



COMPLIANCE REVIEW REPORT

DEPARTMENT OF MANAGED HEALTH CARE

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 Department of Managed Health Care (DMHC) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Severity	Finding
Examinations	In Compliance	Examinations Complied with Civil Service Laws and Board Rules
Examinations	In Compliance	Permanent Withhold Actions Complied with Civil Service Laws and Board Rules
Appointments	In Compliance	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers ¹
Mandated Training	Very Serious	Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

¹ Repeat finding. The May 28, 2018, DMHC compliance review report identified all 165 existing filers and all 194 new filers not receiving ethics training. In addition, the January 20, 2021, DMHC compliance review report identified 59 of 75 existing filers and 17 of 32 new filers not taking ethics training.

Area	Severity	Finding
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	Hire Above Minimum Requests Complied 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	Very Serious	Incorrect Authorization of Out-of-Class Pay
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Area	Severity	Finding
Policy	Serious	Performance Appraisals Were Not Provided to All Employees ²

BACKGROUND

The mission of the DMHC is to protect the consumer's health care rights and ensure a stable health care delivery system. The DMHC accomplishes its mission by ensuring the health care system works for consumers. Currently, the DMHC has a total of 605.5 authorized positions and is comprised of nine offices. These employees and offices help protect the health care rights of more than 29.7 million Californians by regulating health care service plans, assisting consumers through a consumer Help Center, educating consumers on their rights and responsibilities, and preserving the financial stability of the managed health care system.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the DMHC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes³. The primary objective of the review was to determine if the DMHC's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the DMHC's examinations was selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the DMHC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the DMHC's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

² Repeat finding. The May 28, 2018, DMHC compliance review report identified 3 of the 20 employees reviewed as not receiving performance appraisals. In addition, the January 20, 2021, DMHC compliance review report identified 10 of the 39 employees reviewed as not receiving performance appraisals timely.

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

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

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

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

The DMHC'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.

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.

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

The DMHC did not request an exit conference to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DMHC's written response on December 12, 2023, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall

file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) The final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, December 1, 2022, through August 31, 2023, the DMHC conducted four examinations. The CRU reviewed the four examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Corporation Examiner	Departmental Open	Education and Experience ⁵	Continuous	5
Corporation Examiner IV (Specialist)	Departmental Open	Qualification Appraisal Panel ⁶	Continuous	4
Corporation Examiner IV (Supervisor)	Departmental Open	QAP	Continuous	8
Supervising Corporation Examiner	Departmental Open	QAP	Continuous	1

IN COMPLIANCE	FINDING NO. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The CRU reviewed four departmental examinations which the DMHC administered in order to create eligible lists from which to make appointments. The DMHC published and distributed examination bulletins containing the required information for all examinations. Applications received by the DMHC accepted prior to the final filing date. Applicants were notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of

⁵ In an Education and Experience examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

⁶ The Qualification Appraisal Panel interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examinations that the DMHC conducted during the compliance review period.

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 DMHC conducted four permanent withhold actions. The CRU reviewed three of these permanent withhold actions, which are listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Attorney III	9PB08	12/13/2022	12/13/2023	Failed to Meet Minimum Qualifications
Associate Governmental Program Analyst	9PB04	3/23/2023	3/23/2024	Failed to Meet Minimum Qualifications
Attorney, Assistant Chief Counsel	3PBAP	1/30/2023	1/30/2024	Failed to Meet Minimum Qualifications

IN COMPLIANCE	FINDING NO. 2	PERMANENT WITHHOLD ACTIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The CRU found no deficiencies in the permanent withhold actions undertaken by the department during the compliance review period.

