



COMPLIANCE REVIEW REPORT

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

Compliance Review Unit
State Personnel Board
June 27, 2022

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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." The SPB and the 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 the 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, the 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’s 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 Department of Resources Recycling and Recovery’s (CalRecycle’s) personnel practices in the areas of examinations, appointments, EEO, PSC’s, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Severity	Finding
Examinations	In Compliance	Permanent Withhold Actions Complied with Civil Service Laws and Board Rules
Appointments	In Compliance	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
Personal Services Contracts	In Compliance	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers ¹
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Supervisors ²
Compensation and Pay	Very Serious	Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment ³
Compensation and Pay	In Compliance	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

¹ Repeat finding for the third consecutive time. The June 14, 2016, CalRecycle Compliance Review Report identified 306 of 609 existing filers and 12 of 20 new filers not receiving ethics training within 6 months of their appointment. In addition, the February 13, 2020, CalRecycle Compliance Review Report identified 168 of 539 existing filers and 33 of 97 filers not receiving ethics training within 6 months of their appointment.

² Repeat finding for the second consecutive time. The February 13, 2020, CalRecycle Compliance Review Report identified 9 of 24 new supervisors not receiving sexual harassment prevention training within 6 months of their appointment and 49 of 105 existing supervisors not receiving sexual harassment prevention training every 2 years.

³ Repeat finding for the second consecutive time. The February 12, 2020, CalRecycle Compliance Review Report identified one error in the CalRecycle’s determination of employee compensation.

Area	Severity	Finding
Compensation and Pay	In Compliance	Hire Above Minimum Request Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Incorrect Authorization of Bilingual Pay
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 Application 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	In Compliance	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Very Serious	Incorrect Application of State Service and Leave Transactions ⁴
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines

BACKGROUND

The CalRecycle, is a department within the California Environmental Protection Agency.

The CalRecycle administers and provides oversight for all of California's state-managed non-hazardous waste handling and recycling programs. Known mostly for overseeing

⁴ Repeat finding for the second consecutive time. The February 12, 2020, CalRecycle Compliance Review Report identified one Non-Qualifying Pay Period transaction and one Qualifying Pay Period transaction where the state service and leave accruals were incorrectly posted.

beverage container and electronic-waste recycling, the CalRecycle is also responsible for organics management, used tires, used motor oil, carpet, paint, mattresses, rigid plastic containers, newsprint, construction and demolition debris, medical sharps waste reduction, recycling and reuse goals in the nation.

The CalRecycle provides training and ongoing support for Local Enforcement Agencies, which regulate and inspect California's active and closed solid waste landfills, as well as materials recovery facilities, solid waste transfer stations, compost facilities, and more. The permitting and inspection processes help the CalRecycle fulfill its mission to protect the health and safety of Californians and the environment.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CalRecycle's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁵. The primary objective of the review was to determine if the CalRecycle's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR's policies and guidelines, CalHR's Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The CalRecycle did not conduct any examinations during the compliance review period. The CRU reviewed the CalRecycle's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

A cross-section of the CalRecycle'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 CalRecycle provided, which included Notice of Personnel Action forms, Request for Personnel Actions, vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The CalRecycle did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the CalRecycle did not make any additional appointments during the compliance review period.

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

⁵ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: hire above minimum (HAM) requests, bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments.

During the compliance review period, the CalRecycle did not issue or authorize hiring red circle rate requests or arduous pay.

The review of the CalRecycle'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 CalRecycle's PSC's were also reviewed.⁶ It was beyond the scope of the compliance review to make conclusions as to whether the CalRecycle's justifications for the contracts were legally sufficient. The review was limited to whether the CalRecycle's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CalRecycle'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 CalRecycle'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 CalRecycle'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 CalRecycle's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the CalRecycle's employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of the CalRecycle's

⁶If 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.

