



COMPLIANCE REVIEW REPORT

AGRICULTURAL LABOR RELATIONS BOARD

Compliance Review Unit
State Personnel Board
January 22, 2024

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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authorities' personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training, to ensure compliance with civil service laws and Board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews.

Pursuant to Government Code section 18502, subdivision (c), the SPB and the California Department of Human Resources (CalHR) may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." SPB and CalHR, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the Agricultural Labor Relations Board (ALRB) 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
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed and Some That Were Provided Were Untimely ¹
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	Sexual Harassment Prevention Training Was Not Provided for All Employees
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
Compensation and Pay	In Compliance	Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

¹ Repeat finding. The March 11, 2015, March 27, 2017, and September 3, 2021, ALRB compliance review reports identified probation reports were not completed.

Area	Severity	Finding
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Serious	Department Did Not Certify That All Leave Records Were Reviewed
Leave	In Compliance	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Neptism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Serious	Performance Appraisals Were Not Provided to All Employees ²

BACKGROUND

The ALRB was created in 1975 with the enactment of the Agricultural Labor Relations Act (ALRA), a landmark California law that extended collective bargaining rights and protections to agricultural employees who are excluded from the coverage of the federal National Labor Relations Act. The ALRA authorizes the ALRB to oversee and protect the rights of agricultural employees to organize themselves in negotiating the terms and conditions of their employment, including whether or not to have labor unions represent them.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the ALRB's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave,

² Repeat finding. The September 3, 2021, ALRB compliance review report identified performance appraisals were not provided to 17 of 20 employees.

and policy and processes³. The primary objective of the review was to determine if the ALRB's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The ALRB did not conduct any exams or permanent withhold actions during the compliance review period.

A cross-section of the ALRB's appointments was selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the ALRB provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The ALRB did not conduct any unlawful appointment investigations and did not make any additional appointments during the compliance review period.

The ALRB's appointments were also selected for review to ensure the ALRB applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the ALRB provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments. During the compliance review period, the ALRB did not issue or authorize hiring above minimum (HAM) requests, red circle rate requests, or arduous pay.

The review of the ALRB'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.

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

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

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

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

The ALRB did not request an exit conference to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the ALRB's written response on January 10, 2024, which is attached to this final compliance review report.

⁴If 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.

FINDINGS AND RECOMMENDATIONS

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, 2022, through September 30, 2023, the ALRB made 12 appointments. The CRU reviewed six of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Administrative Law Judge	Certification List	Permanent	Full Time	1
Associate General Counsel, Unfair Labor Practices, ALRB	Certification List	Permanent	Full Time	1
Field Examiner I, ALRB	Certification List	Permanent	Full Time	1
Field Examiner II, ALRB	Certification List	Permanent	Full Time	1
Field Examiner III, ALRB	Certification List	Permanent	Full Time	1
Administrative Law Judge	Transfer	Permanent	Full Time	1

SEVERITY: SERIOUS	FINDING NO. 1 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED AND SOME THAT WERE PROVIDED WERE UNTIMELY
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Summary: The ALRB did not provide three probationary reports of performance for one of the six appointments reviewed by the CRU. In addition, the ALRB did not provide one probationary report of performance in a

timely manner, as reflected in the table below. This is the fourth consecutive time this has been a finding for the ALRB.

Classification	Appointment Type	No. of Appointments	Total No. of Missing Probation Reports
Associate General Counsel, Unfair Labor Practices, ALRB	Certification List	1	3

Classification	Appointment Type	No. of Appointments	Total No. of Late Probation Reports
Field Examiner I, ALRB	Certification List	1	1

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

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that

the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The ALRB states that managers and supervisors have not been held accountable for completing probationary evaluations.

