



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA STATE LOTTERY COMMISSION**

Compliance Review Unit  
State Personnel Board  
October 15, 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 California State Lottery Commission (CSLC)'s personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Severity	Finding
Examinations	In Compliance	Examinations Complied with Civil Service Laws and Board Rules
Appointments	In Compliance	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contracts <sup>1</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	Exceptions to Salary Rules Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Incorrect Authorization of Bilingual Pay <sup>2</sup>

<sup>1</sup> Repeat finding. March 26, 2019, the CSLC's compliance review report indicated the department did not notify unions prior to contract execution for 6 of the 11 PSC's that were reviewed.

<sup>2</sup> Repeat finding. March 26, 2019, the CSLC's compliance review report identified 6 incorrectly authorized bilingual pay transactions of the 21 bilingual pay authorizations that were reviewed.

Area	Severity	Finding
Compensation and Pay	In Compliance	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Serious	Department Did Not Properly Monitor Time Worked for All Positive Paid Employees
Leave	In Compliance	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines

### **BACKGROUND**

The California State Lottery Commission (CSLC) was created by the Lottery Act, an initiative and constitutional amendment approved by the voters on November 6, 1984. The CSLC began operations in October 1985 with a clear mission: to provide supplemental funding for public schools and colleges. This funding provides supplemental dollars to K-12 public schools, Community Colleges, the California State University, the University of California, and other educational entities.

The CSLC oversees the California Lottery and approves its budget and business plans. Headquartered in Sacramento with nine district offices located around the state, the CSLC is supported by 824 employees including Lottery Managers, Senior Marketing

Specialists, District Sales Representatives, Key Accounts Specialists, and Information Technology staff.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the CSLC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>3</sup>. The primary objective of the review was to determine if the CSLC's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The CSLC's examinations were selected for review. The CSLC conducted three CEA examinations during the compliance review period, of which all three were reviewed. The CRU examined the documentation that the CSLC provided, which included examination plans, examination bulletins, and scoring results.

The CSLC did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the CSLC'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 CSLC 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 CRU also reviewed the CSLC's policies and procedures concerning unlawful appointments to ensure departmental practices conform to state civil service laws and Board regulations.

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

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

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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.

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: bilingual pay, monthly pay differentials, and out-of-class assignments.

During the compliance review period, the CSLC did not issue or authorize hiring above minimum requests, red circle rate requests, arduous pay, or alternate range movements.

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

The CSLC's PSC's were also reviewed.<sup>4</sup> It was beyond the scope of the compliance review to make conclusions as to whether the CSLC's justifications for the contracts were legally sufficient. The review was limited to whether the CSLC's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CSLC's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all were provided sexual harassment prevention training within statutory timelines.

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

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<sup>4</sup>If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

adhered to procedural requirements. The CSLC did not track any temporary intermittent employees by actual time worked during the compliance review period.

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

On September 16, 2021, an exit conference was held with the CSLC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CSLC's written response on September 28, 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, November 1, 2019, through July 1, 2020, the CSLC conducted three examinations. The CRU reviewed all three of those examinations, which are listed below:



Classification	Exam Type	Exam Components	Final File Date	No. of Apps
CEA A, Chief of Engagement and Retention	CEA	Statement of Qualifications (SOQ) <sup>5</sup>	11/27/2019	21
CEA A, Chief Product Management	CEA	SOQ	4/15/2019	32
CEA B, Assistant Deputy Director of Sales	CEA	SOQ	11/8/2019	34

<b>IN COMPLIANCE</b>	<b>FINDING NO. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CRU reviewed the three CEA examinations which the CSLC administered in order to create eligible lists from which to make appointments. The CSLC published and distributed examination bulletins containing the required information for all examinations. Applications received by the CSLC were accepted prior to the final filing date. Applicants were notified about the next phase of the examination process. After all phases of the CEA examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examinations that the CSLC 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

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<sup>5</sup> In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