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

The CalRecycle declined an exit conference to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CalRecycle's written response on May 16, 2022, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

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, October 1, 2020, through June 30, 2021, the CalRecycle conducted 10 permanent withhold actions. The CRU reviewed those 10 permanent withhold actions, which are listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Accountant I (Specialist)	0PB31	8/3/20	10/20/20	Failed to Meet Minimum Qualifications (MQ's)
Accounting Officer (Specialist)	0PBAG	6/1/20	4/6/21	Failed to meet MQ's
Associate Governmental Program Analyst (AGPA)	9PB04	10/5/20	10/14/20	Failed to meet MQ's
AGPA	9PB04	7/15/20	10/14/20	Failed to meet MQ's
AGPA	9PB04	6/21/20	10/14/20	Failed to meet MQ's
AGPA	9PB04	9/21/20	11/5/20	Failed to meet MQ's
AGPA	9PB04	6/12/20	11/5/20	Failed to meet MQ's
AGPA	9PB04	8/4/20	10/13/20	Failed to meet MQ's
Auditor I	0PB01	7/6/20	10/8/20	Failed to meet MQ's
Information Technology (IT) Specialist I	7PB35	3/22/21	3/25/21	Failed to meet MQ's

IN COMPLIANCE	FINDING NO. 1 PERMANENT WITHHOLD ACTIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The CRU found no deficiencies in the permanent withhold actions undertaken by the department during the compliance review period.

Appointments

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

During the period under review, October 1, 2020, through June 30, 2021, the CalRecycle made 111 appointments. The CRU reviewed 23 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accountant Trainee	Certification List	Permanent	Full Time	1
Accounting Administrator I	Certification List	Permanent	Full Time	1
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
AGPA	Certification List	Permanent	Full Time	3
Associate Personnel Analyst (APA)	Certification List	Permanent	Full Time	1
Environmental Scientist	Certification List	Permanent	Full Time	2
Office Technician (OT) (Typing)	Certification List	Permanent	Full Time	1
Program Technician (PT) III	Certification List	Limited Term	Full Time	1
Senior Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
Senior Environmental Scientist (Supervisory)	Certification List	Permanent	Full Time	1
Staff Services Analyst (SSA) (General)	Certification List	Limited Term	Full Time	1
Staff Services Manager (SSM) II (Supervisory)	Certification List	Permanent	Full Time	1
Accounting Administrator II	Transfer	Permanent	Full Time	1
AGPA	Transfer	Permanent	Full Time	1
Environmental Scientist	Transfer	Permanent	Full Time	2
General Auditor III	Transfer	Permanent	Full Time	1
PT	Transfer	Permanent	Full Time	1
Senior Environmental Scientist (Specialist)	Transfer	Permanent	Full Time	1
Senior Waste Management Engineer	Transfer	Permanent	Full Time	1

IN COMPLIANCE	FINDING NO. 2 APPOINTMENTS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The CalRecycle measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the 15 list appointments reviewed, the CalRecycle 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 eight CalRecycle appointments made via transfer. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Regs., tit. 2, § 425.) The CalRecycle verified the eligibility of each candidate to their appointed class.

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

Equal Employment Opportunity

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

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

IN COMPLIANCE	FINDING NO. 3 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 CalRecycle’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 CalRecycle’s Director. The CalRecycle 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, October 1, 2020, through June 30, 2021, the CalRecycle had 57 PSC’s that were in effect. The CRU reviewed 11 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Arcadis U.S. Inc.	Fire Debris and Tree Removal Assessment	11/23/20 – 10/22/21	\$52,400,000	Yes	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Crowe LLP	Processing and Handling Fee Cost Surveys	2/5/21 – 6/30/22	\$1,999,849	Yes	Yes
Enterprise Rancheria Estom Yumeka Maidu	Cultural Resources Monitoring	11/1/20 – 6/30/21	\$957,77	Yes	Yes
Forgen DRC JV	Fire Debris and Tree Removal	11/30/20 – 5/1/21	\$235,365,000	Yes	Yes
Goodfellow-Teichert-Odin JV	Fire Debris and Tree Removal	11/30/20 – 5/1/21	\$355,300,000	Yes	Yes
Konkow Valley Cultural Preservation, LLC	Cultural Resources Monitoring	11/1/20 – 6/30/21	\$2,265,073	Yes	Yes
Mooretown Rancheria	Cultural Resources Monitoring	11/1/20 – 6/30/21	\$1,020,337	Yes	Yes
NES, Inc.	Health and Safety Training	3/1/21 – 6/30/23	\$30,660	Yes	Yes
Sukut/Odin/P31/J W Bamford, JV	Hazard Tree Removal	11/6/20 – 10/31/21	\$207,000,000	Yes	Yes
Tetra Tech, Inc.	Fire Debris and Tree Removal Assessment	11/23/20 – 10/22/21	\$72,623,841	Yes	Yes
WSP USA Solutions, Inc.	Fire Debris and Tree Removal Assessment	11/23/20 – 10/22/21	\$52,500,000	Yes	Yes