Corrective Action: Within 90 days of the date of this report, the ALRB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the probationary requirements of Government Code section 19172 and California Code of Regulations, title 2, section 599.795. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Equal Employment Opportunity

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

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

IN COMPLIANCE	FINDING NO. 2 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 ALRB’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 Executive Director of the ALRB. The ALRB 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, 2022, through September 30, 2023, the ALRB had one PSC that was in effect. The CRU reviewed the PSC, which is listed below:

Vendor	Services	Contract Amount	Justification Identified?	Union Notification?
Wicklund IT Consulting	IT Services	\$60,000	Yes	Yes

IN COMPLIANCE	FINDING NO. 3 PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS
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The total dollar amount of the PSC reviewed was \$60,000. It was beyond the scope of the review to make conclusions as to whether ALRB justifications for the contract were legally sufficient. For the PSC reviewed, the ALRB provided specific and detailed factual information in the written justification as to how the contract met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, ALRB complied with proper notification to all organizations that represent state employees who perform or could perform the type or work contracted as required by California Code of Regulations section 547.60.2. Accordingly, the ALRB PSC 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.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a) and (b), & 19995.4, subd. (b).) Additionally, the training must be successfully completed within the term of the employee’s probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).)

Within 12 months of the initial appointment of an employee to a management or CEA position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*)

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 ALRB’s mandated training program that was in effect during the compliance review period, October 1, 2021, through September 30, 2023. The ALRB’s supervisory training and ethics training were found to be in compliance, while the ALRB’s sexual harassment prevention training was found to be out of compliance.

SEVERITY: VERY SERIOUS	FINDING NO. 4 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL EMPLOYEES
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Summary: The ALRB did not provide sexual harassment prevention training to all six existing supervisors every two years.

In addition, the ALRB did not provide sexual harassment prevention training to 21 of 38 existing non-supervisors every two years.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention training every two years and non-supervisory employees one hour of sexual harassment prevention training every two years. New employees must be provided sexual harassment

prevention training within six months of appointment. (Gov. Code, § 12950.1, subs. (a) and (b); Gov. Code § 19995.4.)

Severity: Very Serious. The department does not ensure that all new and existing employees 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 ALRB states that all staff are required to complete this training when hired and every two years; however, the ALRB did not notify staff timely regarding the requirements for this training.

Corrective Action: Within 90 days of the date of this report, the ALRB must submit to the SPB a written corrective action response which addresses the corrections the department will implement 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.

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 rate⁵ 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.

⁵ "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

During the period under review, October 1, 2022, through September 30, 2023, the ALRB made 12 appointments. The CRU reviewed two of those appointments to determine if the ALRB applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Administrative Law Judge	Certification List	Permanent	Full Time	\$10,468
Field Examiner III, ALRB	Certification List	Permanent	Full Time	\$7,252

IN COMPLIANCE	FINDING NO. 5 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the salary determinations that were reviewed. The ALRB 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, October 1, 2022, through September 30, 2023, the ALRB employees made seven alternate range movements within a classification. The CRU reviewed five of those alternate range movements to determine if the ALRB 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	B	C	Full Time	\$8,281
Attorney	A	B	Full Time	\$7,511
Attorney	A	B	Full Time	\$7,511
Attorney	A	B	Full Time	\$7,511
Field Examiner I, ALRB	A	B	Full Time	\$4,588

SEVERITY: VERY SERIOUS	FINDING NO. 6 ALTERNATE RANGE MOVEMENTS DID NOT COMPLY WITH CIVIL SERVICE LAWS, RULES, AND CALHR POLICIES AND GUIDELINES
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Summary: The CRU found two errors in the five alternate range movements reviewed:

Classification	Description of Findings	Criteria
Attorney (2 positions)	Incorrect anniversary dates were determined, resulting in the employees being overcompensated.	Cal. Code Regs., tit. 2, section 599.608

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 ALRB 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 ALRB states that the anniversary dates were miscalculated for the two alternate range movements.