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, January 1, 2020, through September 30, 2020, the CSLC made 82 appointments. The CRU reviewed 21 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
CEA A, Chief of Engagement and Retention Marketing	CEA	Permanent	Full Time	1
CEA A, Assistant Deputy Director of Sales	CEA	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	2
Attorney IV	Certification List	Permanent	Full Time	1
Chief Engineer I	Certification List	Permanent	Full Time	1
Information Technology Manager I	Certification List	Permanent	Full Time	1
Information Technology Specialist II	Certification List	Permanent	Full Time	1
Marketing Analyst II, California State Lottery	Certification List	Permanent	Full Time	1
Program Technician	Certification List	Limited Term	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager III	Certification List	Permanent	Full Time	1
Stationary Engineer	Certification List	Permanent	Full Time	1
Supervising Lottery Agent	Certification List	Permanent	Full Time	1
Supervising Program Technician III	Certification List	Permanent	Full Time	1
Warehouse Manager I	Certification List	Permanent	Full Time	1
Warehouse Worker	Certification List	Permanent	Full Time	2
Associate Personnel Analyst	Transfer	Permanent	Full Time	1
Labor Relations Analyst	Transfer	Permanent	Full Time	1

<b>IN COMPLIANCE</b>	<b>FINDING No. 2 APPOINTMENTS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CSLC 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 17 list appointments reviewed, as well as the two CEA appointments, the CSLC ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU reviewed two CSLC 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 CSLC verified the eligibility of each candidate to their appointed class.

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

**Equal Employment Opportunity**

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

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).)

<b>IN COMPLIANCE</b>	<b>FINDING No. 3 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES</b>
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After reviewing the policies, procedures, and programs necessary for compliance with the EEO program’s role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the CSLC’s EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the CSLC’s EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Executive Director of the CSLC. The CSLC also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

**Personal Services Contracts**

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

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

During the period under review, November 1, 2019, through July 1, 2020, the CSLC had 22 PSC's that were in effect. The CRU reviewed 10 of those, which are listed below:

Vendor	Services	Contract Date(s)	Contract Amount	Justification identified	Union Notification
Atlas Disposal Industries	Waste and Recycle Services	6/2020-5/2023	\$21,000.00	Yes	Yes
Cornerstone Earth Group	Geotechnical Observation and Testing	5/2020-12/2020	\$10,000.00	Yes	Yes
Edco Disposal Corporation	Waste and Recycle Services	6/2020-5/2023	\$4,000.00	Yes	No
Elevator Industries	Elevator Repair	11/15/2019 - 11/14/2022	\$2,250.00	Yes	Yes
Gaming Laboratories International	Evaluation of Lottery Security	2/1/2020-12/31/2022	\$66,675.00	Yes	Yes
Hiner & Partners, Inc	Mail and Online Surveys	4/2020-6/2021	\$99,440.00	Yes	No
Kovarus, Inc.	Server Storage and Installation Services	5/2020-5/2023	\$99,413.94	Yes	Yes
National Fire Systems, Inc.	Kitchen Hood Inspection	12/1/2019-11/30/2021	\$1,500.00	Yes	Yes
Rose Paving, LLC	Overlay and Curb Repair	1/2020-3/2020	\$19,726.62	Yes	Yes
Terminix Commercial	Pest Control	12/2019-12/2022	\$4,000.00	Yes	Yes

<b>SERIOUS</b>	<b>FINDING NO. 4 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS</b>
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**Summary:** The CSLC did not notify unions prior to entering into two of the ten PSC's that were reviewed. This is the second consecutive time this has been a finding for CSLC.

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

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

**Cause:** The CSLC states that the two PSC's that were not noticed to the unions were due to staff inadvertently missing this step during the processing of the PSC's.

**Corrective Action:** The CSLC provides that steps have been taken to move responsibility for the PSC union notifications from the Human Resource Division to Procurement Services and Support Unit. It is the contracting department's responsibility to identify and notify any unions whose members could potentially perform the type of work to be contracted prior to executing the PSC. The PSC's reviewed during this compliance review involved waste and recycle services as well as survey services, functions which various rank-and-file civil service classifications perform. Within 90 days of the date of this report, the CSLC must submit to the SPB copies of documentation demonstrating the corrections the department implemented to ensure conformity with the requirements of Government Code section 19132.

