



COMPLIANCE REVIEW REPORT

CALIFORNIA MILITARY DEPARTMENT

Compliance Review Unit
State Personnel Board
December 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 California Military Department (CMD) 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 | Technical | Department Did Not Comply with Documentation Requirements for Permanent Withholds |
| Appointments | Very Serious | Unlawful Appointment |
| Appointments | Serious | Probationary Evaluations Were Not Provided for all Appointments Reviewed ¹ |
| Appointments | Technical | Appointment Documentation Was Not Kept for the Appropriate Amount of Time ² |
| 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 |
| Mandated Training | Very Serious | Ethics Training Was Not Provided for All Filers ³ |

¹ Repeat finding for the third consecutive time. The March 22, 2019, CMD Compliance Review Report identified 7 missing probationary reports for 4 of the 22 appointment files reviewed. The August 28, 2015, CMD Compliance Review Report identified 14 missing probationary reports for 12 of the 42 appointment files reviewed.

² Repeat finding. The March 22, 2019, CMD Compliance Review Report identified 3 NOPAs and a hired applicant's application not being retained from 22 appointment files reviewed.

³ Repeat finding. The March 22, 2019, CMD Compliance Review Report identified eight new filers not receiving ethics training within six months of appointment.

| Area | Severity | Finding |
|----------------------|---------------|--|
| Mandated Training | Very Serious | Sexual Harassment Prevention Training Was Not Provided for All Supervisors ⁴ |
| Compensation and Pay | In Compliance | Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Compensation and Pay | Very Serious | Alternate Range Movement Did Not Comply with Civil Service Laws, Rules, and CalHR Policies and Guidelines |
| Compensation and Pay | Very Serious | Incorrect Authorization of Bilingual Pay |
| Compensation and Pay | Very Serious | Incorrect Authorization of Pay Differentials |
| 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 | Serious | Department Did Not Retain Employee Time and Attendance Records |
| Leave | In Compliance | Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and |
| Policy | In Compliance | Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Policy | In Compliance | Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Policy | Serious | Performance Appraisals Were Not Provided to All Employees ⁵ |

⁴ Repeat finding. The March 22, 2019, CMD Compliance Review Report identified seven existing supervisors and six new supervisors not receiving sexual harassment prevention training within 6 months of their appointment.

⁵ Repeat finding. March 22, 2019, CMD Compliance Review Report identified 46 of 70 employees reviewed as not receiving performance appraisals.

BACKGROUND

The CMD is a diverse, community-based organization comprised of four pillars: the California Army National Guard, the California Air National Guard, the California State Guard, and the California Youth and Community Programs.

At its core, more than 20,000 soldiers, airmen and airwomen, and state guard service members, stand ready to respond to emergencies in California and across the United States. In times of conflict or distress, service members also deploy overseas in support of combat and humanitarian operations.

The state civil service employees of the CMD play a critical role in administrative readiness, strengthening the department's ability to rapidly respond to emergencies. The CMD is committed to improving, preparing, and protecting our communities, state, and nation.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CMD's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁶. The primary objective of the review was to determine if the CMD'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 CMD did not conduct any examinations during the compliance review period. The CRU reviewed the CMD's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

A cross-section of the CMD'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 CMD provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions, vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The CMD did not conduct any unlawful

⁶ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

appointment investigations during the compliance review period. Additionally, the CMD did not make any additional appointments during the compliance review period.

The CMD's appointments were also selected for review to ensure the CMD applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CMD 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: bilingual pay, monthly pay differentials, and alternate range movements. During the compliance review period, the CMD did not issue or authorize hiring above minimum requests, red circle rate requests, arduous pay, or out-of-class assignments.

The review of the CMD'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 CMD's PSC's were also reviewed.⁷ It was beyond the scope of the compliance review to make conclusions as to whether the CMD's justifications for the contracts were legally sufficient. The review was limited to whether the CMD's practices, policies, and procedures relative to PSC's complied with procedural requirements.

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

The CRU reviewed the CMD'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 CMD'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 CMD's employees' employment and pay

⁷If 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.

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 CMD employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of CMD 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 CMD's policies and processes concerning nepotism, workers' compensation, and performance appraisals. The review was limited to whether the CMD's policies and processes adhered to procedural requirements.