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

Bilingual Pay

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

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

During the period under review, October 1, 2022, through September 30, 2023, the ALRB issued bilingual pay to 41 employees. The CRU reviewed 24 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.
Associate General Counsel, Unfair Labor Practices, ALRB	M02	Full Time	1
Associate Governmental Program Analyst	R01	Full Time	1
Attorney	R02	Full Time	4
Attorney III	R02	Full Time	1
Field Examiner I, ALRB	R01	Full Time	4
Field Examiner II, ALRB	R01	Full Time	5
Field Examiner III, ALRB	S01	Full Time	1
Legal Secretary	R04	Full Time	2

Classification	Bargaining Unit	Time Base	No. of Appts.
Office Technician (Typing)	R04	Full Time	1
Senior Legal Typist	R04	Full Time	1
Staff Services Analyst	R01	Full Time	2
Staff Services Manager I	S01	Full Time	1

IN COMPLIANCE	FINDING NO. 7 BILINGUAL PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found that the bilingual pay authorized to employees 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, October 1, 2022, through September 30, 2023, the ALRB authorized two pay differentials.⁶ The CRU reviewed the two pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

⁶ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Administrative Law Judge	84	5%
Supervising Administrative Law Judge	84	5%

IN COMPLIANCE	FINDING NO. 8 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 ALRB 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 excluded⁷ 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 time period outlined in applicable law, policy or MOU expires. (Classification and Pay Guide Section 375.)

During the period under review, October 1, 2022, through September 30, 2023, the ALRB issued OOC pay to three employees. The CRU reviewed all three of these OOC

⁷ “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.

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
Associate Governmental Program Analyst	R01	Staff Services Manager I	4/3/23-8/1/23
Attorney	R02	Associate General Counsel, Unfair Labor Practices, ALRB	4/3/23-8/1/23
Field Examiner II, ALRB	R01	Field Examiner III, ALRB	3/1/23-6/28/23

IN COMPLIANCE	FINDING NO. 9 OUT OF CLASS PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the OOC pay assignments that the ALRB authorized during the compliance review period. OOC pay was issued appropriately to employees performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment.

Leave

Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting time is used 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 the working days of a month. When counting 189 days, every day worked, including partial days⁸ worked and paid absences⁹, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day are 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

⁸ For example, two hours or ten hours count as one day.

⁹ For example, vacation, sick leave, compensating time off, etc.

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).)

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

Classification	Tenure	Time Frame	Time Worked
Associate Governmental Program Analyst	Retired Annuitant	7/1/22-6/30/23	941.5 Hours
Attorney IV	Retired Annuitant	7/1/22-6/30/23	927 Hours

IN COMPLIANCE	FINDING NO. 10	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 ALRB 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, July 1, 2022, through June 30, 2023, the ALRB authorized 11 ATO transactions. The CRU reviewed 10 of these ATO transactions 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	8/22/2022	9 Hours
Attorney	9/27/2022 - 9/28/2022	16 Hours
Field Examiner I, ALRB	8/12/2022, 8/15/2022 - 8/19/2022, 8/22/2022	51 Hours
Field Examiner II, ALRB	7/27/2022 - 8/1/2022	32 Hours
Field Examiner II, ALRB	7/11/2022 - 7/15/2022	40 Hours
Field Examiner II, ALRB	9/8/2022 - 9/13/2022	32 Hours
Field Examiner II, ALRB	10/11/2022 -10/16/2022	40 Hours
Field Examiner II, ALRB	11/28/2022 - 11/30/2022	24 Hours
Field Examiner II, ALRB	12/1/2022 - 12/2/2022	16 Hours
Supervising Administrative Law Judge	12/7/2022 - 12/12/2022, 12/16/2022 - 12/20/2022, and 12/28/2022 - 12/29/2022	80 Hours

IN COMPLIANCE	FINDING NO. 11	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 ALRB 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, 2023, through June 30, 2023, the ALRB reported 9 units comprised of 62 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	No. of Employees	No. of Timesheets Reviewed	No. of Missing Timesheets
April 2023	201	7	7	0
May 2023	240	13	13	0
June 2023	301	5	5	0