### **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 employees must be provided sexual harassment prevention training within six months of appointment. Thereafter, each department must provide its

supervisors two hours of sexual harassment prevention training and non-supervisors one hour of sexual harassment prevention training every two years. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code, § 19995.4.)

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

The CRU reviewed the CSLC’s mandated training program that was in effect during the compliance review period, August 1, 2018, through July 1, 2020.

<b>IN COMPLIANCE</b>	<b>FINDING NO. 5 MANDATED TRAINING COMPLIED WITH STATUTORY REQUIREMENTS</b>
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The CSLC provided ethics training to its 14 new filers within six months of appointment and, for its 209 existing filers, “at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter.” In addition, the CSLC provided sexual harassment prevention training its 20 new supervisors within six months of appointment, and sexual harassment prevention training to its 99 existing supervisors every two years. Thus, the CSLC 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>6</sup> upon appointment depending on the appointment type, the employee’s state employment and pay history, and tenure.

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<sup>6</sup> “Rate” is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

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

During the period under review, January 1, 2020, through September 30, 2020, the CSLC made 82 appointments. The CRU reviewed 10 of those appointments to determine if the CSCL applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,149.00
Attorney IV	Certification List	Permanent	Full Time	\$12,140.00
Chief Engineer	Certification List	Permanent	Full Time	\$6,696.00
Information Technology Specialist II	Certification List	Permanent	Full Time	\$9,449.00
Staff Services Manager III	Certification List	Permanent	Full Time	\$8,770.00
Supervising Program Technician III	Certification List	Permanent	Full Time	\$3,739.72
Warehouse Worker	Certification List	Permanent	Full Time	\$3,749.00
Warehouse Worker	Certification List	Permanent	Full Time	\$3,400.00
Associate Personnel Analyst	Transfer	Permanent	Full Time	\$4,979.67
Staff Services Analyst (General)	Transfer	Permanent	Full Time	\$4,865.27

<b>IN COMPLIANCE</b>	<b>FINDING NO. 6 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 CSLC 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.



Exceptions to Salary

California Code of Regulations sections 599.674 and 599.676 allow employees to receive a salary rate up to one step (5%) above the salary rate they last received. In those instances when these rules do not provide employees with the equivalent rate last received (1) upon transfer to a deep class or (2) in their former class, then under the authority of Government Code section 19836, an exception to these salary rules can be made. Exceptions to these rules should be applied uniformly for all employees. (Classification and Pay Guide Section 285.)

For those affected employees incurring salary loss upon transfer to a deep class, CalHR recommends placing the employee on a T&D Assignment for a period of time sufficient to meet the higher alternate range criteria. Upon successful completion of the T&D assignment, the employee may be transferred to the transferable range, and then moved to the next higher alternate range effective the same day. If this does not provide the employee their current salary, departments may process an exception so the employee does not incur a salary loss. (*Ibid.*)

Delegation agreements with CalHR give departments the delegated authority to approve an exception to the salary rules under the following circumstances: when there is a salary loss upon transfer to a deep class; when there is a reappointment or reinstatement without a break in service.

During the period under review, January 1, 2020, through September 30, 2020, the CSLC authorized one salary exception request. The CRU reviewed one authorized salary exception request, listed below, to determine if the CSLC correctly verified, approved and documented the salary exception authorization process:

Classification	Prior Classification	T&D Assignment? (Y/N)	Approved Salary
Staff Services Manager I	Staff Services Manager III	No	\$7,608.00

<b>IN COMPLIANCE</b>	<b>FINDING NO. 7</b>	<b>EXCEPTIONS TO SALARY RULES COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found that the salary exception the CSLC made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