The CMD declined to have an exit conference. The CRU received and carefully reviewed the CMD's written response on November 23, 2021, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Permanent Withhold Actions

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

During the period under review, September 1, 2020, through May 31, 2021, the CMD conducted four permanent withhold actions. The CRU reviewed all of these permanent withhold actions, which are listed below:

| Exam Title | Exam ID | Date List Eligibility Began | Date List Eligibility Ended | Reason Candidate Placed on Withhold |
|--|---------|-----------------------------|-----------------------------|---------------------------------------|
| Associate Governmental Program Analyst | 9PB04 | 3/22/21 | 4/29/21 | Failed to Meet Minimum Qualifications |
| Associate Governmental Program Analyst | 9PB04 | 1/29/21 | 7/12/21 | Failed to Meet Minimum Qualifications |
| Construction Supervisor II | 8PB56 | 5/14/21 | 7/12/21 | Failed to Meet Minimum Qualifications |
| Supervising Management Auditor | 4PB4502 | 1/29/21 | 6/29/21 | Failed to Meet Minimum Qualifications |

| | |
|--------------------------------|--|
| SEVERITY: TECHNICAL | FINDING NO. 1 DEPARTMENT DID NOT COMPLY WITH DOCUMENTATION REQUIREMENTS FOR PERMANENT WITHHOLDS |
|--------------------------------|--|

Summary: The CMD did not provide CalHR Form 272 – Minimum Qualifications Withhold Determination Worksheet and supporting documentation for the withhold determination for all four permanent withhold actions the CRU reviewed.

Criteria: HR Manual Section 1105 mandates that Human Resources offices processing withhold actions must use the appropriate Withhold Determination Worksheet to document the withhold decision. The worksheets are (1) CalHR Form 272 – Minimum Qualifications Withhold Determination Worksheet or (2) CalHR Form 267 – Withhold for Cause Determination Worksheet

Further, human resources offices are required to maintain the following withhold documentation for a period of five years:

1. Withhold Determination Worksheet
2. Job vacancy posting
3. Candidate’s application package (including the STD Form 678, and all received documents)
4. Supporting documentation for the withhold determination

5. Copies of all non-system generated correspondence

Severity: Technical. Without documentation, the CRU could not verify if the permanent withhold actions were properly conducted.

Cause: The CMD states that insufficient knowledge transfer with recent staff turnover coupled with a lack of awareness of the laws and rules regarding permanent withholds caused this finding.

Corrective Action: Within 90 days of the date of this report, the CMD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with HR Manual Section 1105. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Appointments

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

During the period under review, September 1, 2020, through May 31, 2021, the CMD made 31 appointments. The CRU reviewed 12 of those appointments, which are listed below:

| Classification | Appointment Type | Tenure | Time Base | No. of Appts. |
|---|--------------------|-----------|-----------|---------------|
| Accounting Officer (Specialist) | Certification List | Permanent | Full Time | 1 |
| Chief Of Plant Operation I | Certification List | Permanent | Full Time | 1 |
| Information Technology Specialist I | Certification List | Permanent | Full Time | 2 |
| Maintenance Mechanic | Certification List | Permanent | Full Time | 1 |
| Materials And Stores Specialist | Certification List | Permanent | Full Time | 1 |
| Senior Environmental Scientist (Specialist) | Certification List | Permanent | Full Time | 1 |
| Staff Services Analyst (General) | Certification List | Permanent | Full Time | 1 |
| Staff Services Manager I | Certification List | Permanent | Full Time | 1 |
| Supervisor of Building Trades | Certification List | Permanent | Full Time | 1 |
| Associate Governmental Program Analyst | Transfer | Permanent | Full Time | 1 |
| Staff Services Manager I | Transfer | Permanent | Full Time | 1 |

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|-----------------------------------|---|
| SEVERITY: VERY SERIOUS | FINDING NO. 2 UNLAWFUL APPOINTMENT |
|-----------------------------------|---|

Summary: The CMD made one unlawful appointment utilizing the certification list for the Information Technology Specialist I classification. The hired candidate did not meet minimum qualifications for the classification.

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

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

inconsistencies that jeopardize the equitable administration of the civil service merit system.

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

Cause: The CMD states that staff were unaware of certain restrictions relative to the 2018 information technology class consolidation which impacted the candidate’s ability to meet the minimum qualifications.

Corrective Action: The CMD has voided the unlawful appointment. Within 90 days of the date of this report, the CMD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate that the department will improve its hiring practices. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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| SEVERITY: SERIOUS | FINDING NO. 3 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED |
|------------------------------|---|

Summary: The CMD did not provide 4 probationary reports of performance for 2 of the 12 appointments reviewed by the CRU, as reflected in the table below. This is the third consecutive time this has been a finding for the CMD.

| Classification | Appointment Type | Total Number of Missing Probation Reports |
|--|--------------------|---|
| Associate Governmental Program Analyst | Certification List | 3 |
| Senior Accounting Officer (Specialist) | Certification List | 1 |

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

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

Cause: The CMD states that insufficient knowledge transfer with recent staff turnover coupled with a lack of awareness of the laws and rules in regard to probation reports for military and civilian supervisors/managers caused this finding.