IN COMPLIANCE	FINDING NO. 4 PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS
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The total dollar amount of all the PSC’s reviewed was \$980,504,760. It was beyond the scope of the review to make conclusions as to whether the CalRecycle’s justifications for the contract were legally sufficient. For all PSC’s reviewed, the CalRecycle provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, the CalRecycle complied with proper notification to all organizations that represent state employees who perform the type or work contracted. Accordingly, the CalRecycle’s PSC’s complied with civil service laws and board rules.

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 CalRecycle’s mandated training program that was in effect during the compliance review period, July 1, 2019, through June 30, 2021.

SEVERITY: VERY SERIOUS	FINDING NO. 5 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS
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Summary: The CalRecycle did not provide ethics training to 15 of 94 existing filers. In addition, the CalRecycle did not provide ethics training to 23 of 53 new filers within 6 months of their appointment. This is the third consecutive time this has been a finding for the CalRecycle.

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 CalRecycle reports that a lack of adequate tracking mechanism and consequences for non-compliance contributed to this finding.

Corrective Action: All filers have now completed Ethics training and the CalRecycle reports it has created a more robust tracking process; however, the SPB was unable to independently validate these improvements. Within 90 days of this report, the CalRecycle must submit to the SPB written documentation which demonstrates the corrections the department has implemented to demonstrate conformity with Government Code section 11146.3. The CalRecycle must make a meaningful and serious attempt to rectify the deficiencies in this area, considering this is the third time insufficiencies have been identified in this area

SEVERITY: VERY SERIOUS	FINDING NO. 6 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS
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Summary: The CalRecycle did not provide sexual harassment prevention training to 6 of 28 new supervisors within 6 months of their appointment. In addition, the CalRecycle did not provide sexual harassment prevention training to 4 of 116 existing supervisors every 2 years. This is the third consecutive time this has been a finding for the CalRecycle.

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 CalRecycle reports that a lack of adequate tracking mechanism and consequences for non-compliance contributed to this finding.

Corrective Action: All filers have now completed sexual harassment prevention training and the CalRecycle reports that it has created a more robust tracking process; however, the SPB was unable to independently validate these improvements. Within 90 days of the date of this report, the CalRecycle must submit to the SPB documentation which demonstrates 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.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by the CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate⁷ 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

