



# **COMPLIANCE REVIEW REPORT**

  

## **PUBLIC EMPLOYMENT RELATIONS BOARD**

Compliance Review Unit  
State Personnel Board  
July 14, 2022

# TABLE OF CONTENTS

INTRODUCTION .....	1
EXECUTIVE SUMMARY .....	2
BACKGROUND .....	3
SCOPE AND METHODOLOGY .....	4
FINDINGS AND RECOMMENDATIONS .....	6
EXAMINATIONS.....	6
APPOINTMENTS.....	8
EQUAL EMPLOYMENT OPPORTUNITY .....	9
PERSONAL SERVICES CONTRACTS .....	11
MANDATED TRAINING .....	13
COMPENSATION AND PAY .....	16
LEAVE.....	24
POLICY AND PROCESSES .....	29
DEPARTMENTAL RESPONSE.....	31
SPB REPLY .....	31

## 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 Public Employment Relations Board's (PERB) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Severity	Finding
Examinations	Very Serious	Equal Employment Opportunity Questionnaires Were Not Separated from Applications
Appointments	In Compliance	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	Very Serious	EEO Officer's Duty Statement Does Not Reflect EEO Duties
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contract
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers <sup>1</sup>
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
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 Movements Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines <sup>2</sup>
Compensation and Pay	In Compliance	Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

<sup>1</sup> Repeat finding. March 20, 2020, the PERB's compliance review report identified the PERB did not provide ethics training to 2 of 31 existing filers.

<sup>2</sup> Repeat finding. March 20, 2020, the PERB's compliance review report identified errors in the PERB's determination of employee compensation.

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	Very Serious	Incorrect Authorization of Out-of-Class Pay
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Serious	Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely
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, Board Rules, and CalHR Policies and Guidelines

### **BACKGROUND**

It is the mission of the PERB to administer and enforce California public sector collective bargaining laws in an expert, fair, and consistent manner; to thereby promote improved public sector employer-employee relations; and to provide a timely and cost-effective method through which employers, employee organizations, and employees can resolve their labor relations disputes.

The PERB's staff consists of approximately 74 employees. The PERB is headquartered in Sacramento, and maintains regional offices in Glendale and Oakland. The major organizational elements of the PERB, in addition to the Board itself, are the Office of the General Counsel, the Division of Administrative Law, State Mediation and Conciliation Services, and the Division of Administration.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the PERB'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 PERB's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the PERB's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the PERB provided, which included examination plans, examination bulletins, job analyses, and scoring results.

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

A cross-section of the PERB'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 PERB provided, which included NOPA forms, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The PERB did not conduct any unlawful appointment investigations during the compliance review period.

Additionally, the PERB did not make any additional appointments during the compliance review period.

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

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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.

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

The review of the PERB'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 PERB'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 PERB's justifications for the contracts were legally sufficient. The review was limited to whether the PERB's practices, policies, and procedures relative to PSC's complied with procedural requirements.

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

The CRU reviewed the PERB'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 PERB's units in order to ensure they maintained accurate and timely leave accounting records. Additionally, the CRU reviewed a selection of the PERB employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of PERB positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

During the compliance review period, the PERB did not have any employees with non-qualifying pay period transactions.

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

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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.

On June 16, 2022, an exit conference was held with the PERB to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the PERB's written response on June 24, 2022, 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, April 1, 2020, through March 31, 2021, the PERB conducted one examination. The CRU reviewed the examination, which is listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Administrative Law Judge (ALJ)	Departmental Open	Qualification Appraisal Panel <sup>5</sup>	06/02/20	3

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<sup>5</sup> The Qualification Appraisal Panel interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.



<b>VERY SERIOUS</b>	<b>FINDING NO. 1 EQUAL EMPLOYMENT OPPORTUNITY QUESTIONNAIRES WERE NOT SEPARATED FROM APPLICATIONS</b>
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**Summary:** The examination referenced above included applications where the EEO questionnaires were not separated from the STD. 678 employment application. Specifically, all three applications reviewed failed to have the EEO questionnaires separated from the STD. 678.