Appointments

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

During the period under review, October 1, 2022, through June 30, 2023, the DMHC made 147 appointments. The CRU reviewed 30 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Actuary	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Attorney	Certification List	Permanent	Full Time	1
Attorney III	Certification List	Permanent	Full Time	1
Attorney IV	Certification List	Permanent	Full Time	1
Attorney, Assistant Chief Counsel	Certification List	Permanent	Full Time	1
CEA	Certification List	CEA	Full Time	1
Corporation Examiner	Certification List	Permanent	Full Time	2
Health Program Specialist I	Certification List	Permanent	Full Time	2

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Health Program Specialist II	Certification List	Permanent	Full Time	2
Information Officer II	Certification List	Permanent	Full Time	1
Information Technology Associate	Certification List	Permanent	Full Time	1
Information Technology Specialist I	Certification List	Permanent	Full Time	1
Information Technology Technician	Certification List	Permanent	Full Time	1
Legal Analyst	Certification List	Permanent	Full Time	1
Research Data Analyst II	Certification List	Permanent	Full Time	1
Research Data Supervisor I	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Limited Term	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Training & Development	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Information Technology Specialist I	Transfer	Permanent	Full Time	1
Information Technology Specialist II	Transfer	Permanent	Full Time	1
Senior Legal Analyst	Transfer	Permanent	Full Time	1
Staff Services Analyst	Transfer	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Transfer	Permanent	Full Time	1

IN COMPLIANCE	FINDING NO. 3 APPOINTMENTS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The DMHC measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the 23 list appointments reviewed, the DMHC ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU reviewed six DMHC appointments made via transfer. A transfer of an employee from a position under one appointing power to a position under another appointing power

may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Regs., tit. 2, § 425.) The DMHC verified the eligibility of each candidate to their appointed class.

Eligibility for training and development (T & D) assignments are limited to employees who (1) have permanent status in their present class, or (2) who have probationary status and who previously have had permanent status and who, since such permanent status, have had no break in service due to a permanent separation. (Cal. Code Regs., tit. 2, § 438, subd. (a).) The CRU reviewed one training and development appointment(s) and determined it to be in compliance with applicable civil service laws and Board rules.

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

Equal Employment Opportunity

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

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

IN COMPLIANCE	FINDING NO. 4 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 DMHC’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 DMHC. The DMHC 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, December 1, 2022, through August 31, 2023, the DMHC had 23 PSC’s that were in effect. The CRU reviewed 14 of those, which are listed below:

Vendor	Services	Contract Amount	Justification Identified?	Union Notification?
ArcherHall, LLC	Relativity eDiscovery Software Application	\$34,560	Yes	Yes
Estrada Consulting, Inc.	Consulting Services for ISO	\$322,450	Yes	Yes ⁷
FARO Consulting & Solutions, LLC	Software License Subscription via DGS Software Licensing Program	\$60,696	Yes	Yes
JHC Solutions, LLC	Chief Medical Officer Consulting Services	\$530,000	Yes	Yes
Lewis & Ellis, Inc	Consulting Services	\$4,200,000	Yes	Yes
Lewis & Ellis, Inc	Methodologies Assessment and Development and Consulting Services	\$251,940	Yes	Yes
Managed Healthcare Unlimited	Clinical Consulting Services	\$1,587,000	Yes	Yes
Mathamatica Inc.	Health Equity and Quality Data Analysis Services	\$741,236	Yes	Yes
Maximus Federal Services, Inc.	Independent Medical Review Services	\$9,365,220	Yes	Yes
Maximus Federal Services, Inc.	Clinical Consulting Services	\$4,875,160	Yes	Yes
Maximus Federal Services, Inc.	Behavioral Health	\$2,107,950	Yes	No
PYA, P.C.	Health Care Service Plan and Acquisition	\$250,000	Yes	Yes
Queer Works	Quality Standard and Training Curriculum Development	\$154,500	Yes	Yes
Team Friday, Inc.	Social Media Outreach Campaign	\$484,000	Yes	No

⁷ Union notification was sent after the contract was executed.

SEVERITY: SERIOUS	FINDING NO. 5 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS
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Summary: The DMHC did not notify unions prior to entering into 3 of the 14 PSC's reviewed.