⁷ "Rate" is any one of the salary rates in the resolution by the CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, October 1, 2020, through June 30, 2021, the CalRecycle made 111 appointments. The CRU reviewed 23 of those appointments to determine if the CalRecycle applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accountant Trainee	Certification List	Permanent	Full Time	\$3,817
Accounting Administrator I	Certification List	Permanent	Full Time	\$6,572
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	\$4,496
AGPA	Certification List	Permanent	Full Time	\$5,149
AGPA	Certification List	Permanent	Full Time	\$5,149
AGPA	Certification List	Permanent	Full Time	\$6,446
APA	Certification List	Permanent	Full Time	\$5,149
Environmental Scientist	Certification List	Permanent	Full Time	\$3,851
Environmental Scientist	Certification List	Permanent	Full Time	\$3,851
OT (Typing)	Certification List	Permanent	Full Time	\$3,144
PT III	Certification List	Limited Term	Full Time	\$3,522
Senior Accounting Officer (Specialist)	Certification List	Permanent	Full Time	\$5,149
Senior Environmental Scientist (Supervisory)	Certification List	Permanent	Full Time	\$9,268
SSA (General)	Certification List	Limited Term	Full Time	\$4,281
SSM II (Supervisory)	Certification List	Permanent	Full Time	\$8,025
Accounting Administrator II	Transfer	Permanent	Full Time	\$7,237
AGPA	Transfer	Permanent	Full Time	\$6,446
Environmental Scientist	Transfer	Permanent	Full Time	\$6,857
Environmental Scientist	Transfer	Permanent	Full Time	\$5,923
General Auditor III	Transfer	Permanent	Full Time	\$6,517
PT	Transfer	Permanent	Full Time	\$3,151
Senior Environmental Scientist (Specialist)	Transfer	Permanent	Full Time	\$8,479
Senior Waste Management Engineer	Transfer	Permanent	Full Time	\$11,441

SEVERITY: VERY SERIOUS	FINDING No. 7 INCORRECT APPLICATION OF SALARY DETERMINATION LAWS, RULES, AND CALHR POLICIES AND GUIDELINES FOR APPOINTMENT
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Summary: The CRU found 1 error in the CalRecycle’s 23 determinations of employees’ pay. This is the second consecutive time this has been a finding for the CalRecycle.

Classification	Description of Finding	Criteria
Accountant Trainee	Department did not obtain CalHR’s approval to retain the employee’s pay from the prior limited term appointment. Without permanent or probationary status, the employee was only entitled to receive the entrance rate of the appointed classification. Employee was overpaid.	Cal. Code Regs., § 599.673

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

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

Cause: This finding is caused by human error and a lack of training.

Corrective Action: The CalRecycle reports it has provided training to appropriate staff on how to apply salary rules and this specific salary rule correctly. The CalRecycle must establish an audit system to correct current compensation transactions as well as future transactions. Within 90 days of the date of this report, the CalRecycle must submit to the SPB written documentation demonstrating the corrections implemented to ensure that employees are compensated correctly.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary

rates of the alternate ranges. (Cal. Code Regs., tit. 2, § 599.681.) However, in many instances, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria. (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, October 1, 2020, through June 30, 2021, the CalRecycle’s employees made six alternate range movements within a classification. The CRU reviewed those six alternate range movements to determine if the CalRecycle applied salary regulations accurately and correctly processed each employee’s compensation, which are listed below:

Classification	No. of Positions	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Attorney	1	A	B	Full Time	\$6,286
Environmental Scientist	4	B	C	Full Time	\$5,923
IT Associate	1	C	D	Full Time	\$7,126

IN COMPLIANCE	FINDING NO. 8 ALTERNATIVE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU determined that the alternate range movements the CalRecycle made during the compliance review period, satisfied civil service laws, Board rules and CalHR’s policies and guidelines.

Hiring Above Minimum Requests

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

Extraordinary qualifications may provide expertise in a particular area of a department’s program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such

experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

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

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

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

During the period under review, October 1, 2020, through June 30, 2021, the CalRecycle authorized one HAM request. The CRU reviewed the one authorized HAM request to determine if the CalRecycle correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications which are listed below:

⁸ 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.

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Senior Environmental Scientist (Specialist)	Certification List	Permanent	\$6,816 – \$8,479	\$7,500

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

Bilingual Pay

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

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

During the period under review, October 1, 2020, through June 30, 2021, the CalRecycle issued bilingual pay to 33 employees. The CRU reviewed 10 of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base	No. of Appts.
AGPA	R01	Full Time	1
Associate Management Auditor (AMA)	R01	Full Time	2
Attorney III	R02	Full Time	1
OT (General)	R04	Full Time	1
OT (Typing)	R04	Full Time	1
Recycling Specialist II	R01	Full Time	1
Staff Management Auditor	S01	Full Time	2

