



# **COMPLIANCE REVIEW REPORT**

## **EMPLOYMENT TRAINING PANEL**

Compliance Review Unit  
State Personnel Board  
December 22, 2023

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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 Employment Training Panel (ETP) 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		Permanent Withhold Actions Complied with Civil Service Laws and Board Rules
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers
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	In Compliance	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Very Serious	Incorrectly Posted Leave Usage and/or Leave Credit
Leave	In Compliance	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Area	Severity	Finding
Policy	Very Serious	Department's Nepotism Policy Does Not Contain All Required Components
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 <sup>1</sup>

**BACKGROUND**

The ETP provides funding to employers to assist in upgrading the skills of their workers through training that leads to good paying, long-term jobs. The ETP was created in 1982 by the California State Legislature and is funded by California employers through a special payroll tax. The ETP has a tripartite governing structure, with appointed panel members representing business, unions, and state government. The ETP is a funding agency, not a training agency. Businesses determine their own training needs and how to provide training. Furthermore, the ETP employs approximately 120 employees in Sacramento, San Diego, North Hollywood and the San Francisco Bay Area.

The Employment Development Department (EDD) performs human resources operations for the ETP.

**SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the ETP's examinations, appointments, EEO program, mandated training, compensation and pay, leave, and policy and processes<sup>2</sup>. The primary objective of the review was to determine if the ETP'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.

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<sup>1</sup> Repeat finding. The ETP's July 2, 2021, compliance review report identified 10 of 15 employees reviewed did not receive annual performance appraisals after the completion of the employees' probationary period.

<sup>2</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

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

A cross-section of the ETP'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 ETP 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 ETP did not conduct any unlawful appointment investigations or make any additional appointments during the compliance review period.

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

The review of the ETP'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 (DAC).

The ETP did not execute any PSC's during the compliance review period.

The ETP'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 ETP'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 ETP'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 ETP'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 positive paid employee whose hours were tracked during the compliance review period in order to ensure that they adhered to procedural requirements. The ETP did not authorize Administrative Time Off (ATO) during the compliance review period.

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

On December 7, 2023, an exit conference was held with the ETP to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the ETP's written response on December 12, 2023, 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, December 1, 2022, through August 31, 2023, the ETP conducted one permanent withhold action. The CRU reviewed the permanent withhold action, which is listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Research Data Analyst	8PB38	2/10/23	2/10/24	Failed to Meet Minimum Qualifications

<b>IN COMPLIANCE</b>	<b>FINDING NO. 1 PERMANENT WITHHOLD ACTIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CRU found no deficiencies in the permanent withhold action 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, December 1, 2022, through August 31, 2023, the ETP made 19 appointments. The CRU reviewed 6 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Associate Management Auditor	Certification List	Permanent	Full Time	1
Information Technology Manager I	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Training & Development	Permanent	Full Time	1

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 2 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED</b>
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**Summary:** The ETP did not provide three probationary reports of performance for one of the six appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	No. of Appointments	Total No. of Missing Probation Reports
Associate Governmental Program Analyst	Certification List	1	3

**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 ETP states that despite notifying managers and supervisors of the requirement annually, not all probationary evaluations were completed.

**Corrective Action:** Within 90 days of the date of this report, the ETP must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19172. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### **Equal Employment Opportunity**

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

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

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

IN COMPLIANCE	<b>FINDING NO. 3</b> <b>EQUAL EMPLOYMENT OPPORTUNITY PROGRAM</b> <b>COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES</b>
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After reviewing the policies, procedures, and programs necessary for compliance with the EEO program’s role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the ETP’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 ETP. The ETP 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.

**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 Career Executive Assignment (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 ETP’s mandated training program that was in effect during the compliance review period, September 1, 2021, through August 31, 2023. The ETP’s supervisory training was found to be in compliance, while the ETP’s ethics training and sexual harassment prevention training were found to be out of compliance.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 4 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS</b>
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**Summary:** The CRU reviewed 52 of 72 ETP existing filers. The ETP did not provide ethics training to 37 of 52 existing filers. In addition, the ETP

did not provide ethics training to 1 of 14 new filers within 6 months of their appointment.

**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 ETP states that during the transition to the EDD’s new Learning Management System (LMS), ETP staff were not signed up for the new ethics training course that replaced their previous ethics training. However, when the ETP Training Coordinator ran reports using the LMS system, it appeared the ETP was in compliance with ethics training. The ETP states this error was discovered in March 2023 and has been corrected.

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

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 5 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL EMPLOYEES</b>
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**Summary:** The ETP provided sexual harassment prevention training to their five new supervisors within six months of their appointment. In addition, the ETP provided sexual harassment prevention training to their 15 existing supervisors every 2 years. However, the ETP did not provide sexual harassment prevention training to 1 of 62 existing non-supervisors every 2 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 ETP states that sexual harassment prevention training for non-supervisors is provided through the EDD's LMS. Despite the LMS automatically notifying employees to complete the training at seven different time periods, one employee did not complete the training timely.