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

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| SEVERITY: TECHNICAL | FINDING NO. 4 APPOINTMENT DOCUMENTATION WAS NOT KEPT FOR THE APPROPRIATE AMOUNT OF TIME |
|--------------------------------|--|

Summary: Of the 12 appointments reviewed, the CMD failed to retain 2 NOPAs. This is the second consecutive time this has been a finding for the CMD.

Criteria: As specified in section 26 of the Board’s Regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of five years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Regs., tit. 2, § 26.)

Severity: Technical. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: The CMD states that a process was not in place to track all NOPAs to ensure the return to the human resources office. Additionally, staff turnover, a lack of knowledge transfer, and a lack of training contributed to this finding.

Corrective Action: Within 90 days of the date of this report, the CMD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations, title 2, section 26. 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).)

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|----------------------|--|
| IN COMPLIANCE | FINDING NO. 5 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES |
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After reviewing the policies, procedures, and programs necessary for compliance with the EEO program’s role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the CMD’s EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Adjutant General of the CMD. The CMD 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, September 1, 2020, through May 31, 2021, the CMD had 82 PSC's that were in effect. The CRU reviewed 32 of those, which are listed below:

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified? | Union Notification? |
|--------------------------------|------------------------|----------------|-----------------|---------------------------|---------------------|
| Advance Tech Laboratories | Waste Services | 4/21-10/23 | \$8,000 | Yes | Yes |
| All Valley Environmental, Inc. | Maintenance Services | 3/21-9/21 | \$3,576 | Yes | Yes |
| Allison Mechanical, Inc. | Maintenance Services | 11/20-3/21 | \$3,227 | Yes | No |
| Althouse and Meade, Inc. | Environmental Services | 9/20-9/21 | \$17,900 | Yes | No |
| Althouse and Meade, Inc. | Plant Services | 2/21-2/22 | \$38,540 | Yes | Yes |
| Cuesta College | Healthcare Services | 1/21-12/22 | \$258,553 | Yes | Yes |
| Deep Blue Integration | Maintenance Services | 1/21-3/24 | \$149,343 | Yes | No |

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified? | Union Notification? |
|---------------------------------|-------------------------|----------------|-----------------|---------------------------|---------------------|
| Diverse Pest Management | Plant Services | 9/20-9/21 | \$38,526 | Yes | Yes |
| DSD Technologies, Inc. | Teaching Services | 2/21-2/23 | \$1,035 | Yes | Yes |
| Easter Seals | Janitorial Services | 5/21-7/21 | \$4,317 | Yes | Yes |
| Elwyn California | Janitorial Services | 4/21-3/24 | \$60,654 | Yes | No |
| Facilities Engineering | Maintenance Services | 5/21-4/24 | \$20,405 | Yes | Yes |
| Fedex Corporate Services | Delivery Services | 9/20-8/21 | \$3,000 | Yes | Yes |
| Gold Standard Fire Protection | Maintenance Services | 1/21-7/23 | \$17,249 | Yes | No |
| Greene Backflow | Maintenance Services | 5/21-9/21 | \$492 | Yes | Yes |
| Johnson Controls Fire | Maintenance Services | 2/21-3/21 | \$6,311 | Yes | Yes |
| Lizzies Lice Pickers | Healthcare Services | 1/21-12/21 | \$9,600 | Yes | Yes |
| LOVARC | Food Delivery Services | 1/21-12/22 | \$3,111 | Yes | Yes |
| McCrometer, Inc. | Maintenance Services | 5/21-8/21 | \$1,450 | Yes | Yes |
| Net Transcripts, Inc. | Transcript Services | 10/20-8/22 | \$9,500 | Yes | Yes |
| Newport Exterminating, Inc. | Pest Control Services | 2/21-1/24 | \$58,020 | Yes | Yes |
| Oliveira Consulting | Animal Control Services | 9/20-9/22 | \$24,445 | Yes | Yes |
| Pacific West Industries, Inc. | Maintenance Services | 12/20-9/23 | \$43,638 | Yes | No |
| Pacific West Industries, Inc. | Maintenance Services | 1/21-9/23 | \$37,410 | Yes | Yes |
| Republic Services of Sacramento | Waste Services | 10/20-9/22 | \$9,845 | Yes | Yes |
| Republic Services of Sacramento | Waste Services | 4/21-3/24 | \$5,253 | Yes | Yes |