Classification	Bargaining Unit	Time Base	No. of Appts.
SSA (General)	R01	Full Time	1

SEVERITY: VERY SERIOUS	FINDING No.10 INCORRECT AUTHORIZATION OF BILINGUAL PAY
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Summary: The CRU found four errors in the CalRecycle’s 10 authorizations of bilingual pay:

Classification	Description of Findings	Criteria
Attorney III	Department did not provide supporting documentation demonstrating the need for bilingual services and certification that the employee’s duties required use of bilingual skills for at least 10% of their time.	Pay Differential 14
OT	Department failed to provide certification that the employee’s duties required use of bilingual skills for at least 10% of their time.	Pay Differential 14
Recycling Specialist II	Department failed to provide certification that the employee’s duties required use of bilingual skills for at least 10% of their time.	Pay Differential 14
SSA (General)	Department did not provide supporting documentation demonstrating the need for bilingual services and certification that the employee’s duties required use of bilingual skills for at least 10% of their time.	Pay Differential 14

Criteria: For any state agency, a “qualified” bilingual employee, person, or interpreter is someone who the CalHR has tested and certified, someone who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as proficient in both the English language and the non-English language to be used. (Gov. Code, § 7296, subd. (a)(3).) An individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on a continuing basis averaging 10 percent of the time spent either conversing, interpreting or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions. (Pay Differential 14.)

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

Cause: This finding is caused by lack of training. Additionally, there was no auditing process in place to ensure that all required documentation was retained for existing employees who have been receiving bilingual pay.

Corrective Action: The CalRecycle provides that its human resources office and EEO is working to create an audit process to ensure all appropriate bilingual pay documentation is on file for all employees. Within 90 days of the date of this report, the CalRecycle must submit to the SPB written documentation which demonstrates the corrections the department has implement to ensure conformity with Pay Differential 14.

Pay Differentials

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

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

During the period under review, October 1, 2020, through June 30, 2021, the CalRecycle authorized 25 pay differentials.⁹ The CRU reviewed five of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	No. of Positions	Pay Differential	Monthly Amount
Questioned Document Examiner II	1	245	5%
Senior Safety Engineer -Industrial-	1	433	4%
Waste Management Engineer	3	433	4%

IN COMPLIANCE	FINDING NO.11 PAY DIFFERENTIAL AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the pay differentials that the CalRecycle 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 excluded¹⁰ 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

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

¹⁰ "Excluded employee" means an employee as defined in Government Code section 3527, subdivision (b) (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to Government Code section 18801.1.

to correct the situation before the time period outlined in applicable law, policy or MOU expires. (Classification and Pay Guide Section 375.)

During the period under review, October 1, 2020, through June 30, 2021, the CalRecycle issued OOC pay to three employees. The CRU reviewed those three OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Accounting Technician	R04	Staff Services Analyst	1/12/21 – 5/31/21
Information Officer I (Specialist)	R01	Information Officer II	10/8/20 – 3/22/21
OT (Typing)	R04	Staff Services Analyst	12/15/20 – 5/25/21

SEVERITY: VERY SERIOUS	FINDING No.12 INCORRECT APPLICATION OF OUT-OF-CLASS PAY
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Summary: The CRU found three errors in the CalRecycle’s three OOC payments:

Classification	Out-of-Class Classification	Description of Findings	Criteria
Accounting Technician	SSA	The department used an incorrect salary rate in calculating the OOC pay and did not reduce the rate for PLP 2020, resulting in the employee being overpaid.	Pay Differential 91
Information Officer I (Specialist)	Information Officer II	The department used an incorrect salary rate in calculating the OOC pay for October and did not reduce the rate for PLP 2020, resulting in the employee being overpaid.	Pay Differential 91
OT (Typing)	SSA	The department did not reduce the employee’s OOC pay for PLP 2020, resulting in the employee being overpaid.	Pay Differential 91

Criteria: An employee may be temporarily required to perform out-of-class work by his/her department for up to one hundred twenty (120) calendar days in any twelve (12) consecutive calendar months when it determines that such an assignment is of unusual urgency, nature, volume, location, duration, or other special characteristics; and,

cannot feasibly be met through use of other civil service or administrative alternatives. Departments may not use out-of-class assignments to avoid giving civil service examinations or to avoid using existing eligibility lists created as the result of a civil service examination.