SEVERITY: SERIOUS	FINDING NO. 12 DEPARTMENT DID NOT CERTIFY THAT ALL LEAVE RECORDS WERE REVIEWED
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Summary:

The ALRB failed to certify that all leave records have been reviewed and corrected if necessary for the three units reviewed. As a result, the ALRB did not correctly enter 1 of 22 timesheets into the Leave Accounting System (LAS) during the May 2023 pay period. The employee retained their prior leave balance despite having used leave credits.

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.) Departments shall identify and record all errors found and shall certify that all leave records for the unit/pay period identified have been reviewed and all leave errors identified have been corrected. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)

Severity: Serious. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. Failure to audit leave could put the department at risk of incurring additional costs from the initiation of collection efforts from overpayments, and the risk of liability related to recovering inappropriately credited leave hours and funds.

Cause: The ALRB states that they currently compare what has been recorded in the leave accounting system as accrued/earned or used by each employee to their attendance record for the pay period by using the Leave Activity Balance reports. However, an error was made in keying one timesheet in LAS.

Corrective Action: Within 90 days of the date of this report, the ALRB 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 is documented and that all leave input is keyed accurately and timely. The ALRB must incorporate completion of Leave Activity and Correction Certification forms for all leave records even when errors are not identified or corrected. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

State Service

The state recognizes two different types of absences while an employee is on pay status, paid or unpaid. The unpaid absences can affect whether a pay period is 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.¹⁰ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

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

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs., tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs., tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees¹¹ 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, 2022, through September 30, 2023, the ALRB had one employee with a non-qualifying pay period transaction. The CRU reviewed the

¹⁰ 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.

¹¹ 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.

transaction to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which is listed below:

Type of Transaction	Time base	No. Reviewed
Non-Qualifying Pay Period	Full Time	1

IN COMPLIANCE	FINDING NO. 13	SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU determined that the ALRB ensured the employee with a non-qualifying pay period did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

Policy and Processes

Nepotism

It is the policy of the State of California to hire, transfer, and promote all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. (Cal. Code Regs., tit. 2, § 87.) (*Ibid.*) All appointing powers shall adopt an anti-nepotism policy that includes the following components: (1) a statement that the appointing power is committed to merit-based hiring and that nepotism is antithetical to a merit-based civil service system; (2) a definition of “nepotism” as an employee’s use of influence or power to hire, transfer, or promote an applicant or employee because of a personal relationship; (3) a definition of “personal relationship” as persons related by blood, adoption, current or former marriage, domestic partnership or cohabitation; (4) a statement that prohibits participation in the selection of an applicant for employment by anyone who has a personal relationship with the applicant, as defined in section 83.6; (5) a statement that prohibits the direct or first-line supervision of an employee with whom the supervisor has a personal relationship, as defined in section 83.6; (6) a process for addressing issues of direct supervision when personal relationships between employees exist. (*Ibid.*)

IN COMPLIANCE	FINDING NO. 14	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 ALRB’s commitment to the state policy of hiring, transferring, and promoting employees on the basis of merit. Additionally, the ALRB’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 COMPLIANCE	FINDING NO. 15	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 ALRB 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 ALRB 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 11 permanent ALRB employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

SEVERITY: SERIOUS	FINDING NO. 16	PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES
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Summary: The ALRB did not provide annual performance appraisals to any of the 11 employees reviewed after the completion of the employee’s probationary period. This is the second consecutive time this has been a finding for the ALRB.

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

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

Cause: The ALRB states that managers and supervisors have not been held accountable for completing performance appraisals.

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

DEPARTMENTAL RESPONSE

The ALRB's departmental response is attached as Attachment 1.

SPB REPLY

Based upon the ALRB written response, the ALRB 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.