel I	04/29/2017
Principal Deputy Legislative Counsel I	10/06/2018
Principal Deputy Legislative Counsel I	05/30/2019
Staff Services Analyst (General)	01/12/2019
Staff Services Analyst (General)	04/15/2019

<b>IN COMPLIANCE</b>	<b>FINDING NO. 16 PERFORMANCE APPRAISAL POLICY AND PROCESSES COMPLIED WITH CIVIL SERVICE LAWS AND REGULATIONS AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the performance appraisals selected for review. Accordingly, the LCB’s performance appraisal policy and processes satisfied civil service laws, Board rules, policies and guidelines.

**DEPARTMENTAL RESPONSE**

The LCB’s response is attached as Attachment 1.

**SPB REPLY**

Based upon the LCB’s written response, the LCB 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.



May 21, 2021

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

The 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 five areas: examinations, appointments, equal employment opportunity (EEO), personnel services contracts (PSCs), and mandated training, from December 1, 2018, through August 30, 2019. Additionally, the CRU conducted compliance reviews of the OLC's personnel practices to ensure the OLC is appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policies and processes. 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. Of the multiple areas reviewed by the CRU, there were five areas of noted for response. Below are the OLC's responses to the CRU areas of concern:

**FINDING NO.1 - Examinations - EQUAL EMPLOYMENT OPPORTUNITY  
QUESTIONNAIRES WERE NOT SEPARATED FROM APPLICATIONS**

**Summary:** Out of three examinations reviewed, one examination included applications where EEO questionnaires were not separated from the employment application (STD. 678). Specifically, three of the 23 applications reviewed included EEO questionnaires that were not separated from the STD. 678.

**Cause:** The three applications that did not have EEO questionnaires removed as referenced above, were candidates that did not meet minimum qualifications (MQs) for the examination, and were not admitted to the examination. OLC examination staff did not remove the EEO questionnaires from the three applications but kept them separately from admitted candidates' applications in the examination file.

The OLC does not require notation on applications for any protected category under Government Code section 12940. This examination was announced at a time when most state applications were provided in hard copy and not electronically. Candidates provided the EEO sheets as part of the state application when applying for the examination. The referenced examination was a written examination for the classification of Proofreader,



applications were reviewed and the exam proctored solely by OLC HR staff, where applications are submitted for OLC examination staff to review MQs for entrance into the examination. At no time does the OLC attach EEO questionnaires to applications that would be copied and sent to supervisors/managers for review of candidates in examinations or in hiring decisions.

Additionally, with a high percentage of all applications now coming through the CalCareer website electronically, EEO sheets are not printed when received due to programming in the CalCareer system.

Going forward the OLC will make sure that any hard copy applications for examinations have the EEO forms removed from all applications whether or not the candidates are admitted to the examination.

### **FINDING NO. 2 – Appointments - Probationary Evaluations Were Not Provided for All Appointments Reviewed**

**Summary:** The OLC did not provide two probationary reports of performance for two of the 45 appointments reviewed by the CRU. This is the second consecutive time this has been a finding for the LCB.

**Cause:** The first probationary reports for the two appointments mentioned above were not completed and returned to Human Resources. The second and third reports were completed and returned.

Along with the OLC Oracle Human Resources Management System and additional reminder emails sent to OLC supervisors and managers notifying of each probationary report due date 30 days in advance, OLC HR will endeavor to ensure all probationary reports are completed in a timely manner and returned to the Human Resources Office for retention in each employee's official personnel file.

### **FINDING NO. 3 – EEO - A Disability Advisory Committee (DAC) Has Not Been Established**

**Summary:** The LCB does not have an active DAC. This is the second consecutive time this has been a finding for LCB.

**Cause:** During the 2019 CRU audit review period, the OLC reformulated its DAC, which has been active since September 2020.

The OLC reconstituted its DAC in September 2020, and has since held two quarterly meetings. The reformation of the DAC was advertised to all OLC employees, and all employees were invited to join. The most recent meeting at the time of this report was held in April 2021, and the primary discussion topic was a review of the OLC's Emergency Response Plan to determine if updates were needed to ensure the safety of disabled persons during an emergency situation. The DAC will continue to meet quarterly, or more often as may be necessary.

### **FINDING NO. 15 – INJURED EMPLOYEE DID NOT RECEIVE CLAIM FORMS WITHIN ONE WORKING DAY OF NOTICE OR KNOWLEDGE OF INJURY**

**Summary:** Of the five workers' compensation claim forms reviewed by the CRU, one of them was not provided to the employee within one working day of notice or knowledge of injury.