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

Cause: This finding is caused by a high rate of staff turnover, human error and lack of training.

Corrective Action: The CalRecycle states it has provided training to pertinent human resources staff on processing transactions and OOC payments correctly. Within 90 days of the date of this report, the CalRecycle must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with California Code of Regulations, title 2, section 599.810 and Pay Differential 91.

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 days¹¹ worked and paid absences¹², 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

¹¹ For example, two hours or ten hours count as one day.

¹² For example, vacation, sick leave, compensating time off, etc.

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 CalRecycle had 20 positive paid employees whose hours were tracked. The CRU reviewed nine 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
AGPA	Retired Annuitant	Intermittent	81 hours
AGPA	Retired Annuitant	Intermittent	876 hours
AGPA	Retired Annuitant	Intermittent	152 hours
AGPA	Retired Annuitant	Intermittent	517 hours
Environmental Scientist	Retired Annuitant	Intermittent	524.75 hours
PT	Permanent	Intermittent	606.5 hours
PT II	Permanent	Intermittent	1,496 hours
PT II	Permanent	Intermittent	882 hours
Senior Environmental Scientist (Specialist)	Retired Annuitant	Intermittent	412.5 hours

IN COMPLIANCE	FINDING No.13 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The CalRecycle provided sufficient justification and adhered to applicable laws, regulations and CalHR's 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 CalRecycle authorized 1,155 ATO transactions. The CRU reviewed 16 of these ATO transactions to ensure compliance with applicable laws, regulations, and CalHR's policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Accounting Technician	9/10/20 – 9/10/20	2 hours
Associate Accounting Analyst	7/6/20 – 7/8/20	24 hours
AGPA	6/1/20 – 6/5/20	12 hours
AMA	3/30/21 – 3/30/21	9 hours
Auditor I	11/3/20 – 11/3/20	2 hours
Environmental Scientist	12/8/20 – 12/21/20	10 days
Environmental Scientist	3/10/21 – 3/10/21	2 hours
Environmental Scientist	3/16/21 – 3/16/21	2 hours
OT (Typing)	6/1/20 – 6/1/20	8 hours
Personnel Specialist (PS)	3/15/21 – 3/19/21	5 hours
PS	6/1/20 – 6/2/20	16 hours
PT III	9/15/20 – 9/30/20	80 hours
Research Data Analyst	3/17/21 – 3/17/21	2 hours
Senior Environmental Scientist (Sup)	9/8/20 – 9/21/20	24 hours
Senior Waste Management Engineer	3/19/21 – 3/19/21	2 hours

Classification	Time Frame	Amount of Time on ATO
Staff Services Management Auditor	3/11/21 – 3/11/21	2 hours

IN COMPLAINE	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 CalRecycle provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR’s 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, January 1, 2021, through March 31, 2021, the CalRecycle reported 93 units comprised of 792 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
January 2021	893	8	8	0
January 2021	894	5	5	0
January 2021	895	10	10	0
February 2021	100	8	8	0
February 2021	101	13	13	0

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
February 2021	103	7	7	0
February 2021	104	3	3	0
March 2021	100	7	7	0
March 2021	101	13	13	0
March 2021	103	7	7	0

IN COMPLIANCE	FINDING NO.15 LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU reviewed employee leave records from three different leave periods to ensure compliance with applicable laws, regulations and CalHR’s policy and guidelines. Based on our review, the CRU found no deficiencies. The CalRecycle kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

State Service

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

Generally, an employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.¹³ (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.)

¹³ 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.