## Bilingual Pay

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

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

During the period under review, January 1, 2020, through September 30, 2020, the CSLC issued bilingual pay to 40 employees. The CRU reviewed 23 of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Collective Bargaining Identifier	Time Base	No. of Apps.
Associate Governmental Program Analyst	R01	Full Time	2
District Sales Representative, California State Lottery	R01	Full Time	2
Information Officer I (Specialist)	R01	Full Time	1
Investigator	R07	Full Time	4
Key Accounts Specialist, California State Lottery	R01	Full Time	1
Lottery Manager, Sales	S01	Full Time	1
Management Services Technician	R01	Full Time	1
Office Technician (Typing)	R04	Full Time	2
Program Technician	R04	Full Time	1
Program Technician II	R04	Full Time	1
Route Sales Representative	R01	Full Time	1
Staff Services Analyst (General)	R01	Full Time	1
Staff Services Manager I	S01	Full Time	1
Special Investigator	R07	Full Time	3
Television Specialist	R01	Full Time	1

<b>VERY SERIOUS</b>	<b>FINDING NO. 8 INCORRECT AUTHORIZATION OF BILINGUAL PAY</b>
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**Summary:** The CRU found eight errors in the CSLC’s authorization of bilingual pay. This is the second consecutive time that bilingual pay was authorized incorrectly.

Classification	Number of Positions	Description of Finding(s)	Criteria
Associate Governmental Program Analyst	1	Missing documentation denoting 10% of duties performed are bilingual.	Pay Differential 14
District Sales Representative, California State Lottery	1	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14
Information Officer I (Specialist)	1	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14
Investigator	1	No record of completed Oral Fluency Exam.	Government Code section 7296
Office Technician (Typing)	1	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14
Program Technician II	1	No record of completed Oral Fluency Exam.	Government Code section 7296
Staff Services Analyst (General)	1	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14
Staff Services Manager I	1	Missing documentation denoting 10% of duties performed are bilingual.	Pay Differential 14

**Criteria:** For any state agency, a “qualified” bilingual employee, person, or interpreter is someone who CalHR has tested and certified, someone who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as proficient in both the English language and the non-English language

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

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

**Cause:** The CSLC states any deficiency related to authorization of bilingual pay was due to lack of clarity regarding staff roles and responsibilities pertaining to the retention of required documentation. Previously, bilingual pay authorizations were filed with Requests for Personnel Actions which were purged after five years.

**Corrective Action:** The CSLC provides that steps have been taken to retain authorization of bilingual pay in electronic files, train staff on the retention of documentation, and develop processes to ensure pay differentials are approved accurately. Within 90 days of the date of this report, the CSLC must submit to the SPB documentation demonstrating the corrections the department has implemented to ensure conformity with Government Code section 7296, and Pay Differential 14.

### Pay Differentials

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

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

During the period under review, January 1, 2020, through September 30, 2020, the CSLC issued pay differentials<sup>7</sup> to 383 employees. The CRU reviewed 22 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Chief Engineer II	Pay Differential 436	% of base salary
Digital Print Operator I	Pay Differential 202	\$150.00
District Sales Representative, California State Lottery	Pay Differential 441	\$250.00
District Sales Representative, California State Lottery	Pay Differential 441	\$250.00
District Sales Representative, California State Lottery	Pay Differential 74	\$250.00
District Sales Representative, California State Lottery	Pay Differential 74	\$250.00
District Sales Representative, California State Lottery	Pay Differential 74	\$250.00
District Sales Representative, California State Lottery	Pay Differential 74	\$250.00
District Sales Representative, California State Lottery	Pay Differential 74	\$2,110.00
District Sales Representative, California State Lottery	Pay Differential 74	\$2,110.00
District Sales Representative, California State Lottery	Pay Differential 74	\$2,880.00
District Sales Representative, California State Lottery	Pay Differential 74	\$1,760.00
District Sales Supervisor, CSL	Pay Differential 74	\$2,785.00
District Sales Supervisor, CSL	Pay Differential 74	\$2,880.00
Investigator	Pay Differential 244	\$125.00

<sup>7</sup> For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Investigator	Pay Differential 244	\$125.00
Lottery Ticket Sales Specialist	Pay Differential 74	\$900.00
Maintenance Mechanic	Pay Differential 233	\$100.00
Personnel Specialist	Pay Differential 240	\$2,400.00
Program Technician	Pay Differential 441	\$250.00
Senior Personnel Specialist	Pay Differential 240	\$2,400.00
Supervising Lottery Agent	Pay Differential 244	\$125.00

<b>IN COMPLIANCE</b>	<b>FINDING No. 9 PAY DIFFERENTIAL AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the pay differentials that the CSLC authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

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

For excluded<sup>8</sup> and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

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

<sup>8</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.

to correct the situation before the 120-day time period expires. (Classification and Pay Guide Section 375.)