**Criteria:** Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a): for example, a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Applicants for employment in state civil service are asked to voluntarily provide ethnic data about themselves where such data is determined by the CalHR to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

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

**Cause:** The PERB states that the Administrative Law Judge examination was conducted through the Examination and Certification Online System (ECOS). All applications for this examination were submitted electronically and remain in the ECOS system. The PERB further states that only the Human Resources Office has access to the exam applications. When the applications were sent to the SPB for review, the EEO pages were inadvertently included. However, during the exam process, no one has access to the applications since they are housed within the ECOS system. The questionnaires are not used in any employment decisions.

**SPB Reply:** The EEO pages do not print out for applications received through ECOS; only for those received in hard copy and uploaded into the ECOS system. This was confirmed by the CalHR Selections Division.

**Corrective Action:** Within 90 days of the date of this report, the PERB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that future EEO questionnaires are separated from all applications. 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, April 1, 2020, through March 31, 2021, the PERB made 17 appointments. The CRU reviewed 8 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Career Executive Assignment (CEA) B, Deputy Executive Director	CEA	Permanent	Full Time	1
ALJ III	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Conciliator, Department of Industrial Relations	Certification List	Permanent	Full Time	1
Office Technician (Typing)	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
Attorney III	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 PERB measured each applicant’s ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For one CEA appointment and each of the six list appointments reviewed, the PERB 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 one PERB appointment 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 PERB verified the eligibility of the candidate to their appointed class.

The CRU found no deficiencies in the appointments that the PERB initiated during the compliance review period. Accordingly, the CRU found that the PERB’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).)

Pursuant to Government Code section 19795, subdivision (a), in a state agency with less than 500 employees, like PERB, the EEO Officer may be the Personnel Officer.

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>VERY SERIOUS</b>	<b>FINDING NO. 3</b>	<b>EQUAL EMPLOYMENT OPPORTUNITY OFFICER'S DUTY STATEMENT DOES NOT REFLECT EEO DUTIES</b>
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**Summary:** A Deputy Executive Director serves as the PERB's EEO Officer. Although the PERB's EEO program outlines the roles and responsibilities of the EEO Officer, the Deputy Executive Director's Duty Statement provided by PERB does not contain EEO Officer related duties.

**Criteria:** 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).) The EEO Officer shall, among other duties, analyze and report on appointments of employees, bring issues of concern regarding EEO to the appointing power and recommend appropriate action, and perform other duties necessary for the effective implementation of the agency EEO plans. (Gov. Code, § 19795, subd. (a).)

**Severity:** Very Serious. The EEO Officer is responsible for developing, implementing, coordinating, and monitoring an effective EEO program. Due to the substantial responsibilities held by each department's EEO Officer, it is essential that each department, dedicate sufficient staff resources to successfully maintain an effective EEO program.

**Cause:** The PERB acknowledges the importance of clarity in the EEO Officer's duty statement; and states that it will update the duty statement to better reflect the EEO responsibilities.

**Corrective Action:** Within 90 days of the date of this report, the PERB must submit to the SPB a written corrective action response including an updated duty statement for the EEO Officer. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### **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, April 1, 2020, through March 31, 2021, the PERB had one PSC that was in effect. The CRU reviewed the PSC, which is listed below:

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
Cloud Keeper Consulting, LLC	IT Services	11/01/2020 – 10/31/2021	\$165,999.99	Yes	No

<b>SERIOUS</b>	<b>FINDING NO. 4 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACT</b>
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**Summary:** The PERB did not notify unions prior to entering into one PSC.

**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 PERB asserts that it has differing interpretations of existing regulations related to contract notice requirements. The PERB states that it was in compliance with this finding during a Department of General Services audit and was allowed to move forward per their approval. The PERB further states that it will evaluate and request guidance on how to move forward with Government Code section 19132.

**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 a PSC. The PSC's reviewed during this compliance review involved network maintenance, application and Information Technology support, functions which various rank-and-file civil service classifications perform. Within 90 days of the date of this report, the PERB 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 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 PERB’s mandated training program that was in effect during the compliance review period, April 1, 2019, through March 31, 2021. The PERB’s ethics training and sexual harassment prevention training were found to be out of compliance.

<b>VERY SERIOUS</b>	<b>FINDING NO. 5</b>	<b>ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS</b>
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**Summary:** The PERB did not provide ethics training to 4 of 66 existing filers. This is the second consecutive time this has been a finding for the PERB.

**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 PERB states that its Human Resources Office provides quarterly reminders to all managers and supervisors for all training needed by their staff. The department required all employees to take the ethics training in August 2020, with a due date of September 2020, so that all employees would be on the same renewal schedule. Due to the pandemic and the move to remote work, 4 of 66 employees did not complete the ethics training. The PERB further states that all employees are in compliance effective the next cycle on September 2021.