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 employees¹⁴ 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, October 1, 2020, through June 30, 2021, the CalRecycle had four employees with qualifying and non-qualifying pay period transactions. The CRU reviewed eight transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Non-Qualifying Pay Period	Full Time	2
Qualifying Pay Period	Full Time	6

SEVERITY: VERY SERIOUS	FINDING NO.16 INCORRECT APPLICATION OF STATE SERVICE AND LEAVE TRANSACTIONS
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Summary: The CRU found the one error in the CalRecycle’s eight state service transactions, as identified below. This is the second consecutive time the CalRecycle has been out of compliance in this area.

Type of Transaction	Time base	State Service Incorrectly Posted	Leave Accruals Incorrectly Posted
Qualifying Pay Period	Full Time	1	1

Criteria: In the application of Government Code section 19837, an employee shall be considered to have a month of state service if the employee either: (1) has had 11 or more working days of service in a monthly pay period; or (2) would have had 11 or more working days of service

¹⁴ 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.

in a monthly pay period but was laid off or on a leave of absence for the purpose of lessening the impact of an impending layoff. (Cal. Code Regs., tit.2, § 599.608.) Absences from state service resulting from permanent separation for more than 11 consecutive working days which fall into two consecutive pay periods shall disqualify one of the pay periods. (*Ibid.*)

Hourly or daily rate employees working in a state agency 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.) When an employee has a break in service or changes to full-time, any combination of time worked which does not equal one qualifying month of full-time service shall not be accumulated or counted. (*Ibid.*)

Severity: Very Serious. For audit purposes, accurate and timely attendance reporting is required of all departments. If the length of an informal leave results in a non-qualifying pay period, a state service transaction must be processed. Inappropriately authorizing state service credits and leave accruals to employees who did not earn them results in a monetary loss for the department.

Cause: This finding is caused by human error and lack of training.

Corrective Action: The CalRecycle reports that the state service credit keying error has been corrected and additional training has been provided to human resources staff. Within 90 days of the date of this report, the CalRecycle must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure state service transactions are keyed accurately.

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.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 CalRecycle's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CalRecycle's nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Workers' Compensation

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

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.)

Workers' compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. (*Ibid.*) In this case, the CalRecycle did not employ volunteers during the compliance review period.

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 CalRecycle 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 CalRecycle 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 40 permanent CalRecycle employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

IN COMPLIANCE	FINDING No.19 PERFORMANCE APPRAISAL POLICY AND PROCESSES COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the 40 performance appraisals selected for review. Accordingly, the CalRecycle performance appraisal policy and processes satisfied civil service laws, Board rules, policies and guidelines.

DEPARTMENTAL RESPONSE

The CalRecycle's response is attached as Attachment 1.

SPB REPLY

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



May 16, 2022

Suzanne M. Ambrose
Executive Officer
State Personnel Board
801 Capitol Mall
Sacramento, CA 95815

The Department of Resources Recycling and Recovery (CalRecycle) would like to thank State Personnel Board (SPB) for their thorough review of CalRecycle's compliance with Personnel policies.

CalRecycle and our Human Resources (HR) office is dedicated to adhering to the State's Personnel policies and practices and taking corrective action when we are not in compliance.

Below are CalRecycle's responses to the 2021 compliance review audit:

FINDING NO. 5 Ethics Training Was Not Provided for All Filers: The report noted the CalRecycle did not provide ethics training to 15 of 94 existing filers and did not provide training to 23 of 53 new filers within 6 months of their appointment.

Department Response: CalRecycle acknowledges not all filers completed ethics training within the prescribed timeframes. Although CalRecycle did inform the filers of the requirement of training, we did not have adequate follow up or consequences to ensure that these were completed. Since the review, all of the filers listed in the report have come into compliance with the training requirement. Additionally, CalRecycle has created a more robust tracking process that involves our Legal office and requires managers and supervisors to ensure compliance from their staff.

Cause: The finding is caused by a lack of adequate tracking and consequences for non-compliance.