During the period under review, January 1, 2020, through September 30, 2020, the CSLC issued OOC pay to 11 employees. The CRU reviewed five of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Collective Bargaining Identifier	Out-of-Class Classification	Time Frame
District Sales Supervisor, California State Lottery	S01	Lottery Sales Manager	03/12/2020-05/30/2020
Marketing Specialist, California State Lottery	R01	Staff Services Manager II	06/16/2020-08/15/2020
Staff Services Manager II (Supervisory)	S01	Staff Services Manager III (Managerial)	12/30/2019-12/28/2020
Supervising Lottery Agent	S07	Field Chief, Security/Law Enforcement Division	11/08/2018-03/07/2019
Warehouse Worker	R12	Materials & Stores Specialist	12/09/2019-02/21/2020

<b>IN COMPLIANCE</b>	<b>FINDING NO. 10</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 CSLC 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>9</sup> worked and paid absences<sup>10</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, 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 CSLC had 48 positive paid employees whose hours were tracked. The CRU reviewed 29 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

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<sup>9</sup> For example, two hours or ten hours count as one day.

<sup>10</sup> For example, vacation, sick leave, compensating time off, etc.



Classification	Tenure	Time Frame	Time Worked (hours)
Associate Personnel Analyst	Retired Annuitant	Intermittent	898
District Sales Representative, California State Lottery	Permanent	Intermittent	1,253
District Sales Representative, California State Lottery	Permanent	Intermittent	956
District Sales Representative, California State Lottery	Permanent	Intermittent	971
District Sales Representative, California State Lottery	Permanent	Intermittent	1,289
District Sales Representative, California State Lottery	Permanent	Intermittent	818
District Sales Representative, California State Lottery	Permanent	Intermittent	785
District Sales Representative, California State Lottery	Permanent	Intermittent	787
District Sales Representative, California State Lottery	Permanent	Intermittent	1,258
District Sales Representative, California State Lottery	Permanent	Intermittent	1,220
District Sales Representative, California State Lottery	Permanent	Intermittent	1,237
District Sales Representative, California State Lottery	Permanent	Intermittent	1,204
District Sales Representative, California State Lottery	Permanent	Intermittent	1,217
District Sales Representative, California State Lottery	Permanent	Intermittent	1165
District Sales Representative, California State Lottery	Permanent	Intermittent	1,242
District Sales Representative, California State Lottery	Permanent	Intermittent	1,153
District Sales Representative, California State Lottery	Permanent	Intermittent	1,167.30
District Sales Representative, California State Lottery	Permanent	Intermittent	857
District Sales Representative, California State Lottery	Permanent	Intermittent	977
District Sales Representative, California State Lottery	Permanent	Intermittent	1232

Classification	Tenure	Time Frame	Time Worked (hours)
Information Technology Specialist I	Retired Annuitant	Intermittent	952.50
Key Data Operator	Permanent	Intermittent	1529
Lottery Ticket Sales Specialist	Permanent	Intermittent	1561.25
Lottery Ticket Sales Specialist	Permanent	Intermittent	1558.50
Program Technician II	Permanent	Intermittent	1464
Route Sales Representative	Permanent	Intermittent	882
Staff Services Analyst (General)	Retired Annuitant	Intermittent	438
Supervising Lottery Agent	Retired Annuitant	Intermittent	364
Warehouse Worker	Permanent	Intermittent	719.25

<b>SERIOUS</b>	<b>FINDING NO. 11 DEPARTMENT DID NOT PROPERLY MONITOR TIME WORKED FOR ALL POSITIVE PAID EMPLOYEES</b>
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**Summary:** The CSLC did not consistently monitor the actual number of hours worked in order to ensure that 3 positive paid employees did not exceed the 1,500-hour limitation in any calendar year.