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified? | Union Notification? |
|---------------------------------|----------------------|----------------|-----------------|---------------------------|---------------------|
| Republic Services of Sacramento | Waste Services | 4/21-3/24 | \$9,694 | Yes | Yes |
| Republic Services of Sacramento | Waste Services | 4/21-4/23 | \$8,930 | Yes | Yes |
| Robert's Waste & Recycling | Waste Services | 1/21-12/22 | \$22,140 | Yes | Yes |
| Shield Network and Security | Maintenance Services | 12/20-12/21 | \$1,200 | Yes | Yes |
| Terra Verde Consulting | Plant Services | 9/20-3/22 | \$49,045 | Yes | Yes |
| Troy Alarm | Maintenance Services | 5/21-4/24 | \$47,214 | Yes | Yes |

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| SEVERITY: SERIOUS | FINDING NO. 6 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS |
|------------------------------|--|

Summary: The CMD did not notify unions prior to entering into 6 of the 32 PSC's reviewed.

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 CMD states that administrative errors, lack of staff, and not establishing an electronic process for union notification checklists were the causes of this finding.

Corrective Action: 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, janitorial, and maintenance services, functions which various rank-and-file civil service classifications perform. Within 90 days of the date of

this report, the CMD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 CMD’s mandated training program that was in effect during the compliance review period, June 1, 2019, through May, 31, 2021.

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| SEVERITY: VERY SERIOUS | FINDING NO. 7 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS |
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Summary: The CMD did not provide ethics training to 2 of 10 existing filers. In addition, the CMD did not provide ethics training to all four new filers within six months of their appointment. This is the second consecutive time this has been a finding for the CMD.

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

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

Cause: The CMD states that despite receiving weekly reminder emails 45 days prior to training due dates, staff who did not submit their certificates either didn't follow instructions or ignored the weekly reminders.

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

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| SEVERITY: VERY SERIOUS | FINDING NO. 8 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS |
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Summary: The CMD did not provide sexual harassment prevention training to one of four new supervisors within six months of their appointment. This is the second consecutive time this has been a finding for the CMD.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six

months of appointment. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code, § 19995.4.)

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

Cause: The CMD states certificates were mistakenly deleted.

Corrective Action: Within 90 days of the date of this report, the CMD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that supervisors are provided sexual harassment prevention training in accordance with Government Code section 12950.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 rate⁸ 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.

⁸ "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).

During the period under review, September 1, 2020, through May 31, 2021, the CMD made 31 appointments. The CRU reviewed 11 of those appointments to determine if the CMD applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

| Classification | Appointment Type | Tenure | Time Base | Salary (Monthly Rate) |
|---|--------------------|-----------|-----------|-----------------------|
| Accounting Officer (Specialist) | Certification List | Permanent | Full Time | \$4,673.75 |
| Chief of Plant Operation I | Certification List | Permanent | Full Time | \$6,021.68 |
| Information Technology Specialist I | Certification List | Permanent | Full Time | \$6,143.31 |
| Information Technology Specialist I | Certification List | Permanent | Full Time | \$6,095.21 |
| Maintenance Mechanic | Certification List | Permanent | Full Time | \$4,113.70 |
| Materials and Stores Specialist | Certification List | Permanent | Full Time | \$3,086.18 |
| Senior Environmental Scientist (Specialist) | Certification List | Permanent | Full Time | \$6,535.44 |
| Staff Services Analyst (General) | Certification List | Permanent | Full Time | \$4,673.75 |
| Staff Services Manager I | Certification List | Permanent | Full Time | \$6,143.31 |
| Supervisor of Building Trades | Certification List | Permanent | Full Time | \$5,467.08 |
| Staff Services Manager I | Transfer | Permanent | Full Time | \$6,905.78 |

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| IN COMPLIANCE | FINDING NO. 9 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
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The CRU found no deficiencies in the salary determinations that were reviewed. The CMD 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, September 1, 2020, through May 31, 2021, the CMD employees made two alternate range movements within a classification. The CRU reviewed both of those alternate range movements to determine if the CMD 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) |
|-------------------------|-------------|---------------|-----------|-----------------------|
| Environmental Scientist | A | B | Full Time | \$4,680 |
| Personnel Specialist | B | C | Full Time | \$4,154 |