Criteria: Before a state agency executes a contract or amendment to a contract for personal services conditions specified within Government Code section 19130, subdivision (b), the agency shall notify all organizations that represent state employees who perform or could perform the type of work that is called for within the contract, unless exempted under Government Code section 19132, subdivision (b)(1). (Cal. Code Regs., tit. 2, § 547.60.2.)

Severity: Serious. Unions must be notified of impending personal services contracts in order to ensure they are aware contracts are being proposed for the type of work that their members could perform.

Cause: The DMHC states that due to oversight by the analyst, the established process for PSC union notification was not followed.

Corrective Action: Departments are responsible for notifying all organizations that represent state employees who perform or could perform the type of work to be contracted prior to executing a PSC. The PSC's reviewed during this compliance review involved several services and functions which various rank-and-file civil service classifications perform. Within 90 days of the date of this report, the DMHC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of California Code of Regulations section 547.60.2. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she

holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

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

SEVERITY: VERY SERIOUS	FINDING NO. 6 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS
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Summary: The DMHC did not provide ethics training to 44 of 398 existing filers. In addition, the DMHC did not provide ethics training to 30 of 121 new filers within 6 months of their appointment. This is the third consecutive time this has been a finding for the DMHC.

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 DMHC states that ethics training is administered through the Department of Justice (DOJ), and it appears some DMHC employees may be inaccurately marking the assignments complete without completing the training and/or submitting the DOJ certificate of completion.

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

SEVERITY: VERY SERIOUS	FINDING NO. 7 SUPERVISORY TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS, MANAGERS, AND CEAS
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Summary: The DMHC provided basic supervisory training to 8 new supervisors within 12 months of appointment; however, they did not provide

manager training to their 2 new managers within 12 months of appointment.

Criteria: Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. (Gov. Code, § 19995.4, subd. (b).)

Upon initial appointment of an employee to a managerial position, each employee must receive 40 hours of leadership training within 12 months of appointment. (Gov. Code, § 19995.4, subd. (d).)

Upon initial appointment of an employee to a Career Executive Assignment position, each employee must receive 20 hours of leadership training within 12 months of appointment. (Gov. Code, § 19995.4, subd. (e).)

Severity: Very Serious. The department does not ensure its leaders are properly trained. Without proper training, leaders may not properly carry out their leadership roles, including managing employees.

Cause: The DMHC states that due to scheduling conflicts, two managers did not meet the required training deadline.

Corrective Action: Within 90 days of the date of this report, the DMHC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that new supervisors are provided supervisory training within twelve months of appointment as required by Government Code section 19995.4. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Compensation and Pay

Salary Determination

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

calculate and determine an employee’s salary rate⁸ upon appointment depending on the appointment type, the employee’s state employment and pay history, and tenure.

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

During the period under review, October 1, 2022, through June 30, 2023, the DMHC made 147 appointments. The CRU reviewed 14 of those appointments to determine if the DMHC 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	\$6,031
Attorney III	Certification List	Permanent	Full Time	\$11,379
Attorney, Assistant Chief Counsel	Certification List	Permanent	Full Time	\$14,417
Corporation Examiner	Certification List	Permanent	Full Time	\$5,543
Corporation Examiner	Certification List	Permanent	Full Time	\$8,367
Health Program Specialist I	Certification List	Permanent	Full Time	\$7,252
Information Technology Associate	Certification List	Permanent	Full Time	\$5,968
Information Technology Technician	Certification List	Permanent	Full Time	\$4,515
Legal Analyst	Certification List	Permanent	Full Time	\$5,583
Research Data Analyst II	Certification List	Permanent	Full Time	\$7,252
Research Data Supervisor I	Certification List	Permanent	Full Time	\$6,563
Information Technology Specialist I	Transfer	Permanent	Full Time	\$8,527
Senior Legal Analyst	Transfer	Permanent	Full Time	\$6,387