Specifically, the following employees exceeded the established limitations:

Classification	Tenure	Time Frame	Time Worked (hours)	Time Worked Over Limit
Key Data Operator	Permanent	Intermittent	1529	29
Lottery Ticket Sales Specialist	Permanent	Intermittent	1558.5	58.5
Lottery Ticket Sales Specialist	Permanent	Intermittent	1561.25	61.25

**Criteria:** A permanent intermittent employee may work up to 1,500 hours in any calendar year. The number of hours and schedule of work shall be determined based upon the operational needs of each department. (Applicable Bargaining Unit Agreements.)

**Severity:** Serious. The number of days or hours an individual may work in a permanent intermittent appointment is limited in the state civil service. To ensure permanent intermittent appointments are not

made on a full-time basis, a maximum of 1,500 hours has been placed on the number of hours which a permanent intermittent employee may work any calendar year.

**Cause:** The CSLC states that either the Personnel Specialist (PS) did not communicate the hours to the positive paid employees’ management as they neared the 1,500-hour limitation or the positive paid employees’ management did not appropriately schedule the employees to ensure they did not exceed the 1,500-hour limitation after receiving an alert from the PS.

**Corrective Action:** The CSLC provides that steps have been taken to report and manage positive paid employees’ hours nearing the 1,500 limitation. Within 90 days of the date of this report, the CSLC must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 21224, and California Code of Regulations, title 2, section 599.665, and applicable Bargaining Unit agreement(s).

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, May 1, 2019, through April 30, 2020, the CSLC placed 118 employees on ATO. The CRU reviewed 40 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
Administrative Assistant I	12/23/2019	2 hours
Associate Governmental Program Analyst	04/24/2020	8 hours
Associate Governmental Program Analyst	04/13/2020 – 04/29/2020	56 hours

Classification	Time Frame	Amount of Time on ATO
Associate Governmental Program Analyst	04/23/2020 – 04/24/2020	16 hours
Building Maintenance Worker	04/02/2020 – 04/28/2020	30 hours
Custodian	04/13/2020 – 04/24/2020	80 hours
District Sales Representative, California State Lottery	03/18/2020	5 hours
District Sales Representative, California State Lottery	04/13/2020 – 04/28/2020	48 hours
District Sales Representative, California State Lottery	03/18/2020 – 04/22/2020	120 hours
Information Technology Specialist II	04/17/2020	8 hours
Information Technology Specialist II	04/20/2020 – 04/29/2020	32 hours
Investigator	04/14/2020 – 04/27/2020	80 hours
Lottery Ticket Sales Senior Specialist	03/15/2020 – 03/27/2020	80 hours
Lottery Ticket Sales Specialist	03/23/2020 – 03/26/2020	32 hours
Lottery Ticket Sales Specialist	04/16/2020 – 04/30/2020	24 hours
Lottery Ticket Sales Specialist	03/03/2020 – 03/24/2020	29 hours
Lottery Ticket Sales Specialist	04/16/2020 – 04/17/2020	8 hours
Lottery Ticket Sales Specialist	03/19/2020 – 03/29/2020	59 hours
Materials and Stores Specialist	04/21/2020 – 04/24/2020	28 hours
Materials and Stores Specialist	05/29/2019 – 04/15/2020	85 hours
Office Assistant (General)	04/08/2020 – 04/27/2020	16 hours
Office Assistant (General)	04/23/2020 – 04/30/2020	24 hours
Office Technician (General)	04/07/2020 – 04/29/2020	144 hours
Office Technician (Typing)	04/17/2020 – 04/24/2020	24 hours

Classification	Time Frame	Amount of Time on ATO
Office Technician (Typing)	04/01/2020 – 04/21/2020	118.75 hours
Research Data Specialist I	04/23/2020 – 04/30/2020	16 hours
Staff Services Manager I	04/17/2020 – 04/13/2020	24 hours
Warehouse Worker	11/25/2019 – 11/27/2019	24 hours
Warehouse Worker	04/01/2020 – 04/21/2020	80 hours
Warehouse Worker	04/06/2020 – 04/17/2020	80 hours
Warehouse Worker	04/01/2020 – 04/10/2020	64 hours
Warehouse Worker	04/14/2020 – 04/24/2020	80 hours
Warehouse Worker	03/23/2020 – 04/30/2020	72 hours
Warehouse Worker	08/16/2019	2.50 hours
Warehouse Worker	08/16/2019	2.50 hours
Warehouse Worker	04/02/2020 – 04/23/2020	41 hours
Warehouse Worker	04/17/2020 – 04/30/2020	80 hours
Warehouse Worker	08/16/2019	1 hour
Warehouse Worker	08/16/2019	1 hour
Warehouse Worker	08/16/2019	1 hour