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| SEVERITY: VERY SERIOUS | FINDING NO. 10 ALTERNATE RANGE MOVEMENT DID NOT COMPLY WITH CIVIL SERVICE LAWS, RULES, AND CALHR POLICIES AND GUIDELINES |
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Summary: The CRU found the following error in the CMD’s determination of employee compensation:

| Classification | Description of Finding | Criteria |
|----------------------|--|------------------------------------|
| Personnel Specialist | Incorrect salary determination, resulting in the employee being overcompensated. | Cal. Code Regs., tit. 2, § 599.676 |

Criteria: Alternate ranges are designed to recognize increased competence in the performance of class duties based upon experience obtained while in the class. The employee gains status in the alternate range as though each range were a separate classification. (Classification and Pay Guide Section 220.)

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

Severity: Very Serious. In one circumstance, the CMD failed to comply with the requirements outlined in the state civil service pay plan. Incorrectly applying compensation laws and rules not in accordance with CalHR's policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay amounts.

Cause: The CMD states that insufficient knowledge transfer coupled with a lack of awareness of the laws and rules in regard to alternate range movements caused this finding.

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

Bilingual Pay

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

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

During the period under review, September 1, 2020, through May 31, 2021, the CMD issued bilingual pay to one employee. The CRU reviewed the bilingual pay authorization

to ensure compliance with applicable CalHR policies and guidelines, which is listed below:

| Classification | Bargaining Unit | Time Base | No. of Appts. |
|---------------------------------|-----------------|-----------|---------------|
| Instructor, Military Department | R03 | Full Time | 1 |

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| SEVERITY: VERY SERIOUS | FINDING NO. 11 INCORRECT AUTHORIZATION OF BILINGUAL PAY |
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Summary: The CRU found one error in the CMD’s authorization of bilingual pay:

| Classification | Description of Finding | Criteria |
|---------------------------------|---|---------------------|
| Instructor, Military Department | Department failed to supply supporting documentation demonstrating the need for bilingual services. | Pay Differential 14 |

Criteria: 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 CMD states that insufficient knowledge transfer coupled with a lack of awareness of the laws and rules in regard to bilingual pay caused this finding.

Corrective Action: Within 90 days of the date of this report, the CMD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Pay Differential 14. Copies of relevant documentation

demonstrating that the corrective action has been implemented must be included with the corrective action response.

Pay Differentials

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

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

During the period under review, September 1, 2020, through May 31, 2021, the CMD issued pay differentials⁹ to 29 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 |
|--------------------------------------|------------------|----------------|
| Associate Construction Analyst | 433 | \$206.18 |
| Captain Firefighter/Security Officer | 245 | \$130.82 |
| Captain Firefighter/Security Officer | 244 | \$75.00 |
| Chief Engineer II | 436 | \$703.53 |
| Construction Inspector II | 433 | \$239.97 |
| Fire Fighter | 244 | \$75.00 |
| Fire Fighter | 244 | \$125.00 |
| Maintenance Mechanic | 6 | \$50.00 |

⁹ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

| Classification | Pay Differential | Monthly Amount |
|-----------------------------------|------------------|----------------|
| Maintenance Mechanic | 233 | \$100.00 |
| Principal Architect | 433 | \$468.87 |
| Project Director I | 433 | \$328.65 |
| Stationary Engineer | 436 | \$607.41 |
| Stationary Engineer | 435 | \$100.00 |
| Stationary Engineer | 435 | \$100.00 |
| Stationary Engineer | 435 | \$100.00 |
| Stationary Engineer | 233 | \$100.00 |
| Stationary Engineer | 436 | \$607.41 |
| Stationary Engineer | 435 | \$100.00 |
| Stationary Engineer | 436 | \$607.41 |
| Stationary Engineer | 233 | \$100.00 |
| Stationary Engineer | 409 | \$337.45 |
| Water And Sewage Plant Supervisor | 338 | \$236.44 |