FINDING NO. 6 Sexual Harassment Prevention Training Was Not Provided for all Supervisors: The report noted the CalRecycle did not provide sexual harassment training to 6 of 28 new supervisors within 6 months of their appointment, and did not provide training to 4 of 166 existing supervisors every 2 years.

Department Response: CalRecycle acknowledges not all filers completed Sexual Harassment training within the prescribed timeframes. Although CalRecycle did inform

the filers of the requirement of training, we did not have adequate follow up or consequences to ensure that these were completed. Since the review, all of the filers listed in the report have come into compliance with the training requirement. Additionally, CalRecycle is working to create a more robust tracking process that requires managers and supervisors to ensure compliance from their staff, and to create consequences for when that does not occur.

Cause: The finding is caused by a lack of adequate tracking and consequences for non-compliance.

FINDING NO. 7 Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment: The report noted CalRecycle did not obtain CalHR's approval to retain the employees pay from a prior limited term appointment.

Department Response: CalRecycle acknowledges our error in processing the salary determination. Although the California Code of Regulations allow for salary earned as a limited term appointment, departments must request CalHR's approval to do so. CalRecycle failed to receive approval from CalHR when completing the salary determination. CalRecycle has requested approval from CalHR and is awaiting response. Additionally, all Personnel Specialists have received training on how to apply salary rules correctly and requirements of this specific salary rule.

Cause: The finding is caused by human error and a lack of training.

FINDING NO. 10 Incorrect Authorization of Bilingual Pay: The report noted four errors in CalRecycle's 10 authorizations of bilingual pay. Specifically, two duty statements failed to demonstrate bilingual services for at least 10% of their time, and all four did not have the standard 897 form on file justifying the need for bilingual services.

Department Response: CalRecycle acknowledges the missing documents. The employees in the findings have had bilingual pay for significant periods of time, some over ten years. Although CalRecycle's Equal Employment Opportunity (EEO) Office and our HR office work together to ensure the documents are present when keying new bilingual pay, there has been no auditing process to ensure we have forms on file for existing bilingual pay. CalRecycle is working with the managers and supervisors in these cases to ensure the duties are appropriate for bilingual pay and obtain the correct documentation. Additionally, HR and EEO are working together to create an audit process to ensure all appropriate documentation is on file.

Cause: The finding is caused by lack of tracking.

FINDING NO. 12 Incorrect Application of Out-of-Class Pay: The report noted CalRecycle used an incorrect salary rate by failing to reduce the rate for PLP 2020 in three cases.

Department Response: CalRecycle acknowledges the error in calculating the salary rate. Over the last year there has been significant turnover in our Transactions unit and almost all Personnel Specialists were new and obtaining training during the period of time these transactions took place. Since this time, CalRecycle has provided significant training to these staff, including on processing of out-of-class compensation. Additionally, these errors have been sent to the State Controller's Office for correction of the pay.

Cause: The finding is caused by human error and lack of training.

FINDING NO. 16 Incorrect Application of State Service and Leave Transactions:

The report noted CalRecycle failed to credit an employee who had 11 or more working days in the month with a state service accrual.

Department Response: CalRecycle acknowledges the error in processing state service credit. The specific employee had reported absences without pay for more than 11 working days in the month and because of that a Non-Qualifying Pay Period transaction (715) was keyed. After the cutoff period, HR was provided an updated timesheet and the 715 transaction was voided. However, the Personnel Specialist failed to manual key a state service credit. This error has since been corrected and the employee was provided a state service credit. Additionally, the Personnel Specialist has been provided training.

Cause: The finding is caused by human error and lack of training.

CalRecycle would like to again thank the SPB compliance review team for their efforts and for the opportunity to respond to this report. CalRecycle will continue to educate and train our staff on Personnel Policy requirements to ensure compliance. Should you have any questions or need additional information, please contact CalRecycle's Personnel Officer, Desiree Scott at (916) 341-6508 or Desiree.Scott@CalRecycle.ca.gov.

Sincerely,

Rachel Machi Wagoner, Director
Department of Resources Recycling and Recovery

cc: SPB Audit File