<b>IN COMPLIANCE</b>	<b>FINDING NO. 12 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 CSLC provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

#### Leave Auditing and Timekeeping

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

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

During the period under review, February 1, 2020 through April 30, 2020, the CSLC reported 10 units comprised of 824 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
February 2020	110	16	16	0
February 2020	170	7	7	0
February 2020	229	15	15	0
February 2020	300	1	1	0
February 2020	310	5	5	0
February 2020	722	22	22	0
February 2020	726	40	40	0
March 2020	705	10	10	0
March 2020	708	9	9	0
March 2020	711	27	27	0

<b>IN COMPLIANCE</b>	<b>FINDING NO. 13 LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU reviewed employee leave records from two 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 CSL kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

## State Service

The state recognizes two different types of absences while an employee is on pay status; paid or unpaid. The unpaid absences can affect whether a pay period is considered to be a qualifying or non-qualifying pay period for state service and leave accruals.

Generally, an employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.<sup>11</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>12</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.

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<sup>11</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>12</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.

During the period under review, January 1, 2020 through September 30, 2020, the CSLC had three employees with non-qualifying pay period transactions. The CRU reviewed three transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Qualifying Pay Period	Full Time	2
Non-Qualifying Pay Period	Full Time	1

<b>IN COMPLIANCE</b>	<b>FINDING No. 14 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 CSLC 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. 15 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 CSLC’s commitment to the state policy of recruiting, hiring and assigning employees on the basis



of merit. Additionally, the CSLC’s nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Workers’ Compensation

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

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

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

IN COMPLIANCE	<b>FINDING NO. 16 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 CSLC 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 CSLC 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 12 calendar months after the completion of the employee's probationary period.

The CRU selected 30 permanent CSLC 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
Accountant Trainee	6/25/2019
Accounting Administrator II	2/11/2020
Accounting Technician	3/20/2019
Administrative Assistant I	1/31/2020
Administrative Assistant II	5/31/2019
Associate Accounting Analyst	4/30/2019
Associate Administrative Analyst Accounting System	2/20/2019
Associate Governmental Program Analyst	3/18/2019
Associate Governmental Program Analyst	8/01/2019
Associate Governmental Program Analyst	2/01/2020
Associate Governmental Program Analyst	2/24/2020
Associate Management Auditor	9/14/2020
Associate Management Auditor	3/27/2019
Building Maintenance Worker	1/31/2019
Custodian	9/13/2019
Custodian	12/09/2019
Executive Secretary I	12/18/2019
Information Officer I Specialist	3/22/2019
Key Data Operator	4/17/2019
Legal Analyst	12/23/2019
Maintenance Mechanic	4/30/2019
Maintenance Mechanic	12/10/2019
Marketing Analyst II, California State Lottery	2/09/2017
Office Technician (Typing)	3/05/2019
Office Technician (Typing)	2/25/2019
Research Data Specialist II	12/20/2019
Senior Legal Analyst	9/19/2019
Senior Management Auditor	2/21/2020
Senior Market Specialist /California State Lottery	1/17/2018
Senior Market Specialist /California State Lottery	9/13/2017

<b>IN COMPLIANCE</b>	<b>FINDING No. 17 PERFORMANCE APPRAISAL POLICY AND PROCESSES COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the performance appraisals selected for review. Accordingly, the CSLC performance appraisal policy and processes satisfied civil service laws, Board rules, policies and guidelines.

**DEPARTMENTAL RESPONSE**

The CSLC’s response is attached as Attachment 1.