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| SEVERITY: VERY SERIOUS | FINDING NO. 12 INCORRECT AUTHORIZATION OF PAY DIFFERENTIALS |
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Summary: The CRU found 6 errors in the 22 pay differentials reviewed:

| Classification | Area | Description of Findings | Criteria |
|--------------------------------|---|--|----------|
| Associate Construction Analyst | Longevity Pay Differential | The employee did not receive the pay differential on the date they were eligible, resulting in an underpayment. | 433 |
| Chief Engineer II | Plant Experience Recruitment and Retention Differential | The employee did not have 13 or more consecutive years working at the same plant, resulting in an overpayment. | 436 |
| Construction Inspector II | Longevity Pay Differential | The employee did not receive the pay differential on the date they were eligible, resulting in an underpayment. | 433 |
| Maintenance Mechanic | Agricultural Pest Control Licenses Differential | Missing documentation showing evidence that the employee possesses an active Qualified Applicators Certificate, resulting in an overpayment. | 6 |

| Classification | Area | Description of Findings | Criteria |
|---------------------|----------------------------|---|----------|
| Principal Architect | Longevity Pay Differential | The employee did not receive the pay differential on the date they were eligible, resulting in an underpayment. | 433 |
| Project Director I | Longevity Pay Differential | The employee did not receive the pay differential on the date they were eligible, resulting in an underpayment. | 433 |

Criteria: A pay differential may be appropriate 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. 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. (CalHR Classification and Pay Manual Section 230.)

Severity: Very Serious. The CMD failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with CalHR’s policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The CMD states that insufficient knowledge transfer coupled with a lack of awareness of the laws and rules in regard to pay differentials caused this finding

Corrective Action: Within 90 days of the date of this report, the CMD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Pay Differentials 6, 433, and 436; and, ensure that employees are compensated correctly and that transactions are keyed accurately. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Leave

Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting time is used 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 days¹⁰ worked and paid absences¹¹, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (Ibid.) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (Ibid.) The employee shall serve no longer than 189 days in a 12 consecutive month period. (Ibid.) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (Ibid.)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine 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 1,500 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 1,500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2,000 hours in any calendar year.

¹⁰ For example, two hours or ten hours count as one day.

¹¹ For example, vacation, sick leave, compensating time off, etc.

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 CMD had two positive paid employees whose hours were tracked. The CRU reviewed both of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

| Classification | Tenure | Time Frame | Time Worked |
|--|-------------------|----------------|-------------|
| Associate Governmental Program Analyst | Retired Annuitant | 7/1/20-6/30/21 | 952 Hours |
| Instructor, Military Department | Retired Annuitant | 7/1/20-6/30/21 | 789 Hours |

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

Administrative Time Off

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

During the period under review, March 1, 2020, through February 28, 2021, the CMD placed 54 employees on ATO. The CRU reviewed 29 of these ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

| Classification | Time Frame | Amount of Time on ATO |
|---|-----------------------------|-----------------------|
| Accounting Officer (Specialist) | January 2021 | 80 Hours |
| Associate Governmental Program Analyst | April 2020 | 80 Hours |
| Associate Governmental Program Analyst | July 2020 | 80 Hours |
| Associate Governmental Program Analyst | December 2020 | 88 Hours |
| Associate Governmental Program Analyst | November 2020 | 72 Hours |
| Associate Governmental Program Analyst | April 2020 | 64 Hours |
| Associate Governmental Program Analyst | February 2021 | 80 Hours |
| Associate Governmental Program Analyst | June 2020 | 80 Hours |
| Captain Firefighter/Security Officer | July - November 2020 | 528 Hours |
| Carpenter I | June 2020 | 96 Hours |
| Carpenter II | December 2020 | 80 Hours |
| CMD Heavy Equipment Operator | December 2020 | 17.5 Hours |
| Electrician II | January 2021 | 40 Hours |
| Instructor, Military Department | May 2020 | 80 Hours |
| Maintenance Mechanic | June 2020 | 36 Hours |
| Maintenance Mechanic | January 2021 | 76 Hours |
| Maintenance Mechanic | January 2021 | 79 Hours |
| Maintenance Mechanic | April 2020 | 89 Hours |
| Management Services Technician | May 2020 | 80 Hours |
| Office Technician (Typing) | December 2020 | 80 Hours |
| Plumber II | January 2021 | 208 Hours |
| Senior Accounting Officer (Specialist) | June-August 2020 | 220.75 Hours |
| Senior Environmental Scientist | February 2021 | 56 Hours |
| Senior Environmental Scientist (Specialist) | March, April, and June 2020 | 191 Hours |
| Staff Services Manager I | May - July 2020 | 384 Hours |
| Stationary Engineer | January 2021 | 24 Hours |
| Supervising Groundskeeper I | January 2021 | 38.5 Hours |
| Utility Shops Supervisor | January 2021 | 65.5 Hours |
| Water and Sewage Plant Supervisor | August 2020 | 80 Hours |