**Corrective Action:** The PERB provides that it has since established a process for ensuring ethics training for new staff and annual filers. Within 90 days of this report, the PERB must submit to the SPB a written corrective action response which documents the corrections the department has implemented to ensure 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.

<b>VERY SERIOUS</b>	<b>FINDING NO. 6</b>	<b>SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS</b>
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**Summary:** The PERB did not provide sexual harassment prevention training to 1 of 17 existing supervisors every 2 years.

**Criteria:** Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, 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 PERB states that its Human Resources Office provides quarterly reminders to all managers and supervisors for all training needed by their staff. The department required all supervisors to take the sexual harassment prevention training in August 2020, with a due date of September 2020, so that all supervisors would be on the same renewal schedule. The PERB further states that the 1 out of 17 supervisors not in compliance was a retired annuitant working in a specialist capacity<sup>6</sup> and did not supervise any staff.

**SPB Reply:** All employees hired by the PERB, both supervisory and nonsupervisory, must be provided sexual harassment prevention training in accordance with Gov. Code § 12950.1, subd. (a)(1). There are no exceptions contemplated for retired employees hired on a temporary basis to fulfill needed job functions.

**Corrective Action:** The PERB provides that it has since established a process for ensuring sexual harassment prevention training for new and existing supervisors. Within 90 days of this report, the PERB must submit to the SPB a written corrective action response which documents the corrections the department has implemented to ensure that all employees are provided sexual harassment prevention training in accordance with Government Code section 12950.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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<sup>6</sup> The employee was working as a Staff Services Manager I capacity, which is a designated supervisory position.

## **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>7</sup> upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

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

During the period under review, April 1, 2020, through March 31, 2021, the PERB made 17 appointments. The CRU reviewed 8 of those appointments to determine if the PERB applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
ALJ III	Certification List	Permanent	Full-Time	\$12,790.00
Associate Governmental Program Analyst	Certification List	Permanent	Full-Time	\$5,797.00
Conciliator, Department of Industrial Relations	Certification List	Permanent	Full-Time	\$8,748.00
Deputy Executive Director	Certification List	CEA	Full-Time	\$10,360.00
Office Technician (Typing)	Certification List	Permanent	Full-Time	\$3,239.00
Staff Services Analyst (General)	Certification List	Permanent	Full-Time	\$4,410.00
Staff Services Manager I	Certification List	Permanent	Full-Time	\$6,124.00
Attorney III	Transfer	Permanent	Full-Time	\$10,956.00

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<sup>7</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).

<b>IN COMPLIANCE</b>	<b>FINDING NO. 7 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 PERB 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, April 1, 2020, through March 31, 2021, the PERB's employees made four alternate range movements within a classification. The CRU reviewed those alternate range movements to determine if the PERB 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)
Attorney	N	O	Full-Time	\$7,818.00
Attorney	M	N	Full-Time	\$6,946.00
Attorney	N	O	Full-Time	\$8,041.00
Attorney	M	N	Full-Time	\$6,946.00

<b>VERY SERIOUS</b>	<b>FINDING NO. 8 ALTERNATE RANGE MOVEMENTS DID NOT COMPLY WITH CIVIL SERVICE LAWS, RULES, AND CALHR POLICIES AND GUIDELINES</b>
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**Summary:** The CRU found the following errors in the PERB's determination of employee compensation. This is the second consecutive time this has been a finding for the PERB.

Classification	Description of Finding(s)	Criteria
Attorney	Incorrect anniversary date	Cal. Code Regs., tit. 2, § 599.676
Attorney	Range change was keyed on the wrong date	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 two circumstances, the PERB 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 PERB acknowledges the two salary determinations for alternate range movements were incorrect due to staff error. The PERB staff who provide salary determinations have been provided additional training; and a two-level review process has been implemented to ensure salary calculations are accurate.

**Corrective Action:** The PERB provides that it has since established a process for ensuring accuracy of salary determinations. Within 90 days of the date of this report, the PERB must submit to the SPB a written corrective action response which documents the corrections the department implemented to ensure that employees are compensated correctly. The PERB must establish an audit system to correct current compensation transactions as well as future transactions. Copies of relevant documentation must be included with the corrective action response.