**Cause:** Beginning in July 2019, the OLC and the above referenced employee had been engaged in the reasonable accommodation interactive process for a previous medical condition. While discussing an extension of that medical accommodation with the employee on Thursday, October 24, 2019, it was not clear to Human Resources (HR) staff if the medical condition was a pre-existing medical condition or somehow work related. HR provided information to the employee about workers compensation during that meeting. After further conversations with HR Management, the decision was made to provide the claim form to the employee in a good faith effort even though the employee still had not stated or given reason to think this was due to a work injury. Additionally, the employee had not previously indicated or alluded to the injury being work related during the interactive process. The claim form was first provided on Tuesday, October 29, 2019, and again on Monday, November 4, 2019, by the HR Analyst because the employee stated they had lost the one given to them on October 29, 2019.

When OLC HR is noticed of a potential work related injury, claim forms are provided within 24 hours. The above referenced incident was a good faith effort by the OLC to offer a claim form to an employee that was involved in the interactive process for a reasonable accommodation. Had the OLC had notice or reason to believe the employee's pre-existing injury was work related, the form would have been provided within 24 hours as per our standard practice.

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.

The Corrective Action Response (CAR) is an opportunity for departments to demonstrate necessary steps have been implemented to correct the non-compliant Findings (deficiency) found as a result of the Compliance Review.

For each non-compliant Finding, refer to the Corrective Action section of that Finding in the review report. Copies of relevant documentation demonstrating that the Corrective Action has been or is in the process of being corrected must be included with the CAR. Examples include, but are not limited to, a training log for supervisory training, leave reduction policy and/or any new procedures that have been implemented.

## CORRECTIVE ACTION RESPONSE

DEPARTMENT: Office of Legislative Counsel	BRANCH/DIVISION/PROGRAM: Human Resources
CONTACT PERSON (NAME AND TITLE): Michael Dallas, Human Resources Officer	CORRECTIVE ACTION RESPONSE DATE: September 27, 2021

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)
Finding as stated in the report, by number	Description of 1) completed or planned corrective action(s) and 2) of supporting documentation (if applicable)	Actual or Estimated Completion Date
<p><b>Finding No. 1 – Equal Employment Opportunity Questionnaires were not separated from applications.</b></p>	<p><b>Description:</b> The examination in question was announced at a time when most state applications were provided in hard copy and not electronically. Candidates provided the EEO sheets as part of the hard copy state application when applying for the examination. Additionally, with a high percentage of all applications now coming through the CalCareer website electronically, EEO sheets are not printed when received due to programming in the CalCareer system.</p> <p><b>Corrective Action:</b></p> <ol style="list-style-type: none"> <li>1. Going forward the OLC will make sure that any hard copy applications for examinations have the EEO forms removed from all applications, whether or not the candidates are admitted to the examination.</li> <li>2. After the completion of every examination, the examination file will be audited by another examination analyst to make sure EEO sheets are separated as well as making sure the file is in order.</li> </ol>	<p>The described actions went into effect as of July 1, 2021.</p>

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)
<p>Finding No 2 – Appointments – Probationary Evaluations were not provided for all appointments reviewed.</p>	<p><b>Description:</b> The first probationary reports for two appointments were not completed and returned to Human Resources. The second and third reports were completed and returned.</p> <p><b>Corrective Action:</b></p> <ol style="list-style-type: none"> <li>1. The OLC Oracle Human Resources Management System HRMS is programmed with each report due date for each new staff person. Due to the date programming, reminder emails are generated by the system and sent to OLC supervisors and managers notifying of each probationary report due date 30 days in advance.</li> <li>2. OLC HR staff are now included on the system generated emails in order to follow up with managers and supervisors if reports are not received by the due date.</li> <li>3. OLC HR staff will cc the second level manager on follow up emails.</li> </ol>	<p>HRMS system programming is completed. Attached is a sample system generated email showing the email that is sent to supervisors and managers and cc to HR staff.</p>
<p>Finding No 3 – A disability advisory committee has not been established</p>	<p><b>Description:</b> The LCB states that it previously had an active DAC; however, the committee did not convene during the compliance review period. The LCB states that following the review, the LCB reformulated its DAC, which has been active since September 2020.</p> <p><b>Corrective Action:</b></p> <ol style="list-style-type: none"> <li>1. The reformation of the DAC was advertised to all OLC employees, and all employees were invited to join on August 11, 2020. (Announcement Email Attached)</li> <li>2. The OLC does have an active DAC since September 2020 and it meets quarterly.</li> <li>3. The most recent meeting was held in April 2021, and the primary discussion topic was a review of the OLC’s Emergency Response Plan to determine if updates were needed to ensure the safety of disabled persons during an emergency. (Meeting notes from December 2020 and April 2021 are attached.</li> </ol>	<p>Completed September 2020</p>