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| IN COMPLIANCE | FINDING NO. 14 ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The CMD 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, December 1, 2020, through February 28, 2021, the CMD reported 32 units comprised of 806 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 |
|------------------------|---------------|---------------------|-------------------------------|------------------------------|
| December 2020 | 175 | 30 | 29 | 1 |
| December 2020 | 600 | 19 | 17 | 2 |
| January 2021 | 190 | 21 | 19 | 2 |
| January 2021 | 675 | 45 | 43 | 2 |
| February 2021 | 190 | 19 | 12 | 7 |
| February 2021 | 675 | 44 | 43 | 1 |

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| SEVERITY: SERIOUS | FINDING NO. 15 DEPARTMENT DID NOT RETAIN EMPLOYEE TIME AND ATTENDANCE RECORDS |
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Summary: The Department did not retain 3 of 49 timesheets from the December 2020 pay period, 4 of 66 timesheets from the January 2021 pay period, and 8 of 63 timesheets from the February 2021 pay period.

Criteria: Each appointing power shall 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.) Such records shall be kept in the form and manner prescribed by the Department of Finance in connection with its powers to devise, install and supervise a modern and complete accounting system for state agencies. (Ibid.)

Severity: Serious. The CMD failed to retain employee time and attendance records for each employee. Therefore, the department was unable to reconcile timesheets against their leave accounting system at the conclusion of the pay period, which could have affected employee leave accruals and compensation.

Cause: The CMD states that insufficient knowledge transfer coupled with a lack of awareness of the laws and rules in regard to retention of timesheets caused this finding.

Corrective Action: Within 90 days of the date of this report, the CMD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure all timesheets are accounted for and processed in conformity with California Code of Regulations, title 2, section 599.665. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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.¹² (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 employees¹³ 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, September 1, 2020, through May 31, 2021, the CMD had eight employees with qualifying and non-qualifying pay period transactions. The CRU reviewed all 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 | 4 |
| Qualifying Pay Period | Full Time | 4 |

¹² 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.

¹³ As identified in Government Code sections 19858.3, subdivisions (a), (b), or (c), or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subdivision (c), or California Code of Regulations, title 2, section 599.752, subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

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| IN COMPLIANCE | FINDING NO. 16 SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
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The CRU determined that the CMD 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.)

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| IN COMPLIANCE | FINDING NO. 17 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
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The CRU verified that the policy was disseminated to all staff and emphasized the CMD’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CMD’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 office to discuss the status of volunteers. (Ibid.) In this case, the CMD did not employ volunteers during the compliance review period.

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| IN COMPLIANCE | FINDING NO. 18 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
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The CRU verified that the CMD 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 CMD received workers’ compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code section 19992.2, subdivision (a), appointing powers must “prepare performance reports.” Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee’s probationary period.

The CRU selected 71 permanent CMD employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

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| SEVERITY: SERIOUS | FINDING NO. 19 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES |
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Summary: The CMD did not provide annual performance appraisals to 43 of 71 employees reviewed after the completion of the employee’s probationary period. This is the second consecutive time this has been a finding for the CMD.

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

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

Cause: The CMD states that insufficient knowledge transfer coupled with a lack of awareness of the laws and rules in regard to performance appraisals caused this finding.

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

DEPARTMENTAL RESPONSE

The CMD’s response is attached as Attachment 1.

SPB REPLY

Based upon the CMD written response, the CMD 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.

MILITARY DEPARTMENT
OFFICE OF THE ADJUTANT GENERAL
9800 Goethe Road
Sacramento, California 95827-3561



November 8, 2021

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

SUBJECT: CA MILITARY DEPARTMENT RESPONSE TO THE STATE PERSONNEL BOARD
DRAFT COMPLIANCE REPORT

Dear Ms. Ambrose:

Pursuant to Government Code Section 18661, the State Personnel Board (SPB) Compliance Review Unit (CRU) conducted a compliance review of the CA Military Department's (CMD) 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. On October 25, 2021, CMD received the SPB's draft Compliance Report. CMD reviewed the compliance findings and appreciates the collaboration and professionalism of the CRU. CMD is pleased with the findings in the areas where we are compliant and committed to addressing the remaining areas where issues were found. Please find CMD's responses to each of those areas below:

Finding No. 1 – Department Did Not Comply with Documentation Requirements for Permanent Withholds

Summary: CMD did not provide CalHR Form 272 – MQ Withhold Determination Worksheet and supporting documentation for the withhold determination for all four permanent withhold actions the CRU reviewed.

Cause: Staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules.

Finding No. 2 – Unlawful Appointment

Summary: CMD made one appointment utilizing the certification list for the Information Technology Specialist I classification. The hired candidate did not meet the MQs for the classification.