## Hiring Above Minimum Requests

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

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

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.<sup>8</sup> (Gov. Code, § 19836 subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a

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<sup>8</sup> Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

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

During the period under review, April 1, 2020, through March 31, 2021, the PERB authorized three HAM requests. The CRU reviewed those authorized HAM requests to determine if the PERB correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates’ extraordinary qualifications, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Attorney	Certification List	New to State	\$5,763.00 - \$10,028.00	\$6,579.00
Conciliator, Department of Industrial Relations	Certification List	New to State	\$7,557.00 - \$9,461.00	\$8,748.00

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Conciliator, Department of Industrial Relations	Certification List	New to State	\$7,557.00 - \$9,461.00	\$8,332.00

<b>IN COMPLIANCE</b>	<b>FINDING NO. 9</b>	<b>HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found that the HAM requests the PERB made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

## Pay Differentials

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

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

During the period under review, April 1, 2020, through March 31, 2021, the PERB issued pay differentials<sup>9</sup> to 11 employees. The CRU reviewed 8 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
ALJ I, Public Employment Relations Board	084	5%
ALJ II, Public Employment Relations Board	084	5%
ALJ II, Public Employment Relations Board	084	5%
ALJ III, Public Employment Relations Board	084	5%
ALJ III, Public Employment Relations Board	084	5%
ALJ III, Public Employment Relations Board	084	5%
CEA	084	5%
Legal Secretary	141	10%

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

IN COMPLIANCE	<b>FINDING NO. 10 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 PERB 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>10</sup> and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and the California Code of Regulations, title 2, section 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires. (Classification and Pay Guide Section 375.)

During the period under review, April 1, 2020, through March 31, 2021, the PERB issued OOC pay to one employee. The CRU reviewed the OOC assignment to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines, which is listed below:

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<sup>10</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.



Classification	Collective Bargaining Identifier	Out-of-Class Classification	Time Frame
Presiding Conciliator, Department of Industrial Relations	E97	Supervisor of Conciliation, Department of Industrial Relations, CEA	10/1/2020 - 09/30/2021

**VERY SERIOUS | FINDING NO. 11 INCORRECT AUTHORIZATION OF OUT-OF-CLASS PAY**

**Summary:** The CRU found one error in the PERB’s authorization of OOC pay:

Classification	Out-of-Class Classification	Description of Finding(s)	Criteria
Presiding Conciliator, Department of Industrial Relations	Supervisor of Conciliation, Department of Industrial Relations, CEA	The out of class assignment commenced on 10/01/2020, but the employee received out of class pay for the 09/2020 pay period.	Cal. Code Regs., tit. 2, § 599.810 (d)

**Criteria:** Employees may be compensated for performing duties of a higher classification provided that: the assignment is made in advance in writing and the employee is given a copy of the assignment; and the duties performed by the employee are not described in a training and development assignment or by the specification for the class to which the excluded employee is appointed and, are fully consistent with the types of jobs described in the specification for the higher classification; and the employee does not perform such duties for more than 120 days in a fiscal year. (Cal. Code Regs., tit. 2, § 599.810, subd. (b)(1)(3)(4).)

For excluded employees, there shall be no compensation for assignments that last for 15 consecutive working days or less. (Cal. Code Regs., tit. 2, § 599.810, subd. (c).) An excluded employee performing in a higher class for more than 15 consecutive working days shall receive the rate of pay the excluded employee would receive if appointed to the higher class for the entire duration of the assignment, not to exceed one year. (Cal. Code Regs., tit. 2, § 599.810, subd. (d).) An excluded employee may be assigned out-of-class work for more than 120 calendar days during any 12-month

period only if the appointing power files a written statement with the CalHR certifying that the additional out-of-class work is required to meet a need that cannot be met through other administrative or civil service alternatives. (Cal. Code Regs., tit. 2, § 599.810, subd. (e).)

**Severity:** Very Serious. The PERB 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 PERB acknowledges the incorrect authorization of one out-of-class payment due to human error. The PERB states that it will correct the payment.

**Corrective Action:** Within 90 days of the date of this report, the PERB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599. 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 days<sup>11</sup> worked and paid absences<sup>12</sup>, is counted. (Cal. Code Regs., tit. 2, § 265.1, subd.

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<sup>11</sup> For example, two hours or ten hours count as one day.