**Corrective Action:** Within 90 days of the date of this report, the ETP 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 rate<sup>3</sup> upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special

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<sup>3</sup> "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

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, December 1, 2022, through August 31, 2023, the ETP made 19 appointments. The CRU reviewed three of those appointments to determine if the ETP applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,518
Information Technology Manager I	Certification List	Permanent	Full Time	\$11,105
Office Technician (Typing)	Certification List	Permanent	Full Time	\$3,369

<b>IN COMPLIANCE</b>	<b>FINDING NO. 6 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the salary determinations that were reviewed. The ETP 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, December 1, 2022, through August 31, 2023, the ETP made one alternate range movement within a classification. The CRU reviewed the

alternate range movement to determine if the ETP applied salary regulations accurately and correctly processed the employee's compensation, which is listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Information Technology Specialist I	B	C	Full Time	\$8,153

<b>IN COMPLIANCE</b>	<b>FINDING NO. 7</b>	<b>ALTERNATIVE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the alternate range movement the ETP made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

## 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 days<sup>4</sup> worked and paid absences<sup>5</sup>, 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 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.*)

<sup>4</sup> For example, two hours or ten hours count as one day.

<sup>5</sup> For example, vacation, sick leave, compensating time off, etc.



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 ETP had one positive paid employee whose hours were tracked. The CRU reviewed the positive paid appointment to ensure compliance with applicable laws, regulations, policies and guidelines, which is listed below:

Classification	Tenure	Time Frame	Time Worked
Staff Services Manager I	Retired Annuitant	7/1/22 – 6/30/23	342 Hours

<b>IN COMPLIANCE</b>	<b>FINDING NO. 8</b>	<b>POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the positive paid employee reviewed during the compliance review period. The ETP provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

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, March 2, 2023, through May 31, 2023, the ETP reported six units comprised of 101 active employees during the March 2023 pay period, 105 active employees during the April 2023 pay period, and 107 active employees during the May 2023 pay period. 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
March 2023	396	7	7	0
March 2023	397	4	4	0
April 2023	394	5	5	0
April 2023	399	7	7	0
May 2023	399	7	7	0

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 9 INCORRECTLY POSTED LEAVE USAGE AND/OR LEAVE CREDIT</b>
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**Summary:** The ETP did not correctly enter 4 of 30 timesheets into the Leave Accounting System (LAS) during the April 2023 and May 2023 pay periods. As a result, three employees retained their prior leave balance despite having used leave credits.

**Criteria:** Departments shall create a monthly internal audit process to verify that all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) 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.*)

**Severity:** Very serious. Errors in posting leave usage and/or leave credits puts 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 ETP states that these errors were caused by a lack of training and oversight of the leave reconciliation process.

**Corrective Action:** Within 90 days of the date of this report, the ETP must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Human Resources Manual Section 2101. 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.<sup>6</sup> (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

Hourly or daily rate employees working at a department in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or

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<sup>6</sup> Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, and 19997.4 and California Code of Regulations, title 2, sections 599.609, 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.776.1, 599.787, 599.791, 599.840 and 599.843 provide further clarification for calculating state time.

accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609.)

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs., tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs., tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees<sup>7</sup> shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

Permanent intermittent employees also earn leave credits on the pay period following the accumulated accrual of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period, are not counted or accumulated towards leave credits.

During the period under review, December 1, 2022, through August 31, 2023, the ETP had one employee with a non-qualifying pay period transaction. The CRU reviewed the 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

<b>IN COMPLIANCE</b>	<b>FINDING NO. 10 SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the ETP 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.

<sup>7</sup> 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.

## **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.*)

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 11 DEPARTMENT'S NEPOTISM POLICY DOES NOT CONTAIN ALL REQUIRED COMPONENTS</b>
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**Summary:** The ETP's nepotism policy does not contain all required components. Specifically, the ETP's nepotism policy does not include: A definition of "personal relationship" as persons related by blood, adoption, current or former marriage, domestic partnership or cohabitation.

**Criteria:** 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. (Human Resources Manual Section 1204). All department nepotism policies shall include six specific components which emphasize that nepotism is antithetical to merit-based civil service and include definitions and prohibitions integral to upholding the merit system. (Cal. Code Regs., tit. 2, § 87.)

**Severity:** Very Serious. Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. Departments must take proactive steps to ensure that the hiring, transferring, and promoting of all employees is done on the basis of merit and fitness in accordance with civil service statutes. Maintaining a current written nepotism policy that addresses all requirements outlined in civil service statute, rules and regulations, and its dissemination to all staff, is the cornerstone for achieving these outcomes.

**Cause:** The ETP states that the accidental omission was an oversight by the ETP and the Department of Justice who reviewed their nepotism policy.

**Corrective Action:** Within 90 days of the date of this report, the ETP must submit to the SPB a written corrective action response which includes an updated nepotism policy which contains requirements outlined in Human Resources Manual section 1204, and documentation demonstrating that it has been distributed to all staff.

### 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 ETP did not employ volunteers during the compliance review period.

<b>IN COMPLIANCE</b>	<b>FINDING NO. 12 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the ETP 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 ETP 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 20 permanent ETP employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 13 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b>
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**Summary:** The ETP did not provide annual performance appraisals to 4 of 20 employees reviewed after the completion of the employee's probationary period. This is the second consecutive time this has been a finding for the ETP.

**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 ETP states that despite notifying managers and supervisors of the requirement annually, not all performance appraisals were completed.

**Corrective Action:** Within 90 days of the date of this report, the ETP 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 ETP's departmental response is attached as Attachment 1.

### **SPB REPLY**

Based upon the ETP written response, the ETP 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.