Cause: Staff were unaware of the FAQs that CalHR expects departments to utilize when determining MQs for the IT classes. There is no mention of the FAQs in the class specs, nor in the regs that we have been able to find. With staff turnover, and new staff unaware of the 2018 IT reclass, they incorrectly applied the MQs using the class specs only.

Finding No. 3 – Probationary Evaluations Were Not Provided for All Appointments Reviewed

Summary: CMD did not provide 4 probationary reports of performance for 2 of the 12 appointments reviewed by the CRU; three reports missing for an AGPA, and one report missing for a Senior Accounting Officer (Spec). This is the third consecutive time this has been a finding for the CMD.

Cause: Staff/management turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules for both military and civilian supervisors/managers.

Finding No. 4 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: Of the 12 appointments reviewed, CMD failed to retain 2 NOPAs. This is the second consecutive time this has been a finding for the CMD.

Cause: NOPAs are not always returned by employees to ensure they get filed into the OPFs. Also, staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules.

Finding No. 6 – Unions Were Not Notified of Personal Services Contracts (PSCs)

Summary: The CMD did not notify unions prior to entering into 6 of the 32 PSCs reviewed.

Cause: Union notifications were sent after contract execution due to administrative errors by procurement staff. We process an average of 1500 contracts per year with just six analysts. We try to limit administrative errors by using file checklists designed to be annotated as tasks are performed. In most cases, checklists for the contracts identified were annotated after the contracts were executed. Analysts that made the errors, were switching between telework and working in the office and we did not establish an electronic process for using the hard copy checklists. In the case of the service contract for small parcel delivery service, the analyst was not aware that union notification was required for placing individual orders from Leveraged Procurement Agreements negotiated by the Department of General Services. In all cases the signature authority did not examine the full contract file, including substantiating documents prior to the signing the executed contract.

Finding No. 7 – Ethics Training Was Not Provided for All Filers

Summary: The CMD did not provide ethics training to 2 of 10 existing filers. In addition, the CMD did not provide ethics training to all four new filers within six months of their appointment. This is the second consecutive time this has been a finding for the CMD.

Cause: The CMD State EEO Officer notified all State Civil Service employees required to take the Ethics training. We sent weekly reminders 45 days prior to expiration of the Ethics certificates. Emails were sent directly to the employee with a cc to the employee's direct supervisor. Those who did not submit their certificates either didn't follow instructions and or ignored the weekly reminders.

Finding No. 8 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The CMD did not provide sexual harassment prevention training to one of four new supervisors within six months of their appointment. This is the second consecutive time this has been a finding for the CMD.

Cause: The State EEO Officer notified all State Civil Service employees required to take the SHPT via email. We scheduled several months of in person training and training via conference calls. The State EEO Officer was responsible for the training piece of the program and the J1 Sergeant Major was responsible for the administrative piece of the program. All certifications were placed on the federal platform which was removed during the 2020 year and the certificates were mistakenly deleted.

Finding No. 10 – Alternate Range Movement Did Not Comply with Civil Service Laws, Rules, and CalHR Policies and Guidelines

Summary: The CRU found an error in CMDs determination of a range change for a personnel specialist position.

Cause: Staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules.

Finding No. 11 – Incorrect Authorization of Bilingual Pay

Summary: The CRU found one error in CMDs authorization of bilingual pay.

Cause: Staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules.

Finding No. 12 – Incorrect Authorization of Pay Differentials

Summary: The CRU found 6 errors in the 22 pay differentials reviewed.

Cause: Staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules.

Finding No. 15 – Department Did Not Retain Employee Time and Attendance Records

Summary: The department did not retain 3 of 49 timesheets from the December 2020 pay period, 4 of 66 timesheets from the January 2021 pay period, and 8 of the 63 timesheets from the February 2021 pay period.

Cause: Staff turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules.

Finding No. 19 – Performance Appraisals Were Not Provided to All Employees

Summary: The CMD did not provide annual performance appraisals to 43 of 71 employees reviewed after the completion of the employee's probationary period. This is the second consecutive time this has been a finding for the CMD.

Cause: Staff/management turnover, lack of knowledge transfer, and lack of training/awareness of the laws and rules for both military and civilian supervisors/managers.

As outlined above, we have provided the cause for each finding, and will await the SPB response on the Corrective Actions.

If you need additional information, please contact the undersigned below. Thank you in advance for the opportunity to respond to these findings.

Sincerely,



Kimberly Deane, Deputy Director
State Personnel Programs