<sup>12</sup> For example, vacation, sick leave, compensating time off, etc.

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

Classification	Tenure	Time Frame	Time Worked
Conciliator, Department of Industrial Relations	Retired Annuitant	July 2019 – June 2020	130 Hours
Staff Services Manager I	Retired Annuitant	July 2019 – June 2020	315.5 hours
Staff Services Manager I	Retired Annuitant	January 2020 – June 2020	277 hours
Staff Services Manager I	Retired Annuitant	July 2019 – June 2020	850.5 hours

<b>IN COMPLIANCE</b>	<b>FINDING NO. 12 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The PERB 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, April 1, 2020, through March 31, 2021, the PERB placed six employees on ATO. The CRU reviewed six 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
Attorney III	09/03/2020 – 09/04/2020	2 days
Attorney III	10/6/2020, 10/13/2020, 10/20/2020, 10/27/2020	4 days
Conciliator, Department of Industrial Relations	05/05/2020	1 day
Staff Services Analyst (General)	12/16/2020 – 12/29/2020	9 days
Staff Services Manager I	12/31/2020	1 day
Supervising Attorney	09/09/2020 – 12/29/2020	10 days

<b>IN COMPLIANCE</b>	<b>FINDING NO. 13 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 PERB 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, April 1, 2020, through March 31, 2021, the PERB reported 5 units comprised of 76 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
October 2020	001	14	14	0
November 2020	002	11	11	0
December 2020	003	13	13	0

<b>SERIOUS</b>	<b>FINDING NO. 14 DEPARTMENT HAS NOT IMPLEMENTED A MONTHLY INTERNAL AUDIT PROCESS TO VERIFY ALL LEAVE INPUT IS KEYED ACCURATELY AND TIMELY</b>
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**Summary:** The PERB failed to provide documentation that it has implemented a monthly internal audit process to verify that all timesheets were keyed accurately and timely.

**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.) Departments are directed to create an audit process to verify all leave input is keyed accurately and timely. (Human Resources Manual Section 2101.) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)

**Severity:** Serious. In order for Department leave accounting reports to reflect accurate data, the review of the leave accounting records and corrections, if necessary, are to be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. This means corrections are to be made prior to the next monthly leave activity report being produced.

**Cause:** The PERB states that it audits all leave through a two-step review. The Human Resources Office utilizes the forms CalHR 139 and the STD 672 to ensure leave is keyed correctly and timely. The finding is due to communication delays with the Employment Development Department; and PERB was not able to confirm disability approval the following pay period as was reflected in an employee’s timesheet. The PERB further states that the employee’s leave balances were deducted correctly.

**Corrective Action:** Within 90 days of the date of this report, the PERB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that their monthly internal audit process was documented and that all leave input is keyed accurately and timely. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

## 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.*)

IN COMPLIANCE	FINDING NO. 15 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 PERB's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the PERB'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.*)

<b>IN COMPLIANCE</b>	<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 PERB provides notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law.

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 18 permanent PERB 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
Attorney	6/1/2020
Attorney	8/27/2020
Attorney	10/1/2020
Attorney III	7/11/2020
Attorney III	8/21/2020
Attorney III	10/5/2020
Attorney III	10/11/2020
Attorney III	11/26/2020
Conciliator, Department of Industrial Relations	5/1/2020
Conciliator, Department of Industrial Relations	5/1/2020
Conciliator, Department of Industrial Relations	6/1/2020
Presiding Conciliator, Department of Industrial Relations	10/12/2020



Classification	Date Performance Appraisals Due
Presiding Conciliator, Department of Industrial Relations	11/13/2020
Staff Services Manager I	4/1/2020
Staff Services Manager II	9/1/2020
Supervising Attorney	8/10/2020
Supervising Attorney	8/17/2020
Supervising Attorney	11/9/2020

<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 18 performance appraisals selected for review. Accordingly, the PERB performance appraisal policy and processes satisfied civil service laws, Board rules, policies and guidelines.

### **DEPARTMENTAL RESPONSE**

The PERB's response is attached as attachment one.