⁸ “Rate” is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Staff Services Analyst (General)	Transfer	Permanent	Full Time	\$4,428

IN COMPLIANCE	FINDING NO. 8 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 DMHC 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 June 30, 2023, the DMHC employees made 19 alternate range movements within a classification. The CRU reviewed 13 of those alternate range movements to determine if the DMHC 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	A	B	Full Time	\$7,511
Attorney	A	B	Full Time	\$7,511
Attorney	C	D	Full Time	\$8,448
Attorney	C	D	Full Time	\$8,448
Attorney	C	D	Full Time	\$8,448
Attorney	C	D	Full Time	\$9,464

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Corporation Examiner	A	B	Full Time	\$6,682
Corporation Examiner	A	B	Full Time	\$6,682
Information Technology Specialist I	B	C	Full Time	\$9,923
Information Technology Specialist I	B	C	Full Time	\$9,223
Personnel Specialist	A	B	Full Time	\$3,826
Personnel Specialist	A	B	Full Time	\$4,570
Personnel Specialist	B	C	Full Time	\$4,812

SEVERITY: VERY SERIOUS	FINDING NO. 9 ALTERNATE RANGE MOVEMENTS DID NOT COMPLY WITH CIVIL SERVICE LAWS, RULES, AND CALHR POLICIES AND GUIDELINES
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Summary: The CRU found 1 error in the 13 alternate range movements reviewed:

Classification	Description of Finding	Criteria
Attorney	Employee was moved into range D before they met the criteria. The employee was overcompensated.	Alternate Range Criteria 217

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. The DMHC 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 DMHC states that because of the format of their alternate range criteria form, the Personnel Specialist mistook the number of months and days of experience; therefore, the employee was moved to Range D a month prior to the scheduled range change.

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

Hiring Above Minimum Requests

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

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

If the provisions of this section conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.⁹ (Gov. Code, § 19836, subd. (b).) Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

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

During the period under review, October 1, 2022, through June 30, 2023, the DMHC authorized four HAM requests. The CRU reviewed the four authorized HAM requests to determine if the DMHC correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates’ extraordinary qualifications, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Actuary	Certification List	New to State	\$10,150-\$12,711	\$12,711
Attorney III	Certification List	New to State	\$10,225-\$13,118	\$13,000
Information Technology Specialist I	Certification List	New to State	\$7,197-\$9,643	\$8,200

⁹ Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Information Technology Specialist I	Certification List	New to State	\$7,197-\$9,643	\$9,643

IN COMPLIANCE	FINDING NO. 10	HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found that the HAM requests the DMHC made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

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

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

During the period under review, October 1, 2022, through June 30, 2023, the DMHC issued bilingual pay to three employees. The CRU reviewed the three bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base	No. of Appts.
Staff Services Analyst	R01	Full Time	2
Supervising Program Technician II	S04	Full Time	1

IN COMPLIANCE	FINDING NO. 11	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 June 30, 2023, the DMHC authorized six pay differentials.¹⁰ The CRU reviewed five of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Nurse Evaluator IV, Health Services	154	\$100
Program Technician II	411	\$150
Program Technician II	411	\$150
Supervising Program Technician II	411	\$150
Program Technician II	411	\$150

¹⁰ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

IN COMPLIANCE	FINDING NO. 12	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 DMHC 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 excluded¹¹ 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 June 30, 2023, the DMHC issued OOC pay to 13 employees. The CRU reviewed 10 of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

¹¹ “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.