**SPB REPLY**

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

Headquarters  
700 North Tenth Street  
Sacramento, CA 95811



September 28, 2021

State Personnel Board  
Attn: Compliance Review Team  
801 Capitol Mall  
Sacramento, CA 95814

**RE: Response to Draft Compliance Report**

The California State Lottery (Lottery) has reviewed the draft State Personnel Board (SPB) Compliance Report. Based on the compliance review conducted by the SPB Compliance Review Unit (CRU) of Lottery personnel practices in the areas of Examinations, Appointments, Equal Employment Opportunity (EEO), Personal Services Contracts, Mandated Training, Compensation and Pay, Leave, and Policy and Processes, the Lottery's Human Resources Division (HRD) respectfully provides the attached responses indicating the cause of the three non-compliant findings.

The Lottery takes our human resources responsibilities very seriously and we remain committed to addressing the findings. We strive to ensure excellent employment practices and remain committed to working with the SPB. The information gained through the compliance review process is instrumental in making improvements. Thank you for the opportunity to discuss and respond to the Draft Compliance Report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Fernandez', with a long, sweeping underline.

Chris Fernandez  
Deputy Director, Human Resources

**FINDING NUMBER 4** – Unions Were Not Notified of Personal Services Contracts (PSC's)

The summary by the CRU indicated that the Lottery did not notify unions prior to entering into two of the ten PSC's that were reviewed. Unions must be notified of impending PSCs in order to ensure they are aware contracts are being proposed for the type of work that their members could perform.

**Cause:** The Lottery believes the two PSCs that were not noticed to the union were due to staff inadvertently missing this step during the processing of the PSCs.

**Response:** The Lottery recognizes the importance of notifying unions regarding PSCs prior to executing such agreements. Responsibility for sending the PSC union notifications was moved from HRD to the Lottery's Procurement Services and Support (PSS) Unit in August of 2020 to ensure notification occurs prior to execution by having the staff responsible for processing PSCs handle notifications, instead of HRD staff who weren't otherwise involved in PSCs. Additionally, in February 2021, PSS adopted a requirement for completion of an Agreement Summary for all Service Contracts that are routed for review. The PSS Analyst must indicate on the Agreement Summary that the Lottery is in compliance with union notifications for the specific agreement. This summary item ensures that the required union notification is not missed inadvertently. HRD and PSS will continue to work closely together to ensure union notification is completed prior to executing such agreements.

**FINDING NUMBER 8** – Incorrect Authorizations of Bilingual Pay

The summary by the CRU indicated that the Lottery failed to comply with the state civil service pay plan by incorrectly applying compensation rules in accordance with CalHR's policies and guidelines resulting in civil service employees receiving incorrect and/or inappropriate pay.

**Cause:** The Lottery believes any deficiency related to authorization of bilingual pay was due to lack of clarity regarding staff roles and responsibilities pertaining to the retention of required documentation. Previously, bilingual pay authorizations were filed with Requests for Personnel Action which are purged after five years.

**Response:** The Lottery's HRD has started to retain authorization of bilingual pay in electronic files. This will ensure that HRD has backup copies to support the approval of

bilingual pay. Staff will be trained on the retention of documentation. HRD Compliance Unit is currently developing processes to ensure all pay differentials are approved accurately per the state civil service pay scales pay differential criteria.

**FINDING NUMBER 11** – Department Did Not Properly Monitor Time Worked for All Positive Paid Employees

The summary by the CRU indicated that the Lottery did not consistently monitor the actual number of hours worked in order to ensure that 3 positive paid employees did not exceed the 1,500-hour limitation in any calendar year.

**Cause:** The Lottery believes this is due to either the Personnel Specialist (PS) not communicating the hours to the positive paid employees' management as they neared the 1,500-hour limitation or the positive paid employees' management not appropriately scheduling the employees to ensure they not exceed the 1,500-hour limitation after receiving an alert from the PS.

**Response:** The Lottery's HRD will report all positive paid employees' hours nearing the 1,500-hour limitation to their management, with a reminder that they are required to keep hours below the 1,500-hour limitation and it is their responsibility to manage this requirement. HRD will also recommend if more than 1,500 hours are necessary the position needs to be reevaluated to see if it should be converted to a full-time position.