### **SPB REPLY**

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

**PUBLIC EMPLOYMENT RELATIONS BOARD**

1031 18th Street  
Sacramento, CA 95811-4124  
Telephone: 916-322-3198



TO: STATE PERSONNEL BOARD  
FROM: SUSAN DAVEY, DEPUTY EXECUTIVE DIRECTOR  
SUBJECT: PERB RESPONSE TO COMPLIANCE REVIEW REPORT  
DATE: JUNE 24, 2022

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The Public Employment Relations Board (PERB) would like to thank the Compliance Review Unit for its thorough review of PERB's personnel practices in the areas of examinations, appointments, Equal Employment Opportunity (EEO), Personal Services Contracts, mandated training, compensation and pay, leave, and policy and processes. PERB appreciates the opportunity to better ensure our compliance and looks forward to remedying the findings identified in the report. The PERB has reviewed the report and prepared the following responses to the findings.

**Finding No. 1 – Equal Employment Opportunity Questionnaires Were Not Separated From Applications**

The Administrative Law Judge examination was conducted through the Examination and Certification Online System (ECOS). All applications for this examination were submitted electronically and remain in the ECOS system. Only the Human Resources Office has access to the exam applications. When the applications were sent to the State Personnel Board for review, the EEO pages were inadvertently included. However, during the exam process, no one has access to the applications since they are housed within the ECOS system. The questionnaires are not used in any employment decisions.

**Finding No. 3 – Equal Employment Opportunity Officer's Duty Statement Does Not Reflect EEO Duties**

PERB acknowledges the importance of clarity in the duty statement and will update the duty statement to better reflect the EEO responsibilities.

**Finding No. 4 – Unions Were Not Notified Of Personal Services Contracts**

PERB has differing interpretations of existing regulations related to contract notice requirements. The PERB was in compliance with this finding during a Department of General Services audit and was allowed to move forward per their approval. The department will evaluate and request guidance on how to move forward with Government Code 19132.

### **Finding No. 5 – Ethics Training Was Not Provided For All Filers**

The Human Resources Office provides quarterly reminders to all managers and supervisors for all training needed by their staff. The department required all employees to take the Ethics Training in August 2020 with a due date of September 2020 so that all employees would be on the same renewal schedule. Due to the pandemic and the move to remote work, 4 of 66 employees did not complete the Ethics Training. All employees are in compliance effective our next cycle on September 2021.

Ethics training is provided to all new staff as part of the onboarding process and all conflict of interest filers are reminded of their responsibilities as filers annually. The Human Resources Office will continue with quarterly reminders for all training and provide a report to the Deputy Executive Director every six months of incompliant employees.

### **Finding No. 6 – Sexual Harassment Prevention Training Was Not Provided For All Supervisors**

The Human Resources Office provides quarterly reminders to all managers and supervisors for all training needed by their staff. The department required all supervisors to take the Sexual Harassment Prevention Training in August 2020 with a due date of September 2020 so that all supervisors would be on the same renewal schedule. The 1 out of 17 supervisors not in compliance was a retired annuitant working in a specialist capacity and did not supervise any staff. The employee has completed the training in the next cycle effective September 2021 and has since separated as the project they were working on was completed.

Sexual Harassment Prevention Training is provided to all new supervisors as part of the onboarding process. The Human Resources Office will continue with quarterly reminders for all training and provide a report to the Deputy Executive Director every six months of incompliant employees.

### **Finding No. 8 – Alternate Range Movements Did Not Comply With Civil Service Laws, rules, And CalHR Policies And Guidelines**

The PERB acknowledges the two salary determinations for alternate range movements were incorrect due to staff error. PERB staff who provide salary determinations have been provided additional training; and a two-level review process has been implemented to ensure salary calculations are accurate.

### **Finding No. 11 – Incorrect Authorization of Out-Of-Class Pay**

The PERB acknowledges the incorrect authorization of one out-of-class payment. The error was due to human error. The department will be correcting the payment.

**Finding No. 14 – Department Has Not Implemented A Monthly Internal Audit Process To Verify All Leave Input Is Keyed Accurately And Timely**

The PERB audits all leave through a two-step review. The Human Resources Office utilizes the forms CalHR 139 and the STD 672 to ensure leave is keyed correctly and timely. The finding is due to communication delays with the Employment Development Department (EDD) and PERB was not able to confirm disability approval the following pay period as was reflected in an employee's timesheet. The employee's leave balances were deducted correctly.

If you have any questions, please do not hesitate to reach out via email at [Susan.Davey@perb.ca.gov](mailto:Susan.Davey@perb.ca.gov).

Sincerely,



Susan Davey  
Deputy Executive Director