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Associate Governmental Program Analyst	R01	Staff Services Manager I	11/1/22-2/28/23
Associate Governmental Program Analyst	R01	Staff Services Manager I	10/1/22-10/31/22
Associate Governmental Program Analyst	R01	Staff Services Manager I	10/1/22-11/30/22
Attorney III	R02	Attorney IV	1/4/23-3/1/23
Information Technology Specialist II	R01	Information Technology Manager I	10/1/22-12/19/22
Senior Legal Analyst	R01	Staff Services Manager I	5/22/23-5/31/23
Staff Services Analyst	R01	Associate Governmental Program Analyst	10/1/22-10/24/22
Staff Services Analyst	R01	Associate Governmental Program Analyst	11/7/22-1/13/23
Staff Services Manager I	S01	Staff Services Manager II	11/14/2022-4/11/23
Staff Services Manager I	S01	Staff Services Manager II	11/14/22-3/31/23

SEVERITY: VERY SERIOUS	FINDING NO. 13	INCORRECT AUTHORIZATION OF OUT-OF-CLASS PAY
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Summary: The CRU found 1 error in the 10 OOC pay assignments reviewed:

Classification	Out-of-Class Classification	Description of Finding	Criteria
Attorney III	Attorney IV	Inappropriate use of OOC assignment.	Pay Differential 91

Criteria: An employee may be temporarily required to perform out-of-class work by his/her department for up to one hundred twenty (120) calendar days in any twelve (12) consecutive calendar months when

it determines that such an assignment is of unusual urgency, nature, volume, location, duration, or other special characteristics; and, cannot feasibly be met through use of other civil service or administrative alternatives. Departments may not use out-of-class assignments to avoid giving civil service examinations or to avoid using existing eligibility lists created as the result of a civil service examination.

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

Cause: The DMHC states that the OOC was necessary in order to mitigate an undue financial impact on a new employee while maintaining coverage of the critical workload associated with the position.

SPB Response: The SPB acknowledges the need for the position to be filled without causing the employee financial strain; however, OOC assignments should only be used as a "last resort" to accommodate temporary staffing needs.

Corrective Action: Within 90 days of the date of this report, the DMHC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.810 and Pay Differential 91. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Leave

Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting

time is used 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 days¹² worked and paid absences¹³, 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.*)

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

Classification	Tenure	Time Frame	Time Worked
Attorney IV	Retired Annuitant	7/1/22-6/30/23	657.25 Hours

¹² For example, two hours or ten hours count as one day.

¹³ For example, vacation, sick leave, compensating time off, etc.

Classification	Tenure	Time Frame	Time Worked
Attorney IV	Retired Annuitant	7/1/22- 6/30/23	829 Hours
Staff Health Care Service Plan Analyst	Retired Annuitant	7/1/22- 6/30/23	469 Hours

IN COMPLIANCE	FINDING NO. 14	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 DMHC 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, June 1, 2022, through May 31, 2023, the DMHC authorized 128 ATO transactions. The CRU reviewed 25 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
Associate Governmental Program Analyst	6/2/22-6/9/22	44 Hours
Associate Governmental Program Analyst	1/9/23	8 Hours
Associate Governmental Program Analyst	1/9/23	2.25 Hours
Associate Governmental Program Analyst	1/9/23	9 Hours
Associate Governmental Program Analyst	1/9/23	9 Hours
Associate Governmental Program Analyst	1/9/23	3.75 Hours

Classification	Time Frame	Amount of Time on ATO
Associate Governmental Program Analyst	1/9/23	8 Hours
Associate Governmental Program Analyst	6/1/22-7/31/22	64 Hours
Attorney	1/10/23-1/11/23	16 Hours
Attorney III	1/9/23	8 Hours
Attorney IV	1/10/23	8 Hours
Business Services Technician	10/28/22-11/11/22	73.5 Hours
Health Program Specialist II	8/1/22-8/31/22	44 Hours
Information Technology Associate	7/1/22-7/31/22	32 Hours
Information Technology Specialist II	1/9/23	8 Hours
Office Technician	12/21/22	1.25 Hours
Program Tech II	1/9/23	6.75 Hours
Program Tech II	11/8/22	2 Hours
Research Data Specialist I	1/9/23	9 Hours
Senior Accounting Officer Specialist	1/6/23-1/10/23	20 Hours
Staff Services Analyst	1/9/23	8 Hours
Staff Services Analyst	1/9/23-1/10/23	18 Hours
Staff Services Analyst	1/9/23-1/10/23	13 Hours
Staff Services Analyst	1/9/23-1/10/23	16 Hours
Staff Services Analyst	12/20/22	8 Hours

IN COMPLIANCE	FINDING NO. 15	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 DMHC 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, March 2, 2023, through May 31, 2023, the DMHC reported 27 units comprised of 545 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
March 2023	162	24	24	0
March 2023	411	41	41	0
March 2023	551	5	5	0
April 2023	131	10	10	0
April 2023	166	15	15	0
April 2023	611	25	25	0

IN COMPLIANCE	FINDING NO. 16	LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU reviewed employee leave records from two different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The DMHC kept complete and accurate time

and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

State Service

The state recognizes two different types of absences while an employee is on pay status, paid or unpaid. The unpaid absences can affect whether a pay period is 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.¹⁴ (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 employees¹⁵ 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.

¹⁴ 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.

¹⁵ 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.

During the period under review, October 1, 2022, through June 30, 2023, the DMHC had three employees with qualifying and non-qualifying pay period transactions. The CRU reviewed all three transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	No. Reviewed
Non-Qualifying Pay Period	Full Time	1
Qualifying Pay Period	Full Time	2

IN COMPLIANCE	FINDING NO. 17	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 DMHC ensured employees with non-qualifying pay periods did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

Policy and Processes

Nepotism

It is the policy of the State of California to 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. 18	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 DMHC’s commitment to the state policy of hiring, transferring, and promoting employees on the basis of merit. Additionally, the DMHC’s nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Workers’ Compensation

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

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers’ compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers’ compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. (*Ibid.*)

In this case, the DMHC did not employ volunteers during the compliance review period.

IN COMPLIANCE	FINDING NO. 19	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 DMHC 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 DMHC 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 72 permanent DMHC 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. 20	PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES
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Summary: The DMHC did not provide annual performance appraisals to 23 of 72 employees reviewed after the completion of the employee's probationary period. This is the third consecutive time this has been a finding for the DMHC.

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 DMHC states that although they have exerted their efforts in ensuring that supervisors and managers comply with this mandate, some supervisors and managers are not adhering to the process of completing the annual appraisals.

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

SPB REPLY

Based upon the DMHC written response, the DMHC 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.



Attachment 1
Gavin Newsom, Governor
State of California
Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
980 9th Street, Suite 500
Sacramento, CA 95814
Phone: 916-324-8176 | Fax: 916-255-5241
www.HealthHelp.ca.gov

December 12, 2023

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

Re: Response to State Personnel Board (SPB) Draft Compliance Review Report

Dear Ms. Ambrose:

We appreciate the opportunity to provide comments on the draft SPB Compliance Review Report for the Department of Managed Health Care (DMHC).

The DMHC recognizes the importance of efforts to evaluate personnel practices to ensure compliance and foster implementation of best practices. We will continue to strive for excellence in our employment, development, and contracting practices. Our overall compliance demonstrates DMHC's commitment to adhering to civil service laws, boards regulations, bargaining agreements, and our DMHC delegation agreements.

The following are DMHC's responses to the six deficiencies noted in the draft report.

Finding #5 – Unions were not notified of Personal Services Contracts

The DMHC did not notify unions prior to entering three (3) of the 14 PSCs reviewed.

DMHC Response

During the DMHC's review of its contract files, it was determined that one analyst did not follow established processes related to union notifications for personal services contracts. This was an oversight by the identified analyst and appropriate feedback has been provided to ensure established processes are followed for all future personal services contracts.

To ensure compliance, the DMHC has provided training related to union notifications to all procurement and contracts staff. The DMHC has also committed to providing ongoing yearly refresher training and has created a new process for managers to review and audit contract files during the creation, and after execution of each personal services contract to ensure established processes are being followed.

Protecting the Health Care Rights of More Than 26 Million Californians
Contact the DMHC Help Center at 1-888-466-2219 or www.HealthHelp.ca.gov

Finding #6 – Ethics Training was not provided for all Filers

The DMHC did not provide ethics training to 44 of 398 existing filers. In addition, the DMHC did not provide ethics training to 30 of 121 new filers within six (6) months of their appointment. This is the third consecutive time this has been a finding for the DMHC.

DMHC Response

The DMHC provided training to all existing and new filers within six months of their appointment, as evidenced by the DMHC certificates of completion. Ethics training is mandated for all DMHC employees, employees are assigned Ethics training as a reoccurrence from their first completion. The Ethics training is administered through the Department of Justice (DOJ). The DMHC is at a disadvantage without having access to the training SCORM file to accurately capture completion status. The DMHC directs employees to the DOJ site, then employees mark complete and are instructed to submit their certificate of completion to the DMHC Learning and Development Unit for processing. Based on the findings from this audit, it appears some DMHC employees may be inaccurately marking the assignments complete without completing the training and/or submitting the DOJ certificate of completion.

To ensure future compliance and accurate documentation, the DMHC has added an additional acknowledgment within the internal Learning Management System. In addition, on the completion email when employees mark complete, the Learning and Development Unit and the employee's manager are also cc'd and can follow-up with the employee if the certificate is not sent to the email box.

Finding #7 – Supervisory Training Was Not Provided for all Supervisors, Managers, and CEAs

The DMHC provided basic supervisory training to eight (8) new supervisors within 12 months of appointment; however, they did not provide manager training to their two (2) new managers within 12 months of appointment.

DMHC Response

The DMHC provided supervisory training to the twelve new supervisors within the required timeframe. As managers, supervisors and CEAs are appointed, the Learning and Development Unit sends an email regarding their new role, the mandated requirements. The appointees are then required to register directly through CalHR within the required timeframe. Upon completion, employees are instructed to submit their certificates of completion to the Learning and Development Unit and their training record is updated. Unfortunately, the two managers who did not meet the required deadline were due to scheduling conflicts. The DMHC believes this is an isolated incident. However, to ensure compliance, the DMHC will send additional

correspondence to newly appointed managers, supervisors, and CEAs, with a cc to their manager to ensure registration is complete and within the required timeframe.

Finding #9 – Alternate Range Movements did not comply with civil service laws, rules, and CalHR policies and guidelines

The CRU found one (1) error in the 13 alternate range movements reviewed:

Classification	Description of Finding	Criteria
Attorney	Employee was moved into Range D before they met the criteria. The employee was overcompensated.	ARC #217

DMHC Response

The DMHC imposes that all documentation related to an employee’s appointment is completed at the time of the hire. This document includes the Alternate Range Criteria (ARC) form. This form is completed by the selection analyst. The analyst calculates the exact date of when the next range change for the employee is due. Due to the format of the ARC form, the next range change schedule was scheduled incorrectly; therefore, resulting in the employee being moved to Range D a month prior to the scheduled range change. The Personnel Specialist mistook the number of months and days that the experience was completed as the next months and days when the employee is eligible for the next ARC Review. The DMHC HR acknowledged that the form had become an issue, so it was updated in February 2023. The approximate date of the next range change has been added. This ensures that confusion of the dates and keying errors are avoided. The transaction error was corrected. In addition, the employee was notified of this error and is aware that an accounts receivable was established to recoup the overcompensation.

Finding #13 – Incorrect Authorization of Out-of-Class Pay

The CRU found one (1) error in the 10 OOC pay assignments reviewed:

Classification	Out-Of-Class Classification	Description of Finding	Criteria
Attorney III	Attorney IV	Inappropriate use of OOC assignment	Pay Differential 91

DMHC Response

The DMHC’s mission is to protect consumer’s health care rights and ensure a stable health care delivery system. Over the past five years, the number of DMHC licensed health plans and covered lives under the DMHC’s jurisdiction has steadily increased. Currently, the DMHC licenses 132 full-service and specialized health plans with almost 28 million California lives under the DMHC’s jurisdiction. The statutorily mandated time

frame to review standard consumer complaints is 30 days and the time frame to resolve consumer independent medical review applications is 45 days. As a result of the increase in DMHC licensed health plans and covered lives under the DMHC's jurisdiction, the DMHC has been unable to meet the mandated review times for consumer and provider complaints, and a small percentage of the independent medical review applications. Moreover, due to the complex nature and changes in the law regarding mental health services, LAB attorneys currently handle all standard complaints involving mental health services, including but not limited to out-of-state residential treatment services.

If this position was not filled, LAB would be unable to keep up with the volume, urgency, and complexity of incoming complaints and IMR applications, and otherwise ensure compliance with the statutory mandate of closing consumer complaints within 30 days and other metrics. Moreover, having the position act in a lead capacity with respect to LAB's Attorney Is and IIIs, allowed the LAB Assistant Chief Counsels to be more operationally focused.

Based on the information that was provided by the employee's former department, the DMHC and the candidate were under the impression that the candidate was due for a merit salary adjustment (MSA) effective January 2023. For the candidate to receive the MSA prior to the promotion to the Attorney IV classification, a January 4, 2023, start date was agreed upon.

Upon receipt of the Personnel Action Request (PAR) from the employee's former department after the employee's start date with the DMHC, it was discovered the employee was not eligible for an MSA in January 2023 and would not be eligible until March 2023. The employee had already started with the DMHC as an Attorney IV. To mitigate the undue financial impact the former department's miscommunication would have on the employee and to maintain coverage of the critical workload associated with the position, the DMHC HR Office requested to appoint him to a blanket Attorney III position and extend an Attorney IV out of class assignment, effective January 4, 2023.

Finding #20 – Performance Appraisals were not provided to all employees

The DMHC did not provide annual performance appraisals to 23 of 72 employees reviewed after the completion of the employee's probationary period. This is the third consecutive time this has been a finding for the DMHC.

DMHC Response

The DMHC provides annual performance appraisals to employees during the employee's birth month. Unfortunately, some supervisors and managers are not adhering to the process of completing the annual appraisals.

Since the last compliance review in 2020, the DMHC has exerted its effort in ensuring that supervisors and managers comply with this mandate. The DMHC released a newsletter highlighting the process of the completion of annual appraisals on a timely

basis. Multiple emails outlining the expectation also went out. The completion of the annual appraisal was emphasized in the Hiring Guide and Performance Management Guide that were established. The DMHC Human Resources conducted multiple training sessions, new supervisor's forums, quarterly supervisor's forums and brown bag lunch sessions on the importance of timely completion and submission of these reports. Additionally, the DMHC HR sends out monthly reminders to supervisors and managers with a list of reports that are due for the month. The Office of Administrative Services Deputy Director has continued to be proactive in notifying program Deputy Directors of past due and upcoming due dates for their office.

The DMHC is committed to adhering to the guidelines set forth by regulations in providing annual performance appraisals to employees in a timely manner. The DMHC is finding ways to mitigate this non-compliance issue. Currently, the DMHC is piloting an automated system for completing the annual appraisal report through our Learning Management System (LMS), Aspire. This will help ensure that supervisors and managers receive notification and reminders of when the reports are due and assist them to complete the reports in a timely manner. It will also allow for point-in-time compliance reports to be accessed by managers and supervisors for on-going oversight.

If you have any questions or would like any additional information, please contact Noreen Hunter at (916) 327-2438 or Noreen.hunter@dmhc.ca.gov.

Sincerely,

Nichole Eshelman

Nichole Eshelman
Deputy Director
Office of Administration

NE:nh

Cc: Mary Watanabe, Director
Dan Southard, Chief